



REGULATING BARRISTERS

Meeting of the Bar Standards Board
Thursday 27 October 2016, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

Note: there will be a Workshop in Room 1.1 immediately prior to the start of the meeting (from 3.00 pm – 4.15 pm) to consider in detail one of the items on the Private Agenda

			Page
1.	Welcome and introductions (4.30 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes		
	• 29 September 2016 (*)	Annex A Chair	3-8
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B Chair	9-11
	b) Forward agenda	Annex C Chair	13-14
7.	Amending the scope of in-house employed practice (4.40 pm)	BSB 073 (16) Ewen Macleod	15-34
8.	Statutory Intervention (4.50 pm)	BSB 074 (16) Rob Wall	35-52
9.	Bar Council Standing Orders – proposed amendments (5.00 pm)	BSB 075 (16) Vanessa Davies	53-72
10.	Chair's Report on Visits and Meetings: October 2016 (*)	BSB 076 (16) Chair	73-74
11.	Director General's Report (5.05 pm)	BSB 077 (16) Vanessa Davies	75-83
12.	Any other business		
13.	Date of next meeting		
	• Thursday 24 November 2016		
14.	Private Session		

John Picken, Governance Officer
JPicken@barstandardsboard.org.uk
20 October 2016

**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.*

BSB 271016

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 29 September 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair) (items 7 – 13)
Rolande Anderson (by phone)
Rob Behrens CBE
Aidan Christie QC
Malcolm Cohen
Justine Davidge
Andrew Mitchell QC
Tim Robinson
Nicola Sawford
Adam Solomon
Anu Thompson
Dr Anne Wright CBE

Note: Judith Farbey QC 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) (items 1 – 7)
James Wakefield (COIC representative) (items 7 – 13)
Emily Windsor (Special Adviser) (part of meeting – by phone)

Bar Council in attendance: Stephen Crowne (Chief Executive, Bar Council)
Chantal-Aimée Doerries QC (Chairman, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
Andrew Langdon QC (Vice Chairman, Bar Council)

BSB Executive in attendance: Viki Calais (Head of Corporate Services)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Sara Jagger (Director of Professional Conduct)
Bernard MacGregor (Senior Supervision and Authorisation Officer) (items 1 – 9)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amanda Thompson (Director for Governance Reform)
Wilf White (Director of Communications and Public Engagement)

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting, in particular Isobel Leaviss, the Independent Observer, who was presenting her Annual Report to the Board. He also welcomed Andrew Langdon QC, Vice Chairman of the Bar Council and Rebecca Forbes, the new Governance Manager, who were attending their first Board meeting.

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2. The Board heard with deep regret that Adrian Turner (Assessment Manager, Professional Conduct) had died whilst on holiday in Spain. Adrian had been with the organisation for over 18 years, initially working for the Bar Council and later transferring to the BSB upon its creation in 2006. Members expressed their sincere condolences to his family and friends.

Item 2 – Apologies

3.
 - Professor Andrew Sanders
 - Lorinda Long (Treasurer, Bar Council)
 - Oliver Hanmer (Director of Supervision)

Item 3 – Members’ interests and hospitality

4. None.

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

5. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 28 July 2016.

Item 5 – Matters Arising

6. None.

Item 6a – Action points and progress

7. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

8. The Board noted the forward agenda list. There may be scope to run a pre-Board meeting discussion on professional indemnity insurance immediately before the October meeting. The Part 2 agenda will include an item on that topic.

**BSB
Members
to note**

9. The Chair advised that the new lay members due to join the Board from January 2017 will be invited to the Away Day on 15 December 2016.

**JP to
note**

Item 7 – Annual Report of the Governance, Risk and Audit (GRA) Committee to the Board

BSB 061 (16)

10. Isobel Leaviss presented her Annual report for the period July 2015 - June 2016. This included her assurance statement to the Board which confirmed her opinion that the enforcement system continues to operate in line with the BSB's Enforcement Strategy and in accordance with its policies and procedures.
11. She commented as follows:
- this is her last 12-month report as her contract with the BSB finishes at the end of the year. She will, however, produce a further 6-month report for the GRA Committee in December 2016. *Note: this might also be presented to the Board at its January 2017 meeting;*
 - there had been a lapse in monitoring E&D data for the BSB Board and Committee members and ensuring that new members were undertaking E&D induction training. Both matters are currently being addressed. It had taken considerable time for the BSB to respond to the IO's enquiries and ascertain the position. Responsibilities at senior management team level have since been clarified;
 - website information on the enforcement process has recently been updated and is now much clearer. Notwithstanding this, the BSB's website overall remains very text heavy so there is still scope for further improvement to increase clarity and accessibility. A re-vamped and more

Part 1 - Public

user friendly website would encourage “self-service” on the part of both barristers and complainants to obtain the information they need. The IO encouraged the Board to ensure that the BSB website project planned for next year received adequate resourcing;

- one reason for delays for some long running cases is the time taken for court transcripts to arrive. Departmental staff do proactively chase up their requests but the IO suggested that the BSB, as a regulator, might be able to use its influence to expedite requests, particularly for the highest risk cases;
- the litigation register has now been updated in line with her earlier recommendation. The IO suggested that as part of the governance review, consideration should be given to how best to achieve appropriate non-executive oversight of high risk cases, including but not restricted to those involving litigation.

12. Members thanked Isobel for her informative report and her thorough approach. The following comments were made:

- the hiatus on E&D data monitoring may reflect an earlier decision to defer monitoring activity pending the outcome of an internal restructure;
- we should also consider the storage of data as well as its collection. E&D returns originally retained by the Bar Council have been mislaid. In addition, accurate records were not kept on attendance of Board Members at E&D training days;
- court transcripts are often difficult and costly to obtain. We should avoid seeking these unless absolutely necessary;
- It would be helpful to know more about the services complaints mentioned in the GRA Annual Report. Most of these relate to the Professional Conduct Department and it would be useful to understand what lessons have been learned.

13. In response, the following comments were made:

- the issues regarding equality and diversity data storage are acknowledged. This has already been raised with Information Services and improvements have been instigated;
- there are no discernible themes regarding service complaints. Some improvements to signposting and written communication have been implemented as a result but, in many instances, the service complaint is used as an alternative means to appeal against a regulatory decision.

14. **AGREED**

- a) to note the content of the GRA Committee’s report.
- b) to receive the Committee’s assurance on the Independent Observer’s annual report and to request this is published together with her Assurance Statement, on the BSB website.

VC

Item 8 – Planning, Resources & Performance Committee Report for Q1 (April 2016 – June 2016)

BSB 062 (16)

15. Anne Wright highlighted the following:

- notwithstanding the date of the Board meeting, the report relates to performance achieved in Quarter 1 ie April – June 2016;
- the dashboard at Annex 1 shows that most business objectives are currently on target, though some are marked as “amber”;
- income projections are 4% below budget but expenditure remains on target given the close controls in place;

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- high staff turnover remains a concern. The overall figure is 34%, though the voluntary rate is lower at 17%;
 - the Professional Conduct Department KPIs results for the quarter are good with just one Operational Performance Indicator slightly below target.
16. She also commented as follows:
- it would be useful to know if items marked amber in Quarter 1 have been addressed in the interim;
 - the analysis and review of the consultation on Future Bar Training will take place in Q4 (not Q3 as stated in the Business Plan);
 - the introduction of performance related pay appears to have been accurately assessed in terms of budget planning;
 - there has been a loss of some programme management capability as regards the Future Bar Training programme. This is reflected in the “amber” status of that project in the dashboard;
 - the Bar Council did not achieve its income target in terms of receipts from the Practising Certificate Fee (PCF). The BSB therefore faces a challenge in making up the shortfall of £60k (though unbudgeted income arising from the continuation of the Bar Course Aptitude Test will offset this amount somewhat).
17. Malcolm Cohen asked about the impact of our commitment to meet part of the PCF shortfall. He was concerned about the subsequent effect on the BSB’s Business Plan objectives.
18. In response to the above points, Vanessa Davies commented as follows:
- the items marked amber on the dashboard should largely revert to “green” status by the end of Quarter 3;
 - funding remains tight and a detailed half year financial review will take place at the end of Quarter 2;
 - none of the Business Plan objectives are expected to be seriously delayed as a result of adjusting finances to make up the £60k shortfall ie none are expected to go “red” on the dashboard.
19. **AGREED**
to note the report.

Item 9 – Future Bar Training – Continuing Professional Development Consultation Report

BSB 063 (16)

20. Bernard MacGregor highlighted the following:
- the consultation document focused on the technical administration of the new scheme, rather than issues of principle;
 - the new scheme is less prescriptive and more flexible than the one it replaces. This has been broadly welcomed by the profession;
 - the Board is asked to formally approve the rule changes set out in Annex 2 of the report.
 - a communication and engagement plan has been devised. This identifies a number of events (eg roadshows, webinars, advice surgeries) to increase awareness of the new scheme and how it will apply in practice.
 - subject to LSB approval, the scheme will come into force with effect from 1 January 2017.

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21. Vanessa Davies stated that the BSB had worked closely with some of the Specialist Bar Associations (SBAs) and had developed model plans / templates which could be used in the roadshows. Board members, particularly barristers, are welcome to attend these (dates and locations available via the [website](#)).
22. Members commented as follows:
- the report is useful and clear and we should proceed with the rule changes;
 - notwithstanding this, there is a risk that barristers will simply view the new scheme as a “paper exercise” without due regard to planning or reflection, particularly if we over-rely on SBA templates;
 - we should make the link between this form of CPD and career counselling initiatives that already occur in some Chambers. With this in mind, we should target the Institute of Barristers Clerks, Heads of Chambers and Chief Clerks for the roadshows;
 - the “reflection” element is not just about deciding whether objectives have been completed. It is also an opportunity to critically reflect on whether work patterns should change for the future or if any additional skills should be developed. This can be challenging and we need to have clear guidance available to support the barristers concerned;
 - the roadshows need to de-mystify the concept of CPD. In many instances, activity that barristers already undertake would qualify as CPD.
23. **AGREED**
- a) to note the report on the CPD consultation document.
 - b) to approve the updates rules and guidance and to proceed with an application to the LSB (subject to further minor drafting edits, and improvements to the associated guidance material).
 - c) to note the communication and engagement plan.

BM

Item 10 – Equality Rules: Shared Parental Leave

BSB 064 (16)

24. Ewen Macleod commented as follows:
- the report has been drafted in response to a formal request from the Bar Council under the protocol for regulatory independence to review our equality rules. These need to reflect recent statutory changes in relation to shared parental leave (SPL);
 - a Task Completion Group has been established and has identified possible changes to the rules as well as the potential implications of these;
 - the aim is now to prepare a targeted consultation document on proposed changes with a view to preparing a formal recommendation to the Board once feedback has been collated.
25. **AGREED**
- a) to note the summary of the issues as set out in the report.
 - b) to consult on possible changes to the equality rules to permit shared parental leave in Chambers.

EM / AP

Item 11 – Chair’s Report on Visits and Meetings: July – September 2016

BSB 065 (16)

26. **AGREED**
to note the report.

Item 12 – Director General’s Report

BSB 066 (16)

27. Vanessa Davies highlighted the following:
- the implementation of “Work Smart” is underway meaning many staff members are now working at home for one or more days a week. Ultimately this will reduce the space requirements for any future office move;
 - Amanda Thompson, the Director for Governance Reform, leaves the BSB on 7 October 2016. She has greatly contributed to the strategic development of the BSB and will be much missed.
28. The Board joined the Chair in thanking Amanda and wished her the very best for the future.
29. Malcolm Cohen and Justine Davidge referred to the workshops on the Youth Proceedings Advocacy Review (cf. paragraph 46 of the report). Both considered these to be well run and very informative and offered their congratulations to the staff involved.
30. The Chair discussed the outcome of the International Conference of Legal Regulators (cf. paragraph 5 of the report). Board Members are welcome to see the conference papers and should contact Vanessa Davies if they so wish.

**BSB
Members
to note****Item 13 – Schedule of Board Meetings: January 2017 – March 2018**

BSB 067 (16)

31. **AGREED**
to approve the schedule of Board meetings for the period January 2017 – March 2018 as set out in the report.

Item 14 – Any Other Business

32. None.

Item 15 – Date of next meeting

33. Thursday 27 October 2016.

Item 16 – Private Session

34. 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;
 - (2) Matters Arising;
 - (3) Action Points and Progress;
 - (4) BSB Assurance Framework;
 - (5) Corporate Risk Register;
 - (6) APEX recruitment guide;
 - (7) LSB: “A vision for legislative reform of the regulatory framework for legal services in England and Wales” – Sept 2016;
 - (8) Any other private business;
 - (9) Review of the Board meeting in terms of conduct and outcomes.
35. The meeting finished at 5.25 pm.

**BSB – List of Part 1 Actions
27 October 2016**

(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
14b (29 Sept 16) – IO’s Annual Report	publish the IO’s Annual Report and Assurance Statement on the BSB website	Viki Calais	immediate		Completed
23b (29 Sept 16) – new CPD scheme	proceed with rule change application to the LSB to implement the new CPD scheme	Bernard MacGregor	immediate	10/10/16	Completed - Application has been made. LSB confirmed receipt.
25b (29 Sept 16) – shared parental leave	draft consultation on possible changes to the equality rules to permit shared parental leave in Chambers	Amit Popat / Ewen Macleod	before end of Dec 2016	19/10/16	On track - consultation drafted and pending sign off; publication expected 1 November 2106
12b (28 Jul 16) – Statutory Intervention	undertake further work on the Statutory Interventions policy document for its reconsideration by the Board in Autumn 2016	Rob Wall	by 20 October 2016	21/09/16	On track – work on revising the strategy, and on drafting the accompanying operational guidance, progressing well. The final strategy will return to the board for formal approval in October.
27c (19 May 16) – Youth Proceedings Advocacy Review	seek further discussions with the MoJ and Legal Aid Agency on how to address the financial value placed on the youth justice system	Oliver Hanmer	Review at the end of 2016	18/10/16	We still await the publication of the MoJ commissioned Taylor review of Youth Justice, which once published will provide the impetus for discussions with the MoJ/LAA about funding for Youth Court advocacy. No date for publication has yet been made available.
20d (26 Nov 15) – Gov review & revised SOs	establish two new roles to support the changes in education and training ie <ul style="list-style-type: none"> • a “Visitor” to hear challenges against Centralised Examination policy and procedures • an increased role for the Independent Observer to the Centralised Examination Board. 	Victoria Stec	before 31 March 16	17/10/16 20/09/16	In hand – Interim Independent Examinations Observer appointed for work on resit Boards in October 2016. Contract will be ongoing but with 3-month termination clause so that when future of internal audit is clear, other arrangements can be made if needed. In hand – title of “Independent Reviewer” rather than “Visitor” has been agreed and interim Independent Reviewer is in place on an ad hoc basis from July 2016; recruitment processes for permanent role not yet complete.

**BSB – List of Part 1 Actions
27 October 2016**

(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
				20/07/16	See separate Board paper on Assurance Framework regarding Independent Observer. On track – recruitment processes not yet complete; interim appointments made for 2016 cycle, previously reported
				28/04/16	On track – recruitment in progress
				09/03/16	On schedule – role descriptions agreed and recruitment about to start
				16/02/16	In hand – agreed at GRA and recruitment being built into schedule; assurance framework in development.
				19/01/16	In hand – proposal before GRA on 19 January 2016
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	20/10/16	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.
				20/07/16	On track – the LSB has now published its thematic review of restrictions on insurance provider. We are taking this into account as the economic analysis and other work is scoped.

**BSB – List of Part 1 Actions
27 October 2016**

(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
				13/06/16	On track – tender issued for economic analysis to support policy development
				11/05/16	On track – internal project initiated
				09/03/16	On track – initial neutral response from LSB on our submission
				16/02/16	In hand – legal advice being used for submission to LSB on competition law aspects being prepared.
				19/01/16	Ongoing – issues being considered by GRA on 19 January 2016 and update to be provided as necessary to Board.
				16/11/15	Ongoing – update in private session
				04/09/15	Ongoing. A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.

