



REGULATING BARRISTERS

Meeting of the Bar Standards Board
Thursday 25 February 2016, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

			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 <ul style="list-style-type: none">• 28 January 2016 (*)	Annex A	Chair	3-10
5. Matters Arising (*)			
6. a) Action points and progress	Annex B	Chair	11-12
b) Forward agenda	Annex C	Chair	13-14
7. PRP Committee Report for Q3 (October 2015 – December 2015) (4.35 pm)	BSB 014 (16)	Anne Wright	15-29
8. Amending the definition of in-house employed practice (4.45 pm)	BSB 015 (16)	Ewen Macleod	31-45
9. Consultation on the Threshold Standard and Competences that underpin the Professional Statement (4.55 pm)	BSB 016 (16)	Andrew Sanders / Simon Thornton-Wood	47-74
10. Chair's Report on Visits and Meetings: Jan-Feb 2016 (*)	BSB 017 (16)	Chair	75-76
11. Director General's Report (5.15 pm)	BSB 018 (16)	Vanessa Davies	77-86
12. Any other business			
13. Date of next meeting <ul style="list-style-type: none">• Thursday 17 March 2016 (4.30 pm)			
14. Private Session			

John Picken, Governance Officer

JPicken@barstandardsboard.org.uk

18 February 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 250216

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 28 January 2016, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Naomi Ellenbogen QC (Vice Chair)
Rolande Anderson
Aidan Christie QC
Malcolm Cohen
Justine Davidge – items 8-16
Judith Farbey QC
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Nicola Sawford
- By invitation:** Keith Baldwin (Special Adviser)
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
Chantal-Aimée Doerries (Chairman, Bar Council)
Lynne Gibbs (Council of the Inns of Court)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Joseph Bailey (Senior Policy Officer)
Anatole Bhaboukian (Research & Evaluation Officer) – items 8-16
Nicholas Bungard (Regulatory Risk Analyst)
Viki Calais (Head of Corporate Services)
Michael Carter (Case Officer)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision)
Cliodhna Judge (Head of Supervision and Authorisation)
Sara Jagger (Director of Professional Conduct)
Tim Keeling (Change Programme Manager)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Amit Popat (Policy Manager – Equality and Access to Justice)
Jessica Prandle (Senior Policy Officer, Equality & Diversity)
Pippa Prangley (Head of Regulatory Risk)
Simon Thornton-Wood (Director of Education & Training)
Hannah Wilce (Legal & Policy Assistant)
Natalie Zara (Operational Support Team Manager)
- Press:** Nick Hilborne (Legal Futures)
Chloe Smith (Law Society Gazette)

Note: Emily Windsor (Special Adviser) was not present for Part 1 of the agenda but did attend for some of Part 2.

Part 1 - Public

Item 1 – Welcome

1. The Chair welcomed Members to the meeting and made the following announcements:
 - it is the first meeting that Judith Farbey QC is attending in her formal role as a Board Member;
 - Matthew Nicklin QC has resigned as Special Adviser to the Board as he feels his role in respect of CPD is now complete;
 - Lynda Gibbs is substituting for James Wakefield as the COIC representative for the meeting;
 - Two new staff members are attending their first Board meeting ie
 - ❖ Anatole Baboukhan (Research & Evaluation Officer);
 - ❖ Hannah Wilce (Legal & Policy Assistant).

Item 2 – Apologies

2.
 - Rob Behrens;
 - Adam Solomon;
 - Anne Wright;
 - Andrew Langdon QC (Vice Chairman, Bar Council);
 - Lorinda Long (Treasurer, Bar Council);
 - James Wakefield (Director, COIC);
 - Amanda Thompson (Director for Governance Reform).

Item 3 – Members’ interests and hospitality

3. None.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 26 November 2015.

Item 5 – Matters Arising

5. None.

Item 6a – Action points and progress**Action points and progress (Annex B)**

6. The Board noted progress on the action list. Malcolm Cohen asked that an item be added on regulatory responses to recommendations in the Youth Proceedings Advocacy Review Report.

JP to
note**Item 6b – Forward Agenda (Annex C)**

7. The Board noted the forward agenda list. It is likely that the items listed for February and March 2016 will be re-balanced. The Away Day will now include a workshop on the immigration thematic review.

Item 7 –Aggregated Diversity Data on the Barrister Profession

BSB 001 (16)

8. The following comments were made:
 - the report is based on data held as at 1 December 2015 and derived from the authorisation to practise exercise (this incorporates an E&D monitoring questionnaire);
 - completion rates for E&D data have increased, though responses for some categories remain low (religion or belief; sexual orientation and caring responsibilities);
 - the main issues are:
 - ❖ an underrepresentation of disabled practitioners;
 - ❖ a continuing disparity on gender, particularly at QC level;

Part 1 - Public

- ❖ no change on the progression of BME practitioners, again with an underrepresentation at QC level;
 - the BSB's Equality and Access to Justice Team will be closely involved in the design of the new Authorisation to Practise (AtP) portal which will be introduced in 2017. This should result in further improvements to completion rates for analysis in 2018.
9. Members commented as follows:
- the improving picture on disclosure rates is welcome;
 - the symposium on cross-cultural communication at the Bar held in January 2016 was particularly useful and we might possibly think in terms of developing a programme of similar events;
 - it would be useful to know how well the BSB compares with other regulators in terms of the disclosure rates it achieves;
 - it would be helpful to understand more about the storage and transferability of data;
 - a re-design of the Authorisation to Practise portal offers the chance to make a response mandatory. Although some might then use the “prefer not to say” option it may encourage more open responses from others;
 - we need to improve data on socio-economic background as the existing statistics may well be misleading. Nationally private education is small in scale compared to state education. The effect of low disclosure rates, however, may make it appear that these two categories are similar in size. This is not likely to be the case in reality;
 - there may be scope to improve how we ask some of the monitoring form questions eg making clear what we mean by “caring responsibilities”.
10. In response the following comments were made:
- other regulators face the same challenges on disclosure rates. The SRA is in a similar position to us and, in some categories, the BSB has the higher rate;
 - the data is stored indefinitely and is fully transferable to the incoming system. We can therefore build on what we have already recorded from previous AtP exercises. This assumes, however, that respondents will update their characteristics accordingly as some of these can change over time;
 - disclosure of data is voluntary so forcing a response through the re-design would run contrary to this principle;
 - the points on socio-economic status and caring responsibilities are noted and will be addressed as part of the re-design of the AtP portal / database.
- AP / JPr
to note
11. **AGREED**
to approve the Diversity Data Report 2015 for publication. AP / JPr
- Item 8 – Future Bar Training: Analysis of Consultation on Pathways to Qualification**
BSB 002 (16)
12. Simon Thornton-Wood presented the report on the recent BSB consultation on pathways to qualification. The salient points were:
- we received a very healthy response rate (58 replies in total from a range of interested parties);
 - the responses underlined the complexity of the issues involved;
 - the opinions expressed were very divergent.

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13. The responses have been summarised into a report by Courtney Brown from the Regulatory Policy Department and were circulated to Members under separate cover prior to the meeting.
14. The following comments were made:
- a significant proportion of responses came from Law Professors or University Law Schools. This might suggest we are light in terms of a voice on the vocational stage of training;
 - universities may have a particular agenda in mind and will need to be sure we get a balanced view.
15. In response, the following comments were made:
- policy will not be developed simply with a view to the perspective of universities. This consultation is only one part of a conversation on the future of legal education and training;
 - it can be the case that questions about educational standards provoke a defensive response from providers. We are already aware of this and the need for balance.
16. **AGREED**
to approve publication of the consultation analysis and to thank Courtney Brown for her work in preparing this document. **STW**

Item 9 – Review of the Disciplinary Tribunal Regulations – Consultation responses and final regulations for approval

BSB 003 (16)

17. Sara Jagger commented as follows:
- the report at Annex 1 summarises responses from last year's consultation on Disciplinary Tribunal Regulations Review;
 - the Working Group responsible for the Review has commented on the responses and reached a consensus on the majority. There are two issues which need further comment and a decision from the Board ie:
 - ❖ question 5 (powers for Tribunals to refer matters back to the BSB for the imposition of administrative sanctions)
 - ❖ question 11 (whether to retain existing arrangements for the publication of Disciplinary Tribunal decisions or amend these so that all decisions are available online – including those where cases were dismissed);
 - any rule change proposals will need to be approved by the LSB and are unlikely to take effect until the late Autumn as applications for changes to certain regulatory arrangements cannot be made during the period in which the BSB is being considered by the Lord Chancellor for designation as a licensing authority for ABSs
 - Michael Carter and Natalie Zara have both contributed significantly to this work and their work is gratefully acknowledged.
18. She also advised of a communication from COIC about the Board paper. The salient points were:
- the aim of COIC's co-ordinated response was to assist the BSB in assimilating the overall views of those responding on behalf of COIC. This combined view was derived from 20 individuals from three separate groups and all four Inns;
 - the Board paper, however, seems to weight the COIC response as 'one' ie equivalent to a single respondent which must be incongruous given the number of individuals and bodies the collective COIC response represents.

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19. With regard to this point, Sara confirmed that the Working Group had given due consideration (and due weight) to the views expressed by COIC in its subsequent deliberations. This also applied to COIC's response to question 8 of the consultation paper concerning the removal of its involvement in the disciplinary system except in relation to the pronouncement of disbarments. As set out in the paper, the view of the Working Group is that COIC's involvement is no longer required in the pronouncement of sentences in all cases ie for fines, reprimands and suspensions.
20. Members commented as follows:
- with reference to question 8, the views of the Working Group should be supported on the grounds expressed in the paper;
 - with reference to question 5, Tribunals should have the power to refer back matters to the BSB for administrative sanction, even if the likelihood of this happening in practice is small. The public interest is best protected by having this facility, particularly if the case against a barrister cannot be made to the necessary criminal standard of proof but there remains a residual need for some action to be taken;
 - in respect of question 11, the following points were made:
 - ❖ to publish full non-anonymised details may be unfair to the barrister concerned as a simple google search may well associate that individual with a disciplinary case, even though the case itself was dismissed;
 - ❖ a contrary view is that full transparency ought to be the default position and to do otherwise, even for dismissed cases, risks a perception that the BSB is compromising on its principles;
 - ❖ there is a case for greater public transparency and this is supported by COIC among others. The full judgment details could be published, rather than just the decision, if identity of the barrister was anonymised;
 - ❖ an "anonymised" entry on the web might not be effective as it may be possible to identify the individual from the circumstances described;
 - ❖ publishing a summary of the judgment should be sufficient to meet the public interest dimension for cases that have been dismissed. We could do this now without a rule amendment. However, there may be some cases that do warrant some extra disclosure. We would therefore need to build in some flexibility on this point and this would require a rule amendment;
 - ❖ there may be occasions when the barrister concerned would wish to waive anonymity so the rules should provide for this possibility.
21. The consensus view agreed was to amend the rule ie that a summary of dismissed cases will always be published and the default position is that this will be anonymised so the barrister is not identified. There will be some discretion available, however, insofar as:
- anonymity can be lifted if that is the wish of the barrister concerned;
 - the Tribunal can, exceptionally, order the full disclosure of the judgment if it considers this appropriate.
22. **AGREED**
- a) to note the consultation responses set out at Annex 1 of the report.
 - b) to amend the proposed rule changes in respect of questions 5 and 8 of the consultation in line with the above comments (mins 20 and 21).
 - c) subject to b) above, to approve the Disciplinary Tribunal Regulations as set out in Annex 1.

SJ

SJ to
note

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- d) to authorise final sign off of proposals to change the Disciplinary Tribunal Regulations to the Director General and the Chair of the Professional Conduct Committee.

Item 10 – Costs of Authorisation of a Bar Standards Board Alternative Business Structure

BSB 004 (16)

23. Cliodhna Judge highlighted the following:
- the proposed fees reflect the principle of full cost recovery and have been adjusted to take account of an anticipated take up rate of 20 per year. Those quoted in the paper are lower than stated in the consultation because we have since received revised (and lower) estimates for average costs per appeal to the First Tier Tribunal;
 - the single consultation response (from the Bar Council) endorsed the proposed approach and sliding scale of fees and emphasised the need for fee levels to remain competitive;
 - the proposed rates are considered competitive relative to the charges imposed by the Solicitors Regulation Authority;
 - the proposed fees are notably higher than those currently set for entities because the charges in respect of the latter were set with a higher take-up rate in mind (which has not subsequently occurred). To keep in line with the principle of full cost recovery, the fees for entities will therefore be reviewed in due course.
24. Members commented as follows:
- it is not clear how the estimated take-up figures have been identified;
 - we need to consider scalability, both in costs and resources so we can adjust cost and deploy staff effectively. We anticipate low take-up now but this could change over time and we should not over-recover our costs.
25. In response, the following comments were made:
- fees were modelled on a range of likely take up rates based on survey information and the figure quoted represents the median point;
 - the experience on entities shows that take-up rates are likely to be low but should this increase, we would have sufficiently flexibility in existing staff skills and knowledge to respond to the extra demand.
26. **AGREED**
- a) to note the consultation and responses.
 - b) to approve the proposed fee structure for ABS application and authorisation fees as set out in the paper.

**CJ to
note**

Item 11 – Education & Training: Annual Report to the Board for 2015

BSB 005 (16)

27. **AGREED**
to note the report.

Item 12 – Qualifications: Annual Report to the Board for 2015

BSB 006 (16)

28. **AGREED**
to note the report.

Item 13 – Chair’s Report on Visits and Meetings (Nov 15 - Jan 16)

BSB 007 (16)

29. **AGREED**

to note the report.

Item 14 – Director General’s Report

BSB 008 (16)

30. Vanessa Davies highlighted the following:

- two research projects are currently underway ie
 - ❖ public and licensed access review (jointly with LSB);
 - ❖ women at the Bar;
 Both have produced good levels of returns, particularly the latter;
- the standard report from the Resources Group is not included on this occasion but a more streamlined version will appear in future reports;

31. Members referred to the symposium held on 12 January entitled “Does cross cultural communication matter at the Bar?” which several Board Members attended. The following comments were made:

- this was a very useful event with very good speakers. We need to maintain our links with the voluntary sector organisations and consumer groups present;
- it is a good example of the BSB placing an emphasis on training and capacity building;

32. Rolande Anderson reminded colleagues on the Board of the online training for E&D and that a Task Completion Group for Equality Objectives will be established towards the end of the year. Members asked to be kept informed about the development of this Group.

