

Bar Standards Board - Director General's operational report – 27 September 2018

Director General

1. A proportion of BSB staff were on annual leave over August and since the last operational report but activity on key programmes has nevertheless made good progress. This is set out below. In addition, further work was undertaken on the draft strategic plan for 2019-22 and the associated financial planning. We will be consulting on the draft strategy later in the autumn. We also did detailed work on agreed actions arising from the final stages of the governance reform programme, addressing recommendations from the Board member survey in July and anticipating further reform of the Internal Governance Rules (IGRs) driven by the LSB.

Future Bar Training programme

2. The programme is progressing to time and budget.
3. At its 12 September meeting, the Education & Training Committee considered its future role and remit in the light of governance reform in the BSB and once the new Education & Training Rules come into force in February 2019. This will be considered at the November Board meeting, along with the Committee's annual report to the Board.

Part 4 Qualifications Rule Change Consultation

4. As of the closing date, 5 responses had been received. Once all the responses have been analysed, we will consider drafting changes to the new rules before the Board's meeting in October. As is usual practice, we will be sharing a draft copy of the rule change application with the LSB to ensure any significant issues are dealt with prior to submitting the final application in early November.

Memorandum of Understanding with COIC and the Inns of Court

5. Drafting amendments to the proposed MoU and Data Sharing Protocol had slowed down over the summer due to lack of availability from COIC and Inns representatives to consider drafting. Issues relating to the introduction of DBS checks also meant some delay in agreeing an approach.
6. Following the summer break, we have received positive comments from the COIC/Inns staff working with us on several fronts. There has been good take-up for example on the Equality Impact Analysis training we have provided for Inns' education teams. We anticipate the MOU will progress steadily to our December deadline.

Authorisation Framework ("AF")

7. At its meeting on 12 September the Education and Training Committee agreed a revised version of the AF. The revisions make no substantive changes to the version approved by the Board in May, but rather are intended to improve readability by pulling together the key principles and required evidence in a more usable and much more concise way.
8. As a consequence of the revisions – most notably to what an applicant will have to provide to the BSB – the evidence documents in their current format are no longer the best approach to setting out what is required of potential applicants. Instead the AF will be supported by a suite of comprehensive, inter-related user guidance documents setting out relevant

information for different types of applicants, addressing all aspects of the end-to-end authorisation process and setting out what could be expected after initial authorisation, e.g. the nature of supervision.

Authorisation Process

9. Work on implementing a number of elements of the authorisation process is well underway and includes:
 - a. Risk-based regulation – the AF has been reviewed to ensure it reflects the BSB’s risk-based approach to regulation. The output will inform all aspects of the end-to-end authorisation process to confirm we have considered relevant risks and associated controls / mitigating actions.
 - b. Fees model – a principles-based paper setting out the model will be considered by the PRP Committee in early November with a consultation to follow over November – January and Board approval for the fees to be sought thereafter.
 - c. Application Process / On-line System (how applications will be made) – High-level functional requirements have been developed leveraging systems already in use elsewhere in the BSB. A detailed design workshop with the Project Management Office took place on 20 September.
10. As set out above, guidance for relevant users / stakeholders will be produced for each aspect of the process. An EIA has been approved and will be updated throughout the project.

Authorisation of AETOs providing pupillage / work-based learning

11. All organisations, including all chambers and BSB entities, and other existing Pupillage Training Organisations, have been asked whether they wish to offer/continue to offer pupillage. The deadline for responding is the end of September. When we have a view of the data (e.g. volume of potential pupillage providers) an approach to authorisation will be developed. A significant consideration is the level of “chasing” expected to get responses, which will have an impact on resources and timings.

Pupillage – adoption of the Professional Statement

12. We have completed the second round of visits with the first wave of early adopters of the Professional Statement. All four organisations (three employed Bar and one chambers) have been very positive about using the Professional Statement and have been able to develop their own training documentation to implement it. We have gathered some helpful feedback from pupillage committees, pupil supervisors and pupils about how they have done so. We will use this to develop guidance.
13. Feedback about the Supervision programme for pupillage indicates that we are focusing on the right regulatory risks. The programme is now being tweaked to reflect the version of the Authorisation Framework that was reviewed by the Education and Training Committee this month.
14. A series of initial meetings are underway with the second wave of the pilot participants. We now have a range of chambers signed up to the pilot, with a mixture of large and small chambers, London-based and regional. In total the pilot will have included at least 12 participants: 4 employers, 7 chambers and 1 sole practitioner; 8 London-based, but several with multi-site locations, and 4 based in a range of other locations.

