

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish time.

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Meeting of the Bar Standards Board

Thursday 25 May 2017, 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">• 23 March 2017 (*)	Annex A	Chair	3-11
5.	Matters Arising (*)			
6.	a) Action points and progress	Annex B	Chair	13-16
	b) Forward agenda	Annex C	Chair	17-18
7.	Performance Report for Q4 (January 2017 – March 2017) and Year – end 2016-2017 (4.35 pm)	BSB 029 (17)	Anne Wright	19-37
8.	Shared Parental leave (4.45 pm)	BSB 030 (17)	Amit Popat / Oliver May	39-72
9.	Anti-Money Laundering (5.05 pm)	BSB 031 (17)	Julia Witting	73-93
10.	Chair's Report on Visits and Meetings: May 2017	BSB 032 (17)	Chair	95
11.	Director General's Report (5.25 pm)	BSB 033 (17)	Vanessa Davies	97-106
12.	Any other business <ul style="list-style-type: none">• Next Steps on Future Bar Training (Authorisation Framework and Inns Review) (5.30 pm)	BSB 034 (17)	Vanessa Davies & Ewen Macleod	107-117
13.	Date of next meeting <ul style="list-style-type: none">• Thursday 22 June 2017			
14.	Private Session			

John Picken, Governance Officer
18 May 2017

**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](#) before the meeting.*

BSB 250517

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 23 March 2017, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Alison Allden OBE
Rolande Anderson
Rob Behrens CBE
Justine Davidge
Judith Farbey QC
Steven Haines
Zoe McLeod
Andrew Mitchell QC
Nicola Sawford
Adam Solomon
Anu Thompson
- Bar Council in attendance:** Stephen Crowne (Chief Executive, Bar Council) – items 1-10
Lorinda Long (Treasurer, Bar Council) – items 1-8
- By invitation & guests:** James Wakefield (Director, COIC)
Professor Nigel Duncan (Member, Education & Training Committee) – items 1-7
Professor Stuart Sime (Professor of Law, City University, as a member of the public)
- BSB Executive in attendance:** Dan Burraway (Corporate Services Manager)
Andrew Cohen (Senior Information & Projects Officer) – items 1-7
Corrine Charles (Head of Research and Information)
Vanessa Davies (Director General)
Joanne Dixon (Authorisations Manager)
Rebecca Forbes (Governance Manager)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Cliodhna Judge (Head of Supervision and Authorisation)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
Ruby Newton (Senior Authorisation & Supervision Officer)
John Picken (Governance Officer)
Victoria Stec (Head of Training Supervision and Examinations) – items 1-7
Rob Wall (Head of Policy Programmes)
Wilf White (Director of Communications and Public Engagement) (via Starleaf)
- Press:** Max Walters, Law Society Gazette

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting.

Item 2 – Apologies

2.
 - Aidan Christie QC
 - Naomi Ellenbogen QC (Vice Chair)
 - Anne Wright CBE
 - Mark Hatcher (Special Adviser to the Chairman of the Bar Council)
 - Andrew Langdon QC (Chairman, Bar Council)
 - Andrew Walker QC (Vice Chairman, Bar Council)
 - Ben Margerison (Data Analyst)
 - Christopher Young (Policy Manager - Quality Assurance)

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 23 February 2017.

Item 5 – Matters Arising

5. None.

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

6. The Board noted progress on the action list.

Item 6b – Forward Agenda (Annex C)

7. The Board noted the forward agenda list. The response from the MoJ to the CMA Market Study on Legal Services is now overdue and it is not clear when this will be published. Should this continue it will impact on the items currently listed for discussion at the Board Away Day in April 2017.

Item 7 – Future Bar Training: Future Routes to Authorisation

BSB 021 (17)

8. Ewen Macleod summarised the documentation associated with this item and also highlighted the following:
 - the equality impact assessment (Annex B) remains a work in progress and will continue to be developed for the immediate future and until an LSB application is submitted;
 - a summary of the evidence review is provided in the papers. The full evidence base will be published on the BSB website in due course;
 - in addition, the BSB has drafted a policy statement that sets out the effect of the recommendations. A copy was circulated to Board Members in advance and will be published, together with a press release, in the light of any further comments received from the meeting.
9. Justine Davidge (Chair of the Education & Training Committee) reminded the Board of the policy background to the paper and thanked the BSB consultation team for their work. She highlighted the following:
 - we received 1,100 replies to the consultation making this the largest response ever received and an indication of the strong level of interest in the topic within the profession;
 - the Education & Training Committee had access to the full evidence base provided by the Research Team and was able to make its recommendations in the light of the insight this provided. She thanked Ben Margerison in particular for his work in this regard;

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- the Committee’s recommendations as set out in paragraph 7 of the paper are therefore the result of an informed and in-depth discussion on outcome of the consultation.
10. The Board also received the following:
- a tabled copy of comments from Aidan Christie QC about routes to the profession. This suggested:
 - ideally the joint Bar Council / COIC “split BPTC” model should be the preferred and only option;
 - notwithstanding this, there may be scope for a modular, “apprenticeship” option but that would only appeal to the employed Bar;
 - there is a significant lack of enthusiasm in the profession for the “Northumbria Model” (one of the suggested managed pathways) and this should not be pursued;
 - further tabled comments from the following Members:
 - Naomi Ellenbogen QC who supported the views of Aidan Christie QC;
 - Anne Wright CBE who preferred the Managed Pathways option and wished to encourage further development of the COIC model with proper feasibility studies and with piloting and evaluation prior to any full authorisation. This could take some time – possibly several years.
11. The Board discussed each of the recommendations in turn. The following comments were made:
- a) Routes to Qualification
- (i) the outcome of the consultation identified:
 - minimal support for option A (the “evolutionary” approach which would largely keep the BPTC in its current structure) on the grounds that the pathway is too expensive and the cost detracts from our regulatory objective of creating a diverse profession;
 - some support for option B (the “managed pathways” approach) particularly in terms of its flexibility and reduced cost. Notwithstanding this, a contrary view warned of the potential for unintended consequences ie creating a “two tier” system with the profession perceiving some routes as more credible than others;
 - limited support for option C (the “Bar Specialist approach) on the grounds that a short vocational course does not have the capacity to provide sufficient breadth and depth of knowledge;
 - majority support for the joint Bar Council / COIC “split BPTC” model, details of which were circulated as an addendum to the original consultation. The BSB’s view is that this could be regarded as one of the “managed pathways” described as option B of the consultation;
 - (ii) the existing BPTC will continue for the immediate future so as not to disrupt the flow of new barristers. The BSB will evaluate new course submissions against its assessment framework as current arrangements expire over the next two years. It is possible that a version of existing BPTC will be submitted by providers but, in order to meet approval criteria, we would expect to see marked changes to the current offering;
 - (iii) the managed pathways option has the best potential for appealing to a wider, more diverse cohort of students and we should encourage this;
 - (iv) there needs to be a clear understanding, however, that only a limited number of routes will be approved. The E&T Committee accepted the need to strike a balance between offering flexibility, maintaining standards and avoiding confusion within the profession;

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- (v) the joint Bar Council / COIC model is a welcome and innovative addition that is likely to have broad appeal and may increase diversity within the profession. That said, we are at too early a stage to select only this one pathway, particularly as it has yet to be tested. We should, though, support its development so that a training provider is encouraged to take it forward;
 - (vi) the managed pathways model provides an element of “future proofing” as routes can be developed and refined as necessary. It might be the case that just one or two routes emerge as preferred options but we should be cautious about pre-empting this now;
 - (vii) the high response rate from consultees is very welcome and the views expressed are not lost for the future - they can be referenced as the managed pathways model is developed;
 - (viii) we do need to provide choices for the employed Bar and the “modular” route should therefore be retained;
 - (ix) the “Northumbria Model” has been in place for some time. The number of its students that go on to pupillage may not be high but remains at a rate comparable to several other providers;
 - (x) Stephen Crowne confirmed the views of the Chairman of the Bar ie:
 - the concerns expressed over unintentionally creating a “two tier” system under managed pathways are valid;
 - in consequence, a strict limitation on the number of pathways permitted is required. It is reassuring that this will be the case.
 - (xi) James Wakefield welcomed the positive response to the “split BPTC” model. He commented that:
 - allowing the scope for greater innovation is pleasing;
 - the two-stage proposal retains the existing core subjects so recognises the need for a central knowledge base;
 - the proposal needs further development and this will take time and further investment.
- b) Call to the Bar
The Board agreed that we should not seek to change section 207(1) of the Legal Services Act ie that a barrister is called to the Bar by one of the four Inns of Court.
- c) Entry Requirements
Justine Davidge commented as follows:
- this prompted considerable debate at the E&T Committee though there was general agreement that the profession should remain graduate only;
 - it is also the case that application for pupillages can be affected by the class of degree awarded. That said we know there to be excellent practising barristers who qualified with a 2.2 degree;
 - on balance, the Committee felt it would be disproportionate to create a higher barrier of entry to the profession than we already have.
- d) Foundation Subjects of a Qualifying Law Degree
Justine Davidge commented as follows:
- the consultation prompted discussion on whether the BSB should be less prescriptive in terms of the content of a qualifying degree and so give universities more scope as to course design and content;
 - most respondents identified the need for all barristers to share a common knowledge base of key legal concepts and principles. This is a requirement of the BSB’s Professional Statement and is currently achieved through the inclusion of seven core subjects in qualifying law degrees;

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- if the core subjects were not mandatory, there is a risk that shorter qualifying courses such as the Graduate Diploma in Law would not then be sufficient in scope for students to meet the Professional Statement requirements.
- e) Bar Course Aptitude Test (BCAT)
Justine Davidge commented as follows:
- the Board raised the BCAT cut score last year because of evidence to suggest it had originally been set too low;
 - the E&T Committee therefore agreed it is too early to decide whether further changes are required now, though it should be kept under review.
- f) Teaching and Assessment of Ethics
The following comments were made:
- many respondents saw a need for greater integration of ethics within other course modules as well as for both the vocational and work-based learning assessments;
 - it may be better to teach the subject in a more pervasive manner rather than as a separate module but we also need to be clear on how this will be assessed. A review is therefore appropriate.
- g) Working with other regulators
The following comments were made:
- we are already committed to working constructively with the SRA on reciprocity agreements, though there are currently marked differences in our respective approaches to training;
 - notwithstanding this we should continue our work on this. It is already the case that a solicitor with Part 1 of the Solicitors Qualifications Examination (SQE) is highly likely to be recognised by us as having the equivalent of a qualifying law degree.
- h) Other issues
- (i) The following additional comments were made:
- we should not lose sight of issues that may influence access to pupillage. The equality impact assessment action plan is helpful but obviously focuses on initial access to vocational training;
 - the policy statement circulated under separate cover accurately reflects the agreed recommendations. Any further drafting amendments should be sent to the Executive directly;
 - we need to be careful in our communication with the profession given the majority of consultation respondents favoured solely the Bar Council / COIC model. We need to be clear as to our reasons for pursuing the managed pathways option and particularly stress the limit on the number that will be approved.
- (ii) In response to the latter point, Vanessa Davies confirmed that this action would be covered in the BSB's press statement on this topic. Stakeholders and consultation respondents might also be sent personalised letters from the Chairman and there is a further opportunity for engagement at the BPTC Providers Forum meeting on 31 March 2017.

Board
to note12. **AGREED**

- a) that Option B – the “Managed Pathways” approach – be adopted with the proviso that only a limited number of pathways can be authorised.
- b) that providers be advised of min 12 a) above and the BSB's view of the routes that may be feasible (as set out in paragraph 60 of the report). This will include the two-stage Bar Council / COIC model.

EM

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| c) | that no change be sought to s207(1) of the Legal Services Act about current arrangements for calling new barristers to the Bar. | EM to note |
| d) | that the Bar remain a graduate entry profession with a minimum entry requirement normally set as a 2.2 in a qualifying law degree. | EM to note |
| e) | that the seven foundation subjects comprising the Qualifying Law Degree be specified to the extent necessary to enable law degree providers to meet the requirements of the professional statement. | EM to note |
| f) | that no change to the Bar Course Aptitude Test (BCAT) be required at this stage. | EM to note |
| g) | that the teaching and assessment of Ethics be reviewed. | EM |
| h) | that we continue to work with other regulators, including the SRA, to develop a set of principles for future recognition of professional legal qualifications. | EM to note |
| i) | to approve the policy statement on future routes to authorisation for publication subject to any necessary additional drafting amendments. | EM to note |
| j) | to issue a press statement on the decisions made on future routes to authorisation. | WW |

Item 8 – BSB Business Plan 2017-18

BSB 022 (17)

13. The Board considered the draft Business Plan and also received a tabled copy that illustrated its overall design. Members also received a copy of the pie charts that will appear in the final version identifying how our budget is to be spent and the items covered by PCF income.
14. Vanessa Davies commented as follows:
- the main features to note are:
 - key projects to be undertaken are Future Bar Training and work arising from the Competition & Markets Authority (CMA) report on the legal services market;
 - expenditure will be the same as the previous year but income is estimated to be less given the number of uncertainties at present, particularly with regard to potential future routes to qualification and the associated income;
 - the current draft incorporates amendments suggested by the Planning, Resources & Performance (PRP) Committee;
 - it is still possible that the MoJ's formal response to the CMA report will be received before our Business Plan publication date of 31 March 2017. If that is the case, the section on "challenges and uncertainty for our plans" may be further amended;
 - the section on governance will also be amended to include reference to the Independent Decision Making Body and Centralised Assessment Team, both of which will be established in the longer term as part of our overall reform programme.
15. The following comments were made:
- the plan focuses on "critical milestones". This is pleasing to see as it provides a means to monitor performance;
 - we should note that even though our budgeted expenditure remains the same as last year, we are faced with a good deal more complex work, particularly in the first two quarters. This will impact on resources;
 - the "golden thread" which should run through the document is a clear explanation of what we do, why that is the case and how it is done;
 - for clarification, the reference to "scope of practice review" on page 13 of the Business Plan is the start of process where, in line with the LSB's expectations, we shall assess whether our existing rules on what a barrister can and cannot do remain relevant;

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- the empty sections in the timeline of activities might give the wrong impression. Work will be ongoing from previous quarters so this needs to be made apparent;
- the finance chart on page 26 of the plan is misleading. It should reference the contribution from the Bar Council's reserves that makes good the deficit between income and expenditure;
- the wording of the "three programmes" under "Our Strategy" (page 5) is inconsistent with later references throughout the document;
- the section under "rationale" (page 22 of the plan) is potentially misleading. The 12% increase in the PCF is exclusively for the pension deficit but the section also references other areas of expenditure. We need to clarify the point.

16. **AGREED**

to approve the business plan for publication on 31 March 2017 subject to further drafting amendments identified above.

DB

Item 9 – Collection of practice area information

BSB 023 (17)

17. The Board considered a paper about the need for the BSB to collect better quality data about practice areas at the Bar. This could be achieved through a rule change to require barristers to disclose this information as part of the 2018-19 authorisation to practice (AtP) exercise.
18. Stephen Crowne supported the proposal and asked that barristers be requested to share this data with the Bar Council for representative purposes.
19. Members commented as follows:
- the same information is provided to BMIF already and this begs the question of why it cannot be shared between the two organisations. If we are to ask for this again, we need to make clear why it is necessary and how we intend to use the data;
 - in our communications with the profession, we should stress that disclosure of data is also an essential part of our equalities strategy;
 - the BMIF classification system for areas of practice is geared around insurance risk. This is very different to our own needs around assessing regulatory risk. If we are to mirror it completely then the data we receive may not be as useful as we might first imagine;
 - if we choose not to use the BMIF system we are faced with a potentially greater problem of devising our own scheme of classification which will be very difficult to achieve. By way of comparison, the BMIF version has been incrementally developed over several years;
 - we need to be careful about making the AtP too time consuming. There is a risk that this will provoke non-compliance with some members of the Bar.
20. In response, Ewen Macleod commented as follows:
- we have already considered data sharing but this will not provide the necessary level of control. We really need our own data sets;
 - we are trying to establish a base line at this stage. The BMIF classification seems a logical starting point but we can explore other relevant issues in the consultation document about the proposed rule change;
 - we are fully conscious of the need to minimise administrative burdens for the profession and will seek to adopt data collection methods that reflects this principle.

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21. **AGREED**
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| a) | to consult on changing the BSB's authorisation rules to require barristers to disclose their areas of practice and the proportion of work undertake in each practice area. | EM |
| b) | that the consultation be undertaken with a view to implementing new procedures as part of the 2018-19 authorisation to practice exercise. | EM to note |
| c) | that any other incidental changes required to enable the process be included in the consultation. | EM to note |
| d) | that due regard be given to the request that barristers be asked to allow the BSB to share data collected with the Bar Council for representative purposes. | EM to note |

Item 10 – Qualifications Committee: Annual Report to the Board for 2016 and Update on Implementation of Governance Review

BSB 024 (17)

22. Rob Behrens commented as follows:
- the report marks a transition of governance insofar as it confirms that all of the Qualification Committee's decision making powers have now been delegated to staff. It therefore seeks the dissolution of this Committee with effect from 31 August 2017;
 - the transfer of these powers has not impacted on either the time needed or the quality of the decisions taken;
 - the proposal reflects the aim of our governance reforms to modernise the BSB.
23. He expressed his personal gratitude to the Committee's two Vice Chairs (Adam Solomon and Professor Carl Stychin) who had played a key role in reassuring committee members about the proposed changes and to the Authorisations Team, in particular Joanne Dixon, who had worked hard to ensure the success of the delegated scheme. He also reflected on his time with the BSB both as a staff member (in the role of Complaints Commissioner) and a Board Member. He noted the very significant development that has taken place during that period but that the BSB's overriding strength and purpose remains *independent* regulation.
24. The Board noted the report and the Chair thanked Rob for his outstanding contribution to the BSB. He noted with regret that this was his final meeting as a Board Member prior to his taking the role of Parliamentary and Health Service Ombudsman (cf. min 5 – 26 January 2017). Adam Solomon also expressed his appreciation for Rob's excellent chairmanship of the Qualifications Committee.

25. **AGREED**
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| a) | to note the report. | |
| b) | that the Qualifications Committee be disestablished with effect from 31 August 2017. | RF |

Item 11 – Scheme of Delegations for BSB Entities – Proposed Amendments

BSB 025 (17)

26. Cliodhna Judge advised that a change in the scheme of delegations for BSB entities is required to ensure consistency with proposed changes in the Handbook. This follows the LSB's approval of the BSB as a designated licensing authority.
27. **AGREED**
- | | |
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| to approve the proposed amendments to the Scheme of Delegations set out in Annex 1 of the paper. | CJ to note |
|--|-------------------|

Item 12 – Chair’s Report on Visits and Meetings: March 2017

BSB 026 (17)

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

Item 13 – Director General’s Report

BSB 027 (17)

29. Vanessa Davies commented as follows:
- a presentation on the new business plan will be given to BSB staff on both Tuesday 4 April (15:00 hrs – 17:00 hrs) and Thursday 6 April (12:15 hrs – 14:15 hrs). Board Members are welcome to attend;
 - we are increasing the extent of our collaborative working with other legal regulators both on the CMA recommendations and other areas. This is proving both welcome and productive;
 - Viki Calais, the Head of Corporate Services, has left the BSB to take up a new role at Barnardo’s;
 - this year’s AtP exercise is nearing completion stage and the Board may wish to acknowledge the outstanding work of the Records Team in managing this project.
30. **AGREED**
to note the report and to thank members of the Records Team for their hard work in administering the 2017-18 AtP project.

**Board
to note****Item 14 – Any Other Business**

31. None.

Item 15 – Date of next meetings

32. • Thursday 27 April 2017 (Board Away Day);
• Thursday 25 May 2017 (Board meeting).

Item 16 – Private Session

33. The following motion, proposed by the Chair and duly seconded, was agreed:
That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes;
 - (2) Matters Arising;
 - (3) Action Points and Progress;
 - (4) Quality Assurance for Advocacy;
 - (5) Any other private business;
 - (6) Review of the Board meeting in terms of conduct and outcomes.
34. The meeting finished at 6.10 pm.

BSB – List of Part 1 Actions

25 May 2017

(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
12a (23 Mar 17) – Future Bar Training	implement the “Managed Pathways” approach for Future Bar Training but ensure only a limited number of pathways are authorised	Ewen Macleod / Christopher Young	by end 2019	16/05/17	In hand – being tracked via FBT Programme Board
12b (23 Mar 17) – Future Bar Training	advise providers about the decision to adopt the managed pathways approach (with the two-stage Bar Council / COIC model as one of the possible choices)	Ewen Macleod / Christopher Young	by end April 2107	16/05/17	Completed – Board decision and policy statement published
12g (23 Mar 17) – Future Bar Training	organise a review of the teaching and assessment of Ethics	Ewen Macleod / Christopher Young	by end Dec 2017	16/05/17	In hand - Included within FBT programme plans
12j (23 Mar 17) – Future Bar Training	issue a press statement on the decisions made on future routes to authorisation (to include a link to the associated policy statement)	Wilf White	immediate	24/03/17	Completed – press release issued and hosted on website
16 (23 Mar 17) – BSB Business Plan 2017-18	amend BSB Business Plan 2017-18 in line with comments made at the Board meeting and publish on the BSB website	Dan Burraway	by 31 Mar 2017	31/03/17	Completed – amended and published on website together with press release
21a (23 Mar 17) – Collection of practice area information	consult on changing the BSB’s authorisation rules to require barristers to disclose their areas of practice and the proportion of work undertake in each practice area	Ewen Macleod	by end Oct 2017	16/05/17	In hand – consultation being drafted, to be published by June
25b (23 Mar 17) – Qualifications Committee	contact relevant Committee Members re: disestablishment of the Qualifications Committee with effect from 31 August 2017	Rebecca Forbes	by end April 2017	20/04/17	Completed – letters sent dated 20 April 2017 giving the required three months’ notice of cessation of membership due to the Board’s resolution to disestablish the committee

**BSB – List of Part 1 Actions
25 May 2017**

(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
21b (26 Jan 17) – section 69 order to extend BSB’s powers	discuss detailed drafting points of the s69 order with the MoJ and the LSB before finalising it, in particular around intervention and disciplinary powers	Ewen Macleod	before end February 2017	16/05/17	Ongoing – wording of order agreed with MoJ. Progress delayed by election and will be dependent on Parliamentary time being available later in the year. At this stage, we have done all we can to progress.
				15/03/17	Ongoing - Feedback given to MoJ lawyers. We have identified a need to get some external advice which we are seeking urgently.
				15/02/17	In hand – discussion held. MoJ lawyers have come back with advice and request for further instructions. We are currently considering the points raised, will update Board in due course.
15b (27 Oct 16) – definition of “employed barrister (non-authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	16/05/17	Ongoing – currently updating application in the light of LSB comments
				15/03/17	Ongoing – draft application due to be submitted to LSB by end March
				15/02/17	Ongoing – awaiting meeting with BACFI
				17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.
27c (19 May 16) – Youth Proceedings Advocacy Review	seek further discussions with the MoJ and Legal Aid Agency on how to address the financial value placed on the youth justice system	Oliver Hanmer	Review April 2017	17/05/17	Complete – discussions have taken place with LAA and MoJ on value placed on youth court advocacy. No progress has been achieved with this at present. Further discussions have and will continue to take place with other organisations within the youth justice system to further the case for addressing the financial status of youth court advocacy.