**AP to
note**

33. The Chair also expressed his appreciation for the symposium organised by the Law Commission on proposals for reform of the law of Misconduct in Public Office (20 January 2016). This was organised by BSB Board Member Justine Davidge.

34. Vanessa Davies referred to the forthcoming market study on legal services by the Competition and Markets Authority (CMA). A summary of its scope has been received and Ewen Macleod has already met CMA representatives and will be drafting the BSB response. Full details are available on the CMA website.

35. **AGREED**

to note the report.

Item 15 – Any Other Business

36. None.

Item 16 – Date of next meeting37.

- Thursday 25 February 2016.

Item 17 – Private Session

38. 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 – Part 2;
- (4) Regulatory Risk: regulator position, Index changes and Framework update;

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- (5) Future Bar Training – developing options for future regulation;
- (6) Complaints Diversity Analysis 2015;
- (7) LSB Licensing Authority application and issues arising;
- (8) The Bar Council's Defined Pension Scheme – referral from the GRA Committee;
- (9) MoJ Consultation update;
- (10) Any other private business.

The meeting finished at 5.40 pm.

BSB – List of Part 1 Actions

25 February 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
11 (28 Jan 16) – Diversity data	publish the Diversity Data Report 2015	Amit Popat / Jessica Prandle	immediate	09/02/16	Completed
16 (28 Jan 16) – FBT consultation response	publish the consultation responses to “Future Bar Training: Analysis of Consultation on Pathways to Qualification”	Simon Thornton- Wood	immediate	09/02/16	Completed
22b (28 Jan 16) – DTR consultation	amend the proposed rule changes for disciplinary tribunal regulations in line with the comments given at the meeting for questions 5 and 8 of the consultation paper	Sara Jagger	immediate	15/02/16	Completed - Amendments drafted
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. 	Simon Thornton- Wood	before 31 March 16	16/02/16 19/01/16	In hand – agreed at GRA and recruitment being built into schedule; assurance framework in development. 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	Kuljeet Chung	by 31 Jul 15	16/02/16 19/01/16 16/11/15	In hand – legal advice being used for submission to LSB on competition law aspects being prepared. Ongoing – issues being considered by GRA on 19 January 2016 and update to be provided as necessary to Board. Ongoing – update in private session

BSB – List of Part 1 Actions
25 February 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
				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

NB – as at 16 February, business plan activities for 16/17 have not been incorporated into the forward agenda document: this will be done after sign-off of the Business Plan.

Thursday 17 March 2016

- Strategic plan 2016-19; Business Plan 16/17 – final
- Outcome of Fees and Charges Consultation
- Women's experience at the Bar
- CPD: consultation on regulations / outcome of pilot
- APEX recruitment
- Regulatory responses to recommendations in the Youth Proceedings Advocacy Review Report
- Risk Framework, Risk Index and Risk Outlook

Thursday 21 Apr 2016 (Board Away Day)

- Discussion on MoJ consultation
- Future Bar Training
- Immigration Thematic Review: workshop
- Board meetings (agenda content and time management)

Thursday 19 May 2016

- Immigration Thematic Review (Part 1)
- BSB Year-End Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- BSB Equality Objectives – progress review and setting of new objectives

Thursday 23 Jun 2016

- Draft BSB Annual Report 2015-16
- Public and licensed access review (Part 1)

Thursday 28 Jul 2016

- Approval of CPD regime changes (Part 2)
- Enforcement Annual Report
- FBT: Threshold standards – final confirmation post consultation

Thursday 15 Sept 2016 (budget) – **CANCELLED**

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

We propose to cancel the meeting on 15 September to avoid a date clash with the International Regulatory Conference. The agenda for that meeting will be merged into the one for 29 September 2016.

Thursday 29 Sept 2016 - no

- GRA Annual Report – includes the Report from the Independent Observer
- Approval of consultation on future model for training regulation, for publication

Thursday 27 Oct 2016

Thursday 24 Nov 2016

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

Thursday 15 Dec 2016 (Board Away Day)

Thursday 26 Jan 2017

Thursday 23 Feb 2017

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

Thursday 23 Mar 2017

PRP Committee Report for Q3 (October 2015 – December 2015)**Status**

1. For discussion and decision.

Executive Summary

2. This paper provides an update to members of the Board on the BSB's progress and performance in Q3 against the aims and activities set out in its 2015 -16 Business Plan. It covers a wide range of information (see the dashboard in Annex 1) relating to projects, financial position and performance measures, and it provides the Board with an assessment of progress against our plans, as reviewed by the PRP Committee. Overall the position is as projected in Q2 and for this reason some accounts of projects are not repeated in this report (this is clearly indicated where this is the case.)
3. The main “exception” areas highlighted in this report are:
 - a) Although expenditure remains roughly on track, we are forecasting that we will not meet our directly attributable **income projections** by year-end. A variety of factors has contributed towards this; eg lower numbers of Entity Regulation applications and no increases in Qualifications fees. For year-end, we are now forecasting:
 - (i) **Income:** £1,449k against projection of £1,875k (-23%);
 - (ii) **Expenditure:** £5,327k against a budget of £5,437k (2%);
 - b) Fourteen **business plan activities** are reported as off target in Q3; three of these activities are shown as not within our control (C3), whilst the others are deemed to fall within our control (C1). However, a significant proportion of these are well on track for completion within the business year.
 - c) **PCD performance against KPIs** has fallen due to various contributing factors; the Committee recommended that the nature of the KPIs be reviewed during the next business year.
 - d) Staff turnover is still a concern with a turnover rate of +30%. The HR report provided to the Committee gave a welcome update into some of the initiatives the organisation is taking to address this.
4. We are in the third year of our 2013–16 strategic plan and we are currently on track to achieve the majority of the activities within the strategic aims, although a small number will be pushed into the new Strategic Plan period.
5. The Committee held a joint meeting with the Governance Risk and Audit Committee, to discuss the approach to assurance, internal audit and performance reporting under the new governance arrangements. The distinctive roles of each committee were agreed in principle and will be reported on to the Board when the next iteration of the new assurance framework comes before it in Q1 of the 16/17 business year.

Recommendations:

6. Members of the Board are invited to:
- a) **scrutinise** the detail of the report;
 - b) **discuss** the main areas highlighted;
 - c) **make recommendations** to the Executive or the Committee as necessary.

Background

7. The 2013-16 Strategic Plan¹ seeks to enable us to become a more modern and efficient regulator operating at a high level of effectiveness. The five strategic aims outlined are to:
- a) Implement specialist regulatory regimes for advocacy services which operate in the public interest and in support of the regulatory objectives of the LSA2007;
 - b) Promote greater public and professional understanding of and support for our role and mission;
 - c) Set and maintain high standards of entry to and practice in a diverse profession;
 - d) Become more evidence- and risk-based in all we do, taking into account also the globalised legal services market; and
 - e) Strive for “best practice” as an organisation for those who work for us and those whom we serve.
8. The Business Plan for 2015-16 outlines our key activities for the year², and it is the third and final year of our Strategic Plan. The plan also sets out our budget and staffing requirements. This report describes our performance against our objectives and budget, as well as the overall performance within the BSB.

Reporting process

9. On a quarterly basis, the Corporate Support Team gathers information, in liaison with the Senior Management Team (SMT), and then reviews the activities in the Business Plan and provides progress updates. It is SMT members’ responsibility to provide explanations for delays or overspends and the associated risks or impacts and how they are being addressed. Resource Group colleagues provide the figures underlying the HR and IT performance data on a quarterly basis.
10. The live document against which business activities are reported was last updated on 26 January 2016, whereas our performance indicators are for Q3 only (as at 31 December 2015).
11. At the last meeting PRP meeting, it was suggested that we show the completed activities on the dashboard and hence the key has been expanded: green shaded items = completed activities.
12. The PRP Committee reviewed the performance report and provided comment. The Committee

¹ Strategic Plan - https://www.barstandardsboard.org.uk/media/1513219/bsb_strategic_plan_final_20.6.13.pdf

² Business Plan - https://www.barstandardsboard.org.uk/media/1658569/bsb_business_plan_2015-16.pdf

- encouraged the Executive team to reflect the lessons learned in the current year on project timescales in the plans for 16/17
- recommended that the make-up PCD KPIs be reviewed during 16/17 to provide assurance that the right indicators were being monitored and that information relating to them was sufficiently comprehensively collated and presented
- made further recommendations impacting on next year's budget (see Corporate Risk Register.)

Areas for further consideration

13. Activity is reported to the PRP Committee by exception. This means that only items which are not running to its budget, timetable or have other resourcing issues are highlighted below, and have been listed in the order that they appear in the 2015-16 Business Plan.

These include:

a) Alternative Business Structures (ABS), s69, and Entity Authorisation

- (i) This activity was described in the Q2 report and the substance is not repeated here. In summary we have now completed all the work required of us by the LSB and MoJ prior to the LSB's anticipated late March 2016 recommendation to the Lord Chancellor. We continue to work to an autumn 2016 roll out but will shortly be largely reliant on MoJ and Parliament who will control the designation time line.

b) Public and Licensed Access

- (i) Public and Licensed Access enables barristers to be instructed by a client directly without a professional client (usually a solicitor) also being instructed.
- (ii) The aim of the Public and Licensed Access review is to assess whether the current regulatory regime with regards to public and licensed access is suitably transparent, accountable, proportionate, consistent and targeted. The review involves gathering and analysing evidence, setting up a task and finish group, drafting a final report with recommendations to the Board. This report should inform decisions on whether specific policy or other regulatory responses are required to effectively manage risk in this area; whilst the report will make recommendations in this regard, the actual decision making and implementation of any decisions will be outside of the scope of the initial review and separate consultation (and an application to the LSB) will be needed prior to any changes to regulatory arrangements.
- (iii) The review has been delayed for a number of reasons, including:
- The launch of the new policy development framework requiring a different approach with more focus on evidence gathering;
 - Policy resource being diverted to the FBT project. Recruitment to a dedicated FBT policy manager post continues to be difficult;
 - We have jointly commissioned research into the provision of public access work with the LSB. This is due to report at the end of March 2016. The results of this will need to form part of the analysis stage before the formal report and any consultation; and

- Law for Life will review and rewrite the public access guidance and client care letters, including testing material with consumers. This should be complete by the end of March 2016.
- (iv) This Business Plan activity has now been reforecast. It is anticipated that all evidence gathering activities will be completed by the beginning of the next business year. Following on from this analysis of evidence can begin in Q1, a task and finish group established and a consultation launched by the end of Q1. The results of the consultation and recommendations will be presented to the Board by the end of Q2. The next stage will be to carry out some targeted stakeholder engagement, with LSB approval set for Q3 2016/17.
- c) Immigration Thematic Review
- (i) This activity was described in the Q2 report and the substance is not repeated here.
 - (ii) The following are the next agreed stages of the project.
 - An all BSB staff workshop was held on 4 February 16 to raise awareness of the project and gain wider input from staff on possible options;
 - Meeting with the Reference Group to be held on 26 February 2016 to review draft options;
 - Presentation of options to the Project Board in March;
 - Board workshop to be held in April; and
 - Final report and recommendations to be presented to the Board in May 2016.
- d) Review of the three-year rule
- (i) This activity was described in the Q2 report and the substance is not repeated here. The outcome of the associated consultation and proposals for a narrow rule change are before the Board this month (February 2016) and so the project will be completed this business year.
- e) Education and Training Policies and Access Routes
- (i) We had set out in our Business Plan to draft new Qualification Rules so that our Education and Training policies align with our new overarching approach to risk-based, outcomes-focused regulation. We also wanted to improve access routes into the profession and to reassess the regulation of the Academic Stage. These objectives are bound up with the Future Bar Training (FBT) programme.
 - (ii) Our FBT programme focuses on changing the way we regulate, in order to foster innovation, protect the rule of law, protect access to justice and safeguard standards for all those who rely on its services. It is a large-scale programme of work that had some indicative timelines when we drafted the 2015-16 Business Plan, but as we progressed with the projects, the plans were further refined. This means that according to the Business Plan, this activity is not on track, however it is being delivered according to the revised timescales, which advance well into the new Strategy. The revised overall timeline was noted by the Board at its January meeting.

- (iii) Analysis of the collected consultation data was published in January 2016, with options (that are currently under development) being announced in March 2016. The schedule sees a preferred option to be selected by the Board in June 2016 for detailed development up to September 2016. Our application for changes to our regulations is to be submitted to the LSB early in 2017.
 - (iv) PRP noted that the Programme was large-scale and complex and continued to be very leanly resourced, including onto 2016/17. The FBT Programme Board is currently overseeing the resourcing risks and a revised distribution of resources for 16/17 is now being considered by the Executive.
- f) Flexible Approach to CPD
- (i) We set out in 2015-16 to establish a more flexible approach to Continuing Professional Development (CPD), an activity that is labelled C1 i.e. in our control. The planning and testing stages formed part of the 2015-16 business year, with an intention to finish full implementation in 2017. This final milestone is on track, however some of interim check-points have been revised which has meant that this has been flagged on the dashboard.
 - (ii) Only small minorities of barristers (around 3 to 5%) do not fully comply with their CPD obligations each year, but there are risks attached to not having an effective CPD scheme in place; in that barristers will have an inconsistent and unstructured approach to learning and development or do no training to maintain our standards of practice. Consequently, there is a risk that some regulatory objectives (such as protecting and promoting in the public interest and the interests of consumers) may not be met.
 - (iii) We wanted barristers to focus and develop through a CPD scheme that encourages them to maintain professional and ethical standards at the Bar and which, through greater flexibility in our regulation, encourages barristers to take ownership of their learning and development. To protect the public, we have paid particular attention to developing a CPD scheme that will both add value to, and maintain high standards within the profession. The Board reviewed our new scheme and approved a policy shift in CPD; moving away from a prescribed number of hours of CPD, to an outcomes-focused approach (focusing on the impact of a barrister's learning on their ability to provide a competent service). This approach makes each practising barrister, responsible for deciding the amount and type of CPD they should carry out.
 - (iv) We wanted Barrister input on our proposed new CPD scheme for the Established Practitioners Programme (EPP) and, in particular, how it will be applied in the real world. Towards that goal, our Future Bar Training team produced a consultation paper where we invited Barrister comments on our proposed new scheme (see above). The consultation ran from 3 June to 2 September 2015.
 - (v) The introduction of an outcomes-based approach to CPD is a core element of FBT and is being managed through the Supervision Department, which is where the implementation of the operation of the new approach rests. The

responses on the consultation document have been analysed and a BSB response to the issues raised is currently being developed for consideration by the Board at its meeting in March 2016. An assessment of the information from the pilot (which sought to test the new approach in a live environment) will also have been made and will form part of the evidence to determine what changes to the CPD scheme need to be made to ensure that it is practicable and clear. A further consultation will follow on the detailed rules and regulations that will underpin the new Scheme and will reflect the contributions to the consultation and the pilot.

