

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

Cross-departmental programmes

Future Bar Training (FBT) programme

1. As part of the FBT implementation process, projects which have been completed will be embarking on a lessons learnt exercise and this information will then be used to inform the running of new projects and programmes of work at the BSB. Following the rule changes going live on 1 April, the authorisation of education and training organisations (AETOs) has been able to commence. Training for staff about the FBT programme generally and the AF and guidance documents specifically has been in progress since December. Targeted training for those staff members who will be assessing applications commenced in May.
2. The FBT Programme Board meets on the 2nd of July and a proposal will be put forward for the Programme to be Executive-led henceforth. This is so that its governance is in line with the rest of the Programme Boards and also because with all key policy decisions now having been made, transitioning to being Executive-led would be appropriate as the programme is now in its implementation stage.

Role of the Inns

3. A comprehensive MOU with COIC and the Inns has been agreed. There are a number of aspects to the new arrangements that are being worked out and are subject to a programme of phased implementation. For example, the new Guidelines for fit and proper person checks (including DBS checks) and the new framework for Qualifying Sessions are set for implementation in September 2020. The team remains in close contact with COIC to approve internal rules and oversee the transition to the new arrangements in both areas. Although the bulk of the project's work has now been delivered, we propose delaying the project's closure until the remaining deliverables are nearer the target completion date.

Pupil Supervisor Training Outcomes

4. We are also working with COIC to agree a transitional period for implementing new training outcomes for the training of pupil supervisors. Over the summer, we will discuss the draft outcomes with training providers, including the Inns, circuits, and the CPS with a view to bringing them into force in September 2020.

Authorisation Process (Digital Platform)

5. This is now live; one application for a prospective AETO to deliver vocational Bar training is currently being processed.

Authorisation of AETOs providing WBL / Pupillage

6. The 'pilot' phase for applications is now underway and is expected to be completed by the end of May. Those organisations currently authorised as Pupillage Training Organisations (PTOs) have been categorised for authorisation according to their level of risk.

MyBar registration

7. In order to facilitate the new exam registration process, transcript system and online applications for Authorisations, we will require students to register on MyBar. We are working with the PMO to develop the platform for these functions to go-live from January 2020.

Review of Curriculum and Assessments

8. The syllabus and format of the new Civil Litigation assessment has been finalised and we have determined the structure and number of questions required for both parts of the new assessment. Work is also underway to determine the format of the new Professional Ethics assessment in pupillage. This will include a period of consultative engagement with relevant stakeholders including the Centralised Examinations Board, BPTC providers, the Inns of Court and members of the profession.

Pupillage: Recruitment and Advertising project

9. We have launched a targeted engagement programme to seek feedback on the Recruitment and Advertising (RecAd) proposals: introducing a requirement to use the Gateway timetable for pupillage recruitment, and a requirement to use written agreements for pupillage. We have sent out the proposal paper to key stakeholders and surveys to BPTC students, recent and current pupils and pupillage providers. We have invited key stakeholders to engage with us either face to face, over the phone or in writing to ensure flexibility in our approach.

The RecAd Project Team has progressed with work on planning a joint outreach event with the Bar Council and BACFI to promote employed pupillages at the Bar. The event is targeted at organisations who currently employ barristers, but either offer a small number of pupillages or none. The BSB will be speaking on the practicalities of becoming an Authorised Education and Training Organisation (AETO) for pupillage and explaining the Authorisation Framework. The event is due to take place on the 27th of June 2019.

Evaluation

10. AlphaPlus has completed the final design for the Future Bar Training evaluation. This has been signed off by the FBT Programme Board, with work on the evaluation itself expected to begin in June. The evaluation project will run over several years and involve surveys and interviews with trainees and training providers, alongside detailed statistical analysis of existing data on Bar training held by the BSB.

Regulatory Operations Programme

11. The Reg Ops programme is currently working to the new timeline to go-live in October 2019. The PMO and the rest of the BSB are working very closely together and with our suppliers to deliver all of the IT work which remains in the Project Plan. The website project is currently on track with all outputs so far being to the required standard. We are developing a new BSB website because
 - the design and functionality is out of date (this last took place in 2011, and the existing site isn't optimised for tablet and mobile)
 - it is difficult to find and manage information, and
 - the current website doesn't sufficiently meet our accessibility requirements.
12. The new website is due to go live in mid-October alongside the RegOps Programme. We have co-ordinated the dates for these, as it means that all of the content relating to the changes to our complaints and enforcement processes can be fully integrated into the new site map and be completed once only.