Pupillage - Advertising and Recruitment project

15. The project was initiated following concerns that were raised during our previous consultations, and from research conducted, that access to pupillage is one of the biggest barriers to increasing diversity at the Bar. We are now progressing with the implementation plan and will be meeting with the Bar Council under the Protocol on regulatory independence.

Curriculum and Assessments Review

16. A series of workshops is being organised to develop assessment criteria for locally-assessed subjects in the vocational component of training. These workshops will take place from October to December and will involve members of the Curriculum and Assessment Review Task Completion Group and representatives from BPTC providers. The assessment criteria will feed into the Curriculum and Assessment Strategy which will sit under the Authorisation Framework. Initial planning for reform to centralised examinations is underway.

Regulatory Operations Programme

17. The Regulatory Operations Programme is now due to “go-live” from 1 June 2019. This is to ensure that it can properly align with other inter-related projects, such as the refreshed BSB website.

Centralised Assessment Team (CAT) Project

18. The CAT Project Team has been working with the Project Management Office to set out the user requirements for the developers of the relevant databases and case management tools.
19. The assessment process and risk assessment methodology, alongside the supporting guidance and tools are now being tested by staff in PCD and Supervision, to ensure consistency and usability.
20. In addition to this, the Project Team is also reviewing the capacity and capability the CAT Team will ultimately require and has begun drafting proformas which will be used in communications with users.

Independent Decision-making Body (IDB) Project

21. The project is progressing well to its key milestones following the Board’s post-consultation policy decisions in July.
22. The IDB Task Completion Group (TGC) continues to meet on a regular basis to discuss the detailed development of the practical aspects of the new decision-making regime. In September, it discussed the proposals for quality assuring the new decision-making system and provided invaluable input on the most appropriate way to do this. The proposals, adapted in light of the views of the TCG, will now be put to the Senior Management Team for agreement and, in due course, will be considered by the Governance, Risk and Audit Committee.
23. The future arrangements were presented in detail at the annual Awayday of PCC and prosecutors on 13 September and progress on the pilot decision panels’ work was discussed. Overall the vision for the future has been enthusiastically received by this community and a significant number of current PCC members have expressed interest in transferring to the new panels: the transition process and subsequent recruitment work will start later in the next few weeks.

CMA Programme

24. We have received a draft progress report from the LSB outlining its assessment of our progress against the action plan we published in response to the CMA market study. We have responded with factual corrections and expect the report to be published in October.

Transparency Project

25. We issued a transparency rule change consultation in mid-September, alongside detailed guidance and worked examples in specific areas of law to help respondents to the consultation understand the nature of the transparency rules we are proposing. We are now undertaking a programme of engagement with the profession, Specialist Bar Associations, consumer groups and others to encourage responses to the consultation.
26. A supervision programme to test compliance by the profession (from 2020, allowing for a period of bedding-in) has been developed.

Strategy & Policy

27. In July and August, the Policy Team received almost 200 calls and e-mails to the Professional Standards Helpline. This brings the total number of queries this year to date to approximately 750.

Public Access Training Review

28. The Policy Team is leading the review of the Public Access training, which was a key recommendation of last year's Public and Licensed Access Review Report. We developed a framework to assess how well the current Public Access training providers were meeting the required outcomes. The assessments were then used to produce a revised set of required outcomes for the training, which do not differ substantially from the current outcomes, but will lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement).
29. Now the development of the revised set of required outcomes is complete, an invitation to tender will be issued in early October. This will allow existing training providers to demonstrate how they intend to revise their current Public Access training to reflect the revised training outcomes. Any prospective new training providers will also need to demonstrate how their Public Access training proposal reflects the revised training outcomes. Contracts for the revised Public Access training will then be awarded ready for January 2019 (the current training provider contracts expire at the end of December).

Scope of practice review

30. The project team has been undertaking a first principles risk assessment in relation to our scope of practice review. The risks have been considered on the basis of where the barrister is working from, what services they are providing (reserved or unreserved) and the type of client they have been instructed by. This has been reviewed by the Project Board and the Task Completion Group. This risk assessment will support the development of targeted and proportionate scope of practice controls which we anticipate being included within the policy consultation in early 2019.