- (vi) The delivery of the new approach is being managed well within existing resources. Those resources have been supplemented by the transfer of the CPD officer within the Education and Training Department to the Supervision Department. This resource will gradually (as their commitments to existing Education and Training activity cease) become more involved within the implementation of the new CPD regime, as well as wider supervision and authorisation activities. It will also provide valuable additional and more flexible resource to the Department.
 - (vii) Analysis of the pilot outcomes and consultation responses was due to be completed in Q3, but is still ongoing (barristers have now submitted their final Record Cards) and we anticipate the analysis should be completed by early March 2016, when it should be reported to the March Board meeting. An analysis of the consultation responses has been carried out and a report is being completed. We still need to do work on developing the CPD New Scheme rules including a consultation, with submission to the LSB taking place around September/October 2016.
- g) Retention of women at the Bar, and Complaints diversity data
- (i) The PCD produced diversity reports for the periods 2007–2008 and 2009–2010. Further data collection and analysis is part of this year’s business plan.
 - (ii) This activity, labelled as C1, has been delayed by a quarter due to the additional analysis that was carried out and discussed at the E&D Committee meeting in December 2015. These findings were considered by the Board on 28 January 2016. By the end of Q4, this activity will be back on track in order for the three-yearly report on diversity in complaints to be published.
 - (iii) With regard to retention of women at the Bar, currently our statistics show almost 50% of people called to the Bar are women, however women are leaving the profession in disproportionate numbers compared to men. The Equality and Access to Justice Team has reviewed work completed by the Bar Council on the experience of women at the Bar. This has led to the BSB commissioning a survey of women barristers which will close mid-February 2016. The purpose of the survey was to better understand women Barrister's perceptions, expectations and experiences of the equality rules of the BSB Handbook. A report will be produced by the end of March, when this activity will be fully completed.

h) Disciplinary Tribunal Regulations Review

- (i) This activity was described in the Q2 report and the substance is not repeated here.
- (ii) A consultation response paper and several policy options were presented to the Board on 28 January 2016.
- (iii) The project initially slipped due to staffing changes within PCD. This activity was previously labelled as a C1 and will change to C3 pending approval by the LSB of the relevant change application. We are confident that our activity will be completed by the end of the business year but the Board should note that LSB approval cannot take place or effect until after we have been designated as a Licensing Authority: between LSB recommendation of that designation to the Lord Chancellor and his approval, there are constraints on what changes to the Handbook we can make.

i) User Feedback Survey

- (i) We had set out in the 2015-16 Business year to implement any recommendations arising from our User Feedback Survey research into PCD complaints (labelled C1). This will now no longer be completed within this business year as we are currently re-scoping the nature of the research.
- (ii) Board members will also recall that we stated in the Business Plan the need to enhance our consumer knowledge as part of our drive to be “satisfactory” against the LSB’s Regulatory Standards Framework. As part of this initiative, it was considered important to embed our learning on consumer engagement within our research strategy. This has meant revisiting the scope of the User Feedback Survey research. This activity is owned by the research team, under the supervision of the Director for Governance Reform (Amanda Thompson) and discussions on how to take this forward are currently taking place and a project plan/outline will be produced following the outcome of the discussions. It is likely that the planned project work on the 'Role of the Complainant in the Enforcement System' will become part of the consumer engagement strand of the ASPIRE programme³.

HR Dashboard

14. PRP members reviewed the HR dashboard and noted the change in sickness reporting figures. This is because SelectHR has been launched – the new HR self-service software. All of our reporting used to be a manual exercise and now some of it has been automated, which has meant that we are now able to generate much more accurate figures. We are able to capture the majority of sickness absences in real time, meaning that historic total sickness days in the BSB have appeared to increase. However our figures remain below the public sector average. We had suspected some under-reporting of short term sickness in the old system and the new system reports suggest this was the case.

³ ASPIRE (accessing staff potential in inspiring regulatory excellence)

15. Turnover remains the main concern as it continues to hover above 30%. There were six leavers in Q3 although two of these could be excluded from the figures as they remain employed at the Bar Council / BSB. PRP noted the reasons for departure of the remaining four.
16. PRP also reviewed the forward HR operating plan and noted the consistent level of improvement in HR delivery over the year, for which the HR Director and her team were to be congratulated.

Resources Group (RG) - Performance against the Service Level Agreement (SLA)

17. Overall, the service level agreement is working well and the aims, objectives and deliverables are on the whole, being met and on track.
18. The key points to highlight from the quarterly SLA monitoring meetings are:
 - a) There has been ever increasing positive feedback on the improvement of collaboration between the RG and BSB;
 - b) The Information Management (ie the IT Strategy) projects are mostly on track.
 - c) RG turnover reached 47% in Q3, which is higher than that at the BSB. HR, Finance, Records, and IT were all affected by leavers, however recruitment of replacement staff seems to have been successful.

PCD Performance Indicators

19. For the full PCD Performance Indicators table please see Annex 4. As will be seen from the table, the Q3 KPI target was not met primarily because the OPI 1 target was missed. That target is for the PCD's Assessment Team to either close or refer for investigation 80% of complaints within 8 weeks (41 working days).
20. The PCD has investigated the reasons and there is no one decisive factor causing the delays. There were a combination of contributing factors, including:
 - a) a spike in the number of new complaints in September 2015 (the month prior to the commencement of Q3);
 - b) an increase in cases where it was considered appropriate to give the complainant more time than normal to provide information or copy documents to support their complaint; and
 - c) delays in some cases arising from difficulties in allocation of files to, and receiving advice from, a member of the PCC.
21. The overall numbers are relatively small with the risk that small changes in the numbers affect the headline percentages more markedly than would be the case were there a larger number of cases being dealt with overall. We will be carrying out a more thorough review at the end of Q4. The PCD Independent Observer has noted that the delays at the Assessment stage would probably primarily relate to cases that were ultimately dismissed so whilst unfortunate, there was unlikely to have been a significant impact on regulatory risk.

2015-16 Budget and Forecast

22. Below are the headline figures for Q3, further detail can be found in Annex 2:

- a) In the nine-month period ending 31 December 2015 (Q3 of 2015-16), the BSB received £1,166k in income against our budgeted projection of £704k (+66%). By year-end, we predict directly attributable income will reach £1,449k against our budgeted projection of £1,875k (-23%).
- b) For expenditure, we have spent £3,830k against a budget of £4,110k (+7%). By year-end, we forecast that our expenditure will reach £5,327k against our total budget of £5,437k (+2%).

23. Detailed information on each departmental budget, which sets out the departmental forecasts and commentary on each line of the budget, can be provided to Board members upon request. The key pressures and challenges have been summarised from these documents and are set out below:

a) Staff costs:

- (i) We do not budget for recruitment or maternity costs as these types of expenditure are expected to be funded through underspends caused by vacancies. Currently we have six members of staff on maternity leave, and each of these roles is being covered by temporary members of staff. The HR dashboard shows the number of vacancies that we are currently recruiting to (see annex 2).
- (ii) We have progressed with the staff changes (linked with the Governance Review) and endorsed by the Board in September 2015. These will lead to staffing overspends that had not originally been predicted in the 2015-16 budget, but off set by underspends in non-staff budgets.

b) Income

- (i) The Board did not agree to increase the Qualifications Committee application fees, which means that there will be a shortfall against budgeted income in 2015-16. Regarding Entity Regulation, we had projected that there would be over 400 applications and approvals for these new business structures for the year, however only 39 so far have been fully authorised, and if this rate of applications received continues, our revenue will have underperformed significantly against our projections by year-end.

c) Non-staff Expenditure

- (i) We are forecasting that our research and consultancy budgets will be underspent at year-end and we have pared back these amounts in the 2016-17 budget.
- (ii) With regard to PCD Outsourced casework and legal fees, the budgeted figures were based on previous years' activity and trends, and it was thought that the number and complexity of cases would increase over time. This has turned out

not to be the case for 2015-16 to date and so there may be underspends associated with these areas at year-end.

Equality Impact Analyses

- 24. The Strategic Plan and Business Plan have already been through an equality impact assessment. The Performance Indicators related to HR also monitor our performance against various E&D measures.

Risk implications

- 25. PRP Committee members requested to see a copy of the Corporate Risk Register as reported to the GRA Committee.

Regulatory objectives

- 26. Delivery of Strategy is aligned to the Regulatory Objectives and relates to them as explained in the Strategic Plan documents.

Publicity

- 27. This report is presented in the Public part of the agenda.

Annexes

- 28. Annex 1 – Q1 Dashboard
Annex 2 – Management Accounts summary
Annex 3 – PCD Performance Indicators

Lead responsibility

Viki Calais, Head of Corporate Support
Natasha Williams & John Hall, Business Support Officers

Q3 Dashboard

Business Plan Activities (2015-16)						Service Standards (Core activity)																
Aim 1: Implement specialist regulatory regimes						Professional Conduct Indicators																
TIME	BUDGET	STAFF	CTRL	IMPRT	SIZE	PRP paper reference	KPI - % of complaints concluded or referred to disciplinary action within service standards	Q3 73%	Target 80%	⚠️												
⊗	⊙	⊙	c3	↑	3	Paragraph 12a	OPI - % of complaints concluded or referred to investigation within 8 weeks	68%	80%	⚠️												
⊙	⊙	⊙	c3	↑	3	Paragraph 12a	OPI - % external complaints concluded or referred to disciplinary action within 8 months following investigation	82%	80%	⊙												
⊙	⊙	⊙	c1	↑	2	Paragraph 12b	OPI - % of internal complaints concluded or referred to disciplinary action within 5 months following investigation	77%	80%	⚠️												
⊙	⊙	⊙	c1	↑	3		Qualification Committee Applications															
⊙	⊙	⊙	c1	↓	2		Time taken to determine applications from receipt of the complete application:															
⊙	⊙	⊙	c1	↓	2		Up to 6 weeks	76%	75%	⊙												
⊙	⊙	⊙	c1	↓	2	Paragraph 12c	0 to 12 weeks	98%	98%	⊙												
⊙	⊙	⊙	c1	↓	2	Paragraph 12d	Over 12 weeks	2%	2%	⊙												
⊙	⊙	⊙	c1-3	↑	2		Number of Service Complaints closed: Q3															
Aim 2: Promote greater public and professional understanding						2																
⊙	⊙	⊙	c1	↑	2	Stakeholder engagement strategy	2015-16 Q3 YTD actuals against budget															
⊙	⊙	⊙	c1	↑	2	Improvements to complaints & enforcement.	2015-16 YE fcst against budget															
Aim 3: High standards of entry to and practice in a diverse profession						Act	Bud	Var	Fcst	Bud	Var											
⊙	⊙	⊙	c1	↑	3	Benchmark for barristers knowledge and skills	£1,166k	£704k	£462k	⊙	£1,449k	£1,875k	-£426k	⊗								
⊙	⊙	⊙	c1	↑	4	Align education & training policies						Expenditure	£3,830k	£4,110k	£280k	⊙	£5,327k	£5,437k	£110k	⊙		
⊙	⊙	⊙	c1	↑	2	Paragraph 12e						Staffing (Rolling figures) Q3 2014-15			HR		Q3	Q4 14/15				
⊙	⊙	⊙	c1	↑	2	Paragraph 12f						Sickness (days/FTE)	5.1	6.7	⊙	Recruitment times						
⊙	⊙	⊙	c1-2	↑	3	Manages & shares data for E&T						Sickness (long term)	25.0	1.6	⊗	(approval to start		6.2	⊙			
⊙	⊙	⊙	c1	↑	4	Paragraph 12e						Turnover (%)	30.2	36.2	⊙	date (weeks))						
⊙	⊙	⊙	c1	↑	2	Paragraph 12e						IT Response times			Corporate Risk Register							
⊙	⊙	⊙	c1	↑	2	Paragraph 12e						2015-16 (Q2)		22 Oct 15		22 Jan 16						
⊙	⊙	⊙	c1	↑	2	Paragraph 12g						Response to high priority	100%	⊙	Likelihood	2	5	1	Likelihood	2	6	1
⊙	⊙	⊙	c1	↑	3	Paragraph 12h						Response to medium priority calls	98%	⊙	Likelihood	2	8		Likelihood	2	7	
⊙	⊙	⊙	c1	↑	2	Paragraph 12g									Impact	18		Impact	19			
⊙	⊙	⊙	c1	↑	2	Paragraph 12g									Service level agreement with BC (Resources Group)							
⊙	⊙	⊙	c1	↑	3	Regulatory risk framework embedded						Project Management Office	100%	⊙	HR	93%			⚠️			
⊙	⊙	⊙	c1	↑	2	Risk-based supervision						Records Office	90%	⚠️	Facilities Management	99%			⊙			
⊙	⊙	⊙	c1	↑	2	Implement a refreshed research strategy						IT	96%	⊙	Finance	94%			⚠️			
⊙	⊙	⊙	c1	↑	2	Women at the Bar																
⊙	⊙	⊙	c1	↑	2	Paragraph 12g																
⊙	⊙	⊙	c1	↑	4	Governance structure review																
⊙	⊙	⊙	c1	↑	4	LSB Regulatory Standards "satisfactory"																
⊙	⊙	⊙	c1	↑	2	User feedback survey																
⊙	⊙	⊙	c1	↑	2	Paragraph 12i																
Key																						
Control			Importance			Size			Weighting		Business Activities											
C1 - BSB Control	↑	More important	↑	1	Small piece of work	Dark Purple	Higher weighting		Green		Completed											
C2 - RG control	↓	Less important	↓	4	Large piece of work	Light Purple	Lower weighting		Light Green													
C3 - External control																						