Contact & Assessment Team (CAT) Project

13. The Contact & Assessment Project has agreed the usability of the reporting form and has considered the layout and functionality of the public facing web form. Data protection impact assessment has been considered, and retention schedules are being drafted to take account

of new routes and types of information. CAT Training needs have been assessed and have informed a wider training schedule. Equality Impact Assessments are being and refreshed.

14. Work has progressed on the CAT case management system, with one round of User Acceptance Testing completed. There will be further testing needed as the first round did not take account of a number of originally identified requirements and did not cover the whole process as originally expected.
15. The CAT Project Team has discussed a protocol with the Policy Team on referral of common queries from CAT to the Policy Team, which will be agreed shortly. The protocol sets out the Handbook-related queries which CAT will answer themselves and when CAT will refer queries to the Policy Team. The Policy Team will train CAT on Handbook knowledge to enable them to answer queries on the areas listed in the protocol.

IDB Project

16. The IDB recruitment process has concluded. We have appointed a Vice-Chair and 12 new IDB panel members to complement the transfer of relevant existing PCC members to the IDB. This will ensure that we strike a balance between retaining existing expertise in regulatory decision-making whilst also incorporating a fresh perspective into the new body.
17. New Advisory Panel of Experts (APEX) members have been identified via a recruitment exercise to provide legal and practitioner advice to the executive and the IDB. The formal appointments will be made in the near future.
18. We are in the process of recruiting an Independent Reviewer to provide assurance and review functions in relation to our regulatory decision making. The Independent Reviewer will report to the Governance, Risk and Audit Committee (GRA) but will work closely with the Contact and Assessment, Enforcement and Supervision Teams. The application window is now closed, and we have received a good number of applications. Shortlisting and interviewing are due to take place over the next two months, with the successful candidate being appointed in late August or early September. The appointment will be for an initial period of three years.
19. We have submitted to the LSB our application for approval of the changes to regulatory arrangements (largely changes to part 5 of the Handbook) needed to underpin the Programme.

CMA Programme

20. The CMA programme is progressing according to time and budget. A full communications plan has been developed and we will communicate the go live date imminently. Comprehensive guidance to help the profession comply with the transparency rules has been developed.

Transparency Project

21. The LSB has agreed the new transparency rules (11 June) and they are expected to come into force shortly thereafter, with compliance spot-checking from January 2020. A communications plan has been developed to ensure that the profession is aware of and able to start complying with the transparency rules from this time. We will also publish comprehensive guidance to assist the profession in complying with the new rules.
22. Following the compliance spot-checking, we will begin evaluating the effectiveness of the transparency requirements. We are likely to consider three discrete strands: implementation of, compliance with, and impact of the transparency requirements. We will aim to conclude the evaluation programme in 2021.

Equality and Access to Justice Programme

23. The Equality & Access to Justice Programme is progressing well and the programme plan detailing how all the individual work streams are being streamlined and prioritised to reflect the priorities as stated in the Business Plan is being developed.
24. In partnership with Inner Temple the EAJ team delivered a knowledge sharing session in April. The event, 'Opening the Door: Is there collective action on social mobility?' was attended by over 30 colleagues from across the BSB and BC. The event highlighted research from the Bridge Group and how organisations can improve targeting of initiatives to groups in most need of increased resources. Confirming our concerns published in the 2019 BSB Risk Outlook, key challenges relating to 'workplace culture' were highlighted as a factor that impacts upward professional mobility of underrepresented groups.
25. We have designed two equality and diversity focused workshops for the BPTC provider conference in July. Barrister Dr Charlotte Proudman and the founder of the Disabled Barristers Association, Daniel Holt, will deliver workshops on sexual harassment and disability respectively.
26. We have undertaken two workshops with stakeholders to contribute to the equality impact assessment (EIA) of the BSB's equality rules. With high levels of participation from representatives across the profession, data is being collected to inform the potential for further engagement and/or consultation activities. This will contribute to a potential review of our equality rules in due course.
27. The E&AJ team is preparing key-note speeches to represent the BSB at a number of external events: Westminster Legal Policy Forum 2019 Key note seminar 'Next Steps in improving diversity and Inclusion in the Legal Sector'; Chancery Bar Association, 'Achieving Racial Equality at the Bar, and for governance members of the Institute of Chartered Accountants' (members of the regulators' E&D network) 'Embedding diversity through real leadership commitment'.
28. The E&AJ team has prepared the submission for the LSB to remove the restriction in the Equality Rules on the publication of sexual orientation and religion and belief data.

