

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.



Meeting of the Bar Standards Board
Thursday 28 September 2017, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

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1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes • 27 July 2017 (*)	Annex A Chair	3-8
5.	Matters Arising (*)		
6.	a) Action points and progress b) Forward agenda	Annex B Annex C Chair Chair	9-12 13
7.	Future Bar Training: Autumn 2017 FBT Consultation (4.35 pm)	BSB 061 (17) Justine Davidge	15-117
8.	Response to the CMA Recommendations: Policy Consultation on Transparency Standards (5.05 pm)	BSB 062 (17) Ewen Macleod	119-228
9.	Disclosure of sexual orientation and religion and belief data by chambers and entities (5.35 pm)	BSB 063 (17) Amit Popat	229-232
10.	Annual report of the Governance, Risk & Audit Committee (GRA) (5.45 pm)	BSB 064 (17) Nicola Sawford	233-235
11.	Performance Report for Q1 (April 2017-June 2017) (*)	BSB 065 (17) Anne Wright	237-261
12.	Chair's Report on Visits and Meetings: Sept 2017 (*)	BSB 066 (17) Chair	263
13.	Director General's Report (5.55 pm)	BSB 067 (17) Vanessa Davies	265-276

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](#) before the meeting.*

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14. **Schedule of Board meetings: Jan 2018 – Mar 2019 (*)** BSB 068 (17) Chair **277**
15. **Any other business**
16. **Date of next meeting**
- Thursday 26 October 2017
17. **Private Session**

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
21 September 2017

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 27 July 2017, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Rolande Anderson
Aidan Christie QC
Justine Davidge – items 9-15
Judith Farbey QC
Steven Haines
Nicola Sawford
Adam Solomon
Anu Thompson
Anne Wright CBE – by phone
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
Andrew Walker QC (Vice Chair, Bar Council)
- BSB Executive in attendance:** Jake Armes (Policy & Projects Officer)
Joseph Bailey (Policy & Projects Officer)
Oliver Finlay-Smith (Communications & Public Engagement Officer)
Rebecca Forbes (Governance Manager)
Sara Jagger (Director of Professional Conduct)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)

Item 1 – Welcome

1. The Chair welcomed Members to the meeting. He also paid tribute to Stephen Crowne and wished him well for the future. Stephen retires from his role as Chief Executive of the Bar Council at the end of August 2017.

Item 2 – Apologies

2.
 - Alison Alden OBE
 - Naomi Ellenbogen QC (Vice Chair)
 - Zoe McLeod
 - Andrew Mitchell QC
 - Andrew Langdon QC (Chair, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - James Wakefield (Director, COIC)
 - Vanessa Davies (Director General)
 - Joanne Dixon (Authorisation Manager)
 - Oliver Hanmer (Director of Regulatory Assurance)
 - Andrew Lamberti (Communications Manager)

Item 3 – Members’ interests and hospitality

3. Sara Jagger made a declaration in respect of her own and Vanessa Davies’s attendance at the Annual Dinner of Association of Regulatory & Disciplinary Lawyers on 30 June 2017. Sara attended as a guest of Ward Hadaway Solicitors and Vanessa as a guest of Kingsley Napley.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 22 June 2017.

Item 5 – Matters Arising

5. None.

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

6. The Board noted the updates to the action list.

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list. Due to the size of the agenda for the September meeting, the item on the Q1 performance report will be “starred” and therefore not discussed unless a Board Member gives prior notice that this should occur.

Item 7 – Annual Report 2016-17

BSB 048 (17)

8. Wilf White commented as follows:
- after the agenda papers were dispatched, some further changes were made to the Chair’s opening statement and BSB organogram. These amendments give greater emphasis to the role of the Board;
 - the expenses quoted for Board Members in the draft Report are incorrect. These will be amended, along with several other typographical errors;
 - the cost transparency metrics (Annex 2) will be published separately from the main Report. This is at the request of the LSB.
9. Members commented as follows:
- the Annual Report has a welcome focus on the “business as usual” aspect of the BSB’s work;
 - some hard copies should be produced for circulation to stakeholders;
 - the section on income and expenditure is clear and comprehensible;
 - some further clarification is required on the infographics ie:
 - the figures quoted for various disciplinary findings (52 / 19 / 5) do not match the numbers illustrated in the graphic. It is also unclear if the latter two figures are subsets of the first;
 - the reference to the “Women at the Bar” survey is in very small print and easy to miss. This should be given greater prominence.
 - the cost transparency matrix includes a figure for the “total permitted purposes reserve”. Some explanation of what this means should be included.

10. AGREED

to publish the Annual Report subject to the above further amendments.

WW

Item 8 – Enforcement Report 2016-17

BSB 049 (17)

11. Aidan Christie QC commented as follows:
- the report shows that the Professional Conduct Department was short staffed for most of the period (1 April 2016 – 31 March 2017). In the circumstances the performance achieved, as measured by the KPIs, is very commendable;
 - there is no reference to the “user feedback survey”. The reasons for this are as stated in paragraph 1.6 of the report.
 - the number of requests for review which resulted in cases being reopened increased significantly (paragraph 2.53 of the report);
 - increasingly more decisions are now taken by staff in line with the revised governance arrangements. Only the more serious cases are now subject to committee decision.
12. Sara Jagger commented as follows:
- the Department was very grateful for the support of the Professional Conduct Committee, particularly at a time when staffing shortages were particularly acute;
 - some further proof reading of the report will be undertaken prior to publication. Two necessary amendments to the text are:
 - paragraph 1.19 – the range should be 8-25%;
 - paragraph 2.26 – the number of assessments rated “high risk” has fallen by 50% (not 100% as quoted).
13. Rolande Anderson referred to paragraph 4.7 concerning casework lessons. The third sentence needs the words “a lack of” inserted before the word “integrity”.
14. **AGREED** to publish the Enforcement Annual Report 2016-17 subject to the above amendment and further proof reading. **SJ**

Item 9 – Authorisations Governance Review: Update on Implementation

BSB 050 (17)

15. Rebecca Forbes commented as follows:
- the report summarises progress on authorisation governance procedures prior to disestablishment of the Qualifications Committee;
 - two new APEX members and all eight members of the Authorisations Review Panel (ARP) have been appointed;
 - revisions to the Standing Orders (SOs) and Scheme of Delegation have been drafted for the Board’s consideration.
16. Adam Solomon concludes his chairmanship of the Qualifications Committee at the end of August when it will be disestablished. However, it would be helpful for the Executive to have a continuing point of contact on the Board for authorisation related issues. He therefore offered to take on this role, which the Board gladly accepted.
17. Judith Farbey QC noted that the proposed Standing Orders require the Authorisations Review Panel (ARP) to have a lay majority. She queried the need for this. There is a risk that we lose nimbleness and responsiveness as a result and there does not seem to be an obvious public interest argument to justify the requirement.

18. In response, the following comments were made:
- the Qualifications Committee agreed there should be a lay majority on the ARP because that is consistent with our general approach on governance. Moreover, it tends to be barrister, rather than lay members, who find attendance difficult.
 - we can monitor attendance and keep the matter under review. Should it prove problematic in practice, we can reconsider the issue.
19. **AGREED**
- a) to note the report.
 - b) that Adam Solomon be the Board's point of liaison with the Executive for Authorisation related issues. **JD to note**
 - c) to approve the proposed revisions to the Standing Orders and that these take effect from 1 September 2017.
 - d) to note the amendments to the Scheme of Delegations consequential to the Board's earlier decision to disestablish the Qualifications Committee.
 - e) to approve the new delegations as set out in Annex 2 with immediate effect. **RF / JD to note**
20. **Item 10 - After the Event insurance**
BSB 051 (17)
Joseph Bailey and Ewen Macleod highlighted the following:
- in response to several enquiries from barristers, we propose to permit BSB entities and self-employed barristers to recommend and arrange "After the Event" (ATE) insurance ie the cover for legal costs which a claimant must meet when a claim is unsuccessful. The number of enquiries is low although one BSB regulated entity is already acting as an approved representative of an FCA regulated firm;
 - notwithstanding this, we do not propose that the BSB applies to become a designated professional body (DPB) for financial services activities. This is because of low demand; it is not our area of specialism and alternative regulatory arrangements are available;
 - our rules do not prohibit this type of work but, to undertake it, a barrister would either have to be practising within an entity that is regulated by the Financial Conduct Authority (FCA) or become an "appointed representative" (AR) of an FCA regulated firm.
 - CILEx Regulation is in a similar position to the BSB in that it, too, is receiving ATE enquiries from its members but, equally, does not wish to become a designated professional body. The BSB's Senior Management Team therefore supports the proposal to establish a joint Memorandum of Understanding between the BSB, CLIEx Regulation and the FCA. It would assist if authority to negotiate and sign off this MoU could be delegated to the Director General and the Director of Strategy and Policy.
21. The following comments were made:
- this will be the first occasion when a barrister is subject to the rules of a non-legal regulator. This is not the case for solicitors because the Law Society is a designated professional body. This means firms can undertake these type of activities without being regulated by the FCA, if they can meet the conditions specified in section 327 of the Financial Services and Markets Act 2000;

- we need to take care that the wording of the Memorandum of Understanding is clear as to respective roles and does not open the door to “regulation creep” from the FCA;
 - we could authorise the start of negotiations with the other stakeholders on the MoU but the Board should see the final version before it is formally signed;
 - demand may be low now but it could develop, particularly if the number of ABS entities licensed by the BSB increases. It could therefore be appropriate to revisit the decision over whether to become a designated professional body in due course;
 - the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) makes it unlawful to receive referral payments as a result of making recommendations to clients on insurance matters in claims for damages following personal injury or death. Our guidance needs to reflect this point although the Handbook outlaws referral fees in any event;
 - following the agreement of an MoU, we should review regulatory arrangements in 12 months’ time.
22. The Chair also invited comment from Andrew Walker QC on behalf of the Bar Council. He commented that the market for ATE insurance is potentially large but remains hazardous for those without significant experience. The Bar Council’s Ethical Committee took a fairly neutral stance when the issue was first discussed but agreed to make clear the pitfalls to barristers and discourage them from taking undue risks;
23. **AGREED**
- | | | |
|----|---|----------------------------|
| a) | that, subject to satisfactory drafting of a Memorandum of Understanding with CILEx and the FCA, BSB entities and self-employed barristers be permitted to recommend and arrange ATE insurance policies but that this should be reviewed after 12 months of operation. | JB / EM
to note |
| b) | that negotiation on drafting the MoU commence with CILEx and the FCA but that the final draft version be presented to the Board for approval. | JB / EM |
| c) | that the regulatory guidance on ATE insurance as set out in Annex 1 of the report be published subject to further discussions with the APEX member concerned and taking account of the need to ensure that barristers are aware of the potential risks involved. | JB / EM |
| d) | that the BSB (and therefore the Bar Council) should not, at this stage, apply to become a designated professional body for financial services activities. | JB / EM
to note |
| e) | to note that BSB entities which obtain FCA regulation can remain insured by BMIF in respect of legal services. | |

Item 11 – Chair’s Report on Visits and Meetings: May - June 2017
BSB 052 (17)

24. **AGREED**
to note the report.

Item 12 – Director General’s Report
BSB 053 (17)

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

Item 13 – Any Other Business

26. None.

Item 14 – Date of next meeting

27. Thursday 28 September 2017.

Item 15 – Private Session

28. 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 – 22 June 2017
 - (2) Matters arising
 - (3) Action points and progress – Part 2
 - (4) Determining risk appetite
 - (5) Independent regulatory decision making at the Bar Standards Board
 - (6) Future Bar Training: Autumn 2017 FBT consultation – Pupillage
 - (7) Future Bar Training: Research for Publication
 - (8) Update on Professional Indemnity Insurance (PII) Project
 - (9) Quality Assurance / maintaining standards at the Bar
 - (10) Regulatory Standards Framework – BSB self-assessment
 - (11) Any other private business
 - (12) Review of the Board meeting in terms of conduct and outcomes.
29. The meeting finished at 5.15 pm.

BSB – List of Part 1 Actions

28 September 2017

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
10 (27 Jul 17) – Annual Report	amend and then publish the Annual Report	Wilf White	immediate	01/08/17	Completed – published on website
14 (27 Jul 17) – Enforcement Report	amend and then publish the Enforcement Annual Report 2016-17	Sara Jagger	immediate	01/08/17	Completed – published on website
23b (27 Jul 17) – ATE insurance	draft an MoU with CILEx and the FCA on regulatory arrangements for ATE insurance	Ewen Macloed / Joseph Bailey	before 26 Oct 2017	20/09/17	In hand – a joint approach has been made with CILEX regulation to the FCA
23c (27 Jul 17) – ATE insurance	issue regulatory guidance on ATE insurance subject to further discussions with the APEX member concerned and taking account of the need to ensure that barristers are aware of the potential risks involved	Ewen Macloed / Joseph Bailey	before end Sept 2017	20/09/17	In hand – we are awaiting comments from the relevant Apex member and we want to discuss the guidance with the Bar Council before publication
17b (22 Jun 17) – Research Strategy	publish the Research Strategy on the BSB website	Corrine Charles	immediate	21/09/17 17/7/17	In hand – the Strategy has now been designed and is awaiting a foreword. Publication imminent (w/b 25/9 or sooner). In hand – the Strategy is being designed and will be published w/b 24/7.
16a (25 May 17) – Policy on parental leave	amend rule rC110.3.k concerning parental leave and issue a press release	Ewen Macloed / Wilf White	by end Oct 2017	20/09/17 18/07/17	Completed – LSB approval has been received and the rule will be published with the next Handbook update in early November In hand – we have received feedback from the LSB on a draft application and will submit the formal application shortly

**BSB – List of Part 1 Actions
28 September 2017**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				09/06/17	In hand – a draft application has been prepared to be shared with the LSB
21a (23 Mar 17) – Collection of practice area information	consult on changing the BSB's authorisation rules to require barristers to disclose their areas of practice and the proportion of work undertake in each practice area	Ewen Macleod	by end Oct 2017	20/09/17	Completed – outcome of consultation on Board agenda for September
				12/06/17	In hand – published w/c 12 June
				16/05/17	In hand – consultation being drafted, to be published by June
21b (26 Jan 17) – section 69 order to extend BSB's powers	discuss detailed drafting points of the s69 order with the MoJ and the LSB before finalising it, in particular around intervention and disciplinary powers	Ewen Macleod	before end February 2017	20/09/17	Completed – Final version of order agreed with LSB.
				18/07/17	Ongoing – current expectation is that order will be laid in Parliament during Autumn 17, coming into force April 18
				16/05/17	Ongoing – wording of order agreed with MoJ. Progress delayed by election and will be dependent on Parliamentary time being available later in the year. At this stage, we have done all we can to progress.
				15/03/17	Ongoing - Feedback given to MoJ lawyers. We have identified a need to get some external advice which we are seeking urgently.
				15/02/17	In hand – discussion held. MoJ lawyers have come back with advice and request for further instructions. We are currently considering the points raised, will update Board in due course.

**BSB – List of Part 1 Actions
28 September 2017**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
15b (27 Oct 16) – definition of “employed barrister (non-authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	20/09/17	Ongoing – application being finalised
				09/06/17	Ongoing – additional guidance being produced to support final application to the LSB
				16/05/17	Ongoing – currently updating application in the light of LSB comments
				15/03/17	Ongoing – draft application due to be submitted to LSB by end March
				15/02/17	Ongoing – awaiting meeting with BACFI
				17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	20/09/17	In hand – Board being asked to make a decision at the September meeting
				18/07/17	Ongoing – update elsewhere on agenda 27 July
				16/05/17	Ongoing – TCG set up with Board and APEX members in June. Revised deadline for Board decision is September 17.
				15/02/17	Ongoing – Meeting with APEX members to discuss next steps on 21/02/17. Meeting between BSB and BMIF boards scheduled for 05/04/17
				16/11/16	On track – oral update on Part 2 agenda

BSB – List of Part 1 Actions
28 September 2017
(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				20/10/16	For discussion - see Board paper BSB 080 (16) – item 6 on the Part 2 agenda
				20/09/16	On track – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.

Forward Agendas**Thursday 26 Oct 2017**

- Rule change application (practice area information including money laundering and youth courts)
- Positive Action plan to address underrepresentation at Board level
- Standard of Proof – response to consultation
- Public and Licensed Access Review – consultation paper report and rule change
- Quality Assurance of Advocacy
- Review of disciplinary tribunal services
- Regulatory Operations Programme update

Thursday 23 Nov 2017

- Education and Training Committee Annual Report
- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Action Plan to reduce discrimination and barriers to retention/progression for Women at the bar
- Corporate Risk Register
- IDMB update on progress
- Entity Regulation Review
- Statutory Interventions – operational readiness
- Scheme of Delegations
- Regulatory risk (including relevant illustrative case studies based on risk appetite)

Thursday 7 Dec 2017 (Board Away Day)

- Draft Authorisation Framework (FBT)

Thursday 25 Jan 2018

- Final Report on PII Project
- Regulatory Operations Programme including IDMB - Consultation Approval

Thursday 22 Feb 2018

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- Draft BSB Business Plan for 2018-19
- Corporate Risk Register

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19
- FBT: response to consultation and policy decisions
- Authorisations Governance update
- Scope of Practice proposals

Future Bar Training: Autumn 2017 FBT Consultation

Status

1. For **approval**.

Executive Summary

2. The purpose of this paper is to seek the Board's approval to consult from early October on the FBT policy issues identified and discussed by the Education and Training Committee over the course of two meetings in July. The Committee recommends an open consultation seeking views on a variety of options to inform the Board's final position in relation to new rules next year.
3. The broad policy matters concerned are:
 - the continuing role of the Inns of Court in Bar training;
 - future regulatory arrangements for the work-based component of training; and
 - the development of an Authorisation Framework.
4. In addition to the policy themes described above, the consultation also:
 - outlines our intention to form a Task Completion Group to review our current recruitment and advertising rules for pupillage as agreed by the Board in July;
 - sets out our future proposals for recognising qualified lawyers; and
 - describes the need for transitional arrangements between now and the new Authorisation Framework coming into force in 2019.
5. A draft consultation is attached at **Annex A** for the Board's approval.

Recommendations

6. The Board is asked to:
 - **note** the comments made by Education and Training Committee in relation to the scope of the consultation;
 - **discuss** in particular the policy proposals relating to:
 - the continuing role of the inns of court in Bar training;
 - future regulatory arrangements for the work-based component of training;
 - the development of an authorisation framework (Annex 1 of the consultation paper);
 - the recognition of qualified lawyers; and
 - the need for transitional arrangements for BPTC providers and students until the new systems are operational; and
 - subject to discussion by the Board, **approve** the consultation document (**Annex A**) for publication.

Background

7. In 2015, the BSB consulted on a wide range of issues relating to Bar education and training, seeking views on the academic, vocational and work-based stages of training. The results of this consultation signalled the need substantially to change the structure of training and to enable innovative and flexible approaches to develop.
8. Last year, we consulted on three very different regulatory approaches to how training might be delivered in the future. We set out four guiding principles that we would apply to the approval process of any new training pathway:

- Encouraging greater **flexibility** – so that the training system enables innovation in how education and training is delivered;
 - Improving **accessibility** – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves;
 - Improving upon **affordability** – to bring down the cost of studying to students; and
 - **Sustaining high standards** – to ensure that any new training pathway enhances current standards.
9. At its March 2017 meeting, the Board endorsed the permissive approach of “Managed Pathways”, enabling the BSB to approve providers of a limited number of training pathways. In addition to the principles set out above, a number of policy points were agreed. These are:
- that no change is sought to s207(1) Legal Services Act 2007¹;
 - the Bar to remain a graduate profession with the minimum entry requirement normally being a 2:2;
 - that the seven foundation subjects comprising the Qualifying Law Degree be specified to the extent necessary to enable law degree providers to meet the requirements of the professional statement;
 - that no change to the BCAT is required at this stage;
 - that the teaching and assessment of Ethics be reviewed; and
 - that we continue to work with other regulators, including the SRA, to develop a set of principles for future recognition of professional legal qualifications.
10. The BSB Policy Statement on Bar Training set out further how the next steps of the programme would develop to give effect to the Board’s decision.
11. The remaining projects under the FBT programme are:
- i. Develop an over-arching framework for a new set of **Rules** to be consulted on;
 - ii. Develop an **Authorisation Framework** to approve training organisations and particular proposed training pathways in accordance with the above principles;
 - iii. **Review the role of the Inns of Court in Bar training** as it relates to the BSB’s regulatory arrangements;
 - iv. **Review of curriculum and assessment;**
 - v. **Review of the regulatory arrangements for the work-based component of training** to focus on outcomes of training and enable greater flexibility in delivery of varying forms of pupillage; and
 - vi. **Programme evaluation.**
12. In addition to the above, there will be an implementation plan for the period directly following the LSB approving the new set of rules. This will include:
- Operationalisation of the Authorisation Framework;
 - Transitional arrangements for students who have begun training when the new rules come into force; and
 - Clear and impartial advice for students, career advisors, etc.

¹ Note that there is work under way to review the role and governance arrangements of the Inns of Court.

Discussion

The need for new regulations for education and training

13. There are a number of challenges for preparing to implement such a large-scale reform programme. Equally, there are also significant opportunities for the BSB to review – from first principles - what the new rules and regulations should look like, what is in focus and what may be dealt with through supporting documents (eg training handbooks or guidance).
14. The current Handbook rules for education and training are mostly contained in Part 4, with others in Part 3 (scope of practice). The current set of rules is highly prescriptive and does not work with our more outcomes-focused approach. Once the policy considerations have been decided by the Board, a new set of rules will need to be consulted upon and, ultimately, approved by the LSB.

The autumn 2017 consultation: *Shaping the education and training requirements for prospective barristers*

15. The Education and Training Committee has approved the consultation at **Annex A** in order to seek views on a number of policy proposals with the aim of informing a new framework for our training regulations. In particular, the consultation includes options for dealing with the following regulatory arrangements:
 - the extent to which we should prescribe the **role of the Inns of Court in the training and qualification of barristers**;
 - future arrangements for the **work-based component** of training;
 - an early draft of the **Authorisation Framework** which will guide training providers in developing new training routes and against which their proposals will be assessed for approval; and
 - matters relating to the **recognition of qualified lawyers** and the need for **transitional arrangements**.
16. The table below sets out a summary of the substantive policy issues discussed in the consultation.

The role of the Inns of Court in barrister training

❖ **The regulatory oversight of students**

Currently, our regulations require students to join one of the Inns when they start the Bar Professional Training Course (BPTC). We ask for views on whether or not this necessary at such an early stage; and if so, whether the Inns of Court are the most appropriate body to register students as prospective barristers.

❖ **Educational qualification and fit and proper person checks**

Student membership of an Inn involves the Inn checking applicants' educational qualifications and conducting a "fit and proper person" check by requiring the applicant to make a number of declarations. This is a function delegated to the Inns by the BSB and it is the only stage in the current qualification process where checks of this nature are undertaken. We ask for views on whether we should continue to delegate responsibility for these checks to the Inns or whether we should conduct some of them ourselves. We also ask whether more robust assessments of applicants' suitability to become barristers should be undertaken at this stage, for example, by requiring Disclosure and Barring Service (DBS) checks.

❖ **Student conduct**

Linked to the matter of student registration, student conduct is also a delegated function. Again, we ask respondents if some form of student registration is required, should the conduct of students continue to be delegated or whether it is something for which the BSB should take responsibility.

❖ **Qualifying sessions**

Our current rules specify that 12 qualifying sessions must be completed before someone can be called to the Bar. There are a number of different qualifying sessions offered by each Inn, such as guest lecture events, advocacy workshops, dining sessions and debate nights. We outline the pros and cons of mandating attendance at these sessions and then ask respondents to consider whether we should:

- a) remove our requirement for prospective barristers to complete qualifying sessions;
- b) reduce the number of sessions that are mandated, review the nature of the sessions and/or review whether other training providers could deliver qualifying sessions; or
- c) adopt a similar approach to the new Continuing Professional Development (CPD) scheme for established barristers, whereby prospective barristers would plan their learning needs by setting objectives and identifying the types of “qualifying sessions” or activities that would be most beneficial to their needs.

Future arrangements for the work-based component of training

❖ **The length of pupillage**

At present, our rules require that pupils must complete two six-month parts of pupillage, the non-practising and the practising periods. Whilst these arrangements work well for many chambers and organisations, some require their pupils to complete longer training periods (sometimes also known as “Third Six pupillages”). Chambers or organisations offering pupillage may want to tailor their training plans in other ways to better suit their needs. Our current rules do not permit this, as they mandate that all regulated pupillages must be for a period of 12 months. To allow the Bar greater flexibility in the way that pupillage is structured, we discuss the advantages and disadvantages of removing the 12-month rule, seek views on the length of pupillage and ask whether a minimum or a maximum time should be prescribed by the BSB.

❖ **The award of a Provisional Practising Certificate**

Closely aligned to the length of pupillage, we also seek views on when the Provisional Practising Certificate (PPC) should be awarded. We outline four possible options on this and seek views on which one would work best. The options are:

- a) The PPC is granted at the start of pupillage and the pupil may undertake reserved legal activity once their Approved Training Organisation (ATO) determines they are competent;
- b) The PPC may be applied for at any time during pupillage. It would be for the ATO, pupil and supervisor to determine when it is most appropriate for the pupil to apply. The ATO would sign the application to confirm the pupil is competent; or
- c) The ATO, on accreditation of their pupillage scheme, determines when they would want the PPC. The ATO could propose to apply the same award date to all pupils taken on, or identify different award dates for different categories of pupils, based on past experience of training pupils with similar levels of knowledge and experience.
- d) No change. The PPC is award after six months.

❖ Pupillage funding

We currently require all pupils to be paid a minimum of £12,000 over the course of their pupillage. This is below the National Living Wage and there is evidence that some prospective barristers from lower socio-economic backgrounds cannot afford, or are put off from entering, pupillage. We also recognise the potential cost increase for chambers and other organisations offering pupillage, particularly those who undertake publicly funded work. We ask whether the minimum pupillage award should be raised and, if so, what benchmark should we use to set the new minimum level. In addition, we seek views on whether or not the existing exemption from pupillage funding requirements for transferring qualified lawyers should cease.

❖ Re-authorisation of Approved Training Organisations (ATOs)

At present, any chambers or organisation that had a pupil on 1 September 2006 is deemed to have been authorised by us as an ATO. All other organisations offering pupillage since this date have had to apply to us for authorisation. This means that many ATOs have never been through a formal authorisation process and this limits our ability to ensure that they are offering adequate training to pupils. In this section of the consultation paper, we discuss a “light-touch” system of re-authorisation for all current ATOs and then ask for views on this. We also ask respondents to consider how long the defined period of authorisation should last before an ATO is required to be re-authorised.

❖ Rules relating to the relationship between pupil supervisor and pupil

The one-to-one relationship between pupils and their supervisors has been the way that all pupils are trained for a number of years. However, for a variety of good reasons, some pupils have a number of different pupil supervisors during their pupillage. Under our current rules, the pupil is expected to inform us whenever there is a change in supervisor. We seek views on whether we should remove the requirement that pupils have a single, named pupil supervisor and instead require the ATO to ensure that all pupils are adequately supervised throughout their pupillage. We also seek views on whether we should remove our requirement that a pupil supervisor may only supervise one pupil at a time. We are aware of arguments that in some contexts, particularly at the employed bar, this rule can significantly reduce the ability of ATO to offer pupillage.

❖ Pupil supervisor training

All pupil supervisors are required to undertake training prior to being entered onto the register of pupil supervisors. However, we do not currently prescribe what the training outcomes should be for that training nor do we exercise any quality assurance over this training. There is also no standing requirement for supervisors on the register to undertake periodic refresher training. In this section of the consultation, we pose a number of questions relating to pupil supervisor training.

❖ Compulsory training courses during pupillage

Pupils are currently required to undertake two courses during pupillage, one on advocacy and the other on practice management. They are also required to take a course on forensic accountancy either during pupillage or during their first three years of practice. This consultation does *not* ask for views on the appropriateness of the rule requiring these courses to be undertaken, because this is being addressed as part of our wider FBT review of curriculum and assessments. However, assuming that compulsory training courses during pupillage do continue to form part of training rules, we do ask here for views on opening up the delivery of these courses to a wider pool of training providers. Currently, the advocacy and practice management courses are offered exclusively by Inns and the forensic accountancy course is currently provided only by BPP Professional Education.

❖ **Recruitment and advertising of pupillage**

In this consultation paper, we announce our plans to establish a Task Completion Group to review our rules regarding the recruitment and advertising of pupillage. We briefly discuss the issues here, but do not ask any specific questions on this topic at this stage.

Development of an Authorisation Framework

This is intended to provide training providers of vocational and work-based components with guidance about what we will consider when they seek our approval for their new training proposals and therefore will allow them to develop appropriate training routes. We ask a number of questions about the drafting used in this (early) version of the Authorisation Framework. In particular, we seek views on whether or not our definitions of “flexibility”, “accessibility”, “affordability” and “high-standards” are clear and whether we have identified correctly the mandatory indicators of compliance for each of these principles.

17. The proposed consultation is deliberately open – the Committee felt it was necessary to get feedback on a wide range of options before making a final recommendation to the Board on the future structure of our training rules. Some of the questions posed are questions of principle. For example, in relation to the Inns of Court we have gone back to first principles to consider what the role of the regulator should be in specifying the oversight of students. The answer to that question informs what arrangements need to be in place (some of which may currently be undertaken by the Inns). Others, particularly those in relation to future arrangements for the length of pupillage we ask questions from practical perspective, though there are important matters of principle discussed, especially in relation to raising the minimum funding award, for example.
18. We acknowledge that some of the options discussed in the consultation may represent a significant departure from the current arrangements, particularly in relation to the future role of the Inns of Court. The Inns have an important role to play in calling students to the Bar and in supporting people from a diverse range of backgrounds to enter the profession. The purpose of the consultation is to determine the extent to which the BSB should continue to mandate their involvement and/or delegate certain functions to the Inns. It is not intended to imply that the Inns do not add value, but rather we are seeking evidence of that value and the extent to which the current model is the only way of achieving our objectives.

Public engagement

19. The consultation is expected to be published in early October 2017, running for a period of a full twelve weeks (plus some extra time to allow for the Christmas break). Some pre-consultation activities have now taken place and we are now planning a programme of stakeholder engagement activities to accompany the consultation, involving:
 - Open seminars/debates for the profession, training providers, the legal academic community and students at a number of important regional centres for the profession;
 - Meetings with consumer representative organisations, to follow the early engagement and relationship-building through the past twelve months; and
 - Further discussions with representative bodies: the Bar Council and specialist Bar associations, COIC and the circuits.

20. A copy of the Communications and Engagement Plan can be made available to Board members upon request.

Next Steps

20. Throughout the consultation period, work will be ongoing to on a number of FBT projects, including those related to progressing curriculum and assessment reviews and the Authorisation Framework.
21. A pupillage pilot is being run from September 2017 to gather information about ensuring the outcomes from pupillage match the Professional Statement Threshold Standard and Competences. As agreed by the Board in July, a working group will review advertising and recruitment arrangements for the work-based component of training, aiming to provide findings and any recommendations in line with other policy decisions relating to work-based learning.
22. Once this consultation has closed we will collate the responses and bring preferred policy proposals to the Education and Training Committee and the Board over the course of spring 2018. After all policy decisions have been taken, a shorter (possibly four week) rule change consultation will be held; this will set out all of the proposed rule changes required to implement the Managed Pathways approach, agreed by the Board in March 2017.

Equality and diversity implications

23. A preliminary equality impact analysis has been completed on each of the possible options within all policy recommendations. These are available for Board members upon request. A summary is attached at Annex B.

Resource implications

24. The drafting of the consultation, the risk analysis and handling of responses, as well as the public engagement, are provided for in the 2017/18 budget and business plan – this covers executive staff and some limited resources for specialist consultants.
25. Depending on the outcome of some of the policy decisions there could be a resource need not previously identified, although this would be budgeted for as part of our implementation plans.

Lead responsibility

Christopher Young, Policy Manager
Ewen MacLeod, Director of Strategy and Policy

Annexes

Annex A – Draft Consultation document
Annex B – Summary of equality analysis



**Consultation on Future Bar Training:
Shaping the education and training requirements
for prospective barristers**

October 2017

Future Bar Training: Shaping the education and training requirements for prospective barristers

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Future Bar Training: Shaping the education and training requirements for prospective barristers

Foreword

Over the last few years, we have been reviewing the way in which barristers in England and Wales train and qualify. This process of research, consultation, review and regulatory change is known as our [Future Bar Training \(FBT\)](#) programme.

The purpose of our review is to ensure that training for the Bar better meets the four key principles that we identified during an earlier stage of our FBT programme. These principles are:

- **encouraging greater flexibility** – so that the training system enables innovation in how education and training is delivered;
- **improving accessibility** – so that the best candidates can train as barristers and that the Bar as a whole will better reflect the communities it serves;
- **improving upon affordability** – to bring down the cost of studying for students; and
- **sustaining high standards** – to ensure that any new training pathway maintains current standards.

In March 2017, following an extensive consultation exercise, we published a [policy statement](#) describing our vision for the future of Bar training. We also decided to authorise a limited number of new training routes for prospective barristers. We believe these routes can best reflect the four principles described above.

To enable the development of the new training routes, we will need to develop a new rules framework which will enable organisations currently known as Providers, Pupillage Training Organisations or Approved Training Organisations to develop new and innovative training programmes for aspiring barristers and be approved as Authorised Education and Training Organisations. With this in mind, we are reviewing all of our current rules, many of which are highly prescriptive and rigid, to ensure they are both fit for purpose and compatible with our new, outcomes focussed approach to education and training. At the end of this process, we may remove, amend, replace or add to the existing rules. This consultation seeks views on matters of policy that will inform our revision of the rules.

As part of this, we are seeking your views on some important aspects of the current and future system of training and qualification for barristers. These include:

- The extent to which we should prescribe the **role of the Inns of Court in the training and qualification of barristers**;
- Future regulatory arrangements and rules for **work-based learning (pupillage)**; and

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- A draft of the **Authorisation Framework** which will guide training providers in developing new training routes and against which their proposals will be assessed for approval.

In light of the four principles referred to above, it is important that we include a review of our rules governing pupillage and the role of the Inns in the training and education of barristers within FBT. Our intention is to consider how we might be able to help improve the current system for the benefit of the public, the Bar itself, and of course, for prospective barristers.

We would like to emphasise that throughout this consultation process that we are **open-minded** about the best way forward. We recognise the historic and supportive role played by the Inns and by many Approved Training Organisations (ATOs) and individual pupil supervisors in helping prepare barristers for the “real world” of practice.

We want to build upon what already works well and to deregulate where we feel that our rules are no longer needed. We want to encourage flexibility and innovation and to respond to positive changes which are already happening, not to disregard practices which have served the public and the profession well and continue to meet our regulatory requirements. For example, although we are proposing greater flexibility for the supervision of pupillage, we recognise the central importance of pupillage at the Bar, and expect pupillage to play a central role in future Bar training. It should not be assumed that we want to end practices simply because we feel that we need no longer *require* them to be mandated. What is no longer prescribed should not be proscribed, so far as it is compatible with our regulatory objectives. We appreciate

We hope you will respond to this consultation – especially if you are a user of legal services, a practising barrister, a current or recent pupil, a student, a pupil supervisor or a training provider. We very much want to hear your views on what might or might not work “on the ground” in the day-to-day delivery of legal services and in ensuring a steady and reliable supply of new, high-quality practitioners.

We look forward to hearing from you.

Sir Andrew Burns KCMG – Chair of the Bar Standards Board (BSB)

Justine Davidge, barrister – Chair of the BSB’s Education and Training Committee

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Executive Summary

This consultation paper considers a number of aspects of the current system of training and qualification for barristers. These include:

- The extent to which we should prescribe the **role of the Inns of Court in the training and qualification of barristers**;
- Future regulatory arrangements and rules for **work-based learning** (pupillage); and
- A draft of the **Authorisation Framework** which will guide training organisations in developing new training routes and against which their proposals will be assessed for approval.

When considering the issues outlined in this consultation paper, you should also refer to the [Professional Statement for Barristers](#) incorporating the Threshold Standard and Competences of September 2016 (Professional Statement) which describes the knowledge, skills and attributes that all barristers should have on “day one” of practice.

Part I of this consultation is an introduction. It explains our role in the education and training process for barristers, and the aims of our Future Bar Training (FBT) programme.

Part II explains some of the context for implementing our FBT reforms. It contains an overview of some of the important decisions that we have already made about the future arrangements for Bar training.

In **Part III** of this consultation, we consider aspects of the current vocational and professional stages of training, beginning with the **role of the Inns of Court in barrister training**. We explore in detail the issues associated with the following:

The regulatory oversight of students

Currently, our regulations require students to join one of the Inns when they start the Bar Professional Training Course (BPTC). We ask for your views on whether or not this necessary at such an early stage; and whether or not the Inns of Court are the most appropriate body to register students as prospective barristers.

Educational qualification and fit and proper person checks

Under our current rules, student membership of an Inn involves the Inn checking applicants’ educational qualifications and conducting a “fit and proper person” check by requiring the applicant to make a number of declarations. This is the only stage in the current qualification process where checks of this nature are undertaken. We ask for your views on whether we should continue to delegate responsibility for these checks to the Inns or

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whether we should conduct some of them ourselves. We also ask whether more robust assessments on applicants' suitability to become barristers should be undertaken at this stage, for example, by requiring Disclosure and Barring Service (DBS) checks.

Student conduct

If you agree that some form of student registration is required, in this section of the consultation we ask for your views as to who should be responsible for the conduct of students. We ask you to consider whether the Inns should continue to be responsible for this or whether it is something for which the BSB should take responsibility.

Qualifying sessions

Our current rules specify that 12 qualifying sessions must be completed before someone can be called to the Bar. There are a number of different qualifying sessions offered by each Inn, such as guest lecture events, advocacy workshops, dining sessions and debate nights. We outline the pros and cons of mandating attendance at these sessions and then ask you to consider whether or not we should:

- a) remove our requirement for prospective barristers to complete qualifying sessions;
- b) reduce the number of sessions that are mandated, review the nature of the sessions and/or review whether other training providers could deliver qualifying sessions; or
- c) adopt a similar approach to the new Continuing Professional Development (CPD) scheme for established barristers, whereby prospective barristers would plan their learning needs by setting objectives and identifying the types of "qualifying sessions" or activities that would be most beneficial to their needs.

Part III of the consultation paper continues by considering the future arrangements for work-based learning (pupillage). The following issues are explored:

The length of pupillage

At present, our rules require that pupils must complete two six-month parts of pupillage, the non-practising and the practising periods. After successfully completing the non-practising period, a Provisional Practising Certificate (PPC) can be awarded. Whilst these arrangements work well for many chambers and organisations, some require their pupils to complete longer training periods (sometimes also known as "Third Six pupillages"). Chambers or organisations offering pupillage may want to tailor their training plans in other ways to better suit their needs. Our current rules do not permit this, as they mandate that all regulated pupillages must be for a period of 12 months. To allow the Bar greater flexibility in the way that pupillage is structured, we discuss the advantages and disadvantages of removing the 12-month rule

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and seek your views on the length of pupillage ask whether a minimum or a maximum time should be prescribed by the BSB.

The award of a Provisional Practising Certificate

Closely aligned to the length of pupillage, we also seek views on when the PPC should be awarded. We outline four possible options on this and seek your views on which one would work best. The options are:

- a) The PPC is granted at the start of pupillage and the pupil may undertake reserved legal activity once their Approved Training Organisation (ATO) determines they are competent;
- b) The PPC may be applied for at any time during pupillage. It would be for the ATO, pupil and supervisor to determine when it is most appropriate for the pupil to apply. The ATO would sign the application to confirm the pupil is competent; or
- c) The ATO, on accreditation of their pupillage scheme, determines when they would want the PPC. The ATO could propose to apply the same award date to all pupils taken on, or identify different award dates for different categories of pupils, based on past experience of training pupils with similar levels of knowledge and experience.
- d) No change. The PPC is award after six months.

Pupillage funding

We currently require all pupils to be paid a minimum of £12,000 over the course of their pupillage. This is below the National Living Wage and there is evidence that some prospective barristers from lower socio-economic backgrounds cannot afford, or are put off from entering, pupillage. We also recognise the potential cost increase for chambers and other organisations offering pupillage, particularly those who undertake publicly funded work. We ask whether you think the minimum pupillage award should be raised and, if you do, what benchmark should we use to set the new minimum level. In addition, we seek views on whether or not the existing exemption from pupillage funding requirements for transferring qualified lawyers should cease.

Re-accreditation of Approved Training Organisations (ATOs)

At present, any chambers or organisation that had a pupil on 1 September 2006 is deemed to have been authorised by us as an ATO. All other organisations offering pupillage since this date have had to apply to us for authorisation. This means that many ATOs have never been through a formal authorisation process and this limits our ability to ensure that they are offering adequate training to pupils. In this section of the consultation paper, we discuss a “light-touch” system of re-authorisation for all current ATOs and then ask you for your views on this. We also ask you to consider how long the defined period of authorisation should last before an ATO is required to be re-authorised.

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Rules relating to the relationship between pupil supervisor and pupil

The one-to-one relationship between pupils and their supervisors has been the way that all pupils are trained for a number of years. However, for a variety of good reasons, some pupils have a number of different pupil supervisors during their pupillage. Under our current rules, the pupil is expected to inform us whenever there is a change in supervisor. This can create an administrative burden for us, pupil supervisors and pupils. We seek your views on whether we should remove the requirement that pupils have a single, named pupil supervisor and instead require the ATO to ensure that all pupils are adequately supervised throughout their pupillage. We also seek your view on whether we should remove our requirement that a pupil supervisor may only supervise one pupil at a time. We are aware of arguments that in some contexts, particularly at the employed bar, this rule can significantly reduce the ability of ATO to offer pupillage. These two proposals are part of our desire to make our rules more flexible and less onerous on pupils and ATOs and yet continue to ensure pupils receive proper training and supervision during their pupillage.

Pupil supervisor training

All pupil supervisors are required to undertake training prior to being entered onto the register of pupil supervisors. However, we do not currently prescribe what the training outcomes should be for that training nor do we exercise any quality assurance over this training. There is also no standing requirement for supervisors on the register to undertake periodic refresher training. In this section of the consultation, we pose a number of questions relating to pupil supervisor training.

Compulsory training courses during pupillage

Pupils are currently required to undertake two courses during pupillage, one on advocacy and the other on practice management. They are also required to take a course on forensic accountancy either during pupillage or during their first three years of practice. This consultation does *not* ask for views on the appropriateness of the rule requiring these courses to be undertaken, because this is being addressed as part of our wider FBT review of curriculum and assessments. However, assuming that compulsory training courses during pupillage do continue to form part of training rules, we do ask here for views on opening up the delivery of these courses to a wider pool of training providers. Currently, the advocacy and practice management courses are offered exclusively by Inns and the forensic accountancy course is currently provided only by BPP Professional Education.

Recruitment and advertising of pupillage

In this consultation paper, we announce our plans to establish a working group to review our rules regarding the recruitment and advertising of

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pupillage. We briefly discuss the issues here, but do not ask any specific questions on this topic at this stage.

In the final section of **Part III** of this consultation paper, we attach **[Annex 1]** a draft of the **Authorisation Framework**, which is intended to provide training providers of vocational and work-based components with guidance about what we will consider when they seek our approval for their new training proposals and therefore will allow them to develop appropriate training routes. We ask a number of questions about the drafting used in this version of the Authorisation Framework. In particular, we seek views on whether or not our definitions of “flexibility”, “accessibility”, “affordability” and “high-standards” are clear and whether we have identified correctly the mandatory indicators of compliance for each of these principles.

Part IV of this consultation paper asks you to consider our proposal to maintain a series of exemptions for **transferring qualified lawyers** under any new set of rules made as a result of our FBT programme. Our proposal to maintain a system of exemptions broadly follows the system of exemptions applied for by transferring lawyers under the current regime.

In **Part V**, we explain the need for and the likely impact of transitional arrangements to give certainty to both students and providers of education and training for a defined period.

The deadline for responding to this consultation is 5 January 2018. For more information about how to respond please refer to **Part VI** of this consultation paper.

Once this consultation has closed, we will consider the responses in the light of our regulatory objectives and the key policy principles we have set for FBT. We will then develop a new set of rules, on which we will consult in 2018. That consultation will be shorter and will focus simply on whether the rules effectively implement our agreed policy positions. We expect the new rules to come into effect in January 2019.

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Part I: Introduction

About the BSB and what we do

1. The Bar Standards Board is the regulator of barristers in England and Wales. We are also responsible for setting the education and training requirements for those who wish to practise as barristers.
2. In exercising our regulatory functions we must act in a way that is compatible with our regulatory objectives and which we consider most appropriate for the purposes of meeting those objectives. These are:
 - protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of legal services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of citizens' legal rights and duties; and
 - promoting and maintaining adherence to the professional principles.
3. In addition to the regulatory objectives, we have adopted two principles of good regulatory practice, which are set out by the Legal Services Board in its regulatory standards framework:
 - outcomes focused regulation; and
 - risk and evidence based regulation.
4. We must also have regard to the principles under which activities should be transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed, in addition to any other principle appearing to us to represent best regulatory practice.
5. The primary source of our regulatory arrangements is the BSB Handbook, which incorporates the Code of Conduct and the Bar Training Rules.

The BSB's role in education and training

6. The education and training of barristers is obviously very important because barristers play a vital role in the administration of justice. They must demonstrate a high standard of professional practice to justify the trust placed in them by the public and other professionals.

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7. Currently, prospective barristers train under a single, BSB-prescribed route involving higher education institutions and providers of professional training. The Inns of Court also play an important role in a barrister's career; they alone confer the title of barrister and they provide the advocacy training during the professional stage of training. If students have satisfied our requirements, we authorise them to practise as regulated professionals.
8. In addition to the regulatory framework in which we operate, the Legal Services Board (LSB) has published [statutory guidance](#) specific to legal education and training for relevant regulators to which we must adhere.

The Future Bar Training Programme

9. The FBT programme was launched in 2014 to focus on:
 - how training should be regulated to best meet the needs of professional practice;
 - ensuring that regulatory requirements do not restrict access to the Bar;
 - ensuring that the requirements for education and training are targeted on the desired outcomes and are proportionate; and
 - maintaining the standards which must be met at the point where someone is authorised to practise.

Our FBT consultations

10. Over the last few years, the BSB has conducted extensive research and public consultation to examine the ways in which students currently train for the Bar and to consider what reforms to the system should be made, to ensure that it better meets the four key principles of:
 - **encouraging greater flexibility** – so that the training system enables innovation in how education and training is delivered;
 - **improving accessibility** – so that the best candidates can train as barristers and that the Bar as a whole will better reflect the communities it serves;
 - **improving upon affordability** – to bring down the cost of studying to students; and
 - **sustaining high standards** – to ensure that any new training pathway maintains or enhances current standards.
11. These principles were identified through our earlier (2015) consultation looking at issues across the three stages of education and training in the current system.
12. Last year, we consulted on three very different regulatory approaches to how training might be delivered in the future. In March 2017, the BSB Board decided that it will authorise a **limited** number of new training routes for prospective students to qualify

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as barristers. The future system for training for the Bar will retain the three components of training that have proved successful in the past: academic, vocational and work-based¹.

13. In addition to the guiding principles set out above, we have settled on the following points of policy, which will be common to any pathway we consider as part of the authorisation process.

- ❖ A general expectation that the Bar will remain a graduate profession and entrants will normally meet the minimum degree classification of 2:2.
- ❖ Students will need to pass an aptitude test and BSB centralised assessments.
- ❖ We should reduce to a minimum our regulatory involvement in academic legal education (ie the current ‘Qualifying Law Degree’ or Graduate Diploma in Law).
- ❖ We should continue to pursue as much of a common agenda with other legal regulators, and the SRA in particular, as can be achieved in pursuit of our principles.
- ❖ During any transitional period between our decision on future pathways in March 2017 and the new rules coming into force in 2019, specific reforms to the current education and training arrangements (as agreed with those involved) will continue.

14. A full list of our closed FBT consultations can be found on our [website](#).

About this consultation

15. To get to the point where we can implement the approach agreed by the Board earlier this year, we need to consider – from first principles – all other requirements which form our regulatory arrangements, including those which are performed by third parties, such as the Inns of Court or Circuits.
16. This consultation seeks views on a number of policy proposals in order to inform the development of a new set of regulations needed to implement our future approach. Once we have agreed the policy proposals from this consultation, we will consult on a new rules framework in 2018 ahead of our new rules coming into effect in 2019. The consultation on draft rules will be much shorter and more targeted, focusing only on whether the new rules deliver our policy objectives, as decided following this consultation.

¹ Our current rules specify a professional stage of training, which is to be carried out in a work-based environment. Most providers of work-based learning are chambers or other legal service providers who offer pupillage to fulfil this requirement. Although pupillage will continue to be the main form of this training, others may be allowed in the future if they can meet the same outcomes.

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17. In Part II of this consultation, we set out the broad policy context for the consultation highlighting the scope of reforms, the impact of decisions already taken on the three stages of training and the need to develop a framework for authorising proposals for training. We will also discuss the need to develop a new set of rules (to be approved by the LSB) and any transitional arrangements for implementing the new rules.
18. In Part III, we consider the policy proposals relating to our proposed new rules. These are:
 - the role of the Inns of Court in barrister training;
 - future arrangements for work-based learning; and
 - the development of an Authorisation Framework.
19. In this Part we present a number of proposals in pursuit of our regulatory objectives and stated principles. We have not set out firm stances on any particular policy matter and seek views for consideration by the BSB Board following the consultation's closure.
20. Last year, we committed ourselves to working with other legal services regulators and the SRA in particular, to align education and training requirements, where it is appropriate and proportionate to do so. We will continue to work with other regulators, particularly as we develop the Authorisation Framework and set out new rules for transferring qualified lawyers.
21. In Part IV, we present our proposal to maintain a series of exemptions for transferring qualified lawyers under the new set of rules that may arise as a result of the various changes to the training and qualification system.
22. In Part V, we explain the need for and the likely impact of transitional arrangements to give certainty to both students and providers of education and training for defined period.
23. Information on how you can respond to this consultation and our engagement activities can be found in Part VI.

How we will use this consultation

24. In addition to responding to this consultation, we will be arranging a number of other opportunities for you to provide insight and feedback on the issues raised in the consultation – these will be made available on our [website](#). Once we have heard people's views, we will evaluate these in relation to our statutory obligations and the other aims we have identified.
25. We expect the Board to be asked to approve recommendations on policy matters in the spring of 2018. We will then publish a separate consultation on new Handbook rules to bring the reform programme into force.
26. We anticipate that the earliest a new system of education and training for barristers could begin to be implemented would be from 2019 onwards.

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Who should respond to this consultation?

27. Anyone who is interested in doing so. However, we are particularly interested in hearing from:
- consumers of legal services and consumer organisations who may represent the interests of users of barristers' services or organisations which have an interest in promoting equality and diversity and access to the profession;
 - members of the legal profession: registered and unregistered barristers, solicitors, legal executives or anyone who works with barristers professionally;
 - the Bar Council, the Inns of Court, regional Circuits, Specialist Bar Associations and Pupil Supervisors;
 - students: current law students, BPTC students, Bar Transfer Test (BTT) candidates, and anyone interested in a career at the Bar; and
 - higher education and training institutions: universities, current BPTC providers and legal academics.

How has this consultation been developed?

28. The BSB is extremely grateful to the Board, Education & Training Committee and Future Bar Training Programme Board members for their time, energy and expertise. We have also been assisted to date by the following external experts:

Members of the BSB's Advisory Pool of Experts (APEX)

Jane Chapman: Independent Consultant – Professional Legal Education

Carol Wadsworth Jones: Independent Consultant – Professional Legal Education

Deveral Capps: Dean of Leeds Law School, Leeds Beckett University

Maria Tighe: Professor Emerita and Consultant to the BSB

Helen Tinkler: Assistant Chief Examiner (Civil) for the BSB

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Part II: Context for implementing our reforms

The BSB as an outcomes-focused regulator of education and training

29. The BSB is required to be a risk-based, transparent and proportionate regulator, targeting its work at the areas of most need in relation to our regulatory objectives.² Our focus in relation to education and training must, therefore, be on setting and maintaining appropriate standards at the point of authorisation (ie the award of a first practising certificate). To do this, the BSB has clearly defined what competences are required and what the minimum standards are to achieve the competences; these are set out in our [Professional Statement](#).
30. The Professional Statement describes the knowledge, skills and attributes and the minimum standard to which they should be capable of being performed on “day one” of practice, and this now underpins our new system of training for those we authorise. It now serves formally to assist us in maintaining standards, both of those entering practice and of providers of education and training; and to inform the design and delivery of education and training pathways, including the development of educational materials, learning outcomes and assessments.

FBT reforms and the impact on the academic, vocational and professional components of training

31. In the FBT Policy Statement, published in March, we set out our vision for a new Bar training framework. This vision clearly identifies the need for the new system to incorporate the four principles of accessibility, flexibility, affordability and high standards; to encourage training providers to innovate and to compete in developing and adapting their courses as new challenges and opportunities arise; and to fulfil our statutory objectives to protect consumers whilst encouraging an independent, strong, diverse and effective legal profession. This is so that newly qualified barristers can meet the needs of consumers in a fast-changing market for legal services and that these barristers promote access to justice and compliance with the rule of law.
32. As discussed in last year’s consultation, we are developing an Authorisation Framework, which will enable us to assess whether training proposals sufficiently reflect the four principles stated above, and better enable prospective barristers to meet the requirements set out in the Professional Statement. More on how the Authorisation Framework will work and our initial thoughts about the requirements that training providers (Authorised Education and Training Organisations) will have to meet are explored in Part III of this consultation.

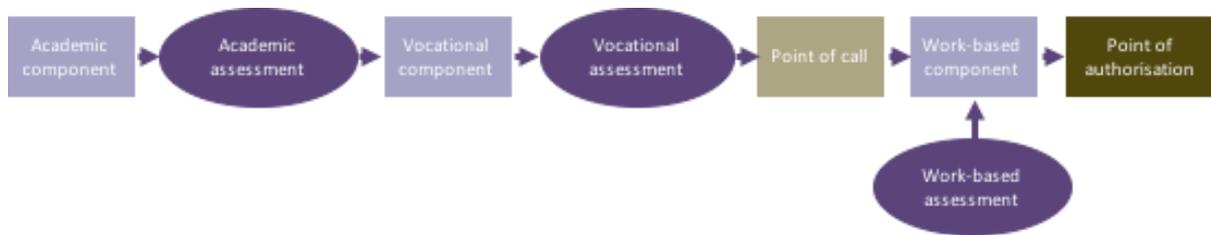
² See Legal Services Act 2007 s1 and s28(3) and BSB Risk [Outlook](#), [Index](#) and [Framework](#).

