

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**Meeting of the Bar Standards Board
Thursday 23 October 2014, 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:			
• 11 September 2014	Annex A		3-6
• 18 September 2014	Annex B		7-15
5. Matters Arising			
• Update on insurance for entities		Ewen MacLeod	
• Governance of Education and Training		Vanessa Davies	
6. a) Action points and progress	Annex C	Chair	17-22
b) Forward agendas	Annex D	Chair	23-24
<u>Items for discussion</u>			
7. Supervision – Report on Activity (4.45 pm)	BSB 069 (14)	Chris Nichols	25-61
8. BSB research (5.05 pm)	BSB 070 (14)	Amanda Thompson	63-71
9. Standard of proof review – update (5.15 pm)	BSB 071 (14)	Sara Jagger	73-77
10. Forward strategic overview – governance review: emerging findings (5.25 pm)	BSB 072 (14)	Amanda Thompson	79-81
11. Supervision and Entity Regulation - Authority for executive decisions (5.35 pm)	BSB 073 (14)	Oliver Hanmer / Chloe Dickinson	83-89
12. Returning Instructions – Consultation report (5.45 pm)	BSB 074 (14)	Ewen Macleod	91-115

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| 13. Chair's Report on Visits and Meetings:
Sept – Oct 14 | BSB 075 (14) | Chair | 117-118 |
| 14. Director General's Report
(5.55 pm) | BSB 076 (14) | Vanessa Davies | 119-130 |
| 15. Any other business
(6.00 pm) | | | |
| 16. Date of next meeting
Thursday 27 November 2014 | | | |
| 17. Private Session | | | |

John Picken
Board & Committees Officer
JPicken@barstandardsboard.org.uk
16 October 2014

BAR STANDARDS BOARD

REGULATING BARRISTERS

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

Thursday 11 September 2014, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Ruth Deech QC (Hon) (Chair)
Rob Behrens
Sarah Clarke
Simon Lofthouse QC
Tim Robinson
Andrew Sanders
Sam Stein QC
Richard Thompson
Anne Wright
- By invitation:** Sarah Brown (Special Adviser)
James Wakefield (COIC representative)
Keith Baldwin (PRP Committee Member)
David Botha (Director of Finance)
- BSB Executive in attendance:** Viki Calais (Business Manager)
Andrew Cohen (Business Support Officer)
Vanessa Davies (Director General)
Joanne Dixon (Qualifications Manager)
Sara Jagger (Director of Professional Conduct);
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Board & Committees Officer)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)
- Bar Council Executive in attendance:** Stephen Crowne (Chief Executive, Bar Council)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council)

Item 1 – Welcome and introductions**ACTION**

- The Chair welcomed members and guests to the meeting, in particular Keith Baldwin who had been invited to attend as a member of the Planning, Resources and Performance Committee.

Item 2 – Apologies

- Patricia Robertson QC (Vice Chair);
- Rolande Anderson;
- Malcolm Cohen;
- Justine Davidge;
- Nick Lavender QC (Chairman, Bar Council);
- Oliver Hanmer (Director of Supervision).

Note: Emily Windsor was not present for Part 1 of the meeting but did attend for Part 2.

Item 3 – Members’ interests and hospitality

2. None.

Item 4 – Approval of Part 1 (public) minutes – 24 July 2014 (Annex A)

3. The Board approved Part 1 of the minutes of the meeting held on Thursday 24 July 2014.

Item 5 – Matters arising

None.

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

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

Forward agendas (Annex C)

5. The Board noted the forward agenda list. The item on the Jeffrey Review action plan and public response will now be considered at the October 2014 meeting.

Item 7 – BSB Q1 Performance Report

BSB 056 (14)

6. Anne Wright presented the Q1 performance report. The salient points were:
- outcomes against performance targets and financial forecasts are largely on track;
 - the main areas of concern relate to:
 - ❖ Regulatory Risk Framework – rated red on grounds of time and staffing (though the newly appointed Regulatory Risk Manager is now in post);
 - ❖ CPD regime development – rated amber on grounds of time and budget. The project has now been re-phased with full implementation now due from January 2017;
 - ❖ PCD Performance Indicators – targets set for two organisational performance indicators (OPIs) and the overarching key performance indicator (KPI) have been missed;
 - ❖ Staff turnover rates – this continues to be a concern following a high turnover figure last year (36%).
7. She also highlighted the following:
- QASA – no operational budget spend will be made to the QASA budget for 2014/15. Staff have been re-deployed to work on projects in other Departments;
 - Entity Authorisation – this has been subject to delay and may need an additional temporary staffing resource once the process for authorising entities is underway;
 - Standard of proof review – this has stalled, though the contributing factors are outside the control of the BSB. An update paper will be provided at the October meeting;
 - Intranet – the first phase remains on track for the planned delivery date despite some minor delays;
 - Performance Management software – delivery has been re-scheduled for next year;
 - Monitoring the cost of complaint handling – work is underway to record the time spent on complaints to identify the cost involved;
 - Youth Courts – a research project has been commissioned in collaboration with ILEX Professional Standards and reflects the Board’s decision on this in May 2014.

**JP to
note**

- fewer applications than anticipated have been received from barristers to undertake litigation. This has detrimentally affected income streams.
8. Members commented as follows:
- it is curious that the number of barristers seeking authorisation to practise litigation are lower than expected. The Bar Council course on litigation was heavily in demand;
 - the annual report of the Professional Conduct Department is included in the agenda for the meeting on 18 September. The Chair of the PCC will address the issues around performance in that report.
- SL to note
9. In response to the first point, staff commented as follows:
- we shall analyse the numbers attending the Bar Council course and those applying for authorisation;
 - it may be that there is simply a time lag between the two stages and that barristers will apply in due course. It may be worth re-stating the fact that attendance of the Bar Council course is not an end in itself for authorisation purposes and that formal applications need to be made.
- EM to note
10. **AGREED**
to note the report.
- Item 8 – PRP Committee annual report to the Board**
BSB 057 (14)
11. Anne Wright highlighted the following:
- the PRP Committee will meet more often in 2015. This is because it considers several complex issues during the course of the year ie the business plan, budget bid and annual report. It has proved challenging to address these fully in a quarterly meeting cycle. More time has therefore been allocated for these specific items;
 - the report sets out the key messages from the Committee in regard to its main items of business ie budget bid and business plan, performance reports, monitoring resources, annual report, fees and charges review and service level agreements;
 - efforts have been made to improve the flow of information to non-Board Members of committees. This followed concerns expressed by some PRP members that they had less than optimum insight as to the Board's perspective.
12. In response to the final point, the Chair welcomed efforts to improve Committee Member engagement and re-stated the open invitation for Members to attend Board meetings.
13. **AGREED**
to note the report.
- Item 9 – Schedule of Board Meetings 2015-16**
BSB 058 (14)
14. **AGREED**
to approve the schedule of Board meetings for January 2015 – March 2016.
- Item 10 – Any Other Business**
15. None.

Item 11 – Date of next meeting

16. Thursday 18 September 2014

Item 12 – Private Session

17. 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 – 24 July 2014 (Annex A);
 - (2) Matters arising;
 - (3) Action points and progress – Part 2 (Annex B);
 - (4) BSB Budget Bid for 2015-16;
 - (5) Corporate Risk Register;
 - (6) Entity regulation fees consultation;
 - (7) Formal approval of legal training delivery requirements for 2014/15;
 - (8) Any other private business.
18. The meeting finished at 4.55 pm.

BAR STANDARDS BOARD

REGULATING BARRISTERS

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

Thursday 18 September 2014, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Ruth Deech QC (Hon) (Chair)
Patricia Robertson QC (Vice Chair)
Rolande Anderson
Rob Behrens
Malcolm Cohen
Simon Lofthouse QC
Tim Robinson
Andrew Sanders
Anne Wright
- By invitation:** Sarah Brown (Special Adviser) – by phone for items 1-4
Isobel Leaviss (Independent Observer)
Emily Windsor (Special Adviser)
- BSB Executive in attendance:** Vanessa Davies (Director General)
Chloe Dickinson (Governance Support Officer)
Joanne Dixon (Qualifications Manager)
Marion Huckle (Policy & Quality Assurance Manager)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
Chris Nichols (Supervision Policy Manager)
John Picken (Board & Committees Officer)
Pippa Prangley (Regulatory Risk Manager)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)
Stephanie Williams (Legal and Policy Assistant)
- Bar Council Executive in attendance:** Poli Avramidis (Chief Information Officer)
Mark Hatcher (Special Adviser to the Chairman of the Bar Council) – items 1-5
- Press:** Catherine Baksi (Law Society Gazette)

Item 1 – Welcome and introductions**ACTION**

- The Chair welcomed members and guests to the meeting, in particular Isobel Leaviss (Independent Observer) who had been invited to present her annual report to the Board.

Item 2 – Apologies

- Justine Davidge;
- Sarah Clarke;
- Sam Stein QC;
- Richard Thompson;

- Stephen Crowne (Chief Executive, Bar Council);
- Nick Lavender QC (Chairman, Bar Council);
- Viki Calais (Business Manager);
- Oliver Hanmer (Director of Supervision).

Item 3 – Members’ interests and hospitality

2. None.

Item 4 – Entity Regulation

BSB 062 (14)

3. The Board considered an updated version of a paper on proposals to amend the Handbook on entity regulation. This followed consultation on rule changes to enable the BSB to regulate entities on a contractual basis, pending receipt of its statutory powers. The original paper was revised following the late receipt of a consultation response from the Bar Mutual Indemnity Fund (BMIF).
4. Ewen Macleod highlighted the following:
- the consultation raised several issues of concern ie:
 - ❖ the extent of proposed statutory intervention powers;
 - ❖ proposals concerning contractual remedies involving powers of the BSB to enter premises and access / control client files;
 - ❖ the potential threat of a significantly reduced membership of the BMIF should large numbers of single person entities come into existence. This would act against the public interest as it would no longer be possible to provide blanket cover under the mutual model. This could increase insurance costs for clients and cause instability and uncertainty within the market;
 - ❖ concerns expressed by the Legal Ombudsman and the Legal Services Consumer Panel that:
 - the proposed minimum level of cover (£500k) is too low, citing a lack of evidence to justify this level;
 - the minimum terms should focus on vulnerable clients but others should have an option to insure under different terms;
 - inclusion of an aggregate claim limit might mean consumers are not fully compensated.
5. He added that:
- the s69 powers consultation will address issues raised on statutory intervention powers;
 - the powers to enter premises and access / control client files will only be used in extreme circumstances when no other option is available to protect client interests eg to access abandoned chambers;
 - the BMIF has since provided more evidence to justify the proposed minimum cover level and advised that a move away from the same terms for all could risk clarity over cover, particularly if the “vulnerable” status of the client changed over time. Moreover a clause on aggregation is necessary as its omission would act as a significant disincentive for any reputable insurance company to provide cover for those entities the BSB wishes to regulate;
 - the Entity Working Group considers there is merit in the public interest arguments of the BMIF, given the expectation that, initially, most new entities will be single person companies. In consequence it believes the BMIF should be permitted to extend its monopoly to cover single person entities.

6. Members commented as follows:
- the key question is whether single person entities should be compelled to insure with BMIF. There is a risk of unintended consequences were this not to happen and we need to balance the public interest of retaining the mutual model with market freedom;
 - one option is to require single person entities to insure with BMIF but to review this model after a defined period of time (possibly two years after the date of authorisation of the first single person entity);
 - the BMIF submission is persuasive and also helpful insofar as it clarifies misunderstandings evident from other responses, notably that of the LSB Consumer Panel. The Act requires entities to be regulated so a viable insurance model is needed in order that they can be established; consumer interest required stability, experience and certainty in entity insurance;
 - there is very little difference between the work of a self-employed barrister and a single person entity and the BMIF position seemed best fitted to achieve the desired outcome. Once entities are established other market providers might come forward. A review may be necessary but a two year lead-in period may give sufficient time. We should monitor and review when there is sufficient evidence to hand;
 - the minimum cover level required by the SRA is currently higher than that proposed by the BSB (£500k) (although the SRA is consulting on reducing the stipulated minimum cover to £500k);
 - one of the proposed rule changes relates to provision of information to the BSB (rC64). Such documents fall under the privilege of the client rather than the regulator and it would be helpful to understand how this will apply in practice.
7. In response, the following comments were made:
- the minimum cover applies to individual claims – it does not represent the total limit;
 - the Handbook requires an entity to hold insurance levels appropriate for its business and this figure may be well above the minimum threshold;
 - the SRA threshold is higher because solicitors hold clients' money and the risks involved are correspondingly different;
 - regarding the provisions of rC64, we can either obtain client consent up front or hold documents securely (without reading them) until such consent is obtained. The key issue is that the rule allows documents to be appropriately safeguarded;
 - the review time limit could be agreed in principle but should also take into account annual renewal cycles and other administrative considerations that will have a practical bearing on the outcome.
8. **AGREED**
- | | | |
|----|--|-------------------|
| a) | to note the issues raised by respondents to the consultation. | |
| b) | to approve the proposed amendments to the BSB Handbook as outlined in the consultation. | EM to note |
| c) | to approve the proposed principles for minimum insurance terms and delegate to the Handbook Working Group responsibility for publishing detailed minimum terms guidance in the light of these. | EM to note |
| d) | approve the further recommendation that single person entities be required to insure with the BMIF, which seemed best fitted to safeguard the public interest and consumer interest but that this be reviewed after a period of time (in principle, two years after the date of authorisation of the first entity, subject to practical administrative issues such as renewal cycles). | EM to note |

- e) to note the commitment to keep insurance terms under review as experience of entity regulation develops.

Item 5 – Professional Conduct Committee / Professional Conduct Department Enforcement Annual Report 2013/14

BSB 063 (14)

9. Simon Lofthouse QC referred to the Annual Report for the Professional Conduct Committee and Professional Conduct Department for the year 1 April 2013 - 31 March 2014. He highlighted the following:
- there has been a significant fall in the number of internal complaints following changes to CPD regulation. The number of external complaints has remained the same;
 - there has been a rise in the number of barristers either disbarred or suspended;
 - the KPI target for concluding cases within service standard deadlines was achieved last year (76.7% against a target of 75%). The KPI threshold has now been raised to 80%;
 - satisfaction ratings on complaints handling has improved, particularly in relation to accessibility and transparency and openness.
10. With reference to KPIs, he also referred to the quarterly performance report presented to the Board on 11 September by the Chair of the Planning, Resources and Performance Committee. This showed a noticeable fall in Operating Performance Indicators (OPIs) which had caused a failure to achieve the overarching KPI standard for Q1 (2014/15). The following points were made:
- the OPIs were affected by the nature of the cases that were closed during the Q1 period. Several were older cases which took longer than usual to resolve either because of their complexity or because of successive procedural challenges on the part of the barrister concerned. This consequently affected the performance figures but does not imply any loss of productivity within the Department;
 - rather than look at statistics in isolation, we should consider the trend over time. This continues to show improvement in overall terms to the extent that the revised target (80%) can realistically be achieved.
11. He added that:
- the PCC now has near parity in terms of lay / barrister member numbers (22 lay / 24 barrister);
 - we continue to rely on the pro-bono support of prosecutors in pursuing enforcement work and the Committee is very grateful for their commitment and professionalism;
 - several action points have been identified as set out in paragraph 5.7 of the report.
12. He concluded by thanking the staff of the Department for their continued efforts during a period of significant change, in particular to Sara Jagger (Director of Professional Conduct) and Paul Martyn (Reports and Data Analysis Officer).
13. Members commented as follows:
- it would be useful to know more about the “determination by consent” procedure ie where, with the barrister’s agreement, PCD staff can make a finding of professional misconduct and apply appropriate sanctions;
 - the Bar Council was initially sceptical of the ability of the Legal Ombudsman to make a consistent and clear distinction between service and misconduct complaints. It would be helpful to know what has happened in practice;

- the statistics do not give the overall time frame from the date a complaint is received to the date it is finally resolved. This length of time is important from the complainant's perspective and should be recorded;
 - it would be helpful to know how we monitor the e&d impact of regulatory decisions on enforcement;
 - if KPIs are being missed because of long-running cases, it would be useful for the PRP Committee to be appropriately informed;
 - it is pleasing to note that we have achieved near parity in barrister / lay member representation. There was considerable disquiet expressed when this was first suggested but any fears have since proved groundless.
14. In response the following comments were made:
- determination by consent is working effectively. A Monitoring Committee has been established to check decisions made by staff and, to date, there have been no disagreements encountered;
 - there is no evidence to suggest the Legal Ombudsman is failing to identify cases of misconduct. A 10% sample of cases is routinely given to the BSB to check and this has not identified any anomalies;
 - the end-to-end timeframe could be measured but statistical returns would still be affected by external factors. When a case goes to tribunal, the BSB effectively loses control of the governing procedures. Cases are currently judged against the criminal standard which can also add to the preparation time. Nevertheless end-to-end times could be included in future reports, albeit with some caveats;
 - a meeting with the Bar Tribunal and Adjudication Service (BTAS) has been arranged for the autumn. One of the agenda items will concern KPIs for tribunal services;
 - e&d data about complaints is captured at source and subsequently analysed by the BSB's Research Team. The next full report is due in 2015;
 - efforts will be made to keep the PRP Committee appropriately informed of long running cases.
15. **AGREED**
- a) to note the report and to endorse the conclusions and action points contained therein.
 - b) to include information on end-to-end times for case resolution for future reports.
 - c) to ensure that the PRP Committee is informed about long-running cases should these detrimentally impact on performance figures.

VLD to
note

SJ / PM

SJ

Item 6 – Governance of Education and Training

BSB 064 (14)

16. The Board considered a paper concerning revisions to the Terms of Reference and scheme of delegation for the Education & Training Committee. It also received a tabled paper setting out a further revision to Annex 2 (the E&T Committee's Terms of Reference). In addition, Members noted that Rolande Anderson has now joined the Legal Education and Training Review (LETR) Change Programme Board (*full membership is Andrew Sanders, Rolande Anderson, Justine Davidge, Jane Walshe and Simon Thornton-Wood*).