Joint Immigration Guidance

31. The Policy team has been developing joint guidance with the Solicitors Regulation Authority (SRA) and the Office of the Immigration Services Commissioner (OISC), aimed at professional clients (largely solicitors and OISC advisers) on instructing and working with immigration barristers. The guidance will ensure that professional clients and barristers

understand the respective roles of barristers and professional clients, and that the expectations of all parties are managed. We expect also to tighten arrangements in relation to barristers who are or purport to be supervising immigration advisers who are no longer OISC-registered e.g. because they have been struck off.

32. The guidance is in response to the Immigration Thematic Review (ITR), which highlighted the issues that clients faced in seeking legal advice from barristers supplying immigration services. One of the issues identified was the quality of advice and standards of service. The ITR recognised that barristers' services are provided at the end of the legal supply chain; therefore, the quality of service they are able to provide can be affected by difficulties that emerge in the supply chain.

Equality and Access to Justice

33. In mid-September, we held a meeting with leading members of the profession (from BAME and White backgrounds) and the BSB lay APEX E&D advisor to explore opportunities to progress our commitments as a regulator to race equality.
34. A workshop attended by 20 people has been delivered to LPMA and IBC senior representatives in support of our Equality Impact Assessment of the Equality Rules.
35. The Head of Equality and Access to Justice has delivered two Embedding Equality Impact Assessment training sessions for representatives across Inns. The training upskilled delegates to undertake EIAs for service provision particularly where it relates to activities undertaken as part of the BSB's regulatory arrangements (e.g. qualifying sessions).
36. In support on the FBT recruitment and advertising project group, team members have attended the Recruitment and Selection training delivered by the Bar Council. Their review of the training course will contribute to recommendations the project group makes with regards to improving diversity at the Bar.

Regulatory Risk

Development of Risk Outlook 2019

37. The July Board discussed a joint paper from the Risk Team and the Corporate Services Team setting out the emerging risk themes we are proposing for the Risk Outlook, alongside the strategic aims and outcomes we are proposing for the Strategy. A similar paper was produced for the GRA Committee in September and, building on the feedback we received during these discussions, we are now developing material for engaging with stakeholders.

Risk Reporting

38. Work has now begun on the development of the 2nd consolidated Risk Report. Over the summer, the Research Team evaluated the evidence used to underpin each risk assessment. This has allowed the risk team to re-assess each of the risks in the risk register, increasing or decreasing assessments according to the quality and quantity of evidence available. The Risk Forum has met to consider the revised register and provide further information for the report. Following this the Risk Team has begun developing the 2nd consolidated Risk Report for the SMT in October. This will also reflect lessons learned from taking the first report to the GRA Committee and the Board and is being developed by both the Risk Team and the Corporate Services Team.

Research

39. Work has been completed on two reports to inform our work in response to the recommendations of the CMA on transparency, both of which are due to be published in September. The first is a review of the transparency pilots conducted from November 2017 to February 2018. The second is the work undertaken by YouGov and London Economics consisting of qualitative focus groups with barrister's clients alongside a quantitative online experiment with a representative sample of the general public.
40. We have been working with the Risk Team to strengthen the evidence base for the Risk Register, alongside preliminary evidence-gathering for the next version of the Risk Outlook. A new version of the Risk Register has been produced which includes a detailed evaluation of the evidence for each risk, and a preliminary summary of evidence has been produced for each of the three themes of the Risk Outlook.
41. The Invitation to Tender has been issued for the Future Bar Training evaluation and closes in the final week of September. We anticipate appointing a supplier in October.
42. Works continues on the CPD evaluation, including an in-depth analysis of qualitative information within the sample of CPD records marked as 'non-compliant'. The final stages of the evaluation - to understand barristers' perceptions and experiences of the new scheme - will progress in the coming weeks.

Professional Conduct Department

Staffing

43. In line with the BSB's commitment to upskilling staff and providing greater internal resources to address legal issues, the Professional Conduct Department (PCD) has recruited another Professional Support Lawyer (PSL), Conrad Grimshaw. Conrad is a New Zealand qualified barrister and solicitor, who previously worked in a private regulatory practice. He joined the BSB on 3 September.
44. Conrad will be managed by the current PSL whose job title has changed to Senior PSL. These two staff now form the Professional Support Legal Team. While the team will sit for the time being in the PCD, they will provide support across the BSB in relation to litigation cases. Conrad will focus initially on improving legal knowledge management as well as ensuring the PCD training programme is delivered. The new role will provide additional support to ensure the BSB is prepared for next year's regulatory decision-making changes.