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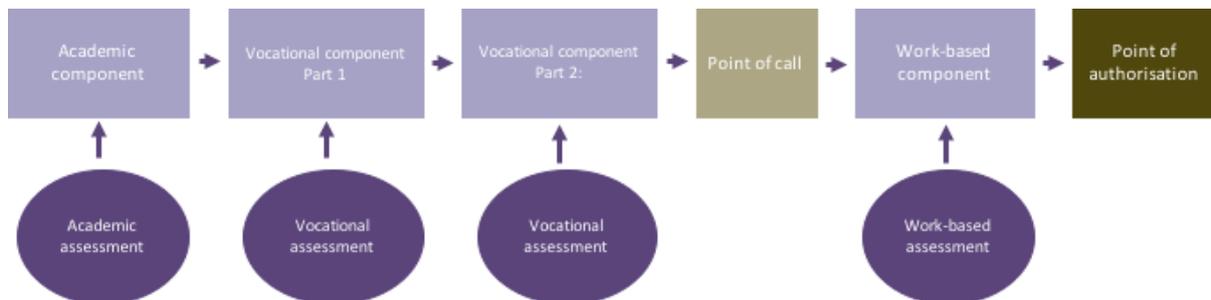
Future requirements

- 33. Last year, we consulted on a number of proposals relating to the three components of education and training: academic, vocational and work-based. We decided that these three components must be present in the route to qualification for the Bar, but they need no longer be prescribed as consecutive stages in only one route.
- 34. The three components may be attained by means of different **pathways**. There are four approved training pathways:

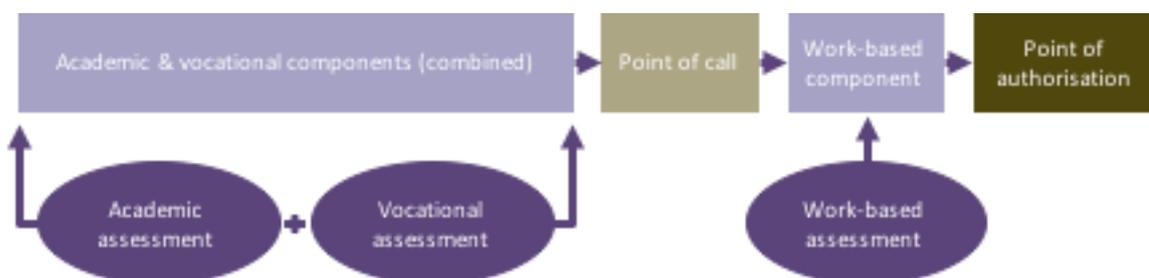
Three step pathway - academic, followed by vocational, followed by work-based components



Four step pathway - academic component, followed by vocational component in two parts, followed by work-based component



Integrated academic and vocational pathway - combined academic and vocational components followed by work-based component



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Apprenticeship pathway - combined academic, vocational and work-based components: *not illustrated as there are many possible permutations.*

35. Authorised Education and Training Organisations are invited to propose their own structure for an apprenticeship pathway. We may be prepared to approve further training pathways in the future.
36. In relation to the academic component, the BSB intends (along with the SRA) to end our regulatory oversight of Qualifying Law Degrees³, undertaken through the [Joint Statement](#) which sets out a number requirements for a law degree to be certified for the purposes of training to become a barrister or solicitor in England and Wales. In future, the BSB will only require law degrees to be compliant with the [Quality Assurance Agency for Higher Education](#) (QAA) benchmark statement for law. We and the SRA intend to issue a further policy statement or “common protocol” setting out our withdrawal from this arrangement and giving future guidance.
37. We also suggested where we thought providers might specify when students were to be called to the Bar as part of the training pathway they were proposing. However, in most of the potential pathways listed above, we think that candidates for call to the Bar would need to have completed at least the vocational component of training but there may be others where call may not occur until after successful completion of work-based components (eg the apprenticeship model).
38. The requirements below will be common to any future pathway:

Academic component

Graduate education enabling prospective barristers to demonstrate (as a minimum) the Competences set out in of the Professional Statement, as follows -

“1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers should:

- a) Be able to recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice specified by the Bar Standards Board.
- b) Be able to keep up to date with significant changes to these principles and rules.”

The principles of law and rules of procedure and practice referred to above are still to be specified by us.⁴ They will include the seven “foundations of legal

³ This includes the Graduate Diploma in Law (GDL) law conversion course.

⁴ The new statement specifying the principles of law and rules of procedure and practice will replace the ‘Joint Statement 1999 issued by the Law Society and the General Council of the Bar on the

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knowledge”: Constitutional and Administrative law; Criminal law; Land law; Contract law; Equity and trusts; Tort; and EU Law⁵.

The academic component will be satisfied by a law degree or a non-law degree at a minimum of a 2.2 classification, plus further graduate/postgraduate study that covers the requirements above.

Vocational component

Education and training preparing prospective barristers to work in the legal profession and demonstrate (as a minimum) the Competences as set out in a document to be developed as part of our parallel work reviewing curriculum and assessments.

Work-based component

Pupillage⁶ or other forms of training providing real life legal work experiences under supervision where prospective barristers can build on prior learning and experience in order to demonstrate the Competences set out in a document to be developed as part of our parallel work reviewing curriculum and assessments.

The Advocacy, Practice Management and Forensic Accounting courses currently undertaken during the work based component or within the first three years of practice are being reviewed as part of our parallel work on curriculum and assessments, and we also seek your thoughts on them in Part III.

Successful completion of the above three components will enable a prospective barrister to acquire the knowledge, skills and attributes required by the Professional Statement (September 2016) and, subject to relevant administrative processes, be authorised to practise.

Implementing the FBT reforms

39. There are a number of challenges for preparing to implement such a large-scale reform programme. Equally, this is also a significant opportunity for the BSB to review what the new rules should include: ensuring, for example, that only those requirements that are necessary to meet our stated policy objectives remain mandatory.
40. The current Handbook rules for education and training are mostly contained in Part 4 (Qualifications), with others in Part 3 (scope of practice). The current rules are highly

Completion of the Initial or Academic Stage of Training by obtaining an undergraduate degree’, which states the current requirements - <https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>.)

⁵ EU Law will remain one of the seven foundation subjects for at least as long as the UK is a member of the EU. This, of course, will need to be reviewed to reflect any needs in the future.

⁶ BSB Policy Statement on Bar Training 23/03/17 paragraph 34 states that FBT “would not require substantive changes to the current arrangements for pupillage”.

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prescriptive and we do not think this works with our more outcomes-focused approach.

41. In order to approve a new rules framework, the Board will need to examine all aspects of the current arrangements, including those delivered by third parties, such as the Inns of Court or Circuits. This means that we must go back to first principles and ensure that any regulations we wish to continue prescribing are necessary, appropriate and proportionate. In other words, any new set of rules would need to be fit for purpose in meeting our regulatory objectives, the four principles outlined for the FBT programme and the LSB's statutory guidance on education and training.
42. In the next section, we will explore which of the remaining arrangements need to be reviewed, including the detail of policy matters relating to the role of the Inns of Court and how we regulate the work-based component. We also explore how the Authorisation Framework will work.

Part III – Shaping the vocational and professional requirements

43. This section of the consultation explores some highly prescribed requirements in the current vocational and professional components of training. We also ask for your opinion as to whether certain proposals meet our objectives best and the reasons behind your views.
44. Some of these requirements relate to registration and the BSB's role in ensuring students who study for the Bar are both qualified and of the right character to do so. Other requirements relate specifically to training requirements that are set by the BSB, regardless of whether they are delivered by a BPTC provider, one of the four Inns of Court or by regional Circuits, or by an employer or chambers as part of a formal arrangement for work-based learning, such as pupillage.
45. Many of the *possible* scenarios explored in this paper may appear to be a significant departure from the status quo. Where we consider the removal of prescription, it should not be taken that the activity cannot be done in the future, just that we may not *require* that it be done as it is now. We must, therefore, consider whether alternatives might better meet our regulatory objectives in a more proportionate and transparent way, in addition to having a robust evidence base for retaining those elements that add value.

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THE ROLE OF THE INNS OF COURT IN BAR TRAINING

46. The Inns of Court have both a historical and continuing role in the training of barristers and, indeed, in the lives and careers of many barristers once qualified to practise. The Inns provide a number of benefits to students by introducing them to life at the Bar, and opportunities to network with other aspiring (and practising) barristers. This can be a particular benefit to those who come from a background that means they lack the confidence or social capital to enter the profession without significant support and mentoring. Once practising, the Inns can help to foster a “community of practice” that may promote professional values and ethical behaviour, as well as supporting wellbeing at the Bar.
47. However, it is important to note that many of the current rules relating to the involvement of the Inns have been in place for some time. As a matter of good regulatory practice it is important to go back to first principles in relation to the roles that the Inns play in our regulatory arrangements. This means asking whether the roles they play remain appropriate as a compulsory requirement in the light of our new approach to Bar training, the Professional Statement and our regulatory objectives. In any event, the Inns will continue to have a valuable role to play in supporting the Bar.
48. The Legal Services Act 2007 (LSA) clearly enshrines the role of the Inns of Court as the bodies responsible for call to the Bar. Being called to the Bar confers the “degree of the Utter Bar”, which is a “recognised award”: a degree unique to the Inns of Court, who do not otherwise have any degree awarding powers under UK legislation.⁷ The BSB has no desire to change the Inns’ statutory role in call to the Bar; but they also perform a number of additional roles within our regulatory arrangements at present which we need to review:
- i. regulatory oversight of students;
 - ii. requirement for student membership of an Inn;
 - iii. student discipline, including the Inns Conduct Committee;
 - iv. approval of pupil supervisors, and providing pupil supervisor training;
 - v. provision of mandatory training courses during pupillage; and
 - vi. provision of “qualifying sessions” and waiving/modifying the requirements of these.
49. The purpose of this part of the consultation is to examine these arrangements with the aim of establishing whether they remain appropriate in light of the Professional Statement and the new approach to training. Where they remain appropriate, we aim to have clear governance arrangements in place to ensure sufficient regulatory oversight. The analysis and proposals that follow are intended to inform respondents of the regulatory framework that must guide our decision-making and to seek views

⁷ See <https://www.gov.uk/guidance/recognised-uk-degrees#recognised-awards>.

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on the extent to which input from the Inns needs to be a compulsory part of our training arrangements.

Regulatory oversight of students

50. We need to consider whether there should be regulatory oversight of students prior to call to the Bar. This currently begins when an individual decides to join an Inn of Court as they must demonstrate they are a ‘fit and proper person’ and meet the academic requirements. If the Inn is satisfied that the applicant meets these criteria, the individual can apply for the vocational stage of training. Once they begin this course, they are subject to the ‘Conduct of Students’ rules within the BSB Handbook⁸. Regulatory oversight of students is therefore comprised of two elements; eligibility to enrol on the vocational stage and ongoing monitoring until call to the Bar.
51. There are a number of reasons for having regulatory oversight of students. Firstly, given the approval of the managed pathways approach to training⁹, there is now an increased likelihood that training will be delivered in ‘real world’ settings (e.g. through law clinics), which could result in students having direct contact with the public during their training. Requiring registration of students who engage with the public occurs in other professions, such as ophthalmology, given the potential for contact with and risk of harm to the public¹⁰.
52. Having oversight in advance of call could also support the BSB to monitor the equality and diversity of those undertaking training for the Bar, particularly as there may well be different training pathways existing concurrently in the future.
53. Regulatory oversight could also determine at an early stage whether a student may be of unsuitable character, saving them the expense of investing in training.
54. As a regulator, it is also necessary to ensure that only those who are ‘fit and proper persons’ are (a) called to the Bar and (b) given a practising certificate. There is, therefore, regulatory value in being able to make an authorisation decision informed by how a person has behaved over the course of their training.
55. However, we need to consider whether it is appropriate to have regulatory oversight of students, and to make an assessment of someone’s suitability in advance of call to the Bar, as this may be seen as premature or disproportionate.

**Question 1: Should the BSB have regulatory oversight of students?
Please explain why or why not.**

56. If the answer to this question is no, regulatory oversight of an individual would only commence at the time of call to the Bar.

⁸ Part 4 B8.

⁹ <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/future-ways-to-qualify-as-a-barrister/>.

¹⁰ The General Optical Council operates such a student registration process.

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57. If, however, there is a need for some regulatory oversight before a student is called, we need to consider the most appropriate body to undertake this. It could be that this is done by the BSB directly, although it might not be the most efficient use of our resources. It may therefore be that some elements of the regulatory oversight are more suitably undertaken by other bodies.
58. We must be mindful that any requirements of regulatory oversight of students will impose a regulatory burden. We therefore need to be able to justify this in line with our approach to reform of education and training for the Bar, as set out in our Policy Statement¹¹.
59. The factors which have been outlined above should be kept in mind when considering the other regulatory arrangements discussed below.

Student membership of an Inn

60. Currently, a student who intends to study the BPTC must join an Inn and pay the relevant fee for admission to that Inn (approx. £105) and for being called to the Bar (approx. £125). Whilst studying on the BPTC, students must also undertake 12 qualifying sessions at their Inn.
61. Each of the four Inns offer some form of educational activities, networking opportunities, dining sessions and student wellbeing support. As above, the Inns also undertake education and character (fit and proper person) checks to ensure students are eligible to become a barrister. Hand in hand with this role, the Inns also oversee matters relating to student conduct.

Why does this matter?

62. As the only statutory requirement regarding the Inns is for them to call students to the Bar, we need to consider whether student membership for this (as well as the vocational course and qualifying sessions) needs to remain mandatory and prescribed by the BSB.

What are the regulatory issues/associated risks?

63. Any requirement to be a member of an Inn (and in particular any cost associated with that) is a regulatory burden on students that we have to be able to justify – from first principles – as a necessary contribution to satisfying the Professional Statement and/or our regulatory objectives.
64. As above, we are considering whether it is necessary to have regulatory oversight of students and if so, which bodies are the most appropriate to undertake each regulatory requirement. If this is the Inns, we would need to consider whether membership would be a necessary requirement for them to fulfil their regulatory obligations.

¹¹ https://www.barstandardsboard.org.uk/media/1825162/032317_fbt_-_policy_statement_version_for_publication.pdf.

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65. Also, we are aware of a potential conflict of interest may arise if the Inns of Court College of Advocacy (ICCA) enters the market for Bar vocational training. If the Inns of Court, through the ICCA, decide to offer vocational training, and there is a continuing requirement for student membership of an Inn, ICCA may be seen as a more favoured provider of training, disrupting competition for students in an open market. As this matter remains hypothetical at this stage, this paper does not seek to analyse the potential conflicts that may arise, but the Inns would be expected to explain how they would manage such potential or actual conflict of interest, should they apply to become an Authorised Education and Training Organisation.

Benefits of the current process

66. A key function of the current membership requirement is that the Inns undertake the BSB's 'fit and proper person' checks, both at admission to the Inn and call to the Bar, and oversee the conduct of students through the Inns Conduct Committee.
67. By administering this in accordance with our rules (as discussed in the Conduct section below), they introduce students to the professional concepts of ethical behaviour and the disciplinary processes which may flow from a failure to adhere to such standards. By overseeing the conduct of students, the Inns also undertake a considerable amount of activity that would otherwise fall to the BSB, should we decide that such oversight of students is necessary.
68. The Inns also provide a dedicated education and training support service to their students. This would not be something that the BSB could realistically provide.
69. Membership of an Inn provides potential barristers without the social capital of those who are "well connected" with the opportunity to mix with practising professionals and acclimatise themselves to the type of environment that they will encounter when practising. After call to the Bar, the Inns provide barristers with access to professional resources, and a network that can promote good practice and ethical behaviours.
70. It is possible that some of these benefits could be realised without the BSB *requiring* that students join an Inn (for example students may choose to join an Inn anyway). There is, however, a risk that without the BSB mandating membership, many students will not join an Inn and will miss out on such opportunities, many of whom may be those most in need of the pastoral and collegiate 'community of practice' that the Inns are able to provide.
71. We are also interested to hear about what the alternatives could be. Do potential training providers believe that they could replicate some or all of what the Inns do at present? For example, providers of vocational training – as a matter of course – oversee student conduct, provide student wellbeing support and provide opportunities to network with students and alumni. Likewise, other organisations (such as the Circuits or Specialist Bar Associations) provide support and networking opportunities to trainee barristers. Could this be expanded upon? Or is there

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something unique to the offer and environment of the Inns of Court which may not be possible to replicate in another setting or by another type of provider? We are seeking views on the questions.

Proposals for future arrangements

Option A: Remove the requirement of student membership of an Inn

72. We would no longer require individuals to be student members of an Inn in order to undertake the vocational stage or qualifying sessions. This would reduce prescription and focus the Inns' mandatory involvement only on the legal requirement that the Inns call students to the Bar. It would not mean that the Inns were prevented from offering membership to students but it would mean that membership was optional unless anyone proposing a training pathway for approval by the BSB proposed that the Inns had a mandatory role to play in their training pathway (which we would consider under the Authorisation Framework).
73. Removing the requirement to be a student member could also mitigate the risk of a conflict of interest if the Inns are to enter the training market for the vocational component. This is pertinent as there may be a perception that mandating membership to an Inn could imply that we consider them to be of a higher status than the other organisations and this could have a detrimental impact on the other organisations.
74. In this scenario, a student who had successfully completed the BPTC would still need to be called to the Bar by one of the Inns of Court but may not need to become a barrister member of the Inn that called them.
75. If this proposal were taken forward, we would need to work out with the Inns how to decide which Inn was responsible for calling which students, where they were not already student members. We anticipate that, following call to the Bar, many barristers might still choose to join an Inn but will have an option at this point as to which one to join.
76. This option has potential benefits, but it also comes with risks. We are aware that that the Inns provide a valuable contribution to the funding of Bar training through the provision of scholarships and the extra support provided to students by members of the profession who provide expertise and support through this environment. What valuable aspect of the current system, if any might be risked if the requirement of student membership was removed? We are seeking views on these questions.

Option B: Retain the requirement of student membership of an Inn

77. If it is considered necessary to retain the requirement of student membership, then we should go on to consider whether it is appropriate for the Inns to take on further roles, such as the fit and proper person checks, both at admission and call, student conduct and qualifying sessions.

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78. In either option described above, we would need to consider the appropriate governance arrangements that the BSB would need to have in place to ensure it had appropriate oversight of those gaining access to the register/profession.

Question 2: Do you think the BSB should continue to require student membership of an Inn as a mandatory part of Bar training? Please explain why or why not.

Educational qualification and fit and proper person checks

79. Under our current qualification rules, student membership of an Inn requires two checks to complete our “fit and proper person” test: that the student has the necessary educational qualifications (or is in the process of obtaining them); and has the necessary character references.
80. With regards to the educational checks, the Inns ask students to provide the original or certified copy of their degree certificate or written confirmation from their university confirming their grade, or written confirmation from the academic institution that they are currently undertaking a qualifying law degree or conversion course¹².
81. When applying for admission to an Inn, students make a number of declarations, including whether they have been convicted of a criminal, disciplinary or academic offence, are subject to a bankruptcy order, if they have been refused admission previously or suffer from a “serious incapacity due to a mental disorder”. They are also required to provide two certificates of good character and declare there are no other matters which question their fitness to practise as a barrister. The Inns also require students to provide a copy of their passport or UK driving licence so that they can verify their identity. No independent criminal records (DBS) check is required.
82. When a student applies to the vocational course provider, they are required to upload documents to certify that they have completed the academic requirements. The provider checks that the documents have been uploaded, but does not verify their authenticity¹³.
83. Upon call to the Bar, students must complete the call declaration, which asks whether there have been any changes since their admission declaration. Students are asked to verify this during an interview with their Inn. Finally, the Inns confirm that the student has passed the BPTC with the provider.

Why does this matter?

¹²<http://www.middletemple.org.uk/sites/default/files/documents/Admission%20Application%20Form%202017.pdf>, https://www.innertemple.org.uk/downloads/prospective-members/full_application_march_2016.pdf, <http://www.lincolnsinn.org.uk/images/word/admission/Admission%20Forms%20Jan%202017.pdf>, https://www.graysinn.org.uk/joining/how-join#Four_Inns.

¹³ See rQ28.1 for admission requirements for the BPTC.

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84. The fundamental question here is whether, in principle, the BSB should continue to delegate responsibility for this function to the Inns of Court. As set out below, there may be practical reasons for this arrangement to continue but we must be satisfied that this course of action is both appropriate and proportionate as a modern, risk-based regulator.

What are the regulatory issues/risks associated?

85. As a regulator, we need to know whether someone has met the requirements to be called to the Bar by having completed their training. As an individual can gain admission to an Inn from the second year of their law degree¹⁴, the educational requirements for call have not been verified at the point of admission. Therefore, to specify educational requirements at the point of admission to an Inn could be seen as premature for our regulatory purposes.
86. As we do not prescribe or oversee how vocational training providers verify the authenticity of the documents confirming the academic stage has been completed, there is a risk that individuals are admitted to the Bar without the necessary qualification. This is rare, but there were two cases brought to the BSB in the last two years in which the education certificates were forged, linking to the key character traits of honesty and integrity. It is also possible that if individuals are called without having satisfied the requirements then this could adversely impact the public's perception of legal services, particularly if a poor client service is received.
87. There is also a risk that relying on the Inns to conduct the fit and proper person checks, which rely to a large extent on the honesty of students to make the relevant disclosures, lacks robustness. Those who are dishonest have the opportunity to be called to the Bar when they may not otherwise be permitted. This is evidenced in two disciplinary cases brought by the BSB, one where false references were provided and another in which the individual failed to declare a number of convictions, both upon admission and call.
88. These risks are also present if an individual seeks re-admission, having previously been disbarred. The BSB's Professional Conduct Department has identified a few cases where the Inns have not made us aware of individuals applying for re-admission, meaning that the BSB has been unable to make representations in these cases as to their fitness to practise as a barrister.

The current process

89. One of the benefits of the Inns undertaking this function is that it enables the Inns to verify that students possess the requisite educational qualifications to study on the next stage of training, join the Inn and, ultimately, become a barrister. This provides a level of continuity in oversight.

¹⁴ A student can join an Inn from the second year of law degree or with the acceptance of a place on the GDL conversion course.

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90. Another benefit of the two-tiered gateway process of admission and call checks taking place is that students will have a greater understanding (and at an earlier stage) as to their ongoing professional responsibilities and their likelihood of entry. If a student understands that certain actions from their past may prohibit their potential as a barrister, this may save a student time and expense of undertaking further studies.
91. Another benefit, to the BSB, is that this function is carried out on our behalf at no direct financial cost to the BSB. If this were not the case it would be an additional expense that would fall to the BSB, to be met either through practising certificate fees or fees charged to the prospective barristers themselves.

Proposals for future arrangements

Option A: the BSB to take over responsibility for educational and fit and proper person checks

92. As it is central to our role as the regulator of barristers, a key question arises: should we assert greater control of the process by which people are admitted to the register? If so, the BSB might consider whether it ought to be performing this function itself.
93. This option would see the BSB taking control of both educational and fit and proper person checks. Checking educational qualifications might not necessarily be undertaken by the BSB directly but could be performed by subsequent training providers with BSB supervision functions assuring compliance. As for the fit and proper person checks, these could be administered by the BSB.
94. The benefit of this approach is one of clear and direct regulatory responsibility for the register of barristers. As a risk-based regulator, this approach may well be seen as an appropriate and proportionate way of ensuring regulatory control.

Option B: Inns of Court continue to perform these functions but with improved checks and greater oversight from the BSB

95. If the BSB decides that it is disproportionate to do so, or that there are other benefits (see benefits above) of retaining the arrangement for the Inns to perform this function, it is arguable that the BSB should exert more control over the process and have clearer sight of any matters which question an individual's suitability to be called to the Bar, to enable the BSB to ensure the proper standards are being applied. We describe below what this greater level of oversight might look like.

Question 3: Do you think the BSB should continue to delegate responsibility for educational and fit and proper person checks to the Inns of Court? Please explain why or why not.

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96. Regardless of which body is responsible for overseeing the checks, the BSB thinks that that following issues ought also to be considered to improve the robustness of the checks being carried out.

Requirement to complete a DBS check prior to call

97. Given the issues highlighted above and the significant contact barristers have with the public, we think that there is a strong case for all students to be required to undertake a DBS check. We believe this would increase the robustness of the fit and proper person checks as we would no longer rely on a self-declaration.
98. The DBS requirement is currently adopted by a number of other regulators, including the SRA¹⁵. As there is a high possibility that barristers will come into contact with vulnerable people and clients during their practice, we consider it appropriate, in line with our regulatory objective to protect the public interest, for such a check to be undertaken on all barristers at the point of call. This is also be an appropriate time to request the disclosure of spent convictions and the only time we can check for unspent convictions, in line with the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023). It is also likely that there will soon be a statutory requirement to effect DBS checks on barristers in relation to Anti-Money Laundering regulations.¹⁶
99. The BSB would have to determine whether the cost of DBS checks ought to fall to students or to the profession as whole. If the cost is passed on to the student and depending on the level of check we would require, the cost ranges from £25-44, plus any additional administration fees. This could potentially have an adverse impact on those students from lower socio-economic backgrounds but this could be justified as a proportionate requirement given the contact which barristers could have with vulnerable individuals. This cost, along with any others for qualifying, should be made clear to students before they commit to the vocational component, enabling students to make an informed choice about whether to pursue a career at the Bar.
100. If we were to decide in favour of DBS checks prior to call to the Bar, this function could be performed by either by the BSB directly or the Inns of Court. Neither the Inns nor the BSB currently have processes in place to undertake these checks and consideration would need to be given to the operational processes needed and financial implications this may have.

Question 4: Do you think the BSB should require DBS checks as part of the fit and proper person checks? Who do you think should perform this function? Please explain why or why not.

¹⁵ <https://www.sra.org.uk/trainees/admission/dbs-check.page>.

¹⁶ See http://www.legislation.gov.uk/ukxi/2017/692/pdfs/ukxi_20170692_en.pdf

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Verification of academic qualifications

101. As part of the new framework, the BSB proposes to increase regulatory oversight of the organisations providing the vocational component of training to ensure that robust processes are in place to check the authenticity of the academic awards. In light of this, the BSB will consider how best to further improve the robustness of our checks.
102. The BSB could, for example, place a duty on organisations to verify the authenticity of such awards, eg by selecting a sample and contacting the academic institution directly. Taking a more proactive approach would ensure sufficient systems are in place to mitigate the risk of dishonest individuals being called to the Bar.

The BSB is made aware of matters (prior to call to the Bar) which could question a student's suitability to be called to the Bar

103. When an individual is called (or applies for readmission) the BSB is not now informed of each student's case, even if there are issues which are raised about a student's fitness to practise. However, if a student is not called on grounds related to fitness, students have the right to appeal to a BSB Independent Review Panel.
104. We propose that in such circumstances, we should be made aware of any matters which call into question the suitability of that individual. This would allow us to make representations and have greater oversight about who is joining the register. This would be particularly pertinent in relation to the prospective re-admission of a person who had previously been disbarred as a consequence of BSB disciplinary action.
105. Whoever administers the fit and proper person checks, we would need to be notified of any matters before Call (or application for readmissions). The arrangements would continue to specify the possibility of appeal for candidates, independent of any representations that we may have made.

Reduce the level of prescription within the call declaration

106. It is proposed that within the call declaration, we would look to remove the specific declaration of serious incapacity due to mental disorder and addiction to alcohol or drugs, as this would be sufficiently covered by the declaration that there are no other matters to disclose which could reasonably be thought to call into question the individual's fitness to become a practising barrister. This would avoid uncertainty as to what would need to be disclosed for this section and reduce unnecessary levels of prescription. For clarity, addiction to alcohol or drugs could be provided as an example of what should be disclosed.

Question 5: Do you agree with our proposals to improve the current checks as described above? Please explain why or why not.

Student Conduct

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107. This topic is linked to the discussion of whether student registration is required and similar principles apply. One of the benefits of student registration is that it enables oversight of student conduct. This section assumes that student registration continues and seeks views on which body ought to oversee student conduct.

The current process

108. As stated above, the Inns are responsible for overseeing the conduct of students from the point of admission to an Inn until they are called to the Bar. The student is required to notify their Inn if they become, among other things, the subject of criminal or disciplinary proceedings or a bankruptcy order.
109. The Inns are permitted to deal with minor matters under their internal disciplinary procedures and have options when reaching a decision on minor matters, including advising as to future conduct and reprimanding the student.
110. If a student appeals the decision of the Inn following an internal review, or if the Inns decide the matter is serious, then the matter is referred to the Inns Conduct Committee (ICC). The table below shows the number of cases brought to the ICC annually, relating to both admission and conduct¹⁷.

2013-14	2014-15	2015-16
63	39	47

111. For those student cases referred in 2015-16, the breakdown is as follows¹⁸:

Criminal offences	3
Bankruptcy/CCJ	0
Academic misconduct	8
Professional/disciplinary misconduct	0
Other	4

112. There is a right to a review of ICC decisions by the BSB (exercised by an Independent Review Panel, previously the Qualifications Committee).
113. There have been 20 cases in the last five years in which the BSB has reviewed the decision in 3 cases, the Qualifications Committee amended the decision of the ICC;
- i. in 17 cases it upheld the ICC decision; and
 - ii. 5 students appealed to the Visitors/High Court¹⁹ against the Qualifications Committee review decision, but the appeal was dismissed in each case (apart from one where the appeal was withdrawn before the hearing took place).

¹⁷ The Bar Tribunals and Adjudication Service Annual Report 2016 [paragraph 35].

¹⁸ The Bar Tribunals and Adjudication Service Annual Report 2016 [paragraph 39].

¹⁹ Decisions being appealed prior to January 2014 were made to the Visitors of the Inns of Court. Since 2014, all appeals under this process are heard in the High Court.

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114. The BSB can currently only consider matters when the Inns have been too strict (ie where a student seeks to challenge a decision). We have no general quality assurance processes in place, for example, to assure ourselves that the Inns have not been too lenient in the decisions taken.

What are the regulatory issues/risks associated?

115. A key risk in the current arrangement is that the BSB is not currently aware of the decisions that are being made by the Inns on minor matters, which are dealt with under each of the four Inns' internal disciplinary policies. This links to the risks outlined within the fit and proper person checks above, as we are not aware of all matters which may question an individual's suitability to be called to the Bar and we are therefore unable to make regulatory representations in these cases.
116. There is also a lack of clarity as to whether the Inns consider matters consistently, particularly when determining whether a matter is minor or serious, and as to the outcome of their internal disciplinary procedures for minor matters. This issue is linked to others discussed above.
117. Depending on our decision in relation to student registration, we might nevertheless need to consider issues of student conduct at the point of call to the Bar. In such circumstances, we would need to consider whether the student conduct function is better carried out by the regulator or another body. In practice, the 'other body' would have to be either training organisations or the Inns (if the latter, that would also necessitate maintaining student membership of the Inns). Our preliminary view is that there would be limited benefit in setting up an alternative student conduct framework (unless the BSB were to take responsibility directly) so we are consulting on two options, but we welcome views on whether there might be alternative ways of dealing with student conduct issues.
118. As with the other functions carried out by the Inns, there are some benefits of the Inns carrying out this function. We need to consider whether that remains appropriate from a regulatory perspective.

Proposals for future arrangements

Option A: The BSB takes responsibility for conduct of students

119. Assuming that the BSB decides in favour of student registration, the BSB could take on the responsibility for student conduct as it is uncommon for third parties to carry out such an essential function on behalf of a regulator. There is no statutory necessity for the Inns to continue performing this function. The Legal Services Act 2007 only requires that the Inns call students to the Bar.
120. This regulatory oversight during the vocational component could overcome the risk that we have insufficient oversight of the conduct of students, are not aware of minor matters and do not have the opportunity to make representations in certain

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situations. This would also present an opportunity to ensure we have a framework for considering all conduct matters, minor or otherwise, consistently.

121. This option could enable the BSB to better protect the public interest as we would have better control over our register, at the point of call to the Bar in addition to at authorisation. It is now uncommon for a modern regulator of a profession to not have ultimate control over its register of practitioners.
122. This scenario would have significant resource implications for the BSB, given that there were 47 cases were referred to the ICC last year alone and this does not include those students that were dealt with under the internal disciplinary procedures of their Inn. This would represent an additional cost of regulation that would need to be recovered from students or the profession as a whole.

Option B: The Inns continue to be responsible for student conduct

123. Alternatively, the Inns (including the ICC) could continue to be responsible for dealing with matters of student conduct.
124. We would need to develop an agreement to ensure there are clearer governance arrangements in place. This would also help to improve our oversight of the disciplinary activities of the Inns and the ICC, so that we were made aware at the point of call of any matters (including what is currently considered a minor matter) which could question an individual's suitability to be called (or readmitted).
125. There may be additional resource implications for the BSB in greater oversight of the cases brought before the ICC, but these could be significantly less than under option A.

Question 6: Do you think that the Inns or the BSB should oversee student conduct? Please explain why.

Qualifying sessions

126. The BSB's current rules set the requirement that 12 qualifying sessions need to be completed before someone can be called to the Bar. These qualifying sessions are mostly undertaken during the current vocational stage of training but delivered solely by the Inns of Court (and/or Bar Circuits outside of London). There are a number of different qualifying sessions offered by each Inn, such as guest lecture events, advocacy workshops, dining sessions and debate nights. There is some variation in the sessions which are offered by each Inn and in the cost to students.
127. Although the qualifying sessions are part of the BSB training rules, the Inns are responsible for deciding their content and for waiving or modifying the requirement for individuals.

Why does this matter?

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128. In light of the Professional Statement and our new approach to training, we must consider whether it is necessary for qualifying sessions to remain a mandatory element of training for the Bar. If they continue, we need to be clear about the governance arrangements in place to ensure their contribution to students being able to meet the requirements of the Professional Statement.

What are the regulatory issues/associated risks?

129. If qualifying sessions are to remain a mandatory part of training, we would set out the requirements the sessions would need to satisfy in the Authorisation Framework. Any compulsion for these sessions to be provided only by the Inns would also need to be supported by evidence that only the Inns are able to meet the objectives specified.
130. If there is value that can only be derived from qualifying sessions to fulfil requirements in the Professional Statement, then we should also consider extending the provision of qualifying sessions to different providers (ie not only the Inns) or permitting students to choose sessions from more than one Inn. This would be to satisfy competition principles.

Benefits of qualifying sessions

131. By attending the qualifying sessions, students have an opportunity for professional development, including enhancing their advocacy skills, building a professional network and gaining an insight into the profession, as well as interpersonal and communication skills, all of which can contribute to a student's knowledge and understanding of the profession.
132. The BSB's research into barriers for training for the Bar²⁰ highlights that a key benefit of the qualifying sessions being provided by the Inns is the possibility to build professional networks, particularly with practising barristers and judges, which could be advantageous when applying for pupillage with chambers. This is particularly important for those who do not currently have a professional network and background in the legal profession.
133. Some participants involved in the above research, as well as students during supervision visits, highlighted that, in "some instances, the qualifying sessions were thought to be more beneficial than the work done on the BPTC due to interaction and proximity with practising barristers".
134. Students have also found some qualifying sessions to be accessible for those outside of London as a number are offered in the regions.

²⁰ This research was undertaken in spring this year with recent BPTC students as well several successful and unsuccessful pupils. The bulk of the research focused on 50 qualitative interviews to understand barriers to gaining access to the Bar. The research is currently being reviewed and will be published shortly.

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135. Similarly, the Inns have confirmed that many sessions are free, or offered at a low cost, as they heavily subsidise them. The below table shows the number of qualifying sessions which were offered free of charge each year.

	2014-15	2015-16	2016-17
Lincoln's Inn	22	20	11
Inner Temple	30	45	30
Middle Temple	69	63	66
Gray's Inn	18	27	22

What are some of the problems with Qualifying Sessions?

136. Whilst there are a number of benefits of the qualifying sessions, there are some problems. Some students with less knowledge of the profession, particularly for those from BME and lower socio-economic backgrounds, may be more likely to feel intimidated by the environment as they may perceive the majority of the barristers attending are white, male and educated at elite institutions²¹.
137. Interviews with students during our supervision visits with providers also highlighted that some of the qualifying sessions were limited in their usefulness and should have more educational substance.
138. Furthermore, the cost of the qualifying sessions can be seen as prohibitive to some students. Whilst it has been acknowledged that many are considered good value for money and a number are free, some respondents to the research on barriers to training felt they needed to have sufficient financial resources to be socially accepted at the Bar: "... it's sending that message that in order to fit in you have to raise your financial capital even if it's a dinner that cost 15 more pounds, that's the message that's being sent".
139. Whilst some sessions are provided in the regions, accessibility can still be an issue for students as they also have the cost of their travel, and potentially an overnight stay if the session finishes late and is based in London. This is not an uncommon view: there is a belief that regional sessions do not have the same level of funding as the London sessions and may be seen as more amateurish if they are organised by the students, with fewer practising barristers attending. This can lead to a perception of lower quality.
140. Interviews with students during supervision visits suggested that the scope of qualifying sessions is too narrow and they are not offered frequently enough for students to be able to fit them in around studying and other extra-curricular activities. This was highlighted at one provider where students have needed to be absent from classes in order to attend a qualifying session.

²¹ Ibid.

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Options for future arrangements

141. In conversation with the Council of the Inns of Court (COIC) and the Inns, we have been made aware of work to develop a framework for reviewing how objectives and learning outcomes of qualifying sessions can be linked to the Professional Statement. This is welcome and can contribute to ongoing improvement prior to any changes which may be decided for the future.
142. If qualifying sessions are to remain mandatory, the BSB would need to outline their purpose and what we would expect them to consist of within the Authorisation Framework. The Authorisation Framework would also require providers of the qualifying sessions to tell us how the learning outcomes of the sessions will be assessed (if at all). In addition to this, the provider of the session will need to demonstrate how the sessions relate to the Professional Statement.

Option A: remove the requirement to complete qualifying sessions

143. In this scenario, the BSB would remove the requirement for qualifying sessions as a mandatory element of training. If a student were a member of an Inn (whether this is compulsory or not), that student would then be able to decide whether they would attend events, activities and dining sessions, if indeed the Inns wished to continue to provide them. At this stage, we do not have evidence to suggest that they would discontinue their provision of such sessions, but the lack of compulsion would obviously affect demand, unless training providers sought to work with the Inns to incorporate qualifying sessions into any proposal for approval by the BSB (it would be open to training providers to make the sessions a compulsory part of any proposed training pathway and to specify the Inns as providers, subject to approval by the BSB.)
144. This approach would acknowledge that the academic, vocational and work-based components of training are sufficient to prepare an individual for day one of practice, with the knowledge, skills and attributes outlined in the Professional Statement, thereby not setting mandatory requirements beyond what is required at the point of authorisation.
145. Additionally, removing the requirement to attend qualifying sessions could reduce the barrier of cost and accessibility which is faced by some students, as well as the potentially intimidating nature of the dining sessions.
146. There is a risk however, that if the sessions are no longer mandatory, then students will be deprived of the benefits outlined above. In particular they will no longer necessarily be presented with the opportunities to develop professional networks through the Inns, and would have to use, for example, university or location based opportunities to continue building social and professional networks. There is a risk that the students who would most benefit from the experience would be less likely to attend if the sessions were voluntary.

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Option B: Reduce the number of mandatory qualifying sessions and/or review the nature of attendance

147. This proposal would see the number of qualifying sessions we mandate reduced and/or focus the nature of the sessions on a particular educational or training objective.
148. Alternatively we could remove the concept of a mandatory number altogether and replace it with a requirement on the Inns that there need to be sessions of a sufficient number and nature to provide students with certain competences or outcomes within the Professional Statement that we think the sessions can assist in meeting.
149. Reducing the number of sessions, requiring the session to be of a particular nature or replacing the mandatory number of sessions with an outcomes-focused requirement might allow the Inns to provide qualifying sessions more flexibly and could be beneficial for students who have highlighted that committing the time for attending each session is challenging, particularly around studying and exams on the current vocational course. This recommendation is likely to have a positive impact on those individuals who work alongside studying and those who have caring responsibilities.

Option C: Adopt a similar approach to the new CPD scheme

150. We could adopt a similar approach to the CPD for established practitioners so that students would plan their learning needs by setting objectives and identifying the types of 'qualifying sessions', or activities, that they feel would help them to achieve their objectives during the vocational component of their training. This has the benefit of students completing activities which support their attainment of the competences within the Professional Statement.
151. In this scenario, there is a risk that students may find it challenging during the vocational component to identify the areas where they would benefit from particular qualifying sessions, by mapping their current competence against the Professional Statement. To mitigate this risk, students might link their own learning objectives outlined on their course through the relevant syllabi.
152. There is also an argument that we should not be requiring students to consider their continuing professional development in this same way prior to the point of authorisation, as CPD is for those individuals who are established as practitioners at the Bar.
153. Student choice would be limited by the size of the market for qualifying sessions. There is no reason why the Inns could not continue to offer the sessions that they do now, although the absence of compulsion might affect supply.

Question 7: Do you think that the BSB should continue to prescribe qualifying sessions as part of the mandatory training requirements? Please

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explain why or why not, including (if appropriate) which elements of the qualifying sessions are particularly useful to be undertaken prior to practice.

Question 8: If you answered ‘yes’ in question 7, should there be any changes to the existing arrangements, or do you prefer Option B or Option C to reform our oversight of qualifying sessions? Please explain why.

Question 9: If you answered ‘yes’ in question 7, do think that other training providers could provide qualifying sessions? Please explain why or why not, including what elements would need to be delivered by or in association with the Inns themselves to ensure their benefits are to be retained.

Question 10: Do you have any alternative suggestions for how qualifying sessions might help students meet requirements of the Professional Statement?

FUTURE ARRANGEMENTS FOR THE WORK-BASED COMPONENT

154. In this section of the consultation, we consider a number of arrangements relating to the work-based component of education and training for the Bar. Here, we also use the term “pupillage” as this is the commonly used term for most schemes set in chambers to fulfil our requirements for professional training. We recognise that, in future, most students will undertake a period of pupillage similar to its current format but we must also be aware that other schemes may be offered and approved and any discussion of future arrangements must also be inclusive of all future schemes and of all students undertaking this component of training.
155. Currently, the final stage of training for the Bar is the professional stage and it comprises a period of work-based learning under the supervision of a qualified barrister known as the pupil supervisor. This final stage of training, as prescribed by the BSB, lasts 12 months and is completed within an Approved Training Organisation (ATO), either within chambers or with an employer. The vast majority of

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pupillages are undertaken within chambers, but with increasing numbers of barristers in employed practice.

Why are we reviewing the arrangements for the work-based component (pupillage)?

156. In light of the decision by the BSB to adopt a new approach to training for the Bar, with a limited number of new pathways, the current rules on work-based learning need to be reviewed to ensure that training providers (chambers and employers) are able to put forward proposals which they believe will best train students for a career at the Bar. Those who provide these opportunities will also become known as Authorised Education and Training Organisations. Key to the approach we are taking is to ensure that any new rules set by the BSB enable them to develop training plans which meet the requirements of the Professional Statement, promote accessibility and affordability in line with our wider education reforms, and are flexible enough to respond to new types of training which may emerge (such as those described in our 2016 consultation).
157. This section of the consultation paper seeks views on the following arrangements:
- the mandatory length of pupillage;
 - the award of a Provisional Practising Certificate (PPC);
 - the minimum pupil funding award;
 - exemptions from funding rules for transferring lawyers;
 - the re-authorisation of current Approved Training Organisations (ATOs);
 - the relationship between pupil and pupil supervisor;
 - pupil supervisor training; and
 - the delivery of compulsory courses during pupillage.
158. This section also sets out our plans to review the rules relating to advertising and recruitment practices for pupillage which will impact on the work-based component.
159. This consultation does not explore how pupillage training plans must align to the Professional Statement. ATOs should be starting to incorporate it into their pupillage plans, although it is not yet part of the BSB’s formal process for signing off pupillage. Pilots will run from September 2017 to explore this with ATOs. If your organisation or chambers wishes to take part in this pilot scheme, please contact us using the details found in Part VI of this document.

The length of pupillage

160. At present the BSB mandates that pupils must complete two, six month parts of pupillage: the non-practising (“First Six”) and the practising (“Second Six”) periods. After successfully completing the non-practising period, a pupil is granted a provisional qualification certificate which entitles them to apply for a provisional

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practising certificate (PPC) once they have registered their practising period of pupillage. Typically, the provisional qualification certificate and the PPC will be awarded at the same time. On completion of the practising period of pupillage the BSB will grant the pupil a full qualification certificate and they will then be a fully qualified barrister. A full qualification certificate entitles a barrister to take up a full practising certificate and become an authorised person under the LSA 2007.

What are the issues/risks associated?

161. The rules, as described above, mean that the majority of pupils complete pupillage within 12 months, although there are some waivers which allow a shorter pupillage. This may be the right amount of time for pupils to complete training, but it may not be.
162. Many chambers require longer training periods but are currently unable to change the 12 month pupillage period. This often leads to pupils needing to complete what is commonly known as a 'Third Six'. 'Third Six' pupillages are not a recognised or regulated part of training, nor do any other rules for pupillage apply (although if they contribute to tenancy recruitment then they would be captured by rules relating to fair recruitment practices). Part-time pupillages are permitted under the current rules although are very rarely offered.
163. Our outcomes-focused approach means that we want to empower those training pupils to develop training plans to meet the training needs of pupils, rather than arbitrary rules. One option would be to remove the rule that *all* pupillages should be 12 months long.
164. The main advantage would be that the BSB no longer mandates an arbitrary length of time in which pupillage must take place. This means that Authorised Education and Training Organisations will be empowered to design the best possible training plan for their pupils to meet the requirements of the Professional Statement, incorporating any need for experience in multiple 'seats' or extended periods of supervised experience in advocacy. For those practice areas where very little advocacy experience is offered during pupillage (particularly those in commercial or chancery sets), this would afford chambers an opportunity to ensure an appropriate level of rounded experience is extended to all pupils and that they meet the competences specified in the Professional Statement.
165. There is, however, a risk that by enabling organisations to determine the length of pupillage, some may reduce the length of pupillages so that pupils can start earning fees earlier. Equally, there is a risk that pupillages may be unnecessarily extended to enable chambers to utilise pupils for extended periods without offering them tenancy.
166. In both cases, careful supervision of training plans will be necessary to ensure this type of risk is mitigated against. This would need to be monitored through supervision work and might form part of any future ATO re-accreditation process. If an ATO was regularly signing off pupils for a PPC unusually early, this could also be

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seen as an indicator of risk and the BSB might investigate. In an ATO intended to introduce a significantly longer pupillage than presently permitted, this would need to be justified when accreditation or re-accreditation was sought

167. It should be noted that we anticipate the majority of chambers may wish to continue setting pupillages as 12 months long.

Question 11: Do you think we should allow pupillages to vary in length? Please explain why or why not.

Question 12: If you answered 'yes' to Question 11, please tell us if you think there should be minimum and or maximum length associated with this change and what should that minimum or maximum length be. Please explain why.

Provisional Practising Certificate

168. Closely aligned to the length of pupillage is the point at which a pupil barrister is able to gain practical experience, working under supervision from an experienced practitioner. As described above, this six month period of pupillage is takes place following the six month, non-practising period.
169. Here we consider a number of scenarios for pupils to be awarded a provisional practising certificate.

Options for future arrangements

Option A: the PPC is granted at the start of pupillage (the work based component) and the pupil may undertake reserved legal activity once the training organisation determines the pupil is competent

170. In this scenario, all pupils would automatically receive a PPC at the beginning of pupillage and would be able to conduct reserved legal activities from the point at which the ATO determines they are competent. The BSB would no longer require supervisors to sign off pupils to receive the PPC and responsibility for ensuring that pupils are competent would pass to the training organisation (ie chambers or employer, via a nominated person²²). The BSB would, of course, still expect pupils to be properly supervised and insured when conducting reserved legal activities.
171. This approach would give maximum freedom to the training organisation as they would determine when a pupil is ready to conduct reserved legal activities. They would no longer need to apply to the BSB for a PPC at this point.
172. There is, however, a risk to the public that some organisations may encourage or allow pupils to conduct reserved legal activities before they are competent. Pupils

²² This could be someone responsible for overseeing training with the organisation.

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might be used as relatively low cost labour which might not always be reflected in fees charged to consumers.

173. Although pupils may also benefit from gaining experience and earning fees, the primary motivator for the ATO may not be the benefit to the pupil or the public interest.
174. In practice, therefore, we would expect the training organisation would set out, when applying for authorisation or re-authorisation, how they intend to assess their pupils' competence before allowing them to conduct reserved legal activities and that the process employed be both transparent and robust.

Option B: The PPC may be applied for at any time during the period of the pupillage / work-based component. It would be for the training organisation, pupil and supervisor to determine when it is most appropriate for the pupil to apply and confirm the pupil is competent

175. Under this option, training organisations would determine when pupils can apply for the PPC dependent on their competence and the area of practice in which they are training. We would anticipate that many organisations will continue to encourage pupils to apply for a PPC after 6 months. However, reducing prescription in our rules would allow greater flexibility for chambers and employers. For example:
- it would allow transferring foreign qualified lawyers or solicitors to conduct reserved legal activities earlier due to their experience²³;
 - it would enable organisations in practice areas such as chancery (business and property) or commercial to extend the non-practising period to reflect the competences their pupils need to acquire (as commonly their pupils will not undertake their own work or conduct advocacy in their pupillage²⁴);
 - it would allow the PPC to be awarded when the pupil is ready (not at an arbitrary point) allowing particularly able pupils to enter practice earlier and some pupils more time to develop the required competences where necessary; and
 - for organisations offering flexible pupillages or pupillages of a different length, this approach would allow them greater freedom to determine when the PPC should be awarded.
176. This option would likely see organisations reviewing their pupils' progress at set times (for example, at three, six and nine months, etc.). At these reviews pupils would be assessed and a determination made on whether to apply to the BSB for a PPC. The pupil would then make an application, which would be counter-signed by their supervisor or head of pupillage to confirm their competence.

²³ Currently, this is dealt with at the application for transfer stage, where transferees are granted an exemption from/reduction in pupillage. We hope to be limiting waivers going forward as the rules will be more flexible.

²⁴ They may still conduct reserved legal activities, something the BSB would encourage to continue.

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177. This option would allow greater flexibility for both pupils and training organisations, and would support the freedoms and innovation envisaged within the reformed approach to education and training for the Bar.
178. Again, there is a risk that training organisations might sign off pupils to conduct reserved legal activities before they are fully competent (as discussed above) or extending the non-practising period longer than is appropriate.

Option C: The Authorised Education and Training Organisation, following approval of their scheme, determines when they want the PPC to be awarded

179. Under this option each training organisation would set out, when applying for authorisation or re-authorisation, the length of pupillage, its structure and when the PPC will be awarded to pupils, with the BSB not prescribing a length for pupillage or when a PPC may be applied for. For example, if a particular employer or chambers was developing their pupillage plan, they would set out how long pupillage will take and at what point their pupils will start practising with a PPC.
180. The difference in this scenario from those above, is that the PPC is determined in advance in a standardised way by the training organisation and approved on the basis that the training plan takes account of the specific needs of pupils, setting out all requirements to be met. This could be particularly beneficial for chambers or employers who regularly have larger groups of pupils coming in within prior experience that the training organisation recognises will allow them to be ready to practise at a certain point.
181. The benefits and risks of this option are similar to those of Option B above. However, one particular advantage of this approach is that it would enable organisations, when seeking authorisation or re-authorisation, to specify a timing that is most suited to their field of practice and to avoid the additional administrative burden of having to make decisions in respect of each individual pupil.
182. One particular disadvantage of this approach is that a fixed point of awarding the PPC will remain in place for all pupils, determined in advance. Whilst we expect training organisations would not sign off a pupil to practise until competent, having such a rigid scheme might mean that students in one category are placed under undue strain if they are not able to practise at the same time as other pupils in their cohort, or that the organisation feels under pressure to sign off pupils who are not ready to practise, because the pre-determined point has been reached and so that the pupil can undertake remunerated work.

Option D: No change to the arrangements.

183. This option would seek no change to this arrangement. The PPC will normally be awarded after the first six months of pupillage in all schemes. A waiver will be required to alter this arrangement.

Other considerations

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184. We considered a proposal to delay awarding any practising certificate until completion of the work-based component, meaning that no PPC would be awarded. This would be a radical change but would bring pupils in line with trainee solicitors who presently are unable to conduct reserved legal activities until they fully qualify. There are, of course limitations to this comparison, not least of which is that most newly qualified solicitors, in their early years of practice, will be supervised whereas junior barristers at the self-employed bar would not expect to be supported in the same way.
185. This approach could reduce the risk to the public, as it would prevent pupils from conducting reserved legal activities before they have fully met the competences set out in the Professional Statement. Ultimately, we think this proposal would not be workable in practice as we felt it would undermine the positive learning experience gained from real world advocacy in a supervised setting.

Summary of options: Award of provisional practising certificate (PPC)

- ❖ Option A: The PPC is granted at the start of pupillage/ work based component and the pupil may undertake reserved legal activities when the organisation or supervisor thinks the pupil is competent.
- ❖ Option B: The PPC may be applied for at any time during the qualifying period of the work-based component. It would be for the organisation, pupil and pupil supervisor to determine when it is most appropriate for the pupil to apply.
- ❖ Option C: The organisation, on authorisation by the BSB of their scheme, determines when they want the PPC to be awarded and applies this to all pupils.
- ❖ Option D: No change. The PPC will normally be awarded after the first six months of pupillage/ the work based component.

Question 13: Which option, if any, for reforming the award of Provisional Practising Certificate do you support? Please explain why.

