

Bar Standards Board - Director General's operational report – March 2019

Future Bar Training (FBT) programme

1. The LSB has approved the application for the rule changes and the new rules come into force on 1 April. The FBT Programme Board met on the 5 March and agreed the inclusion of the new Examinations Project into the Programme of work to be delivered. It was noted that the programme is now transitioning to its implementation phase. The Programme Board will next convene on 2 July where it will consider a proposal for the Programme to be purely executive-led so as to bring it in line with how all the other major programmes of work are run. A knowledge sharing session is also being planned for early April so as keep all staff and colleagues at the Bar Council abreast of the major changes that have taken place in the FBT Programme.

Role of the Inns

2. Apart from the Data Sharing Protocol, the MOU and associated schedules have been agreed between the BSB, COIC and the Inns of Court. The Data Sharing Protocol is scheduled to be agreed prior to the MOU being signed by the Parties at the ISAG meeting on 27 March 2019. The FBT Programme Board will consider the project's closure at its July meeting.

Fees and Charges

3. The consultation on fees and charges for the authorisation and supervision of Authorised Education and Training Organisations (AETOs) closed on 1 March 2019. We received 9 responses. The analysis of these with recommendations is before the Board for separate discussion.

Authorisation Process (Digital Platform)

4. The end-to-end digital platform is ready to go live alongside the new rules. It allows applications to be completed, submitted and assessed in a fully automated way. We will monitor the process on an ongoing basis and encourage and action feedback from all users. Our website offers clear contact details should an applicant wish to discuss any aspect of their application with us.

Authorisation of AETOs providing WBL / Pupillage

5. All responses to our survey have been impact assessed and we are planning the authorisation process. Given the risk associated with existing bodies is generally low, the timeframe for authorisation of all organisations under the new rules is end 2020.

Bar Qualification Manual (BQM)

6. The BQM will be published alongside the new rules as a series of linked web pages and documents.

Review of Curriculum and Assessments

7. The Curriculum and Assessment Strategy for the vocational component has been completed and will be published alongside the Authorisation Framework and BQM when the new rules come into force. Having consulted further with the Curriculum and Assessments Review group, with Providers and the Centralised Examinations Board, we have now issued the updated syllabus for Civil Litigation (which includes Dispute Resolution) for FBT pathways starting in 2020. Work is now underway in designing the new Civil assessment, and work will

begin shortly on the Curriculum and Assessment Strategy for pupillage (including the compulsory courses and the centralised assessment of Professional Ethics).

Implementation of the Professional Statement for pupillage training from 1 September 2019

8. The Professional Statement was rolled out with a group of early adopters for the 2017 and 2018 intakes of pupils in order to learn and share lessons before implementation to the Bar as a whole from 1 September. The pilot group included 8 chambers and 4 organisations from the employed Bar (not otherwise regulated by the BSB). They provided a good cross-section of the Bar in terms of size, location and practice area. The feedback from the early adopters about transitioning from the checklist to the Professional Statement was consistently very positive. Feedback included:
 - The Professional Statement better reflects the training already being delivering because it provides a more rounded framework of the competences needed to become a barrister. In contrast, the old checklists are just a list of tasks to be completed.
 - AETOs in the employed Bar found good alignment with competence frameworks already in use in their own organisations.
 - A number reported that implementing the Professional Statement was a driver to develop more robust and transparent documentation of the assessment of pupils.
 - It provides a useful framework to tackle difficult conversations about development needs relating to competences that were not addressed by the old checklists.
 - Pupils bring with them different levels of experience and different strengths. The BSB's flexible approach allows pupil supervisors to focus time on areas for development, rather than ticking off a list of activities to be completed.
 - It makes for a more balanced relationship between pupil and pupil supervisor. Whereas the onus before was on the pupil to tick off items on the checklists, AETOs found that it put a much clearer onus on the pupil supervisor to actively assess competency, as well as on the pupil to reflect on their own development.
 - It helps pupils to get into the habit of self-reflection, which prepares them well for the new approach to Continuing Professional Development.
9. They also welcomed flexibility to develop their own documentation to suit their circumstances. However, they felt that guidance in certain areas would assist others. The feedback from the participants has helped to inform the guidance that will be in the new Bar Qualification Manual.

Pupillage: Recruitment and Advertising project

10. We will be consulting on two proposals via a targeted engagement programme with relevant stakeholders. The proposals are to mandate written agreements for pupillage and to require AETOs to follow the Gateway timetable for pupillage recruitment. We have already met with the Bar Council under the regulatory independence protocol to discuss these proposals. We also discussed updating the Bar Council's fair recruitment guidance to reflect the recommendations arising from the project.
11. We are developing a joint outreach event with the Bar Council and BACFI (the Specialist Bar Association for commerce, finance and industry) to promote the benefits of employed pupillages to organisations who can potentially offer them. We hope to target organisations who already employ barristers but do not offer pupillage, and organisations who have registered their interest in becoming AETOs. The event is due to take place in June 2019.