Forward Agendas**Thursday 24 Nov 2016**

- New equality objectives 2017-18
- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Protocol on International working (Part 2)
- Public and Licensed Access Review (Part 2)
- Corporate Risk Register (Part 2)
- Independent regulatory decision making at the Bar Standards Board – final proposals (Part 2)
- Prioritisation of regulatory risks – an approach to the next phase of work (may be moved to Awayday)

Thursday 15 Dec 2016 (Board Away Day)

- LSB Paper: “A vision for legislative reform of the regulatory framework for England and Wales” – Sept 2106

Thursday 26 Jan 2017

- Response to FBT Consultation
- Chambers Governance – report on “Delivery Models Used by Barristers”
- Publication of diversity data
- APEX update
- CMA review discussion
- “Reflections” report from the Independent Observer

Thursday 23 Feb 2017

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Draft BSB Business Plan for 2017-18 (Part 2)
- Corporate Risk Register (Part 2)
- Regulatory risk prioritisation

Thursday 23 Mar 2017

- Revised Standing Orders Draft
- BSB Business Plan for 2017-18 (Part 1)
- Assurance Framework update (Part 1)

Thursday 27 Apr 2017 (Board Away Day)**Thursday 25 May 2017**

- PRP Report: includes the BSB YE Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Corporate Risk Register (Part 2)

Thursday 22 Jun 2017

- Draft Annual Report 2016-17 (Part 2)

Thursday 27 Jul 2017

- Annual Report 2016-17 (Part 1)

Thursday 28 Sept 2017

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Business Planning and Budget Bid for 2018-19 (Part 2)
- Corporate Risk Register (Part 2)
- GRA Committee Annual Report (Part 1)

Thursday 26 Oct 2017

Thursday 23 Nov 2017

- PRP Report: includes the BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Corporate Risk Register (Part 2)

Thursday 7 Dec 2017 (Board Away Day)

Thursday 25 Jan 2018

Thursday 22 Feb 2018

- PRP Report: includes the BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs) (Part 1)
- Draft BSB Business Plan for 2018-19 (Part 2)
- Corporate Risk Register (Part 2)

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19 (Part 1)

Amending the scope of in-house employed practice

Status

1. For discussion and decision.

Executive Summary

2. The BSB last year issued a consultation on amending the definition of “employed barrister (non-authorized body)”. A “non-authorized body” is a body that is not authorised to provide reserved legal activities by any approved regulator, so the definition traditionally refers to in-house practice. The consultation paper sought views on a more flexible definition of employed or in-house practice that would have permitted barristers to provide services other than in a traditional employment relationship. Since issuing the consultation, the LSB has published a statement of policy on section 15 of the Legal Services Act 2007 which is relevant to how we respond to this issue.
3. The Board has previously received a report of the two substantive responses that we received from the Bar Association for Commerce, Finance and Industry (BACFI) and the Bar Council. The two organisations disagreed on the proposal. The Bar Council raised many concerns with the BSB’s approach and the proposed definition. It also proposed its own definition as an alternative, should the BSB decide to go ahead with the proposed rule change (although this was proposed only as a temporary fix). BACFI’s view was much more supportive of our proposals in principle but expressed different concerns around terminology. The responses highlighted the complexity inherent in making changes in this area.
4. Following further discussions with the Bar Council and BACFI, and further considering the possible consequences of changing the definition of employed practice, a different approach is now recommended. The BSB has been granting waivers from rS39 (the rule that outlines these barristers’ scope of practice) for some time. Where applicants have met the criteria set, we have not refused any proposals. However, we are aware that some barristers may inadvertently be practising in this way, without realising it is prohibited. It is therefore proposed that we make a targeted amendment to rS39 in order to formalise the policy position taken to date with waivers and regularise the position of those who have yet to apply for a waiver. Any changes to the definition of employed practice will be considered as part of a wider review of scope of practice arrangements in due course.

Recommendations

5. The Board is asked to:
 - a. **note** the responses to the consultation summarised at **Annex B**; and
 - b. **agree** to make the rule change suggested at paragraph 26, subject to further informal discussions with stakeholders and establishment of a Task Completion Group to agree associated guidance and confirm that no further consequential changes are needed.

Background

6. In 2015 the LSB released a discussion document, “Are regulatory restrictions in practising rules for in-house lawyers justified?” As part of the BSB’s response to this, we committed to consulting on the extent to which our rules remain fit for purpose in the context of in-house practice. This is a large programme of work that is taking place as part of the wider review of the BSB’s Handbook. In the course of the review, the BSB will have regard to section 15 of the Legal Services Act 2007 (LSA) and the statement of policy on section 15 that has subsequently been issued by the LSB. The LSB policy statement is attached, for information, as **Annex A**. Section 15 of the LSA makes provision for the carrying on of reserved legal activities by employers and employees. It details when an employer needs to be authorised to carry on reserved legal activities (essentially when those reserved services are being provided to “the public or a section of the public”).
7. In its initial consideration of these issues, the BSB identified that its current definition of employed practice may be unnecessarily restrictive when combined with other scope of practice rules. Therefore, our proposed first step in aligning our provisions more closely with section 15 was to amend the definition of “employed barrister (non-authorised body)” to allow barristers to work in different and more flexible ways. This was intended to be a first step pending a more fundamental review of our scope of practice rules.
8. Many barristers now seek to work through agencies or corporate vehicles, but are unable to do so without seeking a waiver due to the current construction of the scope of practice rules for employed barristers. The BSB is regularly granting waivers to barristers (around 15-20 in relating to rS39 alone) who seek to work through these new arrangements that are low risk but do not fit our traditional view of “employed practice”. The proposed rule change intended to formalise this approach, subject to there being no unintended consequences or new risks identified.

The Consultation

9. A consultation on amending the definition of “employed barrister (non-authorised body)” was issued in October 2015 and closed 15 December 2015. It proposed widening the definition of employed practice to include different employment arrangements (including working through an agency or corporate vehicle). The rationale for the change was that any restrictions that are placed on the practice of employed barristers should be based on risks that are well evidenced, within the context of the general intention of the Legal Services Act to open up the legal services market to meet consumers’ needs more effectively. The consultation outlined how the current definition is preventing new ways of working and so limiting innovation in the market and constraining choice for consumers, and that it also restricts the provision of services beyond what is required by section 15. It noted that the need to remove unjustified burdens is also consistent with the regulatory objectives, including enhancing the strength, diversity and effectiveness of the legal profession, promoting competition and increasing consumer choice.
10. The scope of practice rules currently place restrictions on in-house employed barristers by allowing them to supply legal services (whether reserved or unreserved) only to those listed in rS39 – in most cases the employer only. This is the key difference between these barristers and those working in a regulated law firm, the latter being able to provide services to clients of the employer. Section 15 means that the employer must be authorised in order to provide reserved activities to the public or a section of the public, but there are no such statutory restrictions in relation to unreserved services. It was therefore proposed to adopt a broader

definition of “employed barrister (non-authorized body)” to ensure different, more flexible employment arrangements are captured. The proposed definition in the consultation was:

“An employed barrister (non-authorized body) means a practising barrister who is employed:

- (a) Other than by an authorised body; and
- (b) Either:
 - (i) under a contract for *employment*
 - (ii) engaged under a contract of service by a firm or its wholly owned service company; or
 - (iii) engaged under a contract for services, made between a firm or organisation and:
 - 1) that employed barrister;
 - 2) an employment agency; or
 - 3) a company which is not held out to the public as providing legal services and is wholly owned and directed by that employed barrister; or
 - (iv) by virtue of an office under the Crown or in the institutions of the European Union; and

who supplies *legal services* as a *barrister* in the course of their *employment*.”

11. It was proposed that this more flexible definition would allow the provision of reserved or unreserved services to a broader range of people, but without permitting the provision of such services to “the public or a section of the public”. It envisaged the following types of arrangements:
 - A barrister engaged under a contract for services or a contract of service by an entity through its wholly owned service company. The barrister is "employed" by the entity.
 - A barrister engaged by an employment agency which has a contract for services with a third party. The barrister is "employed" by the third party.
 - A barrister who has established a limited liability company which is wholly owned and directed by the barrister which itself is not held out as providing legal services and has a contract for services with a third party. The barrister is "employed" by the third party.
12. The consultation came to the provisional view that the BSB should amend the definition to allow these new ways of working. It sought views as to whether the BSB should broaden the permissible ways of working, whether the proposed definition was the right one, and if there were any risks the BSB had not considered. There were 4 responses to the consultation from barristers and representative organisations. The consultation report is attached at **Annex B**.
13. The responses to the consultation were mixed as to whether the BSB should make the proposed amendment to the definition. Of particular concern was the view that the BSB had not sufficiently thought through the potential unintended consequences of a change and the suggestion that the proposed drafting did not adequately meet the stated objectives.

Responses to the consultation

14. The consultation sought views on both the proposal to broaden the definition of “employed barrister (non-authorised body)” to include a wider range of employment arrangements, and the definition proposed in the consultation. The consultation contained the following three questions:
 - **Question 1:** Should the definition of employed barrister (non-authorised body) be broadened to include different employment arrangements? Please give your reasons.
 - **Question 2:** Are you content with the proposed definition set out?
 - **Question 3:** Are there any risks associated with broadening the definition of employed barrister (non-authorised body) that the BSB should consider?
15. In response to the above questions, the two substantive responses from BACFI and the Bar Council were opposed in their views. BACFI was broadly in support of the proposed change, whereas the Bar Council raised many concerns and opposed the proposal.
16. BACFI agrees with the objective of the proposed change and is content with the proposed definition, but did have a few concerns and suggestions:
 - BACFI considered the title “employed barrister (non-authorised body)” to be wrong, as many barristers that fall under this definition are not classed as employed and would not want to be for tax reasons.
 - BACFI wished to stress a “One Bar” ethos and recommended that any differentiation between employed and self-employed barristers is unnecessary and regulations should be as similar as possible. Alternatively, if the distinction is necessary, BACFI recommended “barrister (employed, contractor or consultant) non-authorised body” as a more appropriate title.
 - BACFI would also like to see parity between a contractor barrister contracted through a non-authorised body and one contracted through an authorised body.
17. The Bar Council in comparison had many comments and concerns about the proposal. They can be broken down into the following:
 - concern with the BSB’s approach to this problem;
 - lack of understanding and clarity about various aspects of the proposal; and
 - concern with the proposed definition itself and use of the term “employed”.
18. Regarding concern with the BSB’s approach, the Bar Council saw the BSB’s proposal as a “patch repair” and believed there was a risk of unintended consequences with this approach.
19. The Bar Council was unclear on what the BSB was trying to achieve with the proposal. The BSB’s proposal is limited to extending the circumstances in which barrister can provide services to an “employer” with the limits of rS39 in the Handbook. However, the Bar Council was concerned that the proposal might go beyond this.
20. The Bar Council also had many concerns about the proposed definition, including that there were several undefined terms in the proposed definition, such as “employment agency”. It was suggested that the lack of reference to the nature of the barrister-agency relationship could mean a wide variety of arrangements would be permitted and that this could lead to barristers side-stepping controls in the Handbook. The Bar Council also felt that there was scope for confusion in relation to our new entity regulation regime. There was a risk that some barristers

might seek to avoid seeking authorisation for an entity that ought itself to be regulated, or at least that there might be confusion over which entities required to be authorised.

21. A fuller consideration of the responses to the consultation can be found in the consultation report attached as **Annex B**. It should be noted that the responses were all from the profession. It is therefore important that the Board reaches its own independent view of what is appropriate in the light of the regulatory objectives, in addition to considering the arguments made by respondents. However, the responses have raised some legitimate concerns about the scope and impact of the change, which raise wider questions about our approach to the scope of practice rules more generally.

The desired outcome

22. Going back to first principles, the intention of this rule change (which was only intended to be interim, pending a wider review) was to formalise in our rules the position that we have already adopted in relation to waivers. The purpose of the waiver process is to recognise that there are ways of working not captured in rS39 that are low risk and are acceptable to the regulator. We have therefore considered whether a targeted amendment to rS39 might better achieve our policy objectives.
23. The current published guidance in relation to waivers is attached at **Annex C**. It should be noted that whilst the guidance refers to provision of services by an employed barrister to “the public”, in most cases where a waiver has been granted, the barrister arguably is not in fact providing services to the public, as envisaged by the Legal Services Act, due to the close connection between the employer and the other party. The scenarios envisaged by the waiver process are where a barrister provides services through:
- an agency which employs the barrister;
 - an agency which does not employ the barrister; and
 - a company set up by the barrister (which also employs the barrister).
24. Waivers in practice have only been granted where the barrister proposes to act for parties who are not entitled to complain to the Legal Ombudsman (LeO)¹. They have also generally been limited to unreserved legal activities only. This has meant that the risks to clients can be managed.
25. Reflecting on this experience, it is suggested that the desired outcome should be that the circumstances in which we have been prepared to grant waivers is formalised in the rules. This suggests an amendment that is somewhat narrower in scope than originally planned. However, barristers who wish to engage in a broader range of activities may still apply for a waiver on a case by case basis.

¹ Excluded clients would therefore be an individual; or a business or enterprise that was a micro-enterprise (eg a business or enterprise with fewer than 10 employees and turnover or assets not exceeding 2 million euros); or a charity with an annual income net of tax of less than £1 million; or a club, association or organisation, the affairs of which are managed by its members or a committee of its member, with an annual income net of tax of less than £1 million; or a personal representative or beneficiary of the estate of an individual

Revised proposal

26. In the light of the discussion above, it is proposed that we amend rS39 to insert a new limb .2A as follows:

rS39 Subject to s.15(4) of the Legal Services Act 2007, you may only supply legal services to the following persons:

- .1 - your employer;
- .2 - any employee, director or company secretary of your employer in a matter arising out of or relating to that person's employment;
- .2A - an organisation connected to your employer, where:**
 - **the organisation in question would not be entitled to complain to the Legal Ombudsman; and**
 - **the relationship with the organisation is such that you or your employer would not be supplying, or offering to supply, services to the public or a section of the public; and**
 - **the services do not consist of reserved legal activities;**

27. This proposal goes less far than the change on which we consulted. For the time being it remains restricted to unreserved legal activities, as we have an evidence base to satisfy ourselves that this is low risk. There will be a need for additional guidance to support this rule and it is proposed that guidance should be produced with a task completion group that has the expertise of an employed barrister, and subject to comment by stakeholders such as the Bar Council or BACFI to ensure it is clear and helpful. The guidance would include, among other things:

- a description of the circumstances in which an organisation would be “connected to” an employer. For example, where a barrister works for a local authority or large company, but is employed by an employment agency, this would be sufficiently connected. However, if a barrister set up an unregulated consultancy firm, which held itself out to provide services to clients generally, that would not be covered by this change (although the individual could apply for a targeted waiver);
- as the barrister would not be providing services to “the public” there would be no obligation to have insurance in place. It would be necessary to ensure that the organisations engaging the barrister's services were aware of this and content, or that the barrister or employer had appropriate insurance in place;
- additional guidance in relation to conflicts of interest would be necessary (the barrister would not, for example, be under the obligation to have a conflicts protocol in place, as required by barristers working in dual capacity – this may be something that is necessary).

Next steps

28. As this takes a different approach, we propose to discuss the impact of the change further with stakeholders before proceeding with an application to the LSB. We will discuss with the Bar Council and BACFI in particular, as organisations who responded to the earlier consultation. We may undertake a short consultation with a wider range of interested parties. Any further consultation would be on the practicalities of drafting rather than the policy objectives, which essentially remain unchanged. This proposal is deliberately more conservative than the original – to take account of the need to proceed with caution in order to avoid any confusion

or unintended consequences that would more appropriately be dealt with as part of a wider review of scope of practice.

29. If the Board agrees to this approach, it is proposed that a task completion group will be formed with employed Bar expertise to consider supporting guidance that will accompany the new rule.