**BSB – List of Part 1 Actions
25 May 2017**

(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
				18/1/17	In hand – At a discussion with the MoJ on 18 January 2017, value did not appear to be a priority for them. At a subsequent meeting with the Youth Justice Board on 14 March 2017, discussed continuing to put pressure on MoJ about this issue. There will be ongoing engagement with the YJB, LAA and MoJ on the issue of value.
20d (26 Nov 15) – Gov review & revised SOs	<p>establish two new roles to support the changes in education and training ie:</p> <ul style="list-style-type: none"> • a “Visitor” to hear challenges against Centralised Examination policy and procedures • an increased role for the Independent Observer to the Centralised Examination Board. 	Victoria Stec	before 31 March 16	12/05/17	<p>In hand – the Board will consider at its meeting of 25 May 2017 the recommendation from GRA that the Independent Observer of Examinations position be retained on a permanent basis, and will not covered by the internal Audit function. Should the Board endorse this recommendation, this action will now be resolved.</p> <p>The interim Independent Reviewer of Examinations will also be retained on a permanent basis.</p>
				15/02/17	<p>In hand – Meeting with Governance team took place. Proposals for internal audit are not yet at a stage where any change to interim arrangements is proposed and nature of expertise required is, in any case, likely to mean that these roles cannot be undertaken by an internal auditor. Agreed no change at present.</p>
				13/01/17	<p>In hand – Meeting with Governance team set up on 1.2.17 to discuss how to move on from interim arrangements.</p>

BSB – List of Part 1 Actions

25 May 2017

(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
				08/11/16	In hand – Interim Independent Examinations Observer participated in the resit Boards and this worked well. The arrangement will continue until internal audit is clarified.
				17/10/16	In hand – Interim Independent Examinations Observer appointed for work on resit Boards in October 2016. Contract will be ongoing but with 3-month termination clause so that when future of internal audit is clear, other arrangements can be made if needed.
				20/09/16	In hand – title of “Independent Reviewer” rather than “Visitor” has been agreed and interim Independent Reviewer is in place on an ad hoc basis from July 2016; recruitment processes for permanent role not yet complete.
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Rob Wall	by 31 Jul 15	16/05/17	Ongoing – TCG set up with Board and APEX members in June. Revised deadline for Board decision is September 17.
				15/02/17	Ongoing – Meeting with APEX members to discuss next steps on 21/02/17. Meeting between BSB and BMIF boards scheduled for 05/04/17
				16/11/16	On track – oral update on Part 2 agenda
				20/10/16	For discussion - see Board paper BSB 080 (16) – item 6 on the Part 2 agenda
				20/09/16	On track – economic analysis now complete. This will be considered by a Task Completion Group on 22/09 and presented to the board in October.

Forward Agendas

Thursday 22 Jun 2017

- CMA report: approval of action plan
- Draft Annual Report 2016-17
- Remuneration for barrister members
- Regulatory risk prioritisation
- LSB's "Regulatory Approach" Document
- Review of core duties

Thursday 27 Jul 2017

- Annual Report 2016-17
- Enforcement Report 2016/17
- Authorisations Governance Project Update
- Regulatory Standards Framework – BSB self-evaluation
- Statutory Interventions
- Regulatory Standards Framework assessments
- Update on PII Project
- Draft guide for FBT Rules Change consultation
- IDMB – update on progress
- Quality Assurance of Advocacy - update
- Entity Regulation and After the Event Insurance

Thursday 28 Sept 2017

- PRP Report: includes the BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, SLAs)
- GRA Committee Annual Report
- CMA recommendations on transparency: approval of consultation
- Qualifications Fees – Consultation Update
- Schedule of Board meetings Jan 2018 – Mar 2019
- Entity Review
- Standard of Proof – response to draft consultation
- Business Planning and Budget Bid for 2018-19
- Corporate Risk Register
- Public and Licensed Access Review – consultation paper and rule change
- Update on PII Project (including recommendation on extending requirement to insure with BMIF to SPEs)

Thursday 26 Oct 2017

- Education and Training Committee Annual Report
- Quality Assurance of Advocacy
- Statutory Interventions
- Rule change application (practice area, ML, youth courts)

Thursday 23 Nov 2017

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

Thursday 7 Dec 2017 (Board Away Day)

- Draft Authorisation Framework (FBT)

Thursday 25 Jan 2018

- Final Report on PII Project

Thursday 22 Feb 2018

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

Thursday 22 Mar 2018

- BSB Business Plan for 2018-19
- Rule change application for LSB on Future Bar Training

Performance Report for Q4 (January 2017 – March 2017) and Year – end 2016-2017

Status

1. For discussion and decision.

Executive Summary

2. This paper provides a Q4 and year-end update to members of the Board on the BSB's performance against the aims and objectives set out in the 2016-17 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.
3. This material will feed into our 2016-17 annual report, which is currently being drafted.
4. The performance report will also cover the considerable amount of “business as usual” activity that we undertake throughout the year. The new Continuing Professional Development Scheme was one of the key achievements for the year and was launched in January 2017. Being designated a licensing body for ABSs and agreeing the overall policy for Future Bar Training were also significant. For further achievements see annex 7.
5. Overall for 2016 – 17 the BSB has progressed well against the planned activities, although a small number have had their timelines extended into the 2017 – 18 Business Plan. This has been achieved against a very tightly resourced year. High priority projects and programmes impacted on business as usual and smaller, less time critical pieces of work. Staff have dealt with heavy workloads and some re-prioritisation decisions were taken.
6. The main “exception” areas highlighted in this report are:
 - a) Our financial ¹performance is as follows:
 - (i) Income: £1,190 (-2% under final forecast, but 15% over original budget)
 - (ii) Expenditure: £4,912 (6% under final forecast and 6% under original budget)
 - b) Four business activities were off target by the end of 2016-17 business year. We carried out an analysis on the last four business years (annex 8), this shows that the perceived “bow wave” effect has lessened over the years.
 - c) PCD missed two of their full year targets: OPI2 70.4 % (but achieved 100% in Q4) and OPI3 76.4% No trends detected, various reasons.
 - d) Authorisations missed their target of 75% of all applications decided within six weeks. Percentage achieved 55.5%, with a year-end total of 66%. An interim Authorisations Manager has been brought in for a three-month period to help the team to eliminate the backlog.
 - e) The overall staff turnover is 34% with voluntary turnover being 17%.

¹ unaudited – also at the time of going to print, the accounts had not been closed

7. We have completed the first year of our three year strategic plan and looking back there are a number of lessons that we can learn from and improve upon:
- we must continue to improve on our forward planning, remembering the interconnection of activities;
 - continue to involve staff of all levels in the planning of activities; and
 - prioritise our resource allocation to meet our most pressing demands.
8. We must continue to be agile in the use of our resources, so that the Executive can continue to play the leading role in regulatory decision making and policy development as expected by the governance reform programme.

Recommendations

9. Members of the Board are invited to:
- a) **discuss** the main areas highlighted;
 - b) **note** the achievements and analysis in the annexes;
 - c) **make recommendations** to the Executive or the Committee as necessary.

Background

10. We have just completed the first year of our Strategic Plan. The 2016-19 Strategic Plan² sets out the way in which we will regulate barristers and specialised legal services businesses. It also sets out how we will respond to potential proposals for change in the regulatory landscape and its underpinning legislation. The work which is to take place over this three-year period has been organised into the following three strategic aims:
- a) Regulating in the public interest;
 - b) Supporting those we regulate to face the future; and
 - c) Ensuring a strong and sustainable regulator.
11. The Business Plan³ for 2016-17 outlined our key activities for the year, as well as 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

12. 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. A new report has been designed with the aim to increase accountability and to rationalise how management information is presented (see annex 6).

² 2016 – 19 Strategic Plan https://www.barstandardsboard.org.uk/media/1746768/bsb_strategic_plan_2016-19.pdf

³ Business Plan - https://www.barstandardsboard.org.uk/media/1750592/bsb_business_plan_2016-17_31.3.16.pdf

13. The live document against which business activities are reported was last updated on 24 April 2017, whereas our performance indicators and management accounts are for Q4 only (as at 31 March 2017).

Areas for further consideration

14. Activity is reported to the Board and to the PRP Committee by exception. This means that only items which are not running to budget, timetable or have other resourcing issues are highlighted below, and have been listed in the order that they appear in the 2016-17 Business Plan.

These include:

a) Public and Licensed Access

- (i) We set out to review our approach to public and licensed access. This activity which was within our control, 'C1' had to be delayed while we awaited the Competition Market Authority's (CMA) report⁴ of its legal services market study.
- (ii) Following on from the publication of the report, the Board has approved the recommendation of our review of the public and license access. The implementation of new rules/guidance has been planned into 2017 – 18 business plan and will go alongside the implementation of the CMA's recommendations.

b) Ministry of Justice (MoJ)consultation on regulatory independence

- (i) We stated at the beginning of the year that we will respond to the MoJ on regulatory independence. We thought that the MoJ would issue a consultation on the independence of legal services regulators or that the CMA might find problems and impose a remedy in this area.
- (ii) We are currently in the process of and finalising the CMA action plan, which is to be published on 30 June 2017 following Board approval.
- (iii) To date there has been no formal response to the CMA report by the MoJ. With the upcoming General Election on 8 June 2017, we anticipate that we will not hear from them in the immediate short term. In addition to this the Legal Services Board (LSB) have indicated in their 2017 – 18 Business plan that they have deprioritised this area.
- (iv) In the event of a consultation on regulatory independence being issued by the MoJ, we will respond accordingly.

⁴ <https://assets.publishing.service.gov.uk/media/58518dc1ed915d0aeb0000a4/legal-services-market-study-final-report.pdf>

- c) Assurance Framework
- (i) This activity, which is within our control, is marked as red in relation to the timeline. The reason for the current delay is because of the need to align this work with other projects and developments (eg wider regulatory reporting). The size of the project and the time needed to liaise with committees, were larger and longer than first anticipated. This has meant that the timeline stated in the business plan was unrealistic.
 - (ii) BDO have recently completed an exercise mapping the high risk activities of the BSB the report was considered by the Governance Risk and Audit committee and we have begun drafting a tender for internal audit services.
- d) Risk Based Regulation
- (i) This activity was on track for Board approval in March 2017, but had to be pushed back. The Head of Regulatory Risk, had to reduce her workload in the run up to maternity leave and we had difficulties in recruiting her maternity cover. Now that we have recruited to the post, we are confident that we will meet the Q1 milestone in 2017 – 18 business year as the prioritisation session with the Board took place in December 2016.

HR Dashboard

- 15. Turnover continues to stay above 30% at 34% and remains a concern for BSB, although voluntary turnover is at half of this value (17%). Within this quarter we have seen a reduction in the amount of leavers over the past year and out of the three leavers in Q4, one was a fixed term contract. The BSB HR dashboard annex 5, shows a fuller analysis of staff turnover and sickness.
- 16. The HR section within the Resources Group report provides some further insight into organisation-wide statistics.

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

- 17. The Finance Department is highlighted as amber (rating of 77%) due to staffing issues, system and process issues. We are working with the Finance team in order to help them address their current issues.
- 18. Within Q1 2017 – 18 business year we will be reviewing the way that we manage the SLA, with the aim of focusing KPIs more specifically on business critical items.

PCD Performance Indicators

- 19. The performance in Quarter 4 was slightly below the 80% target in relation to individual OPIs 1 and 3, and at 100% in relation to OPI 2 (due to the small number of cases). However, overall our performance for the year has allowed the year end corporate KPI of 80% of cases concluded or referred within the service standards to be met. The year-end outturn on the KPI has improved considerably year on year, having been at 75.7% against the target of 80% in 2015-16, and at 69% against a target of 80% in 2014-15.

20. In relation to the OPIs for Q4, the Assessment Team achieved 72.3% for OPI 1 and the I&H Team recorded 100.0% in relation to OPI 2 and 77.3% in relation to OPI 3. The confirmed statistics for the year have not yet been produced. A comprehensive analysis of the performance statistics for the year will be included the Enforcement Annual Report which is scheduled to be presented to the Board at its July meeting.
21. GRA has previously received detailed accounts of the performance in Quarters 1-3 and it is not considered necessary to repeat these here. In relation to the performance in Quarter 4, this is currently attributed to a number of factors as outlined below. However, as stated above, a more detailed analysis needs to be carried out in light of the overall statistics for the year and it may be that the emphasis on contributory factors outlined below may change.
22. In relation to quarter 4, the slight dip in performance is considered to be due to the following factors:
- a. Staffing vacancies within the Assessment Team, the impact of which was most significant from January – March 2017;
 - b. Vacancies within the Investigations & Hearings Team, which have both been carried since September 2016; and
 - c. Issues with obtaining evidence and allocating cases to Case Examiners for reports to be prepared for the Professional Conduct Committee.
23. In relation to OPI 3 (internal complaints concluded or referred to disciplinary action), performance has fallen short of the 80% target in every quarter. An analysis of these cases indicates that staffing difficulties in the I&H team have contributed significantly, impacting approximately 42% of cases. There have also been issues related to obtaining evidence (approximately 23% cases) and Case Examiner delays (approximately 23% cases). Inevitably in a smaller number of cases, there have been related investigations which have needed to be linked resulting in these case falling outside KPI. Recent and ongoing recruitment drives for PCD staff and PCC members will address the key issues identified.

Authorisations

24. We are disappointed to have missed our Other Authorisation Applications targets for the fourth quarter and for the year as a whole. The reasons for this are as follows:
- From 1 April 2016, the Qualifications team was reduced to a smaller number of more highly skilled staff, in anticipation of the transfer of decision-making from Panels to staff, which would no longer require the resources of supporting the Panels. However, the Panels continued to operate until the end of December, so that staff continued to bear the workload of Panel support, in addition to their own caseload, throughout this period.
 - A significant amount of staff-time has been taken up throughout the year with implementation of the Authorisations Governance Review Project.
 - The above factors have created a backlog of applications so that, even though applications are now being processed at the same rate at which we are receiving them, a higher proportion of applications than usual are more than six, eight or twelve weeks old at their point of final determination.
25. An interim Authorisations Manager has been brought in for a three-month period to help the team to eliminate the backlog and review and improve operational systems.

2016-17 year-end actuals

26. Below are the headline figures for year-end (Q4), further detail can be found in Annex 2:
- a) In the twelve-month period ending 31 March 2017 (Q4 of 2016-17), the BSB received £1,190K in non-PCF income against our forecast of £1,214K (-2%) and our original budget of £1,031 (+15%). The 2017-18 budget is set at £888k for non PCF income.
 - b) For expenditure, we have a total spend of £4,912k against a year-end forecast of £5,198 (- 6%). The 2017-18 budget for directly controlled expenditure is £5,211k.
27. Detailed information on each departmental budget, which sets out the departmental forecasts and commentary on each line of the budget, can be provided upon request. The key pressures and challenges have been summarised from these documents and are set out below:
- a) Staff costs:
 - (i) We have carefully managed our staff cost and made robust decisions when vacancies arose throughout the year, ensuring that we are recruiting to our high priority areas (see paragraph 5). This year 2016 – 17 was also the first year that we introduced performance related pay and the scale of the anticipated increase in staffing cost was difficult to gauge.
 - (ii) Savings within the departments are due to the unexpected staff vacancies. See annex 5, the HR dashboard which shows the vacancies and our staff turnover levels.
 - (iii) We do not budget for recruitment or maternity cost as these types of expenditure are expected to be funded through underspends caused by vacancies. Currently we have four members of staff on maternity and two of the roles are being covered by temporary staff. The HR dashboard show the number of vacancies that we are currently recruiting to (see annex 5)
 - (iv) We already reported to the Board underspends within the staff budget has been offset against the recruitment bills for Board, committee and APEX members. Also that the learning and development budget which was overspent by 10k, due to delivery of the Leadership and Management development programme, where we went for value for money in this area rather than selecting the cheapest supplier.
 - b) Income
 - (i) As previously reported, we did not plan for any BCAT income as we made a cautious planning assumption that the test would not go ahead. Income from BCAT and BPTC had been forecast lower than the previous year. This was on the assumption that FBT might lead to more students deferring their enrolment.
 - (ii) We originally budgeted that we would invoice 1200 students for the BPTC take up and we actually invoiced 1422 students.
 - (iii) The unbudgeted income from BCAT is more than sufficient to meet our 65K commitment to the PCF shortfall against forecast in 16/17.

c) Non-staff Expenditure

- (i) As previously reported, the Strategy and Policy overspend is due to the full market impact assessment that was carried out in relation to BMIF arrangements (PII) and Competition Law.
- (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 turned out not to be the case for 2016-17 and so there is an underspend here.

Equality Impact Analyses

28. 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

29. Risk that may have an impact on the BSB achieving its objectives have been considered whilst compiling the business plan activities.

Regulatory objectives

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

Publicity

31. This report is presented in the Public part of the agenda.

Further Reading

32. BSB Corporate Risk Register as reported to GRA on 25 April 2017.

Annexes

33. Annex 1 – Q1 Dashboard
Annex 2 – Management Accounts summary
Annex 3 – PCD Performance Indicators
Annex 4 – Authorisation Team KPI's
Annex 5 – HR Dashboard – **See BSB paper 038 (17) annex 5**
Annex 6 – Resource Group 1 Report - **See BSB paper 038 (17) annex 6**
Annex 7 – 2016 – 17 Achievements
Annex 8 – Analysis of process against Business Plan

Lead responsibility

Dan Burraway, Corporate Support Manager
Natasha Williams, Business Support Officer

Q4 Dashboard

Business Plan Activities (2016-17)				Service Standards (Core activity)			
Strategic Programme 1 Regulating in the public interest				Professional Conduct Indicators			
	TIME	BUDGET	STAFF	CTRL	IMPRT	SIZE	BSB paper reference
Consumer Engagement* (Combined with as below)	X	X	X	C1	3	2	
Research	✓	✓	✓	C1	3	1	
Stakeholder Engagement (combined with *)	✓	✓	✓	C1	3	2	
Independent regulatory decision making	✓	✓	✓	C1	3	2	
International work	✓	✓	✓	C1	1	1	
Disciplinary system	✓	✓	✓	C1	4	1	
Regulatory Interventions	✓	✓	✓	C1	3	3	
Strategic Programme 2 Supporting barristers and those the BSB regulates to face the future				Entity Authorisation Decisions			
Entity Regulation and ABS	✓	✓	✓	C1	2	1	
Scope of Practice & Employed Barrister rules	✓	✓	✓	C1	2	2	
Public Access	✗	✓	✓	C1	3	2	Paragraph 14a
Chambers' governance	✓	✓	✓	C1	3	2	
Professional Indemnity Insurance arrangements	✓	✓	✓	C1	4	2	
Immigration thematic review	✓	✓	✓	C1	3	2	
Youth Courts	✓	✓	✓	C1	4	2	
QASA	✓	✓	✓	C1	1	1	
Future Bar Training	✓	✓	✓	C1	4	4	
Continuing Professional Development	✓	✓	✓	C1	3	3	
Diversity	✓	✓	✓	C1	4	2	
Strategic Programme 3 A strong and sustainable regulator				Number of Service Complaints closed			
MoJ consultation in regulatory independence	✗	✓	✓	C1	3	2	Paragraph 14b
Assurance Framework	✗	✓	✓	C1	4	2	Paragraph 14c
Board Governance	✓	✓	✓	C1	2	2	
ASPIRE	✓	✓	✓	C1	3	2	
Advisory Pool of Experts	✓	✓	✓	C1	4	3	
HR strategy	✓	✓	✓	C1	4	3	
Risk-based Regulation	✗	✓	✓	C1	4	4	Paragraph 14d
Information Management Programme	✓	✓	✓	C1	3	4	
BSB future Premises	✓	✓	✓	C1	1	1	
Key				IT Response times			
Control				2016 - 17			
C1 - BSB Control				2016 - 17			
C2 - RG control				Q4			
C3 - External control				Q4			
Importance				Size			
4 More important				↑ 1 Small piece of work			
1 Less important				↓ 4 Large piece of work			
Weighting				Corporate Risk Register			
Higher weighting				20 Jan 17			
Lower weighting				26 Apr 17			
Business Activities				Service level agreement with BC (RG)			
Completed				% of aims and objectives met			
				Project Management Office 96% ✓			
				Records Office 100% ✓			
				IT 95% ✓			
				HR 95% ✓			
				Facilities Management 99% ✓			
				Finance 77% ⚠			

2016-17 BSB Management Accounts						
	Q4 YDT Actual	Year End Forecast	Variance		Annual Budget	BSB Paper Reference
	£k	£k	£k	%	£k	
Income						
Entity Regulation and ABS	1	44	43	-98%	36	
Authorisations - Waivers & Accreditations	211	229	18	-8%	254	
Examinations	134	121	13	11%	120	
Supervision - Post Qualification	2	0	2		0	
Supervision - Education and Training	815	808	7	1%	621	
Professional Conduct Department	27	12	15	125%	0	
Total directly controlled income	1,190	1,214	24	-2%	1,031	Paragraph 27b
PCF	6,575	6,573	2	0%	6,754	
Inns Subvention	250	250	0	0%	250	
Total income	8,015	8,037	22	0%	8,035	
Expenditure						
Entity Regulation and ABS	86	95	9	0	82	
Staff Costs	86	85	1	-1%	82	
Other costs	0	10	10	0%	0	
Authorisations - Waivers & Accreditations	231	227	4	-2%	271	
Staff Costs	212	199	13	-7%	197	
Other costs	19	28	9	32%	74	
Examinations	345	359	14	-1%	330	
Staff Costs	136	135	1	-1%	129	
Other costs	209	224	15	7%	201	
Supervision - Post Qualification	439	457	18	4%	484	
Staff Costs	435	447	12	3%	481	
Other costs	4	10	6	100%	3	
Supervision - Education and Training	345	309	36	-12%	364	
Staff Costs	243	240	3	-1%	271	
Other costs	102	69	33	-48%	93	
Professional Conduct	1,171	1,296	125	10%	1,279	
Staff Costs	1,058	1,140	82	7%	1,145	
Other costs	113	156	43	28%	134	
Strategy and Policy	986	1,078	92	9%	991	
Staff Costs	799	800	1	0%	832	
Other costs	187	278	91	33%	159	
Communications and Public Engagement	285	335	50	0	355	
Staff Costs	240	256	16	6%	281	
Other costs	45	79	34	43%	74	
Corporate Services	686	705	19	3%	728	
Staff Costs	556	555	1	0%	575	
Other costs	130	150	20	13%	153	
Chair and Director General	338	337	1	0%	331	
Staff Costs	330	334	4	1%	328	
Other costs	8	3	5	100%	3	
[Staff costs]	4,095	4,191	96	2%	4,321	Paragraph 27a
[Non-staff costs]	817	1,007	190	19%	894	Paragraph 27c
Total directly controlled expenditure	4,912	5,198	286	6%	5,215	
Net	3,103	2,839	308	-6%	2,820	

PCD Key Performance Indicators

PCD Measure		2016-17						2015-16 YE	2015-16 Target
		Q1	Q2	Q3	Q4	YE	Target		
Complaints	Number of complaints received	113	73	63	120	369	n/a	481	n/a
Overarching KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	89.5%	77.8%	78.4%	73.4%	80.1%	80%	75.7%	80%
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks	89.3%	79.2%	96.2%	72.3%	84.6%	80%	72.6%	80%
OPI (Investigation)	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	91.3%	68.8%	25%	100%	70.4%	80%	81.3%	80%
OPI (Investigation)	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	76.5%	78.0%	71.4%	77.3%	76.4%	80%	79.2%	80%

Over-Running Cases

Snapshot at the close of Q4 of 2016-17

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Assessment (8 weeks)	71	17	24%
External Investigation (8 months)	34	6	18%
Internal Investigation (5 months)	41	3	7%
Total	146	26	18%

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

Authorisations Team – Performance against Key Performance Indicators (“KPIs”) for the Fourth Quarter of Financial Year 2016/17

Entity Authorisation

1. The KPIs for Entity Authorisation are as follows:
 - i) The percentage of authorisation decisions made within six months of receiving application and application fee.
Target: 90%
 - ii) The percentage of authorisation decisions made within nine months of receiving application and application fee.
Target: 100%

2. The following table shows performance against these KPI targets for the fourth quarter of the financial year 2016/17 (i.e. 1 January to 31 March 2017):

	No	Percentage	Cumulative Total	No	Percentage
Up to 6 months	8	100%	Within 6 months	8	100%
6-9 months	0	0%	Within 9 months	8	100%
Over 9 months	0	0%			

3. The following table shows performance against the KPI targets for each quarter of the financial year 2016/17:

	Target	Quarter 1		Quarter 2		Quarter 3		Quarter 4		Total	
Within 6 months	90%	7	100%	7	100%	7	100%	8	100%	29	100%
Within 9 months	100%	7	100%	7	100%	7	100%	8	100%	29	100%

4. We are pleased to have met and exceeded our targets for both the fourth quarter and for the financial year as a whole.

