

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 24 September 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair) – by phone for items 6-12
Rolande Anderson
Rob Behrens
Aidan Christie QC
Malcolm Cohen
Naomi Ellenbogen QC
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Nicola Sawford
Sam Stein QC – items 7-12

Note: Justine Davidge was not present for Part 1 of the meeting but did attend for Part 2

By invitation: Keith Baldwin (Special Adviser)
Isobel Leaviss (Independent Observer)
Andrew Russell (Registrar, BTAS)
James Wakefield (COIC representative)

Bar Council in attendance: Alistair MacDonald (Chairman, Bar Council)

BSB Executive in attendance: Nicholas Bungard (Regulatory Risk Analyst)
Viki Calais (Business Manager)
Vanessa Davies (Director General)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision)
Oliver Jackling (Research & Evaluation Officer)
Sara Jagger (Director of Professional Conduct)
Tim Keeling (Change Programme Manager)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Pippa Prangle (Head of Regulatory Risk)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)

Press: Chloe Smith (Law Society Gazette):

Item 1 – Welcome

1. The Chair welcomed members to the meeting, in particular those attending their first Board meeting ie:
 - Aidan Christie QC (new Board Member);
 - Naomi Ellenbogen QC (new Board Member);
 - Andrew Russell (Registrar, BTAS);

- Nicholas Bungard (Regulatory Risk Analyst);
- Oliver Jackling (Research & Evaluation Officer).

Item 2 – Apologies

2.
 - Adam Solomon;
 - Anne Wright;
 - Emily Windsor (Special Adviser);
 - Chantal-Aimée Doerries QC (Bar Council Vice Chairman);
 - Lorinda Long (Treasurer, Bar Council);
 - Stephen Crowne (Chief Executive, Bar Council);
 - Mark Hatcher (Special Adviser to the Bar Council Chairman).

Item 3 – Members’ interests and hospitality

3. None.

Item 4a & b – Action points and Forward Agenda

Action points and progress (Annex A)

4. The Board noted progress on the action list.

Forward Agenda (Annex B)

5. The Board noted the forward agenda list.

Item 5 – GRA Committee Annual Report (including Annual Report from the Independent Observer)

BSB 068 (15)

6. Isobel Leaviss presented her Annual report for the period July 2014-June 2015. This included her assurance statement to the Board which confirmed that, in her opinion, the enforcement system had operated in accordance with the intended outcomes of the BSB’s enforcement strategy.
7. She highlighted the following:
 - a) pre-complaints (para 8) ie enquiries that are not initially classed as complaints but may have the potential to be categorised as such;
 - b) “comebacks” (para 11) ie where a complaint dismissal letter has been issued but is not accepted by the complainant who subsequently writes to request that the case is re-opened;
 - c) regulatory complaints concerning staff, prosecutors and Board / Committee members (para 10).
8. She commented that:
 - a) there were 765 pre-complaints for the period. Of these about 75% were potential complaints and around 20% of those were actually converted to that status;
 - b) of the two comebacks from 2013-14 which were taken further, one has been proved at tribunal, albeit at the lower end of the disciplinary scale. The other is still due to go to tribunal;
 - c) she has made recommendations to guide future handling of complaints about BSB staff / officers given its dual role as employer and regulator.
9. In relation to 7b), the key motivator is dissatisfaction with the outcome of the initial investigation (as opposed to the process). In relation to 7c), the GRA Committee has already been briefed on the cases identified but no consistent pattern as to the underlying cause has emerged.
10. The Board thanked Isobel for her comprehensive and helpful report.

11. **AGREED**

- a) to note the GRA Annual Report.
- b) to endorse the GRA Committee's assurance on the Independent Observer's report.
- c) to publish the Independent Observer's Report and Assurance Statement on the BSB's website.

AL

Item 6 – Future Bar Training: Professional Statement

BSB 069 (15)

12. The Board considered the proposed Professional Statement which had been revised following comment on earlier versions by both the BSB and Education & Training Committee. A proof check is required as the existing version contains referencing errors.

13. **AGREED**

that the Professional Statement set out in the report be published in October 2015 subject to final proof check.

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Item 7 – Amended Rules for the Inns' Conduct Committee

BSB 070 (15)

14. The Board considered further proposals from the Inns' Conduct Committee for the amendment of its Rules. The original proposals were referred back because of concerns about how they would apply to disbarred barristers seeking re-admission.

15. The following points were confirmed:

- COIC has revised the proposals so that readmission hearings are held in public (not private) for barristers who were originally disbarred due to disciplinary proceedings;
- it has maintained the view that the standard of proof to be used in all hearings should be the civil standard.
- the Executive is satisfied with the reasoning to support the latter point and therefore recommends acceptance.

16. **AGREED**

to approve the amended Rules for the Inns' Conduct Committee.

Item 8 – Chair's Report on Visits and Meetings (Aug-Sept 15)

BSB 071 (15)

17. The Chair commented positively on his visit to the Legal Ombudsman (LeO) which he had found very useful and informative. LeO is willing to host visits from other Board Members as well.
18. Arising from this, Members discussed the recent decision to withdraw LeO's application to become an Alternative Dispute Resolution (ADR) entity so that a fuller consultation could take place. This runs until 2 November 2015. The EU Directive on Consumer ADR comes into effect well before that date meaning the default service for the interim period is the Trading Standards Office. Some concern was expressed at these circumstances and that the BSB should press the case for LeO to become an ADR entity.
19. In response, Ewen Macleod confirmed that the Law Society has issued guidance to its members for this interim period and that the BSB would respond in a similar fashion. The BSB will respond to the consultation in due course.

AGREED

20. to note the Chair's report on visits and meetings.

Item 9 – Director General's Report

BSB 072 (15)

21. Vanessa Davies commented as follows:
- the legal press has published several interesting articles recently on the growing uptake of entity regulation;
 - the seminar on Regulatory Risk (5 October 2015) will go ahead as planned. Details will be included in the next "Friday mailing" for Board Members;
 - the external assurance required for the Information Architecture project has now been received (cf. para 50 of the report). The project will therefore proceed;
 - a progress report on the ASPIRE programme will be provided at the October Board meeting.
22. The Chair noted the outcome of the live webinar as set out in paragraph 3 of the report. He referred to feedback from BSB stakeholders on the high number and complexity of recent BSB consultations and suggested we might make greater use of webinars and alternative technologies to improve engagement.
23. Ewen Macleod referred to the forthcoming consultation on the definition of "employed barrister (non-authorised body)". Given the specific nature of this consultation, it has not been presented to Board Members but is available on request from Kuljeet Chung in the Regulatory Policy Department.

**BSB
Members
to note**

AGREED

24. to note the report.

Item 10 – Any Other Business

25. None.

Item 11 – Date of next meeting

26. Thursday 22 October 2015.

Item 12 – Private Session

27. 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 – 4 September 2015 (Annex A);
 - (2) Matters arising;
 - (3) Action points and progress – Part 2 (Annex B);
 - (4) Human Resources Operating Plan 2015 – Update September 2015 and Staff Survey 2015;
 - (5) Evaluation of the Bar Course Aptitude Test;
 - (6) Regulatory Risk: Outlook development and communications strategy;
 - (7) Governance Review;
 - (8) Amendment to Bar Standard Board's powers: response to the consultation;
 - (9) Standard Contractual Terms and the Cab Rank Rule – update on the LSB undertaking;
 - (10) QASA – Timetable for implementation;
 - (11) Any other private business.

The meeting finished at 5.05 pm.