Equality Impact Assessment

30. An interim equality impact assessment has been undertaken. No major impacts on equality and diversity were identified.

Risk implications

31. The regulatory risks of this rule change are relatively low. The intention is to proceed with care, in order to avoid any unforeseen complications or unintended consequences of amending only one element of the scope of practice rules (which are more effectively considered as a whole, along with their relationship to other parts of the Handbook).

Impacts on other teams/departments/projects

32. There will be no impact on other teams, departments or projects at this stage. There will be a need to publicise any rule change in due course.

Consultation

33. The task completion group will give further consideration to the points raised in the earlier consultation whilst forming the new guidance. We will discuss the new approach with key stakeholders in a targeted consultation exercise.

Consideration of the regulatory objectives

34. Introducing greater flexibility in how barristers can provide legal services can impact positively on competition, access to justice or the interests of consumers by facilitating innovation in service delivery – we know that there is demand for barristers to work in this way. Our experience of granting waivers to date has shown that the risks of permitting people to practise in this way are relatively low.

Resource implications

35. There are no new resource implications arising from this paper.

Annexes

Annex A – LSB statement of policy

Annex B – Amending the definition of employed barrister (non-authorised body) – Consultation Report

Annex C – Current waiver guidance

Lead responsibility:

Ewen Macleod, Director of Regulatory Policy

Statement of policy on section 15(4) of the Legal Services Act 2007: regulatory arrangements for in-house lawyers

Issued under section 49 of the Legal Services Act 2007

February 2016

Provision

1. This statement of policy is issued under Section 49(2) of the Act, which provides for Legal Services Board (LSB) to prepare and issue a statement of policy about any matter. In preparing this statement, LSB has had regard to the principle that its principal role is the oversight of approved regulators, as required by section 49(3).
2. LSB must have regard to any relevant policy statement published under section 49 in exercising or deciding whether to exercise any of its functions. For the purposes of this policy statement, LSB's statutory decision making functions, set out in Schedule 4 and Schedule 10 to the Act, are likely to be the most relevant.
3. In accordance with section 49(6) of the Act the LSB may at any time alter or replace a policy statement.

Purpose of this document

4. This statement of policy will be considered by LSB in exercising or deciding to exercise any of its functions. In so far as any provision relates to section 15(4) of the Act, LSB functions which are likely to be the most relevant include:
 - those in relation to an approval of proposed alterations to regulatory arrangements under Part 3 of Schedule 4 to the Act
 - a recommendation that a body be designated as an approved regulator under Part 2 of Schedule 4 to the Act
 - a recommendation that a body be designated as a licensing authority under Part 1 of Schedule 10 to the Act.
5. The statement of policy, below, does not prejudice the prevailing rules, processes and tests established by LSB to deliver the statutory functions listed above. This includes having regard to the Act's regulatory objectives, the principles of better regulation, and best regulatory practice. Rather, the principles in the statement of policy provide additional focus on those areas identified through our thematic review as important in improving regulatory arrangements for in-house lawyers.

Background

6. LSB has reviewed the regulatory arrangements of approved regulators as they relate specifically to section 15(4) of the Act. Section 15(4) states that an employer who employs an employee who is carrying on a reserved legal activity, does not itself carry on a reserved legal activity unless part of its business is to provide that reserved legal activity to the public, or a section of the public.
7. We considered that in some cases the regulatory arrangements of approved regulators and the provisions of section 15(4) did not align and in some cases were more restrictive than anticipated by section 15(4). In addition, the existence, or not, of regulatory arrangements in relation to section 15(4) of the Act did not appear to be evidence based.
8. Informed by LSB's February 2015 discussion paper about the regulatory restrictions for in-house lawyers¹ and the responses received to that discussion paper², LSB has developed a set of principles that it will consider when asked to approve regulatory arrangements (or an alteration to existing regulatory arrangements) that pertain to section 15(4) of the Act.
9. In keeping with the provisions of section 15(4) of the Act, the statement of policy applies regardless of whether legal services are carried on with a view to profit. In principle, the LSB supports the provision of pro bono services and nothing in the statement of policy should be seen to specifically restrict or deter the provision of pro bono services by in-house lawyers within the current legislative framework.
10. While it is most likely that the principles will be relevant in relation to LSB's statutory decision making functions, LSB may consider these principles when exercising any of its statutory functions.

¹Are regulatory restrictions in practising rules for in-house lawyers justified? A discussion paper, February 2015, is available at: www.legalservicesboard.org.uk.

²Are regulatory restrictions in practising rules for in-house lawyers justified? Summary of responses received to a discussion paper and the LSB's response to them, July 2015, available at www.legalservicesboard.org.uk.

LSB Statement of Policy: principles for assessing regulatory arrangements that pertain to section 15(4) of the Act

11. Where LSB is asked to approve regulatory arrangements (or an alteration to existing regulatory arrangements) that pertain to section 15(4) of the Act, in addition to considering proposed alterations against any relevant rules made by LSB under the Act, LSB will also consider the principles set out below:

1. The approach taken to regulatory arrangements pertaining to section 15(4) is evidence based

12. We will expect an approved regulator which chooses to apply regulatory restrictions that are additional to those required by the Act, to justify its approach with a sound evidence base. Equally, when regulators opt not to apply regulatory restrictions, this should be an active decision taken in light of an appropriate assessment of any need for such action.
13. For regulatory arrangements which pertain to section 15(4) of the Act, it will be particularly important for LSB to understand any evidence that informs a decision by an approved regulator to place regulatory restrictions on in-house lawyers providing unreserved legal services to consumers unconnected to the employer's business.

2. Regulatory arrangements that pertain to section 15(4) have been considered in light of wider regulatory arrangements

14. Our guidance on Schedule 4, Part 3 applications suggests that approved regulators should confirm in their applications to alter regulatory arrangements that any consequential effects of their proposed changes have been considered in light of wider regulatory arrangements.
15. Our work suggests that the approach approved regulators take to regulating in-house lawyers impacts more widely than can be addressed with a simple, isolated change to a definition or rule. LSB will consider the extent to which a review by regulators of regulatory arrangements that relate specifically to section 15(4) has been far reaching and considered in light of any wider regulatory arrangements, including those approved under a designation process (Schedule 4, Part 2 and Schedule 10, Part 1).

3. The impact on consumers of any regulatory arrangements that pertain to section 15(4) of the Act has been assessed

16. Any alterations to regulatory arrangements must, in accordance with LSB rules, assess the impact on consumers,³ as part of a wider assessment of the impact of alterations against the regulatory objectives. This will involve, for example,

³ Under rule nine of the LSB's rules for rule change applications (available at www.legalservicesboard.org.uk), an application must include a statement explaining how and why an alteration will either help to promote, be neutral towards or be detrimental to each of the regulatory objectives, one of which is to protect and promote the interests of consumers.

assessing the extent to which regulators have balanced access to justice with mitigating risks around potential consumer detriment.

17. Where new or revised regulatory arrangements pertain to section 15(4), LSB would further consider how regulators communicate and keep consumers informed about the benefits and consequences of different regulatory approaches for in-house lawyers.

4. Consistency in approach to regulating in-house lawyers has been considered

18. In accordance with the Act and LSB rules, any alterations to regulatory arrangements should have regard to the principle of consistency. Consistency in approach is also a key means of ensuring consumer understanding about recourse and may influence consumers' choice in accessing legal services.
19. When proposed changes to regulatory arrangements relate to section 15(4), LSB will consider the extent to which there is consistency in the approach to regulation taken across the different regulators and across those lawyers, regulated by the same regulator, who work in-house and those who do not.

Consultation – Amending the definition of employed barrister (non-authorised body) Summary of Responses

Executive Summary

1. This paper sets out the responses to the consultation paper on *Amending the definition of employed barrister (non-authorised body)*. The consultation paper sought views on amending this definition to allow barristers to work through agencies or corporate vehicles.
2. The BSB received two substantive responses to the consultation, which addressed all three *questions*, and two short email responses with general comments on the consultation as a whole.
3. The two substantive responses were received from the Bar Association for Commerce, Finance and Industry (BACFI) and the Bar Council. They had differing views on the proposed change. The Bar Council, in particular, raised several concerns that the BSB needs to consider and address.

Overview

4. This consultation was launched in October 2015 and proposed an amended definition for “employed barrister (non-authorised body)”. As part of the BSB’s response to an earlier *discussion* document from the Legal Services Board (LSB), “Are regulatory restrictions in practising rules for in-house lawyers justified?”, the BSB has acknowledged the need to review the alignment of rules in the BSB Handbook with Section 15 of the Legal Services Act 2007 (LSA). This section makes provision for the carrying out of reserved legal activities by employers and employees.
5. The BSB has identified that its current definition of employed practice may be unnecessarily restrictive when combined with other scope of practice rules. The proposed first step in aligning *our* provisions more closely with section 15 of the LSA is to amend the definition of “employed barrister (non-authorised body)” to allow barristers to work in different and more modern ways, for example through agencies or corporate vehicles.
6. The *proposed* definition in the consultation paper is:
“An employed barrister (non-authorised body) means a practising barrister who is employed:
 - (a) Other than by an authorised body; and
 - (b) Either:
 - (i) under a contract for *employment*
 - (ii) engaged under a contract of service by a firm or its wholly owned service company; or
 - (iii) engaged under a contract for services, made between a firm or organisation and:
 - 1) that employed barrister;
 - 2) an employment agency; or
 - 3) a company which is not held out to the public as providing legal services and is wholly owned and directed by that employed barrister; or

- (iv) by virtue of an office under the Crown or in the institutions of the European Union; and

who supplies *legal services as a barrister* in the course of their *employment*.”

7. The consultation sought views on whether or not the definition of “employed barrister (non-*authorised* body)” should be broadened. It also sought agreement with the proposed amended definition, and views on whether or not the BSB has overlooked any risks that could be associated with such a change. The specific questions asked were:
- **Question 1: Should the definition of employed barrister (non-*authorised* body) be broadened to include different employment arrangements? Please give your reasons.**
 - **Question 2: Are you content with the proposed definition set out at paragraph 15?**
 - **Question 3: Are there any risks associated with broadening the definition of employed barristers (non-*authorised* body) that the BSB should consider?**
8. The BSB received two substantive responses to the consultation, which addressed all three *questions*, and two short email responses with general comments on the consultation as a whole. The two substantive responses received were from BACFI and the Bar Council. These *responses* were opposed in their views towards the consultation and proposal.
9. There was also an email response received from a barrister who works as a Local Authority in-house counsel, who supports the proposed changes in the consultation document.
10. The last email response noted that barristers called before 2002 who have not completed pupillage are able to practise as barristers employed by unauthorised bodies. This was thought to be acceptable partly because barristers employed by unauthorised bodies were only able to supply legal services to their employer, so this arrangement did not pose any risk to the public.

Summary of responses to consultation

Q1: Should the definition of employed barrister (non-*authorised* body) be broadened to include different employment arrangements? Please give your reasons.

Summary of responses

11. Both *substantive* responses directly answered this question and with differing views. While BACFI was broadly supportive of the proposed change and of broadening the ways barristers can work, it had concerns that the use of the word “employment” is misleading. *BACFI* suggested instead using the term “different contracting arrangements” for barristers. It argued that many barristers that fall under the title of “employed barrister (non-*authorised* body)” should not be classed as employed and would not want to be for tax reasons. They suggested these different contracting arrangements could give barristers more flexibility in career options and tax advantages, and also afford corporate clients flexibility in human resources and reduce the obligations imposed by contracts of employment.

12. BACFI saw such flexible resourcing models as positive and acknowledged that these were widespread in many other professions, including those of accountants and solicitors. They suggested the Bar should take a similar approach. BACFI believed that it was not necessary to distinguish the capacity under which a barrister is engaged with a corporate client, and recommended that the same rules should apply whether a barrister is contracting through a non-authorised body or an authorised body.
13. Therefore, BACFI broadly supported the objective of the proposed changes, but still had some concerns about defining barristers that fall under the current definition as “employed”, and distinguishing those contracting through non-authorised and authorised bodies.
14. In contrast, *the* Bar Council was opposed to broadening the definition of “employed barrister (non-authorised body)”. The Bar Council identified two possibilities the BSB could be attempting to achieve with the proposed changes in the consultation:
 - that the BSB’s proposal is limited to extending the circumstances in which barristers can provide services to an “employer” within the limits of rS39 of the BSB Handbook; or
 - that the BSB’s proposal aims to extend the ways in which barrister may provide services other than directly to their own personal “clients” as defined by the Handbook.
15. The Bar Council did not think the definition should be broadened, as it saw the proposed change as a “patch repair” and was concerned that the BSB had not addressed all the issues and possible unintended consequences of this approach in the consultation paper. However, it also acknowledged that if the BSB were working towards the first possibility identified above, then broadening the definition of “employed barrister (non-authorised body)” to include different employment arrangements should only be done as a truly temporary measure.
16. The Bar Council stated that if the BSB were working towards the second possibility, it would oppose *any* change, as it had many concerns and would wish to have the opportunity to address those in more detail.

Q2: Are you content with the proposed definition set out at paragraph 15?

Summary of responses

17. BACFI stated that it is content with the proposed definition in the consultation paper, but also suggested that it is not necessary to separately designate the definition of “employed barrister (non-authorised body)”. BACFI suggested an alternative designation of “barrister (employed, contractor or consultant) non-authorised body”, given that not all barristers falling under this definition will want to be classed as employed. It also suggested that the rules should recognise parity between barristers contracted through authorised and non-authorised bodies.
18. The Bar Council was not content with the proposed definition. The majority of the Bar Council’s concerns stem from a lack of clarity or understanding of particular terms and what the BSB is trying to achieve through the proposed change.
19. On the assumption that the BSB’s aim is the first possibility outlined above, the Bar Council had concerns about the drafting of the proposed definition, and put forward its own proposal for *consideration* as an alternative definition. However, the Bar Council

notes that this definition “is put forward with great reluctance”, as it has not had the opportunity to reflect on potential unforeseen or unintended consequences of this alternative. It would also only be intended as a temporary solution. The Bar Council’s proposed alternative was:

“An employed barrister (non-authorised body) means a practising barrister who is:

- (a) *engaged [by a non-authorised body / other than by an authorised body] (the NAB employer); and*
- (b) *(i) employed by the NAB employer under a contract of employment; or*
(ii) employed under a contract of employment with the NAB employer’s wholly owned service company, and engaged by the NAB employer under an arrangement between the NAB employer and that service company; or
(iii) engaged by the NAB employer under a contract for services made between the employer and the barrister which is for a determinate period (subject to any provision for earlier termination or notice); or
(iv) engaged by the NAB employer pursuant to a contract for services (other than legal services) made between the NAB employer and:
 - 1) *An employment agency; or*
 - 2) *A company which does not provide, and is not held out to the public as providing, legal services and is wholly owned and controlled by the barrister; or*
- (v) *Engaged by virtue of appointment to an office under the Crown or in the institutions of the European Union; and*

who supplies legal services as a barrister in the course of that engagement.”

20. The Bar Council believed that the term “employed” in the proposed definition was not appropriate due to its perception of the relationship between a barrister and an agency. The Bar Council stated that this relationship is unlikely to be an “employment relationship”.
21. The Bar Council was also concerned that there are several undefined terms in the proposed definition, such as “employment agency”. The Bar Council suggested that the lack of reference to the nature of the barrister-agency relationship could mean a wide variety of arrangements would be permitted. The Bar Council also suggested that this variety of arrangements could be used to side-step controls in the Handbook. The difference between the terms “employment agency” and “intermediary” was also questioned.
22. The Bar Council raised questions about who the “employer” and the “client” of the barrister would be within the proposed definition. It was particularly concerned about section (b)(iii) of the definition as it does not think it is clear who the barrister’s “employer” would be: the firm or organisation for whom the work would be done, or a third party, such as an employment agency or *company* directed by the barrister. It also questioned whether the Handbook rules rS32 and rS39 allow a barrister to supply legal services to clients of the barrister’s company and who the “clients” would be in such a situation.
23. Some other terms used in the proposed definition, which are not defined in the Handbook, include “*firm*”, “*company*” and “*organisation*”. The Bar Council would like more clarity on the scope of these terms and questions the relationship between these terms and the term “*body*” in the Handbook (as in non-authorised **bodies**).