17. Simon Thornton-Wood referred to the need to have a clear statement on the remit of the Education & Training Committee and how powers are delegated to Sub-Committees and, in particular, the LETR Change Programme Board. The Committee's existing Terms of Reference (ToR) could be interpreted in several ways leading to confusion and challenge. The new ToR also reflects the Board's vision to delegate greater decision-making into the executive.
18. Members commented as follows:
- unless there is an urgent or otherwise compelling reason for a paper to be tabled, then this should be avoided. In this context it is unfortunate that the revised Annex was distributed in this way;
 - the scheme of delegation (Annex 3) is difficult to interpret and the reason for the changes included in the tabled paper is not immediately clear;
 - as drafted, paragraph 3 implies the Committee is making decisions on regulatory requirements, whereas this is the preserve of the Board;
 - the wording in paragraph 1 relates to "formulation of policy". This could result in the Board being excluded from the debate on policy making, even though it retains the power of approval;
 - there needs to be a clear definition, and shared understanding, of terms used in the context of the ToR. This includes "oversee" (paragraph 2) and "implement" (paragraph 3).
19. In response, the following comments were made:
- the LETR Change Programme Board is due to meet on 29 September 2014 to approve the Project Initiation Documentation. Its delegated powers therefore need to be agreed before this date;
 - it may be possible to find an interim solution to the vires issue of the LETR Change Programme Board. Assuming that to be the case, it would be possible to re-visit the ToR and scheme of delegation at the next meeting.
20. **AGREED**
- a) to note the paper and to request that the revised Terms or Reference of the Education & Training Committee and associated changes to the scheme of delegation be considered again at the Board meeting on 23 October 2014. **JP to note**
- b) that Vanessa Davies consider options to enable the LETR Change Programme Board to function within the existing governance framework during the interim period. **VLD**

Item 7 – GRA Committee report to the Board (including the Annual Report from the Independent Observer)

BSB 065 (14)

21. Isobel Leaviss presented her Annual report. The salient points were:
- the report covers the period June 2013-June 2014 and focuses on the operation of the enforcement system;
 - it provides a substantial level of assurance that the enforcement system has operated in accordance with its aims and objectives;
 - her six monthly report to the GRA Committee in October had been much more cautious in tone. This was because the Professional Conduct Department was facing considerable pressure from a number of factors. These included work on the Handbook, high staff turnover, key staff absence due to illness, extra work generated by contested cases and challenges to historic cases following the publication of the Browne report which had highlighted Tribunal panel appointment anomalies.

Notwithstanding these pressures, overall performance had been sustained at a high level;

- eleven recommendations were made during the year to improve enforcement related processes. These had all been accepted and the majority have already been implemented;
- the BSB website has a greater volume of information on enforcement but site navigation could be improved to improve transparency and accessibility. A project to do this is underway;
- the BSB now publicises more about its enforcement activities. Even so, there is still considerable scope to enhance understanding of this role among the profession, consumers of legal services and the wider public;
- the corporate process for the recording, handling and monitoring of complaints about the BSB's services (including PCD) could be improved.
- her work for the immediate future will include the following:
 - ❖ case files not categorised as complaints;
 - ❖ monitoring of compliance with regulatory decisions;
 - ❖ complaints concerning PCD staff, prosecutors and PCC members (known as "professional complaints").

22. Members thanked Isobel for her comprehensive report. In response to a question about her term of office, she confirmed that this will now continue until 31 May 2016 (in all, a five year term from her original appointment date of 1 June 2011, though this is the cumulative effect of a succession of extensions to shorter term contracts).

23. The following comments were made:

- the role of Independent Observer was first mentioned in 2007 and doubts were expressed at the time as to its likely effectiveness. These reservations have since been proved groundless as significant improvements have been made as a result of the IO's observations;
- the Ombudsman Association recommends that Independent Observers are appointed for a full five year term in order that their independence is not compromised. We should bear this in mind when a replacement appointment is made in June 2016;
- it is not clear if the sample case files referred to in paragraph 2.1 of the report are selected by staff or by the Independent Observer, or what proportion these represent of all cases;
- it would help to have specific examples of how the BSB could enhance wider understanding of its enforcement role;
- in respect of the latter point, the BSB's Annual Report included case studies to good effect and there may be scope for extending this idea to information held on the website about enforcement.

**AT to
note**

**SJ to
note**

24. In response, the following comments were made:

- the Independent Observer confirmed that she had selected sample files herself and agreed to feedback on the proportion that these represented (see below);

Post meeting note:

The IO has since indicated that in addition to the case papers she had reviewed for PCC meetings and the Tribunals she had attended, she had reviewed 45 case files. The vast majority of these were closed case files. To put this in some context, the PCD opened 408 new cases in 2013/14 and had 334 active cases at the end of the fourth quarter.

- the earlier reports to the GRA Committee included some suggestions as to how wider understanding of the BSB's enforcement role could be achieved. Isobel Leaviss subsequently met Tim Robinson to discuss these communication issues. Currently the Chair's fortnightly briefing to the profession does include regular updates about enforcement but there is still no such feature in Counsel magazine, even though this was suggested several years ago;
- it might be useful to include some regulatory commentary about general caseload volumes and outcomes in press releases for disbarments to give them the appropriate context.

AL to
note25. **AGREED**

- a) to note the report and to receive the Assurance Statement included as part of the Annual report of the Independent Observer.
- b) to publish the IO's report (June 2013-14) on the BSB website.

FM

Item 8 – Chair's Report on Visits and Meetings: July-Sept 2014

BSB 066 (14)

26. The Chair referred to the Policy Forum event held on 4 September 2014 entitled "The future of legal services regulation". Sir Michael Pitt, Chairman of the Legal Services Board, spoke at this event and commented that:
- there is general agreement that the Legal Services Act is imperfectly drafted and there is scope to improve the structure of legal regulation;
 - the regulators themselves need to lead this discussion as there is no clear consensus as yet;
 - there may be some doubt as to the longer term future of the Legal Services Board but this is by no means certain.

27. The Chair added that there have been significant changes in the senior leadership of both the SRA and the LSB and this could also alter perspectives.

28. **AGREED**

to note the report.

Item 9 – Director General's Report

BSB 067 (14)

29. Vanessa Davies highlighted the following:
- further to the Policy Forum referred to above, there will be a Regulators' Summit meeting on 2 October 2014. Feedback will be available for the Board at the October meeting;
 - all BSB Committee Members have been contacted regarding extensions to terms of office pending a wider governance review. However not all have responded to indicate whether or not they wish to continue. It would be helpful if Committee Chairs could remind them about this.

JP / VLD
to noteComm
Chairs
to note30. **AGREED**

to note the report.

Item 10 – Any Other Business31. Board Appointments

The Chair announced the appointment of the following new Board Members:

- Adam Solomon (barrister member) – takes up the role with effect from 1 January 2015;

- Andrew Mitchell QC (barrister member) – takes up the role with effect from 1 January 2015;
 - Nicola Sawford (lay member) – takes up the role with effect from 1 September 2015.
32. Lay PRP & Qualifications Committee Member, Keith Baldwin, will also be invited to attend meetings as a non-voting special adviser to the Board with effect from 1 January 2015. This is for a two-year period to 31 December 2016. The appointment is to assist with the Board's activities – particularly those centred on finance and efficiency, and major IT projects. If a lay board member vacancy should arise between 1 September 2014 and 31 August 2016, this will be offered to him.

Item 11 – Date of next meeting

33. Thursday 23 October 2014.

Item 12 – Private Session

34. The following motion, proposed by the Chair and duly seconded, was agreed:

That the BSB will go into private session to consider the next items of business:

- (1) Regulatory Standards Framework – self assessment 2014-15;
 - (2) Update on LETR Change Programme;
 - (3) Any other private business.
35. The meeting finished at 6.05 pm.

**BSB – List of Part 1 Actions
23 October 2014**

(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
15b (18 Sept 14)	include information on end-to-end times for case resolution for future PCD performance reports to the Board	Sara Jagger / Paul Martyn	by Sept 15	15/10/14	Noted for the future - action not yet due
15c (18 Sept 14)	ensure that the PRP Committee is informed about long-running cases should these detrimentally impact on performance figures	Sara Jagger	by next PRP Cte (13 Nov 14) and ongoing	15/10/14	Noted for the future - action not yet due
20b (18 Sept 14)	identify options to enable the LETR Change Programme Board to function within the existing governance framework whilst the E&T Terms of Reference are re-considered	Vanessa Davies	immediate	14 /10/14	Completed – LETR Programme Board constituted as a sub committee of the E and T committee until further standing order changes effected (if needed).
25b (18 Sept 14)	publish the Independent Observer's report (June 2013-14) on the BSB website	Fiona McKinson	immediate	19/09/14	Completed and press release issued
22b (24 Jul 14)	prepare and issue a call for evidence be made in respect of how and when the cab rank rule is used as part of a further review of standard contractual terms	Ewen Macleod	before end Sept 2014	14/10/14 02/09/14	Completed: call for evidence published 10 October Outcome of previous Board discussion shared with the LSB: further update on next steps to be shared with LSB by 18 September.
13f (26 Jun 14)	develop an action plan to ensure improved levels of compliance with E&D rules and monitor improvements	Chris Nichols / Sarah Louffi	by end Aug 14	14/10/14	Action plan developed. All actions have been completed to deadline – some actions remain outstanding with deadlines to completed by the end of the year. These actions are on track to be completed to deadline as set out in the plan

**BSB – List of Part 1 Actions
23 October 2014**

(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
13g (26 Jun 14)	provide input into Bar Council events with the Equality Officer Network, focusing on support for officers implementing work allocation and flexible working requirements	Sarah Loutfi / Rolande Anderson	immediate and ongoing	14/10/14	BC EDO event took place on 9 th October. EDA presented and took questions on implementation of equality rules.
20a & b (22 May 14)	prepares an action plan and public response statement for Jeffrey Report with oversight provided by Board Members	Vanessa Davies / Oliver Hanmer / Sam Stein QC / Justine Davidge / Richard Thompson	originally 24 Jul 14 – re- scheduled 18 Sept 14	14/10/14 14 /07/14 17/06/14	Held over again due to inter-relationship with QASA and impact of stay. Now anticipated November. Completion of proposals delayed by unavailability of key players and now scheduled for September. Staff team set up to review the Jeffrey Report and to develop proposals and an action plan. Staff session held on 18 June to discuss the Report. Board members nominated to assist on developing the action plan will be invited to comment on a draft by the end of June with final proposals presented to the Board at its July meeting
12c (21 Nov 13)	undertake a further review to the Standing Orders	Amanda Thompson / Chloe Dickinson	On hold	13/5/14 11/02/14 14/01/14	New timeline needed to reflect decision to undertake fundamental review taken by the Board at the Awayday. Consideration to some principles to be given at April Awayday Work has commenced

**BSB – List of Part 1 Actions
23 October 2014**

(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
16 (24 Oct 13)	continue with implementation of the regulatory risk framework as agreed by the Board	Ewen Macleod	before Apr 14	14/10/14	Completed: plans now in place (see Director General's report for more details)
				02/09/14	Regulatory Risk Manager starts 8 September.
				15/7/14	Report received from InfluenceInc – SMT agreeing action plan. Regulatory Risk Manager expected to be in post 8 September.
				18/6/14	InfluenceInc Risk consultants reporting on maturity assessment in June 2014. Interviews completed for Regulatory Risk Manager.
				13/5/14	Work underway but implementation slower than expected due to delay in recruitment of Regulatory Risk Manager. Workshops have taken place regarding risks related to entity regulation.
				11/03/14	Delays in recruitment mean first review will now be brought to June meeting. By the Board meeting training will have taken place for staff – first specialist session delivered on 13 March.
				11/02/14	First review to be brought to Board in March

**BSB – List of Part 1 Actions
23 October 2014**

(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
				14/01/14	Discussed at Awayday in December; to be reviewed by SMT week of 20 Jan 2014 and by Board in February
				13/11/13	In progress. Updates in Director's report, performance report and corporate risk register. Key action for Board to note is need to schedule training dates for Board members in December.
16b (18 Jul 13)	gather feedback on accessibility of information on the BSB website about complaints	Amanda Thompson	before end Mar 14	09/10/14	Proposals from specialist group now received and being evaluated. Once services we will purchase have been agreed between PCD and Strategy and Communications, work will proceed.
				15/07/14	PCD members have met with one of the stakeholder group members (which specialises in ensuring people have the knowledge, confidence and skills needed to deal with law-related issues) to discuss how we make complaints information available. A work plan is now being developed.
				17/06/14	Progress on stakeholder work has been very limited given volume of other communications activity. Arrival of new Communications Manager will free up resources to focus on this again.

**BSB – List of Part 1 Actions
23 October 2014**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				13/05/14	Stakeholder session focused on understanding complaints system, reflecting stakeholder group's needs. Further activities being planned to complete this action.
				11/03/14	Feedback will be sought at stakeholder session on 28 March.
				14/01/14	On track
				13/11/13	Stakeholder workshop held on 13 November dealing with QASA. Next session will be as below. Early indications are that engagement will be productive.
				17/07/13	Stakeholder workshop/seminar being planned to deal with communicating the work of PCD. Anticipate will be held before end of March 2014 but depends on stakeholder availability. Date will be confirmed when available.
20a (16 Jun 11)	arrange for amended Memorandum of Understanding to be signed for BSB User Group and ensure disclosure of interests by members of the Group	Amanda Thompson	before 13 Jul 11	09/10/14	Ongoing. Consultant had limited availability August – October due to other commitments. Proposal now received and work will commence again in early November.
				02/09/14	Work programme for consultant being agreed between Director of Strategy and Communications, new Communications Manager and consultant.

**BSB – List of Part 1 Actions
23 October 2014**

(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
				15/07/14	Consultant engaged to work on stakeholder engagement through until year end.
				17/06/14	No further progress made on this due to volume of other work. Arrival of new Communications Manager will enable resources (consultant) to invest more time into stakeholder engagement
				13/05/14	Not finalised at meeting due to need to focus on topics needed by stakeholders. Due to staff changes, this is now unlikely to be finalised until July, following further relationship building.
				14/01/14	Expected to be finalised at March 28 stakeholder group meeting
				13/11/13	To be progressed with stakeholder group following analysis of feedback received from first session held on 13 November.
				9 May 13	To be progressed as part of overall stakeholder engagement strategy
				13 Mar 13	To be progressed now new staff in post
				12 Jul 12	Ongoing

Forward Agendas**Thursday 27 November 2014**

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)
- QASA – update
- ABS application to the LSB – policy issues
- BTAS Annual Report and update on Browne Review recommendations
- Jeffrey review action plan and public response document
- Information management

Thursday 11 December 2014 (Board Away Day)

- Governance review (including committee review and Appointments Panel review)
- Strategic plan 2016 – 21: initial discussion
- Board Development: including regulatory risk management

Thursday 29 January 2015

- Interim PCC report
- LETR – draft consultation on BPTC and academic stage (part 2)
- Education and Training Committee Annual report to Board
- Diversity data report
- QASA – update
- Regulatory Risk report

Thursday 26 February 2015

- BSB Business Plan for 2015-16
- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)
- Inns Conduct Committee Rules

Thursday 26 March 2015

- LETR Plan (including CPD Consultation)
- final version of BSB Strategy update, Business Plan 2015-16 & Budget 2015-16
- Standard Contractual terms and CRR

Thursday 23 April 2015 (Board Away Day)

- Strategic Plan 2016 – 21

Thursday 21 May 2015

- BSB Year-End Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)

Thursday 25 June 2015

- Professional Statement (LETR workstream #1) – proposal for sign-off

Thursday 23 July 2015

- BSB Draft Annual Report for 2014-15

Thursday 10 September 2015

(budget meeting, including for 2016-21 Strategic Plan)

Thursday 24 September 2015

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

Thursday 22 October 2015

Thursday 26 November 2015

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

Thursday 17 December 2015 (Board Away Day)

Thursday 28 January 2016

Thursday 25 February 2016

- BSB Business Plan for 2016-17
- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register)
- Office of Immigration Services Commission – barristers supervising immigration advisers

Thursday 17 March 2016

Supervision – Report on Activity

Status

1. For noting

Executive summary

2. Implementation of supervision is well under way and good progress has been made against the proposed activity for the Supervision Team that was agreed in March 2014:
 - The Supervision Team is now fully constituted and inducted.
 - All chambers have had their impact assessed through the Impact Audit Survey process.
 - High Impact chambers have been prioritised for further supervisory attention and most have now completed a Supervision Return, which will enable an assessment of the governance and controls in chambers. This in turn will inform what further action is required and what priority should be given for supervision visits. Medium Impact chambers will complete Supervision Returns in the first quarter of 2015.
 - Supervision visits are being rolled out in earnest following a successful pilot programme that incorporated 13 visits. A report on the pilot programme is included at Annex A to this paper. The pilot highlighted the tangible benefits that can be achieved through visits as well as the positive response that visits garnered from most chambers involved. It also allowed for the approach to visits to be improved.
3. Risk-based supervision is therefore well under way. There remains considerable work to complete over the next 5 months to achieve the proposed activity for this financial year but the Team is well placed to build upon a strong start and meet this challenge.

Recommendations

4. The Board is asked to note the contents of this paper and specifically the report on the pilot visits at Annex A.

Background

5. In September 2013 the Board approved the Supervision Strategy and accompanying guidance that articulated the BSB's new risk-based supervision function. This material is available to view in the Resources section of the supervision pages of the BSB's website, having been updated as supervision has been implemented.
6. In March 2014 the Board considered the proposed activity for the Supervision Team for the financial year 2014/15. This proposed activity comprised the following:
 - (a) Undertake an impact audit for all 800 (approx.) chambers
 - (b) Undertake Supervision Returns for 400 highest impact chambers
 - (c) Undertake up to 70 visits of chambers/entities
 - (d) Undertake one larger thematic review or two smaller ones

7. It also included ongoing supervision of chambers, including gathering and analysing information in order to determine supervision priorities, as well as ongoing supervision of individual barristers.
8. This paper provides an update on the activity of the Supervision Team and the progress that has been made against the proposed activity.