Strategy & Policy

BSB Handbook

29. As set out in the Business Plan for Q1, we have initiated a project to review the Handbook with a discussion at the Board Awayday in May. We have published a Call for Evidence, available on the BSB website. In July the Board will consider a proposal outlining the scope of the review and asking whether certain projects should proceed in parallel.

Professional Indemnity Insurance (PII) and BMIF

30. In April BSB and BMIF signed a revised Memorandum of Understanding, available here: https://www.barstandardsboard.org.uk/media/1987027/memorandum_of_understanding_between_the_bsb_and_bmif.pdf
31. This completes our review of the governance arrangements between the BSB and BMIF. Subject to Board agreement we will be publishing minimum terms of insurance with which BMIF will be expected to comply (this will simply align our governance processes with what was agreed in the MoU – there is no change of substance to BMIF's cover as a result of this). We are on track to deliver on the Business Plan commitment to submit a rule-change

application to the Legal Services Board to oblige single-person authorised bodies to insure with BMIF.

Regulatory Risk

32. We have now completed a full cycle of risk reporting to the Governance, Risk and Audit Committee and the Board. As a result, we have reviewed how risk is reported to the Board so that we can be more targeted and proportionate in the future.
33. The Risk Outlook 2019¹ has now been published alongside the Strategic Plan 2019-22 and the Business Plan 2019.
34. At their away day in May, the Board had an extensive discussion of the refreshed Risk Index. They requested several revisions, and the SMT will discuss and agree final wording in June, before publication at the end of the month. Once this is done, the Regulatory Risk Team will ensure the risk register is revised to reflect these changes, along with revisions to the new Case Management System, thereby ensuring our refreshed Risk Index is fully embedded into the way we work.

Research

35. Work continues on the evaluation of the Continuing Professional Development reforms, with the researchers having completed a literature review of theories and practice around CPD, held a focus group with barristers, and held an internal workshop at the BSB to discuss emerging findings. The next stages involve a quantitative survey of barristers which was launched in April, alongside qualitative interviews and a further focus group.
36. Research into BSB complaints data is being conducted by the Research Team. This will analyse three years of data to investigate factors contributing to differences across gender and ethnicity in the numbers of complaints made, and the outcomes of complaints, and is a follow-up to a similar piece of research published in 2016.
37. Analysis is being undertaken to look at the impact of the change to the cut score/pass mark for the BCAT in 2018. This will help to inform future evaluation work on the BCAT changes. Early scoping work is also being undertaken for a further analysis of differential attainment on the BPTC following the changes to the centralised examinations.
38. The research team is undertaking initial baselining work as part of the evaluation programme for the changed requirements for price and service transparency introduced in response to the recommendations of the Competition and Markets Authority report on legal services. This baselining will be completed before the rule changes go live in the summer.
39. Work on the annual publication *BPTC Key Statistics* has been completed and is expected at the end of June following editing and internal review.

Professional Conduct Department

Quarter 4 2018-19 – Year-end performance statistics

40. Performance in Quarter 4 fell just short of the corporate target: performance against the corporate KPI (80% of cases completed within the service standards) was 76.8% in Q4, bringing the year-end performance to 81.6%. This is the third consecutive year in which the year-end outturn on the KPI has been met, having been at 84.3% against the target of 80% in 2017-18 and 80.1% in 2016-17.

¹ https://www.barstandardsboard.org.uk/media/1982209/bsb_risk_outlook_2019.pdf

41. We are currently analysing the data and trends which will underpin our annual enforcement report. This will be presented to the Performance, Resources and Planning Committee at their August meeting, with a summary reported to the Board in September. The report and accompanying statistical data will be published on the website shortly thereafter.

Standard of Proof

42. On 1 April the Standard of Proof applicable to professional misconduct allegations was changed from the criminal standard (beyond reasonable doubt) to the civil standard (on the balance of probabilities). The relevant training has taken place, and our documentation has been updated accordingly. The new standard has yet to be applied (at the time of writing) in any professional misconduct allegations, as the revised standard is only applicable to conduct which occurred on or after 1 April: all others will remain subject to the criminal standard.