BSB EXECUTIVE

BUDGET HOLDER: VANESSA DAVIES

	DEC	DEC	DEC	DEC	2015/16	2015/16	2015/16 Fcast vs		PRP paper ref.
	Q3	Q3	Q3	Q3	YE	YE	2015/16 Budget		
	ACTUAL	BUDGET	VAR	VAR %	FCAST	BUDGET	VAR	VAR %	
<u>Income</u>	£k	£k	£k		£k	£k	£k		
Professional Conduct	25	0	25		25	0	25		
Assessments	115	150	-35	-24%	115	163	-48	-29%	
Education and Training	840	27	813	2988%	1,057	977	80	8%	
Qualifications	171	338	-167	-49%	237	477	-240	-50%	
Entity Regulation	15	189	-174	-92%	15	258	-244	-94%	
QASA	0	0	0		0	0	0		
Total	1,166	704	462	66%	1,449	1,875	-426	-23%	Paragraph 22b)
<u>Expenditure</u>	£k	£k	£k	%	£k	£k	£k	%	
Executive	531	433	-98	-23%	704	629	-75	-12%	
Staff Costs	476	398	-78	-20%	601	557	-44	-8%	
Other Costs	88	55	-33	-60%	103	72	-31	-43%	
Strategy and Comms	522	604	82	14%	734	852	119	14%	
Staff Costs	450	413	-38	-9%	593	548	-46	-8%	
Other Costs	71	191	120	63%	140	304	164	54%	
Professional Conduct	929	957	27	3%	1,259	1,269	10	1%	
Staff Costs	825	809	-15	-2%	1,081	1,060	-21	-2%	
Other Costs	105	148	43	29%	178	209	31	15%	
Assessments	165	315	151	48%	316	421	105	25%	
Staff Costs	114	117	3	2%	162	156	-6	-4%	
Other Costs	50	198	148	75%	154	265	111	42%	
Education and Training	422	379	-43	-11%	500	455	-45	-10%	
Staff Costs	249	228	-22	-10%	321	297	-24	-8%	
Other Costs	173	152	-21	-14%	179	158	-20	-13%	
FBT	126	152	26	17%	163	173	10	6%	
Staff Costs	59	61	1	2%	82	76	-5	-7%	
Other Costs	66	81	15	18%	82	97	15	16%	
Qualifications	225	238	13	5%	333	314	-19	-6%	
Staff Costs	205	210	5	2%	303	278	-25	-9%	
Other Costs	20	28	8	27%	30	36	6	18%	
Regulatory Policy	479	566	87	15%	702	703	1	0%	
Staff Costs	391	406	16	4%	539	539	-0	0%	
Other Costs	88	160	71	45%	163	165	1	1%	
Entity Regulation	137	140	3	2%	166	183	17	9%	
Staff Costs	87	97	10	11%	107	129	22	17%	
Other Costs	50	43	-8	-18%	59	54	-5	-10%	
Supervision	293	326	33	10%	449	436	-13	-3%	
Staff Costs	289	296	7	2%	409	395	-15	-4%	
Other Costs	4	30	25	85%	40	42	2	5%	
QASA	0	0	0		0	0	0		
Staff Costs	0	0	0		0	0	0		
Other Costs	0	0	0		0	0	0		
Total	3,830	4,110	280	7%	5,327	5,437	110	2%	
Total Staff Costs	3,145	3,034	-111	-4%	4,199	4,035	-164	-4%	Paragraph 22 a)
Total Other Costs	717	1,085	367	34%	1,128	1,402	274	20%	Paragraph 22 c)

PCD Key Performance Indicators

- Performance in Q3 has fallen.
- 114 complaints have been received in Q3 in comparison to 95 in Q2 and 166 in Q1

PCD Measure		2015-16				2014-15 YE	2014-15 Target
		Q1	Q2	Q3	Target		
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	64%	84%	73%	80%	69%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	56%	86%	68%	80%	65%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	72%	69%	82%	80%	84%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	70%	94%	77%	80%	75%	80%

Over-Running Cases

Snapshot at the close of Q3 of 2015-16

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	65	10	15%
External Investigation (8 months)	57	4	7%
Internal Investigation (5 months)	49	3	6%
Total	171	17	10%

Note

OPIs and the overall KPI measure closed cases – In consequences, cases that are delayed (however legitimate the reason) will impact these figures.

The overall KPI reflects the combined effect of the three individual OPIs

Amending the definition of in-house employed practice

Status

1. For discussion and decision.

Executive Summary

2. The BSB recently issued a consultation on amending the definition of “employed barrister (non-authorised body)”. A “non-authorised 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. This paper discusses the views the BSB received in response to the consultation. Two substantive responses were received from the Bar Association for Commerce, Finance and Industry (BACFI) and the Bar Council. The views of these two responses were opposed to each other.
4. 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. In summary, the responses received have highlighted the complexity inherent in making changes in this area. It will therefore be necessary to take more time to consider the potential implications of the proposed change before proceeding with any application to the LSB.
5. This paper therefore recommends that no formal rule change be taken forward at this time and that individual waivers continue to be granted on a case by case basis. After further reflection, it may be possible to recommend an interim rule change pending the wider scope of practice review that will be planned for next year.

Recommendations

6. The Board is asked to:
 - a. **note** the responses to the consultation summarised at **Annex B**; and
 - b. **agree** to make no formal rule change at this stage and continue to grant waivers on a case by case basis.

Background

7. 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 review of the BSB’s Handbook. In the course of the wider 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”).

8. 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 to be a first step pending a more fundamental review of our scope of practice rules.
9. 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 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.
10. The consultation was approved by the former Standards Committee, following independent legal advice.

The Consultation

11. 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.
12. 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-authorised body)” to ensure different, more flexible employment arrangements are captured. The proposed definition in the consultation was:

“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*.”

13. 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 a regulated entity or its wholly owned service company. The barrister is "employed" by the entity or company.
 - 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.
14. 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**.
15. 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

16. 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?
17. 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.
18. 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.
19. 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”.
20. 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.
21. 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.
22. 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.

23. 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.

Next steps

24. The consultation responses have raised a number of issues that require further consideration by the BSB. We must also give proper consideration to the new statement of policy issued by the LSB. Amongst other things, this requires us to consider the potential for unintended consequences elsewhere in our regulatory arrangements of making a change to this particular rule. It is therefore recommended that we do not proceed with a rule change at present. A task completion group will be established to consider the points of principle that have been raised in the consultation response. It is likely that this issue will need to be considered in the round as part of our wider review of our scope of practice rules planned from 2016-17, but if the task completion group believes that an interim rule change would be helpful, this will come back to the Board in due course. If that is the case, the task completion group will consider the drafting comments made by the respondents to the consultation and a timeline on the detail any further work will be agreed at that point.

Equality Impact Assessment

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

Risk implications

26. In making a decision not to implement the proposed change at this time, the Board should consider the risk of confusion over what is permitted under the current rules. However, there would be greater risk in implementing a change without having fully thought through the concerns raised in the consultation. By maintaining an approach of granting waivers on a case-by-case basis we can ensure that only those arrangements that pose a low risk to clients are permitted. So far only two waivers have been applied for and granted. There is a risk that the narrow scope of permitted practice is misunderstood by employed barristers, who may already be practicing in more innovative “in-house” capacities. We have no exact figures at the moment on how many barristers may be in this category, but on the basis of anecdotal information we estimate it will be in the very low hundreds. Where this is the case, the risk to clients is assessed to be low. It would therefore not be a priority for supervision or enforcement action, unless a complaint is received and/or other rules in the Handbook are being breached.

Impacts on other teams/departments/projects

27. There will be no impact on other teams, departments or projects at this stage, as we are not yet recommending a rule change.

Consultation

28. The task completion group will give further consideration to the points raised in consultation responses before we formally respond to the consultation.

Consideration of the regulatory objectives

29. Not going ahead with the proposed change at this stage is likely to protect the public interest by avoiding the risk of unintended consequences. Failing to introduce greater flexibility in our rules could impact negatively on competition, access to justice or the interests of consumers by stifling innovation in services delivery. This will be mitigated by granting waivers and ensuring that in the longer term we properly review our approach to scope of practice.

Resource implications

30. 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

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-authorized **bodies**).

Q3: Are there any risks associated with broadening the definition of employed barristers (non-authorized 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]

Consultation on the Threshold Standard and Competences that underpin the Professional Statement

Status

1. For decision.

Executive summary

2. The Board is asked to approve a planned consultation on the threshold standard and competences for the Professional Statement; ie the requirements of a barrister at the point of qualifying to apply for a first full Practising Certificate. These define the required outcomes of pre-qualification training: the standards that must be achieved by all those entering practice. The threshold standard and competences are an essential requirement for the future design of training.

Recommendation

3. The Board is invited to **agree** publication of the consultation, planned for the week of 7 March 2016.

Background

4. The development of a Professional Statement was agreed by the Board at the inception of the Future Bar Training programme in 2014, in response to the clear direction for future training regulation that was set by the Legal Education & Training Review (2013), and consistent with the outcomes-focused approach enshrined in the Legal Service Board's Statutory Guidance (published February 2014).
5. In contrast to the SRA, the BSB plan for the Professional Statement addresses specifically the threshold standard required at the point of authorisation. This gives clarity to its purpose, maximises the opportunity for engagement with the profession and has the virtue of resulting in an uncomplicated statement.
6. The initial work on the Professional Statement was planned to define the scope of knowledge, skills and attributes required, which past standards had articulated less consistently. This work was consulted upon over the summer of 2015 and the Statement published in November.
7. That work anticipated this second stage, defining more to a level of detail the standards required.
8. This, then, is an important step in the development of the Future Bar Training programme. By setting out clear outcomes for pre-qualification training, we will help training providers to work to a consistent standard. We expect that an emphasis on outcomes will help us to promote innovation in the way training is delivered, at all stages.

Comment

9. The threshold standard and competences were anticipated as a second stage in the development of the Professional Statement, and we have benefitted from the views and evidence submitted in the previous consultation, which closed in October 2015. The contribution of the Council of the Inns of Court has been particularly helpful and their contributions have been incorporated where possible.

10. The threshold standards and competences were reviewed by the reconstituted Education & Training Committee at their meeting on 9 February.

Terminology

11. The consultation sets out a structure of (i) a single threshold standard and (ii) a set of competences. The terminology reflects that used in other professional domains, and medical practice in particular has been referenced in the design of this system. A tabulation of the structure of the Professional Statement, its competences and threshold standard is set out at Annex 1 of the attached consultation.
12. The **Professional Statement** is divided into four principle domains, each of which comprises a set of **knowledge, skills and attributes** that all barristers should possess. These have been agreed by the Board and published last year.
13. The **threshold standard** is a generally applied description of the quality expected in performance of each of the **competences**. These are set out in draft in this consultation, and we anticipate that they may change as a result of wider exposure to the experience of the Bar and of trainers and the academic community.
14. Separately, we plan to engage consumer representative organisations to ensure that the whole Statement and its terminology relate to their needs.
15. The terminology is also compatible with that adopted by the Solicitors Regulation Authority in the design of the Competence Statement for Solicitors, though we have adopted a simpler and more concise structure (partly because the SRA Statement further defines levels of competence throughout a solicitor's career).

Communications

16. With agreement from the Board, we plan to issue the consultation in the week of 7 March 2016, for a full twelve week period.

Resource implications

17. The development of the Professional Statement, the threshold standards and competences is accommodated within the resourcing plan for the Future Bar Training programme.

Equality & diversity implications

18. Equality and diversity considerations were considered in the drafting of the threshold standards and competences, and we have sought responses on the specific equality implications in the consultation. The final draft will be the subject of a full equality impact assessment.

Lead responsibility

Simon Thornton-Wood, Director of Education & Training

Annex A: draft consultation on Threshold Standard and Competences (with annexes 1 and 2)

Future Bar Training
The Professional Statement for Barristers
Consultation on Threshold Standard and Competences

Introduction

1. This consultation paper is an essential component of the Future Bar Training (FBT) programme.
2. FBT is our programme for change in education and training. We hope that by changing how we regulate, we can:
 - make education and training for the Bar more consistent, innovative and flexible;
 - remove unnecessary barriers to entry to the profession, including bringing down the cost of training.
3. In October 2015 we published a [Professional Statement](#) which describes the knowledge, skills and attributes that all barristers should have on ‘day one’ of practice (i.e. upon the issue of a full qualification certificate, on which basis they may apply for a full practising certificate). The Professional Statement provides:
 - a. a clear and objective point of reference for the regulation of training for the Bar and the development of training pathways;
 - b. a baseline for more detailed training specifications, education standards and establishing routes to authorisation;
 - c. a starting point for development of competences and a threshold standard.
4. The purpose of this consultation is to seek views on the draft threshold standard and competences. A summary of the relationship between these and the Professional Statement is attached in Annex 1. The drafts for consultation are in ‘Threshold Standard and Competences for the Professional Statement’ is attached in Annex 2.
5. The threshold standard and competences have been developed to elaborate on the Professional Statement and clearly demonstrate the abilities and standards required for any barrister specifically at the point of authorization (when the first full Practising Certificate is awarded).
6. We have developed the threshold standard and competences to meet the needs of our regulated community and its consumers. We have worked with the Solicitors Regulation Authority to ensure consistency of requirements between the two professions where their training intersects, and particularly in relation to the academic stage, where divergent competences could make a coordinated approach unworkable.
7. This consultation document describes how we have developed the draft threshold standard and competences and invites comments on them.