Q3: Are there any risks associated with broadening the definition of employed barristers (non-authorised body) that the BSB should consider?

Summary of responses

24. BACFI did *not* consider that the proposed change created additional risks. It also stated that the proposed change may lessen the current risks posed by unregistered barristers who operate as contractors, as they could become registered and therefore would be better regulated by the BSB.
25. The Bar Council identified several risks associated with broadening the definition. These are mostly related to the Bar Council's concerns about the proposed change outlined above, such as the use of undefined terms and lack of clarity regarding the relationships between the barrister, *clients* and employers. It suggested that this makes it difficult to foresee the implications of the proposed change in practice. The Bar Council thought that a piecemeal approach created a significant risk of unintended consequences and greater uncertainty in applying unaltered rules.
26. The Bar Council also suggested the side-stepping of other regulations would be a potential risk. It *believed* changing the definition would create greater incentives to set up barrister-owned unauthorised companies rather than single-person authorised entities, with a risk that barristers could use such companies inappropriately to side-step entity regulation.
27. The Bar Council warned that there would be a risk of enabling the payment of referral fees, which *currently* have a blanket ban in the BSB Handbook. It suggests this could stem from the narrow Handbook definition of "intermediary" and from the lack of clarity around the following points if the proposed change goes ahead:
- who is the barrister's relevant client;
 - who is "instructing" the barrister;
 - to whom the barrister owes his/her professional duties;
 - the nature of the relationship between barristers and an "employment agency"; and
 - how rS39 is intended to work with the revised definition.
28. It also considered there could be other risks, as yet unidentified, due to the uncertain effect of the *proposal* and the lack of clarity of the BSB's intentions.

BSB's reply to the responses on the consultation

[to be inserted]

Current guidelines on waiver applications

Guidelines

1.8 *Supply of unreserved legal services through an agency or corporate vehicle*

1.8.1 The Panel may grant a waiver from the prohibition against barristers employed by non-authorised bodies supplying legal services to the public to barristers seeking to supply unreserved legal services through an agency or corporate vehicle, in the following scenarios:

- providing services through an agency which employs the barrister
- providing services as an individual through an agency which does not employ the barrister
- providing services through a company set up by the barrister (which also employs the barrister)

1.8.2 As barristers supplying legal services to the public must be in compliance with the “3-Year Rule”, the barrister in each of the scenarios listed at 1.8.1 would need to be of at least three years’ standing. However, the Panel may grant a waiver from the “3-Year Rule”, in appropriate circumstances.

1.8.3 When considering waiver applications of this nature, the Panel will take into account the following factors:

- a. the nature of the proposed clients. Waivers will normally be restricted to clients who are not entitled to complain to the Legal Ombudsman¹
- b. the experience of the applicant if they are seeking a waiver from the qualified person requirement (in particular comparing the type of services they wish to provide (and to whom) with the work they have done in the past and whether these are broadly similar)
- c. the proposed relationship between the barrister and the proposed clients
- d. the nature of services to be provided (ie. reserved or unreserved)
- e. in the case of applicants who require a self-employed practising certificate, whether they have done the public access course or obtained a waiver from it.

¹ Those that are entitled to complain to the Legal Ombudsman (and therefore barristers applying for these types of waiver would not be able to provide legal services to) include; an individual; or a business or enterprise that was a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly a business or enterprise with fewer than 10 employees and turnover or assets not exceeding 2 million euros); or a charity with an annual income net of tax of less than £1 million; or a club, association or organisation, the affairs of which are managed by its members or a committee of its member, with an annual income net of tax of less than £1 million; or a personal representative or beneficiary of the estate of an individual.

1.8.4 In each of the scenarios listed at 1.8.1, the waiver would be limited to the provision of unreserved legal services to specified categories of “the public”, and would not be a general exemption from the requirement to work with a qualified person when supplying legal services to the public.

1.8.5 Where a waiver is granted, it will be subject to the terms and conditions set out at Annex B.

1.9 *Conditions generally*

1.9.1 The grant of a waiver will sometimes be made conditional upon training requirements, for example the pupillage advocacy course or the advocacy and ethics courses provided by Inns and Circuits as part of the New Practitioners’ Programme.

Statutory Intervention

Status

1. For **approval**.

Executive Summary

2. This paper updates the board on preparations for the introduction of new statutory powers of intervention.
3. At its meeting in July, the board discussed our proposed approach to intervention action and reviewed a draft strategy. It was agreed a final strategy would be brought back to the board for formal approval in October.
4. It was also agreed we would update the board on the additional work undertaken to ensure the BSB is fully prepared for the introduction of the new powers of intervention.

Recommendation

5. The Board is asked to:
 - **approve** the intervention strategy at **Annex A**;
 - **delegate** decision-making authority on intervention action to the DG; and
 - **note** the additional work undertaken.

Background

6. In March 2016 the LSB approved our application to be designated as a licensing authority under Part 5 of the Legal Services Act 2007 (LSA). Should Parliament approve the designation, the BSB will be able to license alternative business structures (ABS). We anticipate this will occur before the end of 2016. At the same time the BSB will acquire statutory powers of intervention in relation to these bodies as set out in Schedule 14 of the LSA.
7. We are seeking similar powers of intervention in relation to other authorised persons (both barristers and entities) through an order under section 69 of the LSA. However initially we will only be able to exercise these powers as a licensing authority (i.e. in relation to ABS).

Intervention Strategy

8. The strategy at **Annex A** sets out the broad principles that will inform our approach to the use of the new powers. It sets out in broad terms what the powers are, to whom they apply, when they will be used and how decisions regarding their use will be made. The strategy makes it clear that intervention action will only be taken where it is necessary and proportionate to do so and where there is a clear public interest.
9. The board discussed a draft strategy at its meeting on 28 July. Feedback from the board has been incorporated into the final strategy. The strategy refers only to licensed bodies as we will initially only have those powers when acting as a licensing authority. Once the proposed section 69 Order is made, the scope of the strategy will be extended to include other authorised persons.
10. In keeping with the principles of good regulation, we plan to publish the strategy to ensure we are open and transparent about our proposed approach.

Intervention Guidance

11. As discussed at the board meeting in July, we have now drafted operational guidance providing more detailed advice to staff on operational policy and process before, during and after intervention action by the BSB. This underpins and complements the higher-level strategy.
12. As interventions are a new activity for the BSB, it is intended that the operational guidance, attached at **Annex B**, will be reviewed and amended to reflect lessons learned from interventions. Additionally, we will update the guidance should we be granted powers of intervention in relation to other persons under section 69 of the LSA.
13. As with the strategy, we plan to publish the operational guidance.

Additional Work

14. The intervention strategy and guidance provide the broad framework within which decisions on interventions will be taken. However, to ensure we have the capacity and capability to undertake intervention action and are fully prepared for the introduction of the new powers, we have also taken the following steps.

Scheme of Delegation

15. We are proposing to amend the Scheme of Delegation to empower the Director General to authorise intervention action and to allow the Director General to delegate the power to take action to a Director. The strategy and guidance both make it clear, however, that the Director General will only delegate authority in *exceptional* circumstances. **If the board is content with our approach to intervention will you now agree to delegate the decision making authority?**

Intervention Agents

16. We have completed a tendering process and selected two suppliers of intervention agency services. The strategy allows the Director General to instruct agents to carry out interventions on our behalf. In practice, we would anticipate that this will normally be the case given capacity and capability limitations. We are currently in the process of finalising call-off contracts with our chosen suppliers to ensure we have the necessary resources available at all times.
17. Amongst other requirements, the contracts will include a commitment by the suppliers to consider the mental health and wellbeing of clients and those involved in the body or practice.

Document Management

18. We have engaged with our existing document management provider to agree our intervention requirements. We are satisfied that they understand and can deliver to meet our needs.
19. We are revising our file retention policy to cover interventions. The policy will reflect the current statutory position - i.e. pursuant to Paragraph 12(1) of Schedule 14 of LSA 2007, there is no express power to destroy files retained following the use of its intervention powers without an order from the High Court. In the absence of such an order, all files must be retained indefinitely (unless returned to clients).

20. We are aware that the Ministry of Justice has sought views from the approved regulators on amending the provision, in essence to allow individual regulators to set their own policies. We will update our policies to reflect any changes as they emerge. However, as the BSB will reasonably expect to retain files for a minimum period, in the interim all files will be retained (as is currently specified in the revised draft policy).

Training

21. We recognise that specialist training is necessary for staff, including the senior management team, who will be directly involved with interventions. We expect this training to be provided in the short term by our chosen intervention agent(s) and have prepared a training proposal which is being considered.
22. We have also delivered knowledge sharing sessions to the Professional Conduct Committee and to BSB staff more generally.

Communications Plan

23. We have prepared a communications plan, setting out how we will make the profession, clients and the general public aware of interventions. This makes clear that we will publish notice that an intervention has taken place where this is in the public interest.

Equality Impact Analysis

24. A full equality impact analysis has been carried out on the strategy. Summary findings indicate that, whilst there are potentially adverse impacts for practitioners and some BSB staff, there are equally positive impacts for the public. In addition, the strategy will ensure that practitioners are only affected in a proportionate way. The strategy needs to be implemented to achieve the BSB's regulatory objectives as provided for in the Legal Services Act 2007.
25. We have also carefully considered health and wellbeing issues. The primary drivers for an intervention are the needs of clients and the public interest – but these can occur at times of extreme pressure for those on the receiving end who may be experiencing financial hardship etc. The operational guidance, and the contracts with intervention agency services, require that an assessment is made to ensure we manage the potential impact on the health and wellbeing of individuals who are managers or employees of bodies being intervened into.

Regulatory Objectives

26. As the strategy makes clear, intervention action will only be considered in pursuit of our regulatory objectives. This is one of the tests that must be passed before an intervention can be sanctioned.

Annexes

Annex A – Statutory Interventions Strategy

Annex B – Operational Guidance on Statutory Interventions

Lead Responsibility

Clodhna Judge, Head of Supervision and Authorisation
Rob Wall, Head of Policy Programmes



STATUTORY INTERVENTIONS STRATEGY

Introduction

1. This strategy sets out the core principles which underpin the approach of the Bar Standards Board (BSB) to statutory interventions and provides a framework within which decisions are made when an intervention is necessary. The operational processes for carrying out an intervention are set out in separate documentation.
2. We take an outcomes focused, risk-based and proportionate approach to all our regulatory activities. This is reflected in our use of statutory interventions. Decisions are also informed by the approach to identifying and managing risk set out in the [BSB Risk Framework](#).
3. This strategy should be read alongside the BSB's [Enforcement Strategy](#) and [Supervision Strategy](#).

Purpose

4. The main objective of this strategy is to provide a framework within which to take decisions on the use of intervention powers. The statutory powers of intervention are set out at Schedule 14 to the Legal Services Act 2007 ("the Act"). This strategy sets out the principles which inform the BSB's use of those powers.

Statutory Intervention

5. Intervention action is only considered in pursuit of our regulatory objectives of:
 1. Protecting and promoting the public interest;
 2. Supporting the constitutional principle of the rule of law;
 3. Improving access to justice;
 4. Protecting and promoting the interests of consumers;
 5. Promoting competition in the provision of services;
 6. Encouraging an independent, strong, diverse and effective legal profession;
 7. Increasing public understanding of the citizen's legal rights and duties; and
 8. Promoting and maintaining adherence to the following professional principles:
 - a. That authorised persons act with independence and integrity;
 - b. That authorised persons maintain proper standards of work;
 - c. That authorised persons act in the best interests of their clients;
 - d. That authorised persons comply with their duty to the court to act with independence in the interests of justice; and
 - e. That the affairs of clients are kept confidential.

6. Interventions are protective rather than punitive actions. The aim is to protect the public interest and the interests of individual clients. Intervention is distinct from the revocation or suspension of an authorisation or licence, or the suspension of a practising certificate. The trigger for an intervention is circumstances which require immediate regulatory action to address serious issues of concern. However, even in such circumstances, intervention action is only used where we are satisfied that it is both necessary and proportionate.

Scope

7. We are able, under the terms of the Act, to use intervention powers against BSB licensed bodies. A BSB licensed body is a partnership, LLP or company that has been and continues to be licensed to act as a licensed body by the BSB in accordance with section 3.E of the [BSB Handbook](#).

Intervention powers

8. The powers of intervention are set out at Schedule 14 to the Act. We are able to provide notice to a licensed body that they need to produce or deliver all documents in their possession or under their control.
9. We are also able to apply to the High Court for orders:
- Requiring a person to provide information about any money held by the person on behalf of a licensed body;
 - Preventing a person holding money on behalf of a licensed body from making any payment of the money, except with the leave of the court;
 - Requiring the licensed body to produce or deliver all documents in its possession or under its control in connection with its activities, of which possession can then be taken;
 - Authorising a person appointed by the BSB to enter premises to search for and take possession of documents;
 - Redirecting postal, electronic and telephone communications to an intervention agent; and
 - Recovering the costs of the intervention from the licensed body.
10. Where a licensed body is holding client money, we have the right as a licensing authority to recover or receive this money, and it will vest in the BSB if we decide this is appropriate. This applies to all sums of money held by or on behalf of the licensed body in connection with:
- Its activities as a licensed body;
 - Any trust of which it is or was a trustee; or
 - Any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.
11. The BSB will seek to recover costs where it is economic to do so.

The decision to intervene

12. In order to effect an intervention a two stage test must be satisfied:
1. Has one of the statutory grounds for intervention arisen?; and
 2. Is the BSB satisfied that it is necessary and proportionate to exercise the powers of intervention to protect the regulatory objectives?

13. The statutory grounds for intervention are set out at Schedule 14 to the Act (see attached Annex A) but can be broadly summarised as:
 - Failure to comply with one or more terms of the licence;
 - The appointment of a receiver or another defined insolvency event;
 - Suspected dishonesty by a manager or employee;
 - Undue delay in dealing with a matter; or
 - It is necessary to exercise the power for the benefit of clients (including former or potential clients).
14. We make a decision to use intervention powers where the above tests have been met and an internal assessment has been undertaken. Factors relevant to this decision may include, but are not limited to:
 - The potential impact on the regulatory objectives;
 - The urgency and seriousness of the case;
 - The level of co-operation and engagement with the BSB by the licensed body;
 - The size of the practice or body;
 - The number of clients that could potentially be affected;
 - The practice area of the practice or body; and
 - Whether any laws have been breached.
15. The internal assessment is undertaken in line with the BSB's [Risk Framework](#) and takes account of the risks outlined in the [Risk Index](#).
16. Interventions are distinct from our investigation, supervision and enforcement processes. In deciding whether to take intervention action, we consider whether an investigation, regulatory supervision or enforcement action is more appropriate in the particular circumstances. Our approach to enforcement and supervision is set out in our respective [enforcement](#) and [supervision](#) strategies.

The decision-maker

17. Decisions to take intervention action under this strategy are taken by the Director General of the BSB, or by a Director where so delegated by the Director General. The Director General and any person so delegated may seek external advice before taking a decision to intervene.
18. Once a decision has been made to intervene, we may instruct an intervention agent to carry out the intervention on our behalf.

Review of decisions

19. We keep any decision that an intervention is necessary under continual review. Should there be a change in circumstances that means that intervention is no longer necessary or proportionate, the Director General, or a person with delegated authority, can end the intervention action.

Public information on interventions

20. We publish our written policies, such as this Statutory Interventions Strategy, to ensure that they are transparent and available to the public.