Comment

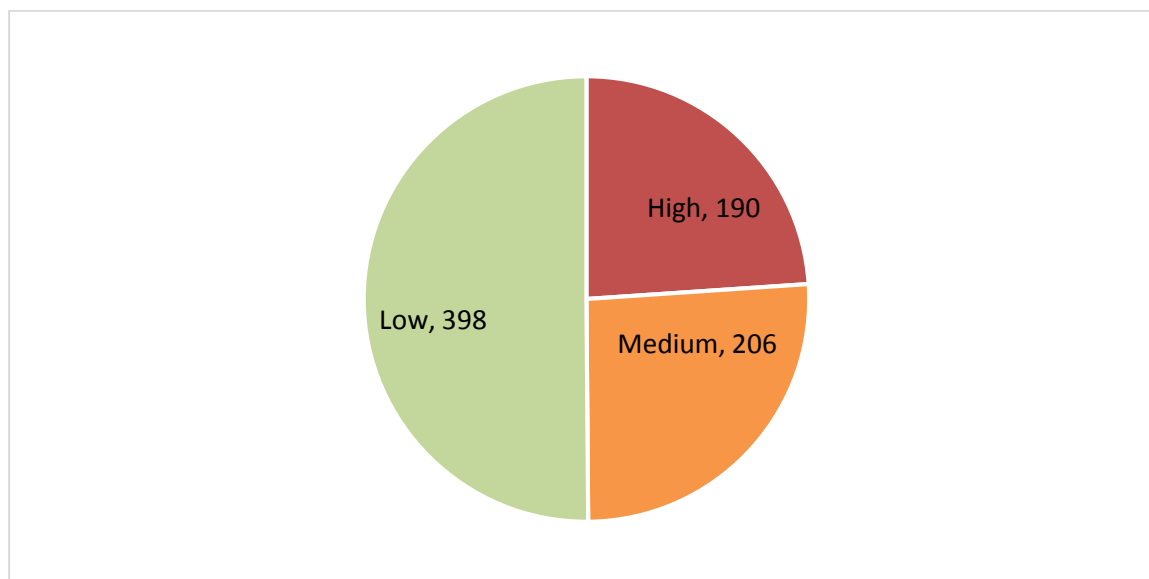
Recruitment and induction of Supervision Team

9. Since the March Board three new members of staff have been recruited to the Supervision Team; Julia Witting (Chambers and Entity Supervisor), Bernard MacGregor (Supervision Officer) and Ruby Newton (Authorisation and Supervision Officer). The Supervision Team now comprises 6 members of staff (two of whom are part-time).
10. The new members of staff bring significant experience in risk-based audit, including from the financial services sector. Significant time and resources have been devoted to induction to ensure that these skills can be effectively applied to the supervision of chambers.
11. All members of staff have familiarised themselves quickly with the area and all have been actively participating in supervision visits and assessing Supervision Returns, as well as running the CPD Spot Check Process.

Impact Audit Survey

12. The process of prioritising chambers for supervision by reference to risk began in July 2014, when all chambers were required to participate in an Impact Audit Survey. The intention was to assess the potential impact of each chambers, which relates to the consequences of chambers not complying with the outcomes in the Handbook.
13. The process was run through the new Objective Uengage software and this proved to be an excellent platform for collecting responses and also automating the assessment of impact utilising a formula approved by the Supervision Committee. This automation meant that the process was very efficient in terms of staff time.
14. The survey elicited 794 responses; this represents the current pool of chambers that the Supervision Team will be responsible for supervising.
15. As a result of responses given to the 7 questions in the survey, chambers received an impact score of between 0-13. This enabled boundaries to be agreed that provided for approximately 25% of chambers to be assessed as High Impact, 25% as Medium Impact and 50% to be assessed as Low Impact. A sample of assessments were reviewed by staff, who concluded that the assessments accorded with the intention of the exercise. All chambers were informed of their impact assessment and what this means for future supervision.

16. The exact split of chambers in each category is depicted in the graph below:



17. Of the 794 chambers, 410 are sole practitioners and 384 are multi-tenant chambers. A total of 43 sole practitioners were assessed as Medium Impact; these are all practising in high impact areas of law and undertaking a significant number of cases, including public access work. All of the High Impact chambers are multi-tenant sets.

18. Of the High Impact chambers, the geographical split is as follows:

Location	No. of Chambers
London	106
Western	15
Midlands	14
Northern	13
North East	12
South East (excluding London)	10
Wales and Chester	4

19. Other noteworthy information gathered through the Impact Audit Survey includes:

- 76% of chambers have at least one member who is accredited to undertake public access work. Of those chambers with members accredited to undertake public access work, 19% had not undertaken any public access work in the preceding 12 months and 33% had undertaken more than 20 cases;
- 24% of chambers stated that they intend to offer at least one pupillage in the coming 12 months and just over half of these intend to offer more than one pupillage; and
- 23% of chambers stated that they undertook work within the Money Laundering Regulations. This will be tested through the Supervision Return process as it is higher than anticipated.

Supervision Returns

20. The Impact Audit Survey was the first step in prioritising chambers for future supervision activity. The Supervision Return process is the next step; it will provide for an assessment of how effective governance and controls are at chambers.
21. High Impact chambers were issued with a Supervision Return in July 2014 and were given until 14 September to submit their return. Most responses have been received although those from a few chambers who were granted extensions are still pending. All responses will have been submitted by the end of October.
22. Medium Impact chambers will be required to complete Supervision Returns in the first quarter of 2015, whilst Low Impact chambers will not be required to complete Supervision Returns and will only be required to engage with the Supervision Team if they are involved in a thematic review or if information is received from other sources that suggests the need for proactive supervision.
23. The Supervision Return was developed in conjunction with the Supervision Committee and was piloted on a small number of chambers. It includes 46 questions, the majority of which are free text, enquiring as to how chambers approach various governance and compliance issues. The Return covers the five key areas that the Supervision Team has identified as central to its Supervision Programme (see Appendix 1 of Annex A). These areas are:
 - (i) Governance and administration
 - (ii) Client service
 - (iii) Equality and Diversity
 - (iv) Pupillage and training
 - (v) Finance and administration
24. The Return is being administered through the Uengage software and must be completed online by chambers. In addition to allowing staff to assess individual responses, the software will facilitate anonymised analysis of trends, which has already proved useful in establishing how various issues are being approached across the market.
25. A hard copy of the Supervision Return questions can be viewed in the Resources section of the supervision pages of the BSB's website.
26. Analysis has begun on the returns that have been received. A marking schedule and moderation process have been developed to ensure consistent results. Chambers will be informed of whether they are assessed as Low, Medium or High risk and the reasons for any elevation in their risk level. High risk chambers will have visits scheduled as a matter of priority to agree action plans for addressing concerns. Most Medium risk chambers will be told to expect a visit in the future and expected to address identified concerns in advance of a visit being scheduled.

Supervision Visits

27. In preparation for increased use of visits following the Supervision Return, the Supervision Team implemented a Pilot Visits Programme to develop and test the new supervision visit function.
28. The pilot programme incorporated 13 visits, including 7 randomly selected chambers and 6 genuine risk-triggered visits that arose as a result of information received from the Legal Ombudsman, the Professional Conduct Department and some other sources. A report on

the programme is included below at Annex A; this explains the process, results and what chambers can expect from supervision visits in the future.

29. In general, the pilot has demonstrated the benefits of visits as a supervision tool:
- (a) The visits undertaken through the pilot identified a number of areas for improvement at chambers (120 actions from the 13 visits). These actions ranged from suggested improvements for chambers to follow up on to required actions to ensure regulatory compliance. Follow up has ensured that progress has been made on these actions so that tangible improvements have resulted from the visits;
 - (b) Chambers have responded very well to supervision visits and many have acknowledged the benefits of constructive engagement with the Supervision Team. The report includes a number of quotes that elaborate upon this. In addition, a survey of chambers involved in the pilot (also detailed in the report), found that a strong majority of chambers felt that the process resulted in improvements in policies, controls and/or processes; the same majority found it helpful to discuss the practicalities of implementation of the Handbook with the Supervision Team and also agreed that the new approach was helpful to them in building a constructive working relationship with the BSB.
30. In addition, observers from the Supervision Committee and the LSB have attended visits and their feedback has been positive and encouraging. The report also explains some of the improvements made as a result of their feedback.
31. Supervision visits are now being rolled out in earnest; two risk-based visits have already occurred since the pilot and a number of other visits are being scheduled. Visits will be continually reviewed with a view to opportunities for further improvement being identified.
32. Following improvements made through the pilot, chambers can expect the following from visits:
- They will be informed by risk-based information, including the Impact Audit Survey, the Supervision Return and information received from other sources. Visits will therefore be targeted at higher risk chambers and tailored to the specific risks at these chambers;
 - Visits will usually last 3 hours, although follow up visits may be scheduled if further time is needed;
 - Chambers may be given more than 2 weeks' notice of a visit where there is not a pressing need for a more urgent visit;
 - Specific documentation will be requested from chambers, to be submitted a week in advance of a visit. The details will be set out in a letter when the chambers is first notified of the visit;
 - Chambers will receive a report within one week of a visit. The report will explain whether the Supervision Team has assessed chambers as Low, Medium or High Risk. It will also confirm the actions that are expected from chambers that were agreed during the visit.
33. The report at Annex A will be published with supporting communications activity. This is a good opportunity to publicise the positive messages that have come out of supervision so far, including the positive response from the profession to a more constructive and proactive approach from the BSB and the improvements that this approach is driving.

34. The report contains, at Appendix 1, the Supervision Programme that was used to support visits. This programme was useful for both staff and chambers in articulating what is expected and how this relates to the outcomes in the BSB Handbook. This has been incorporated into the Supervision Strategy guidance.

Improving standards

35. The Supervision Team has also identified various means by which it can help to improve standards alongside direct supervisory activity. This includes the following:
- (a) The Supervision Team has been offering personalised briefing sessions for chambers on what to expect from supervision. These are normally delivered at chambers and cover advice and guidance on what to consider and prepare for in relation to the five key areas in the Supervision Programme and discussion of best practice. These sessions are advertised on the BSB website and in Counsel and 18 chambers have received a briefing session so far. Feedback from these sessions has been positive, with chambers appreciating the ability to invite the BSB into their premises to help to identify and discuss potential improvements or good practice.
 - (b) The Legal Practice Managers Association has been extremely helpful throughout the development and implementation of supervision. A number of sessions have been arranged in order to discuss what chambers should expect from supervision, test proposals around visits and provide a forum for those involved in administering chambers to provide feedback on our processes. A session is planned for 28 October to discuss the report on the pilot visits. We will continue to work with the LPMA and the Institute of Barristers Clerks to ensure that messages are appropriately relayed and feedback is sought. Following analysis of the Supervision Returns, we will also hope to use these forums to discuss areas of high risk and examples of good practice in addressing such areas.
 - (c) The intention is also for the supervision pages of the BSB's website to be used in the future to help with identification of high risk areas and the sharing of good practice in approaching such issues. This will be possible following analysis of the Supervision Returns.
36. Driving improvements in standards in this manner is an important aspect of the Supervision Team's remit. Assisting well intentioned chambers to improve is a good use of BSB resources; it is also an important aspect of developing more constructive engagement with the Bar and promoting the work and the reputation of the BSB.

Thematic Review

37. As agreed in March, the Supervision Team will undertake at least one thematic review during this financial year. A thematic review will be undertaken during the first quarter of 2015, during the period when the Supervision Return for Medium Impact chambers is open and the Team is awaiting responses.
38. Work has recently begun to agree the scope of this thematic review. A project board has been established with representatives from the Supervision Team and the Regulatory Policy Department. The review will cover litigation services and assess how effectively risks are being managed in practice by barristers and chambers providing litigation services.

CPD Spot Check

39. The Supervision Team has also been responsible for undertaking the 2013 CPD Spot Check process. This has been managed by Bernard MacGregor. The Board has been kept apprised of progress through the Director General's Report. A full report on the process will be presented to the Board in early 2015.

Supervision Committee

40. The Supervision Committee has been constituted since November 2013 and has provided strategic oversight and expert advice on all of the activities that are outlined in this paper.
41. The Committee has met four times in 2014 and has been involved in the development of the Impact Audit Survey and Supervision Return. It was also involved in development of the pilot visits programme, with two members attending visits and providing feedback. Most recently the Committee considered reports on the Impact Audit Survey and the pilot visits report. It also scrutinised the Team's progress against the proposed activity for 2014/15 and advised upon future priorities. This oversight, advice and scrutiny has assisted the Team in making significant progress in implementing supervision.

Next steps

42. Over the coming months the Supervision Team will be focussed on assessing all of the Supervision Returns and undertaking resulting visits to High Risk chambers. It will also continue to plan the thematic review and the Supervision Return process for Medium Impact chambers.
43. The first quarter of 2015 will see the launch of the Supervision Return for Medium Impact chambers and implementation of the thematic review, alongside ongoing visits and supervision of High Impact chambers.
44. The one area in which the Supervision Team does not expect to meet its planned activity for 2014/15 is in relation to the number of supervision visits. The reason for this is that visits require significantly more staff time than was anticipated when this proposed activity was set out; this was prior to pilot visits beginning. One of the key reasons for the increased resource requirements is the extent to which visits are identifying actions and resulting in follow up work with chambers to ensure improvements are made. It had originally been proposed that up to 70 visits would have been undertaken. It is now proposed that 40-50 will be undertaken this financial year. Visits will be prioritised by risk and therefore high risk chambers will still be visited within an appropriate time frame.

Resource implications

45. This paper sets out the activity that has been achieved within the existing resources of the Supervision Team. The Team is fully constituted and all staff are now fully inducted.

Equality impact assessment

46. The Supervision Strategy was subject to an Equality Impact Assessment and implementation has continued in line with this. Once chambers have been assessed through the Supervision Return process it will be possible to assess how particular types of chambers are being impacted upon by supervision and what the equality impacts of this may be.

47. A paper was presented to the last Equality and Diversity Committee meeting, as supervision is identifying issues and trends with compliance with the Equality and Diversity rules. The Supervision Team will continue to work closely with the E&D Committee to drive improvements in compliance and also to ensure that the E&D impacts of supervision are properly understood and managed.

Risk implications

48. The Supervision Team is working closely with the new Regulatory Risk Manager (Pippa Prangley) to ensure that the approach is consistent with the wider Risk Assessment Framework. Embedding supervision within this framework will assist with consistent and useful sharing of information from supervision to other Departments; it should also assist in identifying priorities for future supervision activity.

49. In terms of specific risks to the delivery of supervision, there are two elevated risks which the Supervision Team is monitoring:

- (i) The potential for substantial supervision resources to be drawn into authorisation. Resource planning has been undertaken but the uptake of entity regulation is very difficult to predict and it is also not yet known exactly how long each application is likely to take to consider. Therefore these two variables mean that it is possible that resource requirements will exceed what has been planned for; in these circumstances resources will need to be diverted from the Supervision Team. This could in turn have a knock on effect on the achievement of supervision activity in the first quarter of 2015.

This risk will be monitored as predicted uptake for entity regulation is reviewed and updated. If an impact on supervision is anticipated, a decision will need to be taken on what supervision activity to prioritise. It will be possible to take a more informed decision on what to prioritise once the Supervision Returns for High Impact chambers have been assessed.

- (ii) Further delay in implementing appropriate IT systems. This is covered below in the IT section.

Impact on other teams / Departments and projects

50. The Supervision Department and the Professional Conduct Department have had a number of joint meetings to establish joint working protocols and ensure effective collaborative working. Information sharing and formal referral forms will shortly be agreed to add greater structure to these processes now that both Departments have had an opportunity to work together for a period of time.

51. As set out above, the Supervision Team will be working with the Regulatory Policy Department to design a thematic review that will meet with their expectations in terms of effectively evaluating the new rules concerning litigation services. The Supervision Team has also shared anonymised responses to the Supervision Return to allow for identification of trends in relation to information provided to clients. It is anticipated that this sort of sharing of information will become more commonplace in the future; it has already been agreed that similar analysis will be conducted in conjunction with the Equality and Diversity Advisers in relation to responses on questions concerning the E&D rules.

52. The supervision of pupillage has identified a number of areas of crossover with the Education and Training Department and a session will be scheduled to discuss these and establish protocols to assist effective working across the Departments.

53. Strategy and Communications have provided support where required, specifically in relation to communications work.
54. A number of knowledge sharing sessions have been led by Supervision Team staff, to ensure that all staff at the BSB understand the approach to supervision and how it might impact upon their work.

IT Systems

55. The development of IT systems to underpin supervision has been delayed for a number of reasons, the most recent relating to the discontinuation of the software known as Flosuite from December 2016; Flosuite is currently used by the Professional Conduct Department and was previously agreed as the preferred software solution for supervision.
56. At the moment, supervision is being managed through the Document Management System and a number of Excel Spreadsheets. Whilst this is sustainable in the short to medium term, a less well-tailored IT solution means that significant staff time is required to keep spreadsheets up to date. More importantly, it limits the ability of the Supervision Team to run reports and share information with other Departments. As supervision activity progresses and more information is gathered, this deficiency will become more pronounced. It is important that a more tailored software solution is in place prior to October 2015 as otherwise it may affect the BSB's progress towards "satisfactory" in the LSB's Regulatory Standards Framework assessment.
57. The positive aspect is that the delay has enabled the Supervision Team to improve its understanding of what is required and a specification has been prepared that is more detailed, reliable and appropriate and that should be achievable under most generic case management software and should be of significant assistance to supervision.
58. The specification is now serving the IT Department and the Project Office well in assisting the BSB to develop a longer term solution that would work for the Professional Conduct Department and the Supervision Department and allow for cross-BSB integration. There are significant benefits to utilising the same systems. However, it has been agreed that a short to medium term solution is required to support supervision in the interim period, as delivery of the longer term solution could be beyond October 2015.
59. We are considering several options to support supervision in the medium term by early 2015, in a cost effective way that does not compromise our longer term information management approach. The risk is being monitored closely through the GRA committee and the Senior Leadership Team. There is more detail on our approach to information management elsewhere on the agenda.

Consultation

60. Through the development and implementation of supervision the Supervision Team has been conscious of the importance of feedback and input from those to whom supervision applies. The report on the pilot visits explains some of the work done with the LPMA as well as the formal feedback that was sought through a survey of those involved in visits. The Team maintains a log of all feedback received at visits, by email and over the phone. In addition, surveys will continue to be sent to all chambers that have been visited so that a culture of feedback and continuous improvement is embedded.

Regulatory objectives

61. The approach to supervision has been developed to support compliance with the Handbook and promote compliance with the outcomes set out in it. In this manner, it seeks to promote the regulatory objectives. In particular, the interests of consumers are promoted through assessment of chambers' processes and controls in relation to client service. Ensuring adherence to the E&D rules and encouraging overall improvements in E&D also contributes to promotion of an independent, strong, diverse and effective legal profession.

Publicity

62. Supervision has been received well so far by the profession and there are some very positive messages to publicise about the implementation of more proactive and constructive engagement with the Bar and the positive impacts that this is already having. A communications plan has been agreed with the Communications Team to ensure that these messages are shared. This includes the publication of the report on the pilot supervision visits with accompanying press release.