Other Authorisation Applications

5. The KPIs for all other authorisation applications (i.e. the applications previously determined by the Qualifications Committee but now delegated to staff) are:
- i) The percentage of applications determined within six weeks of receipt of the complete application, including all required documentation and the application fee.
Target: 75%
 - ii) The percentage of applications determined within twelve weeks of receipt of the complete application, including all required documentation and the application fee.
Target: 98%
6. The following table shows performance against these KPI targets, together with an additional measure of the percentage of applications determined within eight weeks, for the fourth quarter of the financial year 2016/17 (i.e. 1 January to 31 March 2017):

	No	Percentage	Cumulative Total	No	Percentage
Up to 6 weeks	197	55.5%	Within 6 weeks	197	55.5%
6-8 weeks	72	20.3%	Within 8 weeks	269	75.8%
8-12 weeks	53	14.9%	Within 12 weeks	322	90.7%
Over 12 weeks	33	9.3%			

7. The following table shows performance against the KPI targets for each quarter of the financial year 2016/17:

	Target	Quarter 1		Quarter 2		Quarter 3		Quarter 4		Total	
Within 6 weeks	75%	289	79%	203	72%	178	57%	197	56%	867	66%
Within 8 weeks	n/a	326	95%	320	88%	255	90%	269	76%	1170	89%
Within 12 weeks	98%	356	98%	278	99%	304	97%	322	91%	1260	96%
Total		364		282		312		355		1313	

Performance Report for Year-End - Achievements**Strategic Aim 1 – Regulating in the Public Interest****Strategic Aim 1 – Achievements**

Developed a strategy for Stakeholder Engagement and Public Affairs

Bar Tribunal and Adjudication Service (BTAS) contract refreshed and extended.

The Interventions policy was approved by the Board in October 2016.

Strategic Aim 2 – Supporting barristers and those the BSB regulates to face the future.**Strategic Aim 2 – Achievements**

Completed all work on becoming an Alternative Business Structure licensing authority, which was launch on 3 April 2017.

Immigration Thematic Review report was published on 20 May 2016

Future Bar Training – We handled the biggest consultation on routes to authorisation, leading to major policy decisions by the Board (published on 24 March).

The Legal Services Board on the 20 November 2016 approved the new Continuing Professional Development Scheme, which went live in January 2017.

New Equality Objectives were approved by the Board in January 2017 and published.

Strategic Aim 3 – A strong and sustainable regulator**Strategic Aim 3 – Achievements**

Board recruitment completed.

Completed the first and second round of recruitment for Advisory Pool of Experts.

Risk Outlook was launched on 12 April 2016.

Analysis on progress against Business Plan

BUSINESS PLAN ACTIVITIES PROGRESS REPORT											
Business Plan 2016/2017 Activities						Business Plan 2015/2016 Activities					
	Red	Amber	Green	TOTAL	% of achievement (green out of total)		Red	Amber	Green	TOTAL	% of achievement (green out of total)
Q1	0	6	20	26	77%	Q1	0	3	29	32	91%
Q2	0	6	20	26	77%	Q2	0	11	21	32	66%
Q3	0	8	18	26	69%	Q3	9	5	18	32	56%
Q4	3	1	22	26	85%	Q4	11	1	19	31	61%
Business Plan 2014/2015 Activities						Business Plan 2013/2014 Activities					
	Red	Amber	Green	TOTAL	% of achievement (green out of total)		Red	Amber	Green	TOTAL	% of achievement (green out of total)
Q1	4	2	26	32	81%	Q1	4	4	13	21	62%
Q2	4	7	22	33	67%	Q2	4	5	12	21	57%
Q3	3	9	21	33	64%	Q3	6	4	11	21	52%
Q4	15	5	13	33	39%	Q4	6	3	12	21	57%

Note

The analysis shows that the perceived “bow wave” effect has lessened over the years.

Shared Parental leave

Status

1. For decision. This paper seeks the Board's approval of rule changes in light of a recent consultation, Task Completion Group meeting, and advice from an Equality & Diversity APEX member.

Executive Summary

2. The Shared Parental Leave Regulations 2014 have enabled employed parents and adopters of children to share parental leave provisions (including maternity leave) between them.
3. At present the BSB Handbook has a rule (rC110.3.k) to ensure that parental leave is offered to the main carer of a new-born child at the self-employed Bar. Although a number of chambers offer shared parental leave (SPL) our rules currently do not require this.
4. This paper proposes that we amend the current parental leave rule (rC110.3.k) to make parental leave open to all self-employed barristers, thereby facilitating shared caring responsibilities. In our recent consultation, respondents were predominantly in favour of the suggested change, save for a number of constructive criticisms. A small minority of respondents were opposed the suggestion in principle. The proposals have since been considered by one of Equality and Diversity APEX members and a task completion group (TCG) convened for this purpose.
5. It is proposed that SPL should be available to the self-employed Bar as follows:
 - Parental leave should be available to every self-employed barrister who becomes a parent/carer of a child preceding or following birth or adoption;
 - A parental leave entitlement should continue to constitute a period of at least 1 year away from practice, including a rent free period (though a barrister would not be obliged to take the full entitlement);
 - The SPL rule should apply to all mothers, fathers, and adoptive parents, as well as the married, civil, and de facto partners of biological or adoptive parents;
 - Chambers' parental leave policies should allow parental leave to be taken flexibly, to enable members to maintain their practice and support their income while on leave;
 - The BSB should not prescribe what form this flexibility takes, however suggestions will be included in the Handbook guidance.

Recommendations

6. That the Board **approves** the proposed change to rule rC110.3.k outlined at paragraph 15.

Background

7. The BSB Handbook equality rules on parental leave, introduced in 2012, apply only to the main carer of a child following birth or adoption. This could be the mother, father or adoptive parent of either sex. The BSB introduced these rules to allow self-employed barristers in chambers access to similar parental leave provisions as are afforded to employed barristers through legislation.

8. In April 2015 a new legal entitlement for employers to offer shared parental leave for eligible parents came into force. The purpose of the legislation is to provide both parents with flexibility in considering how to best care for their child in its first year. The SPL provisions do not apply to self-employed barristers, save for where the self-employed barrister is the mother or main adopter, who chooses to reduce their Maternity or Adoption Allowance and pass their entitlement to an employed partner.
9. In February 2016 the Bar Council requested, through the Protocol for Ensuring Regulatory Independence, that the BSB amend the parental leave rules and provide guidance with respect to SPL. This is so that the BSB Handbook reflects the new legislation and parents at the self-employed Bar are given the opportunity to take a flexible approach to caring for their children while maintaining their practice.
10. The BSB is committed to promoting the principle of parental leave, and particularly supporting the progression and the retention of parents at the Bar, which aligns to our statutory regulatory objectives and our own equality strategy. A TCG was established to consider the issues independently from a regulatory perspective.
11. In November 2016 the BSB released a consultation paper (“the consultation”) on a proposed change to the current parental leave rules in the BSB Handbook. The consultation discussed a number of different options that sought to replicate the statutory scheme and one that sought to simplify the rules by offering the same parental leave entitlement to every parent/carer. The latter was supported by the largest group of respondents to the consultation and the TCG / APEX member for the reasons discussed in this paper.
12. The BSB received a total of 19 responses to the consultation, from individuals, chambers, and representative bodies. These responses have been collated and analysed to inform the recommendation in this paper. The consultation paper is attached at **Annex A** and a list of respondents and high-level summary is attached at **Annex B**. The full responses are available on request.

The proposed rule change

13. The current rule is found at rC110.3.k, and reads:

You must take reasonable steps to ensure that in relation to your chambers or BSB authorised body the following requirements are complied with:

.k	<i>chambers has a parental leave policy¹ which, in the case of a chambers, must cover as a minimum:</i>
i.	<i>the right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;</i>
ii.	<i>the extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave;</i>
iii.	<i>the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave;</i>
iv.	<i>where any element of rent is paid on a flat rate basis, the chambers policy must as a minimum provide that chambers will offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers’ rent;</i>
v.	<i>the procedure for dealing with grievances under the policy;</i>
vi.	<i>chambers’ commitment to regularly review the effectiveness of the policy;</i>

¹ Parental leave means leave taken by the **main carer** [emphasis added] of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex (Definition 150, BSB Handbook).

14. The current policy requires one carer to define as the “main carer” in order to access the parental leave rights required by the Handbook. The main carer has a guaranteed right to a parental leave provision under the current rule, but the second carer does not. Chambers may adopt more flexible policies but are not required to.
15. The proposed change (amended in the light of consultation responses and the TCG discussion) is for rule rC110.3.k to be changed to read¹:

~~.k~~ chambers has a parental leave¹ policy which, ~~in the case of chambers,~~ must cover as a minimum:

- ~~.i~~ **the right of a member of chambers to take parental leave;**
- ~~.ii~~ **the right of a member of chambers to return to chambers after a ~~specified period, or number of separate periods,~~ of parental leave, provided the total leave taken does not exceed a specified maximum duration (which must be at least one year);**
- ~~.iii~~ **a provision that enables parental leave to be taken flexibly and allows the member of chambers to maintain their practice while on parental leave, including the ability to carry out fee earning work while on parental leave without giving up other parental leave rights;**
- ~~.iv~~ the extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave;
- ~~.v~~ the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave;
- ~~.vi~~ where any element of rent is paid on a flat rate basis, the chambers’ policy must ~~as a minimum~~ provide that chambers will offer members taking a period of parental leave a minimum of 6 months free of chambers’ rent;
- ~~.vii~~ the procedure for dealing with grievances under the policy;
- ~~.viii~~ chambers’ commitment to regularly review the effectiveness of the policy;

¹ Parental leave means leave **from practice** taken by ~~the main~~ a carer of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex, **and includes the married, civil, or de facto partner of a biological or adoptive parent**

16. The following new guidance would also be included in the Handbook update (more detail would be included in the standalone Equality and Diversity Guidelines):
- a. Rule rC110.3.k applies to all members of chambers, irrespective of whether their partner or spouse takes parental leave.
 - b. A flexible policy might include for example: keeping in touch (KIT) days; returns to practice in between periods of parental leave; or allowing a carer to practise part time (rC110.3.l deals with flexible working requirements in more detail).

¹ To help clarify the changes made, words have been ~~struck through~~ where they have been removed from the previous version of the rule, and are **in bold** where they have been added.

- c. *Any periods of leave/return should be arranged between chambers and members taking parental leave in a way that is mutually convenient.*

Scope of the proposed rule

17. The proposed rule change includes an amendment to the definition of “parental leave”. Reference to “the main carer” has been replaced by reference to “a carer”. This would make parental leave available to any member of chambers who becomes the parent/carer of a child, and enable child caring responsibilities to be shared.
18. The definition of parental leave has also been extended to include the “married, civil, or de facto partner of a biological or adoptive parent”. This is to ensure that a carer who is not the legal parent of a child will still have access to parental leave.
19. The following four scenarios demonstrate the proposed change in the scope of the rule:

<p>Scenario 1</p> <p>The first carer is a self-employed barrister. The second carer is a self-employed barrister. Both work out of ‘Chambers A’.</p>	
<p>Under the current rule</p> <ul style="list-style-type: none"> • The “main carer” of the child has the right to return to chambers after a specified period of leave (which may as a minimum be up to one year), taken as a single block of leave. • The main carer also has the right to a waiver, reduction, or reimbursement of chambers rent and expenses during this period of leave (and where rent is paid on a flat rate basis this must be at least 6 months free of chambers rent). • The second carer would not have any guaranteed leave or rent free entitlement. 	<p>Under the proposed rule change</p> <ul style="list-style-type: none"> • The two carers would each have an entitlement to the full leave and rent free arrangements offered by ‘Chambers A’.
<p>Scenario 2</p> <p>The first carer is a self-employed barrister in ‘Chambers A’. The second carer is a self-employed barrister in ‘Chambers B’.</p>	
<p>Under the current rule</p> <ul style="list-style-type: none"> • The “main carer” would be entitled to parental leave as in Scenario 1. • The second carer would not have any guaranteed entitlement, as in Scenario 1. 	<p>Under the proposed rule change</p> <ul style="list-style-type: none"> • Both the barrister at ‘Chambers A’ and the barrister at ‘Chambers B’ would have the right to a full parental leave entitlement.

Scenario 3	
The first carer is a self-employed barrister. The second carer is employed.	
Under the current rule	Under the proposed rule change
<ul style="list-style-type: none"> • If the self-employed barrister was the “main carer”, they would have access to parental leave. • The barrister could choose to reduce their allowance and transfer part of their entitlement to their employed partner. • However if the barrister was the secondary carer they would not have any guaranteed entitlement to parental leave. 	<ul style="list-style-type: none"> • The self-employed barrister would be entitled to parental leave, regardless of whether their partner took leave.
Scenario 4	
The first carer is a self-employed barrister. The second carer is not in paid work.	
Under the current rule	Under the proposed rule change
<ul style="list-style-type: none"> • If the self-employed barrister is the mother giving birth, or the carer named as the main adopter, then they have access to parental leave. • If not, they have no guaranteed entitlement to parental leave. 	<ul style="list-style-type: none"> • The self-employed barrister would be entitled to parental leave, regardless of the employment status of their partner.

Risks and benefits of the proposed change

The effect on chambers’ rental receipts

20. The proposal has the effect of increasing the total amount of parental leave that any one chambers must offer. This poses the risk of a short-term detrimental effect on chambers’ rental receipts, as more barristers may take advantage of the rental break associated with parental leave.
21. During development of this policy some chambers provided estimates of this financial risk. One respondent estimated that if every barrister who had a child over the past five years had taken a full parental leave allowance, there would be a less than 5% reduction in chambers rental income (compared with if none had taken additional parental leave).
22. This risk would be somewhat mitigated by the incorporation flexible working arrangements while on parental leave (which may include partial rent contributions). This also assumes that both parents would wish to take their full leave entitlement, which may not be the case.

The proposed new rule does not match the SPL Regulations that apply to employees

23. The proposal will not bring parental leave at the self-employed Bar precisely in line with parental leave at the employed Bar. This could be interpreted as the BSB imposing additional burdens on the profession, especially as the proposal would not require self-employed barristers to share leave entitlements.

24. This was considered at length by the TCG and the APEX advisor. It was agreed that matching the system of leave sharing available to the employed Bar would require a significantly more complicated rule, with little justification.
25. Further, it is not possible to exactly match the rights available to employed barristers, without requiring chambers to contribute to a self-employed barrister's income while they are on parental leave. This is of course inherently inappropriate, given the nature of self-employed practice and the relationship between self-employed barristers and chambers.
26. Therefore in developing this policy we took the view that it should be suited to the unique nature of the self-employed Bar, and not restricted to matching the SPL Regulations as closely as possible.
27. The change is proposed specifically with the self-employed Bar in mind, and in recognition of the different benefits and disbenefits of self-employment.

Benefits

28. The view of the TCG was that the above risks will be outweighed by long term benefits to chambers and the profession generally. The policy will help barristers maintain their practice while on parental leave, reducing the difficulty of 'returning to practice' that some barristers currently face on their return. This will therefore mean that barristers are better able to continue in self-employed practice after having children, and so will continue to contribute to chambers' rental receipts, and retention at the Bar, in the longer term.
29. The policy avoids limiting the leave available to one self-employed barrister by reference to the leave taken by their partner. This removes an element of bureaucracy in the process, eliminating the need for the chambers of a barrister taking parental leave to communicate with the chambers or employer of that barrister's partner. It also avoids creating an artificial employer-employee relationship between chambers and barristers.
30. It is hoped that introducing this rule change will contribute to a culture change at the Bar. Rather than self-employed barristers seemingly facing a choice between their career and having a family, barristers can flexibly share caring responsibilities with their partner to facilitate having both.
31. In turn it is hoped that this will help improve the retention of women at the Bar, a problem highlighted in the Women at the Bar Report 2016².

Outcomes of the consultation

32. The consultation posed a number of potential options for the change to the parental leave rule. The version of the rule that has become the proposed rule change (at paragraph 15) appeared at the end of the consultation, as an alternative to the more complicated rule change required to mirror the SPL Regulations.

General response from the profession regarding the introduction of SPL

33. The majority of responses supported the introduction of a shared parental leave (SPL) rule in the Handbook, subject to a range of constructive criticisms. A very small number of responses were opposed to the introduction of SPL rules.

² https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf.

34. Those respondents **in favour** of introducing SPL proposed that a change in the rule would be a step in the right direction, helping to solve a number of problems that were identified with the current rule, such as:
- Carers of a new-born child may not wish to identify as a “main” and “secondary” carer. The effect of this is that they are not currently able to share caring responsibilities equally.
 - The second carer does not have a guaranteed right to a period of parental leave at present.
 - Where the second carer cannot take any leave, the main carer may feel obliged to take a longer continuous period of leave.
 - Such a long and continuous absence may have a detrimental effect on the main carer’s practice on return from parental leave. This can make returning to practice difficult and may increase the likelihood that the main carer will leave self-employed practice.
 - As parental leave is mostly taken by women, this contributes to the disproportionately high rate of attrition of women from the self-employed Bar³.
 - The inability of new parents to share care for a child in its first year, coupled with the fact that the current parental leave provisions are predominantly taken by women, was also identified as a contributor to stereotyping of women as ‘child rearers’ and men as ‘bread winners’.
35. The two responses that were **not in favour** of the proposal either denied the existence of a problem, or actively supported an alternative proposal that would only enable mothers to have (and directly prevent fathers from having) access to parental leave provisions.

Should the Handbook rule mirror the SPL regulations that apply to the employed Bar?

36. There was some disagreement among respondents about whether or not the SPL rule should closely mirror the SPL regulations that apply to employed barristers.
37. Other than continuity of access to parental leave between the employed Bar and self-employed Bar, no specific reasoning was given as to why the Handbook SPL rule should adhere closely to the equivalent regulations that apply to employees.
38. Matching the Handbook rule strictly to the equivalent regulations for employees is not a benefit in itself. Indeed the SPL regulations cannot be applied directly to the whole Bar because of the obvious differences between self-employment and employment.
39. The approach we are proposing, endorsed by the majority of respondents, is to create a rule which is as fair as possible, and suits the requirements unique to the self-employed Bar.

The Handbook definition of parental leave

40. The consultation asked respondents to consider whether the definition should refer to “main” or “joint” carers (i.e. whether it should be possible for carers to take leave simultaneously). The decision to move away from requiring carers to define themselves in either way was informed by the responses to this question.
41. The change to have the rule apply to any carer removes three main disadvantages:

³ The Women at the Bar research noted the period of highest attrition coincides with the period when women are most likely to start a family.

- Parents would no longer be required to define themselves within a potentially unrealistic hierarchy of care.
 - Chambers would not need to monitor whether or not a carer is on leave at the same time as their partner.
 - It mitigates the inflexibility of the current parental leave rule that limits childcare arrangements.
42. Some respondents raised concerns, which we have considered below. Though they are relevant considerations, we do not consider them barriers to proceeding with this rule change. Additionally, our analysis suggests that potential problems highlighted by some respondents are unlikely to arise in practice:
- One suggested that there may be a disproportionate effect on chambers with two members who share caring responsibility for a child.
 - However where two carers work within the same chambers, it is unlikely that they would take an extended period of leave simultaneously, due to the loss of income.
 - Even if they did take an extended period of simultaneous leave, it may well result in an earlier return to full practice for the two members of chambers.
 - Finally, this is likely to be a relatively rare scenario and the members of chambers would be incentivised to consider any impact on the long-term viability of their chambers (and hence their own practice).
 - Another suggested that having a “main” and “secondary” carer would enable a formal process of sharing leave (as the “main” carer would share leave with the “secondary” carer). This would bring the Handbook rule more closely in line with the SPL regulations available to employees.
 - However in the context of the self-employed Bar this is unnecessarily complicated, and assumes a relationship between chambers and barristers that is akin to an employer and employee.
 - Offering parental leave to all carers is less bureaucratic, and makes implementation practically easier for chambers.
 - Under our proposal, carers would arrange parental leave with their chambers, and would not need to concern themselves with the arrangements in other chambers (or with the employers of members’ partners).
43. Having considered the responses, the recommendation is to give all carers an entitlement to parental leave. The flexibility and longer term benefits of this option outweigh the potential problems highlighted.