The Professional Statement, threshold standard and competences

What is the Professional Statement?

8. The Professional Statement describes the knowledge, skills and attributes that all barristers should have on ‘day one’ of practice.
9. The Professional Statement was the subject of a full consultation exercise prior to the adoption of the definitive Statement by the Board and its publication in October 2015.

What are the competences?

10. The competences describe what a barrister should be able to do and have been defined for each knowledge, skill and attribute of the Professional Statement. They set out at a level of detail, the outcomes they must achieve to demonstrate the knowledge, skills and attributes specified in the Professional Statement.
11. The competences must be sufficiently comprehensive to encapsulate the breadth of the requirements of barristers on ‘day one’ of practice. They must be concise, assessable and suitable to act as an umbrella for detailed learning outcomes to be developed by educators and training organisations.
12. We have not set out a full specification of the knowledge requirements in this document, (i.e. a syllabus, as currently set out in the respective Handbooks of the Academic Stage and the BPTC). We will address these requirements separately.

What is the threshold standard?

13. The threshold standard is the minimum standard to which the competences must be performed on ‘day one’ of practice. Newly qualified barristers will aspire to higher standards but must meet the minimum standard.
14. Standards are also incorporated within the competences, and *the threshold standard and the competences must be read together*.
15. It is important that the threshold standard is set at the right level for barristers on “day one” of practice. The threshold standard must protect clients, preserve the trust and confidence which the public places in the profession and facilitate the administration of justice, whilst recognising that a newly-authorized barrister cannot be expected to work at the same level as one who has practised for some years.

The LSB’s *Statutory Guidance on Education and Training* requires that regulators set standards that “find the right balance between what is required at the point of being issued a full practising certificate, and what can be fulfilled through ongoing competency requirements”.

16. The threshold standard and competences will be used to:
 - a. inform the development of learning outcomes;
 - b. create Bar training pathways, learning opportunities and assessments;

- c. enable prospective barristers to demonstrate that they have reached the standards required for them to be issued a full practising certificate;
- d. inform those seeking to enter the profession what they will need to achieve to be authorised to practise.

Who are the Professional Statement, threshold standard and competences for?

17. **The Bar Standards Board:** They will assist us in maintaining standards of both those entering practice and providers of education and training. They will inform the development of alternative pathways to qualifications and the assessments we control.
18. **Those involved in the design and delivery of education and training for the Bar:** They will be used to inform the development of education and training materials and pathways.
19. **Aspiring barristers:** Clearly understanding the competences that must be achieved in order to be authorised will help aspiring barristers make informed decisions about their future development.
20. **Practising barristers:** The Professional Statement, threshold standard and competences describe the essential knowledge, skills and attributes that they should expect of themselves and their peers and the minimum standard that they must adhere to. They do not replace the Code of Conduct, and all barristers must continue to comply with the regulations set out in the BSB Handbook, which will remain the sole reference point for disciplinary matters.
21. **Consumers:** The Professional Statement, threshold standard and competences may be used to inform an understanding of the barrister's role and the service a consumer can expect to receive. Complaints will continue to be dealt with under the Code of Conduct or the Legal Ombudsman.

The evidence base for the Threshold Standard and Competences

22. Standards for the profession are currently found in a number of our documents including:
 - a. the BPTC Handbook;
 - b. the BSB Handbook;
 - c. the Pupillage Handbook;
 - d. QASA Handbook.

These existing standards were 'mapped' to the Professional Statement and used in the development of the threshold standard and barrister competences.

23. The threshold standard and competences were developed by two legal academics with extensive experience in both the academic and vocational stage of training. The approach taken was to develop a set of competences to sit beneath each knowledge, skill and attribute defined in the Professional Statement and a single threshold standard that would apply to all competences.

24. The threshold standard and competences were developed by reference to:
- Existing standards (as highlighted in the mapping document above);
 - Responses to the original consultation on the Professional Statement;
 - Solicitors Regulation Authority Statement of solicitor competence (in order to ensure that there is consistency between the two professional regulatory bodies, where that is appropriate);
 - Various other professional statements including those for the medical profession, civil servants and legal executives.

25. The draft threshold standard and competences have been reviewed by a consultative group of barristers, including one with senior level experience in vocational training.

The draft threshold standards and barrister competences have also been reviewed by our Education and Training Committee.

Their feedback has been used to test the basic approach, terminology, the validity of the competences, appropriateness of the standard and overall usefulness and clarity. Amendments were made on the basis of their responses.

Structure

26. The diagram in Annex 1 explains the terminology used and the relationships between the various elements of the Professional Statement and the newly drafted threshold standard and competences (by reference to examples).
27. You will find the draft threshold standard and competences in Annex 2, marked by boxes within the Professional Statement.

Consultation questions

Question 1

Are the competences sufficiently comprehensive to encapsulate the breadth of the specific competences of a barrister on 'day one' of practice?

Question 2

Do the competences contain the appropriate level of detail?

Question 3

Are there any competences missing?

Question 4

Have the competences been drafted sufficiently widely to enable educators and training organisations to draft more detailed outcomes and assessment criteria?

Question 5

Do the standards in the competences and threshold standard reflect what would be expected of a barrister on ‘day one’ of practice?

Question 6

Will the threshold standard and competences be a useful tool to help training providers, prospective barristers and consumers understand the required competence of a barrister on the first day of practice?

Question 7

Do the threshold standard and competences strike the right balance between the broad qualification which our research tells us is encompassed by the title barrister, and the degree of focus which comes in time with practice in a particular area?

Question 8

Have we articulated sufficiently the distinction between (a) the Professional Statement Threshold Standard and Competences (in particular its use for education and training) and (b) the role of the BSB Handbook and Code of Conduct (in defining how a barrister must conduct themselves throughout their career)?

Question 9

Are you aware of any impacts on equality and diversity, either positive or negative, which might result from using the threshold standard and competences as a tool to assist our regulatory activities? If yes, what are these?

PLEASE GIVE REASONED ANSWERS IN YOUR RESPONSES

Equality impact assessment

28. We have undertaken an initial screening of the function of the Professional Statement and did not identify any adverse impacts.
29. After this consultation process we will undertake a full Equality Impact Assessment for the threshold standard and barrister competences.

How to respond

We welcome feedback on everything we do as a regulator. There are many ways in which we engage with the public and the profession, from open meetings to webinars and social media. Our website always has up-to-date information about these opportunities. To share your views on this consultation, please contact us in the following ways:

Online, by visiting:

[X]

By email, to

futurebartraining@barstandardsboard.org.uk

By post, to:

Future Bar Training – Threshold Standards consultation
The Bar Standards Board
C/O Hannah Wilce
289-293 High Holborn
London
WC1V 7HZ

With postal and email responses, please state:

- your name or the name of the person on whose behalf you are responding (unless you wish to respond anonymously);
- your role (e.g. barrister, consumer, legal academic)
- your location
- if you wish for us to treat any part or aspect of your response as confidential

Responsible officer

The officer responsible for this work at the BSB is Tim Keeling. Please return your responses, or direct any questions, to futurebartraining@barstandardsboard.org.uk.

Deadline

Please email your responses by **X**

Confidentiality

We may publish a list of respondents to the consultation. Please state clearly if you do not wish your name and/or response to be published. Although we may not publish all individual responses, it is our policy to comply with all Freedom of Information requests.

Our consultants and advisors

Our consultants are Jane Chapman and Carol Wadsworth-Jones; their work was informed by a consultative group of barristers: Rebecca Foulkes, Samantha Pullin, Paul Mertens and Deveral Capps.

Jane qualified as a solicitor and joined the College of Law (now the University of Law) in 1985. In 2012 Jane was appointed Vice President (Academic Governance, Quality and Standards), Chair of the Academic Board, a member of the Academic Standards Committee and a member of the executive management team. Jane was responsible for quality assurance and standards of the academic and professional programmes (including the BPTC). She left the University to pursue consultancy work in professional legal education. Jane holds a BA in Law.

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Carol qualified as a solicitor in 1979, practised until 1988 then entered Higher Education. She was latterly Associate Professor and the Director of Programmes at the College of Law (now University of Law) responsible for the delivery of all programmes (including the BPTC) across the University. She has edited sections of Halsbury's Laws, and sat on the SRA's Education and Training Committee and various accreditation panels. She is a member of the Society of Legal Scholars and a fellow of the Higher Education Academy. She now consults independently. Carol holds a BA in Law and French.

XX February 2016

ANNEX 1

Relationship between the Professional Statement, threshold standard and competences

	Terminology	Explanation	Example
PROFESSIONAL STATEMENT	Knowledge Skills and Attributes	<p>The knowledge, skills and attributes are grouped under four domains:</p> <ol style="list-style-type: none"> 1. Barristers' distinctive characteristics 2. Personal values and standards 3. Working with others 4. Management of practice <p>Barristers will have all the knowledge, skills and attributes on 'day one' of practice.</p>	2.2 Be honest in their dealings with others
	Commentary	A set of explanatory notes on the knowledge, skills and attributes to be used for guidance only	They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading
THRESHOLD STATEMENT AND COMPETENCES	Competences	<p>Ability to perform the roles and tasks required by one's job to the expected standard.</p> <p>Competences have been defined for each knowledge, skill and attribute. Barristers must demonstrate all the competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.</p> <p>Competences are assessable.</p>	<p>Barristers must:</p> <ol style="list-style-type: none"> a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16]. b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status. c) Ensure that any information they give is accurate, true, complete and not likely to mislead.
	Threshold Standard	<p>The threshold standard is the minimum standard to which the barrister competences must be performed on 'day one' of practice. Newly qualified barristers will aspire to higher standards but must meet the minimum standard.</p> <p>Standards are also incorporated within the competences: the threshold standard and competences must be read together.</p> <p>The draft threshold standard is set out in the introduction of Annex 2.</p>	

ANNEX 2**THRESHOLD STANDARD AND BARRISTER COMPETENCES FOR THE PROFESSIONAL STATEMENT****THRESHOLD STANDARD**

The Professional Statement describes the knowledge, skills and attributes that all barristers should have on 'day one' of practice (i.e upon authorisation, when a full Practising Certificate can be applied for).

Competences are defined for each knowledge, skill and attribute. Barristers must demonstrate all competences in order to evidence that they have the knowledge, skills and attributes specified in the Professional Statement.

The statement below describes the level or standard to which the competences must be performed. Standards are also incorporated within the competences: the threshold standard and the competences must be read together.

On 'day one' of practice, barristers cannot be expected to demonstrate the level of excellence that might be expected of a barrister of some years standing. Newly qualified barristers must:

- a) always perform at an acceptable standard, that is the standard of performance must be at least satisfactory (fit for purpose though not necessarily outstanding or perfect), and
- b) perform within a reasonable timeframe (a reasonable timeframe for a newly qualified barrister may be longer than it is for an experienced barrister), and
- c) be able to deal with straightforward or uncomplicated or familiar work unaided, and
- d) recognise and ask for support when it is needed in order to complete more complex or complicated or unfamiliar work

BARRISTER COMPETENCES

The competences have been devised from existing standards articulated in the BSB Handbooks and other established sources. They are identified by a box underneath the knowledge, skills and attributes which have previously been defined in the Professional Statement (preceded by the words 'Barristers must'). Where there is a cross-reference in square brackets, the intention is to incorporate all the competences under that knowledge, skill or attribute.

1. Barristers' distinctive characteristics

Legal knowledge, skills and attributes

Barristers will:

1.1 Uphold the reputation of the Bar and observe their duty to the court in the administration of justice.

They will recognise and abide by their paramount duty in this regard including where this may require them to act against their own or their client's best interests.

Barristers must:

- a) Thoroughly recall and comprehend the Core Duties and their interrelationship.
- b) Ensure that their conduct justifies their clients' and colleagues' trust in them and the public's trust in the profession and they must:
 - (i) Consistently apply the Core Duties and in particular the paramount duty to the court in the administration of justice;
 - (i) Demonstrate a thorough comprehension of the principles and values in the Professional Statement for Barristers.

1.2 Have a knowledge and understanding of the key concepts and principles of public and private law.

They will have a good understanding of the general principles of law underpinning the legal system of England and Wales, including the implications of EU law, and be able to apply this as necessary.

Barristers must:

- a) Thoroughly recall and comprehend and accurately apply to factual situations the principles of law and rules of procedure and practice prescribed by the Bar Standards Board.
- b) Be aware of significant changes to these principles of law.

1.3 Have a knowledge and understanding of the law and procedure relevant to their area(s) of practice.

They will have a good understanding of, and be up-to-date with recent cases and developments in, the area(s) of law in which they practise. They will have a good understanding of the rules of practice and procedure operating in courts relevant to their area(s) of practice. For example, the rules relating to jurisdiction, evidence,

disposals, financial orders and costs. They will understand the processes by which disputes can be resolved outside court, such as arbitration and mediation.

<p>Barristers must:</p> <ul style="list-style-type: none"> a) Thoroughly recall and comprehend the core law and rules of procedure and practice relevant to their area of practice. b) Know the legal texts, journals, materials, documents and research tools relevant to their area of practice. c) Accurately apply to the matters they are dealing with the law and rules of procedure and practice relevant to their area of practice. d) Keep their knowledge and skills in their specific area of practice up-to-date. e) Comprehend and be able to identify and advise clients of situations where alternative forms of dispute resolution may be appropriate to their given circumstances.
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1.4 Have an awareness of the wide range of organisations supporting the administration of justice.

They will understand that the system for administration of justice comprises more than the judicial system alone and will have an awareness of the other elements wherever they are relevant to their work. They will also have an awareness of the sources of advice and funding available to clients, their additional responsibilities in cases that are not self-funded, and the implications of the same for the conduct of a case.

<p>Barristers must:</p> <ul style="list-style-type: none"> a) Be aware of the wide range of organisations supporting the administration of justice and their respective roles. b) Be able to identify and advise clients of alternative sources of advice and funding available to them. c) Understand the implications for the conduct of the case and the additional responsibilities owed in circumstances where the client is not self-funded.