Professional Conduct Committee and Prosecution Panel Away Day

45. On Thursday 13 September, the BSB held the annual Away Day for the Professional Conduct Committee and Prosecution Panel members. The emphasis of the day was on the pending changes to the decision-making processes, particularly the creation of the Independent Decision-Making Body (IDB) and the introduction of the civil standard of proof. The event was well attended and feedback from participants has been very positive.
46. The Chair of the Board introduced the day and the Director General was present throughout. There were lively discussions on refining the detail of how the IDB will operate and how the new approach to decision-making can assist prosecutors in preparing for and representing the BSB at Tribunals. Experts from two other professional regulators gave presentations affording insights to their own experience of some of the change before the BSB – on the standard of proof and decision-making panels.

New case management system

47. During July and August, we have been working intensively with colleagues in the Project Management Office, Regulatory Assurance Department and our IT developers to map out and finalise the system requirements for the new case management system (CMS). The new CMS is currently due to 'go live' in June 2019 alongside the new arrangements for regulatory decision-making. The intention is that the new CMS will provide enhanced support in tracking, monitoring and reporting on all types of casework across the BSB and will support the centralised approach to assessing risk.

Litigation

48. The PCD is currently handling two live litigation cases. One of these is the discrimination claim remitted from the Supreme Court. There has been no further development since the last update. The other case is a Judicial Review which is being dealt with by agreement and negotiations with the applicant are ongoing.

Regulatory Assurance Department

CPD

49. The first spot check of compliance with the new CPD regulations is nearing completion and we are in the process of writing regarding outcomes to all barristers selected. A report will be produced which will outline good and bad practice noted during the spot check as well as some quantitative analysis of compliance by different areas and types of practice. Currently, around 7% of records have been assessed as Non-Compliant, with the rest Compliant or Compliant with Feedback. The team has been unable to contact a very small number of barristers selected for the spot check; these barristers will be referred to the Professional Conduct Department.
50. The next step will be to conduct some wider research into the impact of the new regulations. This will include selecting a sample of barristers who were not part of the spot check, who will be asked about their experience of the new CPD requirements. The team is also due to meet with the new Apex CPD expert to discuss lessons learned and potential areas of focus for the next spot check and for communication with the profession.

Anti-Money Laundering and Counter Terrorist Financing

51. We have contacted a sample of 84 barristers who carry out work within the scope of the Money Laundering Regulations to check compliance with the requirement in our rules to obtain a DBS check. No issues have arisen so far.
52. We are still awaiting the results of the Financial Action Taskforce Mutual Evaluation Peer Review of the UK. We may be audited by OPBAS in late October, but this has not yet been confirmed.

Assuring the competence of barristers

53. The first Project Board meeting took place in August, to ratify the Terms of Reference and review the Project Initiation Document. We have begun meeting key stakeholders, outlining our approach to assuring competence and discussing opportunities for working together. We will continue to meet stakeholders and chase those who have yet to respond over the coming months in line with our stakeholder engagement plan.
54. We are part of the Ministry of Justice's quality of advocacy working group, which is due to meet on 10 October. It brings together Legal Services regulators along with the MoJ and CPS to focus on improving the quality of advocacy.

55. Final touches to the video to help young people to understand what to expect from their barrister are being made with the developer.

Authorisations

56. The Review Panel sat on 5 September and considered 6 applications for review. All decisions were upheld, with no amendments to conditions being made. Quality assurance measures are in place to ensure the consistency and standard of decision-making is maintained.
57. The first Annual Meeting of the Authorisations Review Panel(ARP) took place on 11 September. The three hours session included presentations from Regulatory Assurance Department(RAD) staff to update the panel on the introduction of the Independent Decision-Making Body (IDB), Future Bar Training(FBT) and the Authorisations Framework (AF). These presentations outlined the impact these changes will have on decision making in the future. The event included training and a calibration exercise in preparation for the IDB next year. Evaluation forms issued to attendees have been returned with “excellent” feedback and helpful suggestions for working practice under the new regime. The panel were also asked to reflect on the previous 12 months period and identify strengths, areas for improvement and identify how to improve moving forwards. Feedback from the round table appraisal session was positive. Two barrister members of our existing panel have also volunteered for the pilot scheme for IDB, which will ease the transition from ARP to IDB.
58. Since the last report, the APEX adviser has been used on 1 occasion. The team has contacted the advisor a total of eight times since initial appointment in September 2017. The team continues to use this advice to build its knowledge set.
59. The team now processes all applications and manages workflow within the CRM. The CRM has had a positive impact on managing workflow and KPIs. Recommendations from the Internal Audit report have been implemented which have also supported the achievement of KPIs. Staff have fully engaged with programmes of training and actively suggest ways to further develop how the system is used. The Supervision team is also using the CRM to process applications.
60. A preliminary report suggests that the team has exceeded KPIs for this quarter.
61. 72 applications have been submitted online since March. The team is engaged with IS to design and develop the online application portal, which will further streamline the service and improve efficiency.