Regulatory Operations Programme

12. The go-live date for the Regulatory Operations programme has been extended from 1 June to 15 October. This has been done to allow extra time for the Case Management System to be completed and properly tested. In light of this, the programme and project plans are being refreshed to reflect the new timeline and consideration is also being given to ensure all workstreams can be effectively delivered to the new Programme timeline.

Contact & Assessment Team (CAT) Project

13. The project has been considering the usability of the form that will be the main way in which reports to the BSB will be made. This has involved engaging with a select number of external groups and charities for feedback on making the reporting form more accessible to individuals. The feedback from these groups will assist in the development of the final electronic form.
14. Development has started on the IT systems that will support the CAT work. Work is continuing on creating guidance, policies and staff training that will underpin the work of the Team.

IDB Project

15. The IDB recruitment process is ongoing. We received a large number of applications and therefore the timetable for the process has been extended. We anticipate the appointment of new members will be concluded by the end of April 2019 when we will also confirm the transfer of relevant existing PCC members to the IDB.

CMA Programme

16. The CMA Programme is entering its maturity phase with many major milestones now having been delivered. The Programme is also operating within its budget.

Transparency Project

17. Following approval by the Board, a rule change application has been made to the LSB. The new transparency rules are expected to come into force in May, with compliance spot-checking from January 2020. A communications plan has been developed to ensure that the profession is aware of and able to start complying with the transparency rules from May. We will also publish comprehensive guidance to assist the profession in complying with the new rules.

Strategy & Policy

BSB Handbook

18. The fourth edition of the BSB Handbook is due to come into force on 1 April 2019. The key changes are the new Qualification Rules (to reflect large parts of the Future Bar Training Programme coming into force) and, in the Enforcement Regulations, the change to the civil standard of proof. In the event the UK has exited the EU at that point, new rules on the recognition of European lawyers' qualifications will also come into force. The Handbook will be further updated in May when it is expected that, following approval by the LSB, the new transparency rules will come into force.
19. We are currently planning a potentially larger-scale **review of the Handbook** to make sure that it remains fit for purpose, relevant, and accessible. The draft 2018-19 Business Plan proposes initiating the review in Q1 of the new financial year, engaging with stakeholders

and building our evidence base in Qs 2 and 3 to determine the scope of the review, with the aim of concluding the options analysis and agreeing the scope of the review in Q4.

New BSB website

20. The Professional Standards Team continues to provide the necessary support to the Project Management Office on the development of the new website, particularly in relation to the development of the necessary functionality for the BSB Handbook and Barristers' Register.

Scope of practice

21. We are continuing to review the scope of practice section of the BSB Handbook and plan to issue a discussion paper in April 2019 to seek views of stakeholders. This will pose questions to support our wider Handbook review, as well as possible changes to address specific issues.

Authorisation to Practise

22. The Professional Standards Team continues to provide the necessary support to the Records Office during the Authorisation to Practise process. Overall, the process is running more smoothly than last year with a reduced number of daily emails awaiting attention and authorisation completed in greater volume at earlier points in the cycle than last year.

Professional Indemnity Insurance (PII) and BMIF

23. We are working on agreeing improvements to our governance arrangements for PII with BMIF, in response to the Legal Services Board's thematic review of insurance. We are currently informally consulting Single-Person Authorised Bodies on a rule-change mandating their use of BMIF (which almost all of them already use voluntarily), with the intention to submit a rule-change application to the LSB in Q1 of 2019/20.

Equality and Access to Justice Programme

24. The new Equality and Access to Justice Manager commenced his role in February 2019.
25. The Equality & Access to Justice Programme Plan has been fine-tuned with all projects re-prioritised and aligned to business planning.
26. In line with current diversity data monitoring policy developments, a new gender identity question has been included in the equality opportunities model template form and this is aligned to our authorisation to practice process.
27. A BSB Race Equality Taskforce initial meeting has taken place, also attended by the Director General, and Terms of Reference have been agreed.
28. Through our protocol arrangements, we have agreed engagement with the Bar Council to contribute to the Equality Impact Assessment of the Equality Rules.
29. Internal support continues to be provided by the Equality and Access to Justice team, this has included: advising and contributing to a round table APEX meeting exploring equality and diversity impacts on BPTC providers and supporting the supervision team with developing a project to address sexual harassment at the Bar.

Regulatory Risk

Risk Reporting

30. The third Consolidated Risk Report has been developed and a report to the Board will be made in March. The process for producing the report has become increasingly well embedded into our ways of working. Information within the risk register was refined through discussion with the Exceptional Risk Forum, after which individual Executive owners had the opportunity to comment on their risks, before the SMT took collective ownership of the Risk Report. The report was discussed with the GRA Committee and, as with the second Consolidated Risk Report, led to them agreeing to undertake a deep dive into a medium high priority regulatory risk. This is helping the GRA Committee direct their attention into priority areas of the risk report, while building their assurance in the report and the risk process.