1.5 Apply effective analytical and evaluative skills to their work.

They will identify the relevant facts of a matter and apply their legal and procedural knowledge to those facts to analyse the issues. They will acquire an understanding of their client's circumstances, needs, objectives, priorities and constraints. They will use that analysis and understanding to evaluate the available options and communicate them to their client.

Barristers must:

- a) Identify all necessary information and seek clarification of instructions using appropriate communication skills.
- b) Rigorously assess facts and evaluate key issues and risks.
- c) Analyse financial information.
- d) Recognise inconsistencies and gaps in information.
- e) Methodically evaluate the quality and reliability of the information.
- f) Use multiple sources of information to make effective judgements.
- g) Employ effective research skills [1.12].
- h) Identify relevant legal principles.
- i) Accurately apply legal principles to factual issues to devise the most appropriate solution taking into account the client's circumstances, needs, objectives, priorities and constraints.
- j) Reach reasoned decisions supported by relevant evidence.
- k) Be able to explain and justify their analysis, synthesis and evaluation.

1.6 Provide clear, concise and accurate advice in writing and orally and take responsibility for it.

Advice in writing will include written opinions and advising by email. Oral advice will include conducting conferences and advising by telephone. This will also include advising on the need and preparation for trial where an earlier disposal of the case does not occur, and the ability to convey unpalatable advice where necessary.

Barristers must:

- a) When giving advice take into account the client's circumstances and objectives.
- b) Ensure that advice is informed by appropriate analysis, synthesis and evaluation and where appropriate identifies and evaluates the consequences of different options.
- c) Address and present all relevant legal and factual issues in communicating their advice.
- d) Exercise good communication skills [1.9].

1.7 Negotiate effectively.

They will be able to recognise the strengths and weaknesses of the client's case and that of all other parties and to seek an outcome by negotiation which is in the best interests of the client.

Barristers must:

- a) Identify in so far as possible all parties' interests, objectives and limits.
- b) Develop and formulate best options for meeting parties' objectives.
- c) Present options for compromise cogently.
- d) Recognise, evaluate and respond to options presented by the other side.
- e) Develop appropriate compromises between the options or parties.
- f) Bring the negotiation to an appropriate conclusion depending on the outcome.

Practical knowledge, skills and attributes

1.8 Exercise good English language skills.

They will have an effective command of the language and be able to use it appropriately, accurately and fluently so as to handle complex and detailed argumentation. They will use correct English grammar, spelling and punctuation.

Barristers must:

- a) Use correct vocabulary, English grammar, spelling and punctuation in all communications.
- b) Speak fluent English within a professional context.

1.9 Exercise good communication skills, through any appropriate medium and with any audience as required in their work.

They will be able to choose the appropriate medium of communication, taking into account the message and the audience. They will be aware of and responsive to what others are communicating to them, whether in writing, verbally or non-verbally. They will be able to write with clarity and precision. They will be articulate and able to speak with fluency. They will be able to adapt their language and communication to suit their audience, which may be clients, colleagues and others, from any background.

Barristers must:

- a) Identify the audience.
- b) Select the appropriate medium of communication taking into account the message and the audience.

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| c) | Adapt language and non-verbal communication taking into account the message and the audience. |
| d) | Use appropriate listening and questioning techniques when obtaining information. |
| e) | Analyse written information. |
| f) | Request and provide clarification of meaning when appropriate. |
| g) | Recognise and respond to communications from others (whether in writing, verbal or non-verbal). |
| h) | Exercise good English language skills [1.8]. |
| i) | Write with clarity, accuracy and precision. |
| j) | Speak articulately and fluently. |
| k) | Present arguments cogently and succinctly. |
| l) | Exercise these skills appropriately in meetings and conferences (whether conducted face to face or remotely). |

1.10 Make sound judgements in their work.

They will ensure their judgements are independent, based on a good understanding of the relevant law and evaluation of relevant facts and information, and that any advice they give or decisions they make are reasoned and supported by evidence.

Barristers must:

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| a) | Apply effective analytical and evaluative skills to their work [1.5] |
| b) | Ensure that they act independently so that their judgements are not influenced by external pressures. |
| c) | Take responsibility for their decisions. |

1.11 Ensure they are fully prepared.

They will be familiar with the facts and law applicable to any matter on which they are working, as well as their client's circumstances and goals, so as to be able to supply their client with a good standard of work.

Barristers must:

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| a) | Ensure that they are fully prepared in order to act in the best interests of the client [3.1] and provide a competent standard of work and service to the client [CD7]. |
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1.12 Employ effective research skills.

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Using either paper or electronic media, they will be able to recognise and identify relevant legal issues as well as recognise the need to research areas beyond the law that are relevant to their work. They will undertake any research accurately and efficiently. This will involve assessing the quality and relevance of sources, interpreting and evaluating the results of the research and presenting those results clearly and accurately.

Barristers must:

- a) Accurately identify the legal and non-legal issues.
- b) Recognise when legal and non-legal research is required.
- c) Use appropriate methods and resources (paper, electronic or other media and/or relevant experts) and ensure that sources are up-to-date.
- d) Assess the quality and relevance of sources.
- e) Interpret and evaluate the results of the research.
- f) Apply effective analytical and evaluative skills [1.5].
- g) Apply the research to the issues identified in order to draw conclusions.
- h) Evaluate and present the results clearly and accurately.

Advocacy

1.13 Draft court and other legal documents which are clear, concise, accurate and written so as to reflect fairly the arguments advanced by both sides.

They will be able to draft standard court documents. For example, claim forms, statements of case, witness statements, applications, indictments, orders and appeal documents. They will be able to draft these documents in clear language which focuses on the issues relevant to the case.

Barristers must:

- a) Draft accurate and legally effective documents.
- b) Utilise precedents where appropriate and also be able to draft without them.
- c) Address all relevant legal and factual issues.
- d) Comply with appropriate formalities.
- e) Exercise good English language skills [1.8].
- f) Exercise good communication skills [1.9].

1.14 Draft skeleton arguments which present the relevant facts, law and arguments in a clear, concise and well-structured manner.

They will be able to draft skeleton arguments that have clarity of purpose, are of an appropriate length and which comply with any applicable rules. Their arguments will identify the issues and will cite authorities and external materials in an appropriate manner.

Barristers must:

- a) Undertake a comprehensive case analysis applying effective analytical and evaluative skills [1.5] and employ effective research skills [1.12] as appropriate.
- b) Identify and select the pertinent information for the skeleton argument.
- c) Draft the skeleton argument so as to be a valuable aid to oral advocacy and useful to the court by:
 - (i) Presenting the information in a structured and focused manner;
 - (ii) Providing a summary of the proceedings to-date;
 - (iii) Relating issues to one another;
 - (iv) Using appropriate citations;
 - (v) Summarising in writing a reasoned argument in a clear, logical, succinct and persuasive way;
 - (vi) Presenting a cogent statement of reasons for disposing of the case in the manner requested.

1.15 Have persuasive oral advocacy skills.

They will be able to communicate their client's case effectively. They will be able to deliver coherent, well-structured and concise submissions and cite legal authorities and materials appropriately. They will be able to engage appropriately with and maintain an awareness of others in any forum where they represent clients.

When delivering submissions and questioning witnesses, they will be able to communicate audibly, using both pace and language that are appropriate to the tribunal. They will be able to handle witnesses in accordance with the rules of the court. They will ask questions which assist the court, focus on the real issues in the case and avoid the irrelevant. They will listen to the answers and demonstrate appropriate conduct towards the witness.

Barristers must:

- a) Thoroughly recall and comprehend and accurately apply to the matters they are dealing with the law and procedure relevant to advocacy.
- b) Apply effective analytical and evaluative skills [1.5].
- c) Identify strengths and weaknesses from different parties' perspectives.
- d) Prepare how they will effectively communicate the argument.

- e) Manage facts to support the argument or position.
- f) Present orally a reasoned argument in a clear, logical, succinct and persuasive way.
- g) Use and cite legal authority appropriately.
- h) Comply with formalities.
- i) Recognise the role of different types of witness and use appropriate techniques for witness handling.
- j) Listen and respond effectively to questions and opposing arguments.
- k) Deploy advocacy skills efficiently and effectively in response to legitimate pressures and/or short notice.

Professional standards

1.16 Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct.

They will clearly understand a barrister's Core and apply them in all aspects of their work.

Barristers must:

- a) Identify and select the most recent Code of Conduct rules and other applicable rules and regulations relevant to their practice and the conduct of any matters they are dealing with.
- b) Recognise potential ethical situations and identify ethical issues.
- c) Behave ethically in accordance with the Code of Conduct and other applicable rules and regulations.
- d) Consistently act in accordance with the Code of Conduct, rules and regulations.

1.17 Know how to conduct themselves appropriately in court.

They will know and use the required dress, accepted forms of address, formalities of proceedings and established conventions and customs in each forum where they represent clients.

Barristers must:

- a) Use the required dress, accepted forms of address, observe formalities of proceedings and follow established conventions and customs in each forum where they represent clients.

1.18 Only accept work which they believe they are competent to undertake

They will be able to assess the level of their own knowledge, skills and attributes, to enable them to make an informed judgement on the acceptance of work and have the resilience to decline to act where necessary.

Barristers must:

- a) Recognise and operate within the limits of their competence.
- b) Explain clearly the limits of their competence and knowledge to relevant others.
- c) Consult others where appropriate.
- d) Make an informed judgement on the level of knowledge, skills and attributes required in a particular case.
- e) Decline to act where necessary and refer a client to an appropriate other where this serves the client's best interests.

2. Personal values and standards

Barristers will:

2.1 Act with the utmost integrity and independence at all times, in the interests of justice, representing clients with courage, perseverance and fearlessness.

They will be aware of and recognise the explicit and implicit pressures to behave in any other way and resist those pressures even where to do so may be against their personal interests.

Barristers must:

- a) Identify situations where their integrity and or independence may be put at risk.
- b) Act with integrity including:
 - (i) Identifying and avoiding personal bias;
 - (ii) Maintaining their independence from external pressures;
 - (iii) Identifying potential conflicts of interest, being open about conflicts of interest, declaring conflicts of interest formally and being prepared to exclude themselves from acting;
- c) Uphold the reputation of the Bar and observe their duty to the court in the administration of justice [1.1].
- d) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- e) Take responsibility for their actions and advice.

2.2 Be honest in their dealings with others.

They will ensure that they do not communicate in any way anything that they know or ought to know is untrue, incomplete, inaccurate, or likely to be misleading.

Barristers must:

- a) Comply with regulatory requirements set down by the Bar Standards Board, including the Code of Conduct [1.16].
- b) Ensure that they are honest about the limits of their knowledge, their experience, qualifications and professional status.
- c) Ensure that any information they give is accurate, true, complete and not likely to mislead.

2.3 **Be aware and active in the pursuit of equality and respect for diversity, not tolerating unlawful discrimination, in themselves or others.**

They will understand the law on equality and the need to value differences between members of society and apply that understanding in the workplace through taking positive steps to confront and tackle discrimination, whether in themselves, in others or in the structures of that workplace.

Barristers must:

- a) Actively observe and uphold the law on equality, diversity and discrimination.
- b) Be alert to the potential for unconscious bias and take active steps to act fairly and inclusively and show respect to others.
- c) Identify situations where there is a risk of breach of the law on equality and diversity.
- d) Where appropriate challenge others in the workplace if their behaviour does not comply with the spirit of the law relating to equality, diversity and discrimination.

2.4 **Ensure their work does not incur unnecessary fees.**

They will establish with a client at the outset of any matter the basis for charging fees and then follow those arrangements in a cost-effective manner. They will only undertake work which they believe promotes their client's interests.

Barristers must:

- a) Establish the basis for charging fees, at the outset of any matter, with the client.
- b) Follow those arrangements in a cost effective manner, agreeing any necessary changes to the arrangements with the client.
- c) Undertake work that promotes the client's best interests.
- d) Progress matters expeditiously.

2.5 Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes.

They will continually assess their weaknesses, limitations or knowledge gaps, analysing them accurately and honestly. They will acknowledge these to others if appropriate, and learn from the reflective process.

Barristers must:

- a) Recognise limitations of personal knowledge and skills and act to resolve the situation.
- b) Take appropriate action when experiencing difficulties with work that is beyond their professional competence and disclose as appropriate.
- c) Identify their errors of judgement, omissions and mistakes and take appropriate action.
- d) Ask for and make effective use of feedback, guidance, advice and support.
- e) Take appropriate action to manage personal difficulties that might otherwise affect their work.

2.6 Ensure they practise with adaptability and flexibility, by being self-aware and self-directed, recognising and acting upon the continual need to maintain and develop their knowledge and skills.

They will be able to plan and develop their career by identifying their strengths and preferences and the risks and opportunities of the environment in which they work. They will be able to assess their legal knowledge and skills and their working environment regularly, then eliminate any perceived knowledge or skills shortfall, ensuring their abilities remain relevant for the work they wish to undertake.

Barristers must:

- a) Take responsibility for planning and undertaking personal development and learning.
- b) Identify strengths and areas for development and take positive steps to address them.
- c) Reflect on and learn from their own and others performance and achievements.
- d) Record reflection and learning.
- e) Maintain and develop relevant knowledge and skills.
- f) Regularly take part in activities that maintain and develop their competence and performance.

3. Working with others

Barristers will:

At work

3.1 Understand and exercise their duty to act in the best interests of their client.

They will apply this core barrister's duty in every case except where it conflicts with their duty to the court in the administration of justice.

Barristers must:

- a) Provide a competent standard of work and service to the client [CD7].
- b) Identify the client's best interests.
- c) Recognise and evaluate any conflict between the client's best interests and their duty to the court, their obligation to act with honesty and integrity and to maintain their independence.
- d) Take the appropriate course of action in light of the Conduct Rules and any other regulatory requirements.

3.2 Understand and apply principles of team working where appropriate.

They will have an understanding of how teams work and the benefits of team working and be able to use their individual knowledge and skills to work collaboratively with others towards a common goal. They will be able to play an active role in supporting a team-working ethos, work co-operatively with others and willingly give help and support to colleagues, know when to offer assistance and advice and do so when required.