Pupillage funding

187. The BSB currently requires pupils to be paid a minimum of £12,000 over the course of their pupillage (to be paid monthly in £1,000 instalments). ATOs can use the earnings of pupils in their second six months of practice to cover the cost of the second six months (if the pupil earns enough to meet the minimum award). If not, the pupil must be paid in line with the minimum award agreed when the pupillage was

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registered. If, in the practising period of pupillage, a pupil is able to earn more, the pupil is expected to be able to keep any earnings over this amount.²⁵

Why does this matter?

188. The current minimum funding award was set in 2010 and came into effect on 1 January 2011. This was raised from the original minimum of £10,000 which was set by the Bar Council in 2002 and came into effect on 1 January 2003. Prior to 2003, pupils were self-funded. We propose to review the level of the minimum award again.
189. We recognise that there are strong feelings about the minimum pupillage award. On one hand, there is an argument that a £12,000 minimum award is too low, acts as a barrier to entry to the profession and leaves many pupils, many of whom have significant debts from their studies, with very little to live on. This is especially true of those living in London.
190. On the other hand, there is concern that any increase in the minimum award could result in fewer ATOs being able to afford to offer pupillage and fewer pupilages becoming available.
191. We consulted on this issue in 2015 and, at that time, the majority of respondents felt that the current minimum should be maintained and that raising it would have a disproportionate impact on publicly funded chambers. A small number of respondents even argued that the minimum award should be removed completely on the grounds that pupils gain a great benefit from their supervisor and, therefore, should not also be remunerated. We do not support the latter position; we think this would be a step backwards in terms of promoting accessibility and the evidence suggests that when there is no requirement for chambers to remunerate pupils the chances of gaining tenancy are diminished.
192. A major concern about the current level of the pupillage award is that students from lower socio-economic backgrounds cannot afford to enter pupillage. There is also concern that the amount of debt placed on some pupils may make it much more difficult for them in the early years of practice.

What are the issues/risks associated?

A barrier to entry for applicants from lower socio-economic backgrounds

193. The minimum award has not been reviewed since 2010, despite a recommendation for annual review by the 2010 working party that looked at this at the time. The table below sets out the award levels if the minimum award was increased in line with inflation, the NLW (minimum) and the LWF suggested rates:

²⁵ We will be issuing new guidance on this to clarify how the funding rules are intended to work and ensure that ATOs do not profit from pupils' earnings.

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	Current	Inflation adjusted ²⁶	National Living Wage ²⁷	Living Wage Fdn (UK) ²⁸	Living Wage Fdn (Ldn) ²⁹
Monthly	£1,000.00	£1,182.11	£1,137.50	£1,281.58	£1,478.75
Annual	£12,000.00	£14,185.33	£13,650.00	£15,379.00	£17,745.00

194. The table above shows how far behind inflation the current award has fallen. This clearly demonstrates the reduction in the real cost of pupillage to chambers (offering minimum funded pupillages) since 2010.
195. Pupils are currently paid less than the National Living Wage (NLW). It is legal for chambers to do this because pupils are not considered apprentices or employees³⁰. The fourth column shows what pupils would receive if the award was equivalent to the NLW (for someone who worked 35 hours per week³¹ at the NLW for over 25s of £7.50).
196. If the minimum pupillage award is intended to enable access to the profession for applicants from any financial background, then the wage levels suggested by the Living Wage Foundation (LWF) should be considered.
197. LWF suggested wages are higher than the NLW, but setting the minimum pupillage award at this level would ensure that pupils could afford to undertake pupillage without increasing their debt. The table above sets out the award pupils could expect if this was introduced (the LWF suggested wage is £9.75 per hour in London, and £8.45 outside of London).
198. The reality of this issue is that pupillages funded at the current minimum level are not financially viable, except to applicants who have built up substantial savings, or can rely on financial assistance from their family or spouse. Given the level of debt that most students build up in order to qualify for pupillage, the requirement to add further to that debt *during* their work-based component is enough to prevent many from even applying for minimum funded pupillages.

Financial risk to legal aid funded chambers

199. Legal aid funded chambers have faced a consistent squeeze on their earnings, and many are already struggling to afford the cost of offering pupillages. The result is that

²⁶ Calculated using ONS monthly CPI inflation data between January 2010 and August 2017. Available at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7oe/mm23>.

²⁷ These figures do not incorporate tax and National Insurance contributions.

²⁸ Ibid.

²⁹ Ibid.

³⁰ *Edmunds v Lawson* [2000] QB 501. Although this is the current position for Chambers but pupils undertaking employed setting are employees and subject to employment law. In the future any student undertaking an apprenticeship for Bar training would be considered an apprentice.

³¹ 35 hours is most likely a very low estimate of the actual working hours of pupil barristers.

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many legal aid funded chambers offer pupillage awards at the minimum level. Therefore any potential increase in the minimum pupillage funding level might reduce the ability of some legal aid funded sets to offer pupillage.

200. Closely tied to this risk is the fact that women and BME barristers are overrepresented in legal aid funded practice areas, and underrepresented in other practice areas. Therefore reducing the number of legal aid funded pupillages available may adversely affect women and BME applicants more than their counterparts.
201. This potential barrier therefore needs to be weighed carefully against the possibility of removing the barrier currently faced by applicants from lower socio-economic backgrounds.

Reducing the number of pupillages

202. The introduction of a minimum pupillage award in 2003 did result in a reduction in the number of pupillages from around 800 registered First Six pupillages in 2001 to between 500 and 600 in the following years. However, there was no significant change when the minimum award was raised in 2011. Significantly, the introduction of a minimum award in 2003 did result in an increase in the proportion of pupils that gained tenancy after completing pupillage. This might not be surprising given that the number of tenancies has remained relatively stable but might also suggest greater investment in the development of individual pupils.
203. The table below provides the figures in more detail; it does not include those in employed practice, which may affect the data.³²

Legal Year	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15
Tenancy	283	329	394	414	335	391	384	380	375	368	387	382	378	342	333	270
Pupillages (total)	713	639	790	574	504	541	504	508	522	431	431	443	422	514	399	437
% Pupils gaining Tenancy	40%	51%	50%	72%	66%	72%	76%	75%	72%	85%	90%	86%	90%	67%	83%	62%

204. NLW would only be an increase of £137.50 per month. This would be an increased cost to ATOs of between £825 and £1650 per pupillage (depending on how much ATOs needed to top up their pupil's income during Second Six). Indeed when accounting for inflation, an increase in line with the NLW would still mean that the costs of pupillage to chambers would be less than it was in 2011.
205. An increase in line with the LWF suggested wages would mean an increased cost per pupillage per month of £478.75 for ATOs in London, and £281.58 for ATOs outside London. This would be a per pupillage cost increase of £2,872.50 - £5,745 for ATOs in London, and £1,689.48 - £3,378.96 outside of London.

³² The self-employed to employed or dual capacity ratio is currently 80:20.

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206. The increase in line with the NLW would be a very small increase for pupils and would probably not prevent an ATO from offering pupillage. The LWF would represent a larger increase for pupils, particularly for ATOs in London, but would still be an increase of similar magnitude to the one in 2011, which had no significant impact on the overall number of pupillages.

Comparison to employed pupils

207. Individuals undertaking an employed pupillage are subject to employment legislation, and consequently receive more than their counterparts undertaking a minimum funded pupillage in chambers.
208. It may be desirable to remove the discrepancy between the prescribed minimum income received by employed pupils and the award received by pupils in chambers. Failure to do so might push pupillage applicants from low socio-economic backgrounds towards employed practice, as employed pupillages would be more financially viable.

Comparison to trainee solicitors

209. The Law Society currently recommends that trainee solicitors are paid at least £20,913 in London and £18,547 outside London³³ (these figures are the LWF suggested wages plus £3,168, which is the average yearly Legal Practice Course repayment).
210. If the minimum pupillage award is not kept in line with, or at least near to, the wage that can be earned as a trainee solicitor, then short term financial considerations may force aspiring barristers to choose being a solicitor over a career at the Bar. Such financial pressures would be most acutely experienced by aspiring lawyers from lower socio-economic backgrounds.

Future review

211. The minimum pupillage award will need to be reviewed more regularly in future, to prevent inflation from having as significant an impact as it has in the past.
212. If the new minimum pupillage funding level is set in line with a benchmark figure (eg NLW, LWF) then the BSB would amend the minimum funding level annually to match changes in these benchmarks.

Question 14: Do you think the minimum pupillage award should be raised? Please explain why or why not.

³³ <http://www.lawsociety.org.uk/support-services/advice/articles/recommended-minimum-salary-for-trainee-solicitors/>.

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Question 15: If you answered ‘yes’ to question 14, should we use the National Living Wage or the Living Wage Foundation benchmark for the minimum award? Please explain why.

Pupillage funding exemptions for transferring lawyers

Why does this matter?

213. The current pupillage funding rules do not apply to pupils granted exemption from vocational training by the BSB³⁴. In practice, this means that transferring qualified lawyers are often exempt from the funding requirements which apply to other pupils.³⁵

What are the issues/risks associated?

214. The exemption rule was introduced at a time when minimum funding requirements for pupils were new so the exemption was introduced in response to concerns about the impact of applying these requirements to transferring lawyers. We believe the position has changed: pupillage funding is now standard practice and continuing with the exemption could be seen to give unfair advantage to transferring lawyers, who can be trained for free and are not subject to the same advertising requirements. This could also encourage recruitment practices which are below the standards expected for normal pupillage recruitment.
215. We, therefore, propose to remove this exemption and bring pupillage funding rules for transferring lawyers in line with those for other pupils. This will create a level playing field and help tackle concerns about unfairness in the system. Consistency of approach will also support our wider commitment to fair and equal recruitment and deliver against the principle that all pupils should be paid for the contribution they make during the work-based component of training.

Question 16: Do you think the current exemption from the funding rules for transferring lawyers should be removed? Please explain why or why not.

Re-authorisation of Approved Training Organisations

Why does this matter?

217. At present, any chambers or organisation that had a pupil on 1 September 2006 is deemed to have been accredited as an Approved Training Organisation (ATO). All other organisations, since this date, have had to apply to the BSB for approval. Once

³⁴ Rule rC117.1 of the BSB Handbook.

³⁵ Transferring qualified lawyers are also exempt from the advertising requirements, although this is not stated explicitly in the rules.

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approval has been granted, the organisation remains as an ATO indefinitely unless approval is withdrawn. There are approximately 345 ATOs registered with the BSB.

218. During the period 1997 to 2013, ATOs were subject to pupillage monitoring under the Pupillage Sub-Committee of the Education & Training Committee. Since 2014, this has been incorporated within the BSB's approach to supervision of chambers.

What are the issues/risks associated?

219. Investigation into concerns raised about ATOs and any resulting withdrawal of accreditation was previously undertaken by the Pupillage Sub-Committee. No set procedure has yet been put in place for withdrawal of accreditation since the dissolution of this Sub-Committee in 2015.
220. There are a number of problems and risks associated with the current system. Many ATOs have never been through a formal accreditation process and this limits the information we hold on them and our ability to ensure that they are offering adequate training to pupils. The BSB does not have a comprehensive historical list of ATOs who might offer pupillage (as opposed to those currently or recently offering them). This makes supervision and oversight of ATOs more difficult and makes it difficult to give any member of the public complete information.
221. It is proposed to introduce a light-touch system of re-accreditation for all ATOs, regardless of their current accreditation status. Under this system we would contact all known ATOs to ascertain whether they wish to remain authorised. If so they would be asked to self-certify that they still satisfy the criteria to be an ATO. If they did this they would be re-accredited and this would last for a defined period. ATOs who failed to comply with this request would have their accreditation removed, as would any previously-accredited ATOs with whom the BSB is not in contact.
222. Following this defined period, re-accreditations of existing training organisations would mirror the process that all new prospective training providers (ie vocational and work-based) will be required to complete, aligning with the new Authorisation Framework and resulting in approval as a BSB Authorised Education and Training Organisation. The purpose of this is to ensure we have an up-to-date and accurate register of all organisations offering schemes for the work-based component and to improve confidence in standards in the future.

Removal of ATOs from the register

223. We also propose to amend the rules relating to the removal of ATO status. Under the current rules accreditation can only be removed from an ATO if the pupillage provided by the organisation is or has been seriously deficient or if the organisation has not made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct³⁶.

³⁶ Rule rQ40, BSB Handbook.

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224. We propose to change the rules to include the possibility that accreditation (in due course authorisation) can be removed if an ATO does not comply with a reasonable request of the BSB. This would include failure to comply with re-accreditation or re-authorisation processes.
225. These issues were consulted on during 2015. The majority of respondents felt that there should be a more systematic initial validation of organisations which provide pupillages and supervisors³⁷. The majority of those that responded to the consultation also agreed that periodic re-accreditation of ATOs should be introduced³⁸. Concerns were raised by the Family Law Bar Association and the Chancery Bar Association that re-accreditation could increase the time and cost associated with pupillage schemes and it was argued that if this were to be adopted a long period between each re-accreditation should be introduced. We are committed to ensuring that the re-accreditation or re-authorisation process will be proportionate and as far as possible will not cause an unfair burden on training organisations, whilst improving regulatory oversight, where it is appropriate to do so³⁹.

Question 17: Do you agree that we should introduce re-authorisation of Approved Training Organisations (ATOs), as outlined above? Please explain why or why not.

Question 18: If re-authorisation were to be introduced, how many years do you think the defined authorisation period should last (eg 3 or 5 years, etc)?

Rules relating to the relationship between pupil supervisor and pupil

226. The BSB handbook sets out a number of requirements in respect of the pupil-pupil supervisor relationship.
- Why does this matter?
227. The one-to-one relationship between pupils and their supervisors has historically been the way all pupils are taught.⁴⁰ The BSB will give waivers in some situations to allow supervisors to have more than one pupil for a short period of time. In 2016, four applications for waivers were approved. All of these were to allow an overlap of two pupils for a short period of time (1-2 months).

³⁷ Consultation 2015 analysis – paragraph 53.1-53.2.

³⁸ Consultation 2015 analysis – paragraph 54.1.

³⁹ In particular the new rules will ensure that the frequency of re-accreditation / re-authorisation is both proportionate to the assessed risk of an organisation and not onerous.

⁴⁰ It was introduced by the Bar Council in 1992 to replace the position of supervisors having multiple pupils.

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228. Some pupils have a number of pupil supervisors during their pupillage, particularly if they are in a chambers where barristers work in several different practice areas. We regard this as good practice, particularly because it gives pupils a broad range of experience upon which to draw for their own practice.
229. Under our rules, the pupil is expected to inform the BSB of any change in supervisor. If a pupil supervisor has to take leave or can no longer supervise a pupil then the change of pupil supervisor should also be registered with the BSB.

What are the issues/risks associated?

230. One concern with the current system is that it places an unnecessary administrative burden on the BSB, pupil supervisors and pupils every time they change supervisors. Some pupils may have between two and four supervisors during their pupillage. There is also some evidence that pupils are not informing us when they change pupil supervisor.
231. We discuss, therefore, removing the requirement that pupils have a named pupil supervisor and instead require the training organisation to ensure that all pupils are adequately supervised. As part of the authorisation process and its periodic renewal, it would be for organisations to demonstrate that they have appropriate arrangements in place to ensure adequate supervision for pupils, although they will have the flexibility to determine the arrangements (subject to the Authorisation Framework) most suited to their organisation. Each training organisation would be expected to have a named person who would be responsible for overseeing pupillage and provide continuity during training. This individual would not necessarily be the supervisor of each pupil, but would be responsible for ensuring pupils reach the required competences under the Professional Statement and are suitable to be awarded a PPC.
232. We also discuss removing the requirement that a pupil supervisor may only supervise one pupil. We envisage a more flexible situation where the training organisation must ensure that supervision of a pupil is adequate but this could mean in some cases that a supervisor has more than one pupil. In those cases the training organisation must ensure that the supervisor is able to give enough time to each pupil and that the pupillage will still meet the requirements of the work-based component. We expect those supervising the work-based component to have completed appropriate pupil supervisor training. This could benefit training organisations which employ pupils as they can sometimes struggle to offer each pupil an individual supervisor due to the smaller number of barristers in their organisation, which can reduce the number of pupillages they can offer.
233. Each pupil would still need a named person, either a pupil supervisor or another suitable person. The practical importance of this is to ensure that they are covered by insurance in self-employed practice. However, it is also regularly noted by pupils that the relationship with their supervisor is very important and offers them someone

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to turn to who will be able to assist them as well as offering them continuity throughout their pupillage. The supervisor also plays a vital role in ensuring that a balanced assessment is made at the end of their pupillage. This assessment often feeds into decisions about tenancy.

234. The principle of moving the emphasis for the supervision of pupillage from the supervisor to the training organisation was consulted on during 2015. The majority of respondents agreed that this would improve the consistency of the experience of pupillage. The Bar Association for Commerce, Finance and Industry (BACFI) also noted that this would be easily adopted by companies as well as chambers. It was also noted by the UK Law Students Association that the current system places a significant burden on supervisors and can put the pupil in a vulnerable situation.⁴¹
235. Although we think these changes will create greater flexibility for training organisations, we also accept that many chambers will wish to continue assigning one supervisor for each pupil for the whole period of the work-based component – and they will be able to continue doing so under these proposals.

Question 19: Do you think the BSB should allow pupil supervisors to supervise more than one pupil? Please explain why.

Pupil supervisor training

237. All pupil supervisors are required to undertake training prior to being entered onto the register of pupil supervisors.⁴² Training is offered by each of the four Inns of Court and circuits; it is a short course, typically offered in an evening over 2-3 hours.
238. The BSB does not set requirements for, or monitor, the training of pupil supervisors but we know there is a lack of consistency between the courses offered by the Inns and circuits. We recognise that some may have similar topics but the Inns offer courses of different lengths and the content varies. Given this, there is a risk that some supervisors are not receiving adequate training and may not sufficiently understand their duties and responsibilities.
239. We do not want to prescribe in detail the content of pupil supervisor training. We may, however, wish to specify the necessary outcomes that such training must deliver and then seek regular assurance that these outcomes are being achieved.

Question 20: Should the BSB prescribe pupil supervisor training outcomes? Please explain why or why not.

⁴¹ Consultation 2015 analysis – paragraph 52.1-52.4

⁴² Rule rQ51, BSB Handbook.

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If the BSB specified training outcomes, this might enable providers other than the Inns to deliver pupil supervisor training in the future. We are keen to hear views on whether this training could be provided by alternative providers and/or in other ways. It could be the responsibility of training organisations to source their own training and give assurances to the BSB that they had done so. Or we could go out to tender for a single provider (or a limited number of providers).

Question 21: How should the BSB seek assurance that outcomes in pupil supervisor training are being delivered? Please explain why or why not.

Question 22: Should organisations be required to provide this assurance during the authorisation process? Please explain why or why not.

Question 23: Should the provision of pupil supervisor training be opened up to other providers (other than the Inns)? Please explain why or why not.

242. At present we recommend that pupil supervisors undertake refresher training to ensure their skills are current. The pupillage handbook recommends that this should be completed as part of the new CPD scheme. However, this is not mandatory and we have little information on how regularly supervisors are undertaking refresher training or when/how it is provided. We are therefore considering whether refresher training should become mandatory, to ensure that all supervisors are competent and up to date with BSB guidance.

Question 24: Should regular refresher training be mandatory for all pupil supervisors? Please explain why or why not.

Question 25: If you answered 'yes' in Question 24, how often should it be undertaken (eg every 2, 3 or 5 years)?

Compulsory training courses during pupillage

Why does this matter?

244. Pupils are currently required to undertake two courses during pupillage: advocacy and practice management. They are also required to take one course during pupillage or in the first three years of practice: forensic accountancy. These compulsory elements of our education and training requirements for the Bar are being considered as part of the wider BSB review of curriculum and assessment to review the need for continued prescription. This will feed into the Authorisation

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Framework and it will be for Authorised Education and Training Organisations to ensure the outcomes are met for pupils through internal or external training.

245. Advocacy and practice management training are currently provided by the Inns in London or by the circuits elsewhere. The forensic accounting course is currently provided by BPP Professional Education.
246. Once the review of curriculum and assessment has been completed, all mandatory training requirements will be specified as part of the Authorisation Framework. If the three (or any combination of the three) courses are still required as separate courses, the training outcomes would need to be aligned to the Professional Statement to ensure the objectives are being met and consistency of standards.
247. As set out in the Pupil Supervisor Training section above, the BSB may no longer wish to mandate that training be provided by the Inns or the circuits. If not, the current advocacy and practice management courses could be delivered by other providers, although the Inns and Circuits would still be able to continue to offer such training if they wished. Alternatively, if we did wish to continue to specify that particular forms of training should be received during this time, we may consider adding to existing modules or replacing them in whole, or in part.
248. ATOs are currently also able to offer training or mandate their own training for their pupils over and above any requirements set by the BSB. We would strongly encourage ATOs to review, as part of their pupillage training plans, what type of training is required to ensure pupils are achieving the requirements of the Professional Statement and then decide accordingly whether top-up training (internal or external to their organisation) may be required. We would also suggest that Specialist Bar Associations and circuits have an important role to play here and may be able to advise on future training plans.

Question 26: Should delivery of mandatory courses for pupils be opened up to other training providers? Please explain why or why not, specifically considering the risks and benefits.

Recruitment and advertising for the work based component

250. The recruitment of pupils is directly managed by the recruiting organisation. There are, however, some mandatory requirements currently, such as that all ATOs must advertise on the Pupillage Gateway (run by the Bar Council) and must comply with the Equality Act 2010⁴³. The BSB Handbook also currently places a number of requirements on ATOs in respect of the recruitment of pupils.

What are the issues/risks associated?

⁴³ Pupillage Handbook – 6.1.

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251. Recruitment practices were last formally reviewed in 2010 by the BSB’s Pupillage Working Party. The review concluded that standards were sufficient to ensure fair recruitment processes. More recently, in the BSB’s report on High Impact Supervision Returns, it was noted that:
- there is a real desire in a number of chambers to support the diversity agenda and encourage more equality and diversity at the Bar;
 - some chambers need more guidance about how to comply with the rules;
 - chambers often have to choose between a number of high calibre candidates when recruiting pupils so do not always see any need to “widen the net”. They may not understand the many benefits that a more diverse pool of talent can bring; and
 - some chambers found the cost of pupillage was too high despite them wanting to deliver pupillage in different ways.
252. During the 2015 and 2016 consultations on education and training reform, concerns were raised that access to pupillage is the single biggest barrier to increasing diversity. In particular, recruitment is felt by some to be unfairly biased towards those who have attended Oxford and Cambridge Universities. This perpetuates the perception that the Bar is not accessible to those from other backgrounds⁴⁴. Concerns have also been raised by BACFI and by the Nursing and Midwifery Council, among others, that current advertising requirements are inflexible and prohibitive.
253. Given these concerns, the BSB will establish a Task Completion Group (TCG) to review recruitment and advertising practices. This will include a review of the Bar Council’s role in relation to the Pupillage Gateway. The TCG will explore whether any recommendations or guidance should be issued to address current practices and whether current guidance needs to be amended or changed.
254. At present, ATOs do not need to issue pupils with contracts although the pupillage handbook states that this is good practice. As part of the separate review of recruitment and advertising, we will review whether contracts for pupils should be mandatory and what, if any, provisions should be required of all training organisations offering the work based component of education and training.
255. The TCG will also look at “Third Six” arrangements (see below) in order to better understand the extent to which chambers utilise Third Six pupillages for the purposes of extending the current, 12 month pupillage before offering tenancy to a pupil.

What is a Third Six Pupillage?

⁴⁴ BSB forthcoming research report into barriers to legal education.

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256. Individuals who have completed their pupillage but have been unable to secure tenancy may undertake a further period at a chambers commonly called the “Third six pupillage”. Many hope to secure tenancy after this period.
257. This is a largely unregulated area of early practice and, as such, the BSB does not specify how “Third Six pupillages” are conducted, advertised or recruited to⁴⁵. These ‘pupils’ are in fact fully qualified barristers, authorised to provide reserved legal services.
258. The Bar Council has recently published guidelines for best practice in this area and is encouraging ATOs to sign up to these⁴⁶ but we are aware that there remains a degree of confusion about the Third Six process. We are also aware that individuals can have very different experiences depending on the chambers where the Third Six is completed.
259. We plan to review this area within our wider review of recruitment and advertising practices for pupillage. In cases where the Third Six is being used to determine whether a barrister should be taken on as a tenant, this would be captured by our fair recruitment rules and we will look to update our guidance to reflect this.

DEVELOPMENT OF AN AUTHORISATION FRAMEWORK

Purpose of the Authorisation Framework

260. In our October 2016 Consultation on the *Future of Training for the Bar: Future Routes to Authorisation*, we set out the four core principles that would apply to any future training system: flexibility, accessibility, affordability, and high standards. These principles are settled and underpin every aspect of our approach.
261. We are developing an Authorisation Framework which prescribes the standards that organisations must meet in order to provide education and training for the Bar – that is to become an Authorised Education and Training Organisation (this term includes organisations currently known as Providers, Pupillage Training Organisations and Approved Training Organisations). These standards embody the four principles that are the foundation of training for the Bar. Compliance with the indicators set out under each of the four principles will demonstrate meeting the required standards. We will use the Authorisation Framework to assess whether proposals for education and training enable prospective barristers to acquire the necessary knowledge, skills and attributes as set out in the Professional Statement.

⁴⁵ For the purposes of regulation the individual is a qualified barrister (authorised person) and not a pupil.

⁴⁶ [http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/pupillages-\(third-six\)-best-practice-guidelines/](http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/pupillages-(third-six)-best-practice-guidelines/).

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262. The Authorisation Framework will need to be developed further to reflect responses to the present consultation: for example, there could be new or different mandatory aspects added to the Authorisation Framework following decisions on issues we are now consulting on. However, we have included the current iteration at Annex 1.
263. The Authorisation Framework is effectively a manual for approval of education and training proposals. As a tool, it will therefore be of use to those wishing to become Authorised Education and Training Organisations. These may be existing vocational and pupillage providers, or those intending to enter the market for the first time to offer any or all of the three components of education and training for the Bar.
264. Existing providers will need to develop fresh proposals and comply with the Authorisation Framework to become Authorised Education and Training Organisations; there will be no automatic carrying over of existing arrangements (see however also above, paragraphs 211-219 on arrangements for current ATOs offering pupilages.)
265. We wish to use clear and transparent language and terminology in the Authorisation Framework so that all stakeholders including prospective barristers and other consumers will find it helpful in understanding more about what is expected of those who deliver training for the Bar.

Question 27: Do you find the language and terminology used in the Authorisation Framework sufficiently clear and accessible? If not, please provide examples of how and where this could be improved.

266. The structure of the Authorisation Framework sets out a detailed explanation of each of the four core principles and what they mean in the context of training for the Bar, before going on to set out the indicators that will need to be complied with.

The four principles – what they mean

267. The principle of “flexibility” is about “Encouraging greater flexibility - so that the training system enables innovation in how education and training is delivered”.⁴⁷ (Page 10, Annex 1)
268. The principle of “accessibility” is about: “Improving accessibility – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves”.⁴⁸ (Page 11, Annex 1)
269. The principle of “affordability” is about “Improving upon affordability – to bring down the cost of studying to prospective barristers”.⁴⁹ (Page 12, Annex 1)

⁴⁷ BSB Policy Statement on Bar Training, 23/03/17.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

Future Bar Training: Shaping the education and training requirements for prospective barristers

270. The principle of “high standards” is about “Sustaining high standards – to ensure that any new training pathway maintains current standards”.⁵⁰ (Page 13, Annex 1)

Question 28: Referring to the relevant sections of the draft Authorisation Framework, are the definitions of flexibility, accessibility, affordability and high standards sufficiently clear? If not, how could they be improved?

The four principles – what the BSB wants to see

271. The Authorisation Framework sets out which requirements Authorised Education and Training Organisations must comply with, and which requirements we recommend that they comply with. These are set out in Annex 1 under each of the four core principles. (Pages 14-24, Annex 1).
272. We have thought carefully about where we propose that a requirement should be mandatory. In devising the Authorisation Framework, we have sought to reduce close prescription to a minimum so that Authorised Education and Training Organisations have the freedom to develop varied proposals that give prospective barristers greater choice.
273. If a requirement is not mandatory or recommended, this does not imply that we mandate against it. For instance, an Authorised Education and Training Organisation may wish to include something which is not mandatory or recommended by us because it provides increased value for money for students, or makes the most of something which that organisation is uniquely placed to offer. Where the rationale for inclusion is underpinned by one of the four principles, this will be material to our assessment of the education and training proposal.

Question 29: Do you think we have identified the correct mandatory indicators for flexibility, accessibility, affordability and high standards? If not, what do you think should be added or removed and why?

274. Authorised Education and Training Organisations who propose to deliver the vocational component and work based components will need to comply with an additional set of requirements relating to the curriculum that is delivered in these components, and the way that it is assessed. We have undertaken a review of the current curriculum and assessments and propose some changes that are underpinned by the four core principles. These are being consulted on in a different and targeted way, in parallel with the present consultation. If you have a specific interest in this and you have not already been informed about this separate consultation process, please get in touch with us straight away at

⁵⁰ *Ibid.*

Future Bar Training: Shaping the education and training requirements for prospective barristers

BSBContactus@barstandardsboard.org.uk so that we can let you know about our proposals and take your views on them.

Part IV: Provisions for transferring qualified lawyers

275. The BSB currently accepts applications for exemption from any or all of the standard training requirements. We grant exemptions from a requirement whenever applicants can demonstrate that their knowledge and experience make it unnecessary for them to comply with it.
276. Most applicants for exemption are individuals who are already qualified as lawyers, whether in England and Wales (eg solicitors) or in another jurisdiction. We usually exempt such applicants from the current Academic and Vocational stages of training, although this exemption will often be made conditional on passing some or all of the Bar Transfer Test. The Bar Transfer Test is a set of examinations covering the main elements of the current Academic and Vocational stages of training. We usually require transferring qualified lawyers to pass those sections of the Test that they have not already covered as part of their training. For example, transferring solicitors are never required to be assessed on those sections relating to the Academic Stage of training or civil or criminal litigation but may be required to pass those sections relating to advocacy and barristers' professional ethics. Applicants may also be granted a reduction in or exemption from the standard pupillage requirements.
277. We propose to retain a similar approach under our new arrangements. Any individual who is able to demonstrate that they have achieved the competences set out in the BSB's Professional Statement, whether through qualification as a lawyer or otherwise, will be able to apply to be recognised as having satisfied all of the requirements for qualification as a barrister.
278. It may be that prospective Authorised Education and Training Organisations will submit to us, for approval under our Authorisation Framework, proposals for training courses specifically designed to prepare lawyers qualified in other jurisdictions for practice at the Bar of England and Wales and to demonstrate the competences required to do so.
279. We are working with the SRA to map their proposed Solicitors Qualifying Examination ("SQE") against the BSB's Professional Statement. This will allow a standard approach to be taken with respect to any applicants who have passed

Future Bar Training: Shaping the education and training requirements for prospective barristers

either or both of the two parts of the SQE. It is likely that such applicants will be able to demonstrate those vocational component competences not deemed to have been demonstrated through the SQE through the BSB's centralised assessments.

280. As now, it is proposed that most transferring qualified lawyers will be required to undertake a period of pupillage or other work based training, but that this requirement may be modified to the extent that individual applicants can demonstrate the competences normally demonstrated through the work based component e.g. through previous training and/or work experience.
281. Special provisions currently apply to applicants who are qualified as lawyers in and are nationals of other member states of the European Union. Such applicants can currently only be required to pass the Bar Transfer Test to the extent that their education and training differs substantially from that required of barristers, and cannot be required to undertake pupillage. We will retain these provisions for so long as we remain subject to the obligations of membership of the European Union and will develop arrangements subsequent to that consistent with any transitional and final agreements between the UK and EU as relevant.

Question 30: Do you agree with our proposals for recognising transferring qualified lawyers? Please explain why or why not.

Future Bar Training: Shaping the education and training requirements for prospective barristers

Part V: Provisions for transitional arrangements

282. We wish to facilitate a smooth transition to new arrangements and to make new opportunities available as quickly as possible. However, we recognise that the development and approval of proposals from existing or new providers may take some time. We therefore seek to devise transitional arrangements which take this into account, and which ensure that there is no hiatus in the availability of training during this period. Transitional arrangements will also need to enable those who have commenced training under the present system to complete their training under that system within a reasonable timeframe.
283. Current providers of the vocational training may continue to recruit under existing arrangements in the academic year 2018-19. When the Authorisation Framework comes into effect, they, and any new prospective Authorised Education and Training Organisations who wish to enter the market, will be able to put forward proposals for delivery from the academic year 2019-20. Depending on the timescale for institutional internal approval mechanisms for current BPTC providers, a further round of recruitment under existing arrangements for that course may be necessary in the academic year 2019-20 but we will be seeking to avoid this as far as practically possible.
284. We recognise that future plans and circumstances are individual to each institution that currently offers vocational stage training, and for that reason there will be some element of bespoke specification for transitional arrangements. We will engage in discussions with each provider who wishes to continue in the market by February 2018 at the latest, and conclude discussions by May 2018. During those discussions, we will wish to assure ourselves that suitable arrangements will be made for students who commenced under the old arrangements to complete their training, or for allowing them to transition across to new arrangements where this is feasible.
285. We encourage organisations not to inhibit innovation or incremental change that will benefit prospective barristers during the transitional period. Providers may wish to take the opportunity to pilot aspects of training that will feature in their proposals for new arrangements and we encourage this where it is feasible during the transitional phase.
286. There will continue to be a Bar Transfer Test available for qualified foreign lawyers and solicitors during the transitional phase.

Future Bar Training: Shaping the education and training requirements for prospective barristers

Question 31: Do you think there is anything which we have omitted and that we should take into account when considering transitional arrangements?

Part VI: How to respond to this consultation

287. The deadline for this consultation is **5 January 2018**. You do not need to wait until the deadline to respond.
288. Please follow the link [here to respond to the consultation](#); this is the best way to submit a response as it will be easier for us to compile and analyse responses to the specific questions posed. However, if you are unable to respond in this way, you can send us responses by email.
289. Your response can be short form answers to the specific questions we have posed. It is far more useful to us (and we are better able to take your views into account) if you are able to address the specific questions we have posed.
290. If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please let us know if there is anything else we can do to facilitate feedback other than via written responses.
291. Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of respondents. **If you do not want to be named as a respondent to this consultation please set this out clearly in your response.**
292. Please submit your response by following the link below: [Insert link to survey monkey](#)
293. If [you are unable to submit your response online](#), please send your response to: XXXXXXXXXX@barstandardsboard.org.uk

Engagement activities

294. The BSB will conduct a range of engagement activities from October to December 2017. Similar to last year's programme of activities, events will be held in multiple locations throughout England and Wales with a range of key stakeholder groups and across the regional circuits. These events will be held to facilitate discussions to explore the proposals being considered.

Future Bar Training: Shaping the education and training requirements for prospective barristers

295. We will also organise some specific engagement activities targeted at stakeholder groups such as pupils and pupil supervisors, students and consumers, who may find it more difficult to express their views at meetings containing a mix of stakeholders.
296. For more information about these focus groups around England and Wales please see the Future Bar Training page on our [website](#). If you would like to attend any of these focus groups or if your organisation wishes to take part in the pupillage pilot project, please email XXXXXXXXXX@barstandardsboard.org.uk.

Next steps following the end of the consultation

297. The consultation will close on 5 January 2018. We will then consider the responses in the light of our regulatory objectives and the key policy principles we have set for FBT. We will then develop a new set of rules for the BSB Handbook, on which we will consult in 2018. That consultation will be shorter and will focus simply on whether the rules effectively implement our agreed policy.
298. These rule changes will then be reviewed by the LSB and, if approved, will be implemented from 2019. We are likely to be able to receive formal applications for approval of Authorised Education and Training Organisations in the three months prior to the new rules coming into force, but no formal approval can be given prior to the date of coming into force of the new rules.
299. For further information about the Future Bar Training programme please see our [website](#).

Bar Standards Board
Authorisation Framework for the
Approval of Education and Training
Organisations

(DRAFT 9.2, 20 September 2017)

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PREAMBLE

1. As the regulator of the Bar in England and Wales, the Bar Standards Board (BSB), regulates barristers and specialised legal services businesses in the public interest. Our responsibilities include setting the education and training requirements for becoming a barrister and setting continuing education and training requirements to ensure that barristers' skills are maintained throughout their career. Our work is governed by The Legal Services Act 2007 as well as a number of other statutes, notably the Equality Act 2010.
2. We are conducting a programme of regulatory change, Future Bar Training, focusing on education and training for the Bar. Future Bar Training enables us to fulfil our statutory objective of encouraging an independent, strong, diverse and effective legal profession so that there are barristers who can meet the needs of consumers in a fast-changing market for legal services. Future Bar Training is informed by the Legal Services Board's statutory guidance, Guidance on regulatory arrangements for education and training issued under s162 Legal Services Act 2007 (04 March 2014), and their proposed standards for assessing regulatory performance, Regulatory performance assessment (June 2017).

INTRODUCTION

3. This Authorisation Framework prescribes the standards that organisations must meet in order to provide education and training for the Bar, that is, to become Authorised Education and Training Organisations (this term includes organisations formerly known as Providers, Pupillage Training Organisations and Approved Training Organisations). These standards embody the four principles that are the foundation of training for the Bar: Flexibility; Accessibility; Affordability and High Standards.¹ Compliance with the indicators set out under each of the four principles will demonstrate meeting the required standards.²
4. Education and training for the Bar must prepare prospective barristers to satisfy the requirements of the Professional Statement for Barristers incorporating the Threshold Standard and Competences September 2016 (Professional Statement (September 2016)), which prescribes the knowledge, skills and attributes that all barristers will have on 'day one' of practice. Competences are defined for each knowledge, skill and attribute. Barristers should demonstrate all Competences in order to evidence that they have the specified knowledge, skills and attributes. The Threshold Standard describes the minimum standard to which the competences should be performed on 'day one' of practice.³ The Authorisation Framework ensures that Authorised Education and Training Organisations enable prospective barristers to acquire the necessary knowledge, skills

¹ The four criteria set out in the BSB Policy Statement on Bar Training 23/03/17

² Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard A1 (consultation closes 25/09/17)

³ Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard A2 (consultation closes 25/09/17)

PREAMBLE AND INTRODUCTION

and attributes and demonstrate the Competences to at least the Threshold Standard.⁴

5. The Authorisation Framework encourages Authorised Education and Training Organisations to innovate and compete in developing and adapting their provision as new challenges and opportunities arise. The Authorisation Framework is outcomes focused, evidence based, transparent, risk based and consumer focused. We will use a range of regulatory tools proactively and reactively in the application of the Authorisation Framework.⁵

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⁴ Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard A3 (consultation closes 25/09/17)

⁵ Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard S1 (consultation closes 25/09/17)

COMPONENTS AND PATHWAYS

6. There were previously three distinct **stages** of education and training for the Bar:

Academic Stage - satisfied by completion of a Qualifying Law Degree (QLD) or a non-law degree plus the Common Professional Examination (CPE) or Graduate Diploma in Law (GDL);

followed by

Vocational Stage - satisfied by completion of the Bar Professional Training Course (BPTC) and the Inns pre-Call requirements as set out in the BSB Handbook Part 4;

followed by

Professional Stage – satisfied by pupillage as set out in the BSB Handbook Part 4.

7. The advantages of the three stages of education and training have been retained in the Authorisation Framework through the continuing requirement to have them as **components** (rather than sequential stages) of more flexible pathways to qualification. The three components of education and training for the Bar are -
Academic
Vocational
Work-based.

Academic component

Graduate education enabling prospective barristers to demonstrate (as a minimum) the Competences set out in of the Professional Statement (September 2016), as follows -

“1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers should:

- a) Be able to recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice specified by the Bar Standards Board.
- b) Be able to keep up to date with significant changes to these principles and rules.”

The principles of law and rules of procedure and practice referred to above are still to be specified by us.⁶

The academic component will be satisfied by a law degree or a non-law degree plus further graduate/postgraduate study that covers the requirements in Competence 1.2 above.

⁶ The new statement specifying the principles of law and rules of procedure and practice will replace the ‘Joint Statement 1999 issued by the Law Society and the General Council of the Bar on the Completion of the Initial or Academic Stage of Training by obtaining an undergraduate degree’, which states the current requirements - <https://www.sra.org.uk/students/academic-stage-joint-statement-bsb-law-society.page>.)

We do not regulate the content of undergraduate degrees and we expect a Higher Education Institution (HEI) or body with degree awarding powers to do so independently of us within the framework of the relevant competent bodies for HEI quality assurance and regulation.

Vocational component

Education and training preparing prospective barristers to work in the legal profession and demonstrate (as a minimum) the Competences as set out in [this will refer to a document setting out the Competences expected to be acquired in the vocational component].

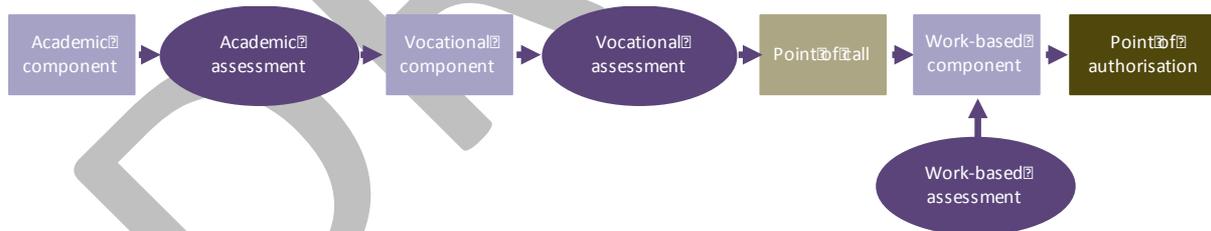
Work-based component

Pupillage⁷ or other forms of training providing real life legal work experiences under supervision where prospective barristers can build on prior learning and experience in order to demonstrate the Competences set out in [this will refer to a document setting out the Competences expected to be acquired in the work-based component].

Successful completion of the above components will enable a prospective barrister to acquire the knowledge, skills and attributes required by the Professional Statement (September 2016) and, subject to relevant administrative processes, be authorised to practise.

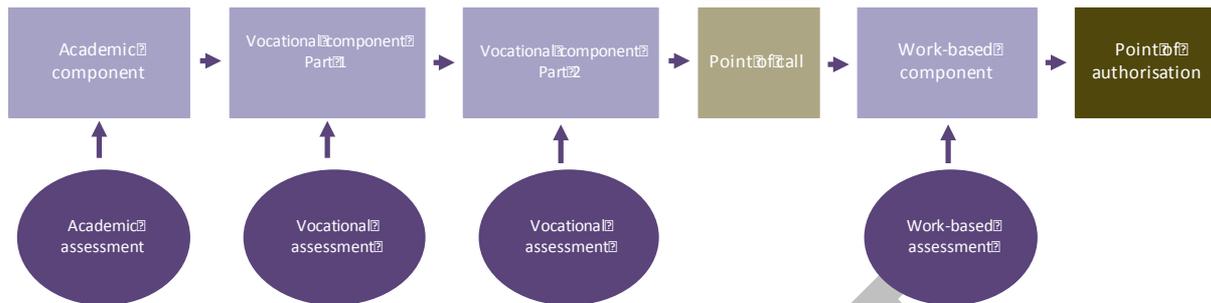
- 8. The three components may be attained by means of different **pathways**. There are four approved training pathways:

- 8.1. Three step pathway - academic, followed by vocational, followed by work-based components;

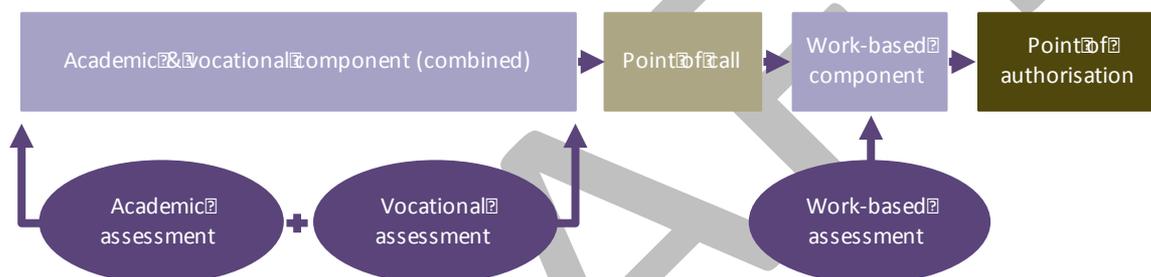


⁷ BSB Policy Statement on Bar Training 23/03/17 paragraph 34 states that FBT “would not require substantive changes to the current arrangements for pupillage”.

8.2. Four step pathway - academic component, followed by vocational component in two parts, followed by work-based component;



8.3. Integrated academic and vocational pathway - combined academic and vocational components followed by work-based component;



8.4. Apprenticeship pathway - combined academic, vocational and work-based components.⁸ Authorised Education and Training Organisations are invited to propose their own structure for an apprenticeship pathway.

We may be prepared to approve further training pathways in the future.

9. The three components of education and training for the Bar must satisfy four core principles:

- Flexibility
- Accessibility
- Affordability, and
- High Standards.

10. In the section ‘The Four Principles – What they mean’, we provide a comprehensive explanation of each principle. The four principles have equal weight and are inter-related. Authorised Education and Training Organisations are expected to demonstrate that they have complied with the indicators listed under each of the four principles in developing education and training for the Bar. Where they identify a possible tension between the principles, Authorised Education and Training Organisations will need to

⁸ BSB Policy Statement on Bar Training 23/03/17, paragraph 31, Higher Apprenticeship Model

provide a rationale as to how they have achieved an acceptable balance between the principles.

11. In the section 'The Four Principles – What the BSB wants to see – Indicators', we set out what we require from Authorised Education and Training Organisations in order to demonstrate that they satisfy the four principles and meet our standards for authorisation. Indicators of compliance are designated as either mandatory or recommended. In deciding what is mandatory and what is recommended we have taken into account our statutory objective of encouraging an independent, strong, diverse and effective legal profession so that there are barristers who can meet the needs of consumers in a fast-changing market for legal services as well as other statutory requirements and agreed regulatory policy objectives.
12. Authorised Education and Training Organisations have responsibility for the components of the approved training pathways that they are authorised to provide. Where education and training is provided in collaboration or consortium with other organisations, we will require the Authorised Education and Training Organisations to have adequate governance arrangements in place to reflect that responsibility.

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AUTHORISATION, RE-AUTHORISATION AND MONITORING

13. Pupillage Training Organisations and Approved Training Organisations will be subject to transitional arrangements for re-accreditation. Following the transitional period these organisations will have to meet the standards in this Authorisation Framework to provide education and training for the Bar. [Subject to consultation].
14. Prospective Authorised Education and Training Organisations will be expected to submit a proposal setting out the components/approved training pathways they wish to provide. In order to show that they meet the standards in this Authorisation Framework, they must provide clear evidence of how they meet the mandatory indicators and explain which of the recommended indicators they comply with and how. We will set out against each indicator examples of the types of evidence that could be provided by the Authorised Education and Training Organisation, or used by us, to assess whether the organisation is compliant. The Authorisation Framework will be applied proportionately.
15. Authorisation will last for a defined period after which re-authorisation will be required.
16. We will set out separately -
- the process for developing and making the authorisation submission (a template will be provided);
 - the process for re-authorisation;
 - what the authorisation/re-authorisation process consists of and how much it costs;
 - how the authorisation/re-authorisation decision is made and by whom and to what timescale; and
 - what routes of appeal are available in the event of a refusal of authorisation/re-authorisation.

We will conduct the process and manage appeals fairly, efficiently and transparently.⁹

17. Authorised Education and Training Organisations will be monitored by us to ensure that they continue to satisfy the four principles and meet our standards and, where they do not, steps will be taken to remedy this.¹⁰ We will set out separately the monitoring process.
18. Arrangements for transferring lawyers (for example, qualified solicitors, qualified lawyers from other countries and legal academics) are subject to consultation. Organisations providing education and training for transferring lawyers will have to meet the standards in this Authorisation Framework.
19. To ensure that Authorised Education and Training Organisations, prospective barristers, practising barristers and consumers have the opportunity to benefit from the learning and

⁹ Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard A4 (consultation closes 25/09/17)

¹⁰ Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard S2 (consultation closes 25/09/17)

AUTHORISATION, RE-AUTHORISATION AND MONITORING

good practice identified by the authorisation and monitoring process we will publish a register, reports, other communications and information, sharing examples of good practice and discussing where improvements can be made.¹¹

20. We will comply with the “better regulation” five principles of good regulation (proportionality, accountability, consistency, transparency and targeting) when carrying out the authorisation and monitoring processes.¹²

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¹¹ Legal Services Board, Annex A, Regulatory performance assessment 2017, Regulatory performance standard A5 and S4 (consultation closes 25/09/17)

¹² The Better Regulation Taskforce, Principles of Good Regulation (2003)

THE FOUR PRINCIPLES – WHAT THEY MEAN

FLEXIBILITY

21. Our stated aim is “Encouraging greater flexibility - so that the training system enables innovation in how education and training is delivered”.¹³ The barrister profession needs to reflect the society it serves. By regulating for different approaches to the provision of education and training and opening up new pathways to qualification we will give prospective barristers choice, widen access and support our principles of Accessibility, Affordability and High Standards.

21.1. We will also comply with the LSB statutory guidance which states - “Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required”.¹⁴

21.2. We see Flexibility as having two aspects:

- Flexibility for prospective barristers, and
- Flexibility for Authorised Education and Training Organisations.

21.3. Flexibility for prospective barristers means flexible education and training. “Flexible learning is about offering students choice in how, what, when and where they learn; the pace, place and mode of delivery”.¹⁵

21.4. Flexibility for Authorised Education and Training Organisations takes into account that -

- we are a risk and evidence based regulator, and
- we are taking a lighter touch role particularly in respect of the academic component and concentrating “.....on matters more directly concerned with our standards for authorisation to practise”.¹⁶

21.5. Flexibility for Authorised Education and Training Organisations includes -

- the prescriptive requirements at the vocational stage in the previous BPTC Handbook being replaced by the Authorisation Framework;
- an Authorisation Framework that encourages innovation in education and training, for example the use of the latest technology-enhanced learning and e-learning and the incorporation of clinical legal education;¹⁷
- an Authorisation Framework that enables any training organisation, which is able to demonstrate compliance with the indicators listed under each of

¹³ BSB Policy Statement on Bar Training 23/03/17

¹⁴ Outcome 2 of the Legal Services Board: Guidance on regulatory arrangements for education and training (March 2014)

¹⁵ Higher Education Academy <https://www.heacademy.ac.uk/individuals/student-success/toolkits/flexible-learning>, accessed 05/06/17

¹⁶ FBT Consultation on the Future of Training for the Bar: Future Routes to Authorisation October 2016 paragraph 31

¹⁷ Clinical legal education means, for example, hands-on legal experience

THE FOUR PRINCIPLES

the four principles, to provide a training pathway or components of a pathway;

- reliance on established quality assurance or consumer protection organisations or mechanisms.¹⁸
- recognition of the economics of providing education and training to relatively small annual numbers of prospective barristers (approximately 1,500 per year).

ACCESSIBILITY

22. Our stated aim is “Improving accessibility – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves”.¹⁹ All of society relies on the justice system and the rule of law. Barristers play an important role in upholding both; some eventually become members of the judiciary. We aim to enable the best candidates to train as barristers, whatever their background, so that the barrister profession will reflect the composition of society more closely. We are committed to increasing social mobility in the profession and to enhancing its diversity in relation to the protected characteristics enshrined in the Equality Act 2010.

22.1. To accomplish this, we comply with the LSB statutory guidance which states - “Regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession”.²⁰

This means that -

- we actively promote wide and fair access to training pathways;
- we actively promote giving prospective barristers choice in how they train;
- we do not place limits on the numbers undertaking Bar training, though we do require Authorised Education and Training Organisations to assure us how they will offer a quality education and training experience;
- we expect Authorised Education and Training Organisations to adapt to the changing needs of the legal services market so that prospective barristers will be employable.

22.2. We encourage Authorised Education and Training Organisations to adopt (as relevant and proportionate) the principles and practices, known as the “whole student life-cycle” approach, of the Office for Fair Access (OFFA).²¹ The ethos of this approach means that it is not sufficient to make education and training more accessible at the point of entry. Authorised Education and Training Organisations have a responsibility to -

¹⁸ FBT Consultation on the Future of Training for the Bar: Future Routes to Authorisation October 2016 paragraph 31

¹⁹ BSB Policy Statement on Bar Training 23/03/17

²⁰ Outcome 5 of the Legal Services Board: Guidance on regulatory arrangements for education and training (March 2014)

²¹ OFFA safeguards and promotes fair access to higher education by approving and monitoring access agreements. Office for Students (OfS), once fully operational in April 2018, will replace OFFA and HEFCE, <https://www.gov.uk/government/news/chief-executive-of-new-office-for-students-announced>

- remove barriers to entry for those who are currently under-represented within the Bar;
- support prospective barristers to complete their education and training and to achieve the best outcome that they are capable of, with the objective of enabling them to demonstrate the Competences to at least the Threshold Standard;
- support prospective barristers to progress into the profession, the workplace or further study;
- be explicit about how the above responsibilities will be fulfilled in relation to both national and international prospective barristers.

AFFORDABILITY

23. Our stated aim is “Improving upon affordability – to bring down the cost of studying to prospective barristers”.²² English graduates have the highest student debts in the developed world.²³ The cost of Bar training is therefore a significant issue for prospective barristers; a potential disincentive for some and a potential barrier to poorer members of society. Reducing the cost of Bar training is a key factor in widening access to the Bar but is only one aspect of affordability. We are committed to a broader view of improving affordability which includes improving the prospective barrister’s prospects of success and providing transferable knowledge, skills and attributes for those who do not complete their Bar training or do not enter ‘day one’ practice.

23.1. Affordability is improved by re-balancing and improving the risk/benefit ratio for prospective barristers. Risks include financial cost, time, lost opportunity and an individual’s reputation in the event of not completing their education and training. Re-balancing can be achieved by -

- reducing the financial cost of Bar training;
- providing best value for money i.e. “the most advantageous combination of cost, quality and sustainability to meet customer requirements”;²⁴
- enhancing benefits e.g. incorporating recognised academic awards such as master’s degrees and/or professional qualifications;
- increasing transferability and/or recognition within and outside the legal profession (nationally and internationally);
- increasing the prospect of success for those who embark on Bar training;
- providing clear and accessible information so that prospective barristers understand the risks and benefits of Bar training as they apply to their own personal circumstances.

