

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 24 July 2014, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Ruth Deech QC (Hon) (Chair)
Rolande Anderson
Rob Behrens
Sarah Clarke – items 7 to 14
Malcolm Cohen
Justine Davidge
Simon Lofthouse QC – items 7 to 14
Tim Robinson
Andrew Sanders
Sam Stein QC – items 7 to 14
Richard Thompson – items 8 to 14
Anne Wright
- By invitation:** Roger Hammond (Change Manager)
Emily Windsor (Special Adviser) – items 7 to 14
- BSB Executive in attendance:** Viki Calais (Business Manager)
Vanessa Davies (Director)
Eugene Grant (Press Officer)
Oliver Hanmer (Head of Supervision)
Sara Jagger (Head of Professional Conduct);
Andrew Lamberti (Communications Manager)
Ewen Macleod (Head of Regulatory Policy)
John Picken (Board & Committees Officer)
Amanda Thompson (Head of Strategy & Communications)
Simon Thornton-Wood (Head of Education & Training)
- Bar Council Executive in attendance:** Stephen Crowne (Chief Executive, Bar Council)
James Wakefield (COIC representative)

Item 1 – Welcome and introductions**ACTION**

- The Chair welcomed members to the meeting, in particular, Roger Hammond who was attending to present his closure report to The Regulatory Improvement Programme.

Item 2 – Apologies

- Patricia Robertson QC (Vice Chair);
 - Sarah Brown (Special Adviser);
 - Matthew Nicklin QC (Special Adviser);
 - Stephen Collier (Treasurer, Bar Council);
 - Nick Lavender QC (Chairman, Bar Council);
 - Mark Hatcher (Special Adviser to the Chairman of the Bar Council);
 - Joanne Dixon (Qualifications Manager).

Item 3 – Members’ interests and hospitality

3. None.

Item 4 – Approval of Part 1 (public) minutes – 26 June 2014 (Annex A)

4. The Board approved Part 1 of the minutes of the meeting held on Thursday 26 June 2014.

Item 5 – Matters arising

None.

Item 6 – Action Points & Forward AgendasAction points and progress (Annex B)

5. The Board noted the action list as set out in Annex B.

Forward agendas (Annex C)

6. The Board noted the forward agenda list. The item on CPD, originally planned for 18 September, will now be scheduled for 23 October 2014.

**JP to
note**

Item 7 – Closure Report on The Regulatory Improvement Programme (TRIP)

BSB 049 (14)

7. Roger Hammond highlighted the following:
- the BSB is now on track to achieve a “satisfactory” rating against the LSB’s Regulatory Standards Framework (RSF) by March 2016. The report includes the action plans necessary to achieve this goal;
 - a risk based approach to regulatory decision making is in operation;
 - value for money was introduced as a workstream as part of the change programme and has been implemented through a process mapping exercise against which costs can be estimated and benchmarked;
 - the SPACE project prompted operational efficiencies by co-locating those teams whose work overlaps, thus enabling improved communication;
 - the implementation of the Legal Education Training Review (LETR) was taken out of the TRIP programme. This is now being managed separately as a stand-alone project;
 - the TRIP Board should re-convene later in the year to review the governance arrangements.
8. Board Members commented as follows:
- the report is very useful and the challenge now is one of implementation;
 - the action plans are solid with identifiable measures of success. They also act as key control documents to achieve the RSF target;
 - staff engaged with the change programme in a positive and productive manner. The organisation has learned a lot from this exercise and is in a good position to sustain the improvements that the programme has brought about;
 - we need to ensure that BSB committees are fully aware of the impact of the programme as well as the effect of the action plans and future cost analysis through benchmarking;
 - the RSF identifies a higher rating – “good”. It would be helpful to have a clearer idea of the demarcation between that rating and “satisfactory”;
 - one of the actions under the “capacity and capability” workstream refers to “evidence based understanding of the market that the BSB regulates”. This needs to be addressed in the context of a changing regulatory environment. There are a number of external factors over which we have no control but which can nevertheless impact on the delivery of BSB business plans;