21. We publish notice that an intervention into a licensed body has taken place where this is in the public interest.

Review

22. This strategy comes into effect on [date].
23. The strategy is reviewed regularly. The first review will take place by the end of 2018. We welcome feedback on the strategy's content.
24. We are committed to ensuring the application of this strategy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. BSB regulated persons or bodies subject to this strategy should advise us of any reasonable adjustment or specific requirements they have. These will be accommodated as far as is reasonably practicable and in line with our obligations under the Equalities Act 2010.
25. We monitor any intervention action taken under this strategy to ensure there is no disproportionate impact on any equalities groups within the community we regulate.

October 2016

Annex A: Schedule 14 to the Legal Services Act 2007 – Intervention powers

The exact wording of the Act is set out below.

The intervention conditions are—

- (a) that the licensing authority is satisfied that one or more of the terms of the licensed body's licence have not been complied with;*
- (b) that a person has been appointed receiver or manager of property of the licensed body;*
- (c) that a relevant insolvency event has occurred in relation to the licensed body;*
- (d) that the licensing authority has reason to suspect dishonesty on the part of any manager or employee of the licensed body in connection with—*
 - (i) that body's business,*
 - (ii) any trust of which that body is or was a trustee,*
 - (iii) any trust of which the manager or employee of the body is or was a trustee in that person's capacity as such a manager or employee, or*
 - (iv) the business of another body in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;*
- (e) that the licensing authority is satisfied that there has been undue delay—*
 - (i) on the part of the licensed body in connection with any matter in which it is or was acting for a client or with any trust of which it is or was a trustee, or*
 - (ii) on the part of a person who is or was a manager or employee of the licensed body in connection with any trust of which that person is or was a trustee in that person's capacity as such a manager or employee,**and the notice conditions are satisfied;*
- (f) that the licensing authority is satisfied that it is necessary to exercise the powers conferred by this Schedule (or any of them) in relation to a licensed body to protect—*
 - (i) the interests of clients (or former or potential clients) of the licensed body,*
 - (ii) the interests of the beneficiaries of any trust of which the licensed body is or was a trustee, or*
 - (iii) the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.*

BAR
STANDARDS
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REGULATING BARRISTERS

OPERATIONAL GUIDANCE ON STATUTORY INTERVENTIONS

Introduction

1. The purpose of this document is to provide guidance to staff on operational policy and process before, during and after intervention action by the BSB.
2. Interventions are protective rather than punitive actions, the primary objective being to protect the public interest and the interest of individual clients. The trigger for an intervention is circumstances which require immediate and urgent regulatory action to address serious issues of concern. However, even in such circumstances, intervention action is only used where we are satisfied that it is both necessary and proportionate.
3. The core principles which underpin the BSB’s approach to interventions are set out in the BSB’s Statutory Interventions Strategy (“the Strategy”). This guidance should be read and considered in conjunction with this and the following key documents:
 - the [BSB Handbook](#);
 - Intervention Agent Contracts;
 - Statutory Intervention Communications Plan; and
 - File Retention Policy – Interventions.

Interventions Team

4. There is an Interventions Team (“the Team”) within the BSB. The role of the Team is to assess all available information and recommend to the Director General whether, in the specific circumstances, an intervention is necessary, proportionate and in the public interest.
5. The Team comprises members of the Professional Conduct and Regulatory Assurance Departments, including:
 - Head of Supervision and Authorisation;
 - Supervision Manager.
 - Investigations and Hearing Team Manager; and
 - Casework Supervisor(s).

The Team also accesses additional expertise as required.

6. Specific training in interventions is given to the Team to complement existing legal and regulatory competencies, skills and expertise.

Recommendation

7. All information and intelligence howsoever received by the BSB continues to be evaluated and assessed in line with current risk-based practice and procedure. However, where information is received and suggests that intervention action may be warranted, it is passed immediately to a senior member of the Team to make an initial assessment. If appropriate, the senior member designates a Team member to carry out a formal Intervention Assessment (“the Assessment”). Where practicable, all members of the Team are involved in the Assessment for advice and comment.
8. The purpose of the Assessment is to determine whether a recommendation should be made to the Director General to authorise intervention action. On the information available, the Team assessor must be satisfied that a two stage test is passed:
- i. Has one of the statutory grounds for intervention arisen¹; and
 - ii. Is the BSB satisfied that it is necessary and proportionate to exercise its powers of intervention to protect the regulatory objectives?
9. The first stage of the test is a question of fact, involving a consideration of the reliability of the information and evidence received and available.
10. The second stage of the test is primarily a risk assessment of the situation. The Team identifies the regulatory objectives that are at risk and assess the likelihood and impact of a worst case scenario along with any mitigating factors. Factors relevant to this may include, but are not limited to:
- the potential impact on one or more of the regulatory objectives;
 - the urgency and seriousness of the case;
 - the level of co-operation and engagement with the BSB by the practice or body;
 - the size of the practice or body;
 - the number and types of clients potentially affected;
 - whether any laws have been breached.
11. The assessment is undertaken in line with the BSB’s [Risk Framework](#) and takes account of the risks outlined in the [Risk Index](#).
12. The Team decides whether there are any other regulatory tools that can more appropriately be used to mitigate, manage and / or control the risk(s), e.g. engagement with the practice or body, alternative enforcement action (e.g. suspension) or proactive targeted supervision. When considering intervention action, the Team always considers whether investigation, regulatory supervision or other enforcement action is more appropriate in the circumstances.

¹ The core principles which underpin the BSB’s approach to Interventions are set out in the Statutory Interventions Strategy. The statutory grounds for Intervention are found in Schedule 14 of the [Legal Services Act 2007](#). For ease of reference, these are set out at [Annex A](#).

13. Should the Team, having reviewed the guidance and the Strategy, consider intervention action both necessary and proportionate, it will recommend to the Director General that an intervention take place.
14. The Team keeps a record of all the information, reasons, conclusions and rationale for the recommendation to intervene.
15. In parallel, the Team also considers whether additional regulatory or enforcement actions are needed. Examples of these are set out below.

Modification of the licence / authorisation

It may be necessary to modify the licence / authorisation of a body (ABS or entity) as set out in Rule S116 of the BSB Handbook.

Suspension of the licence / authorisation and suspension

It will likely be necessary to suspend the licence / authorisation of a body in accordance with Rule S117 of the BSB Handbook. It may also be necessary to seek to suspend those who are managers and / or employees of the body – either on an interim or immediate interim basis – under Part 5 of the BSB Handbook.

Revocation of the licence / authorisation

The BSB would ordinarily seek to first suspend rather than revoke a licence / authorisation, as while suspended a body would remain a BSB regulated person and the suspension might be subsequently lifted. However, in extreme circumstances it may be necessary to revoke a licence / authorisation in accordance with Rule S117 of the BSB Handbook.

Divestiture

The BSB has the statutory power under Schedule 13 of the Legal Services Act 2007 to make an application for divestiture in relation to a non-authorized person and a body.

Internal referral

The conduct of the body, its managers and/or employees may be referred to the Professional Conduct Department for assessment/investigation. Alternatively supervisory action may be appropriate. It may also be that the conduct of those associated with the body (e.g. other entities and barristers) should be referred to the Professional Conduct Department or Supervision Team for action.

Fitness to practise

Information may have been received which suggests that a BSB authorised individual may be incapacitated due to his or her physical or mental condition (including any addiction) and, as a result, the individual's fitness to practise is impaired. In these circumstances consideration of their health or conduct should be referred under the Fitness to Practise Rules, which are in Part 5 of the BSB Handbook.

Disqualification

Consideration should be given as to whether any individuals should be disqualified under Part 5 of the BSB Handbook.

Referral to other regulators/bodies

Consideration should be given as to whether the conduct of any non-BSB authorised individuals who are managers and/or employees of the body should be referred to other approved regulators. In some circumstances it may also be appropriate to refer the conduct of individuals to other regulators, professional bodies or law enforcement.

Decision

16. The final decision on intervention action is taken by the Director General.
17. Decisions on the use of Intervention Agents (“Agents”) are also taken by the Director General.
18. The Team makes a formal recommendation to the Director General that, in the particular circumstances, intervention action is appropriate. Where possible, this is in writing and sets out the full facts of the case, including the reasons and rationale for making the recommendation.
19. In considering the recommendation, the Director General reviews whether;
 - a risk assessment has been carried out and the nature of the risks identified;
 - the statutory grounds for an intervention have been met;
 - intervention action is necessary, proportionate and in the public interest;
 - all other regulatory, supervisory and enforcement options have been fully considered and deemed to be insufficient to mitigate, manage or control the risk(s);
 - equality, diversity, health and wellbeing impacts have been identified with plan(s) in place to address;
 - media and communications plans are in place;
 - confidentiality has been considered, i.e. in the specific circumstances (e.g. urgency, sensitivity) who should be apprised of the intervention; and
 - appropriate resources are available to carry out both the initial intervention and any subsequent actions, including making potential applications to the High Court².

² Under Schedule 14 to the LSA, the BSB will be able to apply to the High Court for orders:

- requiring a person to provide information about any money held by the person on behalf of the ABS entity;
- preventing a person holding money on behalf of the ABS entity from making any payment of the money, except with the leave of the court;
- requiring the ABS to produce or deliver all documents in its possession or under its control in connection with its activities, of which possession can then be taken;
- authorising an intervention agent to enter premises to search for and take possession of documents;
- redirecting postal, electronic and telephone communications to an intervention agent; and
- recovering the costs of the intervention from the ABS entity.

20. The Director General may seek additional advice, including from external sources, before making a final decision.
21. The reasons for the decision to intervene, together with all supporting documentation and information, are recorded.
22. When a decision to intervene is taken all members of the BSB Senior Management team and the Chair of the Board are notified.
23. In *exceptional* circumstances, where the Director General is unavailable and an immediate decision is required, the decision to authorise intervention action and use intervention agents can be taken by a Director, where so delegated by the Director General.

Intervention Agents

24. As the BSB cannot predict with any degree of certainty how many interventions are likely to arise each year, it has call-off contracts with two suppliers of intervention agency services (“Agents”).
25. Where it is considered appropriate to engage the services of an Agent, the engagement will be managed by the Team who will determine what tasks should be delegated to the Agents. In all cases members of the Team will attend the intervention to provide oversight and additional instructions to the Agents as required.
26. Given the different circumstances of every intervention, there is no exhaustive list for the services provided by the Agents. However the following indicates the types of services the Agents may be required to provide:
 - Preparing for, effecting and managing interventions with the BSB involving:
 - Planning for and taking all necessary pre-intervention steps;
 - Attending interventions with representatives of the BSB within time limits;
 - Advising on implications relating to taking control or transferring control of assets;
 - Taking and acting upon instructions from the BSB on how to deal with emergent issues;
 - Securing and categorising all relevant files, documents, information and other assets;
 - Acting on urgent client matters;
 - Liaising with third party storage provider(s) for removal and indexing of all non-urgent / inactive files;
 - Dealing with client queries / requests.
 - Managing client contact and files, including securely returning files, ongoing monitoring of live files and acting on urgent matters;
 - Analysing the accounts of the practice or body and advising on implications for the future management of financial and business matters, including closure;
 - Assisting with the recovery of costs associated with the intervention;

- Providing training for BSB staff members who will be involved with and attend interventions;
- Ensuring reasonable adjustments are made for diverse or vulnerable clients and those directly involved with the practice or body;
- Considering the mental health and wellbeing of clients and those involved in the authorised body, including practitioners and clients;
- Assisting with the review and evaluation of BSB intervention activities.

New Evidence

27. In the course of an intervention the BSB may obtain information, particularly documents, that raise issues of professional misconduct necessitating enforcement action or that are relevant to ongoing enforcement action. Although the purpose of an intervention is not to gather evidence, nothing precludes the BSB from relying upon evidence obtained for new or ongoing enforcement proceedings.

Withdrawing a Decision to Intervene

28. The BSB, as a public interest regulator, has a duty to keep the need for any intervention order under review. Should information come to the BSB's attention that indicates an intervention is no longer necessary or appropriate, the decision to intervene is withdrawn.
29. Only the Director General, or a person with delegated authority, can formally end the intervention action.

File Management

30. Interventions can result in a high volume of files, documents and other papers being seized from the body or practice. In addition to the services provided by the Agents, the BSB retains the services of a document management company to assist with file management and storage. The company engages closely with the BSB and the appointed Agent before, during and after an intervention to agree all necessary requirements.
31. The BSB has no express power to destroy files retained following the use of its intervention powers without an order from the High Court. In the absence of such an order, all files are retained indefinitely as outlined in the File Retention Policy – Interventions.

Communications

32. The Intervention Communication Plan sets out the range of actions taken by the BSB to communicate internally and externally about intervention action.
33. Notice that an intervention has taken place is published where it is considered to be in the public interest.

Recovering Costs

34. The BSB seeks to recover costs where it is economic to do so as provided for in the Legal Services Act 2007.

Reviewing the intervention

35. The BSB reviews the process and progress of an intervention on a regular and ongoing basis from commencement to completion. Where an Agent has been appointed, the Agent is required to provide updates to the BSB to facilitate these reviews.
36. When the intervention has completed, the BSB conducts a formal review to ensure that intervention processes have been correctly followed and to identify areas for improvement. Where an Agent has been appointed, the Agent assists and engages with this review. Factors considered include:
- the initial assessment and the risks identified;
 - the decision making process;
 - the intervention itself, including staff and / or agency involvement;
 - the costs incurred, including actual and potential cost recovery and ongoing costs implications (e.g. file storage);
 - the communications plan; and
 - the closure of the intervention.
37. The BSB also carries out an annual review of intervention activity which is presented to the Board.

Reviewing this guidance

38. This operational guidance comes into effect in November 2016 (TBC). It is reviewed regularly and amended to reflect the learning from individual interventions.

Annex A: Schedule 14 to the Legal Services Act 2007 – Intervention Powers

The intervention conditions are—

- (a) that the licensing authority is satisfied that one or more of the terms of the licensed body's licence have not been complied with;*
- (b) that a person has been appointed receiver or manager of property of the licensed body;*
- (c) that a relevant insolvency event has occurred in relation to the licensed body;*
- (d) that the licensing authority has reason to suspect dishonesty on the part of any manager or employee of the licensed body in connection with—*
 - (i) that body's business,*
 - (ii) any trust of which that body is or was a trustee,*
 - (iii) any trust of which the manager or employee of the body is or was a trustee in that person's capacity as such a manager or employee, or*
 - (iv) the business of another body in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;*
- (e) that the licensing authority is satisfied that there has been undue delay—*
 - (i) on the part of the licensed body in connection with any matter in which it is or was acting for a client or with any trust of which it is or was a trustee, or*
 - (ii) on the part of a person who is or was a manager or employee of the licensed body in connection with any trust of which that person is or was a trustee in that person's capacity as such a manager or employee,**and the notice conditions are satisfied;*
- (f) that the licensing authority is satisfied that it is necessary to exercise the powers conferred by this Schedule (or any of them) in relation to a licensed body to protect—*
 - (i) the interests of clients (or former or potential clients) of the licensed body,*
 - (ii) the interests of the beneficiaries of any trust of which the licensed body is or was a trustee, or*
 - (iii) the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.*

Bar Council Standing Orders – proposed amendments

Status

1. For agreement.

Executive Summary:

2. The Bar Council is seeking agreement from the Bar Standards Board regarding an amendment to its standing orders.
3. At the Bar Standards Board in November 2015 it was agreed that all of the parts of the Bar Council's existing standing orders that apply to or affect the Bar Standards Board, namely Part Three of the Standing Orders which deals with the joint Bar Council and BSB Committees, namely Finance Committee, Audit Committee, Emoluments Committee and Chairmen's Committee, should be placed in a separate, stand-alone set of standing orders. A specific set of standing orders were provided for approval.
4. This proposal was subsequently agreed by the Bar Council at its meeting in January 2016.
5. Since this date further work has been carried out on formalising an appointments process for the joint committees, which is currently missing from the Standing Orders. However, in formalising the process, it has been realised that some further changes to the Standing Orders agreed in November 2015 are required. These changes, agreed by the Chairmen's Committee in September 2016, involve ensuring that all non-ex officio joint committee appointments are made **jointly** by the Chairman of the Bar Council and the Chair of the Bar Standards Board, in consultation with the Treasurer.
6. The Chairman's Committee agree that this approach would ensure consistency in the appointments process across all joint committees and that it reflects best practice.
7. The Bar Council is seeking agreement from the Bar Standards Board to:
 - a. Include the proposed appointments process in the Standing Orders for the joint committees; and
 - b. To make amendments to the Standing Orders to ensure that all non-ex officio appointments are made jointly by the Chairman of the Bar Council and the Chair of the Bar Standards Board, in consultation with the Treasurer.