Training Supervision and Examinations

62. Contracts with current BPTC providers which were due to expire on 31 August 2018 were extended to enable recruitment for academic year 2018-19 and 2019-20 after which providers will need to make application through the new FBT processes to become Authorised Education and Training Providers if they wish to deliver a BSB authorised pathway.
63. The Examinations team has expanded to take account of the increased workload since the introduction of in-house marking for Professional Ethics, as well as the need to free up time of senior staff for work on implementing the new Curriculum and Assessment Strategy. Munira Khanom has joined the team as Examinations Officer, and Sharleen Kwarteng as Examinations Officer (fixed term).
64. Since the last report the summer assessments have taken place; the Litigation exams have been marked and the subject boards held. The Professional Ethics exam has been first marked and standard setting completed; second marking and preparation for the Ethics

subject board and Final Board is now underway, as is preparation for the spring assessments.

65. The Chair's report for the spring 2018 assessments is due to be published this month. This is later than planned as an issue was found with a small number of the results of the spring sit. This has since been rectified and the correct results issued to any affected students. Publication of the Chair's report was delayed in order to explain this.

Communications and Stakeholder Engagement

66. Since this report was last prepared for the July Board, the following press releases and news announcements have been issued:
- 3 July: appointment of new Advisory Pool of Experts members;
 - 5 July: barrister ordered to be suspended for one month for failing to provide a competent standard of work to a client;
 - 5 July: explanation of how we assure competence at the Bar;
 - 6 July: research showing that newly qualified barristers benefit from regular guidance by experienced practitioners, but levels of support vary;
 - 19 July: launch of consultation about the new training and qualification rules;
 - 25 July: publication of 2017-18 Annual Report;
 - 27 July: statement welcoming Select Committee Report into sexual harassment; and
 - 13 September: launch of consultation on draft of new Bar transparency rules.

Work in Progress

67. 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 annual Enforcement Report;
 - guidance about non-disclosure agreements and harassment;
 - immigration guidance for professional clients; and
 - consultation on the new BSB Strategic Plan.
68. The team is also working on the following projects:
- implementation of the agreed tactical communications plan to raise awareness about FBT and, subject to LSB approval, the introduction of new Bar training rules;
 - communications input into the draft of the new BSB Strategic Plan and the next BSB Risk Outlook;
 - developing the BSB website; and
 - reviewing the Communications and Public Engagement Strategy for consideration at the October Board meeting.
69. The team is planning a number of Public Engagement events over the autumn. These include:
- attendance and presentations about FBT at two pupillage fairs in October and November;
 - a series of FBT roadshows in the Circuits focussing on pupillage rule changes;
 - the BSB session at the Bar Conference, also focussing on pupillage rule changes; and
 - a series of roundtable events for selected stakeholders to share evidence and views on three of our planned priorities for the next BSB Strategic Plan.

Online and social media

70. During July, 28,956 users visited the BSB website with a further 26,880 visiting during August. At the time of writing, we have 20,167 followers on Twitter, 3,162 followers on LinkedIn and 539 followers on Facebook.

Corporate Services

71. The Governance Team has been working on changes to the organisation's constitutional arrangements with the Bar Council to bring us up to date with best practice and prepare for the new Internal Governance Rules from the LSB in 2019.
72. The Corporate Support team is currently reviewing how the organisation deals with feedback and complaints about our service. This includes a review of the service complaints policy and process for dealing with complaints. The team has been providing support to the Regulatory Risk team with consolidated risk reporting while it is recruiting for a new member of staff.
73. The Corporate Services team has been heavily involved with the formulation of the new strategy and the associated budget bid, working with SMT and Operational Managers to ensure that there are adequate resources to deliver the new strategy.

Vanessa Davies
Director General BSB
September 2018