Risk Outlook

31. At the completion of the Risk Outlook and Strategic Planning consultation process, there were no substantive issues relating to the Risk Outlook themes and evidence. Accordingly, a final version of the Risk Outlook has been developed and agreed by the SMT. It will be presented to the Board, along with the Strategic Plan and Business Plan in March.

Risk Index

32. Work on refreshing the Risk Index has continued. Further discussions have been held with the Risk Forum and with colleagues across the BSB. A refreshed risk index will be presented to the Board at their May Away day.

Research

33. AlphaPlus is continuing to work on the second stage of the Future Bar Training evaluation. This involves the development of a logic model, key evaluation questions and the finalisation of the evaluation design for both the process evaluation and the impact evaluation.
34. Work continues on the evaluation of the Continuing Professional Development reforms, with the researchers having completed a literature review of theories and practice around CPD, held a focus group with barristers, and held an internal workshop at the BSB to discuss emerging findings. The next stages of the evaluation will involve a quantitative survey, alongside qualitative interviews and a further focus group.
35. Research into PCD complaints data is being conducted by the Research Team. This will analyse three years of data to investigate factors contributing to differences across gender and ethnicity in the numbers of complaints made, and the outcomes of complaints, and is a follow-up to a similar piece of research published in 2016.
36. The latest edition of the Diversity at the Bar report was published at the end of January. This is an annual publication that details the profile of the practising Bar, and monitors progress in ensuring a more diverse and representative profession, as well as any improvements in data disclosure levels compared to previous years.
37. Analysis is being undertaken to look at the impact of the change to the cut score/pass mark for the BCAT in 2018. This will help to inform future evaluation work on the BCAT changes. Early scoping work has also been undertaken to set out a framework for the evaluation of the transparency changes introduced in response to the CMA report on legal services.

Professional Conduct Department

Quarter 4 performance statistics

38. As we approach the end of the 2018-19 reporting year, we are currently on course to meet the corporate Key Performance Indicator. Our performance against the KPI of 80% of cases processed within service standards currently stands at 82.1%.
39. The PCD has continued to focus on delivering business as usual but is also undertaking a significant amount of work towards the implementation of the Contact and Assessment Team, the Independent Decision-Making Body (IDB) and the development of the new case management system (CMS).
40. The implementation date has been put back to 15 October, in order to allow sufficient time for the effective development of the CMS. This means that the Professional Conduct Committee will now not be disestablished until that date. IDB Pilot meetings will continue up until implementation as they provide invaluable feedback as we refine the system.

Staffing

41. The PCD is currently carrying three vacancies across the Assessment and Investigations & Hearings Teams. Two of the vacancies will be filled by the end of April, but we will continue to operate with a shortfall while the remaining vacancy is recruited to.

Training

42. Building on the successful training session delivered by external trainers "The Writer" in January, a further session was delivered to staff who undertake the most complex business writing. This session focussed on report writing and other types of writing and included training on how best to structure reports for the IDB.
43. In early February the PCD Senior Professional Support Lawyer (PSL) attended the 2019 the ADR Centre Disciplinary Conference, dedicated to professionals working in the sphere of professional regulation. As well as providing regulatory updates and industry news the conference offered an opportunity to meet and network with fellow professionals. The PSL also attended a Regulators' Forum focussing on ethics in regulatory decision-making.
44. At the beginning of March, the Head of Investigations & Hearings delivered a presentation on developments in legal regulation, in collaboration with a colleague from the Solicitors Regulation Authority, at the Disciplinary and Regulatory Tribunals Conference.
45. The PCD continues to provide support to the wider organisation in relation to legal knowledge. On 6 March, the Head of Investigations and Hearings provided Basic Legal Knowledge training for new staff. This corporate training, which is held once a quarter, ensures that all staff, regardless of the area they work in, have an understanding of the legal system.

Litigation

46. The PCD is currently handling two litigation cases. The first is the discrimination claim remitted to the High Court from the Supreme Court. There have been no further developments in this case since the last update. The second case relates to a claim brought by the same barrister before the Employment Tribunal, alleging discrimination. There is no date for any preliminary hearing as yet.