Annexes

- Annex A – Report on the Pilot Supervision Visits

Lead responsibility

Chris Nichols
Richard Thompson

Report on the Pilot Supervision Visits



REGULATING BARRISTERS

Content: Report on the Pilot Supervision Visits
Contact: Julia Witting, Chambers & Entity Supervisor
tel. 020 7611 1148
email: jwitting@barstandardsboard.org.uk

BAR
STANDARDS
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REGULATING BARRISTERS

Report on Pilot Supervision Visits

September 2014

Prepared by: Julia Witting, Chambers & Entity Supervisor

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EXECUTIVE SUMMARY

Commencement of risk-based supervision

Following the establishment of the Supervision Team in 2014, risk-based supervision has commenced. This provides the basis for constructive engagement between the BSB and those that it regulates. Supervision visits are a key tool in this new approach.

Piloting supervision visits

The Supervision Team has developed a risk-based supervision visit programme and tested this through a number of pilot supervision visits. This paper outlines the results of the pilot.

The pilot visits have already resulted in the identification of issues in chambers visited so far and have begun to provide the BSB with information about where the key risks are in the market.

Chambers have received the visits positively and have shown an appetite to work with the Supervision Team to improve their management of risk and compliance with the BSB Handbook.

“We were able to have an open conversation about the issues that all chambers face these days.”

“It was a pleasure to meet with you all, and I hope that you found the exercise to be as engaging as I did.”

“Having been quite sceptical about the value of supervision, I have to some extent changed my mind. Although our main administrative processes are good, the supervision did make us think about things that are less obviously necessary and on the whole I think this was a good thing.”

We are already seeing tangible improvements in policies, procedures and controls as a result. We believe that, with the improvements set out in this report, the visits programme can drive significant improvements in the market.

What chambers can expect next

The Supervision Team are developing a risk-based programme of visits, drawing on information from the Impact assessment, Supervision Returns and other sources. Chambers will be selected for visits based on a prioritisation of this risk-based information.

Chambers will receive advance notice and specific information about what they need to do to prepare for a visit, including the documentation that should be sent to the Supervision Team in advance of the visit. Visits will usually be about three hours long. The agenda will be based on the five key areas outlined in Appendix 1 and focussed on key risks that have been identified.

At the conclusion of the visit, a risk rating will be determined. Specific actions required to reduce risk will be agreed with chambers, together with a timeframe for addressing them and reporting back to the BSB on implementation. This information will be summarised in a report to chambers.

1. Background

1.1 Supervision Strategy

The BSB has published a Supervision Strategy, which explains the framework for risk-based supervision. It is available on the website here:

<https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>

The BSB will supervise chambers to ensure that they are managing risk effectively and are compliant with regulatory requirements. Risk-based supervision will:

- Allow the BSB proactively to identify risks and take appropriate action to prevent them from materialising;
- Encourage more effective risk management by chambers and entities and contribute to improvements in the level of compliance with regulatory requirements;
- Help to prevent negative outcomes for consumers and negative impacts on the regulatory objectives;
- Provide a means of ensuring that identified non-compliance does not recur;
- Allow the BSB to target its resources at those chambers, entities, individuals or areas that would benefit from supervisory attention; and
- Provide the basis for constructive engagement between the BSB and those that it regulates.

Following the establishment of the Supervision Team in 2014, risk-based supervision has commenced. An impact assessment has been carried out. Data from this exercise has been collected and analysed and chambers categorised as High, Medium or Low Impact, according to criteria such as the volume of new cases, the type of legal services delivered and whether or not pupillages are in place. Chambers categorised as High Impact have completed a Supervision Return. Together with other information, such as chambers referred by the Professional Conduct Department (“PCD”) according to their own risk-based assessment criteria, information from other organisations such as the Legal Ombudsman and reports from barristers, a risk-based plan for supervision activity is being developed. Supervision visits are a key tool in this plan.

In order to prepare for this, a supervision visit programme was developed and a sample of chambers was selected for pilot visits to test the programme. This paper outlines the results of the pilot visits.

1.2 Selection of chambers for the pilot

Thirteen supervision visits were completed for the pilot. Seven chambers were selected randomly for the pilot, ensuring coverage of chambers within and outside London, small (under 20 members) and large chambers, and a range of practice areas. As the pilots progressed, the Supervision Team decided to include some risk-based visits in the pilot, prioritised following referrals from PCD. There were six risk-based visits.

Visits were carried out by the four members of the Supervision Team who will be primarily involved in implementing risk-based supervision. Two lay members of the Supervision

Committee, including the Chair, accompanied staff on a visit each as observers to provide independent feedback. In addition, personnel from the Legal Services Board accompanied the team on a visit as part of the preparations for entity authorisation and gave very positive feedback.

1.3 About the supervision visits

All chambers must ensure that they are compliant with the regulatory requirements set out in the BSB Handbook. This includes a requirement to have appropriate risk management procedures in place.

The BSB has identified a number of key processes that it expects competently administered chambers to be managing in order to ensure compliance with the BSB Handbook. These can be summarised into the following five key areas:

1. Governance and administration of chambers.
2. Provision of services to clients.
3. Equality and diversity.
4. Pupillage.
5. Financial management.

The supervision visit programme is based on these five areas, which are described in more detail in Appendix 1.

For the pilot visits where chambers were selected at random, all five areas were covered. For the risk-based visits, the focus was on the areas identified as high risk.

Visits were scheduled to last three-hours, during which the Supervision Team requested to meet with the following (not all were required to be present for the full three hours):

- Head of Chambers and other senior barristers where relevant, such as Head of the Pupillage Committee
- Practice Manager, Chief Executive or Business Development Manager, where in post
- Senior Clerk
- Equality and Diversity Officer/Diversity Data Officer
- Pupils, in some cases

Chambers were given at least 2 weeks' notice of visits.

Information was requested in advance. In addition, we carried out a desk-based review of information held by the BSB prior to visiting.

Following each visit, we prepared a report to chambers to provide feedback on any issues identified (i.e. risks not managed and non-compliance with the Handbook). The report included a risk rating of chambers, based on the information gathered and the nature of the issues identified. Our aim was to agree these issues and the risk rating during the visit so

there were no surprises in the report. Chambers were asked to respond to the Supervision Team with updates on actions according to the agreed timeframe.

2. Outcomes from the first thirteen visits

2.1 Risk ratings

Following a supervision visit, chambers were classified by the Supervision Team as either High, Medium or Low Risk. These categories are explained in Appendix 2. The thirteen chambers visited were assessed as follows:

	Number of chambers assessed in each category
High Risk	6
Medium Risk	4
Low Risk	3

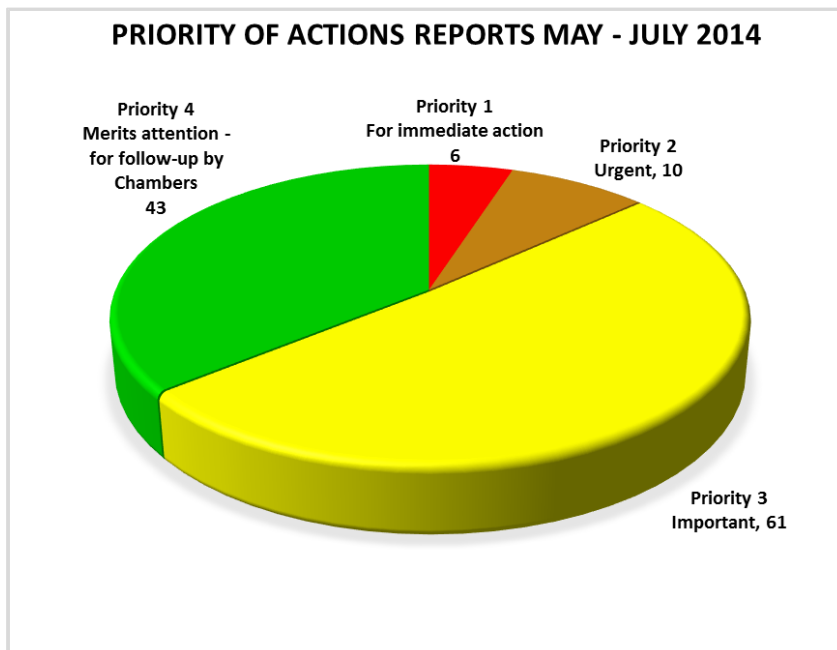
Five of the six High Risk chambers were selected on the basis of risk, due to referrals from PCD. The sixth chambers was selected randomly.

Half of the chambers assessed as High or Medium Risk were located outside of London. All three Low Risk chambers were located in London and were from the random selection.

2.2 Priority of issues identified

We prioritised the actions arising from the visits into one of four categories as follows. These categories are explained in Appendix 3. Chambers are required to provide updates on action taken on Priority 1 to 3 issues.

120 actions were raised in total, which were split as follows:



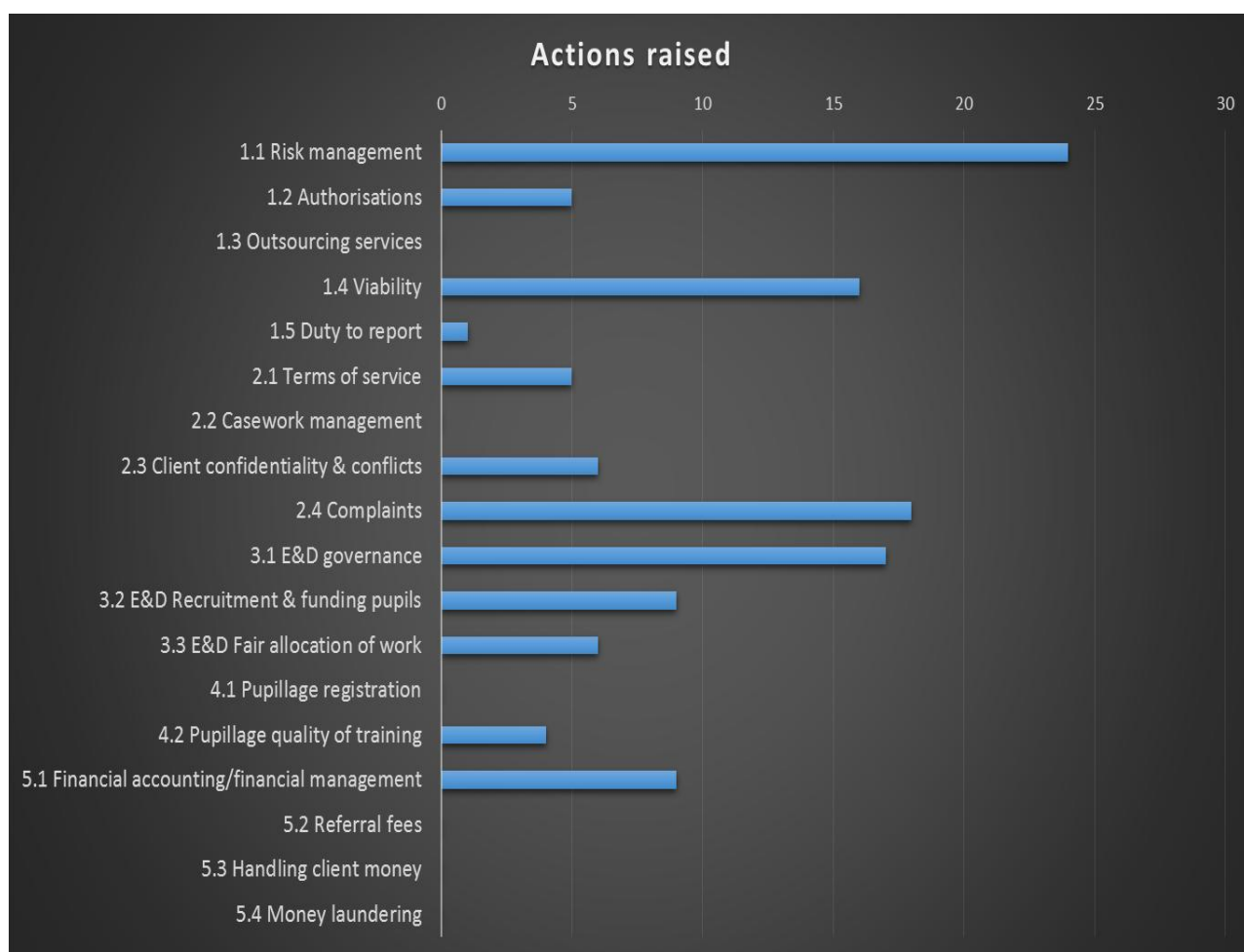
Part 1 – Public

Of the six Priority 1 actions, five related to the financial viability of three chambers that were selected for visits on a risk basis. The actions required the respective chambers to keep the BSB informed if, at any stage, there is an increased likelihood that the chambers will be forced to close. These chambers were asked to prepare emergency procedures in the event that they were forced to close unexpectedly and to inform the BSB if and when they plan to recruit pupils again. All have been subject to ongoing monitoring since the visits. The situation at one of the chambers has now stabilised and the other chambers are still subject to close monitoring.

The sixth Priority 1 action related to delays in paying BMIF insurance premiums, which chambers was requested to address immediately.

2.3 Themes

The table below provides an analysis of the 120 actions raised, grouped into the key processes that are assessed during visits (see Appendix 1¹).



¹ The BSB has identified a number of key processes that it expects competently administered chambers to be managing in order to ensure compliance with the BSB Handbook. These can be summarised into five key areas that we will focus on during our supervision visits:

1. Governance and administration of chambers
2. Delivery of services to clients
3. Equality and diversity
4. Pupillage
5. Financial management

More actions were raised than anticipated. Key themes include the following:

Risk management

The majority (17 out of 24) were Priority 4 actions for chambers to follow up. Issues raised were primarily in the following areas:

- Improving risk management by drawing up a plan to articulate how chambers manages and responds to risks and uncertainty and improving risk monitoring.
- Strengthening chambers' governance arrangements by, for example, developing a chambers constitution, establishing a management committee or ensuring that chambers meetings and committee meetings are documented.
- Improving business continuity planning.

Viability

- Eleven of the 16 actions related to the five chambers that were visited because of concerns about their financial health. Chambers were required to prepare budgets and cash flow projections, prepare contingency plans to address what needs to happen to effect an orderly wind down in the event that chambers are forced to close suddenly, and to inform the BSB immediately if closure is expected.
- In addition, we are encouraging all chambers to consider preparing such a contingency plan in the event that there is sudden closure, for whatever reason. Our guidance on chambers closure was provided and is available on the BSB website: www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/ We have recommended to the Professional Practice team inclusion of this guidance in the next version of the Handbook.

Complaints

This was an area of particular focus during the visits that had been triggered, at least in part, by information from the Legal Ombudsman about high volumes of complaints and/or “premature” complaints (i.e. where complainants had approached the Legal Ombudsman before complaining to chambers, suggesting that complaints procedures were not well explained to clients). Actions were agreed in the following areas:

- Improving information provided to lay clients about how to complain.
- Updating information provided to clients about the right to make a complaint to the Legal Ombudsman up to six years after the act/omission took place (which has been amended): www.legalombudsman.org.uk/consumer/step-by-step.html
- Improving complaints handling procedures and monitoring of complaints by chambers, including establishing benchmarks.

Equality & Diversity

Compliance with the Equality & Diversity requirements in the BSB Handbook were not fully in place in 12 out of the 13 chambers visited. This resulted in 33 actions being raised in total in the following areas:

- Diversity Data Officer and/or Equality & Diversity Officer not yet appointed.
- Diversity data not yet collected, analysed and published.
- No Equality Action Plan in place.
- Procedures for ensuring fair allocation of work not in place, or needing improvement.
- Fair recruitment training not completed.
- Inadequate documentation of assessment criteria for recruitment that ensure a consistent and fair process.

This is an area in which significant improvements can be made and chambers welcomed support and guidance in this area. A number were keen to discuss the practical challenges in this area and we are liaising with the BSB Equality and Diversity team to feed back our findings.

For most, work to address compliance was in progress and some have already completed the actions agreed. We also saw some examples of good practice; for example, one chambers had engaged consultants to help them to develop an objective recruitment process and materials.

Financial accounting/financial management

The nine actions raised related to the five chambers selected for visits due to concerns about their financial health, and covered improved financial planning, including preparation and monitoring of budgets, and preparation of chambers accounts.

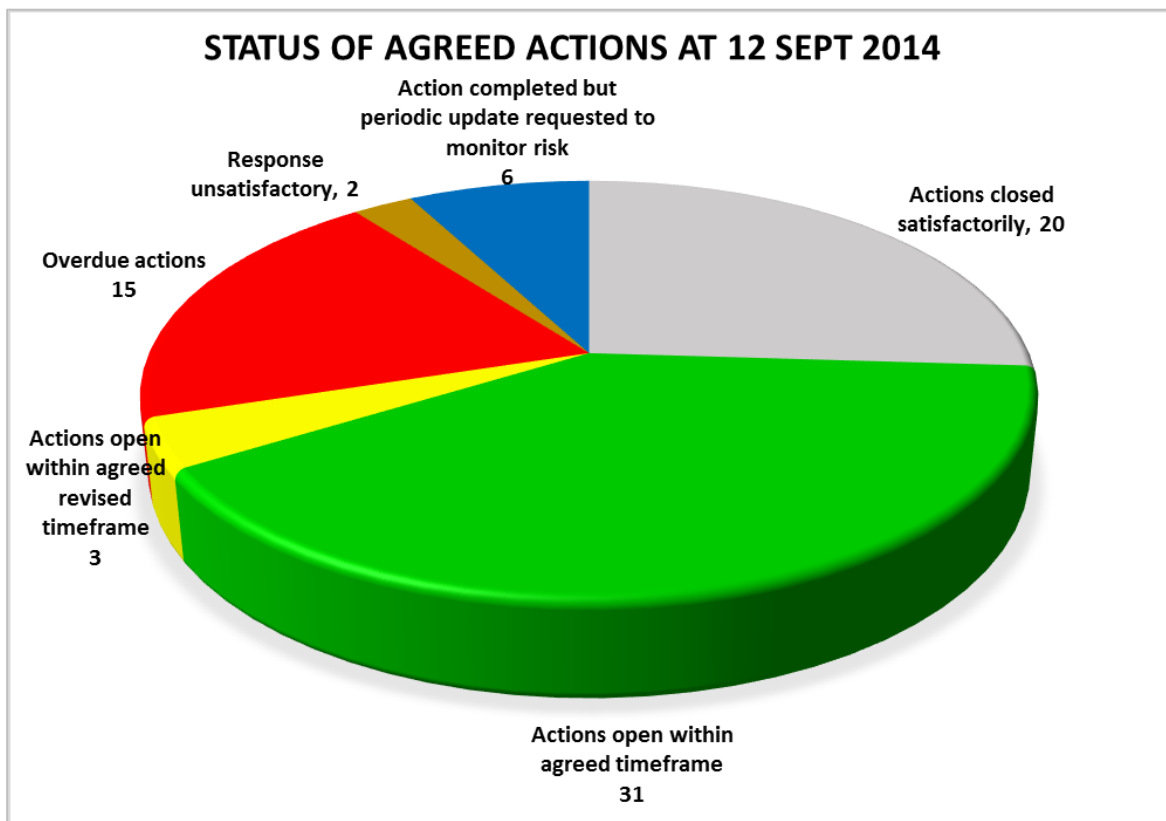
During our visits we review key financial controls and have found some basic financial controls absent in some chambers. The accounting function at one of the chambers selected on a random basis had been hit by a fraudster who had apparently been targeting the legal services market as a sector where controls are likely to be weak. That chambers had not reported the incident to the BSB and we have no data to indicate whether fraud is an issue in the market. Therefore we have asked about fraud history in the Supervision Return in order to build up a picture of the level of risk.