23.2. Affordability may be enhanced by providing financial support to those who need/deserve it. In addition to loans there are other types of financial support:²⁵

²² BSB Policy Statement on Bar Training 23/03/17

²³ Research undertaken on behalf of the Institute of Fiscal Studies. The average student debt on graduation is £50,000 and up to £57,000 for poorer students. Higher Education funding in England: past, present and options for the future 05 July 2017, <https://www.ifs.org.uk/people/profile/668>

²⁴ finance-ni.gov.uk/articles/definition-best-value-money, accessed 05/06/17

²⁵ See [OFFA.org.uk/Quick facts for financial support in education](https://offa.org.uk/Quick-facts-for-financial-support-in-education), accessed 05/06/17

- scholarships and bursaries – financial awards paid by HEIs, charities, Inns of Court, professional bodies and others to prospective barristers who meet certain criteria;
- fee waivers – a reduction in fees, subscriptions and other charges;
- ‘in-kind support’ – e.g. credit that prospective barristers can spend on in-campus facilities, provision of court dress and/or accommodation.

HIGH STANDARDS

24. Our stated aim is “Sustaining high standards – to ensure that any new training pathway enhances current standards”.²⁶ The standards expected of the profession depend upon a high level of intellectual ability, a firm foundation of knowledge, skills and attributes and the confidence to use them in challenging circumstances. We are committed to ensuring that every barrister meets the standard required.

24.1. To accomplish this, we comply with the LSB statutory guidance which states -

- “Education and training requirements focus on what an individual must know, understand and be able to do at the point of authorisation”;
- “Standards are set that find the right balance between what is required at the point of authorisation and what can be fulfilled through ongoing competency requirements”.²⁷

24.2. The Authorisation Framework ensures that Authorised Education and Training Organisations enable prospective barristers to fulfil their potential and develop and demonstrate the Competences to at least the Threshold Standard²⁸ through a combination of strategic commitment, high quality education and training, and assessment and appraisal opportunities and appropriate resources, policies and procedures. Newly qualified barristers must achieve the Threshold Standard (the minimum standard) but will aspire to higher standards and this should be encouraged and supported by Authorised Education and Training Organisations.

24.3. We will assure the maintenance of high standards by continuing to require training pathways to include BSB-controlled curriculum, tests, assessments and quality assurance processes, which we will prescribe from time to time.

²⁶ BSB Policy Statement on Bar Training 23/03/17

²⁷ Outcomes 1 and 3 of the Legal Services Board: Guidance on regulatory arrangements for education and training (March 2014)

²⁸ Professional Statement for Barristers (incorporating the Threshold Standard and Competences) September 2016

THE FOUR PRINCIPLES – WHAT THE BSB WANTS TO SEE - INDICATORS

25. In order to demonstrate that they have satisfied the four principles and meet our standards, Authorised Education and Training Organisations will need to comply with all the mandatory indicators set out below and show that they have considered and responded to the recommended indicators. All indicators apply to all Authorised Education and Training Organisations, including those responsible for work-based learning, unless otherwise stated. How the indicators apply will depend on the type of Authorised Education and Training Organisation and which component(s) and/or pathway they provide. The Authorisation Framework will be applied proportionately. We may set out separately an illustration of how the Authorisation Framework will be applied in respect of an Authorised Education and Training Organisation seeking to provide only the work-based component in a traditional chambers and pupillage context.

The term ‘prospective barrister’ includes any person who intends to qualify as a barrister.

For each Principle, indicators are grouped under the headings - Strategic Goals and Oversight; Education and Training; Assessment and Appraisal.

FLEXIBILITY

Strategic Goals and Oversight

26. MANDATORY

26.1. A strategic approach to the planning and delivery of the component(s) and/or the training pathways provided that will enhance flexibility for prospective barristers.

26.2. Systems and structures supporting flexibility as appropriate to the component(s) and/or pathway provided. This includes - administrative, financial and other support systems; policies, regulations and procedures; technology-enhanced learning and e-learning infrastructures.

27. RECOMMENDED

27.1. Collaboration with other organisations to facilitate work-based and work-place learning.

Education and Training

28. MANDATORY

28.1. An education and training programme that is appropriate for the component (academic, vocational or work-based) and enables prospective barristers to develop and demonstrate the Competences.

- 28.2. Education and training modes (for example full-time or part-time) and pace of delivery that are suitable to the needs of prospective barristers and matched to the education and training programme.
- 28.3. A variety of learning, teaching and training methods, practices and approaches that are appropriate for the mode and pace of delivery, support the prospective barrister to develop and demonstrate the Competences and allow for varied learning styles and preferences.
- 28.4. Clear, accessible information about the component(s) being provided and its place within the training pathway that enables prospective barristers easily to navigate their own route to qualification.
- 28.5. Timely provision of clear, accessible information for prospective barristers as to how, what, when and where they may learn and the pace, place and mode of delivery.
- 28.6. Flexibility within the work-based component that supports equality and diversity and takes into account prospective barristers' personal circumstances, for example by the provision of part-time work-based training and work-based training consistent with the taking of parental leave.

29. RECOMMENDED

- 29.1. Technology-enhanced learning or e-learning to support education and training whether learning takes place on campus, at home, in the work-place or elsewhere.
- 29.2. Flexibility within the academic and/or vocational components that delivers employment opportunities for prospective barristers including work-based learning, work-place learning and flexible working, whether nationally or internationally.
- 29.3. Facilitation of movement of prospective barristers between Authorised Education and Training Organisations so that they are able to continue their education and training if and when their circumstances change.
- 29.4. Innovation in Bar training to better meet the needs of prospective barristers, for example combining or splitting of components into parts. Where the vocational component is split into two parts we will not regulate any education and training provided in preparation for the assessment of the first part, however, provision of the assessment itself will come within the Authorisation Framework (see also Affordability).²⁹
- 29.5. The provision of joint education and training, for example -

²⁹ BSB Policy Statement on Bar Training 23/03/17 paragraph 23-25.

- that also meets the requirements of solicitors and legal executives and other legal and non-legal professions;³⁰
- that enables prospective barristers to learn with others (see also Affordability).

29.6. Flexibility within the work-based component, for example allowing prospective barristers to train with different supervisors within a given period enabling the prospective barrister to demonstrate Competences that might otherwise not be acquired. [Subject to consultation.]

Assessment and Appraisal

30. MANDATORY

- 30.1. Assessment and appraisal methods that facilitate flexibility, support the development and demonstration of the Competences and suit varied learning styles and preferences, to include timing of assessment and appraisal points and variety of types of assessment and appraisal.
- 30.2. An assessment and appraisal strategy that incorporates the BSB-controlled curriculum, tests, assessments and quality assurance processes, which we will prescribe from time to time.
- 30.3. A schedule of assessment and appraisal points in a calendar or academic year that enables prospective barristers to benefit from timely results and feedback. Feedback should allow prospective barristers to make any necessary changes to their learning in order to improve, make decisions as to whether or not to continue their Bar training, and allow them to progress without delay to the next component, into the profession, the workplace or further study. Timely communication of schedules to enable prospective barristers to plan.

31. RECOMMENDED

None currently proposed.

³⁰ Joint education and training is likely to reduce cost, increase transferability of the qualification and encourage new organisations to apply to become Authorised Education and Training Organisations.

The BSB will also contribute to Flexibility by means of:

Considering proposals for innovative approaches to education and training and assessment and appraisal provided that they enable prospective barristers to develop and demonstrate the Competences.

Publication of clear and accessible information relating to the approved training pathways to qualification.

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ACCESSIBILITY

Strategic Goals and Oversight

32. MANDATORY

- 32.1. Commitment to Equality and Diversity at organisational level, including a specific strategic commitment to –
- increasing diversity at the Bar;
 - changing the public perception of the Bar as an elitist profession, for example through public events.
- 32.2. A clear strategy as to how the components(s) and/or pathway provided will be made accessible and how prospective barristers will be able to complete their education and training and achieve the best outcome that they are capable of, enabling them to demonstrate the Competences to at least the Threshold Standard.
- 32.3. For Approved Education and Training Organisations that provide academic and/or vocational components, the “whole student life-cycle” approach means not simply replicating or relying on an existing institutional agreement, but producing one at a discipline level that directly addresses the needs of prospective barristers (see 22.2).
- 32.4. A set of targeted policies and procedures flowing from that strategy/agreement relating to access, retention, attainment and progression, including -
- provision of information, guidance and advice, and outreach activities, for example in schools and the wider community, to encourage those who are currently under-represented at the Bar to consider it as a career;
 - admission policies promoting open and fair recruitment; aiming to address traditional biases through flexible approaches to considering prior learning and experience; selection processes that seek to eliminate bias around aspects such as socio-economic background; taking into account external constraints on international applicants such as visas and immigration;
 - how prospective barristers will be supported to enable them to engage with, reflect on and complete their Bar training (for example feedback mechanisms, support and mentoring);
 - how the education and training enables prospective barristers to progress to and from work-based learning and to the legal profession, the workplace or further study (for example a clear indication of what Competences they will have achieved during and on completion of each component, and what routes are then available to them).
- 32.5. Periodic evaluation of this strategic approach and the effectiveness of the policies and procedures using quantifiable measures and data analysis.

- 32.6. Contribution to changing the public perception of the Bar as an elitist profession, for example through public events and outreach activities.

33. RECOMMENDED

None currently proposed.

Education and Training

34. MANDATORY

- 34.1. Compliance with all relevant legal obligations, for example reasonable adjustments to enable full participation in all aspects of education and training and assessment and appraisal.
- 34.2. Sufficient and appropriate human, physical and technological resources to provide every prospective barrister with an equal and effective opportunity to develop and demonstrate the Competences.³¹
- 34.3. Provision and maintenance of physical, virtual and social learning environments that are supportive, safe, accessible and reliable for every prospective barrister promoting dignity, courtesy and respect in their use.³²
- 34.4. Prospective barristers provided with opportunities to give feedback to the Authorised Education and Training Organisation in order to shape their and others' learning experience.
- 34.5. Prospective barristers enabled to monitor their own progress and further the development of their learning through regular opportunities for feedback and communication.³³

35. RECOMMENDED

None currently proposed.

Assessment and Appraisal

36. MANDATORY

- 36.1. Communication and consistent application of assessment and appraisal policies, regulations and procedures, including clear and accessible information relating to how the Competences will be assessed or appraised.³⁴

³¹ See QAA Chapter B3, indicator 2

³² See QAA Chapter B3, indicator 6

³³ See QAA Chapter B3, indicator 9

³⁴ See QAA Chapter B6, indicator 2

36.2. Communication and consistent application of policies for the recognition of prior learning and experience, including clear and accessible information about how any previous learning and experience may be recognised and contribute towards fulfilling the requirements of the training pathway. Support for applicants throughout the process of obtaining such recognition.³⁵

36.3. The form of assessment and appraisal must be accessible to all, through design or reasonable adjustment.³⁶

37. RECOMMENDED

None currently proposed.

The BSB will also contribute to Accessibility by means of:

Demonstrating its own commitment to changing the perception of the Bar (see 32.6).

Benchmarking its accessibility policies and procedures against other professions.

³⁵ See QAA Chapter B6, indicator 3

³⁶ See QAA Chapter B6, indicators 8 and 10

AFFORDABILITY

Strategic Goals and Oversight

38. MANDATORY

- 38.1. Education and training that enhances employability and transferability to and from other legal professions and other professions.
- 38.2. Offering best value for money, enhanced benefits and high quality learning, education and training and assessment and appraisal opportunities to prospective barristers in line with our principle of High Standards.
- 38.3. Relevant and targeted policies and procedures relating to financial support and/or remuneration that take into account our Accessibility principle.
- 38.4. The use of quantifiable measures to evaluate the success of these policies and procedures.
- 38.5. For Approved Education and Training Organisations that provide academic and/or vocational components, communication of clear, accessible and meaningful information and data that enables prospective barristers (whether national or international) to make informed decisions as to their personal risk/benefit ratio. Data to be communicated includes -
- the correlation between degree classifications and levels of success;
 - the correlation between the Bar Course Aptitude Test (BCAT) scores and levels of success;
 - fees, first attempt pass rates and success in obtaining work-based training.
- 38.6. For those who provide work-based training -
- communication of clear, accessible and meaningful information and data as to the direct and indirect costs of work-based training and the likelihood of being retained post qualification;
 - meeting BSB minimum funding requirements (self-employed) or National Minimum or Living Wage (employed). [Subject to consultation]

39. RECOMMENDED

None currently proposed.

Education and Training

40. MANDATORY

None currently proposed

41. RECOMMENDED

- 41.1. Education and training that allows prospective barristers to spread the cost of their Bar training and/or earn while they learn or limit the cost in the event that they do not complete their Bar training.
- 41.2. For Approved Education and Training Organisations that provide academic and/or vocational components, provision of education and training leading to academic awards (including early exit awards) at postgraduate level that are recognised outside the legal profession both nationally and internationally. Recognised awards will be beneficial for those who decide not to complete their Bar training or to practise as a barrister.³⁷
- 41.3. Innovation in Bar training to better meet the needs of prospective barristers, for example combining or splitting of components into parts. Where the vocational component is split into two parts we will not regulate any education and training provided in preparation for the assessment of the first part, however, provision of the assessment itself will come within the Authorisation Framework (see also Flexibility).³⁸
- 41.4. The provision of joint education and training, for example -
- that also meets the education and training requirements of solicitors and legal executives and other legal and non-legal professions;
 - that enables prospective barristers to learn with others (see also Flexibility).³⁹
- 41.5. Mapping of the Competences covered in component(s) and/or pathway to the Solicitors Regulation Authority's Statement of solicitor competence in order to facilitate the provision of joint education and training and assist those applying for recognition of prior learning and experience in order to qualify as a solicitor.⁴⁰

Assessment and Appraisal

42. MANDATORY

- 42.1. For Approved Education and Training Organisations that provide academic and/or vocational components, flexible and low cost assessment opportunities (both initial assessment and resits).

43. RECOMMENDED

None currently proposed.

³⁷ The Law Degree is widely recognised but the BPTC is not. A vocational component at Masters level may increase financial cost but provide enhanced benefit. Evidence of enhanced benefit would be required.

³⁸ BSB Policy Statement on Bar Training 23/03/17 paragraph 23-25.

³⁹ Joint education and training is likely to reduce cost, increase transferability of the qualification and encourage new organisations to apply to become Authorised Education and Training Organisations.

⁴⁰ <http://www.sra.org.uk/solicitors/competence-statement.page>

The BSB will also contribute to accessibility of information by means of:

Publishing comparative data acquired under 38.5 and 38.6 to enable prospective barristers to make meaningful comparisons and calculate their personal cost/benefit ratio.

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HIGH STANDARDS

Strategic Goals and Oversight

44. MANDATORY

- 44.1. Authorised Education and Training Organisations will -
- have Degree Awarding Powers (DAP)⁴¹ or be validated by a body with DAP and/or subscribe to the Quality Assurance Agency (QAA)⁴² and subscribe to Office of the Independent Adjudicator (OIA);⁴³
- or
- demonstrate how they comply with equivalent standards, requirements and quality assurance processes as relevant and proportionate to the nature of the organisation and prescribed by us (for example, in any future Pupillage Handbook).⁴⁴
- 44.2. Recruitment, selection and admission policies and procedures consistent with the Competences to be developed and demonstrated. There should be an appropriate balance between any entrance requirements imposed, the likelihood of success for the prospective barrister and our principle of Accessibility.
- 44.3. Authorised Education and Training Organisations will adopt the following admission criteria to any free-standing vocational components -
- a law degree, or a non-law degree plus further graduate/post-graduate study that satisfies the Professional Statement (September 2016) Competence 1.2 and classified as not less than a lower second class honours (2:2) or equivalent;
 - successful completion of the Bar Course Aptitude Test (BCAT);
 - verification that the prospective barrister's English language ability is a minimum of IELTS 7.5 in each section of the test or equivalent.
- 44.4. Authorised Education and Training Organisations must take responsibility for qualifications, identity and credentials checks and report to us any fraudulent or dishonest activity related to entry qualifications. [Educational qualifications and fit and proper person checks are subject to consultation.]

⁴¹Degree Awarding Powers: All valid UK degrees are awarded by a university or other legally approved degree-awarding body that has overall responsibility for the academic standards and quality of the qualification. Decisions to grant degree awarding powers in the UK are made by the Privy Council based on advice from the QAA. Authorised Education and Training Organisations will have the type(s) of degree awarding powers (Foundation degree awarding powers (FDAP), Taught degree awarding powers (TDAP) and Research degree awarding powers (RDAP)) appropriate to the education and training provided.

⁴² Quality Assurance Agency: The QAA review UK higher education providers to assess how they maintain their academic standards.

⁴³ Office of the Independent Adjudicator is an independent body that runs a student complaints scheme in England and Wales. OIA membership includes FE colleges providing higher education, alternative providers and providers of School-Centred Initial Teacher Training, as well as universities.

⁴⁴ The BSB will keep abreast of "Revised operating model for quality assessment" March 2016/03 HEFCE.

- 44.5. Relevant and targeted policies and procedures around access, retention, support, attainment and progression, to include progression to and from work-based learning and into the legal profession and recognition of prior learning and experience in line with our principles of Accessibility and Affordability. Clear and accessible information for prospective barristers to enable them to understand the application of any policies and procedures that relate to them.
- 44.6. Effective quality assurance policies and procedures (including those which relate to design, development, approval, monitoring, review and improvement of components and/or education and training programmes) to ensure that prospective barristers can develop and demonstrate the Competences to the Threshold Standard.
- 44.7. Mapping of the Competences covered in component(s) and/or pathway to the Professional Statement (September 2016).

45. RECOMMENDED

None currently proposed.

Education and Training and Assessment and Appraisal

46. MANDATORY

- 46.1. Education and training programmes, assessment and appraisal opportunities, resources (human, physical, technological, financial and intellectual), policies and procedures that underpin and reflect the Professional Statement (September 2016) and incorporate the BSB-controlled curriculum, tests, assessments and quality assurance processes which we will prescribe from time to time.
- 46.2. Providing education and training and assessment and appraisal at the appropriate graduate/postgraduate/professional standard.
- 46.3. An organisational culture that promotes high quality education and training and high standards of performance and professionalism on the part of prospective barristers. Academic misconduct must be reported to us.
- 46.4. Consistently applying appropriate internal and external quality assurance (e.g. pupillage committee; external examiners).
- 46.5. Support to enable prospective barristers to fulfil their potential in developing and demonstrating the Competences to the Threshold Standard.
- 46.6. Fair, timely and objective assessment and appraisal methods and opportunities.
- 46.7. Providing opportunities for prospective barristers to engage with their education and training and assessment and appraisal through feedback (formal and

informal), including appeals, complaints, grievance policies and procedures.

47. RECOMMENDED

None currently proposed.

BSB will also regulate for High Standards by means of:

BSB-controlled curriculum, tests and assessments of Competences in high risk areas for the profession and to the public.

Consistently applied external quality assurance processes (eg BSB external examiners, monitoring of Authorised Education and Training Organisations).

Oversight of Authorised Education and Training Organisations' assessments and appraisals in order to deliver consistency.

Jane Chapman and
Carol Wadsworth-Jones
20 September 2017

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Summary of equality analysis

Role of the Inns

1. Regarding student membership of the Inns, Option A is to remove the requirement for students to become members of Inns, and Option B is to keep the requirement.
2. Option A represents a small (relative to the overall cost of training) cost saving for students, as Inn membership costs approximately £100, which may have a positive impact on students from low socio-economic backgrounds. That, in turn, would benefit BME students more than their white counterparts, owing to the intersectionality between socioeconomic status and race. This saving may also be a benefit to those with caring responsibilities, or mature students who have other significant financial responsibilities.
3. However, removing the requirement to join an Inn may make it less likely that students from lower socioeconomic backgrounds will be aware of what the Inns provide, the availability of Inn scholarships and the wider benefits of interacting with more senior members of the profession. This may lead to the Bar becoming less accessible to those from lower socioeconomic backgrounds.

Qualifying sessions

4. The policy under consideration is whether to maintain, reduce, or remove the requirement for student barristers to attend 12 qualifying sessions, with another alternative being to mirror the new CPD arrangements.
5. The main concerns regarding equality impacts are:
 - a. the perceived lack of utility of the qualifying sessions given their expense;
 - b. the qualifying sessions making BME students and those from lower socioeconomic backgrounds feel uncomfortable and undermining their confidence in their ability to succeed;
 - c. the effect of the additional stress of being required to attend 12 sessions in a year on those with mental health conditions; and
 - d. the inflexibility of qualifying sessions being inconvenient for mature students and students with caring responsibilities.
6. However, the above concerns must be weighed against the likelihood that no longer mandating attendance would reduce the opportunities for students to interact with experienced barristers and the judiciary. Qualifying sessions can offer structured networking opportunities, which can be of particular help to students who do not otherwise have any opportunity to engage in professional networks.

Other policies

7. There are no equality impacts identified for: BSB oversight of students; fit and proper person checks; or student conduct.

Future arrangements for the work-based component of training

One-to-one relationship between pupils and pupil supervisors

8. Removal of the requirements for pupil supervisors to be limited to one pupil and pupils to have a named supervisor would be expected to have broadly positive impacts.
9. At present the pupil-to-supervisor relationship can have a determinative bearing on the likelihood of a pupil being offered tenancy at the end of their pupillage. While this does not directly have any equality impacts, it does open pupils to the risk of being

supervised by someone with a bias against their characteristics (be it consciously or unconsciously).

10. The above applies to those with disabilities and those with caring responsibilities, however for these two protected characteristics the overall effect would be more mixed. For a pupil with a disability or caring responsibilities, having a close relationship with one specific supervisor can be beneficial as it can be easier for them to arrange reasonable adjustments. Removal of the one-to-one relationship might make organising such reasonable adjustments more difficult, however this risk could be mitigated by ensuring that ATOs have appropriate reasonable adjustment policies.

Compulsory courses during pupillage

11. The options considered under this policy proposal are: removing the requirement for compulsory courses during pupillage; and continuing to require the courses but no longer mandating that they are provided by the Inns of Court and Circuits.
12. Removing the requirement for pupils to attend compulsory courses risks having an indirect negative impact on women, BME pupils, and those from lower socio-economic backgrounds.
13. The courses being mandatory has meant that: there are a large number of attendees which results in economies of scale, meaning that the price of the course per head is lower than it would otherwise be; and many chambers offer to pay for their pupils to do the courses. Removing the requirement to attend these courses would lower attendance, thereby raising the price per head. It would also likely stop many chambers from offering to pay for their pupils to attend. This is most likely to negatively affect pupils in legal aid funded chambers (owing to those chambers being most susceptible to price fluctuations), and paying for the courses would have a larger impact on pupils from lower socioeconomic backgrounds.

Pupillage award

14. The options being considered regarding the pupillage award are: to increase the award to the National Living Wage (£13,650); and to increase the award to the Living Wage Foundation suggested wages (£17,745 in London and £15,379 outside London).
15. An increase in the pupillage award to £13,650 might have a very small negative impact on women and BME pupils. There is unlikely to be an impact on any other group.
16. The impact identified is due to the possibility that any increase in the cost of pupillage to ATOs may prevent legal aid funded chambers (in which women and BME pupils are overrepresented) from being able to afford to offer pupillage. However given how small an increase in award this would be, this effect is unlikely to manifest in many ATOs, if at all.
17. Pupillage applicants from lower socioeconomic backgrounds are not likely benefit from an increase of the minimum award to £13,650, as the figure would still be well below a level that would enable them to undertake minimum funded pupilages without taking on additional debt.
18. An increase in the award to £17,745 and £15,379 (in and outside London respectively) would have a large direct positive impact on pupillage applicants from lower socioeconomic backgrounds, and therefore also benefit BME applicants due to the intersectionality between race and socioeconomic background. This is because increasing the award to this level would remove the financial barrier that currently prevents many such applicants from applying to minimum funded chambers.

19. There is a risk that increasing the award to the Living Wage Foundation suggested wages might decrease the viability of some legal aid funded ATOs from offering pupillage. There is currently no way of accurately quantifying this risk, as we have no information about which ATOs (if any) may be forced to stop offering pupillage¹. If this risk was to manifest, it would disproportionately affect women and BME pupils as these groups are overrepresented in legal aid funded ATOs.

Length of pupillage and probationary practising certificate

20. There are very few expected equality impacts from the potential changes to the length of pupillage and the award of the probationary practising certificate.
21. The only identified impacts relate to mature pupils and those with caring responsibilities. Both groups would likely benefit from shorter pupillages, and be comparatively disadvantaged from longer pupillages. As it is not yet clear whether pupillages would become longer or shorter (or simply differing lengths offered by different ATOs), a precise impact is hard to estimate.

Re-authorisation and removal of ATOs

22. The only identified equality impacts for this policy would be if there was a significant cost in the re-authorisation process. If this was the case it may dissuade ATOs that are struggling financially from undergoing the re-authorisation process. This would be more likely to affect legal aid funded chambers, and therefore would disproportionately impact women and BME pupil applicant as both groups are overrepresented in legal aid funded practice areas.
23. If there was no significant cost associated with the re-accreditation process, then there would be no equality impacts expected.

Authorisation framework

24. An equality screening form was conducted to provide an initial equality assessment for the authorisation framework. No negative equality impacts were identified. Indeed, the purpose of the proposed change is to remove or mitigate existing negative equality impacts within the authorisation process.

Other policies

25. There are no equality impacts identified for the potential changes to pupil supervisor training.

¹ The increased cost per pupillage would be approximately £1,689.50 to £3,379 (for ATOs outside London), and £2,872.50 to £5,745 (for ATOs in London), depending on each pupil's earnings during their Second Six.

Response to the CMA Recommendations: Policy Consultation on Transparency Standards

Status

1. For approval.

Executive Summary

2. In December 2016, the Competition and Markets Authority (CMA) published the findings of its market study into legal services, which included a recommendation to deliver a step change in standards of transparency across the market. At the end of June 2017, the BSB published an action plan detailing its response to the CMA's recommendations. This included a commitment to issue, by the end of September, a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency.
3. When referring to standards of transparency to help consumers, the CMA described this as the information needed to help them understand the price and service they will receive, what redress is available and the regulatory status of their provider. The overall aim is to enable them to compare providers and improve competition in the market.
4. In its report, the CMA recommended 13 transparency measures in relation to price, service and redress. The BSB has categorised these recommendations into 3 categories ("very high impact", "high impact" and "medium impact") based on the expected benefit for the Bar's consumers. As we recognise the challenges that the practising Bar will face in adapting to any new requirements, we wish to be proportionate in our approach and target any new requirements where they are most needed. For these reasons, the consultation paper proposes that only the recommendations which have been categorised as "very high impact" for consumers should be adopted as mandatory rules.
5. Where the impact is assessed as "high" or "medium" for consumers, the BSB is proposing to issue guidance for chambers and barristers wanting to disclose this type of information (rather than making it compulsory).
6. The CMA recommendations make clear that the CMA has prioritised Public Access work by barristers as having the most pressing need for new minimum standards of transparency. The consultation paper therefore proposes that any new mandatory rules in relation to disclosure should apply to all Public Access barristers.
7. However, the BSB is also of the view that the suggested minimum disclosure requirements should apply to barristers undertaking referral work where the client is entitled to complain to the Legal Ombudsman (LeO).¹ In addition, the consultation paper poses a question about whether the suggested minimum disclosure requirements should

¹ Those clients who are able to complain to the LeO are as follows:

- a) Individuals;
- b) Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- c) Charities with an annual income net of tax of less than £1 million;
- d) Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- e) Trustees of trusts with an asset value of less than £1 million; and
- f) Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the LeO.

apply to referral work that is within high-risk practice areas such as immigration, crime and family law (i.e. where clients are more likely to be vulnerable, and the types of information disclosure being considered would be particularly beneficial). As an exception to this, it is not proposed that the suggested minimum disclosure requirements in relation to price should apply to barristers undertaking referral work for clients funded by the Legal Aid Agency. This is because legal aid rates are set by the government and not subject to competition in the same way as other legal services. However, barristers undertaking this work would need to comply with the suggested minimum disclosure requirements in relation to service and redress.

8. Furthermore, only self-employed barristers and BSB regulated entities will need to comply with the new transparency requirements. Barristers employed in entities regulated by other approved regulators will need to comply with the requirements of the relevant regulator.
9. We have committed to issue the consultation paper by the end of September, and so we intend to do this on Friday 29 September. The other frontline regulators will also be publishing their consultation papers on this date. **Because of the tight deadline, Board members are invited to submit any drafting comments electronically ahead of the Board meeting.**

Recommendations

10. The Board is asked to:
 - a) **agree** the application and scope of the proposed new transparency measures; and
 - b) **approve** for publication the draft consultation paper at Annex 1.

Background

11. In December 2016, the Competition and Markets Authority (CMA) published the findings of its market study into legal services. Its recommendations fall broadly into four categories:
 - delivering a step change in standards of transparency across the market;
 - promoting the use of independent feedback platforms;
 - making regulatory data more accessible; and
 - making better information available to assist consumers (including by reviewing the content of the Legal Choices website).
12. At the end of June 2017, the BSB published an action plan detailing its response to the CMA's recommendations. This included a commitment to issue, by the end of September, a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. (The BSB will address the other CMA recommendations in the future in accordance with the action plan that it published in June).
13. When referring to standards of transparency to help consumers, the CMA described this as the information needed to help them understand the price and service they will receive, what redress is available and the regulatory status of their provider. The overall aim is to enable them to compare providers and improve competition in the market.
14. The CMA required all of the legal regulators in England and Wales to work collaboratively when implementing its recommendations in order to ensure a degree of consistency across the market. Consequently, while the consultation paper considers how best to

implement the CMA's recommendation to improve transparency standards at the Bar, the other legal regulators will simultaneously be consulting on how to do this with their own regulated professions.

15. However, the focus of the BSB consultation paper is on how best to make any new transparency measures work for the consumers of barristers' services. The BSB's proposed approach recognises the wide variety of legal services provided by barristers, the complex nature of their work and the unique ways in which barristers' services are engaged (in particular, the way in which many barristers are referred to consumers by other legal service providers). The consultation paper has been developed with advice from the APEX members for Competition and Economics, and Competition Law, and reviewed by the CMA. It has also been informed by research involving consultation and engagement with the profession, representative bodies and consumers. In brief, the research focuses on (i) understanding the current issues and priorities for the profession surrounding price and service transparency, including examples of good practice; (ii) perceived barriers, drivers and potential risks to increasing transparency; and (iii) consideration of ways to increase and improve transparency in ways that consumers would find useful. The emerging findings from the research are outlined in Annex 2.
16. Our published action plan commits us to issue the consultation paper by the end of September, and so we intend to do this on Friday 29 September. The other frontline regulators will also be publishing their consultation papers on this date.

Application and Scope of Proposed New Transparency Measures

17. The BSB recognises that the practising Bar is already transparent about price and service information at the point of engagement. Indeed, Rule C22.1 of the BSB Handbook requires barristers to confirm to clients in writing the acceptance of the instructions and the terms and/or basis on which they will be acting, including the basis of charging. In addition, Rule C125 requires Public Access barristers to confirm to clients in writing, and in clear and readily understandable terms, the work which they have agreed to perform and a number of other particulars (including the limitations of their role).
18. However, the CMA's December 2016 report states that *"information issues, including both limited awareness of the sector and providers' lack of transparency, can...lead to consumers believing that they cannot afford legal advice and resorting to doing nothing or resolving their issues themselves, which may not be the best option"*. The CMA has therefore identified a consumer need for legal services providers to be more transparent about price and service information prior to the point of engagement. This will assist consumers at an earlier point in the consumer journey, and enable them to shop around without necessarily having to contact various legal services providers.
19. In its report, the CMA recommended 13 transparency measures in relation to price, service and redress. The BSB has categorised these recommendations into 3 categories ("very high impact", "high impact" and "medium impact") based on expected consumer benefit. As we recognise the challenges that the practising Bar will face in adapting to any new requirements, we wish to be proportionate in our approach and target any new requirements where they are most needed. For these reasons, **the consultation paper proposes that only the recommendations which have been categorised as "very high impact" for consumers should be adopted as mandatory rules.** These measures are:

- Pricing and charging model (eg fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement);
 - Hourly fees (where charged) by grade of staff;
 - (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged;
 - A description of the services that the legal services provider provides;
 - Indicative timescales for completing services and factors affecting these;
 - Regulatory status and registration details; and
 - Complaints process and access to the Legal Ombudsman (LeO).
20. **Where the impact is assessed as “high” or “medium” for consumers, the BSB is proposing to issue guidance for chambers and barristers wanting to disclose this type of information (rather than making it compulsory).** However, we would still expect barristers to use the guidance to determine what additional factors (above the suggested minimum disclosure requirements set out in the rules) would increase transparency and consumer understanding.
21. The CMA recommendations make it clear that the CMA has prioritised Public Access work by barristers as having the most pressing need for new minimum standards of disclosure. **The consultation paper therefore proposes that any new mandatory rules in relation to disclosure should apply to all Public Access barristers.**
22. However, **the BSB is also of the view that the suggested minimum disclosure requirements should apply to barristers undertaking referral work where the client is entitled to complain to the LeO.² In addition, the consultation paper poses a question about whether the suggested minimum disclosure requirements should apply to referral work that is within high-risk practice areas such as immigration, crime and family law** (i.e. where clients are more likely to be vulnerable, and the types of information disclosure being considered would be particularly beneficial). As an exception to this, **it is not proposed that the suggested minimum disclosure requirements should apply to barristers undertaking referral work for clients funded by the Legal Aid Agency.** This is because legal aid rates are set by the government and not subject to competition in the same way as other legal services.
23. Furthermore, **only self-employed barristers and BSB regulated entities will need to comply with the new transparency requirements.** Barristers employed in entities regulated by other approved regulators will need to comply with the requirements of the relevant regulator.
24. The CMA’s report notes that transparency *“generates a virtuous cycle for competition where providers are driven by informed consumers to compete and innovate in order to improve the value of their offering and to win custom”*. It is therefore possible that the new requirements could lead to a general culture change towards greater transparency in the

² Those clients who are able to complain to the LeO are as follows:

- a) Individuals;
- b) Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- c) Charities with an annual income net of tax of less than £1 million;
- d) Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- e) Trustees of trusts with an asset value of less than £1 million; and
- f) Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the LeO.

profession, with greater transparency even in areas to which the requirements do not apply. This would lead to greater competition in the market for barristers' services.

Additional Measures

25. In addition to the recommendations the CMA has identified, the BSB is of the view that there is other information which may be beneficial to consumers. The consultation paper therefore poses questions about whether barristers should be required to:
- Provide first-tier complaints data on their chambers' website i.e. data on complaints which have been made to them directly in the first instance (before they may have been made to the LeO). The consumer benefits of providing this data must be balanced against the risk that it could be misinterpreted;
 - Use the BSB's logo on their chambers' or entity website. The BSB may need to develop a digital smart badge, as logos can be fraudulently used to give credence to fake websites; and
 - If undertaking Public Access work, provide the BSB's Guidance for Lay Clients on their chambers' website. This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters, and reduce the need for frequent communication between barristers and Public Access clients.

Challenges and Opportunities

Hourly Rates

26. Although the BSB has categorised the publication of hourly fees (where charged) by grade of staff as having a "very high impact" in terms of expected consumer benefit, we recognise the inherent difficulty in requiring barristers to do so. The setting of hourly fees is not necessarily straightforward and a number of factors may determine the rate that the barrister chooses to set; for example, seniority, type of client, and whether the barrister is trying to build business in a new area. In addition, it would be reasonable to expect that barristers who operate in different chambers through associate chambers have different rates in different regions.
27. The BSB is also mindful that by mandating greater transparency we do not inadvertently have the consequence of restricting barristers from offering better rates to more socially beneficial causes. We will therefore not mandate a specific pricing model, but expect barristers to be transparent about the model they do use (which may not necessarily be hourly rates) and the likely costs (whether this is calculated based on an hourly rate, fixed/capped fee or conditional fee/damages-based agreement).

Provision of Price Information

28. The BSB is not proposing a "one size fits all" model to implement any new disclosure requirements. We are proposing to introduce mandatory rules in relation to the suggested minimum disclosure requirements, but accept there may be variations in how barristers choose to provide that information. The consultation paper discusses two options as to how barristers might comply with the disclosure of mandatory pricing information.

29. **Option one** is for self-employed barristers in chambers to provide *individual* price and service information on their chambers' website. They could, for example, take their three most common types of case (i.e. cases that conform to a specific scenario) and provide the necessary price and service information for each of them. With respect to pricing information, this may present some competition law risks insofar as self-employed barristers in chambers compete with each other, and greater transparency on individual rates could potentially foster collusion. The CMA's report did consider the risk of collusion, but concluded that this was low (particularly given the fragmented nature of the sector).
30. **Option two** is for self-employed barristers in chambers to provide *blended* price and service information on their chambers' website. This could take the form of ranges, indicative fees for standard work or average fees. Chambers could, for example, take the three most common types of case for all barristers in chambers (i.e. cases that conform to a specified scenario) and provide illustrative price and service information for each of them based on averages of current prices. Variants of this approach would be to:
- Take the three most common types of case for barristers in chambers specialising in particular areas of law and provide averages of current rates; or
 - Take the three most common types of case for barristers in chambers with less than five years' practising experience, between five and ten years' practising experience and more than ten years' practising experience and provide averages of current rates.
31. The proposed view is that option two would be more straightforward to administer than providing price and service information for each individual barrister (as set out in option one). The consultation paper also provides examples of how barristers might use options one and two to comply with the disclosure of mandatory information. Prior to any new requirements coming into force, further examples will be developed and included in supporting guidance for barristers and chambers.

Price Discrimination

32. As discussed, while the BSB acknowledges the fact that barristers may wish to charge different prices in certain circumstances, we would expect a certain degree of transparency about the circumstances in which this might arise. An example would be practitioners setting different hourly rates depending on the client: low for Government bodies, medium for non-departmental public bodies and high for corporate bodies. Barristers may also wish to charge a different price for work that is of wider social value. The ability of practitioners to charge lower prices to those with more limited means may be particularly important in areas where there have been cuts to legal aid.
33. However, the new transparency requirements may mean that in some cases, price discrimination may not be possible where the market has converged to a focal price (for example, the headline published rate). While this would work in the interests of consumers with greater willingness/ability to pay, it is plausible that (at least in the short term) those with more limited means may be priced out as the uniform prices become too high for them.
34. It is important to emphasise that given the fragmented nature of the sector, the CMA's report concluded the risk of this occurring was low. In the medium to long term, some practitioners may also recognise the impact on those with more limited means and lower their uniform prices. In addition, barristers would retain the flexibility to charge lower prices to some clients in any event. However, if this price flexibility is not referred to on

their chambers' website, those clients may assume that they cannot afford legal advice or representation.

35. The BSB's action plan in response to the CMA's recommendations commits us to evaluating the new transparency requirements from December 2020 (two years after they come into force). This will include an assessment of the impact of the new requirements (if any) on price discrimination.

Perceptions of Value

36. One view is that the new transparency requirements could encourage consumers to focus disproportionately on price rather than the overall value of barristers' services (including a specific expertise or the overall quality of the work). However, ultimately it would be for the client to decide what their priority is when making a decision on which legal services provider to choose. The information available should empower consumers to make an informed decision by shopping around and drawing useful comparisons.
37. There is also a perception that barristers charge higher fees than solicitors and other legal services providers. This may often be the case, not least because barristers are more likely to offer specialist legal services than solicitors and other providers. However, where barristers are not charging higher fees than other providers for the same services, price transparency is a good opportunity to demonstrate the value of their services.

Fee Disputes

38. Disputes about fees are one of the most frequent complaints. Our engagement with the profession found that this is often due to different types of fees which are not explained to clients (for example, brief fees and refreshers), and a lack of clarity as to what fees do and do not cover. The new transparency requirements are therefore a good opportunity to improve client communication and in turn, reduce disputes and complaints about fees (which can negatively impact on clients and barristers).

Resource Implications

39. The Professional Standards Team will also be overseeing the piloting of potential new requirements by the profession from early November to February 2018. The piloting will test what is set out in the consultation paper in terms of helping to determine not only what will have the greatest impact in terms of consumer benefit and driving competition, but also what will be feasible for the practising Bar to implement. We are keen to learn more about the challenges that may be associated with implementing any new requirements, and will seek to explore this with those who participate in the pilots.
40. Design of and recruitment to the pilots is underway and the publication of the consultation paper will include a callout for further volunteers. Feedback on the consultation and the piloting of potential new requirements will then inform the BSB's final policy position on transparency and in turn, the development of new rules. A rule change consultation paper will be issued in March 2018, with new rules coming into force by the end of 2018.

Equality Impact Assessment

41. An equality impact assessment (EIA) of the proposals in the consultation paper has been carried out. This identified that barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole

practitioners, and therefore may find complying with the new requirements more administratively burdensome.

42. However, our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010. In addition, we have detailed an action plan for improvement in the EIA. This includes reviewing whether there is any adverse impact for different groups (particularly barristers who are BME, male and over 35) and if so, seeking to mitigate the impact.

Risk Implications

43. The consultation paper proposes that any new mandatory rules in relation to disclosure should apply to all Public Access barristers. However, the BSB is also of the view that the suggested minimum disclosure requirements should apply to barristers undertaking referral work where the client is entitled to complain to the LeO. If the suggested minimum disclosure requirements only apply to Public Access barristers, but not barristers undertaking referral work where the client is entitled to complain to the LeO, there is a risk that fewer barristers will register to undertake Public Access work. This would have adverse implications in terms of access to justice.

Impact on Other Teams/Departments or Projects

44. The Professional Standards Team has worked with the Communications and Public Engagement Team to develop an engagement plan for the consultation, seeking feedback from the profession, consumer groups and others. The consultation will close in early January 2018.
45. The consultation also discusses the BSB's proposed approach to the supervision and enforcement of the new requirements: a system of "spot checking" barristers' compliance. If non-compliance is found, this would generally be dealt with through supervisory rather than enforcement action in the first instance.

Regulatory Objectives

46. In particular by adopting the CMA recommendations, the BSB will be protecting and promoting the consumer interest, improving access to justice and promoting competition in the provision of legal services.

Lead Responsibility

Joseph Bailey, Senior Policy Officer.
Ewen Macleod, Director of Strategy and Policy.

Annexes

Annex 1 – Draft Policy Consultation on Transparency Standards.
Annex 2 – Emerging Research Findings.

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**Response to the Competition and Market Authority's
Recommendations**

Policy Consultation on Transparency Standards

September 2017

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Foreword by BSB Chair, Sir Andrew Burns KCMG

This consultation paper sets out our proposed response to the Competition and Market Authority's (CMA's) recommendations that we, and the other legal services regulators, introduce new price and service disclosure requirements for all legal services providers.

It is important to highlight from the outset that this consultation is not about **pricing** regulation, it is about **transparency** regulation and seeking views on how we can implement measures that will ensure better access to justice for those that most need it. As part of this, we are required by the CMA to consult the public and the profession about how our regulated professions – in our case, the Bar of England and Wales – can be more transparent with consumers about **their services, their fees and the rights of redress that are available**. We agree with the CMA that making this information available across the legal sector may **encourage competition and help the consumers** who most need it, but we are also aware of some of the **unique challenges for the Bar**, in particular with regard to publication of fees. With the requirement to publish information about fees, services and redress, we are also seeking to break down perceptions of barriers and preconceived ideas that engaging the services of barristers is inevitably expensive. Greater transparency should lead to greater understanding of the different services available, and the consumer's ability to shop around. This in turn should have a positive impact on access to justice by making consumers more aware that barristers' services may in fact be accessible to them. Inevitably this will also mean that there is greater competition in the provision of legal services.

This is why we are especially keen to hear your views on our proposed approach to responding to the CMA's recommendations. We want to hear from legal consumers, and organisations representing their interests, about the information that barristers could disclose about their services that would be most helpful, and how this might best be presented. And we want to hear from practitioners about what might or might not be feasible to publish.

We have already had some interesting and informative discussions with consumer organisations, Bar representative groups and individual barristers about the issues raised here. These have helped inform our proposed approach. These discussions, together with our own desk-based research, have helped us identify good practice with regard to transparency already being undertaken by some chambers and by some parts of the Bar. We want to consider how best to build upon this to have the greatest impact in terms of consumer benefit

and increasing competition in the provision of legal services in order to address the CMA's recommendations more widely across the Bar.

We want to ensure that our approach is **proportionate** and that any new disclosure requirements are effective, promote competition and are targeted at those consumers who would most benefit from them. With this in mind, the focus of our proposed approach is initially on public access barristers. We also consider whether any new requirements should apply to the referral Bar when providing services to clients who are entitled to complain to the Legal Ombudsman (LeO).

As you will see, we have categorised each of the CMA's recommendations in relation to service, price and redress disclosure based on the potential benefits for consumers if they were able to access this information before agreeing to engage the services of a barrister. At this stage, we are proposing that only the recommendations which are categorised as having a "very high" impact on consumers form mandatory rules. For the remaining CMA recommendations where consumer impacts are assessed as either "high" or "medium", we propose issuing guidance, meaning the publication of such information would not be compulsory. As part of your response to this consultation, we ask you whether you agree with this approach to the categorisation of the CMA recommendations, and whether you agree with how we have assessed the likely consumer impact of each one.

The other very important point to make about our proposed approach is that it would permit a **high degree of flexibility** for chambers and individual barristers with regard to *how* information about their services is disclosed. Given the wide variety of legal services provided by barristers and the often highly complex nature of their work, we think it would be wrong if we mandated precise forms of wording to be quoted or fixed ways to publish fees. Our proposed approach would not do that, but would instead require parts of the Bar to comply with high-level disclosure requirements, leaving the precise method for doing that up to individual barristers or chambers. We are keen to hear what you think about this approach.

Finally, it is worth stressing that we are **open-minded** about some of the detail that we propose here. We are required to bring the Bar in line with the CMA recommendations, and with similar disclosure requirements which will be introduced for other lawyers by their regulators, but the way we go about this for barristers is up to us.

In conclusion, my colleagues on the Board and I do very much want to hear your thoughts on the approach that we outline here. I hope you can spare some time to share your views with

us. If you are a barrister or represent a set of chambers and you would like to get even more engaged with these issues, please note that we are looking for volunteers to help us pilot some of these disclosure measures. Please check our website for more information about how to get involved with these pilots.

We look forward to hearing from you.

Sir Andrew Burns KCMG

DRAFT

Executive Summary

In December 2016, the Competition and Markets Authority (CMA) published the findings of its [market study into legal services](#). Its recommendations fall broadly into four categories:

- delivering a step change in standards of transparency across the market;
- promoting the use of independent feedback platforms;
- making regulatory data more accessible; and
- making better information available to assist consumers (including by reviewing the content of the [Legal Choices](#) website).

This consultation contains the Bar Standards Board's (BSB's) approach to the first of these recommendations: **delivering a step change in standards of transparency for consumers**. The BSB will address the other CMA recommendations in the future in accordance with the [action plan](#) that it published in June 2017.

When referring to standards of transparency to help consumers, the CMA described this as the information needed to help them understand the price and service they will receive, what redress is available and the regulatory status of their provider, with the overall aim being to enable them to compare providers.

The CMA required all of the legal regulators in England and Wales **to work collaboratively** when implementing its recommendations in order to ensure a degree of consistency across the market. Consequently, while this consultation paper considers how best to implement the CMA's recommendation to improve transparency standards at the Bar, the other legal regulators will simultaneously be consulting on how to do this with their own regulated professions. The final approach for the Bar will need to be broadly similar to the approaches adopted by the other regulators.

Having said this, the focus in this paper is on **how best to make any new transparency measures work for the consumers of barristers' services**. The BSB's proposed approach – described in detail in this consultation paper – recognises the wide variety of legal services provided by barristers, the complex nature of their work and the unique ways in which barristers' services are engaged (in particular, the way in which many barristers are referred to consumers by other legal service providers).

After a brief introduction in Part I of this consultation paper, Part II outlines the CMA's recommendations on **price, service and redress** in more detail. It contains a table showing the minimum disclosure requirements recommended by the CMA.

Part II also summarises **the desk-based research conducted by the BSB** when exploring the current position with regard to information about fees provided by barristers' chambers. This provided evidence of good, transparent, practice in this area undertaken by some chambers. However, the research did find that 75% of chambers' websites made no reference to their fees and gave no guidance to this effect. This part also provides an overview of how we built on the initial research through **wider research**. This involved consultation and engagement with the profession, representative bodies and consumers.

Part III of this paper describes **the purpose and aims of this consultation**. It sets out that whilst the BSB has adopted the CMA's recommendations in principle, it is important to implement an approach that takes into account the unique nature of the Bar. It highlights the BSB's wish to be **proportionate** and explains that the proposal is for any new requirements to apply to barristers and entities undertaking Public Access work and those undertaking referral work for clients entitled to complain to LeO. It also sets out next steps, highlighting that any new mandatory measures will be implemented at the end of 2018, following further engagement, research and a rules consultation in Spring 2018.

Part IV of this consultation paper outlines **the BSB's proposed approach to improving transparency standards at the Bar**. The high-level approach has been to assess the likely benefit to consumers of each of the CMA's disclosure recommendations concerning price, service and redress. The likely benefits for each CMA recommendation have been categorised into having a "very high impact", a "high impact" or a "medium impact" for consumers of barristers' services. This part of the consultation seeks your views on the overall approach and on the BSB's assessment of each of the CMA's recommendations. The BSB is proposing that barristers should be required to disclose information about their services whenever the recommendation has been assessed as having a "very high impact". Where the impact is assessed as "high" or "medium", the BSB is proposing to issue guidance for chambers and barristers wanting to disclose this type of information (rather than making it compulsory).

The CMA recommendations that have been categorised as having a "very high impact" are as follows:

- Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement);
- Hourly fees (where charged) by grade of staff;
- (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged;
- A description of the services that the legal services provider provides;
- Indicative timescales of completing services and factors affecting these;
- Regulatory status, registration details; and
- Complaints process and access to the Legal Ombudsman (LeO).

This Part of the consultation poses a number of questions relating to the above assessments and those categorised as “high” and “medium” impact. It also asks whether you agree that the BSB should introduce guidance (rather than mandatory rules) for recommendations that have been categorised as having “high” and “medium” impact.

Next, the consultation seeks views on a number of additional factors that if they were to be mandated would go beyond the CMA recommendations. The BSB is open-minded about these factors and wants to gauge reactions about whether requiring barristers to disclose this additional information is necessary. These factors include:

- whether the BSB should require publication of first-tier complaints data, and if not, why not;
- whether it would be beneficial to require barristers to display the BSB logo on their websites, and if not, why not;
- whether Public Access barristers should be required to publish the BSB’s Guidance for Lay Clients on their websites, and if not, why not; and
- whether there are any other examples of what you consider to be good practice that you could draw to our attention.

In Part IV, consideration is given to **the scope of the new transparency arrangements** and we invite views on when and to whom the requirements should apply. The proposal is that any new mandatory requirements should apply to barristers and entities undertaking Public Access work, as this is where the need and impact would be greatest. However, the BSB is provisionally of the view that the suggested minimum disclosure requirements should also apply for referred work when the consumer is entitled to complain to LeO). We also seek your views on whether the requirements should apply to specific areas of work.

The BSB's view is that there must be a balance between information effectively improving consumer understanding on the one hand, and the requirements not overburdening barristers and chambers on the other. Therefore, it is not proposed that barristers undertaking referral work for clients funded by the Legal Aid Agency (for example, in the areas of immigration, crime and family law) would be required to publish legal aid rates. In addition, there is a section in the consultation to recognise a range of situations in which barristers may offer different rates for different types of consumers; for example, to cultivate a new relationship or to grow reputation outside their core market. The consultation seeks views on these issues and asks when the suggested minimum disclosure requirements should apply.

Part V of the consultation considers **the implementation of the proposed approach**. It begins by outlining two options for how price information might be published by chambers:

- Option one would be for self-employed barristers in chambers to provide individual price and service information on their chambers' website; and
- Option two would be for chambers to publish blended price and service information on their websites for all of the barristers in their set. This could take the form of price ranges, indicative fees for standard work, or average fees.

The BSB favours option two as being the more feasible in terms of providing minimum price and service information, but is keen to know what you think.

There are questions about how disclosure might work for BSB authorised entities, and how to ensure that the information disclosed by the Bar is **consistent, accessible and easily understood** by its intended audience.

This Part of the consultation goes on to consider **the need for flexibility** when requiring barristers to present their pricing models. It considers issues that may arise **around price discrimination, fee disputes** and **perceptions of value** insofar as the new transparency requirements could encourage consumers to focus disproportionately on price rather than the overall value of a barrister's services.

Part VI of the consultation asks for your views on the BSB's proposed approach to **the supervision and enforcement of the new transparency requirements**. In short, the consultation paper proposes a system of "spot checking" barristers' compliance with the new requirements. If non-compliance is found, this would generally be dealt with, in the first

instance, through supervisory, rather than enforcement, action. This would enable any regulatory action to focus on fixing the situation for the benefit of consumers in the future.

Part VII of the consultation reports that the BSB conducted an **Equality Impact Assessment** (EIA) on its proposals. The EIA identified that barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. However, our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010. However, we ask you to make us aware if you think that there could be any such impacts. We have also detailed an action plan for improvement in the EIA.

Finally, Part VII outlines **how to respond to the consultation**. There are a number of ways to respond including emailing professionalstandards@barstandardsboard.org.uk.

The deadline for responses is **XX**.

PART I: Introduction

1. The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted (for the purposes of this consultation, consumers are defined as those who use, have used or may be contemplating using barristers' services, whether on a referral or direct access basis). The BSB regulates over 15,000 barristers and 60 specialised legal services businesses in England and Wales.
2. The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its [final report](#) was published on 15 December. Its recommendations fall broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making regulatory data more accessible and making better information available to assist consumers (including by reviewing the content of the [Legal Choices](#) website). The CMA has asked each legal services regulator to introduce changes to its regulatory arrangements but with a degree of consistency across the sector, and recommended that the regulators form an implementation group.
3. At the end of June 2017, the BSB published an [action plan](#) detailing its response to the CMA's recommendations. This included a commitment to issue, by the end of September, a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. This consultation delivers on that commitment (for more information on the BSB's response to the CMA's other recommendations, see the action plan above).