Regulatory Assurance Department

Anti-Money Laundering

47. The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) visited the BSB for two days in October 2018 to assess us against each criteria set out in the OPBAS Sourcebook. We had a positive teleconference with them to discuss our response to their findings and they appear to be content with our planned actions. OPBAS have published a report on themes arising from their visits to all 22 supervisors in the legal and accounting sectors. The legal sector supervisors are meeting next week to discuss the report, which was published without prior notice.
48. OPBAS has launched another round of consultation on the fee-rate it will charge to professional body supervisors. This follows considerable criticism of their last proposal, which was weighted towards the three largest legal and accounting regulators. Our response to the previous consultation can be found here.
49. The Financial Action Task Force (FATF) has launched a consultation on draft guidance on a risk-based approach, which they have developed to assist countries, regulators and professionals in the legal, accountancy and trust and company service provider sectors. The consultation can be found here. We are reviewing the draft guidance to ensure our approach to supervision is consistent with it.

Assuring Competence of Barristers

50. We have been working with the BSB's Policy Forum to refine our approach to assuring the competence of barristers. Further engagement with APEX and the LSB is scheduled for the coming months.
51. Stakeholder engagement work continues to remain an important part of this project. Recent examples include attending a NSPCC event around young vulnerable witnesses and engaging as a member of Ministry of Justice's quality of advocacy working group, as well as a meeting with the DPP and CPS.

Authorisations

52. The Authorisations Review Panel (ARP) last met on 17 February and considered two applications for review, these were for Authorisation as a Pupillage Training Organisation (PTO) and Reduction in Pupillage. The decision in respect of the Pupillage Reduction was upheld with no amendments to the decision. However, the decision for the PTO Authorisation is still pending as the 'Panel' have requested further information from the applicant. The Panel will next meet on 10 April and there are currently four decision scheduled for review.
53. The team is working together with the Supervision Team to deliver the Pilot AETO application process. Feedback for the new application form and guidance has been received from participating organisations. This feedback is being currently being considered.
54. The Team has commenced the User Acceptance Training (UAT) for the new AETO module within the CRM system. The 'end to end' testing of the IT process will commence from 18 March 2019, there are no delays foreseen at this stage.
55. The team has completed pupillage registration spot checks during January to quality assure our registration process and ensure that Chambers are complying with the requirement to

advertise pupillages on the Pupillage Gateway. Information has been gathered and collated, we expect to be able to report on our findings by the end of March.

Training Supervision and Examinations

56. The Training Supervision team is now focussed on developing the authorisation process to be ready for the first AETO applications likely to be received when the rules go live. A statement has been issued outlining transitional arrangements during the period of overlap while the BPTC is still running, and as new approved pathways commence. This sets out the arrangements for current and continuing BPTC students and the last opportunities to take the assessments in their current format. This has been sent with all offer letters to those commencing in September 2019 and to all students who registered in earlier years but have yet to complete the course.
57. The Examinations team has been conducting paper confirmation meetings and preparing for the next diet of assessment which commences on 8 April 2019.

Communications and Stakeholder Engagement

58. Since this report was last prepared for the January Board, the following press releases and news announcements have been issued:
- 1 February: Publication of the BSB's annual Diversity at the Bar statistics;
 - 1 February: BSB agreement of the new transparency rules for the Bar; and
 - 21 February: Recruitment opens for up to two new barrister Board members.

Work in Progress

59. 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:
- the introduction of the new Bar training rules;
 - publication of the new BSB Strategic Plan for 2019-22, the new Risk Outlook and the 2019-20 Business Plan; and
 - the launch of a possible consultation on new Scope of Practice rules
60. The team is also working on the following projects:
- implementation of the agreed tactical communications plan to raise awareness about FBT;
 - finalising the new Risk Outlook, the new BSB Strategic Plan, and the 2019-20 Business Plan;
 - conducting a review of the current Communications and Public Engagement Strategy and preparing an update for the Board to agree;
 - supporting the Records team with communications support for the 2019 Authorisation to Practise process; and
 - development of the new BSB website later this year.

Online and social media

61. During January, 33,460 users visited the BSB website with a further 30,807 visiting during February. At the time of writing, we have 21,386 followers on Twitter, 3,442 followers on LinkedIn and 579 followers on Facebook.

Governance and Corporate Services

62. Recruitment has commenced for one or more barrister members of the Board, to replace the vacancy left when Anupama Thompson resigned (to take up a judicial appointment) and to replace an anticipated vacancy that will arise later in the year. Applications close on 25 March and it is intended that appointment(s) will be confirmed by the end of April.
63. The recruitment campaign for new members of the Advisory Pool of Experts (APEX) to provide advice on specific practice and legal issues in the areas of law most commonly encountered when considering enforcement cases has been extended until 1 April 2019. We had requested applications by 25 February, to ensure that appointments were made in good time before the Independent Decision-Making Body (IDB) became operational in June. However, as we have decided that the IDB will now start operating from October (so that it can fully benefit from our new Case Management System which is still in development), we have extended the date for applications for APEX.
64. The business planning process has concluded, and we intend to publish our 2019 – 20 business plan (for the first year of our next strategic period) after approval by the Board at the end of March.

Vanessa Davies
Director General
March 2019