2.4 Status of actions agreed

Chambers are required to report back to the Supervision Team within the agreed timeframe for actions included as Priority 1 to 3 in the visit report. (Priority 4 actions are for follow up within chambers and are not monitored by the Supervision Team).

The following table and chart provide a summary of the status of Priority 1 to 3 actions that were agreed with chambers and included in the visit reports

As at 12 September 2014	Priority 1	Priority 2	Priority 3	Total Priority 1-3 actions
Total actions raised	6	10	61	77
Actions closed satisfactorily	1	6	13	20
Actions open within agreed timeframe	0	0	31	31
Actions open within agreed revised timeframe	0	0	3	3
Overdue actions	1	3	11	15
Response unsatisfactory	0	1	1	2
Action completed but periodic update requested to monitor risk	4	0	2	6



There remains a significant number of overdue actions where chambers have not provided an update to the Supervision Team. The follow-up process is resource-intensive for the Supervision Team for those chambers where repeated chasing is required. Extra efforts were made on later visits to ensure that chambers set and commit, during the visit, to realistic deadlines for follow-up and proactive reporting back to the Supervision Team.

Two of the overdue actions and the two actions where the response was unsatisfactory relate to one chambers which has been subject to frequent monitoring contact by the Supervision Team due to the persistently high level of risk relating to financial viability and high level of complaints.

It should be noted, however, that a third of Priority 1 to 3 actions have already been addressed by chambers. As these include actions where visits were triggered on the basis of identified risk, we are already seeing tangible improvements in policies, procedures and controls through the follow-up process. We believe that, with the improvements set out in this report, the visits programme can drive significant improvements in the market.

3. Outcomes: lessons learned and adjustments made

3.1 Gathering feedback

In order to identify what went well and what could be improved, we asked those present at the supervision visits for their feedback during the visit. We also asked them to complete a short anonymous survey after the report was issued (seven people responded).

One of the Chief Executives that was involved in a pilot visit is a member of the Legal Practice Managers Association committee; we attended their lunch meeting to get further feedback and answer questions.

We also held team debriefings.

Overall, the feedback from the visits was positive and the team recorded some very encouraging comments, some of which are included for illustration in the highlighted boxes in the following paragraphs. We have also had a number of constructive suggestions from chambers that have already helped to shape the visits; these are outlined in the following paragraphs.

3.2 Selection of chambers for visits

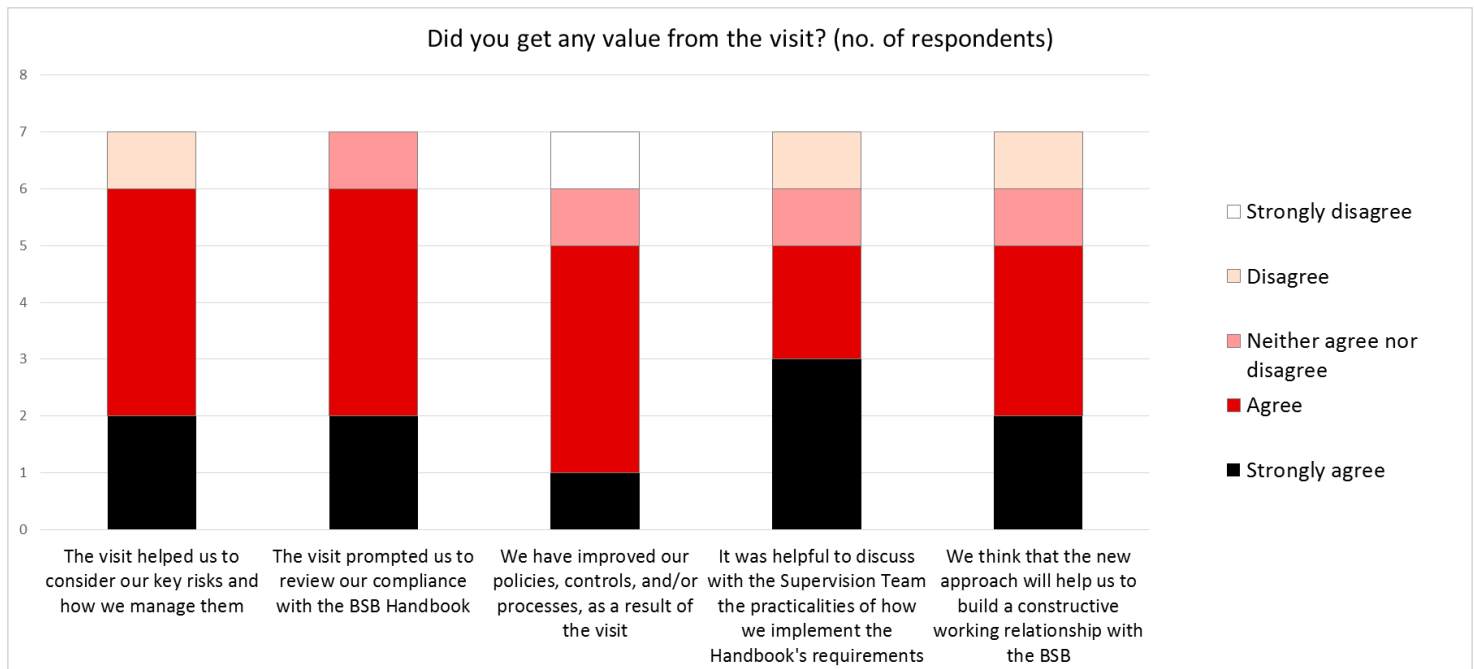
In the survey, we asked chambers a number of questions to gauge the value they got from the visits. Most chambers were positive and their responses are summarised in the table on the following page.

Personnel in one or two chambers questioned the value of the visits. Notably, they were amongst those that were selected on a random basis at the start of the pilot and during the visits were able to demonstrate that they were actively managing risks and their compliance obligations, resulting in few actions arising and a Low Risk rating. One said: "I honestly wonder what the BSB thinks it is going to learn by these visits."

For the Supervision Team, it was helpful to visit well-managed chambers in order to refine the visit programme and understand how good practice can be achieved. When planning the visits, this objective was stressed to chambers; in practice, however, some of these chambers were less clear about the objectives than those visited on a risk basis where the Supervision Team were focussing on specific risks that had triggered the visits. Their more positive comments are included in the following paragraphs.

Adjustments made

The chambers referred to above would probably not have been visited as part of a risk-based programme of supervision. This shows the importance of developing an effective risk-based approach in order to optimise both the BSB’s and chambers’ time and resources. This is being achieved through the Impact Audit Survey, the Supervision Returns and the gathering of other risk-based information from various sources.



3.3 Format of the visits

The visits were scheduled to last for 3 hours. A key aim was to establish a basis for constructive engagement with chambers by setting a tone for the visits that is supportive, proactively helping to promote good practice and compliance with the Handbook, pre-empting the need to resort to enforcement action when things go wrong.

There is a balance to be struck in setting the length and tone of the visits:

- The Supervision Team needs to gather sufficient information in order to make an assessment of the adequacy of controls so that the risk rating allocated is a fair reflection of the level of risk in chambers.

In a three hour timeframe, the focus is on interviewing key staff and members of chambers. There is limited time available to look at supporting documentary evidence

during visits. The Supervision Team have discussed with members of the Supervision Committee whether this approach is sufficient to unmask any serious problems or issues, particularly given the objective to set a constructive tone.

Chambers welcomed the tone set by the Supervision Team

“I hadn't fully grasped that the intention of the visit was to assist and help chambers, I thought it was to check what we might be doing wrong. However, at the meeting itself it quickly became apparent that the BSB are offering assistance, guidance and help. The meeting was clear and the follow up letter clearly stated the objectives that chambers should concentrate on to improve certain aspects. I did not find that the process, in any way, set out to be critical.”

“I felt very relaxed with the Supervision Team and found them extremely easy to talk to.”

“We were able to have an open conversation about the issues that all chambers face these days.”

We particularly found that staff in chambers outside London, who have fewer opportunities for networking, welcomed the opportunity to learn about good practice.

- The duration of the visit, and the regulatory burden, needs to be proportionate to the level of risk.
- Chambers are generally run with lean staff resources and barristers who attend are giving up income-generating time or need to arrange time at the end of a day in court. Some of the feedback received highlighted that a three hour visit is challenging in this respect.
- The Supervision Team needs to be able to allocate its limited resources efficiently and on the basis of risk prioritisation.

Adjustments made

The Supervision Team are of the view that key risk areas can be covered in the allotted time and the issues that have been identified during the pilots reflect this, with the following adjustments:

- a) Future visits will be arranged on the basis of the Impact assessment, the Supervision Return and other risks identified; visit plans will therefore be focussed on the most relevant areas of the programme. For example, for a chambers identified as having pupillage issues or concerns about financial viability, the visit could focus on the relevant parts of the programme only, with a risk-based assessment made as to whether subsequent monitoring is required in other areas. This would allow for a more in-depth assessment of specific areas of concern.

The Supervision Team's records would need to reflect that, and a clear message given to chambers that the risk rating reflects the limited scope.

- b) We will be more specific in the information that we request in advance of the visit, so that we can save time in visits by better preparation, and so that we have documentary evidence for key risk areas (see para. 3.4 below).
- c) As part of the Supervision Return process, the Supervision Team is establishing a portfolio arrangement whereby chambers are allocated to each team member on a relationship management basis. This will help the Supervision Team to build their knowledge of the risk profile of individual chambers.
- d) We will make it clearer when arranging visits that staff and barristers can be seen in succession, according to the topic, and do not need to be present for the full duration of the visit.
- e) Where three hour visits are not practical for chambers, visits may be split.

3.4 Information requested in advance

- a) One of the chambers selected in the early stages of the pilot programme felt that there had been a lack of guidance about what they were supposed to produce for a supervision visit.

“Goodness knows how much time I’ve spent on preparing for the supervision visit”

“A great deal of time could have been saved if we had known the specific format and requirements”.

- b) In the first visits that we arranged, we advised chambers to prepare by gathering relevant policies, procedures and monitoring reports so that they were available to view during the visit, and suggested that if they could send copies of this information to us in advance, it would help the visit to run smoothly and efficiently. Later, we gave chambers a list of suggested documents to gather.

We found that most chambers did not send information in advance. Those that did, sent a large number of policies to us very close to the date of the visit, which gave us little time to review them before the visit. However, it was helpful to the team in preparing for the visits as chambers staff and members could refer to documents that the team had already seen.

For those that did not send documents in advance, but had them available in the visit, the team found it difficult to review the documentation effectively during the visits.

Some provided hard copies of documentation for the team to take away, but this is against departmental policy of paperless record keeping wherever possible.

Some documentation was forwarded to the team after visits, but this is inefficient for the team to monitor, delayed the prompt issuing of reports and could lead to issues being revealed after the report has been issued.

- c) Some chambers were worried about confidentiality; in particular, fearing that the Supervision Team would share information with weaker chambers, resulting in them losing their competitive edge.

Adjustments made

- a) All chambers were offered a briefing by the Supervision Team about the new supervision processes and we continue to offer this with a notice on the BSB website and an advert placed in Counsel magazine.
- b) Where visits are risk-based, we are specific in outlining the risks that we will focus on during the visit.

“The supervision team were extremely helpful in explaining their approach and what they expected from us. That made it easy to ensure that we gave them what they required.”

“It was clearly expressed that the visit was to investigate certain key areas of the business with a view towards highlighting any possible issues or, specifically, any concerns that could be a risk to the public. It was also explained that were the BSB to find any such areas that they would provide guidance and assistance to make help us make corrective measures.”

- c) Having completed the pilot visits, the Supervision Team has seen a cross section of policies, procedural documentation, client records and reports from the most commonly used clerking IT systems, which provide the best supporting evidence for the key controls in the five areas that are reviewed. We have now prepared a short list of key documents that we request to be sent 7 days in advance of a visit. So far, this been achievable and it has helped the Supervision Team to identify key risks in advance of visits.
- d) The letter that we send to chambers is explicit about maintaining confidentiality of documentation.

We have also discussed this issue with the LPMA committee members, explaining that whilst we aim to promote good practice in the interests of protecting the public interest, we will not share commercially sensitive information.

3.5 Notice period

A notice period of two weeks was set as the benchmark for visits because the Supervision Team will sometimes need to respond quickly to information about heightened levels of risk in some chambers. Most respondents to the survey said that the notice period was “fine”. In particular, for the visits that were triggered by specific risks, we found that this timeframe was achievable.

Most chambers had put a significant amount of work into preparing for the visit.

One Chief Executive asked us to be aware that chambers that are managing their risks well and take pride in the quality of their administration, will want to ensure that all evidence is in place prior to the visit. They should therefore be allowed sufficient time to gather evidence, taking into account the limited resources that they have to do so.

From the dates recorded on policies and procedural documentation, it was clear that a considerable amount of work in most chambers had gone into ensuring that all policies and other documentation was up to date. Where this had not been achieved prior to the visit, there was an awareness of the areas where improvements needed to be made.

Adjustments made

A key aim of proactive supervision is to raise standards of good practice, pre-empting the need for enforcement when things go wrong. Therefore if chambers are taking the opportunity of a supervision visit to update policies and review compliance gaps, this is to be supported and the notice period will be increased where there is no specific and urgent public interest concern.

3.6 Supervision visit programme

The supervision visit programme was developed on the basis of the five key areas that were identified in the BSB's draft risk framework, and specific areas to be covered were linked to the Handbook, to provide clear rationale for the areas covered during the visits. Chambers were sent a copy of the programme (included in Appendix 1) in advance and found it helpful in providing clarity on the areas of focus during the visits.

In the survey, six out of seven respondents thought that we focussed on the most important processes, risks, and controls, during the visit.

One respondent felt that the programme was not sufficiently focussed on the key risks, in particular with too much focus on financial management of the operating costs.

Adjustments made

In future, our visits will be informed by risk-based information, including the Impact Audit Survey, the Supervision Return and information received from other sources. Visits to chambers that resulted from assessment of risk-based information have been tailored to the relevant risks and consequently much more focussed in scope and outcome, and chambers have found the visits more valuable as a result.

In general, the visit programme is a useful tool for the Supervision Team and chambers in terms of identifying the areas for supervision to focus on. It is important that the programme remains under review so new risks are accounted for when they are identified. Two particular areas of risk have been identified and have been explicitly added to the visit programme, namely chambers governance arrangements and adequacy of information risk management, including in connection with IT systems and mobile devices.

Feedback after a visit to chambers triggered by significant risks identified:

"Thank you for coming to see us yesterday Your prompts and suggestions were very useful and will be incorporated into the reshaping of our business moving forward."

3.7 Timeframe for issuing reports

The Supervision Team has grown in size and has a number of calls on its time, including supporting the entity authorisation project. It is important to turn reports around promptly after visits to ensure momentum is kept where key risks are identified.

Adjustments made

We have now set a commitment to report to chambers within one week of the visit date. When supervision visits are arranged, the following day is booked for a member of the Supervision Team to write up the report. This timeframe is now being consistently met.

3.8 Quality control

In the event of dispute or complaint, we may need to refer to records of our visits.

Adjustments made

We are documenting our processes as we develop them. These will be consolidated in to a Supervision Manual so that there is consistency in the quality of the work that we do.

4. Conclusion and Next Steps

The pilot visits programme has been successful in identifying areas for improvement in chambers. The process has been well received by chambers, who have generally appreciated a more constructive relationship with the BSB. As a result, tangible improvements have been made to governance, risk management and service delivery at most of the chambers involved in visits.

This report explains some of the adjustments that have been made during the pilot phase and following a review of the entire pilot.

Visits will now be rolled out as part of the BSB's wider risk-based approach to supervision. Future visits will have the following key features:

- They will be informed by risk-based information, including the Impact Audit Survey, the Supervision Return and information received from other sources. Visits will therefore be targeted at higher risk chambers and tailored to the specific risks at these chambers.
- Visits will usually last 3 hours, although follow up visits may be scheduled if further time is needed.
- Chambers may be given more than 2 weeks' notice of a visit where there is not a pressing need for a more urgent visit.
- Specific documentation will be requested from chambers, to be submitted a week in advance of a visit. The details will be set out in a letter when the chambers is first notified of the visit.
- Chambers will receive a report within one week of a visit. The report will explain whether the Supervision Team has assessed chambers as Low, Medium or High Risk. It will also confirm the actions that are expected from chambers that were agreed during the visit.

The Supervision Team will continue to seek formal feedback following all visits and will keep the visits programme under review to identify potential improvements.

APPENDIX 1: SUPERVISION VISIT PROGRAMME

Chambers Key Processes

All chambers must ensure that they are compliant with the regulatory requirements set out in the BSB Handbook <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>. This includes a requirement to have appropriate risk management procedures in place.

The BSB has identified a number of key processes that it expects competently administered chambers to be managing in order to ensure compliance with the BSB Handbook. These can be summarised into the following five key areas that we will focus on during our supervision visits.

1. Governance & Administration of Chambers

1.1 Risk management

Handbook Core Duties

CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook outcomes: Section C5

oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC76-78 & rC89

- Risk management.
- Insurance.