PART II: CMA recommendation on transparency standards and BSB research

The CMA's recommendations

4. In its final report, the CMA recommended that the regulators deliver a step change in standards of transparency to *“help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services”*.¹
5. The report also stated that *“in the case of barristers, increased public transparency will be most relevant and beneficial to customers engaging a barrister through the public access scheme rather than issuing instructions via a solicitor. However, we note that the solicitors' role as intermediaries instructing barristers on behalf of clients will be strengthened if there is a general improvement in the level of transparency in the sector”*.²
6. In order to help consumers to understand price, service, redress and regulatory status and in turn, compare providers, the CMA recommended the following minimum disclosure requirements *before* providers are instructed:

Minimum disclosure requirements		
<i>Price</i>	<i>Service</i>	<i>Redress</i>
Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement)	A description of the services that the legal services provider provides	Regulatory status, registration details

¹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

² <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 281

Hourly fees (where charged) by grade of staff	Mix of staff that deliver the service	Complaints process and access to the Legal Ombudsman (LeO)
(Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged	Key (and discrete) stages of services	Professional indemnity insurance (PII) cover
Typical range of costs for different stages of cases (where appropriate)	Indicative timescales of completing services and factors affecting these	
Scale of likely disbursements (e.g. searches, court fees)		
Key factors that determine price (including disbursements)		

Table 7.1, CMA Final Report (2016)

7. There are ways in which barristers and specialised legal services businesses (known as entities) could go beyond this level of disclosure. This is explored in the consultation. However, the [BSB Handbook](#) currently only requires barristers and entities to confirm the following in writing to clients *after* they have been instructed:

- Acceptance of the instructions and the terms and/or basis on which they will be acting, including the basis of charging (Rule C22.1); and
- The client's right to make a complaint, including their right (if any) to complain to the LeO (Rule C99.1).

Desk research

8. While the BSB Handbook does not prevent disclosure before barristers are instructed, the BSB had limited information on the extent to which this was occurring in practice. As a first step to better understanding the current position, we undertook desk research examining the information which barristers' chambers provide on their websites regarding fees. We looked at 368 chambers in total, 329 of which had websites. The research classified these into four categories:
- Chambers which provide numerical data regarding their fees/prices (20/329, **6%**);
 - Chambers which provide detailed guidance about how fees are typically calculated, but do not provide any numerical data on fees/prices (26/329, **8%**);
 - Chambers which provide simple or basic reference to fees, with no numerical data or detailed guidance about how fees are typically calculated (36/329, **11%**); and
 - Chambers which made no reference whatsoever to their fees and no guidance to this effect (247/329, **75%**).
9. Of the 6% that did provide numerical data a handful provided rates by level of seniority. Of the 8% of Chambers that provide detailed guidance about how fees are typically calculated, only one provided examples of costs for a standard type of instructions.
10. While the research should be considered a snapshot, the findings strongly suggest that the majority of chambers do not provide information on their websites regarding fees. Introducing a requirement to disclose fees and charges is therefore likely to represent a significant culture shift for barristers, and indeed likely to require a number of barristers to make changes to the way they communicate the prices of their services. The introduction of new transparency requirements by each regulator is also likely to represent a significant culture shift for the entire legal profession. However, the intention is that the new requirements should lead to improvements for consumers. In 2016, the BSB's [Risk Outlook](#) identified that there is a lack of information to help consumers

choose an appropriate lawyer, with little to help them distinguish between lawyers on quality, value and affordability.³

11. The desk research we undertook also suggests that price and service information is most common in the areas of Public Access and family law. Chambers which either provide numerical data regarding their fees/prices, or detailed guidance about how fees are calculated, are more likely to specialise in Public Access and/or family law. This chimes with the CMA's statement that increased transparency will be most relevant and beneficial to customers engaging a barrister through the Public Access scheme. A recent survey commissioned by the BSB and our oversight regulator, the Legal Services Board (LSB), found that Public Access is most commonly undertaken in the area of family law.⁴

Further research and engagement

12. To inform this policy consultation, we built on the initial research through wider research involving consultation and engagement with the profession, representative bodies and consumers. In brief, the research focuses on (i) understanding the current issues and priorities for the profession surrounding price and service transparency, including examples of good practice; (ii) perceived barriers, drivers and potential risks to increasing transparency; and (iii) consideration of ways to increase and improve transparency in ways that consumers would find useful.
13. To date, representatives from four professional bodies, four consumer organisations and seven providers have been interviewed for this research, which is still in progress. Four further interviews with providers have been scheduled and a survey of a sample of legal consumers is underway. Some emerging headline findings from the interviews completed so far are outlined below.
14. A key perceived barrier to transparency is that "one size doesn't fit all" because of the complexity of each case. The main drivers for increased transparency are perceived to be legal aid cuts and competition by other providers (including better consumer engagement by other providers). While consumer organisations recognise that it is

³ https://www.barstandardsboard.org.uk/media/1751659/bsb_risk_outlook.pdf, page 42

⁴ <https://research.legalservicesboard.org.uk/wp-content/media/Public-Access-FINAL-Report.pdf>, page

complex to price legal services with accuracy before delivery, they would expect an estimation of the cost (rather than a definite price) to be available on a provider's website. Most of the providers interviewed – including those who currently publicise price and service information on their website – indicated that they would welcome new regulatory requirements on transparency. However, they expect the BSB to find a balance between overly rigid requirements and minimal requirements that would render the information provided meaningless. Finally, the main risk perceived by the profession is that competition will be driven only by price at the expense of the whole value of the service provided, including a specific expertise or the overall quality of the work (this is discussed further at paragraphs **89-90**).

15. These are emerging findings from a small qualitative sample and are intended to inform the approach to consultation and the approach to further piloting. They are not intended to be representative of the views or experiences of the profession as a whole and should be treated as indicative only.

Piloting

16. Alongside this policy consultation, we will also be piloting the suggested new mandatory transparency requirements. The piloting will test what is set out in this paper in terms of helping to determine not only what will have the greatest impact in terms of consumer benefit and driving competition, but also what will be feasible for the practising Bar to implement. We are keen to learn more about the challenges that may be associated with implementing any new requirements, and will seek to explore this with those who participate in the pilots. Lessons learned from the piloting – for example, the extent to which it helped consumers, and delivered a step change in standards of transparency – and responses to this consultation will be taken into account when developing any new rules.

PART III: Purpose of the consultation and next steps

Purpose and aims of the consultation

17. The BSB has accepted the CMA's recommendations in principle, as ultimately this will further the regulatory objectives set out in the Legal Services Act 2007 (the 2007 Act). In particular by adopting the CMA recommendations, the BSB will be protecting and promoting the consumer interest, improving access to justice, and promoting competition in the provision of services.
18. Although the BSB is accepting the recommendations in principle, it still recognises the challenges that the practising Bar will face in adapting to any new requirements, as this will be a significant culture shift from current practice. The BSB wishes to be proportionate in its proposed approach and for this reason the scope of any new requirements will be targeted where most needed. Currently it is proposed that any new requirements would only apply to barristers and entities undertaking Public Access work and those undertaking referral work for clients entitled to complain to LeO. Issues around scope and feasibility are discussed further at paragraphs **57-59** and **67-78**. The consultation also explores to what degree and how the information listed in the CMA report should be disclosed to have the greatest impact for both (i) practice at the Bar and (ii) consumers using barristers' services.
19. The BSB also recognises that the practising Bar is already transparent about price and service information at the point of engagement. Indeed, Rule C22.1 of the [BSB Handbook](#) requires barristers to confirm to clients in writing the acceptance of the instructions and the terms and/or basis on which they will be acting, including the basis of charging. In addition, Rule C125 requires Public Access barristers to confirm to clients in writing, and in clear and readily understandable terms, of the work which they have agreed to perform and a number of other particulars (including the limitations of their role). However, the CMA has identified a consumer need for legal services providers to be more transparent about price and service information prior to the point of engagement. This will assist consumers at an earlier point in the consumer journey, and enable them to shop around without necessarily having to contact various legal services providers.

20. It should also be noted that improving standards of price and service transparency is not the only remedy recommended by the CMA, as they have also recommended promoting the use of independent feedback platforms, making regulatory data more accessible and making better information available to assist consumers (including by reviewing the content of the [Legal Choices](#) website). The BSB and the other legal services regulators will be also be working to implement these recommendations between now and the end of 2018 and the aim is that, together with improved transparency standards, they will improve the consumer experience across the sector. For more information on the BSB's response to the CMA's other recommendations, see the [action plan](#).
21. The broad principles of the BSB's approach to improving transparency standards are included in this paper, the findings of which together with the findings from the pilots and the wider programme of research will help to inform and underpin a rule change consultation in March 2018, with new rules eventually coming into force by the end of 2018.
22. Our consideration of the most effective way of implementing the CMA's recommendations will also draw on the criteria for success identified in the Legal Services Consumer Panel's (LSCP's) March 2017 report. This concerned the [development of information remedies in legal services](#). The report stated, for example, that information remedies should be appropriate to consumers' ability to understand them, accessible and avoid 'information overload'. The report also stated information remedies may need to be targeted at groups of consumers differently, and that regulators should develop a system to monitor compliance with disclosure requirements.⁵ Drawing on the criteria for success identified in the LSCP's report will therefore help to consider:
- What information should be disclosed to improve consumer understanding i.e. what the principles and priorities for transparency requirements should be;
 - How the new transparency requirements should be applied proportionately and targeted at consumers who would most benefit;
 - The challenges and opportunities associated with new transparency requirements; and
 - The BSB's strategy for determining compliance with its new transparency requirements.

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http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2017032_2_Information_Remedies.pdf, page 5

Part IV: The BSB's proposed approach

23. The following section is set out in two parts. The first section explores to what extent and how the recommendations in the CMA report can be applied to practice at the Bar, with the aim of improving consumer understanding. The second section goes on to explore how the new transparency requirements should be applied proportionately (for example, to barristers and entities undertaking Public Access and/or referral work).

Priorities for transparency standards

24. In its final report the CMA sets out at table 7.1 (see paragraph 4) their view of the minimum levels of transparency that consumers should be able to expect from legal services providers. The CMA states that the list is not exhaustive and has not been tested with consumers. They also state that *“it will be for individual regulators to assess their own current regulatory requirements and the relevance of our recommendations to the services that their regulated professionals offer”*.⁶
25. One of the aims of the wider programme of research is to identify perceived barriers to publicising transparency information, along with examples of good practice and suggestions of how to increase and improve transparency (in ways that consumers would find useful). Based on these findings we have attempted to segment the different requirements based on expected consumer benefits. The BSB is now seeking views on which of the recommendations would have greatest impact for consumers, while also being a proportionate response in terms of scope and feasible in terms of implementation.
26. The paragraphs that follow examine the CMA recommendations in relation to price, service and redress. Each CMA recommendation has been categorised as either very high impact, high impact or medium impact in terms of expected benefit to consumers who may wish to use barristers' services. In this section the BSB is seeking views on whether it has correctly categorised each of the CMA's recommendations for greater transparency in relation to the Bar. The sections that follow will seek views on the scope and feasibility of the recommendations for those that practice at the Bar.

⁶ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 228

27. For the purposes of this consultation, the BSB is proposing that the CMA recommendations that have been categorised as very high impact in terms of expected consumer benefit would be the suggested minimum disclosure requirements that barristers would be required to publish. The feasibility of this proposed approach will be tested during the pilots. The recommendations in relation to price, service and redress are discussed in more detail below.

Price

28. The table below indicates how we have categorised the CMA's recommendations in relation to price, based on the potential benefits that publication of these factors would have for consumers.

Recommendation	Very high impact	High impact	Medium impact
1. Pricing and charging model (eg fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement)	✓		
2. Hourly fees (where charged) by grade of staff	✓		
3. (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged	✓		
4. Typical range of costs for different stages of cases (where appropriate)		✓	

Recommendation	Very high impact	High impact	Medium impact
5. Scale of likely disbursements (eg searches, court fees)		✓	
6. Key factors that determine price (including disbursements)		✓	

29. Our initial view is that recommendations 1, 2 and 3 in relation to price would have the most impact in terms of improving consumer understanding, facilitating shopping around and ultimately driving competition. As the CMA's report states, *"information issues, including both limited awareness of the sector and providers' lack of transparency, can...lead to consumers believing that they cannot afford legal advice and resorting to doing nothing or resolving their issues themselves, which may not be the best option"*.⁷
30. Within the pricing and charging model, fixed fees and conditional fee agreements ("no win, no fee" agreements) may be more attractive to consumers. However, this may be due to behavioural bias whereby consumers prefer fixed fees because they remove anxiety associated with not knowing how long certain types of work might take (and therefore the cost associated with this). In reality consumers may pay more for fixed fees than they would if they were charged a variable rate, as by charging on a fixed fee basis the provider will be taking on the risk that the work may take longer than expected and so build in premiums to compensate for this. When charging on a fixed fee basis, it is also important for barristers to be clear about the circumstances where additional fees may be charged. As the BSB's [Public and Licensed Access Review Report](#) notes, it can be hard for barristers to predict the time that will be spent on cases (and this can be more difficult with Public Access cases, particularly as the barrister will ordinarily need to spend more time liaising with the lay client).

⁷ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 10

31. However, there can nonetheless be transparency on what different fee levels will likely achieve; for example, “it will cost £X for a certain amount of work, but if a particular situation arises that requires Y action then there will be additional costs of £Z”. This would help to reduce information asymmetries and also manage clients’ expectations.⁸ The CMA’s report also includes an example of a ‘menu’ approach, “*whereby a core basic service is offered for a fixed fee with added extras charged at an additional standard rate*”.⁹ However, there is a risk that if consumers are not reasonably certain of the timescales involved, they could potentially make mistakes in determining whether this model of charging is more convenient/cost-effective than a linear one (for example, one based on an hourly rate).
32. Although the BSB has categorised the publication of hourly fees (where charged) by grade of staff as having a very high impact in terms of expected consumer benefit, it recognises the inherent difficulty in requiring barristers to do so. The setting of hourly fees is not necessarily straightforward and a number of factors may determine the rate that the barrister chooses to set (for example, seniority, type of client, whether the work is likely to have more socially beneficial outcomes and whether the barrister is trying to build business in a new area). The BSB is mindful that by mandating greater transparency we do not inadvertently have the consequence of restricting barristers from offering better rates to more socially beneficial causes. The BSB is mindful to ensure that it will not mandate a specific pricing model, rather it will expect barristers to be transparent about the model they do use (which may not necessarily be hourly rates) and the likely costs (whether this is calculated based on an hourly rate, fixed/capped fee or conditional fee/damages-based agreement). The most common pricing models which we believe are used by the Bar are listed at Annex A. How barristers may implement any new requirements and the challenges associated with doing so are discussed further at paragraphs **67-78**.

QUESTION 1: do you agree that the publication of price recommendations 1, 2 and 3 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

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https://www.barstandardsboard.org.uk/media/1824703/public_and_licensed_access_review_final_report.pdf, page 38

⁹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 234

Service

33. The table below indicates how we have categorised the CMA’s recommendations in relation to service, based on the potential benefits that publication of these factors would have for consumers.

Recommendation	Very high impact	High impact	Medium impact
7. A description of the services that the legal services provider provides	✓		
8. Mix of staff that deliver the service			✓
9. Key (and discrete) stages of services		✓	
10. Indicative timescales of completing services and factors affecting these	✓		

34. Core service information will be needed alongside core price information to allow consumers to make an informed decision on choosing a provider. As the CMA’s report states, “consumers also need to understand what the service is that providers are offering, [and] how it will be delivered...any disclosure on the service should therefore essentially explain what the ‘problem’ is that the service addresses and how the service addresses that problem or need”.¹⁰ In addition, the LeO’s [guide on good costs service](#) notes it is important for consumers to be able to “choose the way of dealing with their

¹⁰ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 239 – 240

case that suits their needs".¹¹ For this reason the BSB's initial view is that recommendations 7 and 10 in relation to service would have the greatest impact in improving consumer understanding, facilitating shopping around and ultimately driving competition. Where hourly fees are charged, the indicative timescales of completing services will also provide an estimate of the total cost. As the LeO notes, "*consumers will almost always want to know what the total cost of their case is likely to be*".¹² This was reflected in our engagement with consumer organisations, who recognise that while it is complex to price legal services with accuracy before delivery, they would expect an estimation of the cost (rather than a definite price) to be available on a provider's website. In addition, it is likely to be useful for chambers' websites to state that fees are indicative only, intended to enable comparison and that for the best possible fee estimate, consumers should contact the barrister or their clerk. It may also be useful for barristers to consider stating that whilst any other charges (eg court fees) are not included in the pricing and charging model, they could be a key factor that determines price.

QUESTION 2: do you agree that the publication of service recommendations 7 and 10 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

Redress

35. The table below indicates how we have categorised the CMA's recommendations in relation to redress, based on the potential benefits that publication of these factors would have for consumers.

Recommendation	Very high impact	High impact	Medium impact
11. Regulatory status, registration details	✓		

¹¹ <http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf>, page 7

¹² <http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf>, page 8

Recommendation	Very high impact	High impact	Medium impact
12. Complaints process and access to LeO	✓		
13. PII cover			✓

36. We consider that core information about redress (recommendations 11 and 12) should have the most impact in terms of improving consumer understanding. It would be straightforward for barristers to display the text “regulated by the Bar Standards Board” on their chambers website to indicate their regulatory status, and ensure their name on the website matches that on the BSB’s [Barristers’ Register](#). In addition, it would be useful for websites to clarify that self-employed barristers in chambers are separate and independent from one another, and not responsible for one another’s work. It is noted that the Bar Council already suggests making these disclosures on chambers’ websites to ensure compliance with the Provision of Services Regulations 2009.¹³
37. In relation to complaints process and access to LeO, there are some existing requirements in place in the Handbook that barristers need to adhere to. After barristers have been instructed, Rule C99.1 of the BSB Handbook requires them to inform clients in writing of their right to make a complaint, including any right to complain to the LeO.¹⁴ Rule C103 also states that chambers’ websites must display information about the chambers’ complaints procedure. These rules may need to be amended to ensure that the client has access to all the necessary information in relation to complaints before instructing a barrister (including the right to complain to LeO).

¹³ http://www.barcouncil.org.uk/media/437394/the_provision_of_services_regulations_2009.pdf, page 5

¹⁴ Those clients who are able to complain to the LeO are as follows:

- a) Individuals;
- b) Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- c) Charities with an annual income net of tax of less than £1 million;
- d) Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- e) Trustees of trusts with an asset value of less than £1 million; and
- f) Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the LeO.

QUESTION 3: do you agree that the publication of redress recommendations 11 and 12 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

High and medium impact recommendations

38. The tables above indicate what we have categorised as having high and medium impact in terms improving consumer understanding for those wishing to engage barristers' services. The BSB is proposing to produce guidance with illustrative scenarios for the recommendations that would have high and medium impact. While these recommendations would not form mandatory rules in the BSB Handbook, the BSB would still expect barristers to use the guidance to determine what additional factors (above the suggested minimum disclosure requirements set out in the rules) would increase transparency and consumer understanding. In determining whether any additional transparency measures should be adopted, barristers should have regard to the type of client they are offering services to (for example, a client may still be considered vulnerable even if not caught by the LeO definition), and the type of services they are offering (some areas of work may require a greater degree of transparency than others). Illustrative examples should help barristers to understand whether they should adopt additional measures and the type of measures they could adopt.

QUESTION 4: do you agree that the BSB should introduce guidance (rather than mandatory rules) for the CMA recommendations that have been categorised as having high and medium impact for consumers? If not, please explain why.

39. In the paragraphs that follow, we have set out our analysis as to why the remaining CMA recommendations have been categorised as having high and medium impact.

High impact recommendations

40. We have categorised recommendations 4 (typical range of costs for different stages of cases), 5 (scale of likely disbursements), 6 (key factors that determine price) and 9 (key and discrete stages of service) as having a high impact on improving consumer understanding, facilitating shopping around and driving competition.

41. The CMA's report states that "*information on the anticipated stages and timeline of delivery allows consumers to understand how quickly a service will be delivered (and*

what it is contingent upon)”.¹⁵ In a litigation case, for example, how quickly a service will be delivered may depend on the actions of other parties. More detailed price and service information can therefore operate together with core information for the benefit of consumers. The LeO’s document on [ten questions to ask your lawyer about costs](#) advises consumers as follows: *“don’t just ask how much the hourly rate is. Ask for an estimate of how many hours it will take and what’s included. Also ask what might cause it to change and see how likely this is. Sometimes you’ll be given a range for the costs, but this will help you budget and know where you stand”*.¹⁶ The CMA’s report also concluded that providing information on the key factors which determine price (for example, a standard will as opposed to a will involving a trust) is effective at improving consumer understanding.¹⁷

42. However, where more detailed price and service information does not operate together with core information, this may not work in the consumer’s interest. The BSB’s Family Law Clients Research Report, for example, found that *“for a clear majority [of clients], the final fees were in line with expectations but almost one in five faced higher fees than they were expecting. Two of these had not factored in the court fees which increased the final fee”*.¹⁸
43. The CMA’s report envisages that more detailed price and service information could operate together with core information by way of scenarios. The report states that *“consumers’ ability to anticipate the cost of legal services will be determined both by the pricing model adopted by a provider and the disclosures that the provider makes”*. It continues that *“a well-drafted fixed-fee disclosure will give consumers the greatest level of certainty. This certainty will decrease with the use of hourly rates. However, when accompanied by well-considered disclosures, potentially using scenarios, consumers can get a greater sense of likely charging”*.¹⁹ In this example, the core information (the hourly rate) operates together with the more detailed information; for example, the key (and discrete) stages of services, the typical range of costs for different stages of cases

¹⁵ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 240

¹⁶ <http://www.legalombudsman.org.uk/downloads/documents/publications/consume-Guide-Costs.pdf>, page 8

¹⁷ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, Appendix D, page 13

¹⁸ https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf, page 47

¹⁹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 232

and the scale of likely disbursements²⁰. This works in the consumer’s interest as it gives the best estimate of total cost and time.

44. Barristers could therefore provide illustrative price and service scenarios on their chambers’ website. They could, for example, take their three most common types of case over the past two years (i.e. cases that conformed to a specified scenario) and provide illustrative price and service information for each of them. This could include ranges and average values in relation to the total cost and time for each type of case. The BSB recognises that providing information in this way may cause difficulties for highly diversified chambers with multiple practice areas, but guidance with illustrative examples may help to combat this difficulty. The CMA’s report includes an example of an illustrative price and service scenario.²¹
45. Our initial view is that while more detailed price and service information could have a high impact for improving consumer understanding, it will still need to operate together with core information (i.e. the recommendations we are proposing as suggested minimum disclosure requirements) to fully benefit consumers. With regard to illustrative price and service scenarios, the CMA’s report notes that *“certainty on pricing decreases with complexity and any element of contested dispute, but again, with appropriate consideration, consumers can be given a sense of the potential scale of costs”*. It also notes that *“the use of scenarios can make potentially complicated information easy to engage with”*.²²
46. However, the consumer benefits of providing more detailed price and service information must be balanced against the criteria for success identified in the LSCP’s report. The report states that when devising information remedies, regulators *“should take into consideration...the ability of consumers to adequately comprehend the significance of the information”*. It also states that regulators should avoid ‘information overload’ as *“too much information can make decision-making worse”*.²³ It may therefore be that in some

²⁰ Although barristers would not be paying disbursements (as this would amount to handling client money) this would still be relevant information in order for clients to understand their overall costs.

²¹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 237

²² <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 232

²³

http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf, page 5

cases – for example, very complex contested disputes – requiring barristers to provide more detailed price and service information (including illustrative scenarios) would not effectively improve consumer understanding. Adopting these recommendations as mandatory rules may therefore be counterproductive to improving consumer understanding. As our research found, a key perceived barrier to transparency is that “one size doesn’t fit all” because of the complexity of each case.

Medium impact recommendations

47. We have categorised recommendations 8 (mix of staff that deliver service) and 13 (PII cover) as having a medium impact on improving consumer understanding, facilitating shopping around and driving competition.
48. The mix of staff that deliver the service is less likely to be relevant to the self-employed Bar than, for example, firms regulated by the Solicitors Regulation Authority (SRA). However, it may be a more important factor for those working in BSB regulated entities. Multi-person entities in particular are more likely to operate akin to SRA regulated firms, meaning it is more likely that a mix of staff may be providing services (for example, a paralegal, solicitor and/or barrister). Guidance could clarify that if a mix of staff will be providing services from an entity, this should be made clear to the client (particularly if there is going to be an impact on cost). For the self-employed Bar, the BSB Handbook does permit barristers to outsource work to pupils, devils (other barristers in the same chambers) and other third parties subject to rules on confidentiality and outsourcing. However, requiring disclosure on chambers’ websites may not be necessary as the barrister remains responsible to the client for the work.
49. With regard to PII cover, the CMA’s report states that “*while authorised providers may be required to hold PII, the nature and extent of the cover may vary by individual regulators’ requirements and the provider’s choices. We therefore see benefit in providers making this information available to consumers*”.²⁴ Self-employed barristers are required to be members of the Bar Mutual Indemnity Fund (BMIF) and take out at least the minimum limit of cover (£500,000). BMIF’s maximum limit of cover is £2.5 million and as barristers must have adequate insurance which covers all the legal

²⁴ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 247

services they supply to the public, some are required to take out additional cover on the open market.

50. The BSB's [Public and Licensed Access Consultation](#) (published in June 2017) proposed that after barristers have been instructed, they should be required to inform clients in writing of the level of PII cover they hold. However, as there is no evidence of widespread under-insurance by Public Access barristers, this may not be necessary. There are also concerns that if a barrister disclosed their level of PII cover, this would be commercially sensitive information which may encourage the pursuit of claims and, for this reason, require the written permission of their insurer(s).²⁵ This however would only bear relevance in relation to barristers who have sought top-up cover on the open market. The minimum level of PII cover is a matter of public record for each regulator, so this would already be readily accessible information. Public Access clients and clients entitled to complain to LeO (those to whom the new transparency requirements will be targeted) are also less likely to instruct barristers in matters where more than the minimum level of PII cover is required. A better approach, therefore, may be for barristers to confirm (in accordance with the BSB Handbook) that they have insurance cover for all the legal services they supply. In addition, they could disclose the following on their chambers' website: the name of their insurer(s), their contact details and the territorial coverage of the insurance. This is in any event required to ensure compliance with the Provision of Services Regulations 2009.²⁶
51. As the two recommendations discussed above are only likely to have medium impact in terms of expected consumer benefit, it would be disproportionate to mandate these as requirements in rules. Guidance could cover the scenarios in which it would be most beneficial to provide this type of information.

QUESTION 5: do you agree with the BSB's analysis of why the high and medium impact recommendations should not be adopted as mandatory rules? If not, please explain why.

²⁵ <http://www.legalfutures.co.uk/latest-news/how-much-should-you-tell-clients-about-your-pii>

²⁶ <http://www.legislation.gov.uk/ukdsi/2009/9780111486276/regulation/8>

Additional factors to consider beyond CMA recommendations

52. In addition to the recommendations the CMA has identified, the BSB is of the view that there is other information which may be beneficial to consumers. This includes:

- Providing first-tier complaints data;
- Using the BSB logo; and
- Providing the BSB's Guidance for Lay Clients (when undertaking Public Access work) to all Public Access clients.

First-tier complaints data

53. Barristers could be required to provide first-tier complaints data on their chambers' website i.e. data on complaints which have been made to them directly in the first instance (before they may have been made to the LeO). This could take the form of the previous 3 years' worth of data, allowing consumers to see any trends over time. This data could potentially be a useful signal of quality for consumers. However, the consumer benefits of providing this data must be balanced against the risk that it could be misinterpreted. A barrister who undertakes a higher volume of standardised and transactional work, for example, may have more first-tier complaints made to them than other barristers, and so appear to be providing a poorer service when this is not in fact the case. The volume of Public Access work may also skew the data as there may be a greater proportion of complaints in relation to such work than referral work. If consumers do not understand how first-tier complaints made to barristers are categorised on chambers' websites, providing this data may also lead to 'information overload' and not effectively improve understanding.

QUESTION 6: do you think the BSB should require publication of first-tier complaints data? If not, please explain why.

Use of BSB logo

54. A further potential requirement could be for barristers to display the BSB's logo on their chambers' website. While the BSB's current policy is to not allow use of its logo for web, promotional or marketing material, this could change if it was considered useful for improving consumer understanding of regulatory status. The logo could also link through

to the homepage of the BSB's website or the Barristers' Register, which would make it easier for consumers to engage with regulatory information such as the [guide on using a barrister](#), the BSB Handbook and whether the barrister holds a practising certificate. However, if the logo did link through to the BSB's website, the BSB would need to develop a digital smart badge as logos can be fraudulently used to give credence to fake websites. In contrast, a digital smart badge would provide assurance to a consumer that the barrister was in fact regulated by the BSB. It may also be that barristers displaying the text "regulated by the Bar Standards Board" on their chambers' website would sufficiently improve consumer understanding of regulatory status.

QUESTION 7: do you think it would be beneficial for barristers to display the BSB's logo on their website? If not, please explain why.

Providing Public Access Guidance for Lay Clients to all Public Access clients

55. The BSB's [Public and Licensed Access Review Report](#) (published in March 2017) recommended that the BSB revisit its [Public Access Guidance for Lay Clients](#), and explore whether to make provision of the guidance to lay clients mandatory for barristers.²⁷ This could usefully ensure that all clients have the same basic level of understanding about Public Access, reduce the amount of information which needs to be included in client care letters and reduce the need for frequent communication between barristers and Public Access clients. One way of achieving this would be to require Public Access barristers to publish the guidance on their websites.

QUESTION 8: do you think Public Access barristers should be required to publish the BSB's Guidance for Lay Clients on their websites? If not, please explain why.

56. Apart from the additional potential requirements highlighted above, the BSB would be interested to hear about any other recommendations that may help improve consumer understanding, facilitate shopping around and drive competition.

QUESTION 9: are there any other examples of what you consider to be good practice that you could draw to our attention?

²⁷

https://www.barstandardsboard.org.uk/media/1824703/public_and_licensed_access_review_final_report.pdf, page 36

Scope and application of new transparency requirements

57. Only self-employed barristers and BSB regulated entities will need to comply with the new transparency requirements. Barristers employed in entities regulated by other approved regulators will need to comply with the requirements of the relevant regulator.
58. Beyond this, there are questions about the scope of the compliance requirements for barristers and entities undertaking referral work, and those undertaking Public Access work. The BSB's action plan in response to the CMA's recommendations notes that the CMA *"has prioritised public access barristers as having the greatest potential impact on transparency rather than the referral Bar. This is because the main focus is on difficulties that consumers and small businesses face in "shopping around", such as lack of information about price, difficulty in judging quality, etc. The CMA did not make specific recommendations in relation to barristers doing referral work. It does, however, note that the solicitor's role as an intermediary may be strengthened if there are general improvements in the level of transparency in the sector"*.²⁸
59. The BSB's regulation should be targeted at those who need it most. Similarly any new transparency requirements that we impose should be effective, proportionate and targeted. For the purposes of this consultation, we are currently suggesting that the CMA recommendations which would have a very high impact for consumers looking to engage a barrister should be the subject of future mandatory rules. The following paragraphs discuss the extent to which those requirements should apply (under which circumstances and to whom).

To whom should the requirements apply?

60. As set out above, it is clear that the CMA has prioritised Public Access work as opposed to referral work. For this reason, it is proposed that the CMA recommendations which have been identified as suggested minimum disclosure requirements at page 8 of the executive summary should apply to all Public Access barristers. However, the BSB is provisionally of the view that there are situations in which disclosing the suggested minimum disclosure requirements would also be useful for the referral Bar. It is clear that this could strengthen the role of the solicitor to act in the client's best interests. If this additional information is not provided, it may be difficult to strengthen the roles of

²⁸ https://www.barstandardsboard.org.uk/media/1836947/cma_-_action_plan.pdf, page 3

solicitors and other intermediaries such that there is greater competition in the market for barristers' services.

61. The LSCP's report also states "*there is early evidence that information remedies might affect groups of consumers differently, including vulnerable consumers. There is also emerging recognition that information may need to be targeted differently e.g. to vulnerable consumers*".²⁹ This suggests that, even if barristers and entities undertaking referral work are not generally required to comply, there may be value in requiring them to comply (along with Public Access barristers) if they undertake work in areas where there are more likely to be vulnerable clients. Family law would be one example, and price transparency is already more common in this area (see paragraph 11). Therefore one way in which to ensure the new requirements are proportionate and effective for those who would most benefit would be to require barristers undertaking referral work to disclose the new requirements only to those clients who would be entitled to complain to LeO³⁰. The BSB recognises that some barristers may be performing a mix of work meaning that only a proportion of their clients would fall into the LeO definition. However, the BSB is of the view that even if a small proportion of work is carried out for clients that fall within the LeO definition, the mandatory rules requiring publication of the very high impact information would still be required. Another potential option would be to target any new rules to more high-risk practice areas; for example, immigration, crime and family. If this approach were to be adopted, it is likely that the majority of clients seeking advice/representation in these areas of law would fall into the LeO definition in any event. It is also not proposed that barristers undertaking referral work for clients funded by the Legal Aid Agency (for example, in the areas of immigration, crime and family law) would be required to publish the suggested minimum disclosure requirements in relation to price. However, barristers undertaking this work would be required to comply with the suggested minimum disclosure requirements in relation to service and redress.

QUESTION 10: do you agree that the suggested minimum disclosure requirements should apply to all barristers undertaking Public Access work? If not, please explain why.

²⁹

http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf, page 5

³⁰ See footnote 15 for definition of clients that would be entitled to complain to LeO.

QUESTION 11: do you think that the suggested minimum disclosure requirements should apply to barristers undertaking referral work, either:

- (a) when dealing with clients that are entitled to complain to LeO?;**
- (b) by reference to high-risk practice areas?; or**
- (c) a combination of (a) and (b) above?**

QUESTION 12: regarding work funded by the Legal Aid Agency, do you agree that the suggested minimum disclosure requirements:

- (a) should not apply in relation to price?; but**
- (b) should apply in relation to service and redress?**

QUESTION 13: are there any other options (other than those discussed above) to ensure any new rules are targeted, proportionate and effective?

When should the requirements apply?

62. The BSB is proposing that all Public Access barristers will need to publish the suggested minimum disclosure requirements as a mandatory measure. Similarly, it is suggested that barristers undertaking referral work for clients entitled to complain to LeO, or potentially working in certain high-risk practice areas, could also be required to publish the suggested minimum disclosure requirements.
63. Although the BSB will require some mandatory measures through the introduction of new rules, we recognise that in certain situations barristers may offer different rates for different types of client based on demand led and other factors (for example, they may wish to distinguish between public authority clients and others, and matters that have a pro bono element). The BSB is also aware that at times barristers may wish to offer a lower fee to cultivate a new relationship, or grow their reputation outside of their core market. In addition, it would be reasonable to expect that barristers who operate in different chambers through associate chambers have different rates in different regions. The BSB will be mindful of these factors when introducing any new rules. Taking this into consideration the BSB is not proposing to mandate a specific pricing model. However, we would expect barristers to be transparent about the model they use and the likely costs. This would allow barristers to take factors that are unique to their practice into account (such as those highlighted above) when setting out any pricing model.

64. For example, the BSB’s Family Law Clients Research Report has shown that *“questions about fees are covered for most clients in [the] first consultation with hourly rates the most often quoted option. Some barristers had shown flexibility and reduced the standard hourly rates to deal with the specific circumstances of a particular client. A higher percentage of direct access clients had a fixed fee option compared to referred clients”*. The research also showed that *“a number of barristers were willing to be flexible and offered a reduced rate on their standard hourly or daily fee...Fixed fees were less commonplace but still offered by a fifth of barristers. Most fees charged to direct access clients were based on a fixed fee package but a few were based on an hourly rate”*.³¹
65. Overall, the BSB’s view is that there must be a balance between information effectively improving consumer understanding on the one hand, and the requirements not overburdening barristers and chambers on the other. This was reflected in the findings of our research. Most of the providers interviewed – including those who currently publicise price and service information on their website – indicated that they would welcome new regulatory requirements on transparency. However, they expect the BSB to find a balance between minimal requirements that would render the information provided meaningless, and overly rigid requirements. The CMA’s report also notes that transparency *“generates a virtuous cycle for competition where providers are driven by informed consumers to compete and innovate in order to improve the value of their offering and to win custom”*.³² It is therefore possible that, even in areas to which the requirements do not apply, the requirements could lead to greater transparency and in turn, competition in the market for barristers’ services.
66. The BSB’s action plan in response to the CMA’s recommendations commits us to evaluating the effectiveness of the new transparency requirements from December 2020 (two years after they come into force). This evaluation will include an assessment of whether they have been applied proportionately.

QUESTION 14: do you have any comments on *when* the suggested minimum disclosure requirements should apply to Public Access barristers and those undertaking referral work for clients entitled to complain to LeO?

³¹

https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf, page 10 and page 40

³² <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 57

PART V: Implementing the proposed approach

67. The following section explores the challenges and opportunities associated with implementing the new transparency requirements. Views on this section of the consultation will help to inform how feasible the BSB's proposed approach is for practice at the Bar. The issues highlighted below will also be tested further during the pilots.

Provision of price information by chambers

68. This section sets out how the suggested minimum disclosure requirements could be implemented by chambers and entities. The BSB is not proposing a “one size fits all” model to implement any new disclosure requirements. The BSB is proposing to introduce mandatory rules in relation to the suggested minimum disclosure requirements (highlighted at page 8 of the executive summary) but accepts that there may be variations in how barristers choose to provide that information. For example, there are likely to be differences as to what can be provided at a chambers level, compared to what a sole practitioner may be able to provide. Below we discuss options as to how barristers might comply with the disclosure of mandatory pricing information.

Option one

69. The first option would be for self-employed barristers in chambers to provide *individual* price and service information on their chambers' website. This would be comparable to the option reflected in the CMA's remedies package for their private healthcare market investigation. It may present some competition law risks insofar as greater transparency on individualised rates could potentially foster collusion. For example, as self-employed barristers in Chambers compete with each other, greater transparency requirements could lead to pressure upon members of chambers to co-ordinate with each other to keep prices at a certain level, agree to charge a fixed price or put mechanisms in place for setting prices. When devising the remedies package in the private healthcare market, the CMA did consider the point of collusion but were of the view that the benefits outweighed the risks.

Option two

70. The second option could be for self-employed barristers in chambers to provide *blended* price and service information on their chambers' website. This could take the form of ranges, indicative fees for standard work or average fees. Chambers could, for example, take the three most common types of case for *all barristers in chambers* (i.e. cases that conformed to a specified scenario) and provide illustrative price and service information for each of them based on averages of current prices. Variants of this approach could be to:
- Take the three most common types of case for barristers in chambers specialising in particular areas of law and provide averages of current rates; or
 - Take the three most common types of case for barristers in chambers with less than five years' practising experience, between five and ten years' practising experience and more than ten years' practising experience and provide averages of current rates. Our engagement with the profession found that individual rates are set according to a number of variables, including using the length of their practising experience as a proxy for their expertise.
71. The BSB's view is that option two would be more straightforward to administer than providing price and service information for each individual barrister (as set out in option one). Ease of administration is important as price and service information would need to be updated regularly to ensure it is useful for consumers. Taking the approaches highlighted in option two would also avoid the 'information overload' discussed in the LSCP's report, and make the information on chambers' websites easier for consumers to understand and compare.
72. The examples which follow are intended to demonstrate how barristers and chambers could comply with the requirements to disclose the information categorised as very high impact. Further examples show how barristers and chambers could build on this by disclosing the information categorised as 'high impact' and/or 'medium impact', thereby demonstrating best practice. For both the information categorised as (1) 'very high impact' and (2) 'high and medium impact', there are examples of two different disclosure options:

- Option one: self-employed barristers in chambers provide *individual* price and service information on their chambers' website; and
- Option two: self-employed barristers in chambers provide *blended* price and service information on their chambers' website. This could take the form of ranges, indicative fees for standard types of work or average fees.

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Very high impact disclosure (required) – option one**CHERRY TREE CHAMBERS
BARRISTER A**Mediation services

I can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct me **X** weeks before the mediation (**X** weeks before if complex).

I am able to complete all of the preparation for a fixed fee of **£X – £X** (**£X – £X** if the mediation will be complex). I will agree the fixed fee with you before I start preparation.

I will attend the mediation for a fixed fee of **£X** for the day. If it takes longer than a day, I will charge an additional rate of **£X** per hour.

If the mediation is cancelled more than **X** weeks before, I will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, I will charge **X%** of the fixed fee.

All of my fees include VAT. This fee information is correct as of **X**, but is indicative only. You should contact my clerk **X** on **X** for the best possible fee estimate.

About me and Cherry Tree Chambers

I am regulated by the [Bar Standards Board](#) (BSB). I hold a current practising certificate and my details are displayed on the BSB's [Barristers' Register](#).

I am a self-employed barrister at Cherry Tree Chambers. Barristers in chambers are separate and independent from one another, and not responsible for one another's work.

Complaints information

If you are not satisfied with the service I provide, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from Cherry Tree Chambers, you can make a complaint to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

73. In this example, barrister A has complied with the requirements to disclose the information categorised as very high impact. They have provided:

- Their pricing and charging model (fixed fees and an additional hourly rate);
- Their hourly fees (where charged);
- Their indicative fixed fees, factors that may affect these and the circumstances where additional fees may be charged;
- A description of the legal services that they offer;
- Indicative timescales of completing services, and the factors affecting these;
- Their regulatory status and registration details; and
- Information about the complaints process and access to the LeO.

Very high impact disclosure (required) – option two**CHERRY TREE CHAMBERS – MEDIATION SERVICES**

Our barristers can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct your barrister **X** weeks before the mediation (**X** weeks before if complex).

Your barrister will be able to complete all of the preparation.

If your barrister has less than five years' practising experience, they will complete the preparation for an *average* fixed fee of **£X** (**£X** if the mediation will be complex).

If your barrister has between five and ten years' practising experience, they will complete the preparation for an *average* fixed fee of **£X** (**£X** if the mediation will be complex).

If your barrister has more than ten years' practising experience, they will complete the preparation for an *average* fixed fee of **£X** (**£X** if the mediation will be complex).

Your barrister will agree the fixed fee with you before they start preparation.

Your barrister will attend the mediation for an *average* fixed fee of **£X** for the day. If it takes longer than a day, they will charge an *average* additional rate of **£X** per hour.

If the mediation is cancelled more than **X** weeks before, *on average* your barrister will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, *on average* they will charge **X%** of the fixed fee.

All of our barristers' fees include VAT. These fee estimates are correct as of **X**, but each barrister will charge different fees and calculate those fees based on what you want them to do. The average fees for each type of barrister are indicative only and intended to enable comparison. You should contact the clerks on **X** for the best possible fee estimate.

About Cherry Tree Chambers

Our barristers are regulated by the [Bar Standards Board](#) (BSB). They all hold current practising certificates and their details are displayed on the BSB's [Barristers' Register](#).

Barristers at Cherry Tree Chambers are self-employed. Barristers in chambers are separate and independent from one another, and not responsible for one another's work.

Complaints information

If you are not satisfied with the service your barrister provides, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from us, you can make a complaint about your barrister to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

74. In this example, the barristers in the chambers have also complied with the requirements to disclose the information categorised as very high impact. They have provided:

- The pricing and charging model used in chambers (their average fixed fees and average additional hourly rate);
- Their average hourly fees (where charged);
- Their indicative (average) fixed fees, factors that may affect these and the circumstances where additional fees may be charged;
- A description of the legal services that they offer;
- Indicative timescales of completing services, and the factors affecting these;
- Their regulatory status and registration details; and
- Information about the complaints process and access to the LeO.

High and medium impact disclosure (best practice) – option one**CHERRY TREE CHAMBERS
BARRISTER A**Mediation services

I can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct me X weeks before the mediation (X weeks before if complex). I am able to complete all of the preparation, which may include:

Preparing the core bundle for a fixed fee of £X – £X (£X – £X if the mediation will be complex). This is normally prepared by one party, so is optional;

Preparing your position statement for a fixed fee of £X – £X (£X – £X if the mediation will be complex). A position statement is required; and

Attending a pre-meeting for a fixed fee of £X – £X (£X – £X if the mediation will be complex). This is optional.

I will agree the fixed fees with you before I start preparation.

I will attend the mediation for a fixed fee of £X for the day. If it takes longer than a day, I will charge an additional rate of £X per hour.

If agreement is reached, I am also able to draft the mediation agreement for a fixed fee of £X – £X (£X – £X if the mediation will be complex).

If the mediation is cancelled more than X weeks before, I will charge X% of the fixed fee. If it is cancelled less than X weeks before, I will charge X% of the fixed fee.

All of my fees include VAT. This fee information is correct as of X, but is indicative only. You should contact my clerk X on X for the best possible fee estimate.

Room hire

You can hire rooms at Cherry Tree Chambers for the mediation. This costs £X per day. You can also hire rooms at X for £X per day.

About me and Cherry Tree Chambers

I am regulated by the [Bar Standards Board](#) (BSB). I hold a current practising certificate and my details are displayed on the BSB's [Barristers' Register](#).

I am a self-employed barrister at Cherry Tree Chambers. Barristers in chambers are separate and independent from one another, and not responsible for one another's work.

I have insurance cover for all the legal services I supply, and hold professional indemnity insurance with the [Bar Mutual Indemnity Fund Ltd](#) (BMIF). The coverage is worldwide subject to their terms, which are available on their website. The contact details for the BMIF are X.

Complaints information

If you are not satisfied with the service I provide, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from Cherry Tree Chambers, you can make a complaint to the Legal Ombudsman. This must be done within the time limit of X.

The contact details for the Legal Ombudsman are X.

75. In this example, barrister A has complied with the requirements to disclose the information categorised as very high impact (see above). They have also built on this by disclosing *all* of the information categorised as high impact and medium impact (in bold). They have provided:

- Their typical range of costs for different stages of cases (where appropriate);
- The scale of likely disbursements;
- The key factors that determine price (including disbursements);
- The key (and discrete) stages of services; and
- Information about their PII cover.

76. However, barristers should consider carefully whether disclosing this further information would benefit consumers, and ensure that they avoid ‘information overload’. Some types of client (for example, more vulnerable clients) and some areas of work may require a greater degree of transparency than others.

High and medium impact disclosure (best practice) – option two**CHERRY TREE CHAMBERS – MEDIATION SERVICES**

Our barristers can represent you in a mediation and help you to try to resolve your dispute.

You will normally need to instruct your barrister **X** weeks before the mediation (**X** weeks before if complex).

Your barrister will be able to complete all of the preparation, which may include:

Preparing the core bundle for an average fixed fee of £X (£X if the mediation will be complex). This is normally prepared by one party, so is optional;

Preparing your position statement for an average fixed fee of £X (£X if the mediation will be complex). A position statement is required; and

Attending a pre-meeting for an average fixed fee of £X (£X if the mediation will be complex). This is optional.

Your barrister will agree the fixed fees with you before they start preparation.

Your barrister will attend the mediation for an average fixed fee of £X for the day. If it takes longer than a day, they will charge an average additional rate of £X per hour.

If the mediation is cancelled more than **X** weeks before, *on average* your barrister will charge **X%** of the fixed fee. If it is cancelled less than **X** weeks before, *on average* they will charge **X%** of the fixed fee.

All of our barristers' fees include VAT. These fee estimates are correct as of **X**, but each barrister will charge different fees and calculate those fees based on what you want them to do. The average fees are indicative only. You should contact the clerks on **X** for the best possible fee estimate.

Room hire

You can hire rooms at Cherry Tree Chambers for the mediation. This costs £X per day. You can also hire rooms at **X for £X per day.**

About Cherry Tree Chambers

Our barristers are regulated by the [Bar Standards Board](#) (BSB). They all hold current practising certificates and their details are displayed on the BSB's [Barristers' Register](#).

Barristers at Cherry Tree Chambers are self-employed. Barristers in chambers are separate and independent from one another, and not responsible for one another's work.

Our barristers have insurance cover for all the legal services they supply, and hold professional indemnity insurance with the Bar Mutual Indemnity Fund Ltd (BMIF). The coverage is worldwide subject to their terms, which are available on their website. The contact details for the BMIF are **X.**

Complaints information

If you are not satisfied with the service your barrister provides, you can make a complaint to Cherry Tree Chambers. Information on the chambers' complaints procedure is available on this website.

If you are not satisfied with the response you receive from us, you can make a complaint about your barrister to the Legal Ombudsman. This must be done within the time limit of **X**.

The contact details for the Legal Ombudsman are **X**.

77. In this example, the barristers in the chambers have complied with the requirements to disclose the information categorised as very high impact (see above). They have also built on this by disclosing *all* of the information categorised as high impact and medium impact (in bold). They have provided:

- Their average costs for different stages of cases (where appropriate);
- The scale of likely disbursements;
- The key factors that determine price (including disbursements);
- The key (and discrete) stages of services; and
- Information about their PII cover.

78. However, barristers should consider carefully whether disclosing this further information would benefit consumers, and ensure that they avoid ‘information overload’. Some types of client (for example, more vulnerable clients) and some areas of work may require a greater degree of transparency than others.

QUESTION 15: do you agree that option two would be more feasible in terms of providing minimum price and service information? If not, please explain why.

Entities

79. Entities could provide prices at entity level as they are a single economic unit (known in competition law as a ‘single undertaking’).³³ This would place BSB regulated entities on a similar footing to SRA regulated firms as, for example, they can generally set collective fees for their employees/partners as a standard offering for the firm. More complex scenarios may arise where barristers have involvement in different chambers and entities. This could potentially be the subject of future guidance.

QUESTION 16: are there any other issues in relation to entities providing the suggested minimum disclosure requirements (other than those highlighted above) that the BSB should consider?

³³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/482193/Open_Letter_to_private_medical_practitioners.pdf, page 4

Accessibility of information provided

80. The LSCP’s report notes that accessibility is a key criterion for the success of information remedies. It states that *“for it to be effective consumers must be aware of the information remedies in the first instance. Information remedies may need to be accompanied with measures around the prominence and timeliness of the disclosure”*.³⁴ It is therefore suggested that it should be a requirement for the necessary price, service and redress information to be made sufficiently prominent on chambers’ websites; for example, by requiring that there is a dedicated page or section. It is also suggested that it should be a requirement for the necessary price and service information to be updated regularly. In addition, chambers may wish to consider including information on whether they are willing to offer innovative price structures (such as capped fees or the first hour for free).
81. It may also be useful to include core information on the BSB’s website; for example, practice area information. Such information could be linked to the BSB Barristers’ Register. If the BSB did choose to provide information more centrally, this would allow third parties to access it in a consistent way to make comparison easier for consumers. Another option would be for core information to be included on third party sites, which would also allow consumers to access all of the relevant information in one place (the Bar Council’s Direct Access Portal, for example, already allows consumers to search for barristers by practice area). Ultimately both of these options could make it easier for consumers to shop around.

QUESTION 17: do you think it would be useful to provide core information on either the BSB’s website or through other third party sites?

Consistency of information provided

82. It is important that there is some degree of consistency in the information on different chambers’ websites, as this will make it easier for consumers to understand and compare. The LSCP’s report notes that information remedies *“may need to be prescriptive, particularly where standardisation for the purposes of comparability is an*

³⁴

http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf, page 5

important component of effectiveness. There may be a need to dictate more precisely the format in which information is provided".³⁵ It would be straightforward for most of the core redress information categorised as very high impact at paragraph 36 (regulatory status, registration details, the complaints process and access to the LeO) to be standardised across chambers' websites. However, it would be more difficult to standardise some of the core price and service information listed as very high impact, the more detailed price and service information (including illustrative scenarios) listed as high impact and the other information listed as medium impact.

83. The CMA's report notes the difficulty with standardising illustrative scenarios in particular. It states that *"the usefulness of scenarios in aiding shopping around may at least in part be determined by how consistently providers of the same service adopt the same approach. However, even where the scenarios used are not identical they will give an indication of a supplier's likely prices, which can help consumers decide whether to use that supplier"*.³⁶ As discussed at paragraph 46, it may be that in some cases – for example, very complex contested disputes – requiring barristers to provide illustrative scenarios may not in fact improve consumer understanding. Nonetheless, the CMA's report states that *"for services which are more bespoke, or are delivered in stages, alternative forms of disclosure may be possible, such as setting out the likely costs of each stage under certain circumstances"*.³⁷ The extent to which rules relating to the provision of price, service and redress information can (and should be) prescriptive will therefore be tested in the piloting of the new transparency requirements.

QUESTION 18: are there any other issues in relation to consistency of information (other than those highlighted above) that the BSB should consider?

The need for flexibility

84. The piloting and design of the new requirements will also take account of the need for flexibility in the delivery of legal services. The Law Society's [price and service transparency toolkit](#) (published in December 2016) notes that *"as each client will have*

³⁵

http://www.legalservicesconsumerpanel.org.uk/publications/consultation_responses/documents/Information%20remedies%20Final.pdf, page 5

³⁶ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 237-238

³⁷ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 238

differing circumstances it may not be possible to advertise prices that match every possible scenario. Some firms publicise their fee for a standard package, while explaining that the cost of the service may have to be adapted due to the situation faced by the client. They then invite potential clients to contact them to receive the most accurate possible fee estimate".³⁸ Similarly, the disclosure requirements in the CMA's report (see paragraph 6) only relate to the provision of indicative price and service information. It is therefore unlikely that the new transparency requirements will compromise the need for flexibility in service delivery, or risk barristers undervaluing work which they are then obliged to undertake at a set price (except in the case of fixed fee agreements, where this is already a risk). Indeed, self-employed barristers should not be setting prices at chambers level, as this could constitute a breach of competition law.

85. Flexibility on price can also work in the consumer's interest. The BSB's Family Law Clients Research Report found that *"questions about fees are covered for most clients in [the] first consultation with hourly rates the most often quoted option. Some barristers had shown flexibility and reduced the standard hourly rates to deal with the specific circumstances of a particular client"*.³⁹ This underlines the importance of the new requirements taking account of the need for flexibility.

QUESTION 19: are there any other issues in relation to the need for flexibility (other than those highlighted above) that the BSB should consider?