Staffing

43. Two of the three vacancies in the Assessment and Investigations & Hearings Teams have been filled. Jess Bass joined the Professional Conduct Department in April 2019 as a Case Officer. Jess is a qualified solicitor, who after working in private practice worked as a Case Manager at the Health and Care Professions Council and has also worked for the General Dental Council, Institute and Faculty of Actuaries and the Royal College of Nursing. Zehra Husain has joined the Assessment Team as a Professional Conduct Assistant. Zehra has a law degree and is currently undertaking the Graduate Diploma in Law. Zehra previously worked in banking.
44. The remaining vacancy is currently being recruited to, so we will continue to operate below our full staff complement another two to three months.

Training

45. At the beginning of April, the BSB's APEX data protection specialist delivered training to the PCD on the data protection issues that can arise in the context of barristers' practices and their relevance misconduct investigations. The session covered reporting and registration obligations, links to the Handbook, and the potential for crossover with Information Commissioner's Office investigations.

Litigation

46. The position in the two discrimination cases brought by the same barrister remain the same as reported in March 2019. The case remitted to the High Court by the Supreme Court was set down for a preliminary hearing on 3 May, but this was adjourned to accommodate a longer time estimate. In the Employment Tribunal matter we are still awaiting a date for a preliminary hearing.
47. A new claim has recently been filed in the County Court, alleging a discriminatory course of conduct by the BSB over a number of years. The allegations relate to the BSB's unsuccessful prosecution of professional misconduct charges against the Claimant, and subsequent protracted costs litigation. The BSB is defending the claim.
48. The BSB is also one of eight defendants in another civil claim. In that case, it is alleged that the BSB committed fraud by false representation and breached the Claimant's Article 6 rights in not investigating her complaint against a barrister. The BSB is defending the claim.

Regulatory Assurance Department

Anti-Money Laundering

49. HM Treasury have published a [consultation](#) that sets out the steps the government has proposed to strengthen the UK's AML regime to deter money laundering and terrorist financing activity. The consultation covers areas such as customer due diligence, clarification

on the Politically Exposed Person definition and beneficial ownership. It also adds further requirements on AML supervisors to publish an annual report on their supervisory activity and to undertake criminality checks. We responded to the consultation by the due date of 10 June 2019.

50. The Department for Business, Energy & Industrial Strategy have published a [consultation on corporate transparency and register reform](#). The consultation proposes to enhance the role of Companies House by checking the information submitted to it as well as greater protection of personal information on the companies register. The consultation also outlines reforms that will improve co-operation and data sharing between Companies House and UK Law Enforcement Agencies. We are preparing our response to the consultation which is due by 5 August 2019.
51. The [Office for Professional Body Anti-Money Laundering Supervision](#) (OPBAS) launched a [consultation](#) on the fee-rate it will charge to professional body supervisors on 14 March 2019. Our response to this consultation can be found [here](#).
52. OPBAS visited the BSB for two days in October 2018 to assess us against each criteria set out in the OPBAS [Sourcebook](#). One of the actions agreed with OPBAS was a commitment that we would set-up a telephone line to encourage reports of money laundering within the Bar to us. We have now set this up and details can be found [here](#).

Authorisations

53. Since the last report the Authorisations Review Panel (ARP) met on 10 April and considered four applications for review. These comprised a Pupillage Reduction, Fee Waiver and two cases for Admission to the Bar as a Qualified Foreign Lawyer (QFL).
54. Three decisions were upheld, however one decision in respect of Admission to the Bar as a Qualified Foreign Lawyer was amended.
55. The Panel met again on 22 May to consider five applications. These comprised a Transferring Solicitor, a General Exemption, an Authorisation as a Pupillage Training Organisation and two cases for Admission to the Bar as a Qualified Foreign Lawyer (QFL).
56. There was one case for appeal to the High Court relating to an application for a dispensation from the pupillage regulations. This case was heard on 16 May and was dismissed. BSB was awarded limited costs, in the amount of £3210.00 (inc. VAT).
57. The team continues to work with the Supervision Team to deliver the Pilot AETO application process. Applicants are now populating responses to their applicants via MyBar and have been invited to feedback their user experience. Three members of staff are dedicated to the pilot and re-authorisation process, it is not anticipated that any additional resource is required for this piece of work.
58. The team has analysed the data collected via the pupillage registration spot checks during January and identified two organisations which were non-compliant. We have contacted these organisations and are awaiting responses from them.