1.2 Authorisations

Handbook Core Duties

- CD2: You must act in the best interests of each client
- CD7: You must provide a competent standard of work and service to each client
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook outcomes: section D2

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.
- o30: Barristers undertaking public access or licensed access work have the necessary skills and experience required to work on that basis
- o31: Barristers undertaking public access or licensed access work maintain appropriate records in respect of such work
- o32: Clients only instruct via public access when it is in their interests to do so and they fully understand what is expected of them

Key processes: rules rC89, rC119-141 & rQ130-131

- Practising certificates.
- CPD.
- Registrations for Public Access work and Litigation.
- Procedures for public access and licensed access work.

1. Governance & Administration of Chambers

1.3 Outsourcing services critical to the delivery of legal services

Handbook Core Duties

- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section D2

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.
- oC25: Clients are clear about the extent to which your services are regulated and by whom, and who is responsible for providing those services.

Key Processes: rule rC86

- Contracts
- Performance management.

1.4 Viability

Handbook Core Duties

- CD2: You must act in the best interests of each client
- CD3: You must act with honesty and integrity
- CD7: You must provide a competent standard of work and service to each client
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook outcomes: sections C4 & C5

- oC22: The public have confidence in the proper regulation of persons regulated by the BSB
- oC23: The BSB has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the regulatory objectives
- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC72 & rC89

- Chambers administration.
- Staff competency.
- Arrangements for the orderly wind down of activities.

1.5 Duty to report

Handbook Core Duties

- CD2: You must act in the best interests of each client
- CD3: You must act with honesty and integrity

Handbook outcomes: section C4

oC22: The public have confidence in the proper regulation of persons regulated by the BSB
 oC23: The BSB has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the regulatory objectives

Key processes: rules rC66

- Serious misconduct by a barrister is reported to the BSB

2. Provision of services to clients

2.1 Terms of service

Core Duties

- CD5: You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.
- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section C3 & 5

- oC13: Clients know what to expect and understand the advice they are given
- oC14: Care is given to ensure that the interests of vulnerable clients are taken into account and their needs are met
- oC18: Clients are adequately informed as to the terms on which work is to be done
- oC20: Clients understand who is responsible for work done for them
- oC25: Clients are clear about the extent to which services are regulated and by whom, and who is responsible for providing those services

Key processes: rules rC15, rC19 & rC22:

Terms of service agreed in writing.

2.2 Casework management

Core Duties

- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section C3

Outcomes:

- oC10: Clients receive a competent standard of work and service.
- oC16: Instructions are not accepted, refused or returned in circumstances which adversely affect the administration of justice, access to justice or the best interests of the client.

Key processes: rules rC15 & rC18 & rC21 & 25-27

- Confirming barristers have time to deal with each case before accepting instructions.
- Procedures for returning instructions in accordance with the Handbook.

2.3 Client confidentiality & conflicts of interest

Core Duties

- CD6: You must keep the affairs of each client confidential

Handbook outcomes: section C3 & C5.3

- oC11: Clients best interests are protected and promoted by those acting for them
- oC12: BSB authorised persons do not accept instructions from clients where there is a conflict between their own interest and the clients' or where there is a conflict between one or more clients
- oC15: Clients have confidence in those who are instructed to act on their behalf
- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC15, rC21 & rC89

Policies and procedures for dealing with:

- Management of conflicts of interest in Chambers
- Protecting confidential information
- Compliance with Data Protection legislation

2. Provision of services to clients

2.4 Complaints

Core Duties

- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section D1.1

- oC26: Clients know that they can make a complaint if dissatisfied, and know how to do so.
- oC27: Complaints are dealt with promptly and the client is kept informed about the process

Key processes: rules rC99 – 109

Policy and processes covering:

- How clients are informed of the complaints process.
- Handling complaints.
- Record keeping and confidentiality.
- Assessing and reporting on complaint resolution and trends.
- Learning from complaints.

3. Equality & diversity

All areas

Handbook Core Duties

- CD5: You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.
- CD8: You must not discriminate unlawfully against any person

Handbook section outcomes: D1.2 & D1.3

- oC28: Self-employed barristers, chambers and BSB authorised bodies run their practices without discrimination.
- oC29: Pupils are treated fairly and all vacancies for pupillages are advertised openly.

Qualification rules B5

3.1 Governance

Key processes: rules rC12 & rC110-112

- Equality and Diversity Officer appointed
- Diversity Data Officer appointed and registered with the BSB.
- Equality & Diversity policy and implementation plan in place.
- Policies and procedures in place for:
 - Anti-harassment
 - Parental leave
 - Flexible working
 - Reasonable adjustments
 - Diversity data
- Recruitment processes in place based on objective and fair criteria.
- Information is collected, monitored, acted on and published.

3. Equality & diversity
<p>3.2 Recruitment & funding of pupils</p> <p><u>Key processes: rules rC110, rC113-118 & rQ61</u></p> <ul style="list-style-type: none"> • Recruitment processes. • Pupillage panel members have received equalities/fair recruitment training. • Vacancies advertised on Bar Council approved gateway websites in accordance with Handbook requirements. • Adherence to BSB minimum remuneration requirements for pupils.
<p>3.3 Allocation of work to pupils & members</p> <p><u>Key process: rules rC110-112</u></p> <ul style="list-style-type: none"> • Monitoring and allocation of work.

4. Pupillage
<p>All areas</p> <p><u>Handbook Core Duties</u> CD10 You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations</p> <p><u>Qualification rules B5</u></p>
<p>4.1 Registration</p> <p><u>Key processes: rules rQ37 – 53 & rQ62-67</u></p> <ul style="list-style-type: none"> • Chambers registered as an Approved Training Organisation. • Barristers registered as Pupil Supervisors. • Registration of pupillage
<p>4.2 Quality of training</p> <p><u>Key processes: rules rQ36 & rQ54</u></p> <p>Procedures in place for:</p> <ul style="list-style-type: none"> • Ensuring pupils receive opportunity to develop skills and experience. • Access to Supervisor. • Peer review. • Appraisals. • Training records.

5. Financial management

5.1 Financial accounting, financial management

Handbook Core Duties

- CD3: You must act with honesty & integrity
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook section C5

Outcomes:

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules r89

- Chambers are administered competently and efficiently.
- Staff are competent (experienced, trained).

5.2 Referral fees

Handbook Core Duties

- CD2: You must act in the best interests of each client
- CD3: You must act with honesty & integrity
- CD4: You must maintain your independence
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook section C2

Outcomes:

oC5: Those regulated by the BSB maintain standards of honesty, integrity & independence, and are seen as so doing

oC7: The proper administration of justice, access to justice and the best interests of clients are served

oC9: Those regulated by the BSB and clients understand the obligations of honesty, integrity and independence

Key processes: rule rC10

- Referral fees must not be paid or received

5. Financial management

5.3 Handling client money

Handbook Core Duties

- CD3: You must act with honesty & integrity
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook section C5

Outcomes:

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC73-75

- Barristers & Chambers are prohibited from holding client money.
- Client money held and processed via an FCA-authorised third party payment service.
- Due diligence performed on third party payment systems.

5.4 Money laundering

Handbook Core Duties

- CD3: You must act with honesty & integrity
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Key processes:

Adherence to Money Laundering regulations 2007

APPENDIX 2: SUPERVISION VISIT REPORT RISK ASSESSMENT CATEGORIES

Following a Supervision visit, Chambers are classified by the Supervision Team into one of three categories as follows:

High Risk

There is a significant probability that issues identified from the visit may have a fundamental impact on Chambers' ability to meet the Core Duties and Outcomes set out in the Handbook. Immediate action should be taken by Chambers to mitigate the risks identified. Chambers will be subject to further monitoring by the Supervision Team as specified.

Medium Risk

A number of important issues were identified from the visit and Chambers should address these promptly in order to meet the Core Duties and Outcomes set out in the Handbook. Chambers should report progress to the Supervision Team as specified. In other areas covered during the visit, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Low risk

In the areas covered during the visit, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations. Some issues where controls could be strengthened may have been identified and these should be followed up by Chambers. No further monitoring by Supervision is planned based on the outcome of this visit unless other information comes to our attention.

APPENDIX 3: SUPERVISION VISIT REPORT PRIORITY OF ACTIONS

We prioritised the actions that we require Chambers to take into one of four categories as follows.

The timeframes provide a guide that is intended to help Chambers to understand the level of risk that we have assessed for each finding.

We recognise that it may not be possible for all issues identified to be resolved within the timeframes shown below (for example if a longer term solution to a control weakness is proposed by you) but we would expect chambers to have a clear action plan in place within the timeframe specified and ensure that the risks are managed in the interim.

Priority 1: for immediate action

Areas of high risk where further information is required by the Supervision Team, by return in response to this letter, in order to provide assurance that the risk is being managed effectively.

or

Areas of high risk where we require you to update the Supervision Team immediately should circumstances change or as further information is received which increases or reduces the level of risk.

Priority 2: urgent

Matters where a high risk and weaknesses in controls have been identified and urgent action is required to mitigate the risk. We would normally expect Chambers to address these issues immediately and provide a follow-up to Supervision within the next 2 weeks.

Priority 3: important

Matters where a medium to high risk and weaknesses in controls have been identified and prompt action is required to mitigate the risk. We would normally expect Chambers to address these issues and provide a follow-up to Supervision within the next month.

Priority 4: merits attention

Other areas where controls could be strengthened. We do not require you to report to the Supervision Team on follow-up of these findings, but they should be followed up by Chambers.

Research Strategy

Status

1. For noting.

Executive Summary:

2. This paper provides an update to the Board on the research work proposed to meet current commitments and to advance our evidence base. This paper focuses on the activities that fall into two categories: reporting regarding monitoring data we hold and research in the more traditional sense.

Recommendations

3. It is recommended to the Board that it:
 - a. **Notes** the research activities outlined in this paper.

Background

4. Strategic Aim 4 of the Bar Standards Board's Strategic Plan 2013-16 is "to become more evidence- and risk-based in all we do, taking into account the globalised legal services market". Evidence is relevant to all strands of the Regulatory Standards Framework (RSF), from understanding our regulated community to consumers and the market more widely. The Board needs a Research Strategy to deliver its strategic plan as well as against the RSF.
5. A number of activities have been undertaken to better understand and improve the range of data that we hold regarding barristers. Those aspects are being dealt with in the private agenda. In this paper, we outline the range of reports and papers that we might develop internally or commission externally (as appropriate) in order to provide evidence that we might then use to support our policy making.

Comment

6. In this paper, the range of activities that the Board has committed itself to is outlined. The commitment may have been made in the strategic plan or business plans that sit underneath it. We have some statutory responsibilities for publication of data that requires research input. There are also a range of activities that we undertake in liaison with other organisations within the legal regulation sphere. Recent work has revealed a number of places where our understanding of what we do and the effect we have could usefully be expanded. While not yet agreed, they are flagged as potential projects.
7. This range of activities is expanded upon in the paragraphs below to give the Board an overview of the range of activities undertaken and the timing of them. They are summarised in Annex 1 showing what is underway, at the scoping stage, agreed but not yet started or yet to be agreed as a priority.

Strategic and Business Plan commitments

8. This table shows the range of activities that have been outlined in the published Strategic Plan for 2013-16 and Business Plan for 2014-15.

Activity as stated in Plans	Plan and relevant Aim	What we're doing at the moment
Handbook evaluation	Strat Plan – Aim 1	Scoping the evaluation project
Research of need for other quality assurance and/or accreditation schemes and Develop standards for practice in the Youth Courts	Strat Plan – Aim 1 Strat Plan – Aim 3	Youth Court Advocacy Review project
Develop an International Strategy for advocacy focused services	Strat Plan – Aim 4	Legal Policy Officer doing initial assessment to identify what if any research may be required. Scoping of research work would then follow.
Enhance the facilities for those affected by our enforcement regime to provide feedback Commission research into user feedback results	Strat Plan – Aim 2 Business plan 2014/15 – Aim 2	Scoping underway to understand needs of project and best way of meeting those needs, eg in terms of methodology and provider
Annually evaluate the operation of the Bar Course Aptitude Test	Strat Plan – Aim 2 Business plan 2014/15 – Aim 2	BCAT impact evaluation being undertaken by external provider with close supervision by Research team. BCAT performance evaluation also underway.

Statutory requirements

9. In addition, we have statutory requirements to publish equality and diversity information and also have to meet the Legal Services Board's requirements regarding publication of data. This work involves both the Research team and the Equality and Diversity advisers. It is an annual piece of work and is "business as usual" for the Research team.

Other Board commitments

10. The Board has also agreed to a number of activities which have a research focus or component to them. The post-LETR programme is one such example where a number of aspects require Research to either lead or contribute to them. This work will form a significant part of the Research team's workload over the coming 12-18 months.

Improvements to the range of information we hold

11. This work falls into two categories: the continued management of the data we hold and expanding the data that we hold. The first is strongly linked to the concurrent data quality and management programme being discussed in the private agenda. The second aspect results from work that has been done to understand what data we currently hold. This has revealed a number of areas where it would be beneficial to expand the range of data collected so that we have a very full picture of how the market is operating and how our regulatory activities may be being experienced. These activities have not yet been scheduled in but will be built into a wider programme to be agreed with the Senior Management Team. This would include:
- seeking to better understand the consumers of legal education and training at all stages (which would require a series of activities to understand experience of those undertaking BCAT, BPTC, Pupillage and CPD, including revision of the BPTC perceptions survey).
 - further work to understand consumers of legal services. The exact scope of the legal consumers work would follow further development of risk framework and outcomes of other work underway, eg youth court advocacy, Bar Handbook evaluation,
 - understanding what people do if they don't carry on to become practising barristers. This would assist with shaping our regulatory regime to make sure it is equipping people for practice but even more importantly, understanding if they may be posing any risk to public as they pursue alternative careers.

Contribution to the work of others

12. We are also asked to contribute to the work that other relevant organisations are undertaking. For instance, the Research team is already engaged with the Legal Services' Board's cost of regulation research and anticipates needing to be engaged with the innovation in legal services work that the LSB has foreshadowed. There are also potential projects with the Legal Ombudsman to which we will contribute if they proceed.

Support within the BSB and Bar Council

13. We support other departments within the organisation in a number of ways. This is not always limited to the BSB. We receive a number of ad hoc queries regarding statistics and the provision of data which the Research team responds to. Sometimes there is a joint interest in pursuing a piece of work, for instance the "movers and leavers" survey which seeks to better understand why people move within or leave the profession. While originally instigated by the Bar Council E&D team, it is to both the Bar Council and BSB. The Research team is working with both equality and diversity teams on this project and will report statistics accordingly.
14. Significantly, there are a number of BSB activities which are as yet insufficiently advanced to be clear what the demand for research may be. Two major areas in which clarification will come relatively soon are regulatory risk and supervision. There is the stated strategic plan and business plan need to develop an international strategy, where preliminary analysis is being undertaken that will help identify what research, if any, may be required.

Understanding consumers, barristers and our effect in the market

15. For ease of reading, we have laid out the variety of work being undertaken in another way, to show where our existing, planned and possible future activities address developing evidence in relation to consumers of legal services, providers of legal services and understanding our regulation. Annex 2 provides that outline.

16. Returning to continuing to understand barristers, there are a number of questions for the future. While the Board has previously agreed that the biennial survey will not be undertaken jointly with the Bar Council in the future, we have not yet formulated a concrete proposal as an alternative. This is work for the coming year so that we can be clear if it will fit within the 2015-16 financial year or would be better run on a different time cycle or in a different manner (eg a 5 year census). There is also further work to be done to determine the future of the Bar Barometer. Alternatives such as regular publishing of statistical information on our website may be preferable to the issuing of a “publication” as such. Part of this consideration will emerge through the post-LETR programme of work as well as the regulatory risk development.
17. Members are asked to note the range of activities being undertaken and that there is still some work still to do by the Senior Management team to ensure the desired activities are properly prioritised.

Resource implications

18. The work programme will be primarily carried out by the in-house Research team working very closely with the departments that “own” these projects. The Research team is a support function that enables others to complete work rather than a team that drives or originates work itself in all cases. As such, there is resource required from all departments in terms of people time. This includes Resources Group contributions when necessary, principally from IT and Records. There is a need to strike a balance between the skills of the research team and people in the business groups/departments. We are seeking to optimise skills and knowledge in all parts of the organisation to achieve best effect. That may require the acquisition of new skills by others and will definitely involve looking to use technology wherever possible
19. The use of technology may assist with the publication of statistics in a different way, thereby making it more efficient. There will also be direct savings if we published statistics and data on the website directly as we would save on the cost of publication of things like the Bar Barometer.
20. As always, there is a degree of uncertainty about the draw on resources, particularly as several projects are not yet at the stage where research needs have been clearly identified. We have a budget for research and a small in-house team to carry out this programme. Careful prioritisation will be needed throughout to ensure that we deliver to the required level of quality and in a timely fashion. This will not always be an easy thing to achieve but we still have quite a degree of flexibility given the size and range of skills within the research team. Now that the Research team is again up to full complement again, we can look at how to achieve the best balance.
21. It should be noted that external provision is not a complete solution to any demands on in-house time as external providers must still be managed and the team needs to have time to provide the necessary quality assurance on whatever is provided.

Equality Impact Assessment

22. The paper does not give rise to any equality issues itself. Some of the projects proposed within the strategy are specifically required to meet equality and diversity commitments, whether statutorily required or chosen by the Board. Any other projects will include consideration of e&d aspects where relevant (eg if collecting information about practitioners).

Risk implications

23. There is a risk that if we do not undertake sufficient or properly targeted research we will not have sufficient information to form the evidence base we require. We are seeking to address this risk by carefully considering the entire work programme and prioritise accordingly. WE will be able to refine priorities further as the regulatory risk work develops. There is a corresponding risk that we will have insufficient resources to meet demand. We a small staff resource and some budget provision. The demand could well outstrip our ability to supply. Again, focusing on prioritisation will assist in managing this risk.

Impacts on other teams / departments or projects

24. All departments are involved in the research activities in one way or another. The impacts on particular departments are agreed with them as each project progresses.

Consultation

25. No formal consultation has been necessary as yet. There have been discussions with all other teams to identify existing commitments and to start to identify needs. The Senior Management Team will be considering the work programme shortly to better refine the prioritisation of our research.

Regulatory objectives

26. The research is designed to assist with evidence that will help us show how the regulatory objectives are being affected.