Price discrimination

86. There is an inherent practical difficulty in that price flexibility in the legal services market often takes the form of price discrimination in relation to different types of consumers. However as highlighted earlier in the consultation, whilst the BSB would be introducing mandatory rules in relation to the suggested minimum disclosure requirements which would require publication of core information, we acknowledge the fact that barristers may in certain circumstances wish to charge different prices. This would be acceptable, but the BSB would still expect a certain degree of transparency around the circumstances in which this might arise. An example would be practitioners setting

³⁸ <http://www.lawsociety.org.uk/support-services/advice/articles/price-and-service-transparency-toolkit/>, page 5

³⁹ https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf, page 10

different hourly rates depending on the client: low for Government bodies, medium for non-departmental public bodies and high for corporate bodies. Barristers may also wish to charge a different price for something that is of wider social value, or due to their desire to cultivate new business and establish a reputation in a new practice area for them. These different rates could be advertised and in fact it may be in the interests of barristers to publicise the fact they do charge different rates if they are seeking to attract different types of work/client.

87. The CMA's report found that *"the lack of transparency in the legal services sector and the limited extent to which consumers compare providers (only 22% did so in the CMA's quantitative survey of individual consumers)...allows some providers to price discriminate rather than committing to standard (uniform) pricing for the same service"*.⁴⁰ The CMA report goes on to state that *"consumers may be unaware that price discrimination is occurring or of the alternative prices that may be available to them. Consequently, price discrimination may allow providers to charge higher prices to those with greater willingness to pay"*.⁴¹ While this is undesirable, on the other hand price discrimination does allow practitioners to charge lower prices to those with less willingness/ability to pay. As discussed, the BSB's Family Law Clients Research Report found that some barristers had shown flexibility and reduced their hourly rates for particular clients. The ability of practitioners to charge lower prices to those with more limited means may be particularly important in areas where there have been cuts to legal aid (including family law).
88. As discussed, the disclosure requirements in the CMA's report only relate to the provision of indicative price and service information. However, the new transparency requirements may mean that in some cases, price discrimination may not be possible where the market has converged to a focal price⁴² (for example, the headline published rate). While this would work in the interests of consumers with greater willingness/ability to pay, it is plausible that (at least in the short term) those with more limited means may be priced out as the uniform prices become too high for them. In the medium to long term, some practitioners may recognise the impact on those with more limited means

⁴⁰ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, pages 9 – 10

⁴¹ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 93

⁴² The CMA consider the risk of this happening as low. In their report they state *"we concluded that this risk was low, particularly given the fragmented nature of the sector. We note that in areas of law where there is greater transparency such as conveyancing, no parties provided evidence or suggested that such practices occur"* (page 289).

and lower their uniform prices. They would also retain the flexibility to charge lower prices to some clients. However, if this price flexibility is not referred to on their chambers' website, those clients may assume that they cannot afford legal advice or representation.

QUESTION 20: are there any other issues in relation to price discrimination (other than those highlighted above) that the BSB should consider?

Perceptions of value

89. One view is that the new transparency requirements could encourage consumers to focus disproportionately on price rather than the overall value of barristers' services (including a specific expertise or the overall quality of the work). However, as the Law Society's price and service transparency toolkit notes, the key to transparency "*is to provide the right information which allows those seeking legal services to assess the value of the service. It is important to stress that price is not the sole arbiter of how potential clients make a decision. Most clients of legal services are interested in value and understand that something can be more expensive and good value, and conversely, cheap and poor value*".⁴³ Ultimately it would be for the client to decide what their priority is when making a decision on which legal services provider to choose. The information available should empower consumers to make an informed decision by shopping around and drawing useful comparisons.
90. Naturally some consumers will be less concerned about affordability than others. Other consumers may be more likely to consider price as an important criterion – if not the most important criterion – and therefore perhaps assume that they cannot afford legal advice and representation from barristers. The BSB's Family Law Clients Research Report found "*there is a perception that barristers charge higher fees than solicitors and other legal services providers: 83 per cent of respondents believed that barristers charge higher fees*".⁴⁴ This may often be the case, not least because barristers are more likely to offer specialist legal services than solicitors and other providers. However, where barristers are not charging higher fees than other providers for the same services, price transparency is a good opportunity to demonstrate the value of their services.

⁴³ <http://www.lawsociety.org.uk/support-services/advice/articles/price-and-service-transparency-toolkit/>, page 3

⁴⁴ https://www.barstandardsboard.org.uk/media/1838930/family_law_clients_research_report_11_july_2017.pdf, page 8

QUESTION 21: are there any other issues in relation to perceptions of value (other than those highlighted above) that the BSB should consider?

Fee disputes

91. Disputes about fees are one of the most frequent complaints. Our engagement with the profession found that this is often due to different types of fees which are not explained to clients (for example, brief fees and refreshers), and a lack of clarity as to what fees do and do not cover. The importance of clear explanations and clarity of language was underlined by [Optima Research's Qualitative Research Report on Client Care Letters](#) (published in October 2016). The BSB and other legal services regulators commissioned this jointly with the LSCP to understand how consumers engage with client care letters. The research identified principles key to encouraging engagement with client care letters and the information provided within them. These are as follows:

- Show a clear purpose;
- Keep it concise;
- Put it in plain English;
- Prioritise information;
- Personalise information;
- Highlight key information;
- Make it easy to read; and
- Consider additional touchpoints (which provide further information).⁴⁵

92. An example of an additional touchpoint would be to provide the BSB's Public Access Guidance to lay clients. This would ensure that all clients have the same basic level of understanding about Public Access, and reduce the amount of information which needs to be included in client care letters. While the focus of the research was on information which is provided to clients after providers have been instructed, the principles key to encouraging client engagement with information (clear explanations, clarity of language, etc.) are also relevant to price and service transparency. The new transparency requirements are therefore a good opportunity to improve client communication and in turn, reduce disputes and complaints about fees (which can negatively impact on clients and barristers).

QUESTION 22: are there any other issues in relation to fee disputes (other than those highlighted above) that the BSB should consider?

⁴⁵ https://www.barstandardsboard.org.uk/media/1794566/client_care_letters_research_report_-_final_021116.pdf, page 37

PART VI: Supervision and enforcement of new transparency requirements

93. This section focuses on the BSB's proposed approach to supervising compliance with the new transparency requirements, and any supervisory or enforcement action in the event of non-compliance.
94. Where the new transparency requirements apply to barristers, they will be expected to comply with them by providing the necessary information on their chambers' website or, if they do not have a website, providing the necessary information to consumers on request. The BSB's action plan in response to the CMA's recommendations states that supporting guidance and a communications strategy will be developed to support compliance with the new requirements.
95. The [action plan](#) also states that the BSB's [supervision strategy](#) and [enforcement strategy](#) will be reviewed to ensure compliance with the new transparency requirements and the interface with competition law. The BSB's risk-based approach to supervision means that resources are targeted at chambers, entities, individuals or areas which present the greatest risk. In addition, it is intended to encourage more effective risk management by chambers and entities, and contribute to improvements in the level of compliance with regulatory requirements. Where issues are identified through supervision the BSB seeks, where possible, to address them with the chambers, entity or individual concerned without resorting to enforcement action.
96. While the BSB does not propose to fundamentally revise its approach to supervision and enforcement to ensure compliance with the new transparency requirements, a compliance strategy will need to be in place. One option would be to perform spot-checks and take the same risk-based approach that the BSB takes to CPD supervision. This is explained in detail in the BSB's [CPD guidance](#).
97. If the BSB adopted this approach, spot-checking would focus on barristers who are at higher risk of non-compliance with the new transparency requirements, supplemented with a random sample of those practising at the self-employed Bar and from entities. Higher risk would be established, among other things, with reference to a barrister's history of regulatory compliance. Targeted spot-checking/thematic reviews could also

take place in high-risk practice areas such as immigration, crime and family law (which are likely to have a high impact on vulnerable consumers).

98. Non-compliance would generally be dealt with in the first instance through supervisory action. This would include recommendations (referred to as 'corrective action') where barristers appear not to have met the requirements of the new rules on transparency. For example, corrective actions could be for barristers to ensure that the necessary information is:

- Uploaded to/updated on their chambers' website within a reasonable time period;
- Made sufficiently prominent on their chambers' website; and
- Corrected so that it does not mislead clients and potential clients, which would breach Rule C19 of the BSB Handbook.

99. This means that our focus would not be on enforcement action, but on ensuring that barristers comply with the new transparency requirements. This would be a more effective approach as well as being a more proportionate use of regulatory resources. Referral to enforcement action would be reserved for persistent non-compliance or non-cooperation.

QUESTION 23: do you have any comments on the BSB's proposed strategy for compliance with the new transparency requirements?

PART VII: Equality impact assessment

100. An equality impact assessment (EIA) of the proposals in the consultation has been carried out and can be found at Annex B. The EIA identified that barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. However, our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010, and have detailed an action plan for improvement in the EIA. Furthermore, rules relating to prominence and consistency of disclosure will assist consumers with disabilities (and indeed consumers more widely) to access, understand and compare information.

QUESTION 24: do you agree with the analysis in the EIA, and our view that although barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work, this is justified given the expected benefit to Public Access clients, access to justice and competition? If not, please explain why.

QUESTION 25: do you consider that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010? If yes, please explain your answer.

QUESTION 26: do you have any comments on the action plan for improvement in the EIA?

PART VIII: About the consultation and how to respond

How has the consultation been developed?

101. We are extremely grateful to members of our [Advisory Pool of Experts](#) for their contribution. Their expertise was invaluable to the development of the consultation.

Who should respond to the consultation?

102. We are particularly interested in hearing from:

- Barristers, particularly those undertaking Public Access work;
- Users of barristers' services, particularly Public Access clients and including solicitors;
- Members of chambers' business management, including practice managers and clerks;
- Bar special interest networks and associations;
- Consumer organisations;
- Individual consumers; and
- Students: current law students, BPTC students and anyone interested in a career at the Bar.

How to respond to the consultation

103. The deadline for the consultation is **XX**. You do not need to wait until the deadline to respond to the consultation.

104. A response does not need to be a comprehensive written document, although it can be if you wish. It can also be short form answers to the specific questions we have posed. It is however far more useful to us (and we are better able to take your views into account) if you are able to address the questions we have posed specifically, rather than, for example, simply stating your general view. We will of course never exclude consideration of a response, whatever its form or content.

105. We want to hear your views on all of the questions posed, and will take all of the responses into account.

106. You do not have to respond to the consultation in writing. If you would like someone from the BSB to meet you or the organisation you represent, to listen to and accurately record your views, then as far as possible we will try to accommodate this request. Please contact us either by email, telephone or post as soon as possible if you would like to do this.

107. Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of respondents. If you do not want to be named as a respondent to the consultation, please set this out in your response. If parts of your response are confidential, please identify these and supply a non-confidential version of your response that we can publish with an explanation as to why the identified information is confidential.

108. Please send your response, or otherwise get in touch, as follows:

Email: professionalstandards@barstandardsboard.org.uk

Tel: 020 7611 1444

Professional Standards Team

The Bar Standards Board

289-293 High Holborn

London

WC1V 7HZ

List of questions

QUESTION 1: do you agree that the publication of price recommendations 1, 2 and 3 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

QUESTION 2: do you agree that the publication of service recommendations 7 and 10 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

QUESTION 3: do you agree that the publication of redress recommendations 11 and 12 would have the greatest impact in order to improve consumer understanding, facilitate shopping around and drive competition in service provision?

QUESTION 4: do you agree that the BSB should introduce guidance (rather than mandatory rules) for the CMA recommendations that have been categorised as having high and medium impact for consumers? If not, please explain why.

QUESTION 5: do you agree with the BSB's analysis of why the high and medium impact recommendations should not be adopted as mandatory rules? If not, please explain why.

QUESTION 6: do you think the BSB should require publication of first-tier complaints data? If not, please explain why.

QUESTION 7: do you think it would be beneficial for barristers to display the BSB's logo on their website? If not, please explain why.

QUESTION 8: do you think Public Access barristers should be required to publish the BSB's Guidance for Lay Clients on their websites? If not, please explain why.

QUESTION 9: are there any other examples of what you consider to be good practice that you could draw to our attention?

QUESTION 10: do you agree that the suggested minimum disclosure requirements should apply to all barristers undertaking Public Access work? If not, please explain why.

QUESTION 11: do you think that the suggested minimum disclosure requirements should apply to barristers undertaking referral work, either:

- (a) when dealing with clients that are entitled to complain to LeO?;
- (b) by reference to high-risk practice areas?; or
- (c) a combination of (a) and (b) above?

QUESTION 12: regarding work funded by the Legal Aid Agency, do you agree that the suggested minimum disclosure requirements:

- (a) should not apply in relation to price?; but
- (b) should apply in relation to service and redress?

QUESTION 13: are there any other options (other than those discussed above) to ensure any new rules are targeted, proportionate and effective?

QUESTION 14: do you have any comments on *when* the suggested minimum disclosure requirements should apply to Public Access barristers and those undertaking referral work for clients entitled to complain to LeO?

QUESTION 15: do you agree that option two would be more feasible in terms of providing minimum price and service information? If not, please explain why.

QUESTION 16: are there any other issues in relation to entities providing the suggested minimum disclosure requirements (other than those highlighted above) that the BSB should consider?

QUESTION 17: do you think it would be useful to provide core information on either the BSB's website or through other third party sites?

QUESTION 18: are there any other issues in relation to consistency of information (other than those highlighted above) that the BSB should consider?

QUESTION 19: are there any other issues in relation to the need for flexibility (other than those highlighted above) that the BSB should consider?

QUESTION 20: are there any other issues in relation to price discrimination (other than those highlighted above) that the BSB should consider?

QUESTION 21: are there any other issues in relation to perceptions of value (other than those highlighted above) that the BSB should consider?

QUESTION 22: are there any other issues in relation to fee disputes (other than those highlighted above) that the BSB should consider?

QUESTION 23: do you have any comments on the BSB's proposed strategy for compliance with the new transparency requirements?

QUESTION 24: do you agree with the analysis in the EIA, and our view that although barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with new transparency requirements in respect of Public Access work, this is justified given the expected benefit to Public Access clients, access to justice and competition? If not, please explain why.

QUESTION 25: do you consider that the requirements will have any adverse impact on the basis of other protected characteristics under the Equality Act 2010? If yes, please explain your answer.

QUESTION 26: do you have any comments on the action plan for improvement in the EIA?

Annex A: Most common pricing models

Brief fee and refresher

A brief fee is a fixed fee which covers all of the preparation for a trial and the first day. A refresher is a fixed fee for each subsequent day of the trial (which includes ongoing preparation).

Capped fee

A legal services provider will charge an amount of money per hour (an hourly rate), but agree with the client that the total amount will not exceed a set level.

Conditional fee agreement

A client will only pay a legal services provider for work if they receive compensation as result of the proceedings. Conditional fee agreements are popular with consumers and often referred to as “no win, no fee” agreements.

Damages-based agreement

A client will only pay a legal services provider for work if they receive compensation as result of the proceedings – the fee will normally be an agreed percentage of the compensation received. Damages-based agreements are also known as contingency agreements.

Fixed fee

A legal services provider will charge a client a set amount of money for work. Consumers often prefer fixed fees because they remove anxiety associated with clients not knowing how long certain types of work might take (and therefore the cost associated with this). In reality consumers may pay more for fixed fees than they would if they were charged a variable rate, as by charging on a fixed fee basis the provider will be taking on the risk that the work may take longer than expected and so build in premiums to compensate for this. There may also be circumstances where additional fees are charged, and it is important for the provider to be clear about this.

Hourly rate

The amount of money that a legal services provider charges a client per hour. The setting of hourly fees is not necessarily straightforward and a number of factors may determine the rate that the provider chooses to set; for example, seniority, type of client, whether the work is likely to have more socially beneficial outcomes and whether the provider is trying to build business in a new area.

Retainer

A client will pay a legal services provider a set amount of money in advance to ensure that they will undertake work when required to do so. Retainers are often paid on a monthly or annual basis.

Volume purchase discount

A client will pay a legal services provider for work in bulk and so receive a discount.

Annex B: Equality impact assessment

Date of Assessment	September 2017.
Assessor Name & Job Title	Joseph Bailey – Senior Policy Officer. Kuljeet Chung – Policy Manager (Professional Standards).
Name of Policy/Function to be Assessed	Response to the Competition and Market Authority’s Recommendations – Policy Consultation on Transparency Standards.
Aim/Purpose of Policy	<p>The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its final report was published on 15 December. Its recommendations fall broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making data more accessible and making better information available to assist consumers.</p> <p>In its final report, the CMA recommended that the regulators deliver a step change in standards of transparency to <i>“help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services”</i>.⁴⁶</p> <p>At the end of June 2017, the BSB published an action plan detailing its response to the CMA’s recommendations. This included a commitment to issue, by the end of September, a policy consultation focused on the CMA’s recommendation to deliver a step change in standards of transparency.</p> <p>Although the BSB is accepting the recommendations in principle, it still recognises the challenges that the practising Bar will face in adapting to any new requirements, as this will be a significant culture shift from</p>

⁴⁶ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>, page 15

current practice. The BSB wishes to be proportionate in its proposed approach and recognises the need to ensure that any new requirements are targeted and effective.

The policy consultation therefore explores to what degree and how the price, service and redress information listed in the CMA report should be disclosed, and also tests the feasibility and suitability of such requirements for practice at the Bar. It seeks views on which of the recommendations would have greatest impact for consumers, whilst also being a proportionate response in terms of scope and feasible in terms of implementation. Each CMA recommendation has been categorised as either very high impact, high impact or medium impact in terms of expected benefit to consumers who may wish to use barristers' services.

Only self-employed barristers and BSB regulated entities will need to comply with the new transparency requirements. Barristers employed in entities regulated by other approved regulators will need to comply with the requirements of the relevant regulator. Beyond this, there are questions about the scope of the compliance requirements for barristers and entities undertaking referral work, and those undertaking Public Access work.

The policy consultation proposes that, as a mandatory measure, all Public Access barristers will need to publish the suggested minimum disclosure requirements i.e. those which have been categorised as very high impact in terms of expected benefit to consumers. Public Access barristers will therefore need to publish the following price, service and redress information on their chambers' websites:

- Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement);
- Hourly fees (where charged);
- (Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged;
- A description of the services that the legal services provider provides;

- Indicative timescales of completing services and factors affecting these;
- Regulatory status and registration details; and
- Complaints process and access to the Legal Ombudsman (LeO).

Similarly, the policy consultation proposes that barristers undertaking referral work for clients entitled to complain to the LeO will also need to publish the suggested minimum disclosure requirements. Those clients entitled to complain to the LeO are as follows:

- Individuals;
- Businesses or enterprises that are micro-enterprises within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly businesses or enterprises with fewer than 10 employees and turnover or assets not exceeding €2 million);
- Charities with an annual income net of tax of less than £1 million;
- Clubs, associations or organisations, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million;
- Trustees of trusts with an asset value of less than £1 million; and
- Personal representatives or beneficiaries of the estates of persons who, before they died, had not referred the complaint to the Legal Ombudsman.

Following analysis of responses to the policy consultation and piloting of the new requirements, a rule change consultation will be launched in March 2018. New rules will then come into force by the end of 2018.

1. Evidence

What evidence will you use to assess impact on equality?

The dataset from our annual [report on diversity at the Bar](#) (which was last published in December 2016) has been used to inform this equality analysis. Specifically, the data has been cross-referenced with our data on Public Access registrations, allowing us to determine the percentage of the practising Bar which is Public Access registered in relation to each of the protected characteristics in the Equality Act 2010. As of December 2016, 35% of the practising Bar is Public Access registered. Of these, the vast majority (96.1%) are self-employed barristers – the others are dual capacity barristers (self-employed and employed), employed barristers in BSB regulated entities and registered European lawyers.

The BSB does not have data for the percentage of the practising Bar which undertakes referral work for clients entitled to complain to the LeO in relation to each of the protected characteristics in the Equality Act 2010. While the percentage of the practising Bar which undertakes this referral work is likely to be significantly higher than the 35% which is Public Access registered, this does not necessarily mean that the requirements will have no adverse impact for different groups. However, the BSB's action plan in response to the CMA's recommendations includes a commitment to evaluate the effectiveness of the new transparency requirements from December 2020 (two years after they come into force). As part of this review, we can collect equality data specific to the segment of the practising Bar which undertakes this referral work.

2. Impact on Equality

Consider whether the evidence listed above shows the potential for differential impact, either adverse or positive, for different groups. If there are negative impacts, explain how you will attempt to mitigate these. Mitigating actions can be described in more detail in your Action Plan (Section 4).	
Race	<p>As of December 2016, 42.8% of practising BME barristers are Public Access registered compared to 34.1% of practising white barristers (a statistically significant difference). BME barristers will therefore be somewhat more likely to be required to comply with the new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, this will be reviewed as part of the evaluation of the requirements from December 2020.</p> <p>Barristers will also be encouraged to provide price, service and redress information in different languages where that may be beneficial to meeting consumer need.</p>
Gender	<p>As of December 2016, 36.3% of practising male barristers are Public Access registered compared to 32.6% of practising female barristers (a statistically significant difference). Male barristers will therefore be somewhat more likely to be required to comply with the new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. However, this will be reviewed as part of the evaluation of the requirements from December 2020.</p>
Disability	<p>We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of disability. However, we will explore the possibility of offering targeted support to disabled barristers where that may assist in complying with the requirements (N.B. barristers will not be required to have a website as a result of the transparency requirements – if they do not have a website, they will be required to provide the necessary information to consumers on request). We will also review whether there has</p>

	<p>been any adverse impact for disabled barristers as part of the evaluation of the requirements from December 2020.</p>
Age	<p>As of December 2016, 37% of practising barristers over 35 are Public Access registered compared to 29.8% of practising barristers under 35 (a statistically significant difference). Barristers over 35 will therefore be somewhat more likely to be required to comply with the new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services.</p> <p>However, we will explore the possibility of offering targeted support to barristers where that may assist in complying with the requirements (N.B. barristers will not be required to have a website as a result of the transparency requirements – if they do not have a website, they will be required to provide the necessary information to consumers on request). We will also review whether there has been any adverse impact for older barristers as part of the evaluation of the requirements from December 2020.</p>
Sexual Orientation	<p>We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of sexual orientation.</p>
Religion/Belief	<p>We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of religion or belief.</p>
Gender Reassignment	<p>We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of gender reassignment.</p>
Pregnancy/ Maternity	<p>Barristers who are on maternity leave and not practising will not be required to comply with the new transparency requirements.</p>
Marriage and Civil Partnership	<p>We do not have evidence to suggest that the new transparency requirements will have any adverse impact on the basis of marriage and civil partnership.</p>

Other Identified Groups	<p>The BSB is mindful that by mandating greater transparency we do not inadvertently restrict barristers from offering better rates to more socially beneficial causes. For this reason the BSB will not mandate a specific pricing model, rather it will expect barristers (where the requirements apply to them) to be transparent about the model they do use and the likely costs.</p> <p>In addition, we do not have evidence to suggest that the new transparency requirements will have any adverse impact on those with caring responsibilities.</p>
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<p>How does the policy advance equality of opportunity?</p> <p>The BSB is seeking to target our regulation where it can have the greatest positive impact. The policy consultation therefore proposes that all Public Access barristers will need to publish the suggested minimum disclosure requirements as a mandatory measure. Similarly, it is suggested that barristers undertaking referral work for clients entitled to complain to LeO, or working in certain high-risk practice areas, could also be required to publish the suggested minimum disclosure requirements.</p> <p>The new transparency requirements will therefore assist less expert and more vulnerable consumers (including those from lower socio-economic backgrounds) to access, understand and compare price, service and redress information about barristers' services. Given that this information has hitherto not been so widely available, the requirements could lead to improvements in access to justice. For example, some consumers (particularly in areas where there have been cuts to legal aid) may assume that they cannot afford legal advice or representation when this is not in fact the case. Increased price transparency, particularly by Public Access barristers, may therefore assist consumers in securing legal advice and representation. In 2015, the BSB commissioned, jointly with our oversight regulator the Legal Services Board (LSB), an independent research specialist (Pye Tait) to undertake supply-side research into the Public Access scheme (surveying and interviewing Public Access barristers). The report (published in April 2016) found that "The types of law in which the public access scheme is most commonly used are: family, chancery, employment, general common law and commercial law (litigation and property)". As a result of the new transparency requirements, we would expect to see the most pronounced improvement in access to justice in the areas of family and employment law. As employment claims often relate to discrimination on the grounds of protected characteristics, we would also expect the new requirements to have a positive equality impact.</p>

In addition, the policy consultation suggests that it should be a requirement for the necessary price, service and redress information to be made sufficiently prominent on chambers' websites; for example, by requiring that there is a dedicated page or section. This will assist consumers with disabilities (and indeed consumers more widely) to access, understand and compare information. Where consumers are not able to access information on chambers' websites, barristers will be required to provide this information to them on request.

Furthermore, the policy consultation states it is important that there is some degree of consistency in the information on different chambers' websites, as this will make it easier for consumers (including those with disabilities) to understand and compare. However, some of the core price and service information categorised as very high impact (in terms of expected benefit to consumers) may be difficult to standardise. The extent to which rules relating to the provision of information can (and should) be prescriptive will therefore be tested in the piloting of the new requirements.

Finally, the requirements will be a good opportunity for barristers to improve client communication and in turn, reduce disputes and complaints about fees (which can have an adverse impact for clients and barristers).

How does the policy promote good relations between different groups?

N/A.

3. Summary of Analysis

Now you have considered the potential impacts on equality, what action are you taking? (Mark 'X' next to one option and give a reason for your decision)		
a. No change to the policy (no impacts identified)	Your analysis demonstrates that the policy is robust and the evidence shows no potential for discrimination. You have taken all appropriate steps to advance equality and foster good relations between groups.	
b. Continue the policy (impacts identified)	Continue with the proposal, despite any adverse impacts, provided it is not unlawfully discriminatory and is justified.	X
c. Adjust the policy and continue	Take steps to remove barriers, mitigate impacts or better advance equality before continuing with the policy.	X
d. Stop and remove the policy	There are adverse effects that are not justified and cannot be mitigated. The policy is unlawfully discriminatory.	
Reason for decision:		
<p>Barristers who are BME, male and over 35 will be somewhat more likely to be required to comply with the new transparency requirements in respect of Public Access work. They are also more likely to be Public Access sole practitioners, and therefore may find complying with the new requirements more administratively burdensome. Our view is that this is justified given the expected benefit to Public Access clients, access to justice and competition in the provision of legal services. We also do not have evidence to suggest that the requirements will have any adverse impact on the basis of other protected characteristics.</p> <p>In addition, rules relating to prominence and consistency of disclosure will assist consumers with disabilities (and indeed consumers more widely) to access, understand and compare information.</p>		

4. Action Plan for Improvement

Give an outline of the key actions that need taking based on any challenges, gaps and opportunities you have identified. Include here any action to address negative equality impacts or data gaps.			
Action Required	Desired Outcome	Person Responsible	Timescale
In the piloting of the new transparency requirements, test the extent to which rules relating to the provision of information can (and should) be prescriptive.	Testing this would help us to determine whether a lack of prescription may have any adverse impact for different groups (for example, those with disabilities).	Professional Standards and Research Teams.	November 2017 – February 2018.
Explore the possibility of offering targeted support to, for example, disabled barristers.	This would assist barristers in complying with the requirements.	Professional Standards, Supervision and Equality and Access to Justice Teams.	March 2018 – December 2018.
Encourage barristers to provide price, service and redress information in different languages where that may be beneficial to meeting consumer need. This could be provided both on chambers' websites and on request.	This would assist non-English speakers (or those for whom English is a second or third language) in accessing, understanding and comparing information.	Professional Standards and Communications and Public Engagement Teams.	March 2018 – December 2018.
Review whether there has been any adverse impact for different groups, particularly barristers who are BME, male and over 35 (who are more likely to be Public Access registered and Public Access sole practitioners).	This would allow us to determine whether the requirements have any adverse impact for different groups and, if so, seek to mitigate the impact.	Professional Standards and Research Teams.	From December 2020 (two years after the new transparency requirements come into force).

Action Required	Desired Outcome	Person Responsible	Timescale
Collect equality data on the segment of the practising Bar which undertakes referral work for clients entitled to complain to the LeO.	Collecting this data would allow us to determine whether the requirements have any adverse impact for different groups and, if so, seek to mitigate the impact.	Professional Standards and Research Teams.	From December 2020 (two years after the new transparency requirements come into force).

Research exploring the transparency of price and service information provided by barristers: emerging findings

BSB Research Team, September 2017

Foreword

To follow

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Executive Summary

Background and context for the research

In December 2016, the Competition and Markets Authority (CMA) published the findings from its market study into the provision of legal services in England and Wales. It reported that legal services consumers find it hard to make informed choices because there is very little transparency about price, service and quality. One of the key recommendations of the CMA study was for the frontline legal regulators, including the Bar Standards Board (BSB), to deliver a step change in standards of transparency and introduce new price and service disclosure requirements.

As part of a wider response to the CMA recommendations, the BSB commissioned the present research study which aimed to:

- Improve understanding of the current issues, priorities and practice surrounding price and service transparency among barristers, chambers and regulated entities; and
- Identify perceived barriers to publicising this information, along with a consideration of how to increase and improve transparency in ways that consumers would find useful.

The methodology for this research was primarily qualitative and involved discussions with professional associations of the Bar (4) and in-depth interviews with a small sample of providers: barristers, clerks, practice managers or equivalent involved in pricing and marketing decisions in chambers and regulated entities (7, to date). To contrast and triangulate the views of the profession with the views of consumers, discussions with consumer organisations took place (4) and a survey of a sample of legal services consumers was commissioned which is in progress at the time of writing.

This report summarises the **emerging findings** from the interviews completed so far, which will inform a consultation on transparency standards at the Bar and further piloting activity.

Summary of emerging findings

Several themes have emerged from the research so far, based on the perceptions and professional opinions of those interviewed. These included:

- Transparency appears not to be a current priority for most of the interviewed providers, many of whom held the view that barristers' clerks already provide a sufficient level of transparency when consumers or solicitors engage with them
- Most of the providers interviewed - including those who currently only publicise minimal price and service information on their website – indicated that they would welcome new regulatory requirements on price transparency
- The main factors considered to be driving transparency among chambers and regulated entities that already publicised their prices are perceived to be legal aid cuts, competition and the desire to improve consumer engagement.

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- The main barrier to transparency perceived by professional associations and providers was the complexity of cases, meaning that ‘one size fits all’ approach to pricing would not or could not work. Other barriers included the extent of price variation and competition and the impact on new business.
- Providers perceived a risk that competition might only be driven by price at the expense of the whole value of the legal services provided - such as a specific expertise or the overall quality of the work – as a potential consequence of increasing transparency.
- Consumer organisations highlighted that consumers may appreciate and understand that it is complex to price legal services with accuracy but would benefit from an estimation of the cost rather than a definite price. They emphasised that transparency must be delivered alongside greater accessibility for consumers (e.g. language, format)

Improving price and service transparency

There was broad agreement across interviews that additional price information, fee guides or price scenarios could be provided upfront on chambers and regulated entities websites so long as sufficient limitations and exclusions are provided. Points to note, based on the suggestions of those who took part in this research, include that:

- Providers expect the BSB to find a middle ground between overly rigid requirements that could restrict the freedom of market and requirements that involve providing information so detailed that it confuses consumers.
- Publishing average daily or hourly rates might be achievable but will need to take account of the fact that these are influenced by a range of variables including the level of seniority and expertise of the barristers, their capacity, and the urgency of the work. Online information will need to be updated regularly (i.e. annually) to reflect this point.
- Price scenarios, based on recent cases, may be feasible for small cases but more difficult to apply across the board for complex cases.
- To counter the perceived risk of price being the main - or only - factor driving consumer choice before they engage with a legal service provider, further information that helps to impart the value and quality of the service will be beneficial.
- There could be value in publicising more information about the role of barristers and clerks and the flexibility of the Bar in terms of fee arrangements alongside additional price information.
- Improvements to transparency should not only be limited to websites and should be in formats that are most accessible to consumers.

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1. Introduction

This report presents the emerging findings from research into the transparency of price and service information provided by barristers. The research was commissioned by the Bar Standards Board (BSB) to inform a consultation on transparency standards at the Bar and plans for piloting activity.

1.1 About the Bar Standards Board

The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted. The BSB regulates over 15,000 barristers and 60 specialised legal services businesses in England and Wales.

The BSB is a risk and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services. We identify the potential risks that could prevent our regulatory objectives from being met. When we have done this, we focus our attention on the risks that we think pose the greatest threats to our regulatory objectives. We then take proportionate action to prevent those risks from occurring, or to reduce their impact.

There are three areas in particular in which risks threaten our statutory regulatory objectives, as set out in the BSB Strategic Plan 2016-19 (BSB, 2016a). One of these relates to 'improving how those the BSB regulates meet consumer needs'. The BSB Risk Outlook identifies that there is a lack of information to help consumers choose an appropriate lawyer, with little to help them distinguish between lawyers on quality, value and affordability (BSB, 2016b).

1.2 About the Bar

Traditionally, most barristers in England and Wales are self-employed, often at a chambers with other self-employed barristers. Since April 2015, the BSB has authorised 'entities' which are owned and managed by lawyers, including barristers, solicitors and other legally qualified persons. The BSB also authorises licensed associations or Alternative Business Structures (ABSs), which are entities owned and managed jointly by both lawyers and non-lawyers.

The rules about how barristers must behave and work are contained in the BSB Handbook (BSB, 2017a). They cover a wide range of things including the core duties of barristers (the most important things they should do), how they should conduct themselves, what they are allowed to do in the course of their work, how they qualify to become a barrister and how they will be disciplined if they break the rules.

Barristers in chambers employ clerks (also known as practice managers or chambers directors) who are responsible for running their practices; helping law firms and clients to find the best barrister for their case, fixing appointments and assisting barristers with their administrative workload. Clerks deal with initial

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enquiries and have in-depth knowledge of barristers and their specialisms, areas of practice, and the court process. Many clerks sit on chambers committees and their responsibilities can include diary management, practice management, marketing decisions, fee negotiation and sales.

Under the Public Access scheme, introduced in 2004, members of the public can instruct a barrister of their choice directly, without referral via a solicitor or other intermediary¹. Public access work currently constitutes a small proportion of the work undertaken by the Bar as a whole and most consumers instruct barristers via a solicitor or other intermediary.

1.3 Background to this research

In December 2016, the Competition and Markets Authority (CMA) published the findings from its market study into the provision of legal services in England and Wales. Overall, it found that the legal services sector was not working well for consumers, who generally lack the experience and information needed to find their way around the legal services sector and to engage confidently with providers.

The study concluded that consumers find it hard to make informed choices because there is very little transparency about price, service and quality. To make informed decisions and to be able to compare providers' offers, legal services consumers need clear information to help them understand the price and service offering of individual providers and this information needs to be available before consumers choose a provider (CMA, 2016, p225).

One of the key recommendations of the CMA study was for the frontline legal regulators to deliver a step change in standards of transparency to “*help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services*” (ibid., p.15). The CMA recommended minimum disclosure requirements before providers are instructed (see Table 1).

Table 1: CMA Minimum disclosure requirements

Price	Service	Redress
Pricing and charging model (e.g. fixed fee, hourly rates, capped charges, conditional fee agreement/damages-based agreement)	A description of the services that the legal services provider provides	Regulatory status, registration details

¹ In addition, the licensed access scheme enables specific organisations and individuals under certain conditions to instruct any barrister directly. ‘Direct access’ is an umbrella term used to cover both types of arrangement, although in practice the terms direct access and public access tend to be used interchangeably.

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Hourly fees (where charged) by grade of staff	Mix of staff that deliver the service	Complaints process and access to the Legal Ombudsman
(Where offered) indicative fixed fees and factors that may affect these and the circumstances where additional fees may be charged	Key (and discrete) stages of services	Level of professional indemnity insurance cover
Typical range of costs for different stages of cases (where appropriate)	Indicative timescales of completing services and factors affecting these	
Scale of likely disbursements (e.g. searches, court fees)		
Key factors that determine price (including disbursements)		

1.4 Price and service transparency at the Bar

The BSB Handbook currently only requires barristers and regulated entities to confirm the following information in writing to clients *after* they have been instructed:

- a. their acceptance of the instructions and the terms and/or basis on which they will be acting, including the basis of charging (Rule C22.1); and
- b. the client's right to make a complaint, including their right (if any) to complain to the Legal Ombudsman (Rule C99.1).
- c. Rule C125 requires a barrister who accepts Public Access instructions to 'forthwith notify his Public Access client in writing, and in clear and readily understandable terms' of eight things. These are set out in sub-rules 1 to 4 and 6 to 9² in Rule C125 and include the work the barrister has agreed to perform, the fees he or she is charging, contact details and complaints procedure.

The usual way barristers comply with Rule C125 is to send a client care letter (CCL) incorporating the required information. CCLs are usually issued to clients soon after a barrister or legal services provider has been instructed, by way of confirmation. Typically, the letter will include a confirmation of the client's instructions, the name or names of individuals within the firm dealing with the case, cost information, disbursements (additional costs); and information about how to complain if they are not happy with any aspect of their case.

While the Handbook does not prevent disclosure of price and service information *before* barristers are instructed, until recently, the BSB had fairly limited information on the extent to which this was occurring in practice. While a BSB survey of barristers regarding the legal services they provide (BSB, 2017b) found that 53 per cent of respondents in chambers said that they included details of their fee options and structures in their marketing material, it was unclear whether these details were provided before or after they had been instructed.

² Sub-rule 5 sets out an additional requirement which applies only in intermediary cases.

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To better understand the current position, the BSB undertook a web-sweep exercise to assess how many websites of barristers' chambers published information about their prices. In total, 329 chambers websites were reviewed. Chambers were classified into four categories based on the extent of pricing information found on their websites (BSB, 2017c):

- a) chambers which provided numerical data about fees or price structure, (20, 6%);
- b) chambers which provided detailed guidance on fee calculation, without numerical data on fees or price structure (26, 8%);
- c) chambers which made basic reference to price or fees and how they might be calculated, without numerical data on fees or price structure (36, 11%); and
- d) chambers which made no reference to their price or fees or how they might be calculated (247, 75%).

While the web-sweep can only be treated as a snapshot in time; the findings indicated that most chambers did not provide price information on their websites at the time they were reviewed. Chambers which did provide numerical data about their fees or price structure or detailed guidance about how fees are calculated were more likely to provide family law services and to accept Public Access instructions. This chimed with the findings of recent survey where family law was found to be one of the most common areas of law in which Public Access work is undertaken (BSB & LSB, 2016).

The BSB published its plan to act on the CMA's recommendations at the end of June (BSB, 2017d). This included plans for research to inform a policy consultation and further piloting activity focused on transparency standards at the Bar. This report details the approach to that research and the emerging findings.

1.5 Research aims

The aims and scope of the research were primarily informed by the existing research base - effectively summarised in the CMA report - and the requirement to deliver further insight into price and service transparency issues in the provision of barristers' services. More specifically, the research aimed to:

- improve understanding of the current issues, priorities and practice surrounding price and service transparency among barristers, chambers and regulated entities; and
- identify perceived barriers to publicising this information, along with a consideration of how to increase and improve transparency in ways that consumers would find useful.

In terms of scope, the research is focused on price and service information. Other aspects of transparency highlighted by the CMA study (such as redress) were not included in this study. The research largely focuses on the point in time *before* engagement by the consumer (i.e. when consumers are choosing a legal service provider), guided by the finding of the CMA study that information shortfalls in respect of publicly available information are greatest in advance of engagement.

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The research focuses on chambers and regulated entities engaged with through the Public Access scheme, reflecting the CMA report finding that improvements in transparency were likely to have greatest impact when they were required of providers that are engaged directly by consumers in a client capacity: *“in the case of barristers, increased public transparency will be most relevant and beneficial to customers engaging a barrister through the Public Access scheme rather than issuing instructions via a solicitor”* (CMA, 2016, p.281).

The research is also focused on chambers and regulated entities providing family law services: this was an area identified by the Legal Services Consumer Panel (LSCP) as one of the three priority areas of law where there are particular challenges for the regulated sector in meeting the needs of those affected and where a lack of price transparency has been found to add to problems that consumers face in this area (LSCP, 2016a). At the time the research was commissioned, there were plans to pilot new price disclosure requirements in the areas of public access and family law.

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2. Methodology

2.1 Approach

The research involves mixed methods: qualitative methods have been used to gather primary data to inform the research aims and will be combined and contrasted with quantitative information collected via an online survey.

The research was conducted in four stages: the first two stages of data collection were carried out in parallel, both to gather information relevant to the research aims and to inform the design of the latter stages of data collection. A summary of the different strands to the methodology follows.

Discussions with professional Bar associations

Professional associations of the Bar relevant to the research aims were invited to provide a general perspective of the issues for the profession concerning price and service transparency. Those spoken to included representatives of the Public Access Bar Association, the Family Law Bar Association and the Legal Practice Management Association. This group is collectively referred to as 'professional associations' in the analyses which follows.

Although invited to take part in the research to provide a general overview from the perspective of the professional association they represented, in practice, those who took part at this stage also recounted their personal professional experiences and opinions and these are reflected in the emerging findings.

Discussions took place during July and August 2017, largely by telephone, and focused on the perceived opportunities, barriers and practicalities of achieving greater price and service transparency in the provision of barristers' services. These discussions also helped to refine the approach taken in the latter stage of the research with providers, chiefly by confirming the sampling approach.

Representatives of the CMA working group of the Bar Council also participated in the research by providing insight into the different charging models and fee arrangements being used in the market; emerging trends; common fee disputes and best practice to avoid such disputes. Information provided by the Bar Council is clearly indicated within the findings section.

Discussions with consumer organisations

Several consumer organisations and charities were invited to participate in the research to provide a general overview of issues for consumers regarding price and service transparency in legal services. Those spoken to included two representatives of legal consumers (Law Works and the Legal Services Consumer Panel); Advice UK and the Bar Pro Bono Unit³. This group is collectively referred to as 'consumer organisations' in the analyses which follows.

³ The decision was taken to describe the Bar Pro Bono unit as a consumer organisation since it is an application-based service which members of the public can access via referral from advice agencies, law centres, or their local MP. It is recognised that this is the national charity of the Bar, funded by the Bar.

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Informal telephone discussions took place during August 2017. Broadly, discussions focused on how barristers might provide more price and service information to potential clients who require legal help as well as the practicalities of what greater price and service transparency might look like for a consumer and how this might be achieved.

In-depth interviews with individuals from a sample of chambers and regulated entities***Sampling approach***

Purposive sampling was used to select a sample of participants most relevant to the research aims and scope. A comprehensive sample frame of barristers' chambers with a website had already been constructed following an online web sweep exercise (BSB, 2017c), and was used as the starting point for sampling for this phase of the research. That sample frame (n=329) had been categorised according to the extent of online price transparency detected during the web sweep ('numerical data'; 'detailed guidance', 'basic' or 'no information') and was expanded to incorporate regulated entities, resulting in a sample frame of 354 chambers and regulated entities.

In line with the scope of the research, checks were carried out to ensure that the sample frame included chambers and regulated entities that provided family law services (either as specialists or alongside other areas of practice) and accepted instructions through the Public Access scheme.

Recruiting participants

The research sought to gather information from barristers, clerks, practice managers or equivalent members of staff involved in the decision-making of pricing and marketing affairs, since these had been identified as most likely to be able to provide insight into the research issues. Relevant personnel from chambers and regulated entities on the sample frame were identified and invited to participate in the research – the sample aimed to understand if and how the drivers and barriers to transparency varied across the different categories of online price transparency and to gain a range of perspectives.

Potential participants were invited to take part in the research in July 2017. The recruitment phase of this research coincided with the summer leave plans of many of those on the sample frame; hindering the number of participants who were available and willing to be interviewed. To counter the impact of this, the interview phase was extended and further interviews have been scheduled for September 2017.

Sample achieved

At the time of writing, seven telephone interviews had been completed and analysed. This sample of interviewees is collectively described as 'providers' throughout the emerging findings which follow. Further details are set out in Table A1, below.

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Table A1: Additional information about provider interview participants

Interview number	Job Title/Role	Type of organisation	Extent of online price transparency assessed by web-sweep
1	Barrister	Entity	Numerical
2	Solicitor	Entity	Basic or none
3	Senior Clerk	Chambers	Detailed guidance
4	Chambers Manager	Chambers	Basic or none
5	Senior Clerk	Chambers	Basic or none
6	Chambers Director	Chambers	Numerical
7	Senior Clerk	Chambers	Basic or none

Approach to interviews and analysis

A 'topic guide' was developed which provided an overall framework of questions and themes to be explored in line with the research aims, including current issues and priorities on price and service transparency, perceived barriers and risks to further transparency and practical ways in which they could be more transparent with consumers about services and fees. The guide was developed with input from the BSB advisory pool of members⁴ (APEX) specialising in competition and economics.

Interviews were semi-structured which allowed the key research issues to be explored and to maintain a consistent approach in the conduct of interviews whilst permitting the exploration of any unanticipated issues as they arose. All discussions and interviews were recorded, fully transcribed and analysed according to the main research aims and emerging themes and issues.

Online survey of legal services consumers

In August 2017, an online survey was commissioned from an external survey specialist using a nationally representative consumer panel. The survey is targeted at a sub-sample of legal services consumers in England and Wales, based on the profiles of adults in the panel who said that they had been involved in a legal matter in the preceding two years (i.e. since September 2015), or were still involved in a legal matter.

Questions in the survey cover experiences of accessing price and service information; its prominence; whether it was understood; whether it was useful; whether anything was missing; satisfaction with its accuracy; the priorities for price transparency and ways in which transparency might be increased, to inform later consumer testing. The survey is in progress at the time of writing and the findings will be included in the final report of this research.

⁴ The Advisory Pool of Experts (APEX) is a pool of external and independent subject matter experts who may be called upon to provide advice in an area in which expertise is lacking internally or where an in-depth or more independent view will be helpful.

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2.2 Ethical considerations

The key ethical considerations in this research were as follows:

- Participation was based on valid informed consent: all participants were provided with a detailed explanation both at the invitation stage and at the start of the discussion or interview of the purpose of the research and how the information provided would be captured, used and presented. Participants were asked for their verbal consent to proceed.
- Permission was sought for each discussion and interview to be recorded to enable later analysis: all recordings were deleted after transcription.
- Non-disclosure of identity and personal information: assurance was provided that no individual, chambers or regulated entity would be identified or identifiable in the report of findings. Throughout the report, the personal details of participants have been anonymised and only selected anonymised verbatim quotes from the telephone interviews are presented.
- Enabling participation: the format and timing of the discussions and interviews were arranged at the convenience of research participants (within, to a lesser extent, the parameters of the research timetable) to enable as many participants as possible to take part

2.3 Limitations

There are some limitations that should be kept in mind when reading these emerging findings, as follows:

Qualitative insights

Part of the research involved qualitative methods as these offered the most effective mechanism to explore in detail the range of opinions and perceptions of research participants, based on their professional experience and knowledge.

The qualitative elements of the research were undertaken by the BSB in-house research team. Although participants were assured at the outset of the confidentiality of discussions, it is acknowledged that the BSB's role as regulator might have influenced the nature of the feedback provided by interview participants; either positively or negatively. The choice of methods was driven by the nature of the research aims as well as considerations of time and practicality.

Telephone interviews - sampling approach

The findings of the interviews are drawn from a purposefully selected sample. While the size of the sample is small, it was selected using criteria which identified participants capable of provide the necessary insight required for the research. The choice of sampling approach was governed by the aims of the research: detailed, qualitative insights were sought as opposed to quantitative or statistically-based conclusions. The findings are indicative of the perceptions and professional experience of those involved in the research and should not be treated as representative of all chambers and regulated entities.

Survey approach

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A key limitation of the online survey is that it is a self-completion questionnaire where respondents might misunderstand the questions. It may also exclude some vulnerable clients, some of whom may have limited digital access. A consumer panel has also been used. A panel is a large group of adults – in this case the total base was 150,000 – who have expressed a willingness to take part in regular surveys. The key benefits of using a panel are that access to potential respondents is quick and the survey can be completed promptly; detailed profiles of panel members are available so relevant participants - in this case those involved in a legal matter - can be identified easily. The drawbacks are that panels can attract “professional respondents”, especially if regular monetary rewards are offered. This is not considered to be an issue here as participants on the panel are only entered into a regular prize draw.

While the consumer panel is representative of adults in England and Wales, the survey was self-selecting in that those who took part were both a) motivated to respond and b) available during the two-week period that the survey was open. From this base, only those adults who had been involved in a legal matter in the preceding two years were eligible to proceed. The survey was in progress at the time of writing and further details will be presented in the final report of findings.

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3. Emerging findings

The research findings are based primarily on the perceptions and professional experiences shared by the research participants across eight informal discussions and seven in-depth interviews, and are presented in this section according to the research aims and emergent themes. Where quotes are used, they are attributed to the type of organisation from which the participant was drawn (professional association or consumer organisation) or the role and type of organisation from which the interviewee was drawn (providers). Findings from the consumer survey will be included in the full and final version of this report.

3.1 Current fee arrangements and charging models

As part of the information gathering for this research, members of the Bar Council's CMA Working Group confirmed that barrister's charging models are predominately based on hourly rates. However, fixed, capped, brief and hearing fees are also commonly used. Several factors determine hourly rates, such as the amount of work required, the area of law, the level of expertise and seniority of the barristers (often indexed on their year of call) as well their current workload and the type of client. On the latter, there may be distinct hourly rates between public and private sector clients and preferential tariffs may be available for particular categories of client (the examples given included regular public sector clients and certain private sector clients, such as insurance companies).

Barristers are generally flexible with their charging models. Bespoke fee arrangements are frequent, in particular for Public and Licensed Access work. In addition to the flexible and bespoke nature of fee arrangements, the quality of the service provided and the level of expertise are equally or more important than price for some consumers. This might be, however, more noticeable in certain areas of law such as chancery and commercial law, according to the Bar Council's CMA Working Group.

With Public Access work, it is common for there to be an initial meeting for which the barrister charges a fixed fee (although some of the providers interviewed reported that they offer a free assessment of the case). If the barrister takes on the case, they will then usually charge another fixed fee.

Complaints and fee disputes

Data published by the Legal Ombudsman shows that in 2015/16, around 10 per cent of complaints about cases where the BSB was the regulator involved instances where cost information was deficient or costs were 'excessive' (Legal Ombudsman, 2016). The Bar Council CMA Working Group representatives advised that a lack of clarity about charging often leads to fee disputes: for example, lack of clarity as to whether a brief/hearing fee for a trial will be returned a trial 'cracks' (i.e. when a trial that has been listed for a not guilty hearing on a particular day does not proceed) and lack of clarity with regard to different types of fees (e.g. staged fees, refresher fees, retainers) which are not explained to clients.

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The importance of clear explanations and clarity of language was underlined by research on client care letters (LSCP, 2016b), which identified key principles for encouraging consumer engagement with client care letters and the information provided within them, that have application to considerations about enhancing price and service transparency.

3.2 Current issues, priorities and practice

Consumer organisations we spoke to emphasised that transparency deficits are part of an overarching issue concerning lack of accessibility for consumers in the legal sector. The difficulty of understanding what a barrister does, as well as the language used by barristers and the format of presenting information were perceived as the main barriers to accessibility, especially for the most vulnerable consumers. Without a basic understanding of the market, it can be very challenging for consumers to make a well-informed decision regarding their choice of a provider.

“Transparency is all well and good but the thing is that litigants in person still aren’t entirely certain what a barrister is, or what a solicitor is, or what CiLex is, or what an advocate or litigant is.”

(consumer organisation)

“If information is presented to people in a format that that they struggle to interpret (...) then inevitably they will make bad decisions, poor decisions or no decisions so that will either exclude them from the market completely or it will lead them to make choices that are maybe not objectively the best choices for them.”

(consumer organisation)

For the majority of the professional associations and the providers we talked to, limited price transparency in the sector was not perceived as a priority or an issue: *“We have a number of things we’ve been concerned about but pricing isn’t one of them”.*

“...we think that the current system actually works very well for consumers of Public Access barristerial services and much better for consumers who engage with solicitors. We don’t consider it to be a problem that needs addressing.”

(professional association)

The efficiency of the clerks, especially in their relationship with solicitors (which are still a large consumer base for barristers) appeared to be the main reason for this limited awareness of transparency issues. For most interviewees, the clerks provide a satisfactory level of transparency to every type of consumer once they have reached out to them. The positive role played by clerks was mentioned several times across interviews.

“The clerks are exceptionally good at managing public access, that’s something that shouldn’t be underestimated. Just because something isn’t sitting on a website saying ‘if you do X amount of work it will cost Y amount to you’ doesn’t mean that there isn’t transparency around fees”

(consumer organisation)

Some of the providers acknowledged there could be challenges for Public Access clients in finding price information, who were perceived as being more likely to shop

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around and to be cost-driven compared to consumers instructing barristers on a referral basis:

“There’s a greater likelihood that you will have the consumer actually searching or looking around, rather than perhaps the professional clients in other areas of law.”
(senior clerk, chambers)

“I think everyone would agree that transparency is better for lay clients, which is different when they instruct a barrister via solicitor who gives them the cost. It’s understandable that the lay clients would like to compare costs and products.”
(chambers director)

Although none of those interviewed had current plans in place to tackle this issue, a few indicated that they are receptive to the idea of increasing the extent of price information on their websites for Public Access work in the future.

In terms of existing good practice, examples were limited. In two interviews, mediation was suggested as an area of law where fixed fees from previous cases were often provided to consumers, and this was considered to be good practice by the interviewees. Will-writing and conveyancing were also described by one professional association as areas where good practice in price and service transparency could be observed; mirroring the findings of the CMA report in this respect.

“The examples [of good practice] I’ve seen are more around mediation suites and mediators. There’s a lot more transparency in that area than any other area... A number of chambers will list both the cost of the mediation suite and the cost of the mediation”
(professional association)

3.3 Drivers and opportunities for transparency

Interviews revealed a perception that increased transparency on price and service information in the profession is likely to be driven by the demand and supply market equilibrium. From a competition angle, when there is a high level of supply on the market, there is a higher level of competition to entice consumer engagement, providers tend to be keener to publish their prices on their website. We can observe that in some particularly competitive areas of law such as mediation. According to some interviewees, this might be particularly the case for the most price competitive providers who are aware that they are cheaper than their competitors.