Recommendations

8. It is recommended to the Board that it:
 - a. agrees the proposed appointments process and agrees to its inclusion in the Standing Orders; and
 - b. Agrees the changes to the Standing Orders regarding the appointment of non-ex officio positions.

Background

9. The Board previously agreed to support the Bar Council's proposal to separate its standing orders so that there is one set that deals with joint Bar Council and BSB matters and a separate set that deals with representative matters.

10. Since this time, a formalised appointments process for the joint committees has been developed for inclusion in the joint committee Standing Orders. However, this process has highlighted the need to make changes to the joint committee Standing Orders to ensure consistency in committee appointments and to reflect best practice.
11. The new standing orders are attached as Annex 1 and are now presented for Bar Standards Board approval. The newly added wording is highlighted in yellow.

Comment

12. The Bar Council's proposed appointments process (paragraphs 41 – 50 of the joint committees Standing Orders) seeks to ensure that appointments to the joint committees are made on the principles of fairness, transparency and merit. It sets out those positions to which the process applies.
13. The appointments process for appointments of BSB members to joint committee positions deliberately mirrors the process adopted by the BSB in its Standing Orders (annex 3, paragraph 3):

“Appointments of BSB members to the posts of BSB Committee Chairs and BSB members of Committees are made by the BSB Chair in consultation with the BSB Vice Chair and BSB Director.”

(NB terminology in BSB Standing Orders, for example changing references to “BSB Director” to BSB Director General, will be updated at the next convenient refresh of Standing Orders, anticipated to be January 2017.)

14. To encourage consistency, the same approach is adopted by the Bar Council where applicable e.g. the joint committee Standing Orders state that *“appointments of Bar Council members to the posts are made by the Chairman of the Bar Council in consultation with the Vice Chairman and Chief Executive of the Bar Council”*.
15. Paragraph 47 is included to ensure that all appointees to joint committees have been subjected to a recruitment process based on the Seven Principles of Public Life (“Nolan Principles”.) This is in keeping with the BSB approach to recruitment for its own committees.
16. The appointments process seeks to ensure that where there is recruitment to positions that are not posts linked solely to either the BSB or Bar Council e.g. independent lay members and the Audit Committee Chairman and Vice Chairman, the appointment is made jointly by the Chairman of the Bar Council and Chair of the BSB. This decision has been made for reasons of consistency and to reflect best practice.
17. Due to this, there are two revisions to the current wording in the joint committee Standing Orders, both of which relate to the appointment of members of the Audit Committee, as follows:
 - a. Paragraph 14b originally stated that the Vice-Chairman of the Audit Committee should be nominated by the Chairman of the Audit Committee. It is now proposed that he or she is nominated jointly by the Chairman of the Bar Council and the Chair of the BSB (in consultation with the Treasurer of the Bar Council); and
 - b. Paragraph 14e originally stated that the two Audit Committee independent lay members should be nominated by the Chairman of the Audit Committee. It is now proposed that they are nominated jointly by the Chairman of the Bar Council and the Chair of the BSB (in consultation with the Treasurer of the Bar Council).

18. The revised joint committee Standing Orders are attached as Annex 1 with the suggested amendments and inclusions highlighted in yellow. Strike through indicates where text has been deleted.
19. It is our understanding that the Bar Council will consider these proposed changes at its next meeting on 5 November 2016.

Resource implications

20. No new resource implications arise from this proposal.

Equality Impact Assessment

21. Paragraph 48 of the proposed process explicitly states that consideration should be given to equality and diversity in the appointments process.
22. We see no negative equality impact issues arising from these changes from a Bar Standards Board perspective. Clarity of process and further reinforcement of best practice recruitment may have a positive impact on equality.

Risk implications

23. There are no significant risks arising from these proposed changes. It assists with the separation of functions to support regulatory independence which arguably lowers any risk of a perception of any compromise of independence.

Impacts on other teams / departments or projects

24. There are no wider BSB impacts. This involves very little alteration to existing working practices.

Consultation

25. This paper is the means by which the Bar Council is consulting with the Bar Standards Board. The Bar Standards Board does not need to consult on this issue.

Regulatory objectives

26. The proposals made do not affect the regulatory objectives. The Bar Council is seeking agreement to these changes to ensure that the principle of regulatory independence contained within the Legal Services Act 2007 is not compromised.

Publicity

27. The Bar Council will publish these changes in due course. The BSB will not be publishing anything relating to these changes beyond placing the revised orders on its website.

Annexes

28. Annex 1 – Amended Standing Orders

Lead responsibility:
Rebecca Forbes – Governance Manager



Standing Orders for joint Committees of the Bar Council of England and Wales and the Bar Standards Board

Foreword

The following Standing Orders are issued under the Authority of Regulations 12 and 13 of Part II the Bar Council Constitution.

This edition of the Standing Orders came into effect on X 2016.

NB: The parts highlighted in yellow are the newly added wording.

Introduction

Preamble

1. The Bar Council is an approved regulator for the purposes of the Legal Services Act 2007. The functions and powers of the Bar Council are set out in its constitution.
2. The Bar Council has established the Bar Standards Board (“the BSB”) to exercise the regulatory functions of the Bar Council. The functions and powers of the BSB are set out in its constitution.
3. The Bar Council and the BSB wish to have in place arrangements which observe and respect the principle of regulatory independence (as defined in rule 1 of the Internal Governance Rules 2009), i.e. the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions.
4. These Standing Orders are held jointly by the Bar Council and the BSB and set out the powers and functions of committees and groups where there is representation by both parties. The powers and functions of the Bar Council in its representative capacity are set out in the Bar Council’s Standing Orders. The powers and functions of regulatory committees and groups are set out in the BSB’s Standing Orders.

Definitions

5. In these Standing Orders, unless the context requires otherwise:

“Approved regulator” has the meaning given in section 20(2) of the Legal Services Act 2007.

“The Bar Council” means the Council of the General Council of the Bar of England and Wales.

“The Bar Standards Board” and “BSB” means the Board established by the Bar Council in accordance with the Legal Services Act 2007 independently to exercise and oversee the regulatory functions of the Bar Council.

“Bar Representation Fee” means the voluntary fee payable to support representational activity by the Bar Council.

“The Chairman of the Bar Council”, and “Vice-Chairman of the Bar Council”, shall mean the Chairman and Vice-Chairman respectively of the Bar Council elected pursuant to the provisions of the Bar Council Constitution.

“The Chair of the BSB” and “Vice-Chair of the BSB” shall mean those persons for the time being appointed to that positions.

“The Chief Executive” shall mean the person for the time being appointed to such position pursuant to the provision of Regulation 17 of the Constitution of the General Council of the Bar.

“The Director General of the BSB” shall mean the member of the Bar Council’s staff for the time being appointed to that position.

“The Director of Finance” means the member of the Bar Council’s staff with day-to-day responsibility for financial matters.

“The Director of Human Resources” means the member of the Bar Council’s staff with day-to-day responsibility for matters pertaining to human resources.

“The General Management Committee” (“GMC”) shall mean the standing committee of the Bar Council described in Regulation 12(b) of the Bar Council Constitution.

“Internal Governance Rules” means the Internal Governance Rules made by the Legal Services Board.

“Lay person” has the meaning given in paragraph 2(4) of Schedule 1 to the Legal Services Act 2007 and “lay member” has a corresponding meaning.

“Member of the BSB” means a person, whether practising barrister or otherwise, who for the time being holds a seat on the Board of the Bar Standards Board.

“Practising barrister” means a barrister holding a current practising certificate issued by the Bar Council.

“Practising Certificate Fee” means the amount payable for a practising certificate each year.

“Regulatory functions” has the meaning given in section 27(1) of the Legal Services Act 2007, and the BSB is responsible for determining any question whether a matter involves the exercise of a regulatory function.

“Representative functions” has the meaning given in section 27(1) of the Legal Services Act 2007.

“Resources Group” means the shared services section of the organisation, supporting the Bar Council and the Bar Standards Board.

“The Seven Principles of Public Life” means the Seven Principles of Public Life as laid down in the First Report of the Committee on Standards in Public Life and amended by the Committee following its review in January 2013.

"The Treasurer" shall mean the Treasurer of the Bar Council elected pursuant to the provisions of the Bar Council Constitution.

Any terms used in the Legal Services Act 2007 have the same meaning as in that Act.

The masculine shall include the feminine gender.

The plural shall include the singular and vice versa.

Finance and Resources

General

6. The purpose of these Standing Orders is to set out the arrangements:
 - a. For ensuring that the Bar Council's finances and other resources are properly managed and accounted for; and
 - b. For ensuring that the Bar Council complies with its obligations under rule 7(d) of the Internal Governance Rules 2009, made by the Legal Services Board under s30 of the Legal Services Act, to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions.
7. The Treasurer on behalf of the GMC, BSB and the Finance and the Audit Committees will keep the Bar Council briefed on all matters of financial importance and on behalf of the Finance and the Audit Committees will keep the BSB briefed on all matters of financial importance.
8. The Chief Executive is the accounting officer and responsible for financial planning, day-to-day financial management and the collection of practising certificate fees and the Bar Representation Fee.

Finance Committee

9. The terms of reference of the Finance Committee are:
 - a. To determine and keep under review the Bar Council's accounting policies and procedures including the Finance Manual which sets out the procedures for preparing the annual budget, levels and procedures for the authorisation of expenditure, procurement policy and other financial controls;
 - b. To review and finalise the annual revenue and capital expenditure budgets, in consultation with the BSB and GMC as appropriate, for presentation to the Bar Council;

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- c. To review, also in consultation with the BSB and GMC as appropriate, and put forward proposals to the Bar Council for the practising certificate fees and Bar Representation Fee (including levels, bandings, discounts, surcharges, payment methods, exemption waivers and refunds) which are consistent with section 51 of the Legal Services Act 2007 and the Practising Fee Rules 2009 made by the Legal Services Board and:
 - i. to conduct such consultation in relation thereto as may be required pursuant to the Practising Certificate Rules 2009; and
 - ii. to apply to the Legal Services Board for approval of the practising certificate fee determined by the Bar Council.
- d. To review the Bar Council's management accounts and the associate reports provided by the Chief Executive and the BSB Director General and make recommendations, take such actions or seek assurances as may be necessary or desirable in the interests of the Bar Council as a whole in the light of such accounts;
- e. To review the quarterly and annual reports made by the BSB to the Bar Council (in its capacity as Approved Regulator);
- f. To review quarterly the Bar Council's cash flow forecast;
- g. To review the Bar Council's annual accounts prior to their consideration by the Audit Committee;
- h. To determine and keep under review the Bar Council's banking arrangements, so as to ensure that they reflect current need, value for money and balance of risk;
- i. To keep under review the level and nature of the Bar Council's investments and borrowings and take all such action in relation thereto as is necessary or desirable in the interests of the Bar Council;
- j. To provide advice on any financial matters referred to it by the Bar Council, the BSB or the GMC;
- k. To consider the reports and decide upon the recommendations of the Emoluments Committee; and
- l. To review the findings of the internal and external auditors and ensure that financial issues raised in the management letter are addressed by the appropriate Bar Council staff and to ensure that issues raised by the Audit Committee are appropriately responded to.

10. The membership of the Finance Committee shall be:
- a. The Treasurer of the Bar Council [Chairman];
 - b. The Vice-Chair of the BSB [Vice-Chairman];
 - c. The Chairman and Vice-Chairman of the Bar Council and the Chair of the BSB;
 - d. Two practising barristers nominated by the Chairman of the Bar Council, who shall be appointed for a term of three years, renewable once (see paragraph 45);
 - e. Two members of the BSB or of a BSB committee nominated by the Chair of the BSB, who shall be appointed for a term of three years, renewable once (see paragraph 44);
 - f. Two independent lay persons nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB acting in accordance with the Seven Principles of Public Life and taking account of best practice for public appointments, including in particular the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies, who shall be appointed for a term of three years, renewable once;
 - g. The Chief Executive.

In attendance: the Director General of the BSB, other senior staff as necessary and the Director of Finance (who shall act as secretary to the Finance Committee).

11. Each of the members of the Finance Committee other than the lay persons identified in paragraph 10(f) above and the Chief Executive may nominate an alternate who is entitled to take their place at any meeting which the member is unable to attend.
12. The quorum for meetings of the Finance Committee shall be 5 members (or alternates), which must include:
- a. a member (or the alternate of a member) who is either one of the Officers of the Bar Council or one of the members identified in paragraph 10(d) above;
 - b. a member (or the alternate of a member) who is either the Chair or the Vice-Chair of the BSB or one of the members identified in paragraph 10(e) above; and
 - c. an independent lay member.

Audit Committee

13. The terms of reference of the Audit Committee are:

Governance and Risk Management

- a. To advise the Bar Council in relation the Bar Council's role as an approved regulator for the purposes of the Legal Services Act 2007 on all corporate governance matters and to review the effectiveness of all internal controls, including financial management arrangements and internal business processes and in so doing to make appropriate use for this purpose of:
 - i. internal audits;
 - ii. external audits; and
 - iii. reports and assurances from the Bar Council and the BSB.
- b. To review the Bar Council's and the BSB's risk management strategies, including processes for assessing, reporting, owning and managing business risks and their reputational and financial implications across all parts of the Bar Council, and to make recommendations and seek assurances or clarification as may be necessary or desirable in the interests of the Bar Council as a whole;
- c. To receive risks registers on a quarterly basis from the BSB and the Bar Council and assurances that effective control systems are in place and are being adhered to;
- d. To review and make arrangements on whistleblowing processes and the arrangements for investigating fraud, corruption and error;
- e. To keep under review the level and nature of the Bar Council's insurance cover;

Internal Audit

- f. To determine and keep under review the need for, and the arrangements for the provision of, internal audits, having regard to the need for the internal audit function to be effective, to be adequately resourced, to have appropriate standing within the Bar Council and the BSB and to be aligned with corporate risk registers;
- g. To consider any internal audit reports, and any management responses thereto, and make recommendations or take such actions as may be necessary or desirable in the interests of the Bar Council in the light thereof;

External Audit

- h. To make recommendations to the Bar Council on the appointment and removal of the external auditors;

- i. To oversee the relationship with the external auditors, including:
 - i. approving their terms of engagement and remuneration;
 - ii. ensuring that the nature and scope of the external audit is agreed in advance; and
 - iii. ensuring that the external auditors are informed of any significant developments or risks which might impact upon the audit process or fee;
- j. To monitor and review the external auditor's independence, objectivity and effectiveness;
- k. To review the findings of the external auditor and ensure that appropriate actions are being taken;
- l. To determine and keep under review policy on the engagement of the external auditor to supply non-audit or consultancy services;
- m. To oversee the production, and monitor the integrity, of the Bar Council's Annual Report and Accounts and, subject to audit, to approve them for submission to the Bar Council; and

Statutory Compliance

- n. To review and make recommendations on the processes in place to ensure that the Bar Council meets its statutory obligations, including those with regard to employment, data protection and health and safety.
14. The membership of the Audit Committee shall be:
- a. A chairman who is an independent lay person with relevant audit knowledge and experience nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB acting in accordance with the Seven Principles of Public Life and taking account of best practice for public appointments, including in particular the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies;
 - b. A vice-chairman who is a practising barrister with relevant audit knowledge and experience ~~nominated by the chairman of the Audit Committee~~ **nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB**, who shall be appointed for a term of three years, renewable once;

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- c. A member nominated by the Chairman of the Bar Council, who shall be appointed for a term of three years, renewable once (see paragraph 45);
- d. A member nominated by the Chair of the BSB, who shall be appointed for a term of three years, renewable once (see paragraph 44); and
- e. Two members (who may, but need not, be practising barristers) nominated by the chairman of the Audit Committee jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB acting in accordance with the Seven Principles of Public Life and taking account of best practice for public appointments, including in particular the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies and who shall be appointed for a term of three years, renewable once.