Publicity

27. No publicity is planned regarding this strategy. Individual projects will be promoted as necessary.

Annexes

28. Annex 1 – Projects and Status table

29. Annex 2 – Projects by Category table

Lead responsibility:

Amanda Thompson
Stéphane Laurent

Projects and Status

BSB initiated project	Description	Status	Internal/ External	Completion due
BCAT impact evaluation	The aim of this project is to assess the impact of the BCAT on the quality and/of experience of BPTC students and providers.	Underway	External provider	January 2015
BCAT performance evaluation	The aim of this project is to evaluate the performance of the BCAT as a valid, reliable and consistent test in the selection of BPTC candidates.	Underway	External provider	January 2015
Equality and Diversity statistics	As required by statute – publication of annual statistics	Underway	Internal	January 2016
Youth Court Advocacy Review	Research to examine the knowledge, skills, and attributes that are required of advocates to work effectively and competently in Youth Courts	Underway	External provider	June 2015
Movers and Leavers	Survey and evaluation of those who move within or leave the Bar	Underway	Internal	Ongoing – business as usual
Bar Handbook evaluation	Evaluation	Scoping	To be determined	To be finalised but likely completion end of 2016/17 financial year.
Beyond user feedback survey	Project to understand the experience of users of our enforcement system better than as disclosed in the user feedback survey	Scoping	To be determined	Depends on results of scoping
Replacement for biennial survey	Census or survey on barrister understanding, perception and experience	Agreed but not yet started	To be determined	Depends on approach agreed and cycle of new approach
Replacement for Bar barometer	Publication of statistics about barristers	Yet to be agreed	To be determined	To be determined
Understanding consumers of legal education and training at all stages	A series of activities to understand experience of those undertaking BCAT, BPTC, Pupillage and CPD (including revisiting the BPTC perceptions survey)	Yet to be agreed	To be determined	To be determined

Part 1 – Public

BSB initiated project	Description	Status	Internal/ External	Completion due
Understanding consumers of legal services	Exact scope to be ascertained following further development of risk framework and outcomes of other work underway, eg youth court advocacy, Bar Handbook evaluation,	Yet to be agreed	To be determined	To be determined
Alternative careers	Understanding what people do if they don't carry on to become practising barristers to understand destinations but also any risk to public through other activities	Yet to be agreed	To be determined	To be determined

Table of projects by category

Current projects
1. Consumers of education and training/understanding regulation 1.1. BCAT impact evaluation 1.2. BCAT performance evaluation
2. Consumers of legal services 2.1. Youth Court Advocacy Review
3. Understanding regulation 3.1. Movers and leavers from profession
In scoping stage
4. Understanding regulation/consumers of legal services 4.1. Handbook review
5. Consumers of legal services/understanding regulation 5.1. Beyond user feedback survey (PCD)
Future projects
6. Consumers of education and training/understanding regulation 6.1. BCAT 6.2. BPTC 6.3. Pupillage 6.4. CPD
7. Consumers of legal services 7.1. Consumer research
8. Alternative paths

Review of the standard of proof applied in professional misconduct proceedings – update

Status:

1. For discussion and agreement.

Purpose

2. The purpose of this paper is to:
 - remind the Board of the work that has been carried out to date on the issue of the appropriate standard of proof to be applied in proceedings for professional misconduct;
 - apprise the Board of recent developments and their implications; and
 - seek the agreement of the Board to put any further consideration of the matter on hold until the 2016/17 business year.

Recommendations

3. The Board is asked to:
 - a. **note** the current position regarding the review of the standard of proof;
 - b. **confirm** its previous decision that the BSB should not consider a move to the civil standard of proof independent of the SDT also considering such a move;
 - c. **agree** that the BSB should monitor the position with regard to the standard of proof applied by the SDT specifically in relation to any prospective cases on the point that might be taken through the courts over the next year or so; and
 - d. **agree** that the BSB should formally review the position again as part of the Business Plan for 2016/2017 as opposed to 2014//2015 as is currently scheduled.

Background

4. In 2011 the Professional Conduct Department (PCD), led by a Working Group of the Professional Conduct Committee (PCC), conducted a review of the standard of proof applied in professional misconduct proceedings. The issue under consideration was whether the BSB should move to stipulating that the civil standard (facts proved on the balance of probabilities) should be applied when considering allegations of professional misconduct or whether the higher criminal standard (satisfied so as to be sure / beyond reasonable doubt) should remain in place.
5. The Working Group reported to the Board in November 2011 in private session. While the Group was originally tasked with making recommendations to the Board, in the event it was unable to form a clear view on the way forward. There was an even split amongst the eight members (five lay and three barrister) as to what approach should be recommended. Those who supported the retention of the criminal standard (the barrister members plus one lay

member) referred to the case law¹ indicating that the criminal standard must be applied as well as the absence of any clear evidence that the public interest required a change; and those who favoured a move to the civil standard (the remaining lay members) had concerns about public protection and perception given that all other professional regulators apply the civil standard and the lack of a clear rationale for treating legal professionals differently to other professionals. In the circumstances, the Working Group made no specific recommendation but instead presented the issues and evidence gathered to the Board with a view to the Board determining the way forward.

6. The Board will recall that it did not take a formal decision on whether or not to move to the civil standard but agreed, in principle, that the civil standard was more appropriate for the protection of the public. In forming this view, the Board took into account the BSB's now unique position in being the only "approved regulator" continuing to apply the criminal standard and the almost universal use of the civil standard by non-legal professional regulators. The Board also took particular note of the Solicitors Disciplinary Tribunal (SDT)² firm view that it is legally bound by the relevant case law to apply the criminal standard in its proceedings and that primary legislation would be required to effect a change
7. The majority of Board members were supportive of a move to the civil standard while acknowledging the potential import of the case law and the position of the SDT. It took the view that it would be inappropriate for the two main branches of the legal profession to apply different standards of proof in their disciplinary proceedings (a view supported by the case law³) and to do so would only compound the confusion that has been created in recent years by the application of different standards of proof in the context of the regulation of entities.
8. The Board therefore came to the conclusion that the BSB should not proceed further with its unilateral deliberations on the subject but instead try to take the issue forward in collaboration with the Solicitors Regulatory Authority (SRA) and the SDT with a view to trying to achieve uniformity preferably with the Legal Services Board (LSB) taking a lead/co-ordinating role.

Recent developments

9. Since the Board meeting in November 2011, very little progress on this issue has been made. While it was anticipated that the LSB might take an active lead on the issue, this did not happen. However, in March 2014, the LSB issued a paper titled '*Regulatory sanctions and appeals processes; An assessment of the current arrangements*'⁴ in which it strongly advocated the application of the civil standard across all legal regulators in light of the "*strong public protection argument*". In the report, the LSB indicated that the standard

¹ E.g. *Re a Solicitor [1993] QB 39* and *Campbell V Hamlet [2005] UKPC 19*

² The Solicitors Disciplinary Tribunal is not an "approved regulator" under the Legal Services Act 2007 but is regulated by the Legal Services Board.

³ *Re a Solicitor [1993] QB39*

⁴ The full paper can be found at:

http://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf

applied by individual regulators remained a matter for each regulator to take forward but it recognised that achieving uniformity would take more time and involve primary or secondary legislation or precedent-setting judicial decisions.

10. In order to establish the SDT's current position on the issue, the Director of Professional Conduct met with the Chief Executive of the SDT in July 2014. The CE confirmed that the SDT's stance had not changed since 2011 and indeed, in a public response⁵ to the LSB's paper of March 2014, she had challenged the LSB's evidential base for the assertion that all legal regulators should adopt the civil standard. She confirmed that the SDT remains of the view that it is bound by law to apply the criminal standard and is not intending to seek primary legislation to make a change. However, she acknowledged that the current position whereby the SRA and the SDT apply different standards of proof and the SDT is the appeal route from SRA regulatory enforcement decisions in relation to entities, will almost inevitably lead to a legal challenge to the SDT's continued use of the criminal standard. While understandably unable to provide the BSB with details, she was able to indicate that there was a strong possibility of the relevant issues regarding the application of the criminal standard by the SDT being aired in at least one pending case and thereafter taken through to the higher courts.

Conclusions

11. In light of the SDT's firm position on the application of the criminal standard, there is no prospect of it taking voluntary steps to change the standard of proof. Therefore, unless the Board wishes to revisit its previous decision that a unilateral change to the standard of proof would be inappropriate, the BSB is not at this time in a position to make any further progress on the issue.
12. However, with the prospect of the legal position being tested in the course of the next year which could result in a definitive judgement from the higher courts on the appropriate standard to apply in light of the fundamental changes to the regulatory landscape introduced by the Legal Services Act 2007, the position might change. Nevertheless, such a judgement is highly unlikely to be forthcoming before early 2016 and, in these circumstances, there would be little value in the BSB giving further consideration to the issue prior to 2016/17.
13. The BSB has included in its Business Plan for 2015/16 further consideration of the standard of proof to be applied to professional misconduct allegations. The proposal now is that this work is put back and included in the 2016/17 Business Plan. We will also seek to ensure the subject is kept on any agenda for reform of the statutory aspects of legal services regulation.

Resource implications

14. In light of the recommendation to maintain the status quo for the time being there are no immediate resource implications associated with the suggested course. The Board should however note that the costs work in 2016/17 could readily reach six figures as there would

⁵ The SDT's full response can be found at: <http://www.solicitortribunal.org.uk/about-us/news/details.aspx?id=1d5af851-3ab2-4c93-a1f6-2dcc90953821>

be a need for significant expertise in relation to the policy development and for considerable expenditure on managing stakeholders.

Equality Impact Assessment

15. Previous analysis carried out in the 2011 review revealed that there was no apparent adverse impact on any of the equalities groups associated with either maintaining the criminal standard or moving to the civil standard of proof. Three years on, there is no evidence currently available to indicate that this analysis has altered in any way.

Risk implications

16. The risks associated with delaying further consideration of this issue and continuing to apply the criminal standard of proof to misconduct allegations are considered to be low. There is no clear evidence that the status quo is having any undue adverse impact on the BSB's ability to bring proceedings for professional misconduct and secure findings. The research (albeit limited) carried out as part of the review in 2011 indicated that there was unlikely to be any appreciable difference in the rate of misconduct findings if the civil standard of proof were to be applied. However, given the change in the BSB's regulatory approach since 2011, it would be beneficial to have a further period to gather evidence to support further consideration of the issue in the event that a definitive judgement is not forthcoming by 2016.
17. There may be a reputational risk in delaying consideration of this issue further given that the BSB is the only "approved regulator" still to apply the criminal standard and the civil standard is widely perceived outside the solicitors and barristers professions to be appropriate for the protection of the public. This risk will need to be addressed by ensuring that clear public information is given, where necessary, about the reasons for delaying further consideration of the issue and the practical obstacles the BSB faces in progressing the matter at this stage.

Impacts on other teams / departments or projects

18. There is no apparent direct impact on other teams/departments of maintaining the current position. However, the BSB is currently conducting a review of the Disciplinary Tribunal Regulations (Part 5, Section B of the BSB Handbook). As part of that review, consideration will be given to extending the powers of Disciplinary Tribunals to allow them to impose non-disciplinary administrative sanctions where an allegation of professional misconduct cannot be proved to the criminal standard. Currently such sanctions are only available to the BSB to impose and are subject to the application of the civil standard. The review will therefore need to consider the implications of potentially applying two different standards of proof in the same proceedings. The Board's general view will be reported to the BTAS Strategic Advisory Board at its November meeting.

Consultation

19. Not applicable at this stage. Any changes, whether to regulatory arrangements or statute, will require full consultation.

Regulatory objectives

20. The issues in this paper clearly impact on, and are central to, the objectives of protecting and promoting the public and consumer interest as well as promoting and maintaining adherence to the professional principles.

Publicity

21. As the Board has not previously taken a public stance on this issue and no firm decision has been taken on the way forward, it is not considered necessary to take proactive steps to publicise the recommendations in this paper. However, the BSB should be willing to engage in public debate about the issue and its implications pending further consideration of the matter in 2016/17.

Lead responsibility:

Sara Jagger, Director of Professional Conduct
Siân Mayhew, Policy and Projects Officer (PCD)

Forward strategic overview – governance review: emerging findings**Status:**

1. For noting and decision

Executive Summary:

2. This paper sets out the emerging findings from the Board Committees' consideration of their role and function. It is proposed that the Executive be asked to conduct further comparative study and formulate a proposed change plan for consideration at the away day in April 2015.

Recommendations

3. It is recommended to the Board that it
 - a. **Notes** this update.
 - b. **Agrees** that the Executive should research other regulatory models to inform the Board's April away day
 - c. Agrees that the Executive should produce a change proposal, together with plan and timeline for effecting those changes for the April away day.

Background

4. At its away day on 30 April 2014, the Board agreed to undertake a governance review and to carry out some preliminary work towards it. In particular, current chairs and vice chairs of the Committees were to:
 - a. consider whether or not their committee was a necessary feature of the BSB landscape - supplementing the work already done on each committee's SWOT analysis.
 - b. Assess whether the role and function be executed more efficiently and effectively even if it were a necessary feature.
 - c. consider whether, rather than recruiting to impending vacancies this autumn, their committee could continue to function without filling gaps whilst the fundamental review was effected. This might mean temporary changes to standing orders in respect of the composition of committees and e.g. quoracy.
5. This paper provides emerging findings in relation to the review.

Comment

6. As might be expected from an emerging findings paper, the position regarding committees is not yet finalised. All committees have started to examine their function and mode of operating. For some this is the first time that this work has been instigated. For others, there is a history of consideration of size and functioning of the committee. Not all committees have yet completed that work. The final results will be available for the December away day.
7. The way in which these discussions have taken place has varied. Some committees have had discussions involving all members while some have focused discussion at an office holder level.

8. There are a number of common themes that are emerging from discussions:
- a. All committees agree that some change will be required over time.
 - b. Several committees are open to the idea that they “do themselves out of a job” over time.
 - c. None has yet proposed an immediate change to function, membership or mode of operation.
 - d. While agreeing that change is necessary, no specific proposals regarding function or membership in the future have yet been articulated. A move towards different modes of working that might add better value to the Board has been identified in some cases, eg taking a workshop approach on issues rather than the traditional meeting format which can discourage more detailed examination of important topics. Starting to use “task and finish” groups might be another alternative.
 - e. Small committees with high lay involvement and a clear split between Executive and non-Executives roles see less need to change compared to committees where there may be more overlap between Board, committee and executive functions.
 - f. Clarification of Board v Committee activities and how the two interact is necessary in some cases.
 - g. The background and role of members needs to be examined more closely, eg do you need a wide spread of practice specialisms and expertise to properly examine a topic? Do you need people with particular expertise on all committees? Do you need members of one or more committees represented on all other committees?
 - h. There is a need to embed some aspects in all committees (eg financial consideration, regulatory risk, e&d) but no agreement yet about how that is best done. Acquisition of skills for all or appointment of individuals for that prescribed aspect could be considered.
 - i. There seems to be an increasing acceptance that the Executive should take the primary role in producing papers and recommendations with the Committees adding challenge and assistance where needed.
 - j. Consistency of similar types of decision making across committees should be looked at.
9. As members will see, there is some emerging consensus about the issues that will need to be considered in order to revise the governance structures for the BSB. The exercise to date has not yet resulted in any specific proposals for change. It is suggested to the Board that it instructs the Executive to research other regulatory models to provide a comparative base for the Board to consider at the April 2015 away day, together with a proposal for change for the Board to consider and an outline plan and timeline for how any change might be effected. The proposal must of course meet the above principles, together with those discussed at the last away day.

Resource implications

10. There are no resource implications as a result of this update paper. Any revision of committee or Board structure may increase or decrease costs, depending on what is proposed and the timing of any changes. The resource implications will be specified when decisions are being taken.

Equality Impact Assessment

11. As an update paper, no impact assessment is required. Any proposed changes to standing orders will be impact assessed as they are developed.

Risk implications

12. There are no particular risks arising from this paper. If the Board agrees that the Executive should do the further work proposed, a number of risks will need to be balanced in those proposals.

Impacts on other teams / departments or projects

13. All parts of departments that interact with committees would be impacted by any changes. There is no impact at present.

Consultation

14. Consultation has been carried out with a number of committees as part of the work to date. Further consultation will be required as proposals are developed further.

Regulatory objectives and better regulation principles

15. Any changes to the standing orders would need to reflect the better regulation principles and the BSB's structure must enable us to meet the regulatory objectives. Those factors must be taken into account in any proposed changes in the future. There is no direct impact now.

Publicity

16. No publicity is planned at this stage. Any programme of change would have a communications plan developed to support it.

Lead responsibility:

Amanda Thompson

Supervision and Entity Regulation - Authority for executive decisions

Status

1. For approval.
2. Public.

Executive Summary

3. The Board is asked to consider and approve the delegated authorities to implement new activities within Supervision Department, including entity regulation decisions. This is presented in a clear and simple format in table 1 for scrutiny.
4. The approach has been agreed by the Board and is key to implementing the plans detailed in the papers elsewhere in this meeting agenda. It mirrors that of the Professional Conduct Department in that the majority of work is undertaken and led by executive teams according to rules within the BSB Handbook. The Supervision committee provides oversight of the process on behalf of the Board to ensure consistency and excellence in decision-making.
5. The Board will see in table 1 that certain decisions relevant to the work of entity regulation are taken by the Qualifications Committee or their panels, and any reviews of decisions are also to be made by that committee. All other decisions are to be taken by the executive as detailed.
6. In order to implement this, the Board must formalise the delegated decisions to the executive, and authorise the Chair to sign formal letters of authority, as exist for current agreed delegated decisions.

Recommendations

7. The Board is asked to:
 - a. **consider and approve** the scheme of delegations for the Supervision department activities, and
 - b. **authorise** the Chair to sign the delegation forms to bring them into effect

The proposed structure

8. The proposed decision-making structure is shown in the following table. It is proposed that all staff at officer level and above will be involved in taking decisions on supervision and authorisation activity. Reviews of supervision activity will be carried out by a more senior member of staff such as the Director of Supervision or the Supervision Manager. In addition there will be moderation processes put in place for all decisions to ensure consistency and accountability. The structure of the Supervision Department is attached for ease of reference.
9. The practical implications of the decisions in real terms are detailed below in table 1.

