

<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;

Part 1 - Public

- 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;

Part 1 - Public

- (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;

Part 1 - Public

- 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.

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VLD

Part 1 - Public

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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;

Part 1 - Public

- 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.

Part 1 - Public

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 |
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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.