Barristers must:

- a) Work collaboratively with others, respecting their skills and contributions.
- b) Comprehend how their behaviour may influence others within and outside teams.
- c) Reflect on own strengths and weaknesses as a team member.
- d) Understand the division of responsibilities within the team.
- e) Understand the relationship between counsel and instructing solicitor, and leading and junior counsel.
- f) Delegate to and supervise others effectively.
- g) Establish and maintain effective professional relations with others.

3.3 Respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances.

They will be aware of the potentially differing needs of people from a range of backgrounds, life experiences, or those who have characteristics, which are protected under the Equality Act 2010. They will be receptive and responsive to how those needs might be met through making adjustments to their own practices.

Barristers must:

- a) Be active in the pursuit of equality and respect for diversity [2.3].
- b) Provide information in a way that others can understand taking into account their personal circumstances and any particular vulnerability.
- c) Recognise and respond effectively to others' particular needs, objectives, priorities and constraints.
- d) Recognise and take reasonable steps to meet the particular needs of clients including those in vulnerable circumstances.

3.4 Treat all people with respect and courtesy, regardless of their background or circumstances.

They will be aware of the diversity of people they may encounter and use that awareness to modify their behaviour where necessary so as to demonstrate respect and convey courtesy to all. They will know how and where to demonstrate empathy, and act accordingly. In their own workplace, they will treat senior, junior and support colleagues with respect and courtesy, recognising where an adversarial approach is not suitable.

Barristers must:

- a) Demonstrate suitable professional practice, politeness and respect in communications and personal interactions with others.
- b) Recognise people's differences and modify their behaviour where appropriate to take account of those differences.

3.5 Where appropriate, keep clients, whether lay or professional, informed of case progress in a clear and timely manner and manage their expectations.

They will be able to identify situations where keeping the client informed is their responsibility and in those circumstances they will be able to establish with their clients a suitable structure, including timescales, for communicating significant developments in their case and communicate those effectively. This will include telling the client about options as their case develops, possible outcomes and associated risks.

Barristers must:

- a) Identify the level of their responsibility to consult with and to communicate case progress to a particular client.
- b) Inform clients in a timely manner of key facts and issues including key dates, risks, progress towards objectives and costs.

- c) Identify and evaluate possible courses of action and their consequences and assist clients in reaching a decision.
- d) Manage clients' expectations including in relation to options, the range of possible outcomes, risks and timescales.
- e) Respond appropriately to clients' concerns and complaints.

Lay individuals

3.6 Demonstrate a good awareness of their additional responsibilities in cases involving direct access and litigants in person.

They will understand and apply the relevant elements of the Code of Conduct for barristers in this regard and the need to maintain a balance between their duty not to take unfair advantage and their duty to the court. They will recognise and appreciate the potential lack of understanding where clients or opponents have an inadequate knowledge of the law and procedure compared with those whose cases are conducted through qualified legal advisors and the effect this may have on the handling of a matter.

Barristers must:

- a) Recognise and appreciate the position of direct access clients or opponents not represented by qualified legal advisors (litigants in person) and the potential effect on the handling of the matter.
- b) Act in accordance with the Code of Conduct and other rules and regulations applicable to direct access clients or litigants in person.

4. Management of practice

Barristers will:

Personal practice management

4.1 Where appropriate, possess a strong understanding of the specific implications of being:

4.1.1 a self-employed barrister

They will be able to supervise the day-to-day management of their practice by clerks and other employees and accept overall responsibility for all delegated work.

Barristers must:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to a self-employed barrister.
- b) Demonstrate a thorough understanding of the commercial, organisational and financial context in which they work and their place in it.

4.1.2 an employed barrister

They will understand the specific implications of being employed as a barrister. They will be able to identify and deal with any conflicts of interest that arise as a result of their employed status and act with independence.

Barristers must:

- a) Demonstrate a thorough understanding of the scope of practice rules relevant to an employed barrister.
- b) Demonstrate a thorough understanding of the commercial, organisational and financial context in which they work and their place in it.

4.2 Possess sufficient understanding of organisational and management skills to be able to maintain an effective and efficient practice.

They will have an awareness of skills such as time and project management, planning, record keeping, using IT effectively and personal development. They will analyse their own needs for such skills then acquire and apply them to a good standard where necessary. They will have a basic understanding of risk analysis so as to be able to apply it to their work. The employed barrister in particular will ensure they understand the governance structure of the organisation in which they work and achieve a balance between their obligations to that organisation and their professional duties.

Barristers must:

- (a) Be competent in all aspects of their work, including organisation, management of practice and risk.
- (b) Competent organisation includes:
 - (i) keeping accurate records (including financial records and time-recording) and files;
 - (ii) allocating time efficiently;
 - (iii) prioritising;
 - (iv) observing deadlines;
 - (v) using resources (including IT systems) effectively;
 - (vi) being fully prepared.
- (c) Competent management includes:
 - (i) planning;
 - (ii) putting in place human and non-human resources;
 - (iii) coordinating;
 - (iv) leading or directing;
 - (v) checking progress against plans to accomplish the goal or target.
- (d) Competent risk management includes:

- (i) Identifying, evaluating and measuring the probability and severity of risks to their practice;
 - (ii) Proactively deciding what to do about risks.
- (e) Comprehend the relevance of strategic planning, financial planning and business development in the context in which they work.

4.3 Plan their personal workload and absences so as to ensure they deliver on all work commitments they have made.

They will ensure their workload is manageable. They will have a basic understanding of business continuity so as to be able to deal with unplanned circumstances. They will be sufficiently organised to ensure absences are planned so as to enable them to honour commitments.

Barristers must:

- a) Clarify instructions so as to agree the scope and objectives of the work.
- b) Make an informed judgement on the time required to prepare a matter.
- c) Take account of their availability and that of other resources.
- d) Decline to act where there is insufficient time and opportunity to prepare.
- e) Prioritise and plan workload to meet commitments.
- f) Meet timescales, resource requirements and budgets.
- g) Monitor and keep relevant others informed of progress.
- h) Deal effectively with unplanned circumstances and re-prioritising as necessary.

At workplace level

4.4 Understand the organisational systems or structures within which they work and which support their delivery of a professional service.

They will contribute to the efficient operation of their workplace where appropriate through such actions as the sharing of work when necessary, the developing of the business, and the creation of effective support systems.

Barristers must:

- a) Contribute to efficient operation of the workplace including:
 - (i) Sharing work when necessary;
 - (ii) Undertaking business development activity;
 - (iii) Creating effective support systems.
- b) Understand the contractual basis on which legal services are provided including where appropriate how to calculate and manage costs and bill clients.

Professional compliance and work**4.5 Maintain the confidentiality of their clients' affairs, adopting secure technology where appropriate.**

They will be aware of and be able to use either electronic or hard copy information management systems so as to ensure the confidentiality and security of their client's information as well as comply with current file storage and destruction regulations.

Barristers must:

- a) Identify how they will act in accordance with the Code of Conduct and other rules and regulations applicable to maintaining the confidentiality and security of information relating to third parties including that of their current and former clients.
- b) Comply with relevant data protection requirements.

4.6 Exercise good time-keeping in face-to-face or telephone encounters.

They should attend meetings, conferences and court appearances punctually and fully prepared unless prevented by matters beyond their control.

Barristers must:

- a) Attend all appointments punctually and as fully prepared as possible in the circumstances.

4.7 Where necessary, be diligent in keeping good records and files of cases.

They will be able to identify situations where keeping records and files is their responsibility and in those circumstances they will ensure that the records they keep may be understood by others as well as themselves, are organised, accurate, contain sufficient details to portray a true record and are up-to-date.

Barristers must:

- a) Identify when compiling and keeping records and files is their responsibility.
- b) Prepare and compile appropriate records at the same time or as soon as possible after the events that they are recording.
- c) Ensure records are clear accurate and legible and contain sufficient detail for their purpose.
- d) Organise records so that they are retrievable by themselves and other authorised persons.

Dated 16 February 2016

Chair's Report on Visits and External Meetings, January – February 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**

27 January	Chaired the Chairmen's Committee meeting
27 January	Attended a dinner at Lincoln's Inn hosted by the COIC President for Treasurers, Chairman of the Bar Council and BSB Chair
28 January	Met with the Chairman and senior management team of the Youth Justice Board at the Ministry of Justice
3 February	Attended a dinner event at the Honourable Society of Inner Temple
5 February	Met and had lunch with Sam Younger CBE, Chair of CILEx Regulation
23 February	To attend the Chairmen's Committee meeting
24 February	To attend a meeting with the Chairs and CEOs of SRA and CILEx Regulation
24 February	To attend a Joint Advocacy Group (JAG) meeting with the President of the Queen's Bench Division, Sir Brian Leveson
26 February	To attend the Family Law Bar Association annual dinner at the Honourable Society of Middle Temple
27 February	To attend the Bar Council meeting

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 25 February 2016

For consideration and noting.

Director General

1. This month's reports from BSB departments show good progress in completing work through to the fast-approaching end to the financial year, as well as on the early stages of important things to come – and new acronyms to accompany them: look out for CIARA below.
2. In the last month I have continued to maintain our external network with meetings on a range of issues with the judiciary, the MoJ, Specialist Bar Associations, individual barristers and their associates; and with other regulators and the LSB. In several instances this has been to elicit feedback on our draft Strategic Plan. I have also held "town-hall" and "open-door" meetings for BSB and Resources Group staff on the draft plan and the cumulative feedback is represented in the next iteration of the document before the Board. I have also been overseeing final editing of the draft Risk Outlook and related documentation, again drawing on wide feedback.
3. The Senior Management Team worked together at an in-house leadership development day which focussed on leading change (especially cultural change) in the context of the new Strategy. We were pleased to be joined at the end of the day by the Director of Communications and Public Engagement-designate, who starts with us on 14 March.
4. The SMT also undertook a detailed planning session in relation to prioritisation and phasing of activity in the 16/17 Business Plan and this work is reflected in the draft Business Plan. The extent to which the first year of the new Strategy involves scoping work for future initiatives is now especially clear. We have also taken care to ensure that there is capacity to complete or consolidate work started prior to April 2016 which will have become business as usual. Our identification of the risks to initiatives from external factors has been more explicit and has demonstrated that the next few years present considerable uncertainties for the BSB – as well, of course, as opportunities.

ASPIRE

5. The particular focus of the ASPIRE programme has been to engage more widely with staff on the changes that are necessary to how we work as a regulator. Each of the strands of ASPIRE; consumer engagement, risk and governance has representatives from each BSB department and those representatives as well as the equality and diversity champions from each department met at the end of January. The purpose of the meeting was to think about how best to embed change within the BSB. Work will continue over the coming weeks to refine that approach. The important thing is to ensure that staff take responsibility for change and feel that they can contribute to it. Programmes of activity will be established to start to embed change over the coming months, starting with training for all staff on risk based regulation in March and April.

Regulatory Policy***Standards***

6. Work on the immigration thematic review has progressed into the options development stage. An all staff workshop was held earlier this month, in order to update staff from across the organisation on the project and also to invite creative ideas for option development. The workshop included role play to highlight the issues from a client's perspective, followed by group discussion. It was well received by staff with some

Part 1 – Public

excellent feedback and the ideas generated are being refined into workable options. The project's Reference Group (comprised of stakeholders from the immigration sector) will be meeting at the end of this month to discuss the options currently being formulated by the project team in more detail.

7. We are continuing to gather evidence for the public and licensed access review. The evidence gathering stage of the joint research commissioned with the LSB has now been completed and we hope to receive a final report by the end of March. We are also seeking to commission some additional research which will comprise of in-depth interviews with clients of public access barristers. Law for Life has also been commissioned to review the existing public access guidance for lay clients. As part of that review Law for Life will rewrite the guidance in accordance with better information and plain English principles. The guidance will then be tested with members of the public. For licensed access, a survey has been developed and will be launched online in April.
8. The content of the consumer guide is now live on the BSB website. The content features useful information about using a barrister, including what a client can expect from a barrister, how they charge fees, what they can do if something goes wrong and what protections are in place. See <https://www.barstandardsboard.org.uk/using-a-barrister/>
9. The team has also been reviewing the litigation authorisation process for the 2015 calendar year. We have extracted some detailed statistical information which is now being analysed and will be presented in a final report in due course.

Regulatory Risk

10. Work has continued on the Risk Outlook, Framework and Index. The three documents were discussed at the second meeting of the dedicated task completion group in early February and have been subsequently refined. This meeting also included useful discussion on how the three products are positioned alongside corporate risk and the strategic and business plans. Board members will be sent the latest draft for discussion outside the meeting and will have an opportunity to agree the content formally at the March Board meeting, for publication in early April.
11. Dates for training on regulatory risk have been sent to all staff members. These include sessions looking at what it means to be a risk-based regulator and scenario-based sessions where attendees will play different roles as they seek to create and present a view of risks based on different pieces of evidence – and make recommendations for how to respond. These will build on the success of the pilot session held at the end of 2015.
12. The Risk Forum has started up for 2016 (after a successful start in late 2015) with two sessions being held. The team is currently working on improving the experience of the forum, including how it generates topics for discussion and how it creates knowledge for the organisation. The team has also been involved in CIARA (the project to introduce the proposed new “triage” unit – “Centralised Intelligence and Risk Assessment”) and in finalising the suppliers for the Information Management Programme.

Equality and Access to Justice

Cross-Cultural Communication (CCC) Project

13. The symposium held in January 2016 underlined that CCC is a key risk for the BSB in delivering its regulatory objectives. An event report is being finalised with an associated communications plan. A recommendation from the event was to continue to address the challenges of CCC at the Bar through partnership working with participants from the event. A project has been developed that will result in a report containing recommendations for the BSB and a pre-recorded webinar for the profession about the impact of improved CCC on practice and meeting client needs. A task and completion group will deliver the project.

Equality Champions Group

14. The BSB Equality Champions group has relaunched and has full membership from across the BSB and with a new additional member from the Resources Group. The Group met in February and explored the benefits of conducting equality impact assessments (EIA) on their work and wider measures to ensure EIAs are undertaken for business plans, strategies and consultations. There was a particular focus on the equality objective to monitor the diversity of governance and how the BSB could take action to address underrepresentation on the board and committees.