“I think it’s price competitive [mediation] at the moment, as there are so many people who are mediators and they need to get experience under their belt in order to get more mediations.”
(professional association)

“I would imagine that they think they are competitive enough to entice the viewer to not go anywhere else. Whether or not these prices actually stand true, I’d surprised.”
(senior clerk, chambers)

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From the perspective of consumer organisations, price transparency can be driven by a higher demand for information from inexperienced consumers with a limited knowledge on the amount of work needed, the complexity of the case and the typical range of costs, as opposed to solicitors. Public access family law consumers, for instance, tend to be inexperienced. Incidentally this may give us an indication on why Public Access providers, and especially in family law, tend to publicise prices on their website more than for referral work or in other areas of law, as observed in the web sweep exercise (BSB, 2017c).

“Probably that you’re at the low end of where the barrister makes money. The Family Bar...it deals with clients who haven’t got the money that other barristers’ clients have. That’s why, I think, you find that there’s a keener edge on letting the clients know what the costs are.” (barrister, entity)

“We felt it was probably helpful [to offer price information] - this is particularly for lay clients or the Public Access clients who are looking around and trying to find us to give them some idea of what either the costs might be or how they would be arranged so that we could encourage the clients to get in touch with us.” (senior clerk, chambers)

Legal aids cuts are perceived as another key driver for more transparency from Public Access providers according to some interviewees.

“We felt that... there would be a number of people of limited means that would now not be eligible for legal aid, and we wanted to make sure that those people that were affected that way had some recourse to reasonable costs where they wouldn’t necessarily have been able to get any help.” (senior clerk, chambers)

“A lot of our youngsters do a lot of legal aid work... This is all going to be lost because people are going to be representing themselves because they can’t afford to, so what can we do to counteract that? ... I know that my clerks had been thinking about advertising their rates.” (professional association)

3.4 Perceived barriers to transparency

Complexity of cases

There are perceived challenges with price transparency. A consistent theme arising from interviews with professional associations and providers was that the complexity, variety and bespoke nature of legal cases served as a barrier to transparency, making it difficult to provide a meaningful or accurate price to consumers before the details and the volume of likely work involved were known. This was perceived by many interviewees as the primary barrier to increasing transparency across the board and was a hurdle that few could see a way over. To illustrate:

“Legal services are complex by their nature in that there is very rarely a ‘one size fits all’ for the price, whether it’s for written or advisory work, or whether it’s for hearings. So I think what we would want to do is give the clients some idea of roughly what the brackets of costs might be, but it’s all rather subjective depending on what the context is or the specifics of their particular case are.” (senior clerk, chambers)

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“The thing is, some work, particularly a lot of the work done around Public Access is just so unbelievably nuanced that you couldn’t just put a price up on a website, as it’s so different between cases”.
(consumer organisation)

The issue was perceived to apply irrespective of the different ways in which price information could be publicised; whether fixed fees, hourly rates, price ranges or price scenarios and chimes with the findings of the CMA study, where objections from legal services providers in general were that the nature of the services they offered made it difficult to present information on price and service in a way that consumers could assess.

One barrister interviewee expressed a different opinion on the matter of case complexity: arguing that it was an artificial barrier to price transparency: *“the argument on complexity, to my view, is simply trying to mask the issue of whether it [the Bar] shows its fees or not”*, reasoning that experienced barristers are well equipped to provide an accurate price estimate for their cases.

Competition and commercial sensitivities

There was a firm perception among providers that competition hindered transparency of price information due to concerns about the potential impact on business or profitability and the commercial sensitivity of advertising prices upfront, with the potential for other providers to undercut or to match their prices: *“... it would end up being a bit of a cartel, wouldn’t it? With chambers would then start hiking [prices]...”*

There were particular concerns about potentially overpricing or undervaluing work and simply “getting it wrong”, both in terms of the impact on the provider and on the consumer. As stated by one chambers manager: *“I think the main barrier is about being tied to something that may not be appropriate in a particular instance, and also potentially being taken advantage of.”* This accords with earlier research with Public Access barristers (LSB & BSB, 2016) which found that some barristers were unsure when or what to charge in fees, with many unaware of what their peers in similar practice areas would charge; very few considered themselves to be competing on price and lacked knowledge of the market. A number of barristers interviewed said they knew they were undercharging for their work – in some cases this was a deliberate and benevolent decision, but for most it was because of a lack of understanding of the time the work would take and lack of understanding of how to price “commercially”.

One interviewee indicated that, in their experience, price transparency was kept at a minimum in order to balance the profile of referral versus Public Access work, in this example because barristers were not fully accustomed with cases through this route:

“Barristers here or in general aren’t accustomed to dealing with Public Access people, some are better than others, but it involves more administration for the clerks. That’s a concern we have as a chambers...we can put prices on there, but that’s only dealing with one issue instead of communicating through the clients,

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rather through the clerks. That's probably why we don't promote it as well as we should do." (senior clerk, chambers)

In a second example, the approach to transparency was effectively part of their marketing strategy which was driven around the concern that advertising prices would attract clients focused primarily on price, instead of value:

"We don't want to attract the kind of client who is just differentiating between solicitors on price. That's a secondary reason because actually we are cheaper than all the other solicitors of the same experience and quality. But it still remains a valid reason because we're not the cheapest solicitors anywhere... we don't want to appeal to people who are just shopping around for cheap deals" (solicitor, entity)

For others, transparency was hindered by the prospect of deterring consumers and losing out on their business as a consequence of not being able to explain the value of their services, as illustrated by the approach taken at the former law firm of one provider:

"They decided not to [advertise prices] because they knew that would instantly put clients off if they couldn't convince clients of their expertise and their value for money before giving an indication of costs." (solicitor, entity)

"The potential risk is for the Bar to lose its work... People could be put off straight at the outset by fees that are charged and that's not exactly correct" (senior clerk, chambers)

In a contrasting view, one provider suggested that inertia was as likely to be the chief barrier to price transparency as any willful decision not to publicise information, which does sit well alongside the finding of the present research that lack of price transparency was not necessarily seen as a priority or a current issue for the Bar, among most of the providers interviewed for this research.

Price variation

Closely linked to the issue of the complexity of cases, the extent of price variability in barristers' services was described by some as a barrier to transparency. In certain cases, reduced or subsidised fees might apply and different rates might be used for different types of consumer (professional vs. non-specialist) and these sorts of considerations were described as limiting the extent of current price transparency. To illustrate:

"In terms of hourly rates, we don't have set of hourly rates for everyone. We have a standard hourly rate and enhanced hourly rate, being deployed for cases of more urgency, of more complexity or more value than standard cases. So, again, the hourly rate that we apply depends on an initial case assessment" (solicitor, entity)

"You normally associate more senior barristers with higher hourly rates because it's a whole supply / demand element. If you've more junior barristers who do high quality multi-track work and the hourly rate comes out say, £200 per hour, and you can get

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more senior people to do £150 per hour, then it doesn't sit well to publicise that.”
(senior clerk, chambers)

“We actually took down our subsidised fees rate from the website because it's something that we felt would rather have within our own power to offer to people that we felt were probably needy, rather than it being taken advantage of by those that weren't necessarily in that situation”
(chambers director)

3.5 Perceived risks and consequences of increasing transparency

Risk of confusing consumers with detailed upfront information

Related to concerns about the complexity of cases, many of the professional association and provider interviewees raised concerns about the potential impact on consumers should they be required to publicise price information. This was perceived as being likely to lead to a situation where price information needed to be accompanied by so many caveats and exclusions as to render it meaningless to consumers. To illustrate:

“... there are so many different circumstances, and so many different types of case or scenario that you may end up having pages of information that it is just going to be impossible, you will end up with a kind of matrix or spreadsheet with all kinds of different fees going into different boxes... it's going to be more complicated for the clients to look at”
(chambers director)

“We find it virtually impossible to say ‘your case will cost X’ in a meaningful way on the website because there would be so many exclusions and conditions then it would make it meaningless.”
(solicitor, entity)

While consumer organisations highlighted the point that consumers can and do understand the concept that it is difficult to price legal services precisely; they still appreciate having access to “close enough estimates” in favour of having no sense of what a legal service might cost. These concerns serve to emphasise the importance of consumer testing, as advocated by the CMA study, to be certain that the information made available to consumers is provided in ways that are most useful and meaningful to them.

Price versus value and the impact on quality

A key risk perceived by some of the professional associations and providers was that with increased price transparency, competition might only be driven by price at the expense of the whole value of the service provided. Similarly, there was concern that price would become the main or the only point of comparison for lay consumers, with the associated risk that consumers fail to take account of other important factors when choosing their legal service provider, such as specific expertise or the overall quality of the work, which could enable cheaper providers to prosper at the expense of quality. There was a view that competition might increase, prices might drop and the quality of service provided to consumers might be affected in a “*race to the bottom*” on the prices of barrister's services at the expense of quality.

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“The risk with completely fixed fees is that you would get the minimum in terms of legal services delivery and it would push everything down” (chambers manager)

“You’re also in danger of removing that element of ‘right person for right job’. If you put, say, hourly rates up on the board, well there will be some people who go in at lower hourly rates but they may not necessarily be the best person for the job. I know there are professional obligations around that. But it just feels like, as we are a profession, it should be considered on the basis of the right person for the job.”
(professional association)

This reflected a more general perception, shared by some interviewees, that is it easier to provide price information in advance for commoditised legal services than for bespoke and complex legal services.

“I think there is an issue around published prices when you try to offer a professional service, rather than a commodity. There’s probably a differential that can be made between just basic quick process work, which can become a fixed price, and other type of works. Otherwise clients can differentiate on some of sort of value rather than price”
(chambers manager)

There was recognition that this sort of barrier could potentially be countered by providing more information to support consumers’ choice more generally; particularly that indicating quality. At the same time, there was appreciation that review-style feedback might be difficult for consumers to interpret.

“Family law clients tend to be one-time consumers of this service. They haven’t gone through this before and they have a more restricted ability than most type of clients to assess whether they are instructing a good, bad or indifferent lawyer. They may well be more susceptible than most types of clients to go for lower prices, rather than assessing the quality of the lawyer compared to the price. That’s why I think you got to have some kind of fairly standardised presentation or measurement of that lawyer’s quality as well as their price”
(solicitor, entity)

“if information is presented to people in a format or formats that that they struggle to interpret because their skills levels aren’t very high, let’s put it that way, then inevitably they will make bad decisions, poor decisions or no decisions so that will either exclude them from the market completely or it will lead them to make choices that are maybe not objectively the best choices for them.” (consumer organisation)

In an opposing view, price transparency was seen by one provider as an opportunity for the Bar to demonstrate just how competitive its prices are in the legal market and the value and affordability of its expertise:

“The Bar should be required to publish their fees and the Bar has nothing to fear about that because, to my mind, the fixed fees of a barrister provide probably one of the best values for money around the legal market.”
(barrister, entity)

One consumer organisations emphasised the positive likely impact and benefits for consumers of increased competition: *“the more the competition, the more people feel obliged to show that they are a) good quality and b) very price competitive”*.

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3.6 Survey of legal consumers

Findings to follow

3.7 Improving price and service transparency

Several interviewees welcomed the idea of regulatory requirements on transparency, although there was no consensus as to whether different level of requirements should be applied for Public Access work and referral work. A few providers were of the view that increased transparency could be beneficial for the profession because it could show that barristers are priced competitively and counter any perception that barristers are more expensive than other legal service providers.

“I think there needs to be some prescription and mandatory requirements on price information. And regulators should highlight how beneficial it is for providers to provide this information to consumers, especially for consumers that might not have the time or the inclination to pick up the phone to understand the pricing models.”
(consumer organisation)

Interviewees expect the regulator to find a middle ground between requirements that render the information provided meaningless to consumers and overly rigid requirements that would restrict their freedom of market.

“Don’t make the Bar be too prescriptive about what its charging structures might be ... because if the information being provided is so broad, it makes it unhelpful. If you have to stipulate absolutely everything to give you the widest possible margin... well, that’s not going to be of enormous help to the public.” (chambers director)

“The Bar is a business and it needs to be able to have some freedom of pricing and freedom of structuring and freedom of advertisement and all the things that makes a good business. In terms of what the professional bodies or the regulatory bodies can do to help is just translating some of these things to litigants in person.” (consumer organisation)

In order to mitigate the risk of having a market only driven by cost to the detriment of the overall value of the service provided (as described at 3.5), one provider suggested that the regulator sets out a standard template of price information alongside indicators of value that providers should provide on their website, to enable consumers to make more meaningful comparisons.

“...a standard list of conditions and exemptions so a consumer can go on a website to make a direct comparison on all the factors, not only the price. If you’d have a very rigid standard template, that would be a fairer thing because firms couldn’t mould their price sections to entice clients to come over because the client is thinking it’s cheaper but in fact it’s not”. (solicitor, entity)

Consumer organisations emphasised the wider point that improvements to transparency should not only be limited to websites and should be in formats that are most accessible:

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“It is really important to target the places people already go for their information needs or their information and support needs, so places like libraries and GP surgeries, citizen’s advice.”
(consumer organisation)

Price information

There was broad agreement across interviews that some price information, fee guides or price scenarios could be provided upfront on chambers websites if sufficient limitations and exclusions are provided. Particular caution might be required around hourly rates, which are not always sufficiently informative. The level of expertise or seniority of the barrister and the urgency of the work were factors that it was suggested could influence the final cost:

“You can charge an hourly rate of £100 per hour for a five year of call barrister and £150 per hour for a 10 year of call barrister, but it will usually take less time for the most senior barrister. So an hourly rate is not always the right way, because the junior barrister might take 10 hours with a £1000 bill and only four hours for the most senior barrister which will be £600. So charging an hourly rate is not always the right way to look at things, it’s also about the expertise of counsel”.
(senior clerk, chambers)

“Say, for example, somebody wants a hearing and it’s tomorrow. Well, if somebody is going to have to work through the night, I don’t think that’s to do with busyness; that’s to do with urgency. If you think about it you pay for urgency in most other things, don’t you? So I think there is a valid argument for urgency but I’m not necessarily convinced there’s a valid argument for busyness.”
(professional association)

One suggestion was for the Bar Council or the BSB to provide an open platform with Public Access providers’ hourly rates.

“The best would be if individuals want to contact the Bar Council for Public Access work and they would probably be able to give up the hourly rates and schedule of fees. You could have a table on a Bar Council / BSB website with hourly rate for each chambers”.
(senior clerk, chambers)

The CMA study noted that “the use of scenarios can make potentially complicated information easy to engage with” (CMA, 2016, p232). Across interviews, price scenarios were considered most feasible for small cases and were perceived as more difficult to apply across the board, especially for complex cases. A recurrent suggestion was to provide a price band for each scenario given with an upper and lower cost range.

“I think they could all say for the most junior member of chambers we will charge you £X fees an hour, the most senior might be £Y, but in certain circumstances we may need to deviate from that if the circumstances of the case merit it.”
(chambers director)

“You could create a sort of matrix of levels of fees for each area of work. You’d have to band it between X and Y because what you couldn’t say to give a fixed fee and that all the cases are the same. Although it can be used as a sort of tool to get an

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ideal fee, I would certainly band the level of fee between a lower fee and a higher fee.”
(senior clerk, chambers)

Price information on providers’ websites will need to be updated regularly (at least once a year), particularly given the point that hourly rates can frequently vary.

“I think it’s because people’s hourly rates fluctuate which would require frequent updates on chambers’ websites. Sometimes it can fluctuate every year.”
(senior clerk)

Service information and additional considerations

There may be scope for the regulator and the profession to increase awareness and understanding of what a barrister does, as a complementary action to any change to price transparency requirements. A recent survey of family law consumers found a clear perception that barristers are expensive and certainly more expensive than solicitors: over eight out of ten respondents believed that barristers are expensive plus almost half of those respondents who thought about using a barrister but changed their mind did so because they felt that they were too expensive. (BSB, 2017e). There may be value in undertaking work to increase awareness of the value of the service provided, alongside price.

“I think there’s a message that needs to go out that the Bar isn’t as expensive as people think... I mean the barristers are out there, they are doing public access, they are meeting people...doing a lot of the emotional support things that solicitors used to do and they are doing it for fees that are reasonable for the amount of training and experience that they have. So it does go back to that education of what a barrister is in the 21st century”.
(consumer organisation)

“I think that the problem at the moment is the consumer is still not aware enough of what a barrister can offer. It’s not a murky world but it’s a world that is difficult for the public to understand and people are probably a bit nervous to contact a barrister.”
(senior clerk, chambers)

In tandem, the regulator and the profession could consider publicising the positive client-facing role of the clerks in providing information about much how a case might cost and how long it might take and who the right barrister might be.

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4. Conclusion

To follow on completion of interviews and survey.

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DRAFT: INTERIM RESEARCH FINDINGS

Legal Services Consumer Panel (2016b) *Research into Client Care Letters*.

Available from:

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DRAFT

Disclosure of sexual orientation and religion and belief data by chambers and entities.**Status**

1. This paper is for **approval**.

Executive summary

2. The current rules on chambers' and entities' diversity data disclosure prevent the reporting of any sexual orientation or religion and belief data, unless every member of chambers has consented.
3. This has resulted in very low disclosure of sexual orientation and religion and belief data by chambers and entities, despite much higher rates of disclosure for other protected characteristics.
4. Engagement activities conducted by the Equality & Access to Justice Team have indicated an appetite to review the rule among LGBT+ members of the Bar. The prevailing rationale behind this is to promote awareness of the diversity of sexual orientation that already exists within the profession.
5. As the rule in question applies to both sexual orientation and religion and belief, we are proposing to consult on how the rule applies to both characteristics at the same time. We would do so fully aware of the fact that opinions between the two groups may differ, and the outcome of the consultation may lead to amending the rule for one group and not the other.

Recommendation

6. It is recommended that the Board **agrees** to consult on a potential change to the equality rules, in order to promote disclosure of sexual orientation and religion and belief data.

Background

7. In September 2012 the BSB introduced a number of mandatory equality rules into the Handbook that apply to all self-employed barristers in multi-tenant chambers (some of the rules were subsequently applied to entities, following the introduction of entity regulation). The rules aim to promote and embed equality and diversity within the profession and cover a number of different areas previously untouched by BSB regulation such as equality monitoring and fair recruitment training.
8. The equality rules on collection and publication of diversity data apply to all Chambers and BSB entities. They state that data in relation to the characteristics of sexual orientation and religion or belief must be excluded from publication unless there is consent from every member of the workforce.
9. This has resulted in chambers routinely reporting and publishing data on age, ethnicity, gender and disability. In contrast, reporting of sexual orientation and religion and belief data is significantly lower.

10. The Rule: **rC110.3.s** requires that:

The published summary of anonymised data shall:

- (i) *exclude diversity data relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the members of the workforce;*
 - (ii) *exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent;*
11. Guidance on the rules is provided in the BSB Handbook Equality Rules Supporting Information. The guidance indicates that where there are fewer than ten members of chambers, or fewer than ten individuals with a particular characteristic, rule (ii) comes into force and prevents publication of the relevant data unless there is consent from all those to whom the data in question relates.
12. Rule (ii) was introduced to prevent members of the workforce from being identified because there were only small numbers of people with a particular characteristic in a chambers/entity. This is standard practice when publishing this type of data.
13. Rule (i) was introduced because there was a particular concern about protecting the rights of members of the workforce who wished their sexuality, and religion and belief to be unidentifiable. This rule was deemed necessary, as there were legitimate concerns that without it no sexual orientation or religion and belief data would be disclosed at all. This also minimised the risk of unintended 'outing' of a member of chambers.

Discussion

14. Through the implementation of its equality and diversity strategy, the BSB is committed to the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.
15. As part of this work, we have identified the need to improve diversity monitoring within the profession, in particular where there are low levels of reporting. Without diversity data, it is impossible to establish the nature or extent of any inequality and therefore devise appropriate measures to reduce or remove it.
16. In March 2016 the Bar Council requested, through the Protocol for Ensuring Regulatory Independence, that the BSB review the diversity data rules and associated guidance and proposed amending the disclosure rule in support of promoting a culture of openness and transparency at the Bar.
17. The Bar Council stated that members of the profession and chambers have been seeking practical advice on conducting their workforce monitoring exercises and seeking clarity about the BSB rules on diversity monitoring.
18. Following the Bar Council's representations, we have undertaken an independent review of the issues. From December 2016 to July 2017 the Equality and Access to Justice Team engaged a number of specialist organisations and members of the profession, to better understand good practice in this area and consider the feasibility of amending our rules to enable improved data collection from the LGBT+ workforce.

Part 1 – Public

19. Those engaged with include representatives of FreeBar¹, Stonewall, and Brie Stevens-Hoare QC² - who is a leading advocate for LGBT+ rights at the Bar.
20. Our engagement activities have established that since the rules were initially implemented the desire for extra protection with regards to sexual orientation data has reduced. There is also a growing desire to promote the diversity in sexual orientation that already exists within the profession.
21. There was a concern that the disclosure rules have not had the impact that was originally intended. In particular, the requirement to have every member of the workforce consent to publication of sexual orientation and religion and belief data (even if there is no risk of identifying individuals) has prevented some chambers from publishing any sexual orientation or religion and belief data. For example, the current drafting of the rule means that heterosexual members of chambers (who are not at significant risk of having their identity revealed) are able to veto the publication of all sexual orientation data. This has had the effect of significantly lowering overall publication.
22. This would suggest that rule (ii) above, which is focused generally on preventing the identification of individuals, may offer sufficient protection, without the need for an additional rule targeted at sexual orientation and religion and belief. We have therefore concluded that we should consult on amending the rules.
23. Although we have not engaged directly with any specialist religion or belief organisations, we recognise that the issue concerning such data is very similar. We intend to consult on a change to the rule for both sexual orientation and religion and belief data, with the understanding that there may be differences of opinion between these two groups regarding whether to amend the rules. The outcome of the consultation may suggest that the rule should be amended for one and not the other.

Next steps

24. The Equality & Access to Justice Team will engage with the Communications Team to agree a consultation strategy, including timing the consultation so that it does not interfere with other ongoing consultations.
25. When drafting the consultation we will require input from the barrister Equality and Diversity APEX member, and we will also engage Brie Stevens-Hoare QC in an informal capacity.
26. Once the consultation has been drafted it will be presented to the Board for approval.

Financial implications

27. None arising directly from this paper, as the consultation has already been factored into the current work programme of the Equality and Access to Justice Team.

¹ An LGBT+ inclusive specialist Bar association.

² Brie Stevens-Hoare was engaged through the Protocol for Ensuring Regulatory Independence.

Equality Impact Assessment

28. A full equality impact assessment of any proposed rule change will be completed with the input of APEX members. It is not anticipated that this consultation will have any significant adverse impacts on equality because the equality data rules were designed specifically with the aim of promoting equality and diversity at the Bar. Risks of members of the Bar being identified involuntarily would still be minimised by rule (ii) above.

Risk Implications

29. The BSB Regulatory Risk Index lists a 'lack of a diverse and representative profession' as a significant market risk. The diversity data rule was introduced to increase transparency at the Bar and encourage a diverse range new entrants to the profession.
30. Failure on the BSB's part to reflect these changes in its regulatory arrangements may prevent a positive change with regards to diversity at the Bar, particularly in relation to LGBT+ and religion and belief communities.
31. Any potential changes with regards diversity data rules will be designed in a way that proportionately addresses the rights of individuals to remain unidentified against increasing openness and transparency of diversity at the Bar.
32. A change to the Handbook rules can have potentially significant impacts on the Bar, consumers and our regulatory functions, so we must make an informed decision on any amendment.

Regulatory objectives

33. This proposal has as its primary objective encouraging an independent, strong, diverse, and effective legal profession.

Lead responsibility:

Amit Popat, Head of Equality and Access to Justice
Oliver May, Legal & Policy Officer

Annual report of the Governance, Risk & Audit Committee (GRA)

Status: For noting.

Public paper: Public account of the work the GRA Committee undertakes for the Board.

Executive Summary

1. The GRA Committee is required to update the Board on its activities on an annual basis.

Recommendations

2. The Board is asked to:
 - a) **note** the contents of the update report.

Background

3. Currently the Committee's Terms of Reference include: advising the Board on the effectiveness of corporate governance structures and standards, integrity of internal controls, the risk management framework and the internal oversight functions; providing opinion on the effectiveness of monitoring processes and whether reliance can be placed upon internal controls; and oversight of the internal audit function and the development of the first and second lines of defence of the BSB's assurance framework.

Update

4. The Committee met eight times over the year since the last report in September 2016.

Membership

5. The previous Chair, Malcolm Cohen stood down at the conclusion of his term on the board. Nicola Sawford accepted the appointment to the post of Committee Chair with effect from 01/01/2017.
6. The membership of the Committee includes:

Nicola Sawford	Chair from 01/01/17 (lay, Board member)
Naomi Ellenbogen QC	Vice Chair (barrister Vice Chair of the Board; commenced as VC of GRA in January 2016)
Nicholas Dee	Barrister member
Judith Worthington	Lay member
Tim Fry	Lay member
Malcolm Cohen	Chair until 31 /12/16 (lay, Board member until 31/12/16)

Regulatory Standards Framework

7. During 2017, the Committee reviewed the ongoing work as part of the ASPIRE programme of change intended to achieve satisfactory ratings against the LSB's Regulatory Standards Framework. The committee provided assurance on the BSB's self-assessment process. GRA members reviewed evidence provided by the Senior Management Team (SMT) on progress against the five pillars: outcomes-focussed regulation, risk-based regulation, enforcement, supervision, capability and capacity.

BSB Service Complaints

8. Annual report of the Governance, Risk & Audit Committee (GRA) have a complaint about the BSBs service. This is separate from complaints handled by PCD and focuses on standards of service delivery of the BSB. The Committee received a service complaints monitoring report at its October 2016 meeting; thirteen complaints had been processed during the 12-month period of which all had been resolved at the time of the report. Nine service complaints related to the Professional Conduct Department and the remaining four related to the Regulatory Assurance Department.
9. Four of the complaints were upheld, two partially upheld, six were not upheld and one was inconclusive but an apology was issued.

Corporate Risk Management

10. The Corporate Risk Register was presented to the Committee at quarterly intervals. GRA members scrutinised the risks and the associated mitigating actions, provided assurance to the Board that these were being properly managed, and gave recommendations as necessary. In addition, the Committee was provided with “in-depth risk reviews”, which focussed on pertinent corporate risks: much more detailed analyses, operational plans and information were presented in these reviews, and the “Risk Owners” attended the relevant meetings. Risks that the Committee focussed on over the last 12-month period included: Financial Risk, IT Systems and Security, FBT programme risks and the Authorisations and Waivers process.

Regulatory Risk

11. GRA members were kept up to date with the work of the Regulatory Risk Team, the ongoing development of the framework and the process of ‘knitting’ corporate and regulatory risk together.

Assurance Framework and Governance Review

12. The BSB's lay Independent Observer provided independent assurance that the BSB's enforcement system was operating in line with its aims and objectives. The Committee received reports until the end of 2016 and the reports stated that the complaints and disciplinary proceedings are being handled in line with the BSB's Enforcement Strategy and in accordance with the policies and procedures of the Professional Conduct Department.
13. The position of Independent Observer was disestablished by the Board in December 2016, in line with the Governance Reform Programme. In the future, independent assurance across all of the BSB's regulatory activity will be derived from the internal audit function.
14. GRA members were kept informed of the ongoing work implementing the Governance Reform Programme and have oversight of the ongoing implementation of the assurance framework. In August 2017 a selection panel including several members of the committee appointed Crowe Clark Whitehill as the BSB's internal auditors.

Forward View

15. Over the next year the Committee will continue to focus on the implementation of the assurance framework with an audit plan to be agreed with the internal auditors in the coming months. Furthermore in addition to the Committee's ongoing work to monitor and scrutinise the executive's approach to corporate risk, the Committee will oversee the joining together of the regulatory and corporate risk.

16. The Committee is also recruiting for a new barrister member, with Nicholas Dee standing down at the end of his second term at the end of 2017.
17. The next GRA Annual Report is due to be presented to the Board in October 2018.

Lead responsibility

Nicola Sawford - Chair of GRA Committee

Performance Report for Q1 (April 2017 – June 2017)

Status

1. For noting

Executive Summary

2. This paper provides an update to members of the Board on the BSB's progress and performance in Q1 against the activities set out in its [2017-18 Business Plan](#)¹. It covers a wide range of information (see the dashboard in Annex 1) relating to projects, financial position and performance measures, and it provides the Board with an assessment of progress against our plans.
3. The closure of ASPIRE (Accessing Staff Potential in Inspiring Regulatory Excellence) will be marked in September with a 'Knowledge Sharing Session', see paragraph 11.
4. The main "exception" areas highlighted in this report are:
 - a) Q1 actual against budget has shown that we have kept our tightly controlled expenditure on track. We will be carrying out a mid-year forecast at the end of Q2 in conjunction with the Finance Team and these figures will be presented to Board in November. Q1 financial performance is as follows:
 - (i) **Non PCF Income:** £49k in non-PCF income against our budgeted projection of £64k (variance £17 or - 21%).
 - (ii) **Expenditure:** £1,151k against a budget of £1,210k (variance £59k or +1%).
 - b) Four business plan activities are showing as off target: Public and Licensed Access (Amber), Seek s69 order (Red), Review of disciplinary tribunal service (Amber) and Equality Objectives (Amber).
 - c) PCD missed 3 out of 4 set targets in Q1. Targets achieved were, KPI 73.8%, OPI1 70.5% and OPI2 66.7%. A large amount of cases were entered onto the system at the end of Q4 2016 -17, which will have an effect on this year's performance figures.
 - d) Authorisations missed their application targets. See paragraph 22
 - e) The overall staff turnover is 29%, with voluntary turnover being 16%. Committee members welcomed this drop and thanked the Executive on the improvement on the churn.
 - f) Two private annexes to this report are attached to BSB paper 070 (17) private session: Resource Group One Report and the BSB HR Dashboard.
 - g) The PRP Committee discussed the 2018 - 19 budget bid on 4 Sep. A high level paper will be going to the Finance Committee on 26 September. Business Planning and Budget Bid for 2018 – 19 will be discussed in the Boards private session, see BSB paper 069 (17), agenda item 4.

¹ 2017 – 18 Business Plan https://www.barstandardsboard.org.uk/media/1826204/bsb_business_plan_2017-18.pdf

Recommendations

5. Members of the Board are invited to:
 - a) **note** the detail of the report;

Background

6. We are now in our second year of our 2016 – 19 Strategic Plan². The plan sets out the way in which we are/will regulate barristers and specialised legal services businesses. It also sets out how we will respond to potential proposals for change in the regulatory landscape and its underpinning legislation. The work which is to take place over this three-year period has been organised into the following three strategic aims:
 - a) Regulating in the public interest;
 - b) Supporting those we regulate to face the future; and
 - c) Ensuring a strong and sustainable regulator.
7. The published Business Plan for outlines our key activities for the year, as well as the budget to deliver these. This report describes our performance against these aims, objectives and budget, as well as the overall performance within the BSB.

Reporting process

8. On a quarterly basis, the Corporate Support Team gathers information, in liaison with the Senior Management Team (SMT), and then reviews the activities in the Business Plan and provides progress updates. It is SMT members' responsibility to provide explanations for delays or over or underspends and the associated risks or impacts and how they are being addressed. Resource Group colleagues provide the figures underlying the HR and IT performance data on a quarterly basis.
9. The live document against which business activities are reported was last updated on 31 July 2017, whereas our performance indicators and management accounts are for Q1 only (as at 30 June 2017).

Areas for further consideration

10. Activity is reported to the Board and to the PRP Committee by exception. This means that only items which are not running to budget, timetable or have other resourcing issues are highlighted below, and have been listed in the order that they appear in the 2017-18 Business Plan.

These include:

- a) Public and Licensed Access
 - (i) Board members will recall that this activity, which is within our control was put on hold in 2016 – 17 business year, while we reviewed the Competition Market Authority (CMA) report of the legal services market.
 - (ii) In June we opened a consultation on the changes to the Public and Licensed Access rules. This includes an analysis of whether the cab-rank

² 2016 – 19 Strategic Plan https://www.barstandardsboard.org.uk/media/1746768/bsb_strategic_plan_2016-19.pdf

Part 1 Public

rule, which currently only applies where a self-employed barrister is instructed by a professional client (such as a solicitor) should also apply to Public and Licensed Access cases. The consultation was originally due to close on the 15 September and has been extended for two weeks due to the summer break period.

- (iii) With the new closure date of the 26 September this activity will slip by a quarter. The Board are now schedule to make a decision on the consultation in October and not September as stated in the 2017 – 18 Business Plan. With this slight timeline change in this Business Plan activity, we are certain that we will complete this activity by the end March 2018.

b) Seek s69 Order

- (i) This activity, which was originally within our control 'C1', is currently a 'C3', out of our control, is marked as red in relation to our timeline, see annex 1.
- (ii) We have received confirmation from the Ministry of Justice (MoJ) of their intention to lay the order before Parliament. Due to the general election the parliamentary timetable changed and the order will not be presented until October or November. With this delay (which will not have an impact on other business activities) we will miss the October commencement date and the rule change will not come in to force until 6 April 2018.

c) Review of disciplinary tribunal service

- (i) This activity has slipped into the next quarter: it was due to go to the Board in September, for Board members' consideration and review of the executive's recommendation about the future of the disciplinary tribunal services. The paper will now be going to the Board on 26 October, due to the summer break and the Board's very full agenda in September. We are confident that we will complete this activity by the end of the business year.

d) Equality Objectives

- (ii) Due to an oversight when drafting the 2017 – 18 Business Plan, the report on research into experiences of students should have been cited for Q2 and not Q1. This research was commissioned to address the Equality Objectives
- 3, 'Improve our understanding of the diverse experience of students training for the Bar'; and
 - 4, 'Increase equality of access to the profession';
- and was completed in July, as stated in the BSB Equality and Diversity Strategy 2017 – 18.
- (iii) The research report went to the private session of the Board on 27 July for noting and approval for publication.

ASPIRE

11. Board members will recall that the ASPIRE programme built on from The Regulatory Improvement Programme (TRIP), which focused on putting in place the systems and

infrastructure in order for the BSB to become a more effective regulator. The ASPIRE programme placed considerable emphasis on changing the way we think and behave as a regulator. The four main streams from the programme were;

- consumer engagement - putting consumers at the heart of how we regulate;
 - governance - having in place arrangements that best support executive-based decision-making; and
 - risk-based regulation - ensuring that we regulate in a targeted and proportionate manner.
 - Equality and diversity – embedding our equality objectives in our policy and decision making
12. ASPIRE's aim was to ensure that consumer engagement was a core feature of how we developed policy and took decisions, that we were risk based in our approach, equality and diversity formed part of the ways of ways of working and that the governance framework of the BSB reflected our aims to be a truly modern regulator.
13. Since the launch of ASPIRE in April 2015 we have:
- developed strong relationships with a number of consumer organisations;
 - equality and diversity forms a fundamental part of the strategic plan;
 - in April 2017 we published our risk index and our first risk outlook;
 - our governance of the BSB has been transformed with the disestablishment of a number of committees; and
 - embraced the work of the programme either as champions, or through attending workshops, seminars or knowledge sharing sessions.
14. In July, the ASPIRE Programme Board took the decision to formally close the programme. They decided that given how embedded the changes have become and the assurance arrangements that are in place for any residual work that there is no need to retain oversight.
15. The closure of the programme will be formally marked in September with a staff knowledge sharing session.

HR Dashboard

16. Committee members reviewed and agreed the new HR dashboard, see BSB paper 070 (17) annex 4, which is less time consuming to prepare and more accurate. The core data for the dashboard was generated from HRs people managers' system (SelectHR). The dashboard will report in real-time rather than quarterly intervals. Therefore the figures will reflect the current situation at the time the report is generated.
17. The turnover figure has remained about 30% for a number of years, rising to the highest point of 43% during this time. This quarter has seen a noticeable improvement at 29%, with the voluntary turnover rate at 16%. Of the two leavers in Q1, one moved to a more senior role and the other took a sabbatical before returning to Australia.

Resources Group (RG) - Performance against the Service Level Agreement (SLA)

18. The Director of Regulatory Assurance has now assumed responsibility for the liaison between the BSB and Resources Group. Routine meetings have been set up with each RG director to review progress, to discuss points of concern and success and to ensure that there remains a positive and constructive level of engagement. PRP will receive a report on the success of this new arrangement after 6 months of its operation. Meetings with RG Directors have been productive and constructive. We are

keen to have in place consistent arrangements for monitoring performance between the BSB and Resources Group and a shared understanding of what is expected from each side. PRP will continue to be kept apprised of how these arrangements are working at each Committee meeting,

19. The following is a summary of the RG key updates and further information can be found in the RG one report, BSB paper 070 (17) annex 5:
- Staff were updated at the all staff meeting on the property search for the new office location.
 - New premises search has begun within the agreed defined search parameters.
 - Barristers have been contacted regarding the renewal of their Practising Certificates.
 - BSB examination printing has begun and will be reviewed in line with the property strategy.
 - Records and PMO have contacted BSB communication team regarding either sharing a stand or/if the My Bar Portal demonstration have their own stand at the Bar Conference in November.
 - HR reports are 95% complete, work has now begun on converting reports over to Customer Relationship Management (CRM) database.
 - Regular drop in session have been arranged by the Finance Team to extend and improve users knowledge of Accounts Payable (AP) processes.

PCD Performance Indicators

20. We achieved 73.8% against our KPI of 80% in the first quarter of 2017, meaning that 6.5 cases lead to the target not being met. In relation to OPI1 we achieved a performance of 70.5%, meaning that 55 out of 78 complaints were concluded or referred to disciplinary action within service standards during the quarter. There were a number of cases which missed the service standard due to delays in receiving responses and/or information from complainants, or extensions of time to supply information. In relation to OPI2, 66.7% of external complaints were concluded or referred to disciplinary action within 8 months. This figure is partly a consequence of the small number of cases which fell to be closed in the quarter (6 out of 9 cases were within service standard, meaning that 1 case resulted in the target not being met). Nevertheless, we performed strongly in relation to OPI 3, where 88.6% of internal complaints were concluded or referred to disciplinary action within 5 months.
21. Due to the large volume of work entering the system in the last quarter of 2016/17, the Q1 end snapshot indicates that 39% of cases at Assessment stage are currently over-running and this is likely to impact on the performance figures for future quarters. The latest PCD performance report dated the 11 September has seen an improvement in the percentage of cases within the service standards. Further updates will be given in the BSB Q2 performance report.

Authorisations

22. We are disappointed not to have achieved our overall target and attribute this to the following:
- A third of the applications are outside of the eight weeks and included historic applications over six months old;
 - Three officers were assigned over 100 applications each for completion, whilst embedding a programme of cross skills training within the team; and
 - The current process was unstructured and needed reviewing to remove unnecessary steps in the process
 - Finalising the transition from non-executive and executive decision making and the preparations for the disestablishment of the Qualifications Committee on 31 August 2017.
23. A work programme has been developed by the interim Authorisation Manager to address the backlog of applications and ensure that quarter two will be free from aged applications and that KPIs are achieved. See annex 4 for the full Q4 authorisations report.
24. This area of the work of the BSB remains under close review, with significant senior manager time dedicated to ensure that its performance improves. Improvement takes time given the need to review and revise processes and to adopt the new governance changes. Staff have responded positively to the necessary changes and there is greater confidence that the structure and productivity of the team is now where it needs to be. We would expect to see KPIs being met from Q2.

2017- 18 Q1 Budget and Forecast

25. Below are the headline figures for Q1 and further detail can be found in Annex 1:
- a) In the first three months for the period ending 30 June 2017 (Q1 of 2017-18), the BSB received £49k in non-PCF income against our budgeted projection of £64k (-21%).
 - b) For expenditure, in Q1 we have spent £1,151k against a budget of £1,210k (+1%).
26. The key budget issues:
- a) Income
 - (i) We are currently in the process of resolving our income reconciliations. At the end of Q1 we have generated an income of £49k and we expect the negative variation of 21%, £15k to be shown in Q2 accounts.
 - b) Staff costs:
 - (i) In total there is a staff underspend of £20k against a staff budget of £1,052K – a variation of -2%. The main over and underspends are described below.
 - (ii) The first round of recruiting for a Programme Manager was unsuccessful. After a second round via a search agency we have successfully recruited to the post. The programme Manager started at the end of August and FBT will be the main programme that they will be managing.

- (iii) Over the quarter a number of vacant posts have been recruited to.

Equality Impact Analyses

27. The Strategic Plan and Business Plan have already been through an equality impact assessment. The Performance Indicators related to HR also monitor our performance against various E&D measures.

Risk implications

28. Risks that may have an impact on the BSB achieving its objectives have been considered whilst compiling the business plan activities. The risk register was last reported to the Governance Risk and Audit Committee on 18 July 2017 and to the Board in the private session, see BSB paper 070 (17).

Regulatory objectives

29. Delivery of the BSB strategy is aligned to the Regulatory Objectives and relates to them as explained in the Strategic Plan documents.

Publicity

30. This report is presented in the Public part of the agenda.

Further reading

31. Corporate Risk register, see paragraph 28.

Annexes

32. Annex 1 – Q1 Dashboard
Annex 2 – Management Accounts summary
Annex 3 – PCD Performance Indicators
Annex 4 – Authorisation Team KPI's
Annex 5 – HR Dashboard and New BSB HR Dashboard, see BSB paper 070(17) annex 4
Annex 6 – Resource Group 1 Report, see BSB paper 070(17) annex 5

Lead responsibility

Dan Burraway, Corporate Support Manager
Natasha Williams, Business Support Officer

Q1 Dashboard

Business Plan Activities (2017-18)				Service Standards (Core activity)					
Strategic Programme 1 Regulating in the public interest				Professional Conduct Indicators					
	TIME	BUDGET	STAFF	CTRL	IMPRT	SIZE	BSB paper reference		
CMA action plan	✓	✓	✓	c1	4	4			
Alternative Business Structures	✓	✓	✓	c1	2	2			
Embedding risk-based principles	✓	✓	✓	c1	3	3			
Bar PII and BMIF	✓	✓	✓	c1	4	3			
Public and licensed access	⚠	✓	✓	c1	2	2	Para 10a		
Seek s69 order	✗	✓	✓	c3	3	1	Para 10b		
Research Strategy	✓	✓	✓	c1	2	1			
Standard of Proof	✓	✓	✓	c1	3	1			
Review of disciplinary tribunal services	⚠	✓	✓	c1	2	1	Para 10c		
Strategic Programme 2 Supporting barristers and those the BSB regulates to face the future				Authorisations					
Continuing Professional Development	✓	✓	✓	c1	2	2			
Youth Courts	✓	✓	✓	c1	3	2			
Immigration	✓	✓	✓	c1	3	2			
Equality Objectives	⚠	✓	✓	c1	4	3	Para 10d		
Scope of practice	✓	✓	✓	c1	1	1			
Anti Money Laundering	✓	✓	✓	c1	3	2			
Future Bar Training	✓	✓	✓	c1	4	4			
Strategic Programme 3 A strong and sustainable regulator				Entity Authorisation Decisions					
Disciplinary Tribunal Regulations	✓	✓	✓	c1	2	1			
BSB - PII	✓	✓	✓	c1	2	1			
Regulatory Independence	✓	✓	✓	c1	3	3			
Governance reforms	✓	✓	✓	c1	3	1			
Resource Group Key Activities				Number of Service Complaints closed					
IM Business tools upgrade	✓	2	1		2017 - 18 Q1 actuals against budget				
MI Improvement	✓	3	1		Act	Bud	Var		
IM CRM training	✓	3	3		Income	£49k	£64k	-£15	
ATP Charges	✓	4	2		Expenditure	£1151k	£1210k	£59K	
					Staffing (Rolling figures)				
					2017	2016	HR		
					Sickness (days/FTE)	6	5	✓	
					Sickness (days/long term)	3	3	✓	
					Turnover (%)	29	34	✓	
					Turnover (Voluntary)	16	17	✓	
					IT Response times				
					2017 - 18	Q1	Corporate Risk Register		
					Response to high priority calls	100%	✓	26 Apr 17	
					Response to medium priority calls	100%	✓	07 Jul 17	
								Likelihood	
								Impact	
								16	
								17	
								Impact	
Key				Control					
C1 - BSB Control				Importance					
C2 - RG control				4 More important					
C3 - External control				1 Less important					
				Size					
				1 Small piece of work					
				4 Large piece of work					
				Weighting					
				Higher weighting					
				Lower weighting					
				Business Activities					
				Completed					
				X X X Stopped					

General Council of The Bar
Bar Standards Board
Bar Standards Board Summary

	Month Actual	Month Budget	Variance F/(A)	Y-T-D Actual	Y-T-D Budget	Variance F/(A)	Annual Budget	BSB Ref
Income								
Practising Certificate Fees	578,000	578,000	0	1,734,000	1,734,000	0	6,936,000	
Other Regulatory Income	13,156	50,700	(37,544)	48,703	64,200	(15,497)	887,000	Para 22a
Total Income	591,156	628,700	(37,544)	1,782,703	1,798,200	(15,497)	7,823,000	
Expenditure								
Staff Costs - Salary Related	323,801	337,331	13,530	948,428	1,013,855	65,427	4,118,556	Para 22b
Staff Costs - Temp Staff/Recruitment	22,858	21,432	(1,426)	56,766	21,432	(35,334)	143,740	Para 22b
Staff Costs - Non- Salary Related	8,176	14,575	6,399	27,150	17,305	(9,845)	80,590	
Non - Staff Costs	(138,204)	81,257	219,461	119,512	158,346	38,834	868,114	
Total Costs	216,631	454,595	237,964	1,151,856	1,210,939	59,082	5,211,000	
Net Surplus / (Loss)	374,525	174,105	200,420	630,847	587,261	43,585	2,612,000	

General Council of The Bar
Bar Standards Board

	Month Actual	Month Budget	Variance F/(A)	Y-T-D Actual	Y-T-D Budget	Variance F/(A)	Annual Budget
Income							
Practising Certificate Fees	578,000	578,000	0	1,734,000	1,734,000	0	6,936,000
Professional Conduct Department	(1,154)	0	(1,154)	5,138	0	5,138	0
Supervision - Pre Qualification	308	0	308	0	0	0	0
Supervision - Post Qualification	0	0	0	0	0	0	0
Exams and Assessments	0	0	0	0	0	0	0
Waivers and Accreditations	(29,198)	0	(29,198)	0	0	0	0
Regulatory Assurance Dept.	43,200	50,700	(7,500)	43,565	64,200	(20,635)	887,000
Total Income	591,156	628,700	(37,544)	1,782,703	1,798,200	(15,497)	7,823,000
Expenditure - Staff Related							
Gross Salaries	264,247	273,334	9,087	770,806	823,016	52,210	3,331,852
Overtime	824	0	(824)	824	0	(824)	0
TOIL / AL	0	0	0	0	0	0	0
Benefit Allowance	8,094	8,294	200	23,788	24,947	1,159	99,284
Recognition award	0	0	0	2,600	0	(2,600)	0
Severance Costs	0	0	0	0	0	0	0
Other Pay	0	0	0	0	0	0	20,000
ERS NIC	29,642	32,613	2,971	87,663	96,948	9,285	389,688
ERS Pension	20,994	23,090	2,096	62,747	68,944	6,197	277,732
Maternity / Paternity	0	0	0	0	0	0	0
Temporary Staff	4,078	21,432	17,354	18,102	21,432	3,330	88,740
Recruitment	18,780	0	(18,780)	38,664	0	(38,664)	55,000
Staff Training	2,316	11,000	8,685	20,652	11,000	(9,652)	50,000
Staff Travel : Air	2,876	250	(2,626)	2,876	500	(2,376)	6,500
Staff Travel : Train	608	1,830	1,222	631	3,840	3,209	11,810
Staff Travel : Taxi	0	50	50	63	100	37	300
Staff Travel : Other public transport	0	1,225	1,225	0	1,425	1,425	5,850
Staff Travel : Mileage	0	0	0	0	0	0	0
Staff Travel : Other	0	100	100	192	200	8	600
Staff Accom : UK	1,600	0	(1,600)	1,600	0	(1,600)	2,435
Staff Accom : Overseas	0	0	0	0	0	0	1,000
Staff Subsistence : UK	582	120	(462)	786	240	(546)	1,895
Staff Subsistence : Overseas	0	0	0	0	0	0	200
Staff Reimbursement : Phone etc	0	0	0	30	0	(30)	0
Staff Reimbursement : Health (eg eye check)	194	0	(194)	319	0	(319)	0
Staff Reimbursement : Subscriptions	0	0	0	0	0	0	0
Total Staff Related Costs	354,835	373,338	18,503	1,032,344	1,052,593	20,248	4,342,886
Expenditure - Non-Staff							
Fees - Policy Development	(45,864)	32,080	77,944	(16,348)	74,740	91,088	304,960
Fees - Committee	(8,087)	7,287	15,374	31,991	15,991	(16,000)	129,674
Fees - Assurance	(32,090)	9,040	41,130	12,266	9,040	(3,226)	33,080
Fees - Legal Advice	(19,645)	2,500	22,145	26,903	7,500	(19,403)	71,000
Fees - Regulatory Decision	0	0	0	0	0	0	0
Recruitment	0	0	0	4,584	0	(4,584)	10,000
External Expertise Training	200	0	(200)	200	0	(200)	10,000
External Expertise Travel : Air	0	0	0	425	0	(425)	0
External Expertise Travel : Train	(1,588)	1,000	2,588	7,492	1,000	(6,492)	10,050
External Expertise Travel : Taxi	70	0	(70)	237	0	(237)	0
External Expertise Travel : Other public transport	(482)	600	1,082	582	2,800	2,218	10,250
External Expertise Travel : Mileage	115	0	(115)	422	0	(422)	0
External Expertise Travel : Other	16	950	934	341	2,850	2,509	11,350
External Expertise Accom : UK	(86)	0	86	383	0	(383)	0
External Expertise Accom : Overseas	0	0	0	0	0	0	0
External Expertise Subsistence : UK	(108)	0	108	331	0	(331)	5,500
External Expertise Subsistence : Overseas	0	0	0	0	0	0	0
External Expertise Reimbursement : Phone etc	19	0	(19)	19	0	(19)	0
Appeal - Regulatory Decision	0	0	0	0	0	0	4,700
Appeal - Regulatory Policy Decision	0	0	0	0	0	0	0
Compensation awards	0	0	0	0	0	0	0
Cost Orders	(10,000)	0	10,000	(10,000)	0	10,000	0
Courier	0	0	0	0	375	375	2,400
Court charges	(255)	0	255	0	0	0	0
Evaluation	0	0	0	0	0	0	0
Events	(969)	2,350	3,319	2,210	8,550	6,340	23,800
External meeting refreshments	(144)	0	144	1,093	0	(1,093)	0
External meeting room equipment	0	0	0	0	0	0	0
External meeting room hire	562	4,000	3,438	3,622	12,000	8,378	50,000
Gifts and Hospitality	50	1,000	950	50	1,000	950	3,500
Internal meeting: Room booking	0	0	0	0	1,000	1,000	5,000
Internal meeting: Refreshments	(80)	0	80	0	50	50	250
Internal meeting: Equipment	0	0	0	0	0	0	0
IT systems development	0	0	0	0	0	0	1,500
IT systems maintenance	0	0	0	1,875	0	(1,875)	0
Legal research	0	0	0	0	0	0	0
Membership subscription	0	1,500	1,500	1,088	1,500	412	20,300
Other Casework support	(56)	1,800	1,856	1,057	1,800	743	7,200
Outsourced casework	0	4,500	4,500	0	4,500	4,500	18,000
Periodicals	0	250	250	679	250	(429)	1,000
Printing	(10,455)	1,250	11,705	(4,915)	1,250	6,165	5,000
Publications	(684)	7,500	8,184	7,246	7,500	254	30,000
Research	(8,592)	0	8,592	44,101	0	(44,101)	78,000
Scanning	0	0	0	0	0	0	3,000
Speakers	0	0	0	0	0	0	0
Storage	0	1,000	1,000	397	2,000	1,603	8,000
Transcriptions	(187)	2,150	2,337	1,046	2,150	1,104	8,600
Translations	0	0	0	0	0	0	0
Witness expenses	137	500	363	137	500	363	2,000
Total Non-Staff Costs	(138,204)	81,257	219,461	119,512	158,346	38,834	868,114
Total Expenditure	216,631	454,595	237,964	1,151,856	1,210,939	59,082	5,211,000
Net Surplus / (Loss)	374,525	174,105	200,420	630,847	587,261	43,585	2,612,000

PCD Key Performance Indicators

PCD Measure		2017-18		2016-17 YE	2016-17 Target
		Q1	Target		
Complaints	Number of complaints received	123	n/a	369	n/a
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	73.8%	80%	80.1%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	70.5%	80%	84.6%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	66.7%	80%	70.4%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	88.6%	80%	76.4%	80%

Over-Running Cases

Snapshot at the close of Q1 of 2017-18

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	59	23	39%
External Investigation (8 months)	45	8	18%
Internal Investigation (5 months)	56	3	5%
Total	160	34	21%

Note

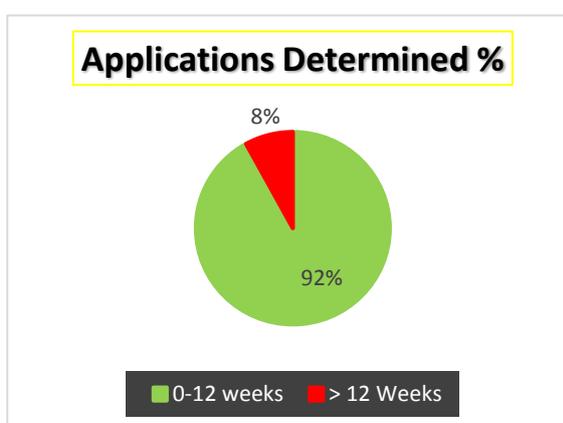
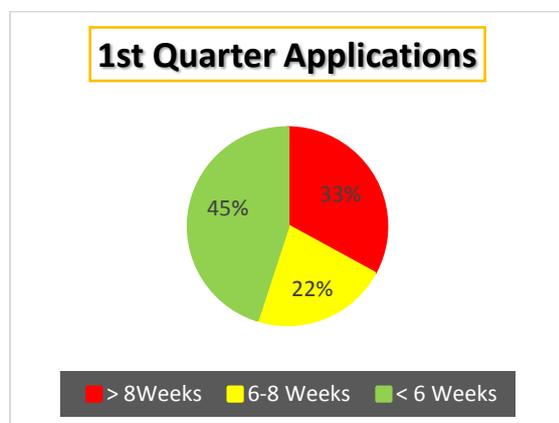
OPIs and the overall KPI measure closed cases – In consequences, cases that are delayed (however legitimate the reason) will impact these figures.