- the regulatory improvement programme has resulted in a major step forward for the BSB by improving quality and generating better value for money. We need to make the profession aware of these achievements.
9. In response, Vanessa Davies commented as follows:
- the senior management team has played a central part in providing leadership for the various strands of the change programme;
 - the opportunity offered by the SPACE project was coincidental but has proved very useful;
 - the BSB's Equality and Diversity staff are now part of the Regulatory Policy Department which has helped to ensure e&d is fully incorporated into policy development processes;
 - the learning and development programme will offer training opportunities to committee members as well as staff and Board members.
 - the definition of "good" in terms of the RSF is that "all indicators are embedded appropriately in the organisation and inform day to day working practices". The definition of "satisfactory" is "significant progress is being made to embed indicators and use them in day to day working practices". Based on the application of similar frameworks in other markets, a move to "good" status, whilst achievable, might well result in increased regulatory costs.
10. In respect of this latter point, the general view was that costs should not be incurred unnecessarily and that the key target of reaching a "satisfactory" standard was sufficient.
11. The Board thanked Roger Hammond warmly for his work in managing the programme and giving it the momentum necessary to achieve a successful conclusion.
12. **AGREED**
- a) to receive the closure report on The Regulatory Improvement Programme.
 - b) to approve the action plans associated with the report.
 - c) to request that the PRP Committee provides oversight for the delivery of the action plans and that the GRA Committee undertakes an assurance role for them. **AT / JP to note**
 - d) to request that feedback to the Board on the progression of the action plans be made through the Director's report. **VLD to note**
 - e) that the Programme Board be reconvened in October 2014 to review the governance arrangements. **JP/ VLD to note**

Item 8 – Policy Development Framework

BSB 050 (14)

13. Amanda Thompson referred to the draft policy development framework document at Annex 1 of the report. She commented as follows:
- the aim of the framework is to ensure policy development happens in a systematic but flexible manner and fully reflects the Board's risk and evidence based approach to regulation;
 - there is an element of scalability to the framework insofar as it is suitable for major projects but can be pared back if needed for smaller concerns;
 - a key feature of its implementation is the early identification of the correct decision maker. This could be the Board, a committee or a member of the Executive depending on the circumstances;
 - the draft has already been considered by members of the Executive as well the Equality and Diversity Committee and suggested amendments have

been incorporated.

14. Members commented as follows:
- an essential precursor to the framework is to decide whether a “policy” is needed at all. If so, the reasons for this should be made clear to the Board;
 - policies need to be implemented and actively maintained through training and general awareness. The framework as proposed is a useful tool but the wider issue of keeping policies relevant and alive needs to be appreciated as well;
 - committees should also have sight of the policy framework and be advised as to its use. The outcome of the process should make clear what success the policy will bring;
 - responsibility for policy approval lies with the Board alone and new policies cannot be put into operation until they have been formally agreed. The framework needs to make this clear;
 - the diagram at Annex 2 of the report would be improved with the inclusion of some examples and some guidance notes to support it;
 - the framework needs to identify when the need and extent of resources required is to be assessed;
 - it should include some element of “red teaming” ie where the underlying assumptions are objectively challenged in a fair and constructive way to stress test the thinking behind them;

15. Vanessa Davies also reported a comment from Sarah Brown who suggested that the stage 1 gateway include external as well as internal stakeholders as sources of evidence.

16. **AGREED**

- a) to ask that the policy development framework be amended to take account of the above points.
- b) subject to (a) above, to approve the policy development framework for use and to engage with its implementation.

AT

**AT to
note**

Item 9 – Review of standard contractual terms and the cab rank rule

BSB 051 (14)

17. Ewen Macleod presented an update on a review of whether or not standard contractual terms should remain part of the BSB’s regulatory arrangements, in particular the obligation under the cab rank rule for barristers to accept work from solicitors if it is offered on those (or the barrister’s own) terms.
18. The salient points were:
- the review was prompted following the LSB’s investigation of Bar Council involvement in a rule change application about standard contractual terms in July 2012;
 - the Bar Council gave an undertaking to complete and publish a review by the end of July 2014 and, should a further rule change application be necessary, to submit this to the LSB by July 2015;
 - the July 2014 publication deadline is no longer feasible. A key problem is insufficient evidence. The new Code has not been in operation long enough to generate any direct feedback on the operation of the cab rank rule and there have been no specific concerns raised from consumers;
 - notwithstanding the above, there should still be time to consult and decide on any necessary rule changes by July 2015;
 - the report sets out two alternative approaches which might form the basis of a consultation on the cab rank rule as it applies to standard contractual

terms ie option A – require a barrister to accept “reasonable” terms under the cab rank rule and option B – require a barrister to publish his / her own “reasonable” terms (which may be standard terms produced by the Bar Council, Specialist Bar Association or others);

- the way forward could be through publication in September of a targeted call for evidence with a view to reaching a final decision in March 2015.