Who the Handbook rule should apply to

44. One respondent queried who the current rule applied to, specifically if a married, civil, or de facto partner of a biological or adoptive parent could qualify for parental leave, regardless of whether that person was themselves a biological or adoptive parent of the child.
45. This prompted clarification within the definition that the rule should apply to this group.
46. It seems sensible and fair that a person who will be the parent of a child, in everything but legal title, should be able to access leave to care for that child.

Rental breaks

47. One response suggested that the parts of the rule relating to the right to rental breaks did not go far enough. The respondent identified this issue as one of the major features that prevents self-employed barristers from taking parental leave, and suggested that rental breaks should extend into the early period of return after parental leave.
- While this would undoubtedly be beneficial for barristers taking SPL, it could lead to a significant negative financial impact on some chambers.
 - This may be disproportionately damaging to predominantly publicly funded chambers, or others already facing significant financial pressure, particularly if they operate a fixed rent policy.
 - This concern is also at least partially mitigated by the introduction of a requirement for parental leave policies to be flexible.
 - We propose that this suggestion should not be implemented at this stage, but should instead be subject to a separate future review.

Guidance

48. Respondents who were supportive of the SPL rule agreed that guidance should not seek to cover every possible eventuality.
49. The suggested guidance in the consultation was widely seen as too prescriptive, particularly in terms of how flexibility should be incorporated into the rule. The guidance now suggested reflects that, while flexibility is still a required element of any chambers' parental leave policy, the specifics of that flexibility is a matter for chambers to determine.

Task Completion Group and APEX advice

50. A TCG was engaged after the consultation process, to discuss the options available, and the wording of the rule. The Task Completion Group comprised of Robin Field-Smith (College of Policing and Education Committee), Nathalie Lieven QC (Landmark Chambers), Graham Reid (RPC Law), and Jessica Stephens (4 Pump Court).
51. The TCG was asked in particular to focus on two key questions arising from the consultation:
- Should parents be required to share parental leave (or should they both have the same entitlement currently available to the "main" carer)?
 - Should the BSB prescribe what form the flexibility in chambers' parental leave policy takes?
52. The members of the TCG agreed that one leave provision per barrister provided a flexible and open policy that would enable self-employed barristers to arrange child care as they saw fit, and in a way that minimised the administrative burden for arranging leave. They also argued that, as long as the right to flexible parental leave was included in the rule, the form of flexibility should not be prescribed.
53. One of our Equality & Diversity APEX advisers was consulted separately on the same issues. She advised that we pursue a policy that was open to all self-employed barristers who become parents/carers, while prioritising simplicity and flexibility. This has the effect of mitigating the risks of indirect discrimination that might occur otherwise.

Resource Implications

54. The main resource implications for the BSB in the current year are amending the Handbook and supporting guidance, and communicating the changes to the profession. This can be accommodated within current budgets and we will seek to collaborate with the Bar Council to ensure they are able to offer support to the profession. A communications plan will be developed with the Communications and Public Engagement Team. There will be implications for our supervision activity going forward – this will likely be incorporated into other work that we will be doing in any event. If we decide that any specific compliance checking is necessary, this will be included in the budget for next business year.
55. There may be resource implications for chambers, so it will be important to ensure sufficient time is permitted in the implementation plan for policies to be updated and implemented. Following LSB approval, we would expect to give the profession 3-6 months to update their policies in line with the new rules.

Risk implications

56. This proposal mitigates one of the key themes identified in the BSB's Risk Outlook, namely *lack of diversity; discriminatory working cultures and practices*.
57. Other risks are considered above at paragraphs 20-27.

Equality and diversity

58. This proposal should have a beneficial impact on the Bar, specifically in relation to gender balance. There is no negative impact expected on groups with other protected characteristics.

Regulatory Objectives

59. This proposed rule change will promote the regulatory objective of *Encouraging an independent, strong, diverse, and effective legal profession*. Previous research has indicated that difficulties returning after parental leave has contributed to the low retention of women after 12 years of call. It is hoped that by implementing this change to the parental leave rules more barristers will be able to become parents while maintaining their practice, thereby improving the retention of women at the Bar and promoting work-life balance generally.

Annexes

Annex A: SPL consultation
Annex B: Consultation responses.

Lead Responsibility

Amit Popat, Head of Equality and Access to Justice
Oliver May, Senior Policy Officer, Equality and Diversity



REGULATING BARRISTERS

Shared Parental Leave

Consultation on a possible change to parental leave rules

November 2016

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Executive Summary

Should self-employed barristers have similar rights to shared parental leave as employed barristers? How might this be achieved? Please give us your views.

In this consultation paper, we consider the issue of whether and how barristers' chambers might allow self-employed barristers to share parental leave with their child's other parent or carer.

We think that this is important because it could contribute to improvements in the **wellbeing and work-life balance of barristers** with families. It could also help the Bar **retain female barristers** and therefore **improve diversity** within the profession.

The proposed change is to the rules within the BSB Handbook. It would require all chambers to include a provision in their parental leave policies for barristers to be able to take **Shared Parental Leave**.

But before we decide whether to do this, we would like your views.

About Shared Parental Leave

Shared Parental Leave has been a legal entitlement for all eligible carers who are employees with a child due (or with a child about to be placed for adoption) since April 2015.

It is designed to give parents more flexibility as to how to share child care arrangements during the first year after birth or adoption. It enables carers to share parental leave entitlements between them. They can decide to take leave simultaneously, or can decide to take it in turn.

Since barristers in chambers are self-employed, there is no statutory requirement for chambers to provide shared parental leave. However we would like to explore the opportunities shared parental leave can bring to the self-employed Bar.

About this consultation paper

We invite responses to this consultation paper from anybody wishing to share their views. However, we anticipate that it is going to be of most interest to self-employed barristers and those managing multi-tenant barristers' chambers.

Within this consultation paper, we consider:

- an amendment to the rules in the BSB Handbook to incorporate SPL (we identify different possible options);

- the potential benefits of the proposed change for individual barristers and for the Bar as a whole; and
- the potential challenges of implementing this rule change.

We encourage you to share your views, either formally or informally. Your thoughts will be critical for us when we consider whether or not to change the rule.

To help you consider the impacts of any future rule changes, we ask you to reflect on the effects of a shared parental leave entitlement in different scenarios. Our core proposal suggests that barristers should be able to share parental leave in the following situations:

- One carer is a self-employed barrister, the other is in employment;
- Both carers are self-employed barristers at the same chambers; and
- Both carers are self-employed barristers at different chambers.

We have also made some additional suggestions, on which we would welcome views. One would enable a barrister to take SPL where the other partner is not in paid work and another would entitle all parents to take the same parental leave, whether or not they are the main carer.

The closing date for this consultation is **5pm Friday, 17 February 2017**.

You can respond to this consultation by contacting us as follows:

Email: equality@barstandardsboard.org.uk
Tel: 0207 611 1305
Equality and Access to Justice Team
The Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please let us know if there is anything else we can do to facilitate feedback other than via written responses.

We look forward to hearing from you.

Part I: Introduction

The Handbook Equality Rules

1. The BSB Handbook sets out the standards that the Bar Standards Board requires from the barristers and specialised legal services businesses which it regulates. In September 2012 the BSB introduced a number of mandatory equality rules into the Handbook that apply to all self-employed barristers in multi-tenant chambers. The rules aim to promote and embed the principles of equality and diversity within chambers. They cover a number of different areas previously untouched by regulation for the Bar such as equality monitoring, fair recruitment training and parental leave.
2. The parental leave rules were introduced in order to support female progression and retention at the Bar. More recent evidence suggests that this is still an issue¹. The number of female practitioners drops significantly after 12 years' call, which is the time when many women decide to start a family. The parental leave rules were designed to support carers, in particular women, by offering self-employed barristers in chambers access to similar provisions as are afforded to the employed Bar through legislation. The current rules enable the 'main carer' of a child to take advantage of time away from practice in order to care for a child.
3. The current parental leave rules for barristers are found at rC110(.k) of the Handbook. They place certain requirements on chambers in relation to the **main carer** of a child. The current rule is shown in detail in Part II.

Shared Parental Leave legislation for employed carers

4. Shared Parental Leave (SPL) is a legal entitlement for all eligible carers with a child due, or with a child placed for adoption, on or after 5 April 2015. It was created by the Shared Parental Leave Regulations 2014 and entitles partners who satisfy certain criteria to share between them the maternity or adoption leave that would previously only have been accessible by one of the carers.
5. SPL is designed to give carers more flexibility in caring for their child during the first year following birth or adoption. When taking advantage of SPL, carers are able to share a period of leave between them as they see fit. Rather than being limited to one partner acting as the 'main carer', taking on the majority of caring responsibilities and taking up to a full year of leave, the partners can act as 'joint carers' and share both the responsibilities and leave as they see fit. They can decide to take leave at the same time, or take it in turns, or a mix of the two.

¹ https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf.

6. To qualify for SPL the mother or adopter must be entitled to maternity or adoption leave, must have given notice to their employer that they intend to share it, and must share the main responsibility for caring for the child with a named partner.

For a carer to be eligible to take SPL they must be an employee and they must also pass the “continuity of employment test”. (See definition below.) In turn, the other carer who is going to share the parental leave must meet the “employment and earnings test”. (See definition below.)

- **Continuity of employment test:** the employee must have worked for the same employer for at least 26 weeks at the end of the 15th week before the week in which the child is due (or at the week in which an adopter was notified of having been matched with a child or adoption). The employee must also still be employed in the first week that SPL is to be taken.
- **Employment and earnings test:** the individual with whom the parental leave is to be shared must have worked for at least 26 weeks in the 66 weeks leading up to the child’s due date (or the date when a child is placed with them for adoption) and have earned above the maternity allowance threshold of £30 per week in 13 of the 66 weeks.

Where both parents satisfy these tests they will both be able to share the leave. However, a family can still take advantage of SPL even when only one parent meets the eligibility criteria. For example, a self-employed parent will not be entitled to take SPL but they could still pass the employment and earnings test allowing the other parent in the family to qualify.

The current parental leave rule for self-employed barristers

7. The current rule is found at rC110(.k) of the BSB Handbook:

You must take reasonable steps to ensure that in relation to your chambers or BSB authorised body the following requirements are complied with:

- .k chambers has a parental leave policy¹ which, in the case of a chambers, must cover as a minimum:*
- i. the right of a member of chambers to return to chambers after a specified period (which must be at least one year) of parental or adoption leave;*
 - ii. the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;*
 - iii. the method of calculation of any waiver, reduction or reimbursement of chambers' rent and expenses during parental leave;*
 - iv. where any element of rent is paid on a flat rate basis, the chambers policy must as a minimum provide that chambers will offer members taking a period of parental leave, or leave following adoption, a minimum of 6 months free of chambers' rent;*
 - v. the procedure for dealing with grievances under the policy;*
 - vi. chambers' commitment to regularly review the effectiveness of the policy;*

¹ *Parental leave means leave taken by the **main carer** [emphasis added] of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex (Definition 150, BSB Handbook).*

Background to the suggested rule change

8. The Bar Council asked us to consider amending the parental leave rules in the BSB Handbook to include provisions for SPL. Members of the profession and chambers have been enquiring about whether SPL provisions apply to them and how/if SPL provisions can be applied to their existing parental leave policies.
9. We have considered the request carefully. The problem it identified is that the current provisions do not entitle all barristers to use SPL. Any chambers is free to offer SPL arrangements to its members, but is not obliged by the BSB's rules to do so. The existing combination of SPL legislation and the parental leave rule in the BSB Handbook may allow a self-employed barrister to take advantage of SPL where they are a primary carer entitled to Maternity or Adoption Allowance, and they choose to reduce their allowance and pass their entitlement to an employed partner. So whilst a chambers might be willing to comply more generally with the spirit of SPL legislation, the BSB rules do not require them to offer parental leave to anyone other than the main carer of a child.
10. The BSB has considered this from the point of view of the regulatory objectives and concluded that introducing a provision for SPL into the Handbook would help promote "an independent, strong, diverse and effective legal profession"². Enabling caring roles to be shared between partners is a practical measure that would help the retention of women at the Bar, and therefore might encourage a more equal gender balance at the top end of the profession. It would also help to foster a more progressive culture in the profession, and break down old stereotypes, eg that 'women have to choose between a career at the Bar and having a family'.
11. The course of action we are considering is:
 - a. Amending the existing rules which limit parental leave and rent breaks to the "main carer"; and
 - b. Producing guidance for chambers on SPL to cover topics such as calculating leave and rent breaks.
12. In order broadly to match the entitlement of employees, we would envisage a new rule that would require parental leave to be available and shared in situations where:
 - a. Both carers are self-employed barristers at the same chambers;
 - b. Both carers are self-employed barristers at different chambers; and
 - c. One carer is a self-employed barrister, the other is in employment.

² <https://www.barstandardsboard.org.uk/about-bar-standards-board/what-we-do/the-regulatory-objectives/>.

Part II: The proposed change to the current rule

13. We do not think it would be helpful to seek exactly to replicate the requirements of the statutory scheme, so we have not, for example, sought to introduce the ‘continuity of employment’ or ‘employment and earnings’ eligibility tests. We also do not propose to set up any regime to require chambers to check what leave is being taken by a barrister’s partner, as we think that would be disproportionate. Given barristers’ overriding duty of honesty, we think the risks of abuse are low. The proposed change is that Handbook rule rC110(.k) should be amended to read:

.k chambers has a parental leave¹ policy which must cover as a minimum:

- .i a provision for shared parental leave that enables a member of chambers to share leave arrangements and childcare responsibilities with a partner during a child’s first year;*
- .ii the right of a member of chambers to return to chambers after a specified period of parental leave (which must be at least one year, or, if taken as shared parental leave with another joint carer, must total at least one year when combined with the other joint carer’s leave);*
- .iii where shared parental leave is taken, a joint carer is entitled to a proportion of the leave/rights available under their chambers’ policy, equivalent to the proportion sacrificed by the other carer;*
- .iv the extent to which a member of chambers is or is not required to contribute to chambers’ rent and expenses during parental leave;*
- .v the method of calculation of any waiver, reduction or reimbursement of chambers’ rent and expenses during parental leave;*
- .vi where any element of rent is paid on a flat rate basis, the chambers’ policy must provide that chambers will offer members taking a period of parental leave a minimum of 6 months free of chambers’ rent (or, if taken as shared parental leave with another joint carer, a proportionate amount);*
- .vii the procedure for dealing with grievances under the policy;*
- .viii chambers’ commitment to regularly review the effectiveness of the policy;*

¹ Parental leave, including when taken as shared parental leave, means leave taken by the main or joint carer of a child preceding or following birth or adoption. This could be a mother, father, or adoptive parent of either sex (Definition 150, BSB Handbook).

14. A definition of “shared parental leave” will also be added to the definitions section of the BSB Handbook that reads:

Shared parental leave means leave taken by the joint carers of a child preceding or following birth or adoption. This can be accessed by mothers, fathers, or adoptive parents of either sex (Definition 150, BSB Handbook).

Question 1: Do you agree with the proposed change to the wording of the parental leave rule above?

15. The proposed rule change would be accompanied by guidance. Implementing SPL arrangements in chambers could be complex, so it is suggested that guidance does not attempt to cover every eventuality.
16. We recommend that the guidance would encourage chambers SPL policies to include:
- a. That SPL can be taken as one continuous block of leave, or split into a maximum of three separate blocks of leave, all of which must be taken within the child’s first year. (This would put the policies in line with the April 2015 Regulations that apply to eligible employees.)
 - b. ‘Shared Parental Leave in touch’ days (SPLIT days). These are individual days of paid work that can be taken without forfeiting the benefits of being on SPL. Each carer can work up to 20 days while taking SPL. These are in addition to the ten ‘keeping in touch’ days (KIT days) available to those on maternity or adoption leave. KIT and SPLIT days would be encouraged but not a compulsory element of the rule, so would need to be agreed by carers and their chambers³.
 - c. That a barrister taking SPL would show that they are a ‘joint’ carer by not submitting any bills during their time on leave, save for any SPLIT days worked. This would minimise bureaucracy, recognising the practical differences between self-employed barristers and those in employment, and would prevent any infringement on privacy during SPL.
17. The guidance would also illustrate how the rule change would enable SPL to be accessible in each of the three scenarios outlined on the next page.

Question 2: Would the suggestions at paragraphs 16-17 be appropriate guidance for chambers’ SPL policies?

³ <https://www.gov.uk/employee-rights-when-on-leave>.

Scenario 1:

The first carer is a self-employed barrister. The second carer is a self-employed barrister. Both work out of 'Chambers A'.

1. Under the current rule the "main carer" of the child has the right to return to chambers after a specified period of leave (which must be at least one year), taken as a single block of leave. The main carer also has the right to a waiver, reduction, or reimbursement of chambers rent and expenses during this period of leave (and where rent is paid on a flat rate basis this must be at least 6 months free of chambers rent). The second carer would not have any specific leave or rent free entitlement.
2. Under the suggested rule change the two carers would have a joint entitlement to the leave and rent free arrangements offered by 'Chambers A'. The total leave allowance would be equal to that available to a main carer under the current rule. The carers would be able to split the leave and rent relief as they saw fit, and each split their leave into up to three blocks (rather than taking it as one continuous block).
3. For Scenario 1 the suggested rule change would have a net-zero financial impact on the Bar as a whole, and on individual chambers (assuming that both barristers were paying the same rent). 'Chambers A' would have had the same total amount of leave and rent free entitlements taken as before the rule change, it would simply be shared between two people rather than entirely taken by one person.

Scenario 2:

The first carer is a self-employed barrister in 'Chambers A'. The second carer is a self-employed barrister in 'Chambers B'.

1. Under the suggested rule change the two carers would each be entitled to a percentage of the parental leave offered by their own chambers. If 'barrister A' at 'Chambers A' gives up a percentage of his/her entitlement, then 'barrister B' at 'Chambers B' would be entitled to take that sacrificed percentage of Chambers B's parental leave policy.
2. For example, 'Chambers A' may have a parental leave entitlement of 2 years, and a full relief of paying chambers rent for the duration of leave taken. 'Chambers B' may have a parental leave entitlement of 1 year, and a 6 month relief from rent taken on a flat-rate basis. If the carers arranged to take 50% of the leave each then the barrister at 'Chambers A' would have 1 year of leave with no rental payments during that time, and the barrister at 'Chambers B' would have 6 months of leave with a 3 month relief from chambers' flat-rate rent.
3. In terms of the total amount of parental leave and rent relief used in Scenario 2, the suggested rule change would have an approximately net-zero impact on the Bar as a whole. However the financial impact on the Bar as a whole would depend on how the financial impacts will be felt by different chambers.
4. One of the expected effects of the rule change would be that the amount of parental leave by female barristers would reduce, and the amount taken by male barristers would increase. Therefore chambers with a higher percentage of women might experience a net-positive financial impact, and chambers with a higher percentage of men experience a net-negative financial impact.

Scenario 3:

The first carer is a self-employed barrister. The second carer is employed.

1. Under the current rule, SPL would only be available if the self-employed barrister were the main carer entitled to Maternity or Adoption Allowance, and they chose to reduce their allowance and pass their entitlement to an employed partner.
2. Under the suggested rule change SPL would be available to the self-employed barrister as a joint carer, regardless of their entitlement to Maternity or Adoption Allowance. The same approach to sharing the entitlement would be adopted as in Scenario 2. The percentage of entitlements sacrificed by the employed carer could be taken by the self-employed barrister as a proportion of the chambers' policies. The carers would determine their relevant shares, and communicate this with the first carer's chambers and the second carer's employer.
3. As we know from our monitoring data¹ there are nearly twice as many men practising as self-employed barristers as there are women, and this ratio is even higher for barristers of 15 years call or more. This fact is a major driving force behind our consideration of this policy change. However for the reasoning outlined in paragraph 25 it also means that there will be a net-negative short-term effect on the finances of individual chambers and the Bar as a whole.
4. The long-term financial implications across all of the scenarios should be positive. If the policy were successful in improving the retention of women at the Bar, then chambers would see an increase in the number of experienced female tenants staying after having children. Retention of female tenants, as they enter the stage of their career in which they can command the highest fees for their expertise, would have a strongly positive impact on chambers' finances.

Question 3: What are your views on how the suggested rule change will affect these three scenarios?

Question 4: Are there any additional scenarios we should consider?

Potential benefits and challenges of the suggested rule change

18. The proposed change has the potential to have a number of direct benefits to the equality and diversity of the profession, but there are also a number of potential challenges to the implementation of the proposed new rule. Below is a table containing those identified so far:

Potential benefits	Potential challenges
<ul style="list-style-type: none"> • Bring the self-employed Bar in line with current SPL provisions for the employed Bar; • Allow parents greater flexibility in how to best care for, and bond with, their child during its first year; • Allow fathers to take a greater role in childcare responsibilities; • Improve the gender diversity at the senior end of the self-employed Bar by supporting the retention and progression of female self-employed barristers; • Increase income for chambers that would otherwise have failed to retain female members; • Reduce the likelihood that chambers lose female members for a full year after having a child; • Improve flexibility when compared with current parental leave rules; • Help to change the culture at the Bar and the traditional view of caring roles; • Improve wellbeing at the Bar through the effect on work/life balance; • Mitigate possible unconscious bias against selecting women of child-bearing age as pupils or tenants. 	<ul style="list-style-type: none"> • All chambers will have to amend their Parental Leave policies; • Introducing SPL will be a professional conduct issue, rather than a legal requirement; • SPL provisions may be subject to abuse (e.g. two barristers in different chambers could each claim full parental leave entitlement). However the risk of this is assessed to be low and would breach Handbook rules on dishonesty; • Cost implications for chambers with a high number of members who previously would not have been able to take leave or request a rent rebate. This may be a particular challenge in predominantly publicly funded chambers.

Question 5: Are there any additional potential benefits or challenges to the proposed new rule?

Part III: Considering additional options

Sharing care where one partner is not in paid work

19. We have also identified one further scenario where parental leave rules might impact on how self-employed barristers share caring responsibilities for a child during its first year:

Scenario 4:

The first carer is a self-employed barrister. The second carer is not in paid work and does not receive state benefits.

20. In an equivalent to this scenario, where one carer is employed and the other is not in paid work, SPL would not be available under the current legislation: applicants would fail either the 'continuity of employment test', or the 'employment and earnings test'. Currently where one carer is employed and the other is not in paid work, the employee can access any maternity or adoption leave entitlements. But if, for example, the parent giving birth is not in paid work, then that parent would have no maternity leave to share with the employed carer and so SPL would not be available.
21. The current Handbook rule has a similar effect. A self-employed barrister, with a partner who is not in paid work, can only access parental leave if they are the main carer (in practice, either a mother who gives birth to the child, or the carer named as the main adopter).
22. The objective of SPL is more equal sharing of traditional caring roles, particularly where very young children are concerned. This is just as important in families where only one carer is in paid work.
23. Consequently, we have determined three alternative approaches to this fourth scenario:
- a. Align the Handbook rule with SPL legislation. This would mean that the self-employed barrister in scenario 4 would only be entitled to parental leave if they were the main carer;
 - b. Entitle the self-employed barrister to 50% of their chambers' parental leave policy. This would mirror the position the barrister would be in if their partner was employed and they shared their SPL entitlement equally; or
 - c. Entitle the self-employed barrister to 100% of their chambers' parental leave policy. This would mean that all self-employed barristers would have access to a full parental leave policy, no matter what their partner's employment status was. Unlike in options (a) and (b), self-employed barristers, whose partner is not in paid work, could choose to be the main

carer in their child's first year.