The overall KPI reflects the combined effect of the three individual OPIs

Authorisations Team – Performance against Key Performance Indicators (“KPIs”) for the First Quarter of Financial Year 2017/18

Applications

1. The KPIs for authorisation applications previously determined by the Qualifications Committee and now delegated to staff are:
 - i) The percentage of applications determined **within six weeks** of receipt of the complete application (which includes all required documentation and the application fee).
Target: **75%**
 - ii) The percentage of applications determined **within twelve weeks** of receipt of the complete application (which includes all required documentation and the application fee).
Target: **98%**
2. The following diagrams illustrate performance against these KPIs and includes the percentage of applications determined between nought to six weeks, six and eight weeks and nought to twelve weeks during the period 1st April and 30th June 2017.

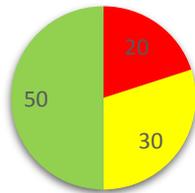


01/04/2017 to 30/06/2017

Total Applications	Number	%
Total Applications Determined	308	100%
Determined between 0 and 12 weeks	284	92%
Determined between 0 and 8 weeks	104	67%
Determined outside of 8 weeks	103	33%
Determined between 6 and 8 weeks	67	22%
Determined within 6 weeks	137	45%

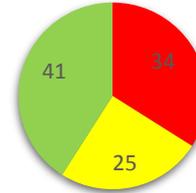
3. The following charts illustrate the team's performance each month against KPIs

April Applications



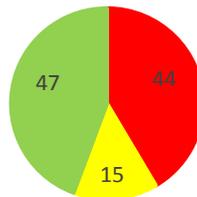
■ > 8 Weeks ■ 6 to 8 Weeks ■ < 6 Weeks

May Applications



■ > 8 Weeks ■ 6 to 8 Weeks ■ < 6 Weeks

June Applications



■ >8 Weeks ■ 6 to 8 Weeks ■ < 6 Weeks

i) April 2017

- A total of 83 applications had decisions determined during April.
- 50% of the applications were determined in less than 6 weeks.
- The average number days taken to complete assessments was 44 (6 weeks)

ii) May 2017

- A total of 100 decisions were made during May.
- 66% were within 8 weeks.
- The average number of days taken to complete assessments was 47 (6 ½ weeks)

iii) June 2017

- A total of 125 decisions were made during June
- 62% were within 8 weeks
- The average number of days taken to complete assessments was 55 (8 weeks)

iv) Other Considerations

The KPIs were not met largely due to:

- an inclusion of historic applications which impacted on the average number of days taken to complete determinations.
- the implementation of new processes and deadlines to enable a more effective service.
- a targeted approach to focus on assessing applications over 8 weeks old.
- cross skilling also being embedded via job shadowing and knowledge sharing.

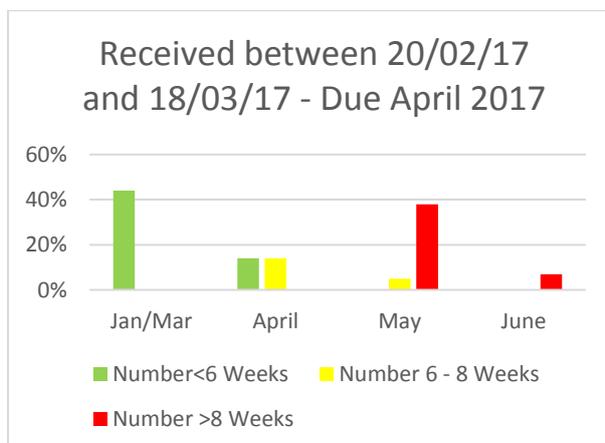
4. 30 working day turnaround

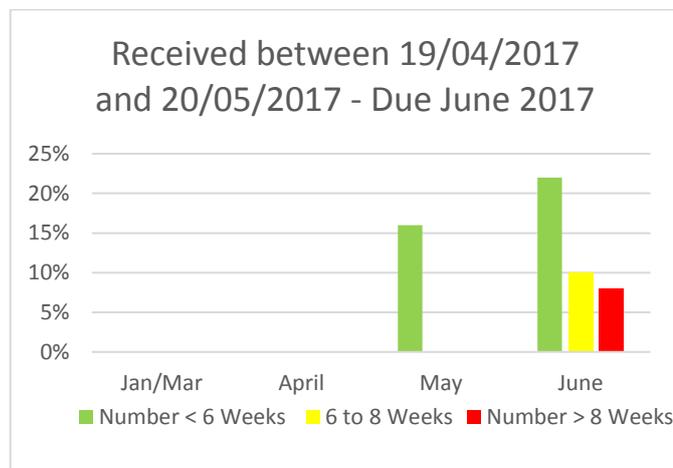
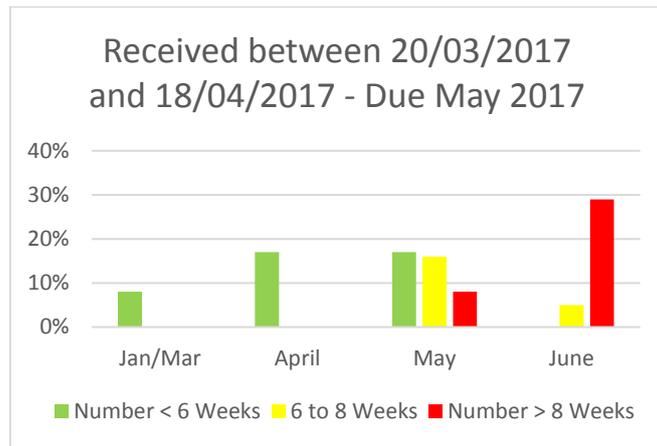
i) Set KPIs are based on 6 weeks (30 working days) turnaround periods which straddle months either side of the month in which a decision is due. Therefore, applications considered complete and received between 20th February and 20th May 2017 were due to be assessed in this quarter.

- an average of 5 applications per day are received during off peak periods.
- this quarter 300 applications received, of which 184 (60%) were deemed “complete”
- only “complete” applications which were received up to and including 20th May were due to be decided by 30th June.
- a total of 104 “complete” applications received during this quarter were not due for assessment before July.

ii) The charts below illustrate the percentage of applications received within the turnaround period, the months which they were assessed and whether they were “in date” or overdue.

*It is worth noting that during this quarter 31 applications (**10%** of all applications determined) were **in advance of the month due**.





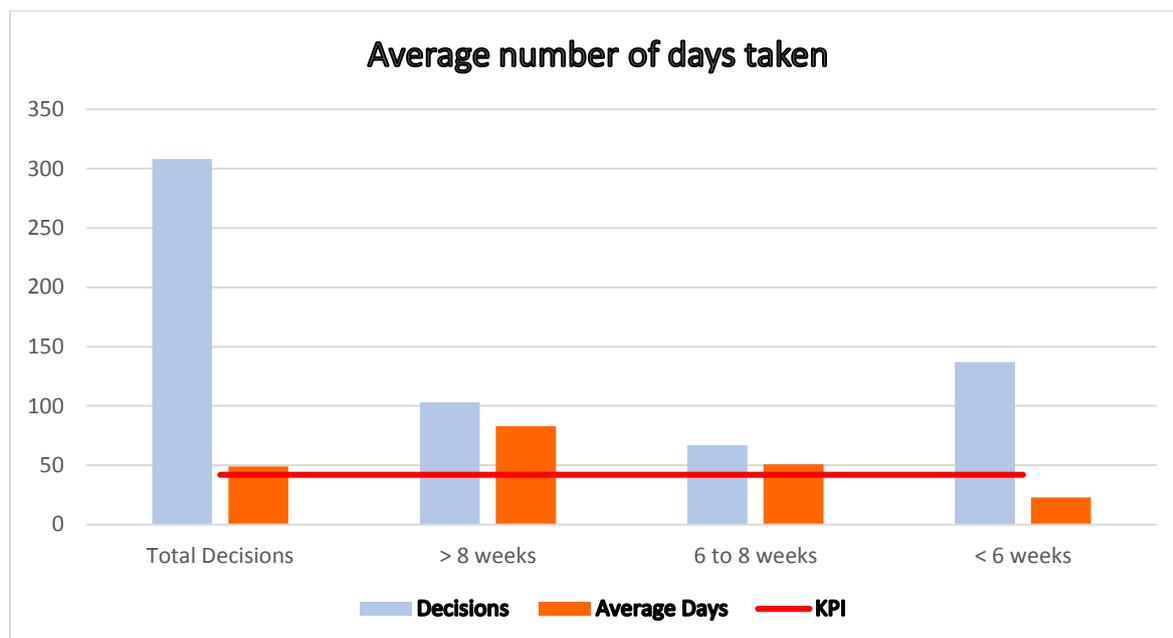
5. Historic Applications Backlog

i) The team started the quarter with an historic backlog, which accounted for **28%** of the decisions made and included applications that had been **outstanding between 3 and 11 months**.

- 103 applications fell into this backlog of work
- the average number of days taken to determine decisions for these applications was 83 days (11 weeks).
- applications between 6 and 8 weeks old at the date of decision took an average amount of 51 days (7 ½ weeks) to finalise decision
- applications determined within 6 weeks took 23 days (3 weeks) on average.

75% of “live” applications awaiting decisions were assessed and determined within an **average** of 49 days (**7 weeks**). These applications had due decision dates spanning an 11month period between July 2016 and August 2017.

ii) The chart below compares the average number of days taken to determine decisions against our KPIs and demonstrates the impact the historic backlog has made on these figures.



Decisions made April to June 2017	Number of Decisions	Average days taken
All decisions	308	49
Over 8 weeks (57 + days)	103	83
6 to 8 weeks (43 to 56 days)	68	51
Within 6 weeks (up to 42 days)	137	23

6. Work Programme (1st April to 30th June 2017)

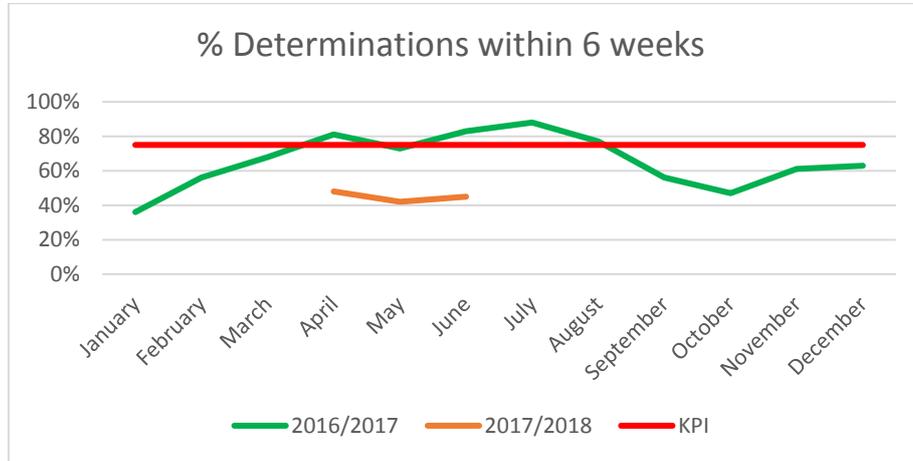
- i) An average of 5 or 6 applications are received daily which equates to 25 to 30 applications per week. The work programme aims to:
- complete 30 to 40 decisions per week
 - reduce the backlog at a rate of 5 to 10 applications per week.

The table below illustrates this:

Total Applications	Number	%
Total Live Applications	468	100%
Total Incomplete Applications	56	11%
Total Applications to be determined	412	100%
Overdue (due date > 8 weeks)	103	22%
Due between 6 and 8 weeks	88	21%
Due date June	136	33%
Due date in July	60	15%
Due Date in August	13	3%
Due date in September	0	0%
Total applications Determined	309	75%

7. Comparative Stats 2016/2018

The chart below illustrates the comparison between last years and this year’s performance against the KPIs.

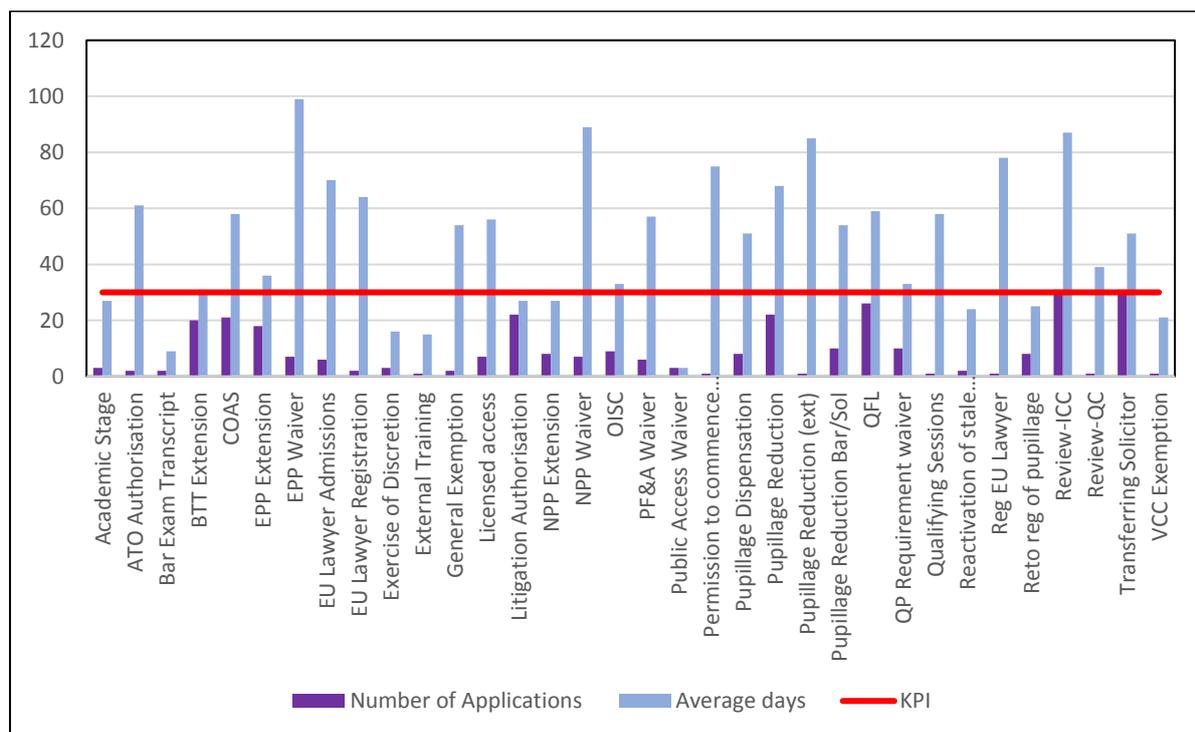


*Figures based on “completed” applications received and determined in the same month.

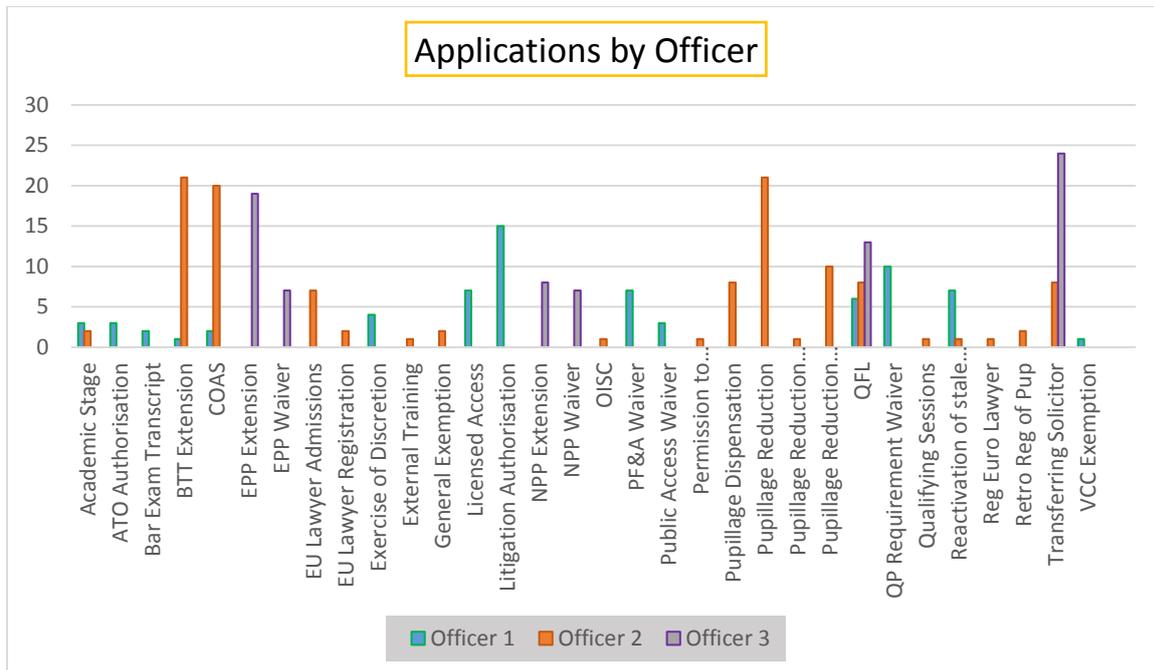
i) This first quarter has shown a dip in performance due to the time allocated to cross skills learning & development within the team, to become more generic and to enable more effective working.

8. Types of application determined

The table below illustrates the number of decisions made by the type of application received and how quickly decisions were made. This is measured against our KPI.



*This also illustrates a skills deficit within the team



9. Decisions by officer (April to June 2017)

The table below is not a reflection of individual officer's performance but a reflection of the inequity of work load.

- i) These decisions can be broken down by application type decided by each officer. During this quarter there were **308 decisions** completed by officers and **10 reviews** (ICC and QC) completed by the Authorisations Manager.
- average of 85 applications per officer
 - inequity of distribution of work/poor use of resources
 - additional training requirements across the team.

10. Reviews

i) Review decisions accounted for **3%** of all decisions made this quarter

- 1 ICC - decision overturned
- 9 QC – decisions upheld

11. Quality assurance

i) 69 applications across the board (22.5%) were Quality Assured

- 100% of approved decisions were sound
- 7% had minor issues including administrative errors or insufficient reasons for decline

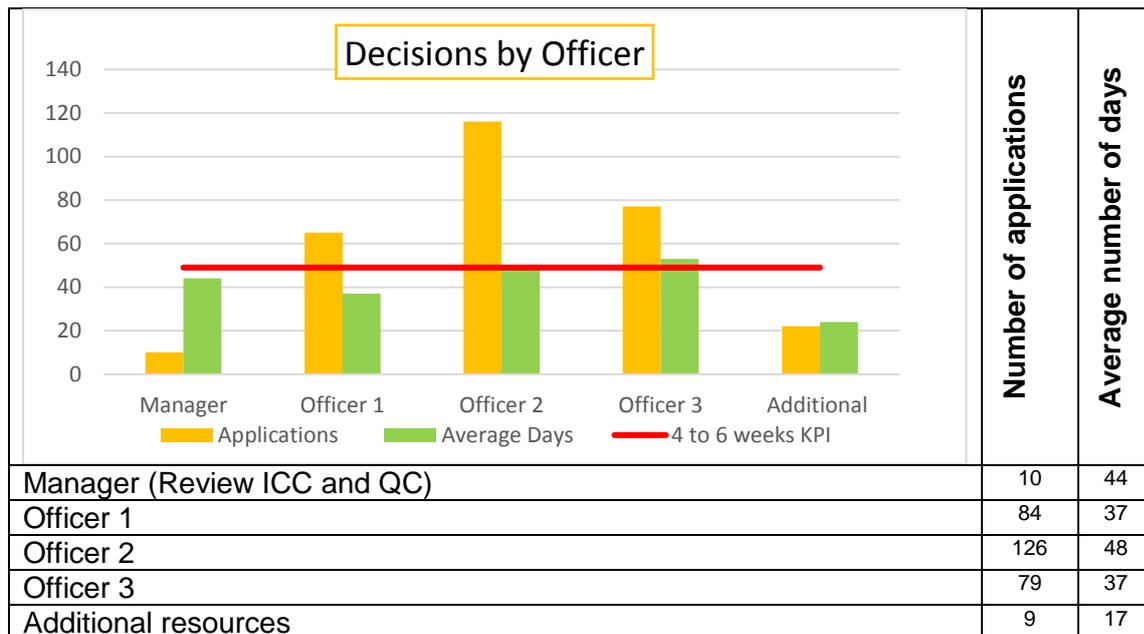
12. Overview

We are disappointed not to have achieved our overall target and attribute this to the following:

- A third of applications were outside of the 8 weeks and included historic applications over 6 months old.
- 3 officers were assigned over 100 applications each for completion, whilst embedding a programme of cross skills training within the team.
- the current process was unstructured and needed reviewing to remove unnecessary delays

i) A new Interim Authorisations Manager has developed a work programme to address the backlog of applications and ensure that the 2nd Quarter will be free from aged applications and KPIs are achieved.

- The average number of days taken to determine applications for this period was 49



days (7 weeks), which is within the given KPI (6-8 weeks).

- officers will be assessing applications with due dates between 30/06/17 and 18/07/17 in mid-July.
- ii) Further investigation of these historic applications uncovered that if an application was placed “on hold” for any reason the clock remained ticking and presented an inaccurate representation of the length of time taken to complete the assessment.
- This issue has been addressed for the 2nd quarter and applications will not be held for more than one month and where they are placed on hold the clock will be reset.
- iii) Another determining factor which created delays is a lack of shared skills and knowledge within the team, the programme of cross skilling is addressing this issue although training needs remain with certain applications.
- **aim** for the next quarter is that **all three officers able to assess all applications and entity authorisations** and quality assure each other’s work
 - the **risk** during the next quarter is the expected increase in academic stage and pupillage applications, which is where the current skills deficit lies.
 - the more structured work programme will address the issues

Entity (including ABS) Authorisation

13. The KPIs for Entity Authorisation are:

- iii) The percentage of authorisation decisions made **within six months** of receipt of the application and associated fee.
Target: **90%**
- iv) The percentage of authorisation decisions made **within nine months** of receipt of the application and associated fee.
Target: **100%**

The following diagram illustrates performance against these KPIs for the 1st Quarter



We have met and exceeded our targets for the first quarter, with no outstanding authorisations due before August

14. Entity Type

i) A total of nine Authorisations were **completed** during the 1st quarter

- BSB Authorised Body (Entity) **55%**
- BSB Licensed Body (ABS) **45%**

ii) There are sixteen Authorisations **pending**

- BSB Authorised Body (Entity) **75%**
- BSB Licensed Body (ABS) **25%**

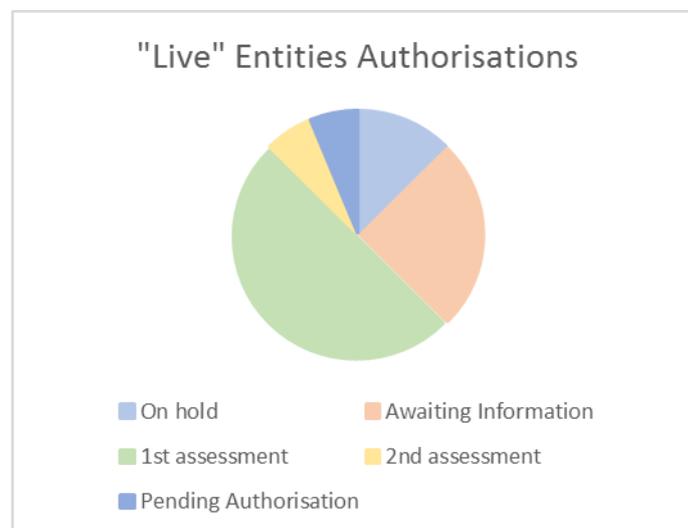
iii) There are no **overdue** Authorisations

- BSB Authorised Body (Entity) **0%**
- BSB Licensed Body (ABS) **0%**

iv) There were eleven annual **renewals**

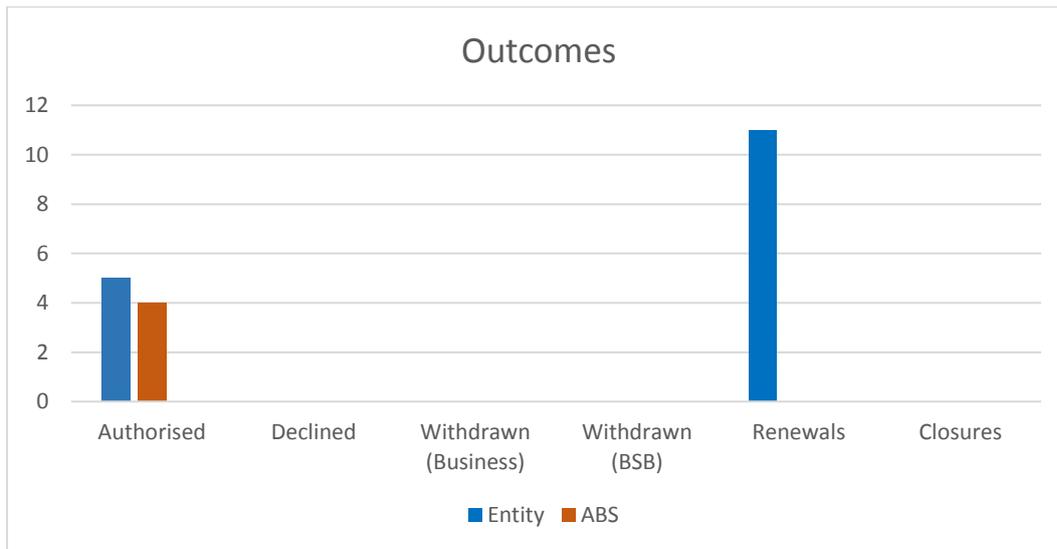
- BSB Authorised Body (Entity) **100%**
- BSB Licensed Body (ABS) **0%**

The following diagram gives a breakdown of the 16 current “live” applications and stage they are at within the process and is representative of expected turnaround



15. Outcomes

The chart below illustrates the various outcomes for both Entities and ABS



16. Resources

- i) A programme of interdepartmental skills training means that there are currently **five officers** competent in assessing and authorising these applications
- ii) Future training will provide an **additional two** members of **staff** with the same competency

17. Quality Assurance

- ii) Increased resource enables an **additional** and **independent** level of Quality Assurance to be applied to decisions
- iii) No issues have been identified relating to assessments or decisions

18. Service Improvement

- i) Staff identified delays in the process relating to insurance and this has been resolved by meeting with Bar Mutual and discussing our requirements and expectations.
- ii) Staff are engaged in a review of processes to identify areas for improvement and deliver more effective services

19. Next Steps

- i) Staff are engaged in a structured work programme aimed at eliminating any backlog, achieving KPIs and maintaining a consistent level of service
- ii) Staff are committed to continued success and aim to achieve and exceed KPIs during the next three quarters.

Sam Jensen
Interim Authorisations Manager
20 July 2017

Chair's Report on Visits and External Meetings, September 2017**Status:**

1. **For noting**

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last Board meeting.

List of Visits and Meetings:**Sir Andrew Burns**

4 September	Attended the PRP meeting
5 September	Attended lunch meeting with Baroness Deech
5 September	Met with CILex and SRA
7 September	Attended PII TCG
12 September	Met with Malcolm Cree, Chief Executive Bar Council
12 September	Attended GRA meeting
13 September	Attended PCC Away Day
19 September	Lunch with Desmond Browne QC, President of COIC
20 September	Attended BSB/LSB Board to Board meeting
20 September	Attended ILFM (Institute of Legal Finance and Management) Luncheon
20 September	Attended Chairs' Committee
26 September	Attended Finance Committee

Director General's report - BSB meeting 28 September 2017

For consideration and noting.

Director General

1. In common with many other BSB staff I have had a period of leave since the last Board meeting. A number of areas of work have nevertheless needed to proceed quite intensively over the summer, including 2018 budget planning, and work on the CMA and FBT consultations in particular. I am grateful for the efforts of all the staff involved.
2. Since returning from leave I have contributed to several regulator CEO level working meetings on the CMA consultations, and further work especially with external stakeholders on FBT. I have attended discussions with three universities to look at the future landscape for professional legal education and addressed the Association of Graduate Careers Advisers on the same topic at their annual conference in Nottingham.
3. I have also overseen work on Board recruitment, in respect of which there have been several key milestones since late July.
4. The two cross cutting programmes in which I am closely involved are reported on immediately below.

Future Bar Training programme***2017 FBT Consultation***

5. As discussed at the July Board meeting, we are planning to hold an open consultation to inform a number of policy proposals relating to:
 - The continuing role of the Inns of Court in Bar training;
 - Future regulatory arrangements for work-based learning; and
 - The Authorisation Framework
6. The consultation will also set out draft principles relating to recognising foreign qualified lawyers and the need for transitional arrangements whilst training providers adapt and seek authorisation for new training pathways. Full Equality Impact Analyses have been conducted on each of the policy options in the consultation.
7. The consultation is expected to be published in the first week of October and run until the first week in January 2018, enabling all key stakeholders in the profession, students and training providers to respond to the proposals raised. We also plan to ensure exposure to the issues by staging several roadshows in key locations across England and Wales. We are planning all events, where possible, in conjunction with consultation events being planned for the CMA consultation.
8. Following the consultation closing, we plan to bring recommendations to the Board over the course of spring 2018 and to have a draft set of rules to consult on in summer 2018.

Authorisation Framework

9. Consultants Jane Chapman and Carol Wadsworth-Jones have continued to work with us on developing the Authorisation Framework. Work during this period has focussed on framing the document in Plain English terms, in particular to ensure that the definitions of the four principles of flexibility, affordability, accessibility and high standards are clear. The document also outlines what is expected of potential

Authorised Education and Training Organisations in terms of proposed mandatory and recommended requirements that they will need to fulfil, to ensure that new training pathways enable prospective barristers to meet the requirements of the Professional Statement for Barristers. Further work will be done to determine the proposed evidence base for demonstrating how those requirements will be met. The Education and Training Committee discussed the draft Authorisation Framework at its meeting on 5 September 2017.

Review of Curriculum and Assessments

10. The Task Completion Group for the Review of Curriculum and Assessments put their proposals for a revised curriculum and assessment strategy for the vocational stage of training to the Education and Training Committee on 5 September 2017. These proposals were the product of an extensive review of the available evidence relating to the Bar Professional Training Course, as well as engagement with current BPTC providers, pupil supervisors, and recent pupils. The view of the Education and Training Committee was that the proposals should not form part of the main Future Bar Training consultation, but that a programme of consultative engagement should take place with relevant stakeholders over the next three months. The Task Completion Group is now planning these activities, which will be targeted to relevant stakeholders, including BPTC providers, representatives from the Inns of Court and recent students. The Group will also consider the compulsory training courses currently undertaken during pupillage and in the first three years of practice.

Pupillage

11. Staff from the Pupillage Project team are in communication with the PTOs who have signed up to the Pupillage Pilot (implementation of the Professional Statement) and work has commenced.
12. We need more chambers to participate in the pilot to ensure that the conclusions we reach are valid. The FBT Strategic Programme Oversight Group have therefore decided to extend the Pupillage Pilot into 2018/19. Mandating the Professional Statement as a means of assessing pupils' competence has therefore been extended to 2019/20. We would welcome support from Board members in encouraging more chambers to participate in the pilot.

Regulatory Operations programme

CAT (Centralised Assessment Team)

13. Testing for of the new risk assessment methodology began on 17 July. We now have 9 assessors trained to conduct assessments. We have been making changes to the system and guidance as testing has progressed so far, and testing is due to continue through until the end of September.
14. The Project Team have also been refining the end-to-end CAT assessment process, with focus over the last month on the "pre-assessment" part of the process.

Strategy & Policy

Professional Standards

15. Work on the next amendment of the BSB Handbook, scheduled for issue on 6 November is ongoing. An exemption application for three minor rule changes has been sent to the LSB, and has been granted. The LSB has now approved an application to

change our rules and require chambers to make shared parental leave arrangements for barristers.

16. In July and August, the team received over 220 calls and e-mails to the Professional Standards Helpline. This brings the total number of enquiries received this year (January – August) to over 820.
17. The BSB is committed to issuing, by the end of September, a policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. The consultation will be discussed by the Board at its September meeting, and includes worked examples of potential new transparency requirements. The consultation has also been informed by research into price and service transparency provided by barristers. This has been conducted by the Research Team. Emerging findings have been shared with the Board and the full report will be published once finalised. The Professional Standards Team has worked with the Communications and Public Engagement Team to develop an engagement plan for the consultation, seeking feedback from both the profession and consumer groups. The Professional Standards Team will also be overseeing the piloting of potential new requirements by the profession from early November to February 2018. Design of and recruitment to the pilots is underway and the publication of the consultation will include a callout for further volunteers. Feedback on the consultation, the piloting of potential new requirements and further research and consumer testing will then inform the BSB's final policy position on transparency and in turn, the development of new rules. A rule change consultation will be issued in March 2018, with new rules coming into force by the end of 2018.
18. The consultation on changes to the Public and Licensed Access Rules closes on 26 September. Work also continues on implementing the other recommendations of the Public and Licensed Access review – standalone regulatory guidance on conducting litigation has been published, and featured in the September edition of the Regulatory Update. A report on the Public and Licensed Access consultation will be produced for the October Board meeting, following which we hope to apply to LSB for approval of the new rules.
19. The consultation on rule changes to collect additional information at Authorisation to Practise closed on 15 September. Work is already underway to draft the LSB application, Board paper and analysis of consultation responses, which will be considered by the Board in October.
20. Following discussion by the Board at its July meeting, work continues on the implications of legal services providers recommending and arranging After the Event (ATE) insurance. The team are working with CILEx Regulation on a joint approach and regulatory guidance on the subject will soon be published.
21. In July and August, staff from across the organisation took part in Policy Forum discussions on the development of the vulnerability toolkit (a recommendation from the immigration thematic review), and potential solutions to the problems identified in the Women at the Bar research report.
22. The team continues to support a number of key projects across the business. This includes support to the Records Team and Project Management Office on the development of the new Authorisation to Practise portal. All of the guidance has been written ready for the launch of the portal, and the current focus is on testing.

Research

23. Work has progressed on our research project concerning price and service transparency provided by barristers. To date, interviews have been completed with professional bodies of the Bar (4), consumer representative groups (4) and a sample of legal service providers (7). Further interviews have been scheduled for September and a survey of legal services consumers is in progress. A report of emerging findings has been prepared and has informed the drafting of the policy consultation focused on the CMA's recommendation to deliver a step change in standards of transparency. We have also started to provide support and guidance to the Professional Standards Team for the piloting of potential new requirements.
24. We have finalised with NatCen Research the report for the Bar Training research project. This project has conducted qualitative research into barriers to access to the profession to inform further aspects of the Future Bar Training programme, consisting of 25 interviews with recent BPTC students and 25 interviews with recent pupillage applicants. The draft report was presented to the August Board meeting and the final report is expected to be published later this year. We have supported colleagues in the Equality and Access to Justice team in drafting an action plan in response to the recommendations arising from the research.
25. We have completed research analysing differential attainment between different groups on the BPTC and in obtaining pupillage. The draft report was presented to the August Board meeting and the final report has now been peer reviewed is expected to be published alongside the NatCen Research.
26. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy of both barristers and solicitor advocates. ICPR have been appointed to carry out the research, consisting of 60 qualitative interviews with Crown Court judges. ICPR are due to complete the interviews by end September and a draft report is due by end October.
27. Pixl8 are continuing their research into users of the BSB website to inform future improvements. A survey of website users is complete, to be followed by a round of interviews, and we will continue to work with the communications department to shape and quality assure the research going forward.
28. We have been working with the Policy team on research into the operation of the Qualified Persons rule for new practitioners, with a survey of new practitioners and Qualified Persons launched in July. A draft report was completed and presented to the project group in September.
29. We are working with the Equality and Access to Justice team to develop a proposal for further research to determine policies aimed at improving retention of women at the Bar and address the issues raised by last year's 'Women at the Bar' research into the operation of the Equality Rules and the experiences of women in the profession. This research will also inform delivery of one of the BSB's Equality Objectives.
30. Our regular 'Research Roundup' has been updated and published on 'verity'. The roundup summarises recently published research in the legal sector that is relevant to the work of the BSB.

Regulatory Risk

Risk Prioritisation

31. At its meeting on 27th July, the Board discussed and agreed its appetite for each of the BSB's Regulatory Risks in the Risk Index. This appetite is the starting point for developing a risk profile for each of our regulatory risks, which will allow us to set the priority for the BSB's action against each of these risks. The Regulatory Risk Team has met colleagues across the BSB to develop that profile and will provide the Board with an update in November setting out how risk appetite is being applied.

Risk Roles & Responsibilities

32. At its meeting on 12 September, the Governance Risk & Audit Committee (GRA) discussed a paper proposing roles and responsibilities for the management of regulatory and corporate risk based on the four lines of defence model. This review of responsibilities has provided an opportunity to integrate the processes for regulatory and corporate risk further, and to clarify the roles for the Corporate Risk team and those of the Regulatory Risk team in the consolidated reporting cycle. It has also given us the opportunity to set out the role of the new departmental risk reporting officers, see below.

Risk Reporting

33. We have successfully recruited a number of staff to be Risk Reporting Officers (RROs), who will be responsible for producing their department's report on regulatory risk, in addition to a number of responsibilities previously undertaken by the ASPIRE Risk Champions. The SMT agreed this enhanced role earlier in the year to support the introduction of Regulatory Risk Reporting.
34. The Regulatory Risk team will now meet each of the RROs to discuss their individual approaches to producing a departmental report, as we look to bring together a first draft Risk Report in time for the GRA meeting on 28 November.
35. That report will provide a high-level view of all risks, consolidating Regulatory, Strategic and Operational into one report. This work will bring together the Risk Profile (set out under *Risk Prioritisation* above), along with views of the data we have for the occurrence of risk, new risks recognised by the Risk Forum, and the departmental risk reports.
36. Key to being able to produce a single reporting document for regulatory and corporate risks is the work to consolidate the separate impact and likelihood tables. This work has progressed well, and the consolidated table will be included in papers to the SMT in October and the GRA in November. The Risk Team will provide a consolidated update to the Board in November.

Risk Assessment

37. Staff across PCD and Supervision have been undertaking testing of the risk assessment tool developed to test our approach to consistent risk assessment (see CAT report above). The risk team have held regular feedback sessions with the assessors in order to inform changes to the tool and the guidance. A number of challenging issues have arisen from this testing, which the risk team have discussed with the CAT Project Team in order to develop solutions.

Cross-regulator risk forum

38. BSB hosted a cross-regulator risk forum to discuss cyber-crime. The Institute of Chartered Accountants in England and Wales chaired the meeting and gave a presentation. This led to a healthy discussion on the different risks arising from cyber-crime and how the different regulators seek to help their regulated communities mitigate them.

Equality and Access to Justice

39. The proposed amendment to the Parental Leave rule has been approved by the Legal Services Board, and the updated rule will be included in the next edition of the BSB Handbook in November 2017. The E&AJ Team are working alongside the Bar Council as they put together their guidance documents that will be released at the same time as the new edition of the Handbook.
40. Following some internal staff moves, we have appointed an E&D consultant to provide short-term support to the Head of Equality and Access to Justice to progress the BSB equality programme while we await the return from maternity leave of the Equality and Diversity Senior Policy Officer.
41. A proposal to the Board has been prepared regarding the consultation on the rule that governs how chambers report anonymous sexual orientation and religion and belief data on their members.
42. Women at the Bar workshops have been planned for October 2017. Three workshops will focus on strategies to reduce discrimination and barriers to retention/progression with a wide range of stakeholders. Responses to our invitation has been positive with currently 30 people having booked places. Additionally, a meeting with the Chair of the Institute of Barristers Clerks has resulted in a commitment to deliver a separate workshop with the IBC management committee if necessary.
43. The BSB equality and diversity eLearning programme for board committee and APEX members has now been reviewed and updated.
44. A draft action plan has been prepared to progress recommendations from the NATCEN research *Barriers to Training for the Bar: a qualitative study*.
45. New departmental Equality and Access to Justice officers have been appointed to support the BSB with its commitment to embed E&AJ best practice across the organisation.

Professional Conduct Department***Staffing***

46. We have successfully appointed two new Professional Conduct Assistants within the Investigations and Hearings Team, one permanent and one maternity cover.
47. Maryna Rasloutseva has worked in various industries including retail, e-commerce and local government. For the last 3.5 years Maryna worked for Barnet Council, helping to develop and implement the additional HMO (House in Multiple Occupation) licensing scheme, providing business and performance reporting for the Environmental Health department, and dealing with Freedom of Information requests.

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48. Claire Stewart is from an administration support background, having worked for over 25 years in various industries, including higher education and the private sector. For the last 2 years, Claire had been self-employed and was running a Virtual Admin business supporting freelance workers and small businesses with their administration needs.

Standard of Proof

49. The consultation closed on Friday 21 July 2017 and we have been analysing the results, which will be presented to the Board for a decision at their October 2017 meeting as part of the public session.

Independent decision-making body (IDMB)

50. We have been reviewing and re-drafting the Complaints Regulations with the intention of including the proposed changes in our consultation on the IDMB which will be running between February – April 2018.

Disciplinary Tribunal Regulations review

51. We have finalised amendments to our internal policies arising from the revised Disciplinary Tribunal regulations in preparation for them taking effect in November 2017. As with all PCD policies, these will be posted onto the BSB's website in due course.

Staff training

52. We have continued with our staff training programme. On 1 August PCD staff attended training on dealing with witnesses, which addressed both the technical skills side of witness handling and the softer skills of best practice for dealing with witnesses. There was a technical aspect to the session, with staff from the CPS Witness Care Unit then discussing their views of best practice in engaging with victims and witnesses. The training also addressed special measures and vulnerable witnesses.
53. On 14 September PCD staff received training on appeals in the disciplinary context. The session provided a refresher of the relevant Civil Procedure and Handbook rules, as well as advice on timescales, disclosure and conducting appeals generally.

Litigation

54. The matter before the Supreme Court (an appeal against previous decisions to dismiss a claim for discrimination on the basis the claim was time-barred) has now been listed for 4 October 2017. We still await dates in relation to the discrimination claim brought by a disbarred barrister before the Employment Tribunal.
55. The Judicial Review that was at the permission stage at the time of the last update has been withdrawn. This related to a decision to dismiss part of a complaint which we agreed to review following receipt of material from the applicant.
56. We have received one new Judicial Review. This is at the permission stage and is by a complainant challenging a decision not to investigate. A different complainant has also lodged a claim in the county court. The claimant is alleging that we failed to make reasonable adjustments. These proceedings are currently stayed pending a review of the decision to dismiss the complaint.

Regulatory Assurance Department***Youth Proceedings***

57. The consultation on Practice Area information collection finished on 15th September. At the time of writing, we had five responses around the registration of youth proceedings work. The reception to the idea of registration has been positive, with stakeholders tending to say that they believe that the proposal did not go far enough. Respondents have included the Ministry of Justice, the Youth Justice Board, individual barristers, the Magistrates Association and a Youth Offending Team. We are continuing to meet stakeholders to publicise the competences and encourage them to report where barristers are not meeting the expectations. In particular, this has involved meeting Youth Offending Team managers across England to publicise our work.

Anti-Money Laundering and Counter Terrorist Financing

58. Two consultations have been launched about the new oversight regulator, the Office for Professional Body Supervisors (OPBAS). The first, by HM Treasury (HMT), relates to the draft regulations for creating OPBAS and establishing its powers. The second, by the Financial Conduct Authority, concerns a Sourcebook for AML Supervisors ie. setting out how OPBAS expects AML Supervisors to comply with their obligations and the estimated impact of OPBAS . We have responded to the HMT consultation (available here: https://www.barstandardsboard.org.uk/media/1846183/2017_08_17_opbas_consultation_bsb_response.pdf) and are preparing our response to the second consultation, which is open until 23 October.
59. Work by the Legal Sector Affinity Group (LSAG) on the new joint guidance for the legal sector is almost complete except for the section on reliance (whereby barristers are entitled under the Money Laundering Regulations to place reliance on Customer Due Diligence (CDD) carried out by solicitors). This is under discussion with HMT. LSAG has agreed, as an interim measure, to submit the guidance to HMT for approval without this section. HMT have said that they will approve the guidance by the end of the year. LSAG has agreed with HMT to publish the guidance whilst it is pending HMT approval.
60. We have met with the National Crime Agency (NCA) and will be developing an information sharing protocol with them. Initial indications are that they regard the Bar as low risk.
61. We have continued to provide information to HMT to support the publication of the National Risk Assessment (anticipated this autumn) and material that HMT will be submitting for the Mutual Evaluation Review of the UK by the Financial Action Task Force in 2018.

Authorisations

62. The Qualifications Committee sat on the 8 August and considered 9 applications for review. Of these, 8 of the decisions were upheld and one was amended.
63. The scheduled dis-establishment of the Qualifications Committee was 31 August. Recruitment of review panel members was carried out over July and August and eight members (three barrister and five lay) were appointed from 1 September. We held a successful and positive induction day on 13 September to introduce the group to each other, give an overview of the BSB and, more specifically, of the Regulatory Assurance Department and the work of the Authorisations team. The first review panel will convene on 3 October. Key ongoing assurance measures will be implemented from the

outset to ensure the consistency and standard of decision-making is maintained and to manage the sharing of knowledge between the team and the panels.

Entity Regulation

64. The entity regulation scheme continues to operate as business-as-usual. There are 75 authorised and 4 licensed bodies currently regulated by the BSB to provide reserved legal activities.

Training Supervision

65. Following the successful BPTC Providers' Conference in July, much of the team's work was focussed on Future Bar Training programme matters outlined above, and preparing for the Education and Training Committee meeting on 5 September.
66. During the summer period, we received a request from Cardiff University Law School to significantly increase the size of their BPTC student cohort from 84 to 120 students from September 2017. The Director General and Head of Training Supervision and Examinations discussed this request and sought assurances from the Law School regarding how it proposed to preserve the integrity of the student experience and standards on the course with such an increase. Assurances have been received and we will carry out a training supervision visit during the first term of the forthcoming academic year to check that all promised measures are in place.
67. Reports for all training supervision visits to BPTC Providers in Academic Year 2016-17 have now been published on the [BSB website](#).

Examinations

68. The Chair of the Centralised Examinations Board (CEB) and the Director General briefly met with BPTC Directors on 14 July to listen to their concerns regarding the Spring 2017 examinations, specifically Professional Ethics. They met again on 4 September. The CEB has committed to additional quality assurance measures, and the time allowed for the Ethics examination will be extended.
69. Publication of the Chair's report on the Spring 2017 examinations has been delayed and it will now be published in October. As the report will not be anonymous and will identify strong and weak cohorts, Providers will be given the opportunity to study the report before publication. Full details of pass rates for the Spring sit will be available once the Chair's report is finalised and will be brought to the November meeting of the Education and Training Committee.

Communications and Stakeholder Engagement

70. Since this report was last prepared for the Board, the following press releases have been issued:
- 11 July: A press release to accompany the publication of new BSB research showing that barristers are serving family law clients well;
 - 17 July: A press release about an unregistered barrister disbarred for dishonest conduct when practising as a solicitor and for failing to declare this when being called to the Bar;
 - 1 August: A press release to accompany the publication of the 2016-17 BSB Annual Report;

- 1 August: A press release to accompany the publication of the 2017-17 Enforcement Annual Report highlighting the BSB's increased efficiency in handling complaints;
- 10 August: A news announcement to promote the fact that translations are now available for the BSB's guidance on immigration and asylum related legal issues;
- 16 August: A news announcement about bogus emails purporting to come from the BSB; and
- 23 August: A news announcement to confirm that the BSB has opened recruitment for a Governance, Risk and Audit (GRA) Committee Barrister Member.

71. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

72. 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:

- publication of the forthcoming BSB consultation responding to the Competition and Market Authority's recommendations and seeking views on how to increase transparency standards at the Bar; and
- publication of the forthcoming BSB consultation about shaping the education and training requirements for prospective barristers.

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

- developing and planning a series of public engagement events and roadshows to seek views for the forthcoming CMA and FBT consultations;
- preparing for the BSB session and stand at the 2017 Bar Conference;
- analysing the results of the recent BSB website user experience survey; and
- inducting our new Press and Communications Officer, Martin O'Connor, into the team.

Online and social media

74. During July, 26,062 users visited the BSB website with a further 23,030 visiting during August. At the time of writing, we have 17,862 followers on Twitter, 2,817 followers on LinkedIn and 387 followers on Facebook.

Corporate Services

Corporate Support

75. The Corporate Support team have been working with operational managers, the senior management team, and PRP Committee on the proposed budget for 2017/18. This has included preparation of income and expenditure forecasts and detailed scenario plans. The current bid means the organisation will continue to be leanly resourced, operating with tight margins and contingency. Despite several new mandatory expenditure items including regulatory costs imposed by other agencies we expect to maintain our commitment to not increasing our costs in the coming financial year.

76. The invitation to tender for internal audit services, issued in July was successful. A total of 4 applications were received by the due date, and a selection panel including staff and Governance Risk and Audit committee members have appointed Crowe Clark Whitehill (CCW) for an initial three and a half year term. The Corporate Support team

will assist the GRA and CCW with the formulation of an audit strategy in the coming months.

77. Work is ongoing reviewing guidance and processes for contract management including tendering within the organisation. This includes a comprehensive review of the Service Level Agreements (SLA) between the BSB and Bar Council for the services provided by the Resources Group. These agreements were last reviewed in 2014/15 and need to be updated to include changes in working arrangements at the BSB and in preparation for the relocation in 2018.

Governance

78. 19 requests for engagement of APEX members to support policy development have been submitted since its inception in January. All requests but two have been accepted, with one member unable to accept a request due to its urgency and their other commitments (that request accepted by two other experts) and one member unable to accept a request due to their other commitments (that request accepted by one other expert).
79. Five Task Completion Groups are currently active. These are:
- Vulnerability Toolkit, to support the development of a vulnerability toolkit to help barristers identify, assess and manage client vulnerability. Membership includes Board members Judith Farbey QC and Zoe McLeod, four external members and three members of the BSB executive.
 - Professional Indemnity Insurance (PII), to provide advice and challenge on our PII programme of work, including on the possible extension of the requirement to insure with BMIF to single person entities (SPEs). Membership includes Board members Naomi Ellenbogen QC, Andrew Mitchell QC and Nicola Sawford, APEX members Andrew Fryer, Fran Gillon, James Harvey and Suzanne Rab, one member of the profession (Graham Reid), and two members of the BSB executive.
 - Curriculum and Assessments Review, to support us to determine the curriculum for future paths to authorisation, to determine which syllabuses will require prescription, and to produce an appropriate assessment strategy. Membership is comprised of external members and the BSB executive.
 - IDMB (implementation), supporting the work to develop and implement a single independent regulatory decision-making body. Membership includes Board members Aidan Christie QC, Nicola Sawford, Adam Solomon and Anu Thompson, ex-Board member and Professional Conduct Committee member Tim Robinson, Professional Conduct Committee members Simon Colton QC and Sinclair Cramsie, and (now disestablished) Qualifications Committee members Alan Clamp and Paul Sommerfeld.
 - Witness Guidance, to inform development of guidance for witnesses and vulnerable witnesses and to consider the diversity and inclusion impacts of our review of the Disciplinary Tribunal Regulations. Membership includes Professional Conduct Committee member Marie Pye, one external member and two members of the BSB executive.
80. Applications for the Chair of the BSB (to take up post on 1 January) closed on 10 August. The Independent Appointments Panel will shortlist on 28 September, with interviews to be held on 30 October. Applications for the three lay Board member

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vacancies closed on 15 September, with 110 applications received. Interviews for those posts will be held in November.

81. Recruitment is open for one barrister member of the Governance, Risk and Audit Committee, with applications closing on 25 September. Following changes to the BSB's Standing Orders in January 2017, eligibility is no longer limited to practising barristers.
82. The Qualifications Committee was formally disestablished on 31 August. One additional member of APEX commenced on 1 September, to provide advice to staff taking regulatory decisions on authorisations to practise and waivers from requirements of the Handbook. Eight members appointed to the Authorisations Review Panel (three barrister and five lay) also commenced in post on 1 September, to consider applications for review of those decisions on authorisations and waivers. The first Authorisations Review Panel meeting is to be held in the first week of October.

Resources Group

83. A Quarterly report is due in October. Of note however is the significant progress on the IM programme, with switch over to the new CRM system expected early October.

**Vanessa Davies
Director General BSB
20 September 2017**

Schedule of Board Meetings Jan 2018 – Mar 2019

Status:

1. For noting and approval.
2. Public.

Executive Summary:

3. A proposed schedule of meetings for 2018/19 is set out below. This reflects the outcome of the surveys sent to Board Members in June and July 2017 which identified the following proposed changes as from 1 April 2018:
 - a) that the start time of Board meetings is from 5.00 pm.
 - b) that the timing of the Board Away Days change from 2.00 pm – 6.00 pm.

Recommendation:

4. The Board is asked to agree the schedule.

Comment / detail:

5. The proposed dates for Bar Standards Board meetings (Jan 2018 – Mar 2019) are:
 - Thursday 25 Jan 2018, 4.30 pm (already diarised)
 - Thursday 22 Feb 2018, 4.30 pm (already diarised)
 - Thursday 22 Mar 2018, 4.30 pm (already diarised)
 - Thursday 26 Apr 2018, 2.00 pm (Board Away Day)
 - Thursday 24 May 2018, 5.00 pm
 - Thursday 28 Jun 2018, 5.00 pm
 - Thursday 26 Jul 2018, 5.00 pm
 - Thursday 27 Sept 2018, 5.00 pm
 - Thursday 11 Oct 2018, 5.00 pm (Board to Board with LSB)
 - Thursday 25 Oct 2018, 5.00 pm
 - Thursday 22 Nov 2018, 5.00 pm
 - Thursday 13 Dec 2018, 2.00 pm (Board Away Day)
 - Thursday 31 Jan 2019, 5.00 pm
 - Thursday 28 Feb 2019, 5.00 pm
 - Thursday 28 Mar 2019, 5.00 pm

Rebecca Forbes
Governance Manager
September 2017