Training Supervision and Examinations

59. The Training Supervision team has been going through the authorisation process for the first AETO application which was received on 1 April. This has included recruiting and inducting a panel of external experts who will assist in assessing applications. The agenda for the annual BPTC Providers' Conference on 12 July 2019 has been finalised and invitations have been sent out to delegates.

60. The Examinations team is in the process of marking the Spring 2019 exams; the subject boards for the Litigation subjects have been held; Ethics marking is well under way, with the subject board to be held on 24 June, followed by the Final Examination Board on 26 June. We are also in the process of finalising the contingency papers for the summer diet.

Communications and Stakeholder Engagement

61. Since this report was last prepared for the March Board, the following press releases and news announcements have been issued:
- 21 March: the disbarment of a barrister who was convicted by a criminal court in 2018 of serious sexual offences;
 - 28 March: signing of a Memorandum of Understanding with the Inns of Court;
 - 29 March: publication of the BSB's Strategic Plan for 2019-22, the 2019 Risk Outlook and the 2019-20 Business Plan;
 - 1 April: adoption of the civil standard of proof in professional misconduct proceedings for barristers;
 - 1 April: publication of a new edition of the BSB Handbook to introduce new Bar qualification rules;
 - 16 April: the disbarment of a barrister who was convicted by a criminal court in 2017 of serious sexual offences;
 - 7 May: the seeking views on pupillage recruitment and the advertising timetable;
 - 9 May: the disbarment of a barrister for dishonestly provided a witness statement when practising as a solicitor;
 - 10 May: recruitment of an Independent Reviewer to provide assurance and review functions in relation to our regulatory decision making;
 - 23 May: the appointment of two new barrister Board members; and
 - 24 May: the suspension of a barrister for six months for practising without a practising certificate.

Work in Progress

62. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- the introduction of the new Bar transparency rules;
 - various communication and engagement activities associated with our plan to promote our work around equality and access to justice; and
 - publication of our annual statistical report of student performance on the BPTC; and
63. The team is also working on the following projects:
- implementation of the agreed tactical communications plan to raise awareness about FBT;
 - writing and designing the 2018-19 Annual Report;
 - a new BSB plan of activity to contribute to improved public legal education; and
 - development of the new BSB website later this year.

Online and social media

64. During April, 31,174 users visited the BSB website. At the time of writing, we have 21,739 followers on Twitter, 3,659 followers on LinkedIn and 611 followers on Facebook.

Governance and Corporate Services

65. Two new barrister members of the Board have been appointed, to take up their posts from 1 June: Elizabeth Prochaska and Leslie Thomas QC. This returns the Board to a full complement of 15. Whilst the Board agreed in 2018 to trial reducing the number of its members, by not replacing the vacancy for a barrister member that arose in that year, and not replacing the next vacancy for a lay member whenever that should arise, it will make these changes with the next vacancies that arise.
66. The recruitment campaign for new members of the Advisory Pool of Experts (APEX) to provide advice on specific practice and legal issues in the areas of law most commonly encountered when considering enforcement cases has concluded, with four appointments being made. Details will be published in due course.
67. Recruitment for an Independent Reviewer is underway, with applications having closed on Monday 3 June. The Independent Reviewer will report to the Governance, Risk and Audit Committee and will provide assurance of the BSB's assessment of incoming information, enforcement and supervision systems and processes; carry out requests for review of individual decisions; and periodic system audits of random samples of cases to give assurance that the processes and procedures are being properly followed.

Resources Group

68. The Records team completed the Authorisation to Practise exercise with unparalleled success in that not a single barrister has been referred to PCD for non-compliance. Nevertheless, the usual lessons learned exercise is underway and nearing completion, to inform further improvements and other required changes to systems for 2020.
69. The HR team sponsored an impressive range of internal events to engage staff in Mental Health Awareness week in May. They also completed the year-end review and performance related pay exercise successfully according to schedule.
70. The Facilities team has been heavily engaged in finalising legal arrangements for the renewal of the leases and the refurbishment for 289 High Holborn and the latter project has now started. The refit of the building will last until the end of the calendar year and will involve some re-location of meetings to external venues as well as decanting and moving of groups of staff over the relevant period.
71. The Finance team is well advanced in their improvement programme and have enhanced their performance significantly against agreed reporting cycles.
72. Information Services and the Project management office have been heavily engaged in supporting the Reg Ops and FBT programmes as well as assisting in the relocation of services as part of the refurbishment project.

Vanessa Davies
Director General
June 2019