19. Vanessa Davies reported comments from Sarah Brown ie

- we need to proactively research the extent to which standard contractual terms are used and what replaces them as alternatives. In addition we also need to understand the extent to which the cab rank rule exemption is being employed;
- the report refers to “bullying” tactics by some solicitors and this might be worse were option A to be adopted;
- if option B means only applying the cab rank rule to terms specified by a barrister, then this may prompt objections. Moreover it is not the role of a regulator to determine what business practices are, or are not, “reasonable”, unless they are directly relevant to a complaint;
- any further review of the Handbook rules in relation to this issue should primarily be concerned about whether such changes would better meet regulatory objectives.

20. Members commented as follows:

- robust and thorough research work about contracts is desirable but this also takes time to complete and the practicality of achieving this in time for the March 2015 decision deadline might be questionable;
- there has been some difficulty in obtaining this sort of information in the past and it is not clear why the consultation proposed would be any more successful;
- neither option A nor option B provides an obvious answer and further evidence is necessary. However, the call for evidence must be balanced in its approach so that feedback is properly representative;
- the call for evidence needs to be properly structured and focus specifically on the operation of the cab rank rule;
- we need to develop a dialogue with the SRA, as the position of solicitors is obviously significant;
- we need to advise the LSB that we intend to delay publication of our review because the evidence base is currently too small, given the short amount that has elapsed, especially taking account of the period necessary for chambers to adjust to the new Code.

21. In response the following comments were made

- some evidence already exists about the different types of contracts that solicitors are currently offering barristers. However we are not clear as to the extent to which they are using the standard contractual terms;
- the legal market has changed significantly recently and in a short period of time and this may prompt a change in attitude in responding to the consultation.

22. **AGREED**
- a) to postpone, in the short term, any decision to remove the standard contractual terms and the list of defaulting solicitors from current regulatory arrangements but to re-visit this pending receipt of further evidence. **EM to note**
- b) that a call for evidence be made in respect of the above issues and in particular how and when the cab rank rule is used. **EM**
- c) to note that any application for a rule change following this call for evidence must be made to the LSB by July 2015.

Item 10 – Chair’s Report on Visits and Meetings: June 14 – July 14

BSB 052 (14)

23. **AGREED**
- The Chair confirmed the following amendments to her report.
- she did not attend the Bench Table meeting at Inner Temple (17 July 14)
 - she did not attend the Proms as a guest of the BBC (18 July 14);
24. In response to a question about the International Legal Ethics Conference (10-11 July 14), Sarah Clarke, a speaker at the conference, confirmed that the audience was mostly legal academics and those who had responsibility for teaching ethics.
25. **AGREED**
- to note the report.

Item 11 – Director’s Report

BSB 053 (14)

26. Contrary to the statement in paragraph 1 her report, Vanessa Davies advised that she did not open the BPTC Conference. The report identified a need for extra resources for the Communications Team. In response to a question she confirmed that this was for a six-month fixed term contract post and would be within budget. The purpose is to provide additional support for the introduction of entity regulation.
27. **AGREED**
- to note the report.

Item 13 – Any Other Business

28. BSB Annual Report 2013-14
- The Board formally received the Annual Report 2013-14 following approval of its content at the previous meeting.

Item 14 – Dates of next meetings

29. Thursday 11 September 2014 (budget).
Thursday 18 September 2014 (main meeting).

Item 15 – Private Session

30. 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) Data quality;
 - (2) Job titles and senior executive posts in the Bar Council;
 - (3) Approval of Part 2 (private) minutes – 26 June 2014 (Annex A);
 - (4) Matters arising;
 - (5) Action points and progress – Part 2 (Annex B);
 - (6) The governance of publishing regulatory guidance;
 - (7) QASA update;

- (8) Chair recruitment update and induction plans;
- (9) Update from LSB on entity regulation application;
- (10) Any other private business.

Stephen Crowne was invited to attend for items 1 and 2 above. The first item followed discussion on data quality and IT governance at previous meetings. The second item related to staff and the Board asked him to present the paper in his capacity as Chief Executive.

- 31. The meeting finished at 5.40 pm.