24. While options (b) and (c) present a different situation from that currently on offer to employed carers, they would serve to promote shared caring of children even in families where only one carer is in paid work.
25. Option (a) would have the smallest financial impact on individual chambers, and option (c) would have the largest financial impact. However it is possible that in most cases like Scenario 4, the self-employed barrister, as the sole earner for the family, will not take a lengthy period of parental leave. And therefore the negative financial impact on chambers, of either (b) or (c), would be minimal.

Question 6: Which of the options in paragraph 23 (a, b, or c) should be the minimum standard required by the BSB of chambers in their SPL policies and why?

Giving full parental leave entitlements to both carers

26. Both the current Handbook rule on parental leave, and the suggested change, would set the minimum standards on chambers' parental leave policies, not the upper limit. By seeking to replicate the statutory SPL scheme, we have perhaps arrived at a relatively complicated rule. There may be value in simplifying the requirements (albeit that might increase the amount of parental leave that was taken by the self-employed Bar in total – whilst that may be a desirable thing, it might impose additional costs on chambers).
27. An alternative approach would be to give all self-employed barristers who become the carer of a child full access to the chambers' parental leave policy, regardless of whether their partner is a barrister at the same chambers, a different chambers, is employed, or is not in paid work. The impact of this change would be that any parent or carer could claim the parental leave rights that are currently only available to the main carer. However, a potential benefit might be improved work-life balance for both carers and a cultural shift towards shared parenting across the profession.

Question 7: Would you support this alternative approach and why?

Question 8: Would the increased burden on chambers be justified in the light of any benefits?

Question 9: What do you estimate the financial cost of giving full parental leave entitlements to both carers would be for your chambers?

Part IV: About this consultation

How has this consultation been developed?

28. We have considered the issue of how SPL could be applied within barristers' chambers. We have done this by using a task completion group consisting of staff, board members, and members of the profession.
29. The change being considered will not be directly relevant to those at the employed Bar, unless they have a partner at the self-employed Bar, as the potential rule change would only affect self-employed practitioners. We recognise that there is a wide variety of different practising models within the profession. This poses a challenge when assessing the impact of a potential rule change to different business structures.
30. We are extremely grateful to the Shared Parental Leave Task Completion Group, a small collection of practising barristers and internal staff, who gave up their time, energy and expertise in an effort to provide external challenge and fresh perspectives on our internal thinking.

How we will use this consultation

31. This consultation will be used to explore the impacts of this potential rule change, from the perspective of anyone who is interested in the issue, but we would particularly welcome the views of those listed below.
32. Once we have listened to your views on the proposed rule change, we will evaluate them in relation to our regulatory objectives and other statutory obligations.

Who should respond to this consultation?

33. We are particularly interested in hearing from:
- Self-employed barristers;
 - Employed barristers;
 - Members of chambers' business management, including clerks;
 - Members of the judiciary;
 - Bar special interest networks and associations; and
 - Students: current law students, BPTC students and anyone interested in a career at the Bar.
34. There are a number of different ways of engaging with the consultation process and responding – see Part IV of this document for more details.

Part V: How to respond to this consultation

35. The deadline for this consultation is **5pm Friday, 17 February 2017**. You do not need to wait until the deadline to respond to this consultation.
36. A response does not need to be a comprehensive written document, although it can be if you wish. It can also be short form answers to the very specific questions we have posed. It is however far more useful to us (and we are better able to take your views into account) if you are able to address the questions we have posed specifically, rather than, for example, simply stating your general view. We will of course never exclude consideration of a response, whatever its form or content.
37. We want to hear your views on all of the questions posed, and are taking into account all responses.
38. You do not have to respond to this consultation in writing. If you would like someone from the BSB to meet you or the organisation you represent, to listen to and accurately record your views, then as far as possible we will try to accommodate this request. Please contact us either by email, telephone or post as soon as possible if you would like to do this.
39. Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation, and publish a list of respondents. If you do not want to be named as a respondent to this consultation please set this out in your response.
40. Please send your response, or otherwise get in touch, as follows:

Email: equality@barstandardsboard.org.uk
Tel: 0207 611 1305
Equality & Access to Justice Team
The Bar Standards Board
289-293 High Holborn
London WC1V 7HZ

Next steps following the end of the consultation

41. The consultation will close on **5pm Friday, 17 February 2017**. Once the consultation has closed we will collate and analyse the responses. We will use them to determine the potential for the suggested rule change. If we decide to go ahead with a rule change, we will finalise the drafting of the new rule.
42. If the rule changes, we will amend and update the relevant guidance on the BSB website.

Appendix 1: About the BSB

About the BSB and what we do

43. The Bar Standards Board is the regulator of barristers in England and Wales. We are also responsible for setting the education and training requirements for those who wish to practise as barristers in England and Wales.
44. We are responsible for the Code of Conduct ([the Handbook](#)) which sets out how barristers must work once they are qualified. We monitor how well barristers are meeting our practising requirements.
45. If they breach the Code of Conduct, we can take enforcement or disciplinary action against them. Through our activity, we protect the public interest and consumers, and help uphold the rule of law and the proper administration of justice. You can find out more about us on our [website](#).

Strategic context and our approach as a regulator

46. Along with other legal services regulators, such as the Solicitors Regulation Authority⁴ (SRA) and CILEx Regulation⁵, our regulatory objectives are:
- protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of legal services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of citizens' legal rights and duties; and
 - promoting and maintaining adherence to the professional principles.
47. Earlier this year, we published our Strategic Plan for 2016-2019. [This Plan](#) and the accompanying annual business plans which support it, set out our strategic aims for ensuring we are best placed to respond to our regulatory objectives. These include:
- regulating in the public interest;
 - supporting barristers and those we regulate to face the future; and
 - ensuring a strong and sustainable regulator.

⁴ The body responsible for regulating solicitors.

⁵ The body responsible for regulating legal executives.

We are a risk- and evidence-based regulator. This means that our approach must focus on identifying potential risks which could prevent us from meeting our Regulatory Objectives⁶. We use evidence to prioritise the risks that we focus upon, and then review our effectiveness in achieving the desired outcomes to inform future adjustments to our regulatory approach.

⁶ <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

Shared Parental Leave consultation responses

1. The BSB received a total of 19 responses to the Shared Parental Leave consultation on a possible change to parental leave rules (“the consultation”).
2. Of those who responded, 8 were individuals, 6 were chambers, and 5 were representative bodies (including one of the Inns of Court).
3. Some respondents wished to remain anonymous. Those who responded and did not express a desire to remain anonymous were:
 - a. Rachel Marcus
 - b. Francesca Quint
 - c. Timothy Brennan QC
 - d. Paul Ashwell
 - e. Esther Gamble
 - f. Jamie Johnston
 - g. Fiona Ryan
 - h. Keating Chambers
 - i. Cloisters Chambers
 - j. Brick Court Chambers
 - k. Lincoln House Chambers
 - l. St Philip’s Stone Chambers
 - m. Matrix Chambers
 - n. The Commercial Bar Association (COMBAR)
 - o. The Bar Council
 - p. Family Law Bar Association
 - q. Inner Temple Bar Liaison Committee
 - r. The Association of Women Barristers

General responses

4. The following did not directly answer the questions posed in the consultation paper, but rather answered in general terms:
 - a. Rachel Marcus;
 - b. Francesca Quint;
 - c. Keating Chambers; and
 - d. An employed barrister who wished to remain anonymous.
5. Respondents who answered in this manner were in favour of widening the scope of the parental leave rule to enable both carers to take time away from practice.
6. Two of the four respondents were in favour of a full parental leave entitlement being available to all self-employed barristers who are carers. The other two supported enabling sharing leave in a manner similar to the SPL Regulations.

Direct responses to the consultation questions

7. The questions asked in the consultation paper were:
- a. Q1: Do you agree with the proposed change to the wording of the parental leave rule above?
 - b. Q2: Would the suggestions at paragraphs 16-17 be appropriate guidance for chambers' SPL policies?
 - c. Q3: What are your views on how the suggested rule change will affect these three scenarios?
 - d. Q4: Are there any additional scenarios we should consider?
 - e. Q5: Are there any additional potential benefits or challenges to the proposed new rule?
 - f. Q6: Which of the options in paragraph 23 (a, b, or c) should be the minimum standard required by the BSB or chambers in their SPL policies and why?
 - g. Q7: Would you support this alternative approach and why?
 - h. Q8: Would the increased burden on chambers be justified in the light of any benefits?
 - i. Q9: What do you estimate the financial cost of giving full parental leave entitlements to both carers would be for your chambers?

Question 1: Do you agree with the proposed change to the wording of the parental leave rule above?

8. The majority of respondents were in favour of the core proposal to enable wider access to parental leave among self-employed barristers.
9. The respondents who were in favour had a range of suggestions for how to amend the wording of the rule so as to achieve the originally stated objective of 'sharing leave'.
10. Seven of these respondents were supportive of the proposal to extend leave to all self-employed barristers who are carers of children.
11. Six supported a model closer to the SPL Regulations that apply to employees.
12. Two respondents were opposed to the suggested change to the parental leave rules.
13. Consequently a total of 9 respondents favoured providing a full parental leave entitlement to both all carer-barristers, 8 supported closely matching the SPL Regulations, and 2 opposed making any change.

Question 2: Would the suggestions at paragraphs 16-17 be appropriate guidance for chambers' SPL policies?

14. The guidance included in the consultation was substantially different to the guidance now proposed. This change was made in light of the consultation responses and subsequent work carried out.
15. Several of the responses were in favour of the guidance as it appeared, but most responses criticised the guidance as too prescriptive and restricting. These responses favoured a more flexible approach to the guidance, which is now reflected in the current proposal.

16. Respondents who objected to the proposed change also responded negatively to the proposed guidance.

Question 3: What are your views on how the suggested rule change will affect these three scenarios?

17. The “suggested rule change” referred to in this question was a more complex version designed to mirror the SPL Regulations (that apply to employees).
18. Those who answered this question predominantly agreed that the analysis provided in the consultation paper was accurate.
19. Some respondents used this question as an opportunity to point out the complexity of the rule proposed in the consultation. These respondents declared a preference for a simpler rule in which avoided the need for “sharing” leave (a suggestion now reflected in the proposed rule change).

Question 4: Are there any additional scenarios we should consider?

20. No additional scenarios were suggested.

Question 5: Are there any additional potential benefits or challenges to the proposed new rule?

21. Most respondents agreed that the benefits and challenges, as summarised in the consultation paper (paragraph 18) were accurate.
22. Additional benefits suggested included benefits to the children of self-employed barristers that would be better able to take parental leave, and an indirect benefit to employed barristers (who would be able to use the improved provision as a bargaining tool in contract negotiations with their employers).
23. Respondents again took this question as an opportunity to criticise the complexity of the rule change proposed in the consultation. This criticism has been heeded, and the rule now proposed is significantly less complex.
24. One respondent questioned the likelihood of this rule change promoting better gender diversity at the Bar.
25. The two respondents who were opposed to the rule change used this question as an opportunity to note the “lack of evidence” for the hypothetical benefits.

Question 6: Which of the options in paragraph 23 (a, b, or c) should be the minimum standard required by the BSB or chambers in their SPL policies and why?

26. The three options referred to in this question were relevant to the proposal included in the consultation paper, but are not relevant to the rule change that has been proposed to the Board.
27. When asked to choose between the three options, the majority of respondents who answered this question were in favour of the most generous provision (Option C).

Part 1 – Public

However many of these respondents actually preferred the “alternative approach” (which has since formed the rule change proposed to the Board).

28. Some respondents preferred Option A, stating that it more closely matched the SPL Regulations.

Question 7: Would you support this alternative approach and why?

29. In the consultation paper, the “alternative approach” discussed in Question 7 was the option of granting parental leave rights to all self-employed barristers who are the carers of a child, regardless of their partners employment status or parent leave rights.
30. This “alternative approach” has since formed the basis for the proposed rule change now presented to the Board.
31. The plurality of respondents who answered this question were strongly in favour of this approach. They argued that it was the simplest option, and that it was the most suited to the unique requirements of a rule that applies to the self-employed Bar, as well as being the only option that would not have any indirectly discriminatory effects.
32. Those who opposed it did so either because they objected to any change to the parental leave rule, or because they preferred options that more closely matched the SPL Regulations.

Question 8: Would the increased burden on chambers be justified in the light of any benefits?

33. Most respondents thought that the increased burden was unlikely to be very large. These respondents argued that the likely increased burden would be justified, as it would be outweighed by the benefits to the work/life balance of parents, benefits to the child, and long term benefits to chambers (through improved retention of parents).
34. Two respondents stated that the increased burden would not be justified.

Question 9: What do you estimate the financial cost of giving full parental leave entitlements to both carers would be for your chambers?

35. Three chambers estimated the financial effect of the “alternative approach” in the consultation paper.
36. Cloisters calculated the maximum cost to their chambers of providing a full parental leave entitlement to all self-employed barristers based on an “outlier year” (i.e. a year in which an unusually high number of members had children). They calculated that the top annual estimated costs would be a 4.55% reduction in chambers rental income.
37. Brick Court Chambers used similar assumptions, and determined that each person who took advantage of a full parental leave entitlement at their chambers would cost them £15,000.
38. St Philips Stone Chamber stated that for each person who went on parental leave their chambers’ income was reduced by approximately £13,000.

Anti- Money Laundering

Status

1. For **noting** and **consideration**.

Executive Summary

2. The Government's aim is "for the Anti Money Laundering/Counter Terrorist Financing ("AML/CTF") regime to make the UK's financial system a hostile environment for illicit finance". (For ease, a glossary of abbreviations is included in **Annex A**).
3. This is an area that has increased in profile, in particular due to:
 - new regulations: The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the "MLRs"), that will come into force in June 2017, that will transpose the EU Fourth Money Laundering Directive ("4MLD"); and
 - the Financial Action Task Force Mutual Evaluation Review ("FATF MER") of the UK in 2018, for which preparations are underway.
4. There are no changes to the scope of the regulations for barristers. There are some changes to the requirements, eg. in connection with the obligations to carry out customer due diligence. These will be addressed through guidance issued by the Bar Council.
5. The main changes that the Board should be aware of relate to our obligations as regulator. This paper provides a summary and an outline of work we are doing to meet the requirements. It provides the Board with assurance that we are meeting our obligations and engaging appropriately with stakeholders to help shape changes.
6. The work required is already reflected in the BSB's Business Plan.

Recommendations

7. The Board is invited to **note** the following:
 - a) The Government's intention to create a new oversight regulator called the Office for Professional Body Supervisors ("OPBAS") and our approach to engagement with the interim OPBAS team.
 - b) The preparations that are underway for the 2018 FATF MER.
 - c) The new MLRs, which will be enacted in June 2017, and the obligations that it places on the BSB as Supervisor.
 - d) Our intention to collect practice area information through the Authorisation to Practise process in 2018, to facilitate compliance with our obligations to:
 - Develop a robust risk assessment and supervise regulatory risks.
 - Provide a register of Trust and Company Service Providers to HMRC.
 - e) It will also help us to collect evidence that will enable OPBAS to calculate an appropriate basis to allocate its costs. The Board has already agreed (in March) to

consult on changing the BSB's rules to require barristers to disclose their areas of practice with a view to implementing new procedures as part of the 2018-19 Authorisation to Practise process.

- f) The requirement and our approach to developing joint legal sector guidance.
 - g) The Director General will be the nominated Responsible Officer for the purposes of AML/CTF Supervision (as required under the new MLRs), with day to day operational management in the Regulatory Assurance Department's Supervision team.
 - h) Our approach to engaging with HM Treasury ("HMT") to develop a National Risk Assessment ("NRA").
 - i) Our approach to working with the Bar Council to help raise awareness and ensure that barristers can engage in an informed way.
8. The Board is invited to **consider** nominating a member of the Board to take a special interest in this area.

Background

9. The General Council of the Bar is an approved regulator for the purposes of the Legal Services Act 2007. The Bar Council has established the BSB to exercise the regulatory functions. Regulatory independence is set out in the Constitution of the BSB and the Protocol for Ensuring Regulatory Independence. The General Council of the Bar is therefore named in the MLRs as the professional body that has responsibility for supervision of the Bar under the MLRs, but this responsibility is delegated to the BSB.
10. In March, HMT published MLRs, consultations and calls for evidence, in response to previous consultations that we have responded to. These publications should be seen in the context of a wider timeframe of activity, particularly relating to the FATF MER. A summary of consultations, publications and events is shown in **Annex B**.
11. The draft MLRs will transpose 4MLD into UK legislation, which will come into force by 26 June 2017. The MLRs reflect the Government's response to the call for information in the areas of supervisory obligations and a number of areas related to the compliance requirements for barristers and other "obliged entities" (ie. those subject to the MLRs).
12. An amended 4MLD, or "5MLD", is anticipated as a result of EU discussions following the Panama Papers and terrorist attacks in Europe. That will be subject to separate consultation.
13. There is no change to the scope of the MLRs for barristers/BSB entities. These are set out in **Annex C**.
14. The main changes to the MLRs that affect barristers are in the areas of customer due diligence, treatment of Politically Exposed Persons and beneficial ownership. These will be addressed through guidance published and publicised by the Bar Council. The Bar Council will launch new training for barristers and chambers/entities.

15. 4MLD set out a number of more explicit requirements for the supervisory regime, which are reflected in the new MLRs. By way of indication of the impact, the 2017 MLRs comprise 107 sections compared to 51 in the 2007 MLRs. Much of this is helpful in defining our powers and responsibilities more clearly and our ability to share risk-based information with stakeholders where appropriate. There are some areas where we will need to establish new procedures, particularly in the area of criminality checks and registration of Trust and Company Service Providers.
16. FATF is an inter-governmental body established in 1989 by the Ministers of its member jurisdictions. It sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. FATF conducts a cycle of peer reviews (“Mutual Evaluations”) of each member to assess levels of implementation and effectiveness of the FATF Recommendations. For more information see <http://www.fatf-gafi.org/>
17. A MER of the UK will be carried out in 2018. Preparation for the MER is the driving force for the Government’s review of the supervisory regime and the pace of change. These changes are reflected in the new MLRs, but will also require further legislation.
18. HMT says that the responses to consultations demonstrated that Government and supervisors can do more to ensure a consistently high standard of supervision across the regime. Two key requirements are being set:
 - Increased oversight of supervisors through the creation of a new body called the Office for Professional Body AML Supervision (“OPBAS”). The plan is to have OPBAS fully operational by the start of 2018.
 - HMT requires each sector (legal, accountancy, finance) to produce a single set of guidance that is applicable across each sector.
19. Given increasing expectations being set, we need to ensure that the scope of our work in this area remains proportionate to the risk, and that there is a shared understanding with HMT and OPBAS about risk.
20. As part of the preparation for the FATF MER, the Government has committed to publishing a second NRA. HMT came under considerable criticism from the AML Supervisors Forum for failure to engage in developing the 2015 risk assessment. As FATF expects supervisors to use the NRA to inform their risk assessments, it will be important to demonstrate that the whole system is working together.

Comment – key changes and our response

21. This section provides an outline of the main changes that the Board should be aware of relating to our obligations as regulator, the work we are doing to meet the requirements and how we are engaging with stakeholders to help shape changes.
 - (1) Creation of a new oversight regulator - OPBAS
 - (2) Supervisors’ obligations and powers

- (3) Joint Guidance for the legal sector
- (4) Criminality tests
- (5) Registration of Trust and Company Service Providers (TCSPs)
- (6) National Risk Assessment

Oversight of the supervisors – creation of OPBAS

Why OPBAS is being created

22. The legal and accounting sectors have 23 supervisors between them, of which 22 are nominally professional bodies (in our case, the Bar Council). Supervisors are a highly diverse group including large global professional bodies, smaller professional and representative bodies, and public sector organisations. The Government recognises there are benefits to a range of sector specific, expert supervisors but has concerns:

- Conflicts of interest - a *perceived* risk that the professional bodies' representative functions undermine their regulatory objectives.
- Work involved in overseeing so many regulators when HMT has limited resources.
- The effectiveness of supervision is inconsistent.
- Different approaches create an uneven playing field for business and increases the risk that criminals could exploit the UK's financial system.
- Information is not sufficiently shared across the system between the Government, supervisors and law enforcement.

These concerns will be addressed through the creation of OPBAS and more explicit requirements for supervisors in the MLRs (described in section (2) below).

23. Due to the FATF MER, there is considerable pressure to do this in a short timescale. The Government will consult on the draft regulations that will underpin OPBAS over the summer. They will be finalised and laid before Parliament in the autumn. The Government expects OPBAS to be fully operational by the start of 2018. An interim team is already in place.

What OPBAS will do and what powers it will have

24. HMT will retain oversight of, and policy responsibility for, the AML supervisory regime, but plans to increase oversight of "professional body" supervisors through the creation OPBAS. OPBAS will be hosted by the FCA, although a new team will be created.

25. OPBAS will:

- Create a centre of expertise and encourage professional bodies to adopt common, high standards of supervision.
- Set out non-binding guidance for professional bodies covering regulatory independence, monitoring and training. OPBAS may investigate bodies who do not follow the guidance.
- Hold supervisors to account.
- Help inform the Government's NRA.
- Facilitate liaison with other statutory bodies (eg. HMRC) and law enforcement.
- Recommend to HMT where regulations need to be strengthened.

26. HMT has been consulting on OPBAS's mandate and powers to:
- set out how professional bodies should fulfil their obligations under the regulations;
 - monitor professional bodies' activities, including requiring their staff to provide information or attend interviews on request, and participate in on-site visits;
 - work with professional bodies to ensure they meet their obligations under the MLRs;
 - publicly censure a professional body or recommend that HMT remove a professional body as an AML supervisor (with appeal mechanisms); and
 - liaise with others across the regime to strengthen collaboration between professional body AML supervisors, statutory supervisors, and law enforcement.