In attendance: the Chief Executive, the Director General of the BSB, other senior staff as necessary and the Director of Finance (who shall act as secretary to the Audit Committee).

15. No person who is a member of the Finance Committee may also be (or act as an alternate for) a member of the Audit Committee.
16. The members of the Audit Committee identified in paragraph 14(b) to (d) above may nominate an alternate who is entitled to take their place at any meeting which the member is unable to attend, providing that alternate is not also a member of the Finance Committee.
17. The quorum for meetings of the Audit Committee shall be 3 members (or alternates).

Emoluments Committee

18. The Emoluments Committee is a sub-committee of the Finance Committee.
19. The terms of reference of the Emoluments Committee are:
 - a. To set parameters for, determine, and report to the Finance Committee on, the remuneration and terms of engagement of the following:
 - i. The Chief Executive
 - ii. The Director General of the BSB
 - iii. Any other senior staff who sit outside the general staff banding structure
 - iv. The members of the BSB
 - v. All remunerated lay members of any Bar Council or BSB committee, sub-committee, panel, working party or other body

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- b. To advise the Chairman of the Bar Council on the recruitment of the Chief Executive and to advise the Chair of the BSB on the recruitment of the Director General of the BSB;
 - c. To advise on the annual pay review to staff;
 - d. To consider appeals by the Chief Executive, the Director General of the BSB and staff who report directly to the Chief Executive or Director General against decisions relating to dismissal, disciplinary sanction, grievance, promotion or demotion. Appeals will be heard by one of the lay members of the committee.
 - e. To provide general oversight and expert advice on HR matters.
20. The membership of the Emoluments Committee shall be:
- a. The Treasurer of the Bar Council (Chairman);
 - b. The Chairman of the Bar Council;
 - c. The Chair of the BSB (or, in respect of matters which the Chair of the BSB is not entitled to discuss, the Vice-Chair of the BSB);
 - d. Two independent lay persons, who may also be members of the Finance Committee, each of whom:
 - i. shall be nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB acting in accordance with the Seven Principles of Public Life and taking account of best practice for public appointments, including in particular the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies; and
 - ii. shall be appointed for a term of three years, renewable once, having regard to their familiarity with current human resources practice and remuneration arrangements for senior appointments in the public and private sectors.

In attendance: the Chief Executive, the Director General of the BSB, other senior staff as necessary, and the Director of HR (who shall act as secretary to the Emoluments Committee).

21. Each of the members of the Emoluments Committee other than the lay persons identified in paragraph 20(d) above may nominate an alternate who is entitled to take their place at any meeting which the member is unable to attend.

22. The quorum for meetings of the Emoluments Committee shall be 3 members (or alternates), which must include:
 - a. the Treasurer or Chairman of the Bar Council (or their alternate); and
 - b. the Chair or the Vice-Chair of the BSB (or their alternate).
23. No member of the Emoluments Committee shall take part in the discussion of a matter in which he or she has a personal interest.
24. A sub group of the Emoluments Committee consisting of the HR Director, the Chief Executive, the Treasurer and lay members of the Emoluments Committee will be responsible for setting the parameters for, determining, and reporting to Finance Committee on the remuneration and the terms of engagement of the following:
 - i. The Chairman of the Bar Council
 - ii. The Vice-Chairman of the Bar Council
 - iii. The Chair of the BSB
 - iv. The Vice Chair of the BSB

The provision of resources to the BSB

25. The resources to be provided to the BSB in each year shall be determined as part of the annual budgeting process.
26. The resources provided to the BSB shall include, as provided for in the annual budget:
 - a. Funds to be spent for the BSB's purposes identified in the annual budget;
 - b. The full-time services of the Director General of the BSB and of other Bar Council employees managed by the Director General of the BSB;
 - c. A share of shared services, including:
 - i. accommodation;
 - ii. IT services; and
 - iii. the services of Bar Council employees managed by the Chief Executive.
27. In relation to the resources provided to the BSB:
 - a. The Bar Council shall observe the requirements of Part One of the Bar Council constitution (discharge of regulatory functions);
 - b. The BSB shall observe the procedures and requirements contained in or made under these Standing Orders.

28. The procedures for preparing the annual budget shall be set out in the Finance Manual.
29. The Finance Committee and the BSB shall use their best endeavours to reach agreement as to those items in the annual budget concerning the resources to be provided to the BSB.
30. If in any year the Finance Committee and the BSB are unable to reach agreement on any such item or items, then a Budget Review Group shall be formed to resolve any such differences and the Finance Committee shall, in preparing the annual budget, give effect to the conclusions of that Budget Review Group.
31. Any other issues concerning the resources provided to the BSB:
 - a. shall if possible be resolved by agreement between the Director General of the BSB and the Director of Finance;
 - b. if so not so resolved, shall be referred to and resolved by the Chief Executive;
 - c. if not so resolved, shall be referred by the Chief Executive to and resolved by the Finance Committee.

Budget Review Groups

32. The membership of any Budget Review Group shall be
 - a. The Treasurer of the Bar Council (Chairman);
 - b. The two independent lay members of the Finance Committee;
 - c. One member of the Finance Committee nominated by the Chairman of the Bar Council;
 - d. One member of the Finance Committee nominated by the Chair of the BSB.

All members shall be present to achieve quorum.

33. Meetings of a Budget Review Group shall be attended by:
 - a. The Chief Executive;
 - b. Relevant senior staff;
 - c. Director of Finance;
 - d. Such other person(s) as the Budget Review Group may invite.

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34. The terms of reference of any Budget Review Group shall be to resolve any difference in relation to those items in the annual budget concerning the resources to be provided to the BSB which arises in the preparation of the budget and which cannot be resolved by agreement between the Finance Committee and the BSB.
35. Any Budget Review Group shall consult with the BSB and shall have regard, inter alia, to:
 - a. The requirements of Part One of the Bar Council constitution (discharge of regulatory functions);
 - b. The Bar Council's obligation under rule 7(d) of the Internal Governance Rules 2009 to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions;
 - c. In respect of any disputed item proposed for inclusion in the annual budget:
 - i. The BSB's objectives (the determination of which is a matter for the BSB).
 - ii. Whether the proposed budget item is appropriate to achieve the BSB's objectives.
 - iii. Any options for achieving those objectives more economically or efficiently.
 - iv. Any measures which have been, or could be, taken to reduce the cost of the proposed item.
 - v. Any offsets available against the cost of the proposed item.
 - vi. Any cost/benefit analysis or assessment of priorities conducted by the BSB.
 - vii. The financial burden on the profession both individually and collectively which would result from providing the resources required by the proposed item.

The Chairmen's Committee

36. The terms of reference of the Chairmen's Committee shall be to keep under review all aspects of the relationship between the Bar Council and the BSB.
37. The Chairmen's Committee shall consist of:
 - a. The Chairman of the Bar Council;
 - b. The Chair of the BSB;
 - c. The Vice-Chairman of the Bar Council;
 - d. The Vice-Chair of the BSB;

- e. The Treasurer of the Bar Council;
 - f. The Chief Executive;
 - g. The Director General of the BSB.
38. Meetings of the Chairmen’s Committee shall be attended by:
- a. Relevant senior staff;
 - b. Such other person(s) as the Chairmen’s Committee may invite.
39. In the interests of the preservation of independence, meetings of the Chairmen’s Committee shall be chaired alternately by the Chairman of the Bar Council (or deputy) and the Chair of the BSB (or deputy). Meetings shall be administrated by the Chief Executive’s Office.
40. The quorum for meetings of the Chairmen’s Committee shall be 4 members which must include the Chairman or Vice-Chairman of the Bar Council and the Chair or Vice-Chair of the Bar Standards Board.

Appointments process for joint Bar Council and BSB Committees

41. Non ex-officio members of the joint Finance, Audit and Emoluments Committee are appointed and reappointed on the principles of fairness, transparency and merit.
42. The Chairmen’s Committee is comprised entirely of ex-officio posts and therefore there is no appointments or reappointments process for this Committee.
43. Those members for whom the appointments process applies are:

Finance Committee

- Two practising barristers nominated by the Chairman of the Bar Council;
- Two members of the BSB or of a BSB committee nominated by the Chair of the BSB;
- Two independent lay persons nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB.

Audit Committee

- A chairman who is an independent lay person with relevant audit knowledge and experience nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB;
- A vice-chairman who is a practising barrister with relevant audit knowledge and experience nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB;
- A member nominated by the Chairman of the Bar Council;

- A member nominated by the Chair of the BSB; and
- Two members (who may, but need not, be practising barristers) nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB.

Emoluments Committee

- Two independent lay persons, who may also be members of the Finance Committee, nominated jointly (in consultation with the Treasurer of the Bar Council) by the Chairman of the Bar Council and the Chair of the BSB.

44. Appointments of BSB members to the posts of Finance or Audit Committee members are made by the BSB Chair in consultation with the BSB Vice-Chair and BSB Director General.
45. Appointments of Bar Council members to the posts of practising barrister member of the Finance Committee or member of the Audit Committee are made by the Chairman of the Bar Council in consultation with the Vice Chairman and Chief Executive of the Bar Council.
46. The posts of Chairman and Vice Chair of the Audit Committee, and those of lay members of the Audit, Finance and Emoluments Committee, are advertised to the public. Members are selected on merit by a Selection Group comprising:
- a. The Chairman or Vice-Chairman of the Bar;
 - b. The Chair or Vice-Chair of the BSB; and -
 - c. The Treasurer of the Bar Council.
47. It is important that appointees to any of the joint committees uphold the standards of the “Seven Principles of Public Life” (also known as the “Nolan Principles”) set out in the Committee on Standards in Public Life’s thirteenth report “Standards Matter” and referred to in paragraph 5 of the Standing Orders for joint Committees of the Bar Council of England and Wales and the Bar Standards Board.
48. Throughout the appointments and reappointments process, careful consideration should be given to equality and diversity.
49. As a general rule, all appointments made to non ex-officio posts shall be for a fixed period of up to three years, renewable once, provided that the Chairman of the Committee (or Chairman of the Bar Council and Chair of the BSB in the case of the Chairman of the Audit Committee post) is satisfied that the person has performed to the required standard and it is in the interest of both parties to renew the appointment.
50. In exceptional circumstances, it may be appropriate to resolve to offer an extension of an individual person’s or group of persons’ appointment beyond the maximum six year period of appointment permitted above. Any resolution to make a limited offer of extension must:

- a. allow for an extension of no more than 18 months in duration,
- b. be made by offer in writing, and
- c. be made for a specific reason that is articulated in the offer of extension

Governance and amendments to the Standing Orders

51. Any amendments to these Standing Orders must be made in line with the principles of the joint protocol on ensuring regulatory independence.
52. Any party wishing to amend or update any part of the Standing Orders must seek the authority of both the Bar Standards Board and the Bar Council to do so, via appropriate internal governance processes. The administrative management of any amendments to the text must be affected through the office of the Chief Executive of the Bar Council.
53. A review of the Standing Orders will be scheduled on an annual basis at a meeting of the Bar Council, Bar Standards Board and Resources Group senior leadership team (SLT) to assess whether any amendments may be required by any party.

Chair's Report on Visits and External Meetings, October 2016**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**

2 October	*attendance at a Reception hosted by the Bar Council at the Temple Church followed by the Dinner jointly hosted by the Chairman of the Bar and the President of the Law Society at Middle Temple <i>(* note – this entry was omitted in error from the original Part 1 papers but is now included for the public record)</i>
3 October	Attended the Opening of the Legal Year ceremony at Westminster Abbey and subsequent reception given by the Lord Chancellor
3 October	Participated in shortlisting candidates in the recruitment process for BSB lay Board members
04 October	Attended the CPD roadshow hosted by the BSB in London
10 October	Attended the CPD roadshow hosted by the BSB in Bristol
17 October	Interviewed candidates in the recruitment process for lay Board members
18 October	Met and had lunch with the Chair of the Institute of Barristers' Clerks, Nicholas Hill
18 October	Attended the CPD roadshow hosted by the BSB in Birmingham
19 October	Interviewed candidates in the recruitment process for lay Board members
19 October	Attended the Chairmen's Committee meeting
20 October	Attended the Middle Temple Grand Day Dinner
24 October	To interview candidates for the roles of lay Board members

Equality Impact Assessment

3. No Impact

Risk implications

4. These reports address the risk of poor governance by improving openness and transparency.

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Sir Andrew Burns KCMG

Director General's report - BSB meeting 27 October 2016

For consideration and noting.

Director General

1. The last month has seen considerable externally-facing activity, notably the series of workshops across the circuits to introduce the new CPD scheme to members of the profession. It has been important for the BSB to present the scheme face-to-face and to provide an opportunity for the profession to help us refine the final guidance and supporting materials we will publish before the end of the year. Discussions at the roadshows have generally shown the extent to which the new scheme will be a positive change for the profession and enhance the BSB's ability to assure the public that barristers remain up to date and competent. I have been and will be present at all CPD roadshow events as well as most smaller stakeholder meetings connected with the new scheme.
2. The BSB was also well represented at the Annual Bar Conference. Ewen Macleod participated in a Bar Council Ethics panel on new ways of working. Unsolicited feedback about the BSB's willingness to help and provide solutions for the benefit of the public and practitioners was extremely positive. I contributed informally to a session looking at the "unregulated" aspects of education and training for entry to the Bar and the extent to which those might be "entrenching privilege." Our main session on ABSs was well attended, but the questions from the floor demonstrated that there is still some way to go to improve basic understanding of what the ABS model is, why Parliament legislated to introduce it and how practitioners might evaluate whether it would be a useful improvement to their business model.
3. As ever I am very grateful to the staff team for giving up their Saturday to contribute to the Bar Conference.
4. As we move towards November I will be attending a number of the FBT consultation events. Our activity in this area has drawn the interest of the Singaporean legal profession and on 26 October I will offer advice to a Committee of Singaporean Supreme Court judges who are reviewing the training of advocates in their jurisdiction.
5. I was pleased to welcome Professor Myles Lynk to the BSB to talk to staff about discrimination and harassment by lawyers in conduct related to the practice of law, and changes to the ABA model rules in this regard. Professor Lynk is Peter Kiewit Foundation Professor of Law and the Legal Profession at Arizona State University, and chair of the [American Bar Association's \("ABA's"\)](#) Standing Committee on Legal Ethics and Professional Responsibility, which is responsible for drafting and interpreting the ABA's Model Rules of Professional Conduct. He is a past chair of the ABA's Standing Committee on Professional Discipline, the Section of Civil Rights and Social Justice, and the Special Committee on Bioethics and the Law. Professor Lynk's lecture provoked interesting discussion and our observations on the ABA new rules were clearly of value to him as well.
6. Internally, my work has focussed on the next step in structural changes in line with the Strategic Plan; and on settling budgets and aspects of the 2017/18 finances. The following planned internal changes have now taken effect.
7. The research team (Oliver Jackling, Anatole Baboukhian and Ben Margerison) will now be reporting to Ewen Macleod. We are in the process of appointing a new Head of Research and Information, who will lead the team in due course. This move of the

research team completes the transformation of the Regulatory Policy Department into the new Strategy and Policy Department under Ewen's direction. The new team will be responsible for:

- Regulatory risk;
 - Policy development in relation to professional standards;
 - Future Bar Training policy;
 - Equality and access to justice; and
 - Research and information.
8. The new structure will enable us to get the benefit of having all these teams' expertise in one place – ensuring that our regulatory arrangements are informed by a proper evidence base, taking account of relevant risks in the market, embedding equality considerations and following best practice in policy development.
9. Governance activity has now shifted across to the Corporate Services team, with Rebecca Forbes, our governance manager, reporting to Viki Calais, but working closely with me and the SMT to keep up the implementation of the governance reform work. Joseph Bailey's secondment to the governance team has come to a close and he has returned Strategy and Policy. We are expecting the arrival of a new business manager in Viki's team on 21 November.
10. Finally, Board members may wish to note that mid-year performance reviews of all staff are now underway and will be completed by 30 November.