Diversity Data Report - Statutory duty to publish equality information

15. Following approval at the January Board meeting, the BSB published its annual report on the diversity of the barrister profession. The report contains anonymised and aggregated data on the Bar at each level of seniority, from pupil to QC. The report shows an underrepresentation of female and disabled practitioners at the Bar, and problems with progression for BME barristers. The data will be used to help inform the development of new organisational equality objectives for 2016 and a new three-year BSB equality strategy. In addition to this report, the BSB also published diversity statistics about candidates who took the BCAT and BPTC in 2015.

Research on Women at the Bar

16. The survey on women's experiences at the Bar closed on 8th February having received over 1,300 responses. An initial review of the responses has revealed some rich data that will be useful in assessing the effectiveness of the BSB equality rules. The project will continue with a Task Completion group meeting on 29th February where the survey results will be analysed and recommendations drafted.

Equality Training

17. Throughout late January and early February the E&AJ team have delivered a number of different training sessions to BSB staff. A training session on anti-discriminatory practice was delivered to members of the Supervision department. A session on EIAs was delivered to members of the Assessments team from the Education and Training department. This was a practical session which helped equip staff with the knowledge and skills required to complete meaningful EIAs as part of the policy development process. An introductory Equality and Diversity training session was held for all staff who had recently joined the organisation.

Legal Services Board Diversity Forum Meeting

18. The E&AJ team were invited to deliver a presentation about diversity data collection and management at a LSB regulators' Diversity Forum meeting. The LSB was open to ideas about synchronising/centralising diversity data across the legal regulators. Further discussions will take place to explore the viability of greater collaboration between legal regulators. The recently-appointed Chief Executive of the LSB attended the meeting and delivered a strong message about the need for diversity initiatives that contribute to meaningful culture change.

Supervision***Youth court advocacy***

19. Further meetings have taken place with a number of youth justice agencies in the light of the BSB commissioned report into advocacy within youth proceedings. These include meetings with HMCTS and the Youth Justice Board chair and members. A meeting has also taken place with the ATC on its proposals for training advocates in how to represent young people. Discussions have been held with the Chair of the Criminal Bar Association, who is very supportive of the need to improve standards of advocacy within the youth courts and keen to work with the BSB to develop an appropriate solution.
20. The Director of Supervision met with Charlie Taylor, who has been commissioned by the Lord Chancellor to review the youth justice system, to discuss the alignment of that review with any proposals that the BSB may make to address the concerns about youth justice. The Director has also been invited to join a working group set up by the Institute for Justice Innovation to look at proposals for how a problem solving approach could be applied to youth justice.
21. There continues to be considerable interest and positive support for the BSB's work in this area. It has also received a reasonable degree of publicity, with amongst other things a front page article in the latest edition of Counsel magazine. The BSB will hold a roundtable meeting in March with all of the agencies, organisations and professions involved within youth justice to seek to achieve collective support and commitment to addressing the concerns within the report about the standards of advocacy.
22. Supervision visits are underway to chambers assessed as "high risk" and "medium impact". This includes the first visits to sole practitioners. Feedback from chambers visited so far continues to be positive. One sole practitioner said: "Several people said that the BSB are all doom and gloom, but I see this as a helping hand... it's been really helpful. A meeting of minds. Really really helpful."
23. The team has also been following up actions agreed with chambers through Supervision returns and visits. Risk ratings have been reduced for a number of chambers where appropriate. In addition to this, new risk information comes in to the team on a daily basis and the team are working with IS to create reporting from the Supervision database so that statistics can be generated on the changing risk profile of chambers, so that this and outstanding actions and issues can be monitored both by the Supervision team and reported to the Board.

Supervision activity

24. The Supervision Manager presented a view from the regulator to pupils in their second six, undertaking their practice management training at Lincoln's Inn.

25. The Access to Justice team delivered an Equality and Diversity workshop to the team to help develop the Supervision approach to this area of regulatory risk.
26. The team as a whole have continued to be heavily involved in key BSB-wide projects, particularly creation of the Risk Outlook, working up options in the Immigration thematic review, delivering Plain English training and the project to establish the new triage function to assess incoming information.

Anti Money Laundering

27. The Supervision Manager attends a regulators' anti-money laundering forum and a legal sector regulators' forum. The UK will be subject to a peer review by the Financial Action Task Force in autumn 2017. Preparations for this are underway, led by HM Treasury.

CIARA – triage unit

28. The project to establish a new triage unit that will be responsible for risk assessing all incoming information has been named CIARA (Central Intelligence and Risk Assessment) by the project team. The team have developed a full project initiation document, a detailed project plan and defined the outcomes for the project, and agreed them with the Project Board (Oliver Hamner, Sara Jagger and Pippa Prangley). Supervision, Professional Conduct, Regulatory Policy, Education & Training and Communications departments have all documented the types of incoming information that they receive. The project team is currently defining which types of information will flow through CIARA and the principles on which risk assessment will be based.

Entity Authorisation

29. As of 10 February 2016 40 entities have been authorised with a further two entities about to complete the authorisation process.
30. The Entity Renewals process allows entities to pay their annual fee and also make declaration confirming they have appropriate insurance are now under way. Entities have until 25 March to complete the process. So far six entities have paid the annual fee. Two entities have made the appropriate declarations but have yet to pay the annual fee.

CPD

31. Development of the new CPD scheme is continuing. Currently the activities completed by barristers involved in the CPD pilot are being assessed. In addition the consultation report is being finalised. It is anticipated that the CPD consultation report and the pilot results will be sent to the March board.

ABS Implementation Project

32. The data-gathering phase of the ABS implementation project closed at the end of January. The final submission to the LSB included an overview of the risk-based approach to design of the end to end operational process and confirmation of Board approval of fees. There has been positive feedback from the LSB about the level of engagement throughout the phase. We expect the LSB Board's decision at the end March 2016.
33. Detailed planning for delivery has started with an anticipated launch date of late 2016. As we have previously stated, we will communicate to the market and the profession once the LSB's decision is issued.

Department Structure

34. Recruitment in January was very successful. There was an internal promotion to senior supervision and authorisation officer and the ensuing vacancy was filled by an external candidate who started on 22 February. Mark Lawrence has left the Department to take up a new business analyst role in the Project Management Office of Resources Group.

Work Smart Pilot

35. The Work Smart pilot began in the Department on 8 February and will run until Easter. All staff will trial working from home on a 2-day per week basis and feed comments and concerns back to the Programme about technical, operational, practical and personal aspects. Regular reviews are being held to identify where suggested improvements can be made or changes are necessary. More formal feedback will be given at the end of the pilot.

Education and Training***Future Bar Training***

36. The wholesale revision of the BPTC and Pupillage Handbooks is progressing, which currently enshrine our detailed requirements and processes (for training providers, individual candidates and our own staff), with a view to publication in July.
37. The Threshold Standards that will underpin the Professional Statement have been drafted, with the support of an expert group, and are the subject of a separate paper at this meeting.
38. Further work has been undertaken on the development of options for reform of training regulation, including the refinement of our risk framework which will inform our future approach.

Operational update

39. The Annual Monitoring process for BPTC providers has continued over the past month. This year, course providers have been able to compare performance by reference to the *BPTC Key Statistics* publication, and this has been a special focus in the monitoring.
40. Following further close examination of options for the future of assessment in Professional Ethics in the Centralised Examinations, an announcement has been made that the format of the examination will change for candidates sitting in April 2017. The current two-part format (multiple choice questions plus short answer questions) will change to a wholly short answer format. This revised format will complement the “single best answer” form of assessment adopted for Civil and Criminal Litigation, which is to be introduced at the same time, and which was announced in November last year.
41. Initial planning is underway, fully to integrate the Bar Transfer Test (BTT) knowledge-based assessments with the Centralised Examinations for the BPTC. The syllabus and examination format are already aligned, and the change will require some alteration of the timetable for the BTT.
42. A number of changes to the Academic Stage requirements were agreed by the reconstituted Education & Training Committee at their first meeting on 9 February. The changes remove the Credit Transfer Rules and remove the duplication of course providers' requirements in relation to time limits, condonation, deemed passes and number of attempts. This contributes to more proportionate regulation by the BSB.

Qualification Regulations

43. The Qualifications Committee met on 2 February 2016. It considered one application for review of a decision of the Inns Conduct Committee to refuse a student admission to an Inn of Court. It upheld the decision of the Inns Conduct Committee.

Professional Conduct

44. The KPIs are being met for the final quarter of the 2015/16 financial year. However, the Board should note that recent vacancies on the Professional Conduct Committee could have an adverse impact on the year-end figures.

Staffing

45. There have been some changes in the staffing of the Professional Conduct Department this month.
46. Lauren Steele joined the Professional Conduct Department as a Casework Supervisor on 1 February 2016. Lauren is a qualified solicitor from Queensland, Australia. She previously worked at the General Dental Council where she managed a team dealing with financial regulations.
47. After two and a half years, Meena Kanbi, Professional Conduct Assistant will be leaving the BSB on 17 February 2016 to emigrate with her family. Her post is currently being advertised.
48. Recruitment to fill the vacant Operational Support Team Manager position has been successful. Until the appointee joins us in a few weeks' time the responsibilities of the role are being filled by various members of PCD staff.

Public Information Project

49. The project to improve the publicly available information about the enforcement system on the BSB's website is now in Phase Two. The Project Group has completed production of the copy for the remaining four sections of the website. The copy will now be uploaded to a testing environment where Quality Assurance can be carried out ahead of a go-live date in mid-late March 2016. Ongoing evaluation of the Phase One copy has led to some structural changes in the website to improve the user experience; further evaluation will be conducted throughout the life of the project.

Litigation

50. Since the last report the PCD have received confirmation that a new discrimination claim has been lodged with an employment tribunal. This relates to a barrister with a number of disciplinary proceedings against them alleging that the BSB have done so on the basis of his race. The BSB await full papers from the representative in this matter.
51. There have been no other developments to the content of last month's report. Two cases are listed before the Court of Appeal in May and July and the BSB is awaiting a decision on permission in relation to the matter filed in December 2015.

Governance Review

52. Work has continued in the areas of professional conduct and authorisation. The Board has received papers on these two proposals at this meeting. The detailed proposals for

APEX will follow at the March meeting, as they are affected by the decisions that the Board will take in relation to professional conduct and authorisations.

53. The joint GRA and PRP meeting on 4 February considered the responsibilities of each of those committees, how they will interact in the future and the assurance framework. Both committees have a role in alerting the Board to risk at a strategic and operational level, but GRA has a stronger role in developing assurance systems whereas PRP focuses on the operational output of these systems. Work is also beginning on more fully developing the assurance framework, with a team of subject matter experts from across the organisation considering optimal assurance systems for their regulatory functions, and how they could be used consistently across functions.
54. The process for recruiting a new chair and members of the Independent Appointments Panel, which undertakes recruitment to the Board, is now underway.

Communications and Stakeholder Engagement

Communications

55. Since this report was prepared for the January Board meeting, the following press releases and announcements have been issued:
- 22 January: The publication of our draft strategic plan and a call for feedback;
 - 22 January: Press release about a barrister who was disbarred for persistent dishonesty;
 - 29 January: A release publicising our report on the latest diversity statistics for the Bar;
 - 1 February: The publication of the report summarising the many responses we had to the Future Bar Training consultation in 2015;
 - 3 February: The publication of our response to the CMA legal services market study's statement of scope.
56. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

57. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- Publication of the statistical analysis relating to diversity in the BSB's complaints handling processes;
 - Publication of a post-event review of the recent "Does cross-cultural communication at the Bar matter?" symposium;
 - Forthcoming Education & Training announcements, including work to publish the Threshold Standards in support of the Professional Statement;
 - the 2016 Risk Outlook and related documents, and Strategic and Business Plans;
 - Planning for an event in April to publish the Risk Outlook and the new BSB strategy;
 - Recruitment for the new post of "Communications and Public Engagement Officer". (This is in addition to the recruitment of the new Communications and Public Engagement Director).

Online and social media

58. During January, 29,513 users visited the BSB website. At the time of writing, we have 13,587 followers on Twitter.

Research***Projects***

59. Since the meeting in January, work has progressed as follows:
- Working with the Communications and Equality and Access to Justice teams to finalise the communications approach for release of the Complaints Diversity Analysis report that was presented to the Board in January;
 - Continuing work supporting the development of the Data Dictionary as part of the Data Foundation Project;
 - Continuing work on finalising stage two of the Risk Outlook, in particular the market overview section;
 - Preparing for the release of updated statistics on the profession for 2015 to be added to the research and statistics pages on the BSB website;
 - Holding focus groups for staff and barristers to investigate the tone and language the BSB uses in communications with the profession and external stakeholders;
 - Supporting the delivery of a staff workshop for the Immigration Thematic Review to investigate potential controls that could be employed to minimise risk for consumers;
 - Commencing analysis of the “Women at the Bar” online survey with initial report to go to the Task Completion Group on 29 February and final report to the Board in March.
 - Starting work with Supervision team on a review of the governance models for barrister services and drafting project initiation document with research scopes and first ITT for stage 1 of the project.
 - Continuing work on Consumer Research project to explore new research approaches and to link overall project with other ongoing, consumer-focused projects.
 - Continuing work on User feedback project to reshape initial research proposal with a consumer angle.

Corporate Services***Staffing***

60. We are currently recruiting a Corporate Support Manager and a Senior Corporate Support Officer and hope to have filled these positions by the start of the new financial year.

Business Planning

61. The team has been compiling the Business Plan for 2016-17, and in parallel we are finalising the budget for the next financial year. The Board will receive a near final version at its March 2016 meeting.
62. Quarter three for 2015-16 finished at the end of December and team members have drafted management information reports including a year-end outturn forecast for our financial performance (see the PRP paper).

Resources Group

63. As indicated in the January report a new reporting format is expected in March/April.
See also PRP report Part 1 item 7 on the agenda.

**Vanessa Davies
Director General BSB
18 February 2016**