OPBAS costs

27. The cost will be funded "by a new fee on professional body supervisors". The FCA will consult on this. No budget estimate has been prepared, although the OPBAS team mentioned that they had in mind a team that would eventually comprise about 20 people. There is cross-sector concern that this is not proportionate to oversee 23 supervisors. The legal sector supervisors also highlighted the practicalities of an apparently short timeframe if consultation and LSB approval is required to raise the practising certificate fee.
28. The Government said, in response to a consultation paper, that it "recognises that no evidence has been provided to suggest professional body supervisors' supervisory activities and decisions have been unduly influenced by their dual role as advocates for their members." The problem is one of perception. The FCA staff will be on a steep learning curve to understand the legal and accountancy sectors, and the differences *within* the legal sector. It has also been criticised for over-regulating (eg. being too prescriptive in a drive towards best practice and not being risk-based). Key concerns for the BSB will be to ensure that:
- The OPBAS costs are fairly apportioned.
 - The cost is proportionate to the risk and delivers value for money.
 - The OPBAS team understand our governance arrangements and the controls that address regulatory independence.

Action we are taking

29. It is clear that OPBAS will be established and we are taking an approach of constructive engagement with OPBAS and HMT to influence how it is shaped. In particular:
- We have shared our risk assessment, which includes an explanation of our governance structure and the controls we have in place to safeguard independence from the representative functions of the Bar Council.
 - We have given them information about the LSB's Regulatory Standards Framework. We have recommended a similar approach as it is a proportionate way to oversee regulators of different sizes, with differing regulated communities, governance arrangements and risks. We understand that the OPBAS team have now met with the LSB.

The OBAS team are open to discussing how the model could be shaped.

30. We have already decided to collect practice area data at the annual Authorisation to Practise process. We are currently preparing a consultation for rule change so that we can do so in 2018. Collecting practice area information has already been approved in

principle by the Board. We have told OPBAS that it will enable us to identify which barristers carry out work that is likely to engage the Regulations and we could also use this data to determine a fair allocation of costs. Publication of the Bar Council's guidance and the new training will help barristers be clear about whether the work they do engages the Regulations. We are engaging with the Bar Council to raise awareness so that barristers can engage with this process in an informed way.

(1) Supervisors' obligations and powers

31. In transposing 4MLD, as well as addressing concerns identified through consultations, the Government has explicitly set out supervisors' obligation and powers in the 2017 MLRs. These are set out in **Annex D**, together with an outline of what we are doing to address them.
32. Key requirements are as follows:
- a) There is now an explicit requirement in the MLRs that representative and supervisory functions must be operationally independent.
 - b) Supervisors must appoint a person to monitor and manage the authority's compliance with its duties under the MLRs. That person must be a single point of contact to liaise with other supervisors, law enforcement, the FCA and HMRC. The Director General will be formally named as the Responsible Officer, with day-to-day operational responsibility delegated to the Director of Regulatory Assurance and the Supervision team. It also may be appropriate for the Board to nominate one of its members to take a special interest in this area and we invite them to consider this.
 - c) Understanding risk, including drawing on the NRA and sharing information with other supervisors.
 - d) Responsibility for monitoring compliance and taking enforcement action where appropriate. The disciplinary measures available to supervisors in their own regimes will operate alongside other powers and procedures available in the MLRs.
 - e) Supervisors will have powers to require their populations to provide appropriate information.
 - f) All supervisors should attend the AML Supervisors Forum and other forums where relevant, to facilitate collaboration.
 - g) Supervisors will be required to cooperate with other supervisors, HMT and law enforcement.
 - h) Only persons with appropriate qualifications, integrity and professional skills should carry out supervisory functions. Supervisory organisations must provide training and adequate resources for their staff to help them identify and respond to risk.
 - i) The Government will continue to encourage supervisors to make available appropriate courses designed to meet their populations' needs.
 - j) A duty on supervisory authorities to take appropriate steps to share relevant information with their regulated communities.
 - k) Supervisors must collect certain information to inform their risk assessments and for reporting to HMT.

(2) Joint Guidance for the legal sector*Current status of guidance for barristers/BSB entities*

33. The Bar Council, rather than the BSB, provides guidance: <http://www.barcouncil.org.uk/practice-ethics/professional-practice-and-ethics/money-laundering-and-terrorist-financing/> In 2015, they formed a working party of barristers and officers to update the guidance. This was published in January 2016 and updated in November 2016. They will shortly be publishing a second tier of guidance that includes practical examples.
34. This is a positive step; our finding from the Supervision Returns that were issued in 2014-15 was that chambers were often unclear about when and whether the MLRs apply to their barristers. This was compounded by training offered on the public access courses which suggested that all public access work is subject to the Regulations. The Bar Council has been updating the guidance with a view to clearer messaging about when the Regulations apply. Training is planned once the guidance is completed.
35. All guidance must be approved by HMT before it is published.

Government concerns

36. HMT have not had the resources to review and approve guidance. Across the legal sector, only the Law Society has been able to get its guidance approved. The rest have been told to publish their guidance as “subject to HMT approval”. This is of concern to the sector given that HMT approval provides “safe harbour” for those who comply with the guidance.
37. Inconsistencies across guidance, as well as the volume of guidance, can impose unnecessary burdens on business. This was mainly an issue in the financial sector where businesses expressed concerns that guidance published by the FCA and the Joint Money Laundering Steering Committee (banking sector) are sometimes contradictory.

Government response

38. HMT now requires that each sector (financial, legal, accountancy) co-operate to produce a single set of guidance that it will approve through a reformed Money Laundering Advisory Committee (MLAC). OPBAS will work with the legal and accountancy sectors to develop their guidance prior to submission to HMT and MLAC.
39. This guidance must be subject to “end user tests” for readability and functionality, and clearly distinguish legal obligations from best practice.

Action being taken by the legal sector

40. The Legal Sector Affinity Group is broadly supportive of this if it will solve the problem of getting the guidance signed off. Furthermore, some of the legal regulators have based their guidance on the Law Society guidance and think that this will save work as the guidance is updated for the new MLRs and the Criminal Finance Act. It may be helpful for

the Bar to have joint guidance given that, under the MLRs, barristers are able to rely on solicitors to carry out client due diligence checks, but this is not always available in practice.

41. The Legal Sector Affinity Group have formed a working party to develop joint guidance, using the Law Society AML Practice Note as a starting point as it already has HMT approval under the existing MLRs. The Bar Council is involved in this. The process proposed to HMT is as follows:
- Stage 1: Ensure it enables independent legal professionals to comply with the new MLRs from June 2017. As time is short between now and 26 June, they will prioritise legal compliance over ensuring the language reflects the whole sector.
 - Stage 2: Consider changes needed to ensure it reads across to all legal sectors, not just solicitors. This work stream will take longer and will work to the timeline of 5MLD, ie. June 2018.

Concerns for the BSB and action we are taking

42. We have been engaging with the Bar Council as we are both concerned to ensure that the joint guidance adequately reflects the work of, and the risk profile of the Bar, and is produced in sufficiently plain English so that barristers are clear what their responsibilities are and when the MLRs apply to the work that they do. Current guidance by the Law Society is, apparently, twice as long as the Bar Council guidance. We are liaising with the Bar Council policy analyst to ensure that an appropriate solution is found. We have both discussed this with HMT and the OPBAS team. The Bar Council is in the legal sector working group.
43. It will still be possible for the Bar Council to produce its own guidance in support of the joint guidance, but they will need to ensure that this is not confusing and create an additional burden. The Bar Council plan to publish their own guidance shortly to reflect the new MLRs.
44. The Affinity Group has agreed that an effective communications plan will be important, and will work together on this.

(3) Criminality tests

45. 4MLD introduces a new criminality test for certain sectors that are not currently subject to fit and proper tests, including tax advisors and independent legal professionals. Compliance is required by June 2018.
46. We have been engaging with HMT to clarify their requirements given that most barristers are self-employed and the MLRs only apply to a limited part of the work of the Bar. Any new requirements need to be proportionate. HMT have told us that they require, as a minimum, DBS checks to be carried out for relevant barristers. Currently it is the Inns, not the BSB, that carry out the fit and proper test at the point of Admission to the Inn (rule rQ9 of the BSB Handbook); this does not extend to DBS checks.

47. As explained above, we have decided to collect practice area data at the annual Authorisation to Practise process in 2018. This will enable us to identify which barristers carry out work that engages the regulations and ensure that they have been subject to a DBS check. We will also require barristers to confirm that they have nothing to declare under rC65 (Duty to report), which would pick up any criminal charges subsequent to the DBS check.

(4) *Registration of Trust and Company Service Providers (TCSPs)*

48. See **Annex D** for the definition of TCSPs under the MLRs and the type of work that this involves. This type of activity is perhaps more commonly carried out by solicitors, accountants and tax advisors than by practising barristers.
49. 4MLD requires TCSPs to be licensed or registered. This is already a requirement. A decision that emerged from consultation was a requirement for HMRC to act as the registry authority (but not the supervisory authority) for all TCSPs who are not registered by HMRC or the FCA. Therefore HMRC require us to provide them with a list of TCSPs that we regulate by 26 June 2017 when the new MLRs come into effect, including unregistered barristers.
50. We do not hold a list of barristers who engage in TCSP activity. This will be addressed for practising barristers in 2018 by collecting practice areas data at Authorisation to Practise, as described above. We have discussed this with HMT.
51. We do not actively supervise unregistered barristers, or indeed have up to date contact details, so we have no means of creating a register of unregistered barristers who engage in TCSP activity. We have discussed this with HMT too. Other legal regulators have similar issues. We plan to carry out a risk assessment to determine what action, if any, we should take to address this.

(5) *National Risk Assessment*

52. As part of the preparation for the FATF MER, the Government has committed to publishing a second NRA in autumn 2017.
53. HMT came under considerable criticism from the AML Supervisors Forum for failure to engage in developing the 2015 NRA. As FATF expects supervisors to use the NRA to inform their risk assessments, HMT is engaging more this time. They have asked for evidence from both the BSB and the Bar Council; they are holding a round table event for practitioners, and have said that they will engage with Supervisors in due course.
54. We have responded to a call for evidence and have prepared and submitted our own risk assessment. Board members who wish to see a copy can contact J Witting.

Resource implications

55. This work is being managed by the Supervision team in the Regulatory Assurance Department with input from the Communications, Strategy and Policy, and Professional Conduct departments. It is reflected in the business plan and budget for 2017-18. We will keep this under review, particularly as OPBAS requirements become clearer. Retaining adequate specialist capability may require additional resources in future.

Equality Impact Assessment

56. An Equality Impact Assessment is being undertaken for the practice area rule change consultation.
57. There has been some concern that the way that the MLRs are enforced by the FCA in the financial sector has led to risk of financial exclusion (because of onerous requirements for customer due diligence and because the PEP association rules have been too widely interpreted). We will need to ensure that OPBAS oversight does not put access to justice at risk.

Risks

58. The key corporate risks are:
- a) Failure to comply with our obligations under the new MLRs. This is being managed by the Supervision team, which has identified changes in the regulations and what we need to do to implement them, as described in this paper.
 - b) Failure to provide adequate information and assurance to HMT, leading to a poor outcome for the UK in the FATF MER. This is being managed by the Supervision team, through engagement with HMT and other regulators through the Legal Sector Affinity Group and the Anti Money Laundering Supervisors Forum, as described in this paper.
59. We have prepared a detailed regulatory risk assessment. Board members should contact Julia Witting if they would like a copy. The main conclusions are:
- a) Given the nature of the work of the Bar and the limitations imposed by the BSB Handbook on the scope of practice, the overall inherent risk profile is judged to be low. The key area of risk is where barristers unknowingly facilitate the laundering of money by, through their involvement, giving an appearance of respectability (commonly referred to as “professional enablers”).
 - b) Key controls are in place to ensure that criminals are not authorised to practise. Areas where controls need to be strengthened are at point of Call by the Inns and at the annual Authorisation to Practise for individual barristers. Plans are in place to address both.
 - c) In our Risk Index and Risk Outlook, we have identified two areas of risk that are relevant: financial impropriety and commercial pressures on providers.
 - d) Whilst the Government’s NRA has assessed the legal sector as high risk, the specific areas highlighted are property, client accounts and trade based money laundering, which are not relevant to the work of the Bar. None of the case studies

reported refer to the involvement of barristers. We have received no intelligence from the Government or law enforcement agencies about the involvement or suspected involvement of any barristers in crimes or potential crimes within the remit of the MLRs.

- e) The BSB has a robust framework for regulatory independence under the Legal Services Act and has in place a risk-based approach to supervision, which has been self-assessed as satisfactory – a rating that has been confirmed by the Legal Services Board.
- f) The BSB is on a journey in its approach to supervising AML/CTF in the Bar. This journey has enabled us to develop our understanding of the risk profile of the Bar, develop a supervisory response and promote improved compliance. This is a journey that is still in progress. There are some areas of over-compliance in relation to public access work.

Impacts on other teams / departments or projects

- 60. We have been, and will continue to liaise with colleagues in Strategy and Policy, and the Professional Conduct Department to complete information required by HMT to prepare for the FATF MER.
- 61. We are liaising with colleagues in Strategy and Policy and Communications for the practice area consultation and rule change.

Regulatory objectives

- 62. This work addresses the objectives of protecting and promoting the public interest, and promoting and maintaining adherence to the professional principles.

Publicity

- 63. It will be important to ensure that barristers fully understand their obligations under the MLRs, in particular when the work that they do engages the Regulations, so that accurate data is collected at Authorisation to Practise in 2018. The Bar Council's guidance will be important in this respect, but we will also have our own communications plan in place.

Annexes

- 64. Annex A - Glossary
Annex B - Summary of consultations, publications and events
Annex C - Money Laundering Regulations 2017: how they apply to the Bar
Annex D - Money Laundering Regulations 2017: Supervisors' obligations and powers

Lead responsibility

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15 May 2017

Glossary

AML/CTF	Anti-Money Laundering/Counter Terrorist Financing
AMLSF	Anti-Money Laundering Supervisors Forum
ESAs	European Supervisory Authorities
FATF	The Financial Action Task Force
FCA	The Financial Conduct Authority
HMRC	Her Majesty's Revenue and Customs
HMT	Her Majesty's Treasury
LSAG	Legal Sector Affinity Group of legal sector supervisors and professional bodies
MER	The Financial Action Task Force Mutual Evaluation Review
MLAC	Money Laundering Advisory Committee
MLRs	The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
NRA	The Government's National Risk Assessment of Money Laundering and Terrorist Financing
OPBAS	The Office for Professional Body AML Supervision
PEP	Politically Exposed Person (part of the customer due diligence rules)
TCSP	Trust and Company Service Provider
4MLD	The EU Fourth Money Laundering Directive
5 MLD	The EU Fifth Money Laundering Directive that is anticipated to amend 4MLD

Summary of consultations, publications and events

October 2015	The Government published the National Risk Assessment of money laundering and terrorist financing (the NRA): https://www.gov.uk/government/publications/uk-national-risk-assessment-of-money-laundering-and-terrorist-financing
April 2016	The Government published an Action plan for anti-money laundering (AML) and counter terrorist finance (CTF) https://www.gov.uk/government/publications/action-plan-for-anti-money-laundering-and-counter-terrorist-finance
2016-17	In response to the Action Plan, the Government is enhancing the law enforcement response through the Criminal Finance Bill , which will provide new powers to build the intelligence picture, disrupt money launderers and terrorists, recover criminal proceeds and protect the integrity of the UK's financial system. It is anticipated that this will come into force at about the same time as the new MLRs ie around June 2017.
April 2016	Also in response to the Action Plan, the Government launched a review of the UK's AML supervisory regime and a further Call for information . The NRA had found that the effectiveness of the supervisory regime in the UK is inconsistent. Whilst some supervisors are highly effective in some areas there is room for improvement across the board including: <ul style="list-style-type: none"> • Understanding and applying a risk-based approach to supervision • Providing a credible deterrent. • The number of professional body supervisors in some sectors risks inconsistencies of approach. • Data is not yet shared between supervisors freely or frequently enough, which exposes some supervised sectors to risk where there are overlaps in supervision. We provided a response to this: https://www.barstandardsboard.org.uk/media/1769634/2016_06_06_call_for_information_aml_supervisory_regime_bsbresponse.pdf
2016	The Government carried out a Cutting red tape review of the UK's AML and CFT regime to improve the effectiveness of the supervisory regime by removing unnecessary burdens on business. No report was published, but the response takes the findings into account. We were interviewed for this.
Sept. 2016	The Government published its consultation on the transposition of the EU 4th Money Laundering Directive . We provided a response: https://www.barstandardsboard.org.uk/media/1796497/2016_11_10_bsb_4mld_response.pdf
March 2017	The Government published the Anti-Money Laundering supervisory regime: response to the consultation and call for further information . https://www.gov.uk/government/consultations/anti-money-laundering-supervisory-regime-response-and-call-for-further-information We provided a response: https://www.barstandardsboard.org.uk/media/1829536/2017_04_25_call_for_further_information_bsb.pdf

March 2017	HMT and the Home Office issued a request for evidence to support the development of the NRA . This was issued to both the Bar Council for professional body input, and to the BSB for supervisory input. We provided a detailed risk assessment (Board members who would like more detail can request a copy from J Witting).
March 2017	The Government published the draft Money Laundering Regulations 2017 , together with a consultation : https://www.gov.uk/government/consultations/money-laundering-regulations-2017 We provided a response: https://www.barstandardsboard.org.uk/media/1827383/2017_04_12_mlrs_bsb_consultation_response.pdf
June 2017	2017 Money Laundering Regulations and Criminal Finance Act come into force.
Autumn 2017	The Government is expected to publish the next National Risk Assessment of money laundering and terrorist financing (the NRA) :
Autumn 2017	HMT submits evidence to FATF inspectors in preparation for the Mutual Evaluation Review of the UK. http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)
January – March 2018	FATF Mutual Evaluation Review.

Money Laundering Regulations 2017: how they apply to the Bar

The following paragraphs of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 define the scope of application to the Bar:

11 (4) **“Tax adviser”** means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

Independent legal professionals:

12.—(1) **“Independent legal professional”** means a firm or sole practitioner who by way of business provides legal or notarial services to other persons, when participating in financial or real property transactions concerning—

- (a) the buying and selling of real property or business entities;
- (b) the managing of client money, securities or other assets;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation or management of companies; or
- (e) the creation, operation or management of trusts, companies, foundations or similar structures,

and, for this purpose, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction.

12 (2) **“Trust or company service provider”*** means a firm or sole practitioner who by way of business provides any of the following services to other persons, when that firm or practitioner is providing such services—

- (a) forming companies or other legal persons;
- (b) acting, or arranging for another person to act—
 - (i) as a director or secretary of a company;
 - (ii) as a partner of a partnership; or
 - (iii) in a similar position in relation to other legal persons;
- (c) providing a registered office, business address, correspondence or administrative address or other related services for a company, partnership or any other legal person or arrangement;
- (d) acting, or arranging for another person to act, as—
 - (i) a trustee of an express trust or similar legal arrangement; or
 - (ii) a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

*For a further definition of Trust or Company Service Provider (“TCSPs”) and explanation of when registration is needed under the current MLRs, see:

<https://www.gov.uk/guidance/money-laundering-regulations-trust-or-company-service-provider-registration> Notably this page on the HM Government website does not refer to the General Council of the Bar/the BSB as one of the main supervisory bodies, since this type of activity is perhaps more commonly carried out by solicitors, accountants and tax advisors registered with tax institutes.

The Government has set out in the new regulations that when a TCSP is asked to form a company, this is to be treated as a business relationship whether or not the formation is the only transaction being carried out for that customer. The Government is seeking views on this, including under which circumstances it might be appropriate, as part of the risk-based approach, for a TCSP to apply simplified due diligence where it concerns the formation of a single company.

Money Laundering Regulations 2017: Supervisors' obligations and powers

<i>MLRs 2017 – new requirements</i>	<i>Action required by BSB</i>
<p>a) Representative and supervisory functions must be operationally independent This is now an explicit requirement in the Regulations.</p>	<p>This is already the case through our Constitution and Protocol for Regulatory Independence. We are engaging with HMT and OPBAS to help them understand our arrangements.</p>
<p>b) Responsible officer Professional body supervisors must appoint a person to monitor and manage the authority's compliance with its duties under the MLRs. That person must be a single point of contact to liaise with other supervisors, law enforcement, the FCA and HMRC.</p>	<p>The Director General will be formally named as the Responsible Officer, with day-to-day operational responsibility delegated to the Director of Regulatory Assurance and the Supervision team. We will prepare an internal policy and process to reflect these arrangements.</p>
<p>c) Risk Understanding the scale and nature of international and domestic ML/TF risk will enable supervisors to take a proportionate approach.</p> <p>Supervisors must draw on common factors as they draw up their risk assessments, including those identified in the NRA and other relevant supervisors' risk assessments.</p> <p>Where several supervisors monitor populations with similar characteristics, they will be able to develop common risk assessments, and the Government encourages them to do so.</p>	<p>This will be achieved through the Legal Sector Affinity Group. The Group recognises that it needs to address risk on its agenda as it is currently focussed only on relaying information about Government policy from the chair (who attends other committees such as MLAC) to the other supervisors.</p> <p>We have agreed the need to update the terms of reference to reflect this. A stronger Government framework to facilitate information sharing will help. At the moment, there is no concrete information being disseminated down to the BSB via the NRA, or being shared by the NCA and other law enforcement, that identifies specific risk in the Bar. Most of the legal sector typologies have focussed on property and conveyancing. HMT recognises this and aims to improve information sharing.</p>
<p>d) Supervision/monitoring/enforcement All supervisors will be required to monitor their populations, and take action where necessary to ensure compliance with the regulations. The Government recognises that supervisors require discretion to issue effective, proportionate and dissuasive penalties within this common framework, and they will be able to decide for themselves which disciplinary measures and complementary appeals processes they need to ensure their populations comply with the regulations. The disciplinary measures will operate</p>	<p>New requirements, summarised here, are set out in the MLRs and are consistent with the BSB's risk-based approach to supervision and enforcement.</p> <p>We have not carried out any active supervision of AML since the Supervision Returns of 2014-15. We have documented our risk-based approach to Supervision to explain our approach as part of the response to the NRA. (Board members can request a copy from J Witting if they want to see the detail).</p> <p>There may be an expectation to carry out more monitoring than we have been doing. We need to continue to work on a shared view of risk.</p>