ASPIRE

11. Progress against the action plans agreed with the LSB in relation to the Regulatory Standards Framework remains broadly on track. There has been some re-prioritisation of activity under the risk strand to reflect a shift in focus of available resource towards the requirements of the Information Management programme. This should not have a long term impact on delivery of the risk programme of activity, particularly now that the team is fully resourced. The LSB will receive a report on progress before the end of November.
12. The ASPIRE programme board will meet before the November Board meeting where they will discuss amongst other things the approach to the closure of the programme.

Strategy and Policy

(See above for information on structural changes within this area)

Professional Standards

PII

13. The economic analysis of the PII market for the Bar is complete and the results will be presented to the Board (at its meeting on 27 October). Following discussion of the analysis we will consider next steps on the proposed rule change to require single person entities to insure with BMIF.

Immigration Thematic Review

14. Work on a project plan and PID for the implementation stage of the Immigration Thematic Review has begun. These will set out a plan, with milestones, for taking

forward the recommendations (published in May 2016). Q3/Q4 will prepare the ground for delivery in 17/18.

Public and Licensed Access Review

15. Following our analysis of the risks in the market and successful TCG meeting, work is progressing on developing options in the following areas: information and guidance provided by barristers to clients, training for barristers and potential rule changes. The recent client care letters research will prove invaluable in developing options, particularly in the area of information and guidance provided by barristers to clients. A report with recommendations will be presented to the Board in November.

Statutory Intervention

16. The team has provided policy support on the Interventions project, the outcome of which is before the Board at the current meeting.

The Policy Development Framework (PDF) and the Policy Forum

17. Over the next couple of months the team will be reviewing the effectiveness of the PDF and the future role of the Policy Forum. Both have a key role to play in improving the way in which BSB makes policy – so the review will explore how best to embed the PDF across the business and the role of the Policy Forum in spreading good practice.

Regulatory Risk

18. The new Risk Manager has starting working up proposals around introduction of risk reporting, and will be using the Risk Forum members to work collaboratively to develop these further. We are also looking at making good use of the new reporting capability already introduced by the Information Management (IM) programme to draw together current data from the diverse array of systems in which it sits.
19. The risk assessment policy work continues, with approach and timings now firmed up as to how this will interface with the IM programme requirements work taking place through late 2016 into 2017.
20. A good deal of this month's work has focused on the support for the project looking at Centralised Assessment, in addition to the research project into models used to deliver barrister services, a review of the updated BPTC Handbook to ensure that risk is adequately reflected, and support to the Regulatory Operations programme team in development of a blueprint or target operating model to help align different elements of organisational change to a common vision. The team is also joining the newly formed task completion group looking at Cross-Cultural Communication, following on from the event jointly hosted by risk and equality and access to justice teams earlier this year.
21. A group spanning BSB and Resources Group has formed to start to think about how we can resource some strategic work on knowledge management around risk and market intelligence, particularly given the advent of Worksmart. This will complement some of the tactical steps the risk champions are looking at on the same topic.
22. The Head of Risk has been working with another regulator to provide an independent review of their developing risk based approach during October.

Equality and Access to Justice

23. Equality and Diversity training of board and committee members continues to progress, with the goal of having all members trained by end of November 2016. The Board training is completed and currently only two committees are awaiting training: Professional Conduct Committee and Qualifications Committee. Plans to deliver unconscious bias and anti-discrimination training to the Professional Conduct Committee have been confirmed for early December 2016.
24. Organised in conjunction with the Supervision Team, the E&AJ team delivered two Youth Court Workshops to support the development of Youth Court Advocacy competencies. Over 30 people from approximately 20 organisation from the youth justice sector were in attendance, BSB Board members were also present in support of the events.
25. Equality Champions have now drafted equality objectives that relate to their specific departments. The E&AJ are working with Champions to finalise objectives for the December Board.
26. Knowledge Sharing Sessions continue to be held monthly. The most recent session was on hearing loss, presented by Andrew Taylor, Regional Information Officer for South East England. In recognition of Black History Month, the next Knowledge Sharing Session will be on 25 October 2016, it will be presented by Shazeeyah Akhtar, International Equality Lawyer and Campaigner, and will cover the topic of Race Equality.
27. A Women at the Bar internal project group had its first meeting on 12 October 2016, where the topic under consideration was the BSB's response to the information presented in the Women at the Bar report. Consultation on changes to the current equality rules, including shared parental leave, will begin in late October.
28. A social mobility round table was held to explore social mobility impacts of FBT. Organisations present included: Social Mobility Foundation, The Sutton Trust, Race Equality Foundation, The University of York and Royal Holloway University.

Future Bar Training

Future routes to authorisation – Consultation

29. The consultation was published on 3 October 2016 after final approval from the Education & Training committee on 19 September 2016. The publication coincided with the SRAs publication of their consultation "a new route to qualification: the Solicitors Qualifying Examination". The BSB and SRA exchanged consultations prior to publication to ensure consistency where possible.
30. The consultation is supported by a stakeholder engagement plan developed by the Director of Communications and his team. The key engagement during the consultation period will involve a number of events around the country in all cities where the BPTC is currently offered. This is to ensure that students, barristers and providers from across the country have an opportunity to ask questions about the consultation but also offer their views and feedback on the proposals. Further engagement will be available in the form of webinars and specific roundtables with key stakeholders such as consumer and representative groups. Details of these events can be found [here](#).

31. After the consultation period, due to end on 23 December 2016 we intend to analyse the information gathered and take this to the Board. We anticipate a report on the consultation at the January Board meeting and that a final decision on the chosen option to be made at the Board meeting on 23 February 2016.

Governance

32. Work on a review of governance of the FBT programme, and of wider education and training activity, has begun. The results of this will be presented to the Board early in Q4. This will include recommendations on winding up the Education and Training Committee, probably in 2017/18.

Research

33. Since the Board meeting in September, work has progressed as follows:
- Presenting the final report investigating the attainment gap across BPTC modules for gender and ethnicity to the Education and Training Committee
 - Working with SMT to finalise the research scoping for two streams of Consumer Research into Family Law and Employment Law
 - Supporting the development of the next stage of the Information Management programme
 - Working with the QC Appointments Panel to support their development of research into under-application by women
 - Undertaking research into the factors that influence attainment of pupillage for the Equality and Access to Justice team
 - Undertaking research into progression and practice type of female and BME barristers
 - Initial scoping with the Supervision department into the monitoring and evaluation of the changes to the CPD scheme to be introduced next year
 - Received and reviewed final report for the Client Care Letters project.

Professional Conduct

Staffing

34. There are four current and pending vacancies within the Professional Conduct Department. The management team has agreed a strategy for recruiting to these vacancies and the process will begin within the next month.

PCC & Prosecutors Away Day

35. The Professional Conduct Department is holding its annual combined Professional Conduct Committee and Prosecutors Panel "Away Day" on 16 November 2016. The purpose of the event is to thank attendees for all their hard work in assisting the BSB in regulating the Bar, to update them on relevant issues, to provide an opportunity to share views and experiences to mutual benefit, and to learn from each other. The programme is being finalised and will include the following subjects, among others; regulation and private life boundaries, conduct issues in public access and pro-bono work, the use of social media and misconduct, and case law updates.

Joint Disciplinary Tribunal Working Group

36. As reported in July 2016, the PCD has been meeting with other regulators (Solicitors Regulation Authority/CILEX Regulation) to consider what common approaches may be adopted to disciplinary processes, in the public interest.

37. The group has three agreed initial work streams, namely:
1. Ensuring Memoranda Of Understanding and operational protocols are in place and operating effectively for the sharing of relevant disciplinary information;
 2. Scoping the existing levels of delegation for internal decision making at the end of the investigation stage, with a view to achieving greater consistency where appropriate;
 3. Scoping the existing publication requirements and powers in relation to disciplinary investigations and findings, with a view to achieving greater consistency where appropriate.

Action on Hearing Loss Knowledge-Sharing session

38. The PCD Diversity Champion arranged through her contacts for Andrew Taylor, Regional Information Officer from Action on Hearing Loss to provide the BSB and Bar Council with this interesting and thought-provoking knowledge-sharing session. More than 900,000 people in the UK are severely or profoundly deaf and the session provided a wealth of statistics. We learnt about the barriers deaf and hard of hearing people face, and gained some useful communication tips. From a PCD viewpoint these were invaluable in considering, and making reasonable adjustments to, our communications with both barristers and complainants who face these challenges.

Litigation

39. The PCD have not received any new applications for Judicial Review since the last update. Judgement was handed down in the oral application made by a complainant who had been previously unsuccessful in challenging decisions to dismiss. The Court stated that having reconsidered the matter it did not feel the grounds were so poor as to be totally without merit and that the PCC had properly investigated and reached the decision to dismiss. It did not impose a Civil Restraint Order.
40. The Employment Tribunal claim by the barrister subject to a number of disciplinary charges was to be heard at the case management stage on 17 October 2017. At the time of writing this had not taken place.

Regulatory Assurance Department

CPD Accreditation

41. Work has commenced in winding down the Provider Accreditation with formal closure on 31 December. A letter to all accredited CPD providers has been issued which describes the new CPD arrangements from 1 January 2017 and invites them to attend an informative roadshow (similar content to the CPD roadshows for the profession). The roadshow is intended to set out how the abolition of accreditation and the new CPD scheme is likely to impact their training provision. A decision has been taken to amend our approach for the final accreditation monitoring cycle – 1 Jun to 31 Dec – in light of the forthcoming closure; CPD providers will not be asked to submit their monitoring report to the BSB for this period but will still be expected to complete and retain the report for 2 years. Resources will be better placed on other aspects of the CPD scheme and elsewhere in the Regulatory Assurance department.

CPD

42. The new CPD scheme has now been approved by the Board along with the next steps. An application to the LSB for rules change approval has been submitted.
43. The BSB is proceeding with an intensive communication and engagement process with the profession. This includes roadshows and seminars across the country to inform the profession about the new scheme and to take feedback that can inform further supporting documents.
44. The BSB is engaging with SBAs to help them support their members.
45. The new scheme is planned to go live on 1 January 2017.

Youth Proceedings Advocacy Review

46. “Defining the competencies of a youth court advocate’ workshops have been held. The workshops were well attended with representatives from 22 different organisations, including members of the Bar, youth offending teams, consumer organisations and other bodies involved in the youth justice sector. The workshops enabled us to gather important information about the key skills needed to undertake youth proceedings work. Our next steps will be to use this information to draft the competencies and continue our work on the regulatory framework surrounding this piece of work.

Licensed Body (“ABS”) Implementation

47. We remain on track to be operationally ready for a late 2016 launch of the regime (subject to the relevant approval). The external pilot closed on 14 October and we are now collating and reviewing feedback from participants. An on line application portal has been developed and successfully piloted.
48. We continue to receive an encouraging number of queries about both the ABS and existing entity schemes. We delivered a session about the topic at the recent Annual Bar Conference which included presentations from the perspectives of 2 players in the legal market with specific interest in the subject. The session was well attended and well received.

Statutory Interventions

49. The final Interventions Strategy is before the Board together with operational guidance and an update on the additional preparatory work for the introduction of the BSB’s powers of intervention. Highlights include the successful tender process for intervention agents, agreement re file management policies and practices, the provision of training for staff and a communication to the wider profession, clients and the public generally.
50. Initially we will acquire intervention powers into ABS only, through designation as a licensing authority. We are seeking similar powers of intervention in relation to other authorised persons (both barristers and entities) through an order under section 69 of the LSA 2007. The expected timeframe for this is 2017.

Authorisations

51. Staff are continuing to work with the Panels of the Qualifications Committee to revise all Criteria and Guidelines documents with a view to all decisions currently taken by Panels to be taken by staff from January 2017.
52. The Qualifications Committee is next due to meet on 7 November 2016.

Governance Review

53. Recruitment for the three lay Board member vacancies proceeded during September and October. Following longlisting by the Independent Appointments Panel, 13 candidates were interviewed by external recruitment consultants. Of those, 10 were shortlisted to be interviewed by the Independent Appointments Panel and the final interviews were held on Monday 24 October.
54. Contracts for the first round of APEX appointments have been issued. Applications for the second round of recruitment closed on 24 October, with roles for competition, equality and diversity, constitutional, human rights and public law practitioners advertised. Interviews will take place in the week commencing 14 November, and it is intended to make offers of appointment in the week commencing 28 November. An induction session is scheduled for Friday 16 December, with the formal induction session to be followed by an opportunity to network. An invitation has been extended to Board members to attend either the formal induction session or the informal networking event afterwards.
55. In line with the Interventions paper being discussed at this meeting, an amendment has been proposed to the Scheme of Delegations, to include delegation from the BSB to the Director General to authorise the use of intervention action, in accordance with the powers set out at Schedule 14 to the Legal Services Act 2007.

Communications and Stakeholder Engagement

56. Since this report was prepared for the September Board meeting, the following press releases and announcements have been issued:
 - 21 September: Press release to accompany the publication of the updated Professional Statement for Barristers including the Threshold Standard and Competences
 - 27 September: Press release about an unregistered barrister disbarred following fraud convictions for fare evasion
 - 30 September: Press release to accompany the publication of the Independent Observer's annual report, highlighting her view that the BSB's complaints-handling process is thorough and fair
 - 3 October: An announcement concerning the latest round of recruitment for the Advisory Pool of Experts
 - 3 October: Press release to accompany the launch of the Future Bar Training consultation, seeking views on the future of Bar training.
57. The Board will have seen the fortnightly media coverage that the above announcements generated.
58. Arrangements were finalised for the CPD workshops for barristers. The first of these took place in London on 4 and 5 October. We have since visited Bristol, Leeds and Birmingham, with Cardiff, Manchester and Winchester to follow.

Work in Progress

59. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- supporting the remaining CPD workshops around the Circuits including a webinar to be held on 10 November;
 - the organisation and promotion of a series of workshops at university providers to support engagement for the current FBT consultation. This includes discussion forums for students, practitioners and the legal education sector;
 - the launch of a consultation for the Bar about shared parental leave; and
 - the joint publication of research with the other legal regulators about client care letters.
60. At the time of writing, the Communications and Public Engagement team are preparing to support the BSB's stand and the ABS workshop at The Bar Conference on 15 October.
61. Wilf White has been working to finalise the Communications and Public Engagement Strategy for formal approval by the Board.

Online and social media

62. During September, 24,696 users visited the BSB website. At the time of writing, we have 15,253 followers on Twitter and 2,599 followers on LinkedIn. The team is in the process of launching a new BSB presence on Facebook.

Corporate Services

Staffing

63. The Corporate Support Manager post remains vacant however we expect to have this filled by the end of November 2016. The Governance members of Amanda Thompson's team (previous Director for Governance Reform) have transferred into the department and handovers have been conducted.

Corporate Support

64. Quarter two of 2016-17 closed on 30 September, so the Corporate Support Team has been working on Q2 performance reporting and mid-year forecasting. Board members will be presented with this information in November 2016.
65. We continue to work on renewing the BTAS (COIC) contract which is due to be extended at the end of the calendar year.
66. Later this month, the team will be liaising with staff from the Legal Services Board on the next stages of its Cost of Regulation project.
67. A quarterly report on the activities of Resources Group was reviewed in the senior leadership team on 21 October. A significant cross-RG achievement has been the successful roll out of the Work Smart programme – see above.

Vanessa Davies
Director General BSB
20 October 2016