<i>MLRs 2017 – new requirements</i>	<i>Action required by BSB</i>
<p>alongside other powers and procedures available in the regulations.</p> <p>The Government will strengthen supervisors' accountability by requiring them to maintain records of any actions taken in the course of their supervision, and reasons for deciding not to impose disciplinary measures in a particular case. Mitigation should be followed by continued monitoring to ensure that ML/TF risks have been appropriately addressed, and follow-up action should be taken as necessary.</p>	
<p>e) Supervisors powers</p> <p>Supervisors will have powers to require their populations to provide appropriate information, or attend a meeting, to help ensure their risk assessments are underpinned by up to date and accurate evidence.</p>	<p>We already have powers under the BSB Handbook to require information and we have enforcement powers.</p> <p>This is being strengthened as we acquire powers of intervention for entities, and in due course for chambers.</p> <p>The MLRs strengthen our existing powers by providing a power to require information.</p>
<p>f) Attendance at AML forums</p> <p>The Government expects all supervisors will attend the AML Supervisors Forum (AMLSF), and other forums where relevant, to facilitate collaboration. Information must be shared to ensure consistency of risk assessment across the regime.</p>	<p>We already attend the AMLSF and the Affinity Group.</p> <p>The MLAC is not open to all supervisors, so we do not attend. The Affinity chair provides feedback. The Government is restructuring MLAC to improve information sharing with all supervisors.</p>
<p>g) Co-operation</p> <p>Supervisors will be required to cooperate with other supervisors, HMT and law enforcement.</p>	<p>We are already working towards that with the development of MoUs with other regulators.</p> <p>The MLRs establish a stronger framework to share information.</p> <p>We currently lack any feedback from law enforcement about risk in the Bar. This will help us to have a shared understanding of the level of risk. The Government recognises this and aims to improve information sharing.</p>
<p>h) Supervisory staff</p> <p>Only persons with appropriate qualifications, integrity and professional skills should carry out supervisory functions.</p> <p>Supervisory organisations must provide training and adequate resources for their staff to help them identify and respond to risk.</p>	<p>The Bar Council is developing some training for its members. This is likely to be available soon. Supervision plan to use this as a basis to train BSB staff once available.</p>

<i>MLRs 2017 – new requirements</i>	<i>Action required by BSB</i>
<p>i) Training for the Bar The Government will continue to encourage supervisors to make available appropriate courses designed to meet their populations' needs.</p>	<p>As above, the Bar Council provides training for its members. The Public Access course also addresses AML, although both the Bar Council and we are concerned that the training is promoting over-compliance and the requirements need to be clarified.</p>
<p>j) Sharing information with the Bar The new regulations place a duty on supervisory authorities to take appropriate steps to share relevant information with their regulated communities. This should include</p> <ul style="list-style-type: none"> • information on money laundering and terrorist financing practices that occur in their sectors; • indicators which may suggest that a transfer of criminal funds is taking place; • relevant information from other sources such as the European Commission, ESAs, Home Office and the Treasury. 	<p>The Bar Council publishes guidance. We have no information being fed back from law enforcement/NCA about risks in the Bar. The NCA typologies that were published recently (the first for some time), only refer to property, conveyancing and solicitors. We were not allowed to publish them.</p>
<p>k) Data Supervisors must collect information from their regulated sectors including:</p> <ul style="list-style-type: none"> • Information to support risk assessments. • Number of firms they supervise, divided into those they consider high, medium and low risk. • Supervisors must provide the Treasury with such information on request, to enable the Treasury to assess, understand and mitigate risks in each sector. 	<p>We are currently preparing a consultation for rule change to enable us to collect practice area data at the annual Authorisation to Practice process. This will provide us with data to evidence which barristers carry out work that engages the regulations. Publication of the Bar Council's guidance and the new training will help barristers be clear about whether the work they do engages the Regulations.</p> <p>We submit an annual supervisors return to HMT. The obligation to do so has been unclear in the past, but the MLRs will make it mandatory.</p>

Chair's Report on Visits and External Meetings, March - May 2017**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**

30 March	Attended farewell drinks for Rob Behrens
4 April	4-way meeting of Chairs and CEOs – BSB/Solicitors' Regulation Authority
5 April	4-way meeting of Chairs and CEOs – BSB/Council for Licensed Conveyancers
5 April	BSB/Bar Mutual Indemnity Fund Board to Board meeting
19 April	Attended Chairmen's Committee meeting with Bar Council
25 April	4-way meeting of Chairs and CEOs – BSB/Legal Services Board
26 April	Attended BSB/Office for Legal Complaints Board to Board meeting
9 May	Social encounter with Treasurer of Middle Temple
11 May	Attended Inns Strategic Advisory Group meeting
18 May	Attended Chairmen's Committee meeting with Bar Council
20 May	Attended Bar Council to report on regulatory matters

Director General's report - BSB meeting 25 May 2017

For consideration and noting.

Director General

1. The snap election has inevitably curtailed temporarily progress in a number of areas of our work which we had been conducting with MoJ and other central government departments (such as the s69 Order) but we have continued internally with work on e.g post-Brexit scenarios for the regulatory framework and are gearing up to establish relationships with a new MoJ ministerial team, whatever form that takes.
2. We have continued our cross-regulator strategic collaborative work in the past eight weeks. A successful Board to Board meeting with the OLC and LeO was held, to meet their new Chair and Board members in particular. Discussion focussed on the evolving characteristics of the legal services (supply side) market and changing expectations from consumer complainants; and on the potential for mutual information and learning from complaints data. It was agreed that such a meeting should be held annually. A further meeting of the CMA Remedies Implementation Group has taken place. This brings together the LSB, front-line regulatory CEOs and the CMA team to share and monitor progress on implementing the CMA recommendations. Front-line regulators have been working together closely on action plans, which were also one of several topics on the quarterly meeting of CEOs and the LSB held in early May.
3. I am increasing my direct involvement in the FBT Programme work this business year. Since the last Board meeting, I have met a number of providers at monitoring visits and at their regular Forum meeting with us, to explain in greater detail the Board's policy statement and take views on our next steps. I have briefed ICCA and ISAG on the review of the Inns' role, and am closely involved in the work on the Authorisation Framework and on the Curriculum and Assessments Review. I will be speaking at the Providers' Forum on 26 May and more generally on FBT at the Westminster Legal Policy Forum on 10 June. The BSB intends to hold its own seminar on "next steps", focussing on ethics, pupillage and access, on 19 June. Invited speakers will engage in panel discussions on each topic.
4. Internally, since the last Board meeting, we have finalised and published the Business Plan for 17/18, and I launched it at two staff seminars, along with our Learning and Development Strategy for staff in 17/18. This latter is of course timed to coincide with the annual Appraisal round which was largely completed by 12 May. The senior management team will be looking at themes emerging from staff appraisals within the next month, and considering also the results of the 2017 staff survey which are due by the end of the month.
5. Finally, I have been supporting our governance manager in her excellent work in securing recruitment consultants to assist with Board, GRA and APEX recruitment and in preparing for and running the recent Board Awayday, a report on which appears elsewhere on the agenda.

Strategy and Policy

Policy

Professional Standards

6. The Professional Standards Team received 149 enquiries through the Professional Standards Helpline in March, and 95 in April. In total, we have now received over 400 calls and emails so far this year (January – April). The Team has also provided assistance on queries relating to the BSB Handbook to the Records Office during the Authorisation to Practise (AtP) process, and to the Project Management Office as the AtP portal is redesigned.
7. Work is progressing on developing our response to the CMA's recommendations on transparency. A high level project and programme plan has been developed and we have met colleagues in other regulators to share approaches and thinking.
8. The Public and Licensed Access (PLA) rule change consultation paper has been drafted. This includes an analysis of whether the cab-rank rule, which currently only applies where a self-employed barrister is instructed by a professional client such as a solicitor, should also apply to Public and Licensed Access cases. The analysis is currently being reviewed by our PLA Task Completion Group, by APEX and by members of the Board. The consultation paper will be published shortly, delivering against one of the milestones in the 17/18 BSB Business Plan. Work will then progress on addressing the other recommendations of the PLA Review Report.
9. A roundtable with 13 consumer organisations and regulators was held on 25 April to gather feedback on draft guidance for organisations working with consumers of immigration legal services. A member of the Board also attended. We have also engaged with consumers directly to hear about their experiences and concerns. We plan to publish the guidance (which was one of the recommendations of the immigration services thematic review in 16/17) in June. This is a milestone in the 17/18 BSB Business Plan.
10. We have drafted a PID and high level project plan for work on Professional Indemnity Insurance (PII). We are in the process of establishing a PII Task Completion Group comprising APEX and Board members.
11. We are currently drafting a rule change consultation paper on declaring practice area information, on requiring barristers who work in the youth courts or with young people to register and declare competence, and to ensure compliance with the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017. The paper will be published shortly.
12. We are working to refresh our systems and procedures around the BSB Handbook and the rule change process. As part of this, we are drafting new internal guidance, have developed an internal communications plan and are planning a series of workshops and knowledge sharing sessions, including with the LSB, to help build capability across the business.

FBT

13. A high level timeline for the next phase (Rule Change) of FBT has been agreed and work on a number of projects are progressing. These include:
- A review of the **role of the Inns of Court in Barrister training**. The Inns will continue to have the role of calling individuals to the Bar. We need to ensure that any associated processes continue to be relevant in the light of the new approach to FBT and the Professional Statement, and that the BSB has proper regulatory oversight.
 - The development of an **Authorisation Framework** for new training pathways. This will set out what the BSB is expecting to see from providers of training, including the four principles on which we consulted and, crucially, how we will make decisions on authorising providers and pathways.
 - **Rules Change**. We intend to launch a consultation on Rule Changes in September this year, with a view to having an application to the LSB for Rule Changes in March next year. We are in consultation with the LSB already and intend meet regularly to ensure they are kept up to speed on our plans and progress.

Risk***Risk Assessment***

14. The risk team met PMO / IM team to discuss progress on the development of the interim risk assessment technical solution. They had planned to have this available by the end of May but problems with the use of Excel as a solution, and technical capacity within the team, have delayed development. They will bring in a consultant for two days at the end of May to train the IM team in developing an MS Access solution instead. Because this testing will enable the CAT Project to be clear about what is required for the eventual IM solution, the PMO have agreed to take the cost of the consultant from the central IM budget.
15. The CAT Project Board had previously agreed that the testing would take place across the summer months. If the Access solution is available from late-June, then we will be able to test throughout the summer and agree our future IM requirement by end-November.

Risk Prioritisation

16. We have appointed a consultant, Barbara Tinson, to provide support to the Regulatory Risk team over the next 12 months whilst Pippa Prangle is on maternity leave. Her initial focus will be on Risk Prioritisation, and she has begun developing work initiated at the Board away day in December. We have shared a draft approach to risk prioritisation with the risk forum, and we are following this up with a series of meetings with colleagues across the BSB. These meetings will help develop ideas for papers that will go through the SMT, GRA and the Board.

Risk Reporting

17. A paper will now go to the SMT on 30th May. A draft has been shared with the risk forum and champions to help refine the paper and test the proposals, these include risk reporting and the related roles and responsibilities of the SMT, Risk Forum and Risk Champions.

Equality and Access to Justice

18. Planning for the Shared Parental Leave Task Completion Group and working with the Barrister Apex E&D advisor has led to a recommendation to the Board elsewhere on the agenda.
19. A BSB Board diversity monitoring report has been produced highlighting areas of underrepresentation. This enables us to take Positive Action to increase board diversity through the forthcoming recruitment of new Board members.
20. A partnership was formed with Remark, a leading disability organisation. Basic sign language taster sessions have been organised for BSB and BC staff. A further session has been organised in June.

Research

21. Since the Board meeting in March, work has progressed in a number of areas.
22. We are working with IRN to finalise the report for the Family Law research project. The research involved a survey of 1200 consumers who had experienced a recent family law issue, alongside 50 interviews with clients of family law barristers. The final report is expected to be ready for publication by the end of May.
23. We are working with NatCen Research to finalise the report for the Bar Training research project. This project has conducted qualitative research into barriers to access to the profession to inform further aspects of the Future Bar Training programme, consisting of 25 interviews with recent BPTC students and 25 interviews with recent pupillage applicants. The first draft of the report was delivered in mid-May with the final report expected to be signed off by the end of June. We are also working on scoping research and data requirements for further final policy development and future evaluation required for FBT.
24. We have been working with the Regulatory Assurance Department and the Solicitors Regulation Authority on a research project on judicial perceptions of criminal advocacy of both barristers and solicitor advocates. ICPR have been appointed to carry out the research, with the research design and research tools finalised and agreed in April, with the research consisting of 60 qualitative interviews with Crown Court judges. ICPR are currently waiting for final approval from the Judicial Office before commencing the first round of pilot interviews.
25. Pixl8 have started their research into users of the BSB website to inform future improvements. A survey for website users has already been launched, and we will continue to work with the communications department to shape and quality assure the research going forward.
26. We are also in the process of finalising the 2017 BPTC Key Statistics Report, which is due to go out in May/early June. This annual report covers detailed statistics on BPTC students, broken down by provider, demographic characteristics, previous education, and provider, as well as the proportions obtaining pupillage.
27. We are conducting initial work to develop an evidence base with regards to the funding of pupillage to support policy development in the area, undertaking initial scoping work to see what evidence we have from the data and literature currently available.

28. We have now completed the final version report by Pye Tait into the models of provision of legal services by barristers. A knowledge sharing session has been scheduled for May 31st during which Pye Tait will present the key findings and engage a discussion with staff on the next steps for this project.
29. We have produced a desk research analysis on the way information related to fees are displayed on chambers' website. This document will inform the initial scoping work related to the CMA recommendations, especially on the transparency of prices in the market.

Professional Conduct

Year-End Key Performance Indicator

30. The PCD is pleased to inform the Board that the corporate KPI of 80% of cases concluded or referred within the service standards was met in 2016-17 with a year-end outturn of 80.1%. Performance against the target has been improving year on year: in 2014-15 it stood at 69% and in 2015-16 at 75.7%. Full details of the year's performance will be included in the annual Enforcement Report which is due to be presented to the Board in July.

Staffing

31. The department is gradually returning to full staff complement following successful appointments to a number of posts.
32. Nikki Gibbons started in March 2017 as the new Case Officer in the Investigations and Hearings Team. Nikki is a foreign qualified solicitor who specialised in criminal law in Scotland. She started her legal training with the Scottish equivalent of the Crown Prosecution Service, prosecuting cases daily in the Sheriff and Justice of the Peace Courts and assisting with prosecutions in the High Court of Justiciary. She then moved into private practice as a criminal defence solicitor, representing clients accused of a wide variety of crimes and took a particular interest in parole hearings and prison law. Prior to moving to London in March 2017, Nikki worked with the Scottish Government's Disclosure Scotland agency who process all Scottish and English applications for Police Act Disclosures. She also assisted in criminal policy work.
33. Nicola Wheater is joining as the new Senior Case Officer and is due to start on 15 May. Nicola is a solicitor who is currently at the GDC. Prior to her training contract Nicola worked at a number of private firms specialising in professional regulation.
34. Tanjila Uddin will be starting as the Reports & Data Analysis Officer on 22 May. Tanjila has a BSc in Medical Genetics and most recently worked at Public Health England as a Data Quality & Information Officer, reporting on tuberculosis cases. She also formerly worked for Imperial College Healthcare NHS Trust in database management and data quality.
35. Stephen Chappell will be Casework Manager (maternity leave cover). He is due to start on 1 June. Stephen worked at the CPS a number of years and left having reached Chief Crown Prosecutor for the East Midlands. Since then he has been sitting as a chair on the IPCC disciplinary panel.
36. Finally Aflonso Tucay will be joining us as the new Head of Conduct Assessment on 19 June. Alfonso is an American National who moved to the UK in 2004 and qualified as a UK solicitor in 2008. He spent four years in private practice as a criminal solicitor. Since 2012 he has worked at the Nursing and Midwifery Council; initially as a Case

Investigation Officer and in the last few years as an Investigations Lawyer with co-responsibility for a team of nine Case Investigators.

Staff training

37. In late March Officers from the Assessment and Investigations & Hearings Team completed two days of investigations training. This covered among other topics; evidence, case analysis, due process, interviewing witnesses and drafting statements, and report writing. The training event was also attend by colleagues from CILEx Regulation.
38. The PCD training programme for 2017-18 is almost complete and is due to be launched this month. While the programme is designed to maintain and improve the technical skills of PCD staff we will this year be offering participation more widely across the BSB where appropriate.

Standard of Proof project

39. In line with the business plan and the Board's decision in February, the public consultation paper on the standard of proof applied to professional misconduct allegations was launched on 2 May. The consultation results will be reported to the Board in September.

Litigation

40. There have been no change to the position in relation to the one matter before the Supreme Court and the one matter before the Employment Tribunal.
41. The claim arising from a case referred to disciplinary tribunal and then subsequently being withdrawn has been settled.
42. The only outstanding Judicial Review, from a defendant to criminal proceedings, has still not reached the permission stage. The Applicant has requested an extension to file more detailed grounds. The Administrative Court have not yet communicated any decision in relation to this.

Regulatory Assurance Department

Licensed Body ("ABS") Implementation

43. The scheme launched on 6 April 2017. Four participants from the pilot were licensed, subject to provision of evidence of appropriate insurance arrangements and payment of fees. In addition there are 8 applications underway. Similarly to authorised bodies (entities), when all conditions are met, details of all ABS will be published on our website in the Entities Register.

Entity Renewals

44. The second entity renewals process was successfully run between February and April. Key statistics:
 - 67 entities were subject to renewal;
 - Of these, 63 renewed, 2 withdrew from the scheme and 2 participated in the ABS pilot and were licensed by the BSB on 6 April.
45. The withdrawals were due to changes in practising circumstances.

Authorisations

46. Since 1 April 2017, applications to the Qualifications Committee for review of authorisation decisions have been considered by small panels, consisting of one barrister member and two lay members of the Qualifications Committee, as a transitional scheme between the previous arrangement whereby all reviews were undertaken by the full Committee and the new arrangements that will take effect from 1 September 2017.
47. Two panels have sat so far. On 18 April 2017, a panel undertook an oral hearing of an application for review of a decision of the Inns Conduct Committee to expel a student from her Inn. The panel decided to reverse the decision of the Inns Conduct Committee. On 8 May 2017, a panel considered on paper an application for review of a decision for extension of time to undertake the Bar Transfer Test. The panel affirmed the original decision.
48. Recruitment has started for members of the new review panels that will take effect from 1 September, and for new members of APEX to assist with first-instance decision-making.

Supervision of Pupillage

49. The pilot project to ensure that pupillage training is designed to meet the competences set out in the Professional Statement, Threshold Standard and Competences is underway. Following engagement with the Inns and publicity through the Regulatory Update, we have commenced engaging with stakeholders and identifying a pilot group of Pupillage Training Organisations.

Centralised Assessment of Incoming Information (“CAT”)

50. The Project Team has been working on how CAT allocates information to departments (Supervision, PCD and others) for a regulatory response. The Risk team are working on a scoring methodology and risk prioritisation framework. Once these are in place, we will be able to test the end-to-end CAT assessment and allocation methodology.

Youth Courts

51. Since the Youth Proceedings Competences and associated guidance were published in February, our work has focused on fostering the positive relationships we have built within the sector and raising the profile of this area of work. As part of this, we have published an article in Counsel Magazine. In addition, the BSB co-sponsored the Youth Justice Legal Summit, which took place on 12 May. The summit was run by the Youth Justice Legal Centre and brought together leading practitioners to share and build expertise in representing children in criminal cases. The BSB ran a stall to disseminate information about the competences and guidance to practitioners and youth justice professionals. Our work in this area received praise in both the keynote speech by the Recorder of London and in the closing speech by the Director of Just for Kids Law. We are speaking at regional meetings of all Youth Offending Teams in the country about our work and what they should expect from barristers.

52. We are continuing to engage with the sector about our guide for young people. The guide will detail what young people should expect from their advocate and from the Youth Court. The BSB has been gathering the views of stakeholders, including young people, about how to make the guide as useful and useable as possible.
53. We will be consulting on the compulsory registration of barristers working in the youth court this summer, as part the consultation on practice area information. Compulsory registration, alongside a declaration of competence is likely to start as part of the Authorisation to Practise process in 2018.

Communications and Stakeholder Engagement

54. Since this report was prepared for the March Board meeting, the following press releases and announcements have been issued:
 - 15 March: A press release to accompany the publication of the report into the BSB's review of the Public and Licensed Access schemes;
 - 24 March: Announcement about the Board's decision on the future of Bar training;
 - 31 March: A press release to accompany the publication of the 2017-18 BSB Business Plan;
 - 3 April: A press release to announce that the BSB is open for ABS authorisations;
 - 6 April: A press release about a barrister suspended for three years following criminal convictions for supplying illegal drugs;
 - 19 April: A press release about an unregistered barrister disbarred for stealing money from her employer and her colleagues;
 - 26 April: A press release about a barrister suspended for 12 months for conducting litigation when not authorised to do so;
 - 2 May: A press release to launch the BSB consultation on changing the standard of proof used in professional misconduct proceedings for barristers;
 - 3 May: A news announcement about recruiting for members of APEX and review panels; and
 - 8 May: A news announcement about recruiting a senior legal academic to help reform education and training for the Bar.
55. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

56. 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:
 - the publication of research undertaken last year about delivery models;
 - the launch of a rule-change consultation regarding the Public and Licensed Access schemes; and
 - the publication of the annual BPTC statistics report.

The team is also working on the following projects:

- a stakeholder engagement event to be held in June about Future Bar Training;
- drafting the 2016-17 BSB Annual Report;
- preparing and writing content for the new "My Bar" portal area of the website;
- analysing the results of the staff survey about the intranet; and
- preparing to analyse the results of the BSB website user experience survey.

Online and social media

57. During March, 48,107 users visited the BSB website, with a further 28,964 users visiting during April. At the time of writing, we have 17,136 followers on Twitter, 2,754 followers on LinkedIn and 346 organisation likes on Facebook.

Corporate Services**Corporate Support**

58. The [Business Plan](#)¹ was published on the 31 March. The Corporate Support team have been working with the OMT to prepare weightings for the various business activities. Assessing the size (resource needs and intensity) and importance of the various organisational work-streams in 2017/18.
59. The Corporate Support Team are also working with the Resource Group Finance Team in preparation of the year-end accounts. The executive has continued to carefully manage its finances and this is reflected in finishing the year, 6% under the mid-year forecast (Spend of £4,912k against a forecast of £5,211). These figures will also make up an important component of the Annual Report due for publication at the end of summer. The team are working closely with the Communications and Public Engagement Directorate in the preparation of the report.
60. BDO LLP completed an in depth assurance mapping exercise of our key risk activities. They reported to the GRA committee and the Corporate Support team are now working with teams across the organisation to get comprehensive process assurance maps completed. The Team is also working on an invitation to tender (ITT) for the provision of Internal Audit services that will be submitted to the next GRA meeting.

Governance

61. 13 requests for engagement of APEX members have been submitted, with all requests initially accepted. Requests have been made of ten of the eleven appointed experts to date. With one exception (due to unavoidable family commitments), all members attended an update in late April which included sessions on the Business Plan for 2017/18 and the programme of work planned to respond to the CMA report. The workshop session on the CMA report elicited a range of insights and proposed approaches to the work from members, and the contribution of members in the group context was of considerable value. We intend to structure future updates so that factual information is provided in a written format prior to the meeting, with time allowed for questions, and more time devoted to utilising the expertise of members on an issue where their combined knowledge and experience can provide new ideas or alternative approaches.
62. An external recruitment consultant has been appointed following open competitive tender to support Board and Committee recruitment for the next three year period, on the basis of the services provided, value for money and their proposals to enhance the diversity profile of candidates. Preliminary work is underway for the recruitment of three lay members to replace those whose terms conclude at the end of 2017, with a meeting of the Appointments Panel to confirm the recruitment plan and materials in early June. Preliminary work has also commenced on recruitment for a non-Board member of the Governance, Risk and Audit Committee (the three non-Board members of this Committee concluding their terms at the end of 2017, 2018 and 2019).

¹ https://www.barstandardsboard.org.uk/media/1826204/bsb_business_plan_2017-18.pdf

63. Recruitment is underway for members of the Advisory Pool of Experts (APEX) to support staff taking decisions on authorisations and waivers, and for members of Review Panels to consider reviews of those decisions. We are seeking to appoint up to six members of APEX, and eight members of review panels (three barristers and five lay members), to provide sufficient flexibility to convene panels of one barrister and two lay members as necessary. Applications will close on Monday 22 May with interviews scheduled for the last two weeks of June.

Vanessa Davies
Director General BSB
18 May 2017

Next Steps on Future Bar Training (Authorisation Framework and Inns Review)

Status

1. For **noting**.

Executive summary

2. The paper updates the Board on work in progress following our major policy decision in March. It includes verbatim the briefing note provided recently to the Inns Strategic Advisory Group concerning a key piece of work we are now undertaking. Barrister Board members in particular may find this especially useful background should they have interactions with their Inns.

FBT update

3. We have made some internal changes to accountabilities and the Director General will now become the internal Programme Sponsor, replacing Oliver Hanmer, who will assume some alternative responsibilities to free her up to do so. The Programme is proceeding into the next phase with intensive work in five projects:
 - the design and operation of the Authorisation Framework
 - A review of curriculum and assessments (including the review of ethics teaching)
 - Pupillage reform, including a pilot (see also the ISAG note below)
 - A review of the role of the Inns in our regulatory arrangements (see below)
 - The Rules framework and related consultation / LSB application.
4. The Programme Board will next be reviewing progress at its meeting on 7 June. On 13 June, the DG will be speaking about FBT at the Westminster Legal Policy Forum. We are holding a seminar event on 19 June, to which invitations will shortly be issued. Speakers will give brief presentations on three topics relating closely to the above work, with panel / audience Q and A to follow. On 14 July, at the annual BPTC Conference which the BSB puts on, we will be inviting participants to contribute further to our work in progress on the above projects, prior to the 27 July Board meeting which will receive the Education and Training Committee's recommendations on relevant policy points and the outline of the of Rule change consultation. We are aiming to open that consultation on 20 September, closing 20 December.
5. Further updates for the Board will appear monthly in the DG report.

Briefing note for the Inns of Court Strategic Advisory Group 11 May 2017**Future Bar Training: Review of the role of the Inns of Court**

1. The purpose of this briefing note is to outline at a high level some of the further work that is being undertaken as part of the Bar Standards Board's (BSB) Future Bar Training Programme (FBT). It particularly focuses on the BSB's review of the role of the Inns of Court in training for the Bar, in the light of the conclusions reached by the BSB at its 23 March Board meeting. For more information on this decision, please see the Policy Statement attached as **Annex 1**.

Legal Services Act 2007

2. The Legal Services Act 2007 (LSA) clearly enshrines the role of the Inns of Court as the bodies responsible for call to the Bar. The BSB supports this role and recognises that the Inns bring a number of benefits to the process of training to become a barrister. As we have said publicly, we have no desire to seek to change the Inns' statutory role.
3. Although the Inns call individuals to the Bar, the process by which this occurs is part of the regulatory arrangements of the General Council of the Bar as defined by the LSA (the regulatory functions being undertaken independently by the BSB). This means that for any change to these arrangements to take effect, the BSB must decide to do so independently of both the Inns and the Bar Council, and the change must be approved by the Legal Services Board (LSB). The Inns' role within our regulatory arrangements is not currently limited to simply calling individuals to the Bar. For example, the Inns are responsible for the following (within the structure of rules set by the BSB):
 - a. Applying the requirements for admission to an Inn;
 - b. Approving pupil supervisors, and providing pupil supervisor training;
 - c. Providing training courses during pupillage;
 - d. Providing "qualifying sessions" and waiving/modifying the requirements;
 - e. Student discipline, including the Inns Conduct Committee.

The process by which the FBT proposals must be approved

4. The BSB will be consulting from September this year on new rules to give effect to FBT. In parallel, we will be developing an authorisation framework, which will set out the requirements and process for any future training provision to be approved by the BSB. This framework will need to describe (amongst other things) the role that the Inns will have in any requirements for qualification as a barrister.
5. Before consulting on any rules, the BSB must be satisfied that they are desirable from the perspective of meeting the LSA's regulatory objectives. It must also consider the extent to which they are compatible with:
 - a. the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
 - b. any other principle appearing to it to represent the best regulatory practice.

6. The BSB must also have regard to the statutory guidance issued by the Legal Services Board on education and training¹.
7. The impact of these various statutory duties is that the BSB must be satisfied from first principles that all regulatory arrangements involving the Inns continue to be both necessary and proportionate from a regulatory perspective.

Scope of the review

8. The review will:
 - a. Map the Inns' current activities within the BSB's regulatory arrangements;
 - b. Assess the extent to which these arrangements remain necessary and proportionate in the light of the professional statement and our new approach to Bar training (we are aware that the Inns have themselves been reviewing certain arrangements, such as qualifying sessions – we welcome that and are keen to discuss this in more detail in due course); and
 - c. Where they remain necessary, consider the governance arrangements that would ensure appropriate regulatory oversight by the BSB.
9. We would envisage, prior to implementing our proposals, signing a memorandum of understanding with the Inns to clarify our respective roles and responsibilities.

Next steps

10. We are currently arranging a meeting with the operational leads for education and training in the Inns, at which we will provide more operational detail about this project, which will include preparing a list of factual questions, the responses to which will inform our review. We envisage requesting a return by mid to late June. We aim to be clear about our thinking on any points of principle about the Inns' role, considering these at our July Board meeting, ahead of our consultation in September. Any further detail will be elaborated as part of the work on the authorisation framework which we expect to conclude by early 2018 ahead of LSB approval. A prospective MoU would be signed as part of the implementation plan.

Pupillage pilot

11. In addition to the work described above, we will be launching a pilot in relation to improvements in pupillage supervision alongside the 2017-18 intake of pupils. Whilst we currently require pupils and pupil supervisors to complete prescribed checklists for pupillage training, in future we envisage this being done in a more flexible way, focusing on the competences in the Professional Statement. We will also be exploring different approaches to our supervision of all Pupillage Training Organisations (PTO).
12. We intend to invite 6-10 PTOs to take part in this pilot, covering a range of sizes, geographic locations and practice areas, both chambers and the Employed Bar. We will roll out any changes as a result of the pilot in 2018-19.

¹http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf

Part 1 – Public

13. As part of the pilot we will be considering some wider questions including the length and structure of pupillage that we currently prescribe (ie. non-practising and practising periods of 6 months each) and the one-to-one relationship between pupils and pupil supervisors that our rules require. These are issues that have been particularly highlighted by the Employed Bar.
14. In addition to the work being done operationally by the BSB and Inns' Education teams, our Director General would be pleased to brief Inns' chairs of education and training committees, or any other governance group which might be interested.

Lead responsibility:

Vanessa Davies, Director General.

BSB Policy Statement on Bar Training

1. As the regulator of the Bar in England and Wales, the Bar Standards Board (BSB) is responsible for regulating the three elements of Bar training: we set out the academic qualifications required, the terms of entry to and the content of the vocational training which follows, and we regulate the provision of the final stage of pupillage (work-based learning).
2. Over the last few years, the BSB has conducted extensive research and public consultation to examine the ways in which students currently train for the Bar and to consider what reforms to the system should be made, to ensure that it better meets the four key criteria of:
 - encouraging greater **flexibility** – so that the training system enables innovation in how education and training is delivered;
 - improving **accessibility** – so that the best candidates are able to train as barristers and that the Bar as a whole better reflects the communities it serves;
 - improving upon **affordability** – to bring down the cost of studying to students; and
 - **sustaining high standards** – to ensure that any new training pathway enhances current standards.
3. These criteria were identified through our earlier (2015) consultation looking at issues in the current system.
4. The most recent consultation generated over 1,100 responses and we are very grateful to all those who gave up their time to offer their views.
5. We aim for a future system of training which meets those criteria, and which also allows us to fulfil our statutory objective of encouraging an independent, strong, diverse and effective legal profession so that there are barristers who can meet the needs of consumers in a fast-changing market for legal services and will promote access to justice and compliance with the rule of law. We want to establish a framework which encourages training providers to innovate and to compete in developing and adapting their courses as new challenges and opportunities arise.
6. We have reached a major milestone in the work we have been doing and have now agreed a broad framework for the future. This framework is one in which a *limited number* of different methods of training should be able to operate in the market and provide flexible access to the profession whilst maintaining high standards.
7. We think this will allow us to:
 - retain and reinforce the best aspects of the current system;
 - deal with deficiencies in the present arrangements in a responsible, transparent and determined way; and
 - set in train important changes that will enable the system to evolve in line with the four key criteria identified.
8. The future system for training for the Bar will recognisably retain the three elements of training that have proved successful in the past: academic, vocational and work-based learning. The expected outcome of these three elements is expressed in the BSB's Professional Statement for barristers. This describes the knowledge, skills and attributes that a trainee will be expected to have accumulated on completion of the three elements of training and before they will be allowed to practise as a barrister.

9. Looking at those three elements in turn within the overall framework of enabling, and then explaining, what our next steps will need to be, our vision for the future is set out below.

Legal Academic Learning

10. We have considered carefully whether to make changes to the current arrangements and, having carefully considered the many responses we have received, we have broadly decided not to do so. The Bar is a graduate profession. Just as they do now, students in future will need to have a degree graded as 2:2 or above. If that is not a qualifying law degree, they must do a postgraduate qualification that will provide them with the requisite legal knowledge (currently usually known as the Graduate Diploma in Law - GDL).
11. The law degree and GDL must cover the seven “Foundations of Legal Knowledge” as they currently stand, and the skills associated with graduate legal work such as legal research. We will, however, be encouraging innovation by academic institutions in the ways that these subjects are taught: through their provision, for example, of opportunities for students to gain work based experience or undertake clinical legal education. We agree with the Criminal Bar Association that it would be valuable if work-based aspects of the existing course could be offered to students *prior to*, as well as during, vocational training.
12. We will also be improving the way we provide information to students so that they are better able to assess their prospects of professional success as barristers, on the basis of their academic experience. For example, we agree with the Council of the Inns of Court (COIC), and others who responded to our consultation, that we should make clear that students who have only attained the minimum 2.2 degree classification are significantly less likely to obtain a pupillage than those with higher classifications of degree.

Vocational Training

BCAT

13. After the academic stage, students will continue to need to pass an online **Bar Course Aptitude Test** (BCAT) which is designed to show how likely it is that they will succeed in the next level of training. Recent research conducted into the effectiveness of the current BCAT shows that it does so very well. Many have argued that the pass mark for this test has been too low in the past and this was one reason for the recent review of its effectiveness. Subsequently the pass mark was raised earlier this academic year and we think it is too early to say whether any further change is necessary at this stage. Another outcome of the recent review was that we decided to give students a detailed breakdown of their BCAT score and how that correlates with the level of success likely to be achieved at the next stage of training. This can help students assess the risk of investing in the next stage of training and we think that this information should therefore continue to be provided. We shall, however, keep the BCAT under review to ensure that it continues to be fit for purpose.

Admission to an Inn

14. Before they start the BPTC, students must be admitted to one of the Inns of Court as a student barrister: this will continue. Being “called to the Bar” by an Inn of Court, following the completion of the vocational stage of training is necessary to fulfil the

statutory definition of a “barrister” and the Inns also provide an important environment in which students can meet members of the profession and develop and maintain ethical competence, which barristers must have - both in their own and in the public interest.

15. There are a number of other requirements at this stage of training, set by the BSB but delivered by the Inns of Court. These are known as “qualifying sessions” and consist of educational and professional networking activity which aims to develop a range of skill requirements in the Professional Statement.
16. Once students have met the requirements of the vocational stage of training (currently, by passing the BPTC) and completed the Inns’ other requirements, students can be “called to the Bar” by their Inn and are awarded the title “barrister”. Respondents generally saw no reason to change that procedure and we agree, although it might have to be reviewed if COIC were to become more directly involved in delivering training. Some consultees specifically raised the possibility that a perceived conflict of interest may arise in these circumstances. The BSB is reviewing the requirements for call to the Bar delivered by the Inns, and the evolving role of the Inns in the formal regulatory arrangements of the BSB. We will report separately on that review.

The BPTC

17. The key focus of respondents to our consultation was the vocational stage of training: - the **Bar Professional Training Course (BPTC)**. This course can currently be undertaken (in a one year course full time or part-time over two years) at various sites around England and Wales. The BPTC is designed to ensure that students acquire the knowledge of procedure and evidence, professional skills, attitudes and competence to prepare them for the final stage of training, more specialised work- based learning (pupillage).

18. The Bar Council’s consultation response can be taken as typifying the great majority of the responses we received, where they criticised the current BPTC:

“The current authorised BPTC model is unsatisfactory, and extremely unpopular with the vast majority of those who take it. It leads to too many people wasting too much money paying for expensive courses which in most cases do not lead either to employment or to tenancy. The system does not ensure that those who wish to come to the Bar have a chance to do so at reasonable expense and with a prospect of success that is reasonable given the investment of time and money required. The system will only be satisfactory if this vocational stage is made much less expensive, and correspondingly open to a wider segment of society.”

19. Some have also argued that the presence on the course of academically less able students, and students with weaker English language skills, may adversely affect the learning experience for other students.

The need to make changes to vocational training

20. The BSB agrees that changes to the BPTC must make it a less risky and more valuable investment (both financially and personally) for those who undertake it. This can be achieved in several possible ways, including changing, for example: the structure and modes of delivery of the course, the admissions policies, the nature of the qualification awarded – or a combination of these things.

Part 1 – Public

21. For the immediate future the current BPTC will of course have to continue, at least in the short term, to provide training for those who have already been accepted onto the course (on a full time or part time basis) and to bridge any gap between the current system and the new one. However, as the licences of current course providers expire in 2018 and 2019 and as new potential course providers prepare to come forward, we shall therefore be considering their proposals against our four key criteria of:
- flexibility
 - accessibility
 - affordability and
 - sustaining high standards
22. *We are not proposing substantive changes to the general syllabus for vocational training, but respondents did argue that the BSB should review the way in which Ethics is taught and assessed. We shall do so. It can take up to three years to effect substantial change in a core syllabus area but we shall work with others to ensure that the earliest reasonable timescale is achieved.*

The two-part vocational training model

23. Most respondents to the consultation argued strongly in favour of a new two part model for vocational training, as proposed by COIC and the Bar Council. A key aspect of this proposal would be to split vocational training into two parts:
- Part 1 would consist of the knowledge-based parts of the course – civil and criminal procedure and evidence, which are centrally examined by the BSB. Candidates would be able to prepare for Part 1 either independently or on a formal course.
 - Only those who pass Part 1 would then be able to proceed to Part 2 which will consist of the remaining skills-based elements – which include advocacy, drafting, ethics, and conferencing skills. Unlike Part 1, Part 2 would require formal attendance at a course.
24. The criticisms of this approach from other consultees centred around two concerns: whether the division of the course into two parts would encourage best-practice learning through the integration of knowledge and skills, and whether it would in practice meet social diversity objectives.
25. Many respondents argued that this two-part model should be the only recognised means of training for the Bar in future. They submitted that having a wider range of permitted pathways would create needless confusion amongst students and pupillage providers, encourage some students to choose courses which would give them inferior chances of gaining pupillage and lead to unnecessary regulatory costs which would have to be borne by the profession. Some respondents also argued that some models might actually deter Chambers from offering pupillages in future.
26. While we agree that the interests of those preparing for pupillage and the views of those Chambers which offer pupillage are of fundamental importance, it is important to bear in mind that the current BPTC, as a one year full time course, is also greatly valued by international students – 46% of students enrolled on the BPTC course in 2016 were not domiciled in the UK and most of those will have their success in it recognised on the professional qualification route in their home jurisdiction. Arguably, these professionals become world-wide ambassadors for compliance with the rule of law and the common law system of England and Wales.

Part 1 – Public

27. Additionally, some 18% of practising barristers work at the employed Bar (such as in the Government Legal Service or Crown Prosecution Service) and this is another reason why not all Bar trainees may be seeking pupillage in Chambers. It is vital that any system of vocational training also meets the needs of the employed Bar.
28. The vocational stage of training also gives people very valuable transferable skills for a wide variety of roles in the justice system as well as in the commercial world and in the public sector and many who do not obtain pupillage nevertheless have very successful careers. Our future system must take into account these factors as well.

The combined academic and vocational model

29. In recent years we have allowed providers (for example, Northumbria University) to combine the BPTC with a Master's degree in Law and this helps to reduce the costs of training. It enables students to fund those costs through the student loan system and gives them a more widely recognised qualification, whether or not they then go on to seek pupillage. We see this as a positive development. Some students may continue to want to follow this route and to choose courses where they can learn knowledge and skills together. We think therefore that this model should also continue subject to its meeting the criteria in our new Authorisation Framework.
30. A number of providers of the current BPTC already offer a "top up" LLM, and this is to be welcomed in our new system.

The modular or apprenticeship model

31. 31. We also think that the model of training most similar to (higher) apprenticeships must also be permissible in our regulatory framework, though we recognise that it is unlikely that providers and employers will be quick to come forward with proposals under this model. The employed Bar indicated particular interest in this model and we consider it to be particularly fitted to that training environment.

Conclusion (vocational training)

32. We agree with those respondents who have argued that having too many routes for qualifying at the Bar would offer no benefit and create confusion for both course providers and students. Although we do not rule out the possibility of other models being proposed in future, we see the four models above as being the only likely models which will be proposed to us for authorisation at present. We set out more about our proposed Authorisation Framework below.

Pupillage

33. During pupillage, pupil barristers undertake a year of paid, practical training supervised by experienced barristers. On successful completion of pupillage barristers are fully qualified and become entitled to their first full practising certificate.
34. The operation of an improved BPTC, the two-part vocational model and the combined academic and vocational model would not require substantive changes to the current arrangements for pupillage. But we shall be improving our oversight of pupillage as a regulator and taking steps to ensure the consistency of the outcomes at the end of pupillage – to give the public confidence that, wherever and however a barrister has done this final stage of training, the same minimum standard as set out in the Professional Statement has been achieved. The apprenticeship model, depending on

the exact details of any proposal received, may require an alteration to some current pupillage arrangements to allow for greater flexibility and, potentially, partnership between providers. However, this model would, we anticipate, generally operate outside of the chambers system and therefore traditional chambers work-based learning will not face significant change.

35. Currently, there are far fewer traditional chambers based pupillage places available than well-qualified students called to the Bar seeking to complete their training as barristers. The BSB notes that of those enrolled on the BPTC from 2011-2014, only 39% of UK/EU students who have been called to the Bar have moved on to pupillage.
36. There are many other opportunities for people who have been called to the Bar to contribute to society with their legal knowledge and skills and the personal attributes of barristers such as independence, honesty and integrity. We want to encourage the profession and the wider justice system to value their potential contribution. We shall maintain our regulatory relationship with them and they remain subject to our Code of Conduct because they are barristers. We shall also take steps to encourage a wider range of pupillages, and other final-stage training opportunities, to be made available and we shall aim to expand the range of work-based learning that we recognise as valid in meeting the requirements of the Professional Statement.

Next steps - The Authorisation Framework

37. We shall provide more detail later in 2017 about the criteria in our Authorisation Framework, which will be developed in collaboration with stakeholders. In the meantime, we set out some (non-exhaustive) indications of what the criteria mean below:
 - flexibility: we think diversity (and possibly also affordability) will be enhanced if training at this stage is permitted to be available in a wider range of modes – not just part time or full time, but through distance and blended learning and integration with paid work, for example.
 - accessibility: it is vital the profession is open to the widest possible range of students and that its diversity is maintained and enhanced. So we shall want to hear from prospective providers about their arrangements to encourage admission of, and enhance support for, students from under-represented groups. We shall also want to ensure that training is available across England and Wales.
 - affordability: postgraduate level professional training is very rarely cheap, but we want to see specific proposals from providers that actively address the balance of cost and risk to the students and enhance the value for money of their training compared to the current system. Understanding the financial and market implications of all new models will be essential.
38. Sustaining high standards: whatever the structural model a provider puts forward for approval, graduate admission standards will be maintained, as will a higher BCAT score for entry. The BSB will continue to control a range of centralised assessments so that the public is assured of a consistency in “day one” outcomes: that whatever route a barrister took to being called to the Bar and subsequently being awarded their first practising certificate, a minimum standard of competence, skill and knowledge has been achieved. We will also need to be sure that a provider is sustainable, accountable and adequately quality assured and that its proposals are financially sound and operationally feasible.

39. So, while we welcome, for example, the proposal of a two-part vocational course and anticipate that it is theoretically capable of meeting the criteria in our Authorisation Framework, the question of *when* that new model, or any other new model for vocational training, can first be offered will depend on the course providers. The exact details of how training is to be provided and how this can ensure accessibility for those from different backgrounds will also determine whether or not any individual proposal is authorised. For our part, we will do everything we can to assist in a smooth and swift development of the model. The two-stage model clearly has strong support from the profession and it could become very popular, given the possibility of studying Part 1 more flexibly, especially if it proves possible to study both Part 1 and Part 2 at a lower cost than the current course.

Aligning our approach with that of other legal regulators

40. Finally, we are conscious that the different branches of the legal profession (notably solicitors and barristers) have been thought to be developing divergent and mutually exclusive systems for future training. Ensuring alignment between our plans and those of the Solicitors Regulation Authority (SRA) wherever possible within our own principles has been a constant in our development work. Neither our new approach nor that of the SRA will drive students to make inappropriately early decisions as to whether to become either a barrister or solicitor, as some have suggested. The SRA approach will be different from ours, but compatible with it. For example, a law degree which includes preparation for the proposed Solicitors Qualifying Examination (SQE) is almost certain to meet the BSB's requirements. We will continue to work with the SRA to develop a set of principles for recognising qualifications, including across jurisdictions.
41. Our work so far on Future Bar Training has engaged actively with a wide range of individuals, groups, communities and institutions. We will continue to work constructively and closely with all those with an interest in our work as we move to developing our Authorisation Framework over the course of 2017, submitting an application for changes to our regulatory arrangements to the LSB by the end of 2017/18, and rolling out a new system incrementally from autumn 2018 onwards.

Further reading

42. To read more about our decision, including a summary of responses to the 2016 consultation and a full equality impact assessment, please read the papers from our March 2017 Board meeting.