Supervision	Decisions made by:	Reviews by:
Decision to take supervisory action (including but not limited to agreeing action, visiting and requesting information), to take no action or to refer the case to PCD	Supervision Dept	Senior members of Supervision Dept
Decision to request barristers to submit their CPD record card for supervision (rQ135)	Supervision Dept	None
Assessment against handbook criteria of CPD compliance (rQ131, 132 & 133 and BSB General Guide to CPD)	Supervision Dept	Senior members of Supervision Dept
Entity Regulation		
Authorisation or rejection of an entity and revocation or suspension of this authorisation, including the imposition of authorisation conditions, and annual renewal	Supervision Dept	Qualifications Committee
Agreement to lift or alter the conditions imposed on an entity before authorisation	Supervision Dept	Qualifications Committee
Approval of a new person (owner, manager, HOLP or HOFA, and emergency interim HOLP or HOFA)	Supervision Dept	Qualifications Committee

Table 1. List of delegated authorities relevant to supervision and entity regulation activity

Details and assurance mechanisms

10. The Qualifications Committee will hold a referral role for all decisions where necessary within entity regulation. In effect the committee is the internal appeal mechanism for entity authorisation decisions. There will also be an external, independent route of appeal.
11. The Supervision Committee will retain an oversight role in respect of both entity regulation and supervision and will receive performance reports and consider the effectiveness of the processes without holding a decision-making role for cases. The Supervision Committee's terms of reference have been carefully crafted to make that oversight role clear. They are attached at Annex 1 for ease of reference.
12. As outlined in paragraph 7 above, all supervision and authorisation decisions will be moderated. At least two members of the Supervision Department will review an application to become an entity or information relating to the need for supervision action. Moderation promotes consistency of approach and also ensures that no decision is taken by a single member of staff. Escalation arrangements are in place to more senior members of the Department where necessary. The Board will have seen from the Supervision report earlier in the agenda that the moderation arrangements have worked effectively.
13. It is also important to note that expert staff have been brought into the department to ensure that there is the competence and capacity to take robust and credible decisions. The new Authorisation Manager (who will have lead responsibility for authorising entities) has a strong legal and commercial background having been both an Irish barrister and a corporate banker. The team responsible for supervision based decisions include staff with extensive risk and compliance experience, financial audit and management experience as well as a broad understanding of the nature of practice at the Bar.

14. A further risk management measure involves the provision of expert advice on complex matters by a newly created “Expert Panel” recruited from existing Board and Committee members. Members of the Panel are able to be called upon, on an *ad hoc* basis, to provide specialist advice to the executive team on both authorisation and supervision issues. The Panel will be in place by the end of 2014. This approach is supported by the LSB for entity regulation and will be trialled within supervision activities. There is also scope for paid for external advice to be sought where a particularly complex or specialist issue is raised during authorisation and supervision.

Resource implications

15. The approval of this scheme, in itself, has no additional financial or resource requirements as the staff capacity exists within the current planned budget envelope for the coming period.

Equality Analysis

16. Although the scheme of delegations is simply codifying arrangements that have previously been agreed, it will be important to ensure the Board’s or Committees’ oversight of delegated decisions takes account of the impact of decision making on protected characteristics and that staff and committee members taking decisions have undertaken equality training including on unconscious bias. The Governance Manual, of which the scheme will become part, has been assessed; and the scheme is designed to be published on the website. In addition, both the supervision and authorisation systems have been the subject of Equality Impact Assessments

Risk implications

17. There is the potential risk that staff would not be competent to take authorisation and supervision decision. This has been mitigated through the skills based recruitment of staff with specific and targeted skills and experience to carry credibility. Robust moderation and accountability arrangements have also been put in place around the decision making process. The risk in respect of supervision has not materialised. Staff have been treated with respect and have demonstrated that their decision making is sound and credible. The oversight role of the Supervision Committee has provided clear quality assurance for the Supervision Department. The challenges the Committee raises to the functioning of the department add valuable rigour to the accountability and quality of the decision making process.
18. Given that both supervision and authorisation of entities are new activities it is proposed that the scheme of delegation in relation to them be reviewed after 12 months. At the point of review further consideration can be given to the governance around decision making.

Consultation

19. The Board has been received a number of reports on both supervision and entity regulation. The approach to supervision has been approved at Board level as have the arrangements for entity authorisation.

Publicity

20. All delegated decisions and processes from the Board will be published on the website in due course, and included within the Governance Manual.

Annexes

- Annex 1 – Terms of Reference for Supervision Committee (Annex 2h of the BSB’s Standing Orders)
Annex 2 – Supervision Department Structure Chart

Lead responsibility:

Oliver Hanmer, Director of Supervision, BSB
Richard Thompson, Chair Supervision Committee

Extract from the BSBs Standing Orders

The Terms of Reference of the Supervision Committee are:

1. To provide assurance to the Board on the supervision of barristers, chambers and entities.
2. To review and challenge proposals brought by the executive relating to the supervision of barristers, chambers and entities, including:
 - a. the application of the risk assessment framework to supervision activity;
 - b. the application of the supervision strategy;
 - c. authorisation of entities;
 - d. future priorities for supervision.
3. To have strategic oversight of, and to provide guidance and advice on the operational delivery of the supervision of barristers, chambers and entities, including:
 - a. The monitoring of chambers and entities;
 - b. The monitoring of individuals;
 - c. Thematic reviews;
 - d. The authorisation of entities.
4. To receive from the executive:
 - a. Reports on general supervision activity;
 - b. Data analysis reports on identified themes and trends arising from all supervision activity;
 - c. Reports on the authorisation of entities.

and to reach agreement with the executive on recommendations to the Board resulting from these reports.

5. To provide an independent perspective on proposals by the executive for thematic reviews.
6. To undertake such other tasks as the Board may from time to time require; and
7. To report to the Board on its work as and when required

Membership

8. A chair who must also be a Board member;
9. One vice chair, who will be a lay member if the chair is a barrister and vice versa;
10. One other practising barrister (excluding chair and vice chairs);
11. Three other lay members (excluding chair and vice chairs);

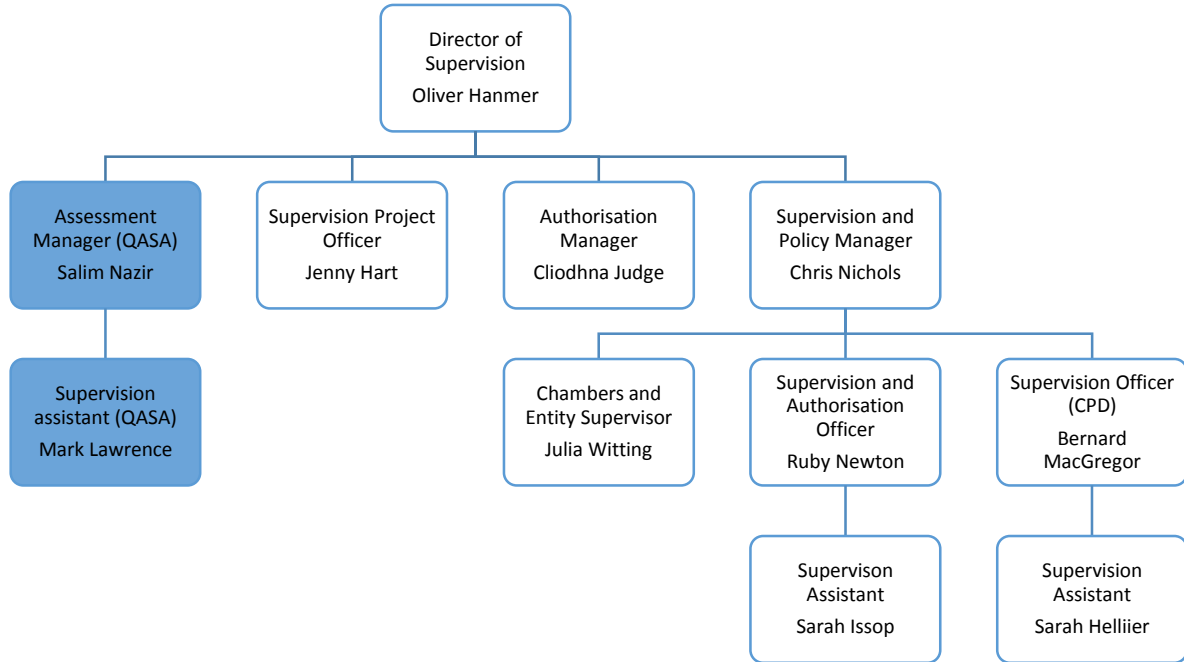
Quorum

12. No business may be transacted at any meeting of the Supervision Committee unless one third of the members are present of whom one must be a chair or vice chair

Meetings

13. Meetings to be held six times a year. If the need arises, the Chair or Vice Chair may convene additional meetings, which may take place by telephone if appropriate.

Supervision Department structure chart – Oct 14



Returning Instructions – Consultation report

Summary

1. The consultation on changes to the guidance on returning instructions opened on 27 March and officially closed on 25 April. An interim paper summarising the key high level themes and issues was considered by the Board in May. It was the view of the Board that while it was appropriate to respond to an apparent risk to the public interest, highlighted in particular by the Legal Aid Agency's decision to reduce fees in Very High Cost Cases (VHCC), it was clear that since doing so the risk that the Board had originally identified had not in fact materialised during a period when significant numbers of advocates were potentially seeking to return instructions. The Board decided that following the drafting of a final detailed consultation response document the Standards Committee should revisit the proposal and advise the Board as to whether updated guidance remained necessary. At its meeting in September the Standards Committee agreed that the current guidance from gC83 to gC87 should be retained.

Recommendation

2. That the Board:
 - a. **agrees** to maintain the current guidance on returning instructions; and
 - b. **approves** the final consultation response attached at annex A for publication.

Consideration of consultation responses

3. 240 responses were received to the consultation, a number of which were lengthy and dealt with a wide range of issues, some of which amounted to a fairly complex line by line assessment of the guidance and rules. Almost all of the responses received were from members of the Bar or organisations representing them, with a small number from others working in the legal services market. Attempts were made to seek further engagement from consumer groups but with no success. All of the responses have been read and considered and a final consultation summary is attached at annex A. The full responses are available on request.
4. The key themes raised by those who responded to the consultation were that:
 - a. the proposed guidance was arguably incompatible with contract law and would have the unintended consequence of limiting barristers' private law rights to enforce contracts;
 - b. the proposed guidance may lead to regulatory uncertainty either due to lack of clarity about the circumstances in which the cab rank rule would apply (by requiring barristers to consider working for less than a reasonable fee) or by replacing guidance that was clear with something that was highly subjective;
 - c. additional guidance was unnecessary, with a lack of evidence of actual risk to the public to justify the need for new guidance;
 - d. the proposed guidance might have unintended consequences for the public if it led to a reduction in the number of barristers willing to undertake (in particular) publicly funded work; and
 - e. there was a potential conflict between the proposed new guidance and rule C26.5 allowing barristers to return their instructions if they do not receive payment in accordance with agreed terms.
5. The themes are discussed further in the attached summary of consultation responses at Annex A. At its May meeting the Board agreed that while it was entirely right and appropriate for the BSB as a public interest, risk based regulator to identify and seek to mitigate the risk of harm to the public that had been identified, the Legal Aid Agency's

decision in VHCC cases had in fact failed to generate evidence that the current guidance was failing clients. In the light of the high-level issues that it considered at that stage, it directed that the Standards Committee re-consider whether any change to guidance was needed.

6. Following the completion of the final consultation summary the Committee considered the guidance at its September meeting. Having reviewed the risks to clients and decided that the new guidance was not in fact necessary or helpful, the Committee considered whether any amendments were needed to the guidance as currently published, considering in particular some of the representations made about the interplay between the guidance and contract law. However, it felt that in the light of recent experience, the current drafting was the most appropriate way of protecting clients' interests whilst not imposing a disproportionate burden on the profession by restricting their rights under contract law. It was noted that no Handbook guidance was intended to be applied in isolation and at all times barristers must be mindful of their other ongoing duties to their clients, the administration of justice and the attainment of the required regulatory outcomes.
7. As the Handbook was still relatively new, the Committee felt that it should avoid making any significant changes unless there was clear evidence of detriment to the regulatory objectives. It agreed, however, to keep this matter under review and would consider amending guidance if evidence of risk emerged in due course. An additional mitigating rule in the Handbook is the requirement to specify clearly in writing for the client the terms on which a barrister accepts work (which may include the consequences of non-payment). The BSB is monitoring compliance with this rule as part of its supervision activity.

Resource implications

8. None beyond current staff provision.

Equality Analysis

9. A detailed equality analysis has not been undertaken. There is no evidence that the current guidance is problematic. If the effect of the guidance on which we had consulted had been to require the publicly funded criminal Bar (which was one of our key areas of concern) to accept instructions at a substantially reduced rate then there would have been a risk of a disproportionate impact on female and BME practitioners, who are disproportionately represented in this group. Changes in remuneration for publicly funded work are a matter for the Government, which will undertake its own equality analysis.

Risk implications

10. The risk implications are largely dealt with in the body of the paper. The immediate risks that were originally identified (that there would be large scale withdrawal from VHCC cases in December 2013, with consequent detriment to clients and the justice system) did not materialise. There is an ongoing regulatory risk that clients might find themselves without representation at a critical time due to changes in remuneration that are not their responsibility, but the Standards Committee believes that the existing guidance strikes the correct balance in what it requires barristers to do.

Impacts on other teams / departments or projects

11. None.

Consultation

12. Dealt with in the body of the paper. Consultation responses highlighted concerns about consulting over a holiday period (Easter 2014) which have been noted for future consultations.

Regulatory objectives

13. This issue requires a balancing of a number of the regulatory objectives. In considering whether current guidance is appropriate, the Board must have regard to the interests of consumers (which may be adversely affected by actions over which they have no control). Similarly, the interests of justice might be adversely affected if clients are left without representation either during or on the eve of trial. However, the promotion of an independent, strong, diverse and independent legal profession could be adversely affected if barristers are placed in a situation where they are obliged to work for fees that are substantially less than they had previously agreed. Ultimately, there has been no evidence since December 2013 that further regulatory intervention is needed.

Publicity

14. The Consultation response will be published on the BSB website.

Annexes:

Annex A – Returning Instructions Consultation Summary

Annex B – Copy of the original Consultation Document

Lead Responsibility:

Ewen Macleod, Director of Regulatory Policy
Sam Stein QC, Chair of Standards Committee

Returning Instructions – Consultation Report

Introduction

1. The Bar Standards Board (BSB) regulates barristers called to the Bar in England and Wales. As a regulator the BSB's purpose is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest. The BSB Handbook is built around the principle of outcomes focused regulation using ten core duties, required outcomes, mandatory rules and supporting guidance.
2. Prior to the announcement by the Legal Aid Agency (LAA) in November 2013 that it was making changes to its Very High Cost Cases (VHCCs) contracts the BSB had identified decisions made by third party funders as an area of concern. While the LAA is the one of the largest and highest profile of the third party funders a decision made by any funder to vary a contract would have the potential adversely to affect a lay client. The decision by the LAA brought this issue into sharp focus and the Board acted to address a situation that in its view represented a risk to the public. Specifically the Board felt that the rules and guidance governing situations when a barrister can or is professionally obliged to withdraw their services, known as returning instructions, may not be sufficient to meet the challenges of a changing legal service market. In light of the challenge interim guidance was issued and a commitment was made to consult fully on possible changes to the relevant guidance in 2014.
3. A consultation on changes to the guidance on returning instructions opened on 27 March 2014 and scheduled to close on 25 April 2014. 240 responses were received and the BSB agreed to extend the closing date for the exercise to 28 April 2014.
4. This report provides a summary of the responses to the consultation.

Overview

5. An online consultation was launched on 27 March 2014. The consultation document proposed a change to the Handbook guidance governing situations when a barrister can or is professionally obliged to withdraw their services, known as returning instructions. No changes were proposed to the applicable rules at c25 - c26 or required outcomes. Four questions were posed and those responding were invited to do so on a formatted sheet included at the end of the document. The four questions posed were:

Question One:

Have we adequately identified the risks to clients, the administration of justice, third parties and the wider public interest where a barrister withdraws from a case? Are there any additional impacts or any unintended consequences arising from this guidance?

Question Two:

Are the additional considerations included in gC87 .1 - .7 adequate to assist a barrister in deciding whether or not they would be justified in withdrawing?

Question Three:

Do you consider it proportionate to remove the automatic assumption in guidance that instructions are withdrawn if there is a fundamental change in remuneration? Does the revised guidance achieve the right balance between the interests of the barrister and of clients, witnesses and the interests of justice? If not what safeguards would you propose to protect the wider public interest?

Question Four:

Are there any further matters the BSB should take into account that are relevant to this guidance?

6. Of the questions asked 161 responses utilised the response sheet provided and 150 provided an answer to all four questions.
 - 159 provided an answer to question 1
 - 155 provided an answer to question 2
 - 162 provided an answer to question 3
 - 150 provided an answer to question 4
 - 79 provided a response in an alternative format
 - 64 responses stated that they wished to endorse the position of a representative body.
7. In summary, none of the responses supported the proposed change to the Handbook guidance.
8. All of the responses were received from members of the Bar, those involved in the provision of legal services or their representative bodies. The BSB actively sought to engage with other stakeholders, including consumer groups, to discuss the consultation and the possible wider implications for the public. Copies of the consultation were sent to key consumer groups and the consultation was available for comment on the BSB website throughout the consultation period. Unfortunately no non-legal stakeholder group responded to the consultation or, despite phone calls to key consumer groups referring to the consultation and inviting views, took up that invitation to contribute to wider discussion.

The BSB Decision

9. Following a review of the consultation responses, the Board considered the issue in depth. While it remained sure that it was entirely right and appropriate for the BSB as a public interest risk-based regulator to seek to mitigate the risk of harm to the public, that risk had lessened.
10. The decision in November 2013 by the LAA in VHCC had created an immediate risk to lay clients of barristers already engaged on a VHCC contracts. Under the existing guidance at gC87 the change imposed by the LAA amounted to a withdrawal of instructions and offer of new instructions. While it was anticipated that most barristers would take it upon themselves to consider the wider implications of a withdrawal mid case it was felt that the guidance did not sufficiently assist the Bar in making that decision.
11. There has been no evidence that in the intervening period there have been any instances of any member of the Bar involved in a VHCC matter withdrawing in circumstances that caused significant harm to the client, administration of justice or other third parties. It was the view of the Board that the overall anticipated risk had reduced and while the potential impact on the public of decisions by third party funders remained high in the short term the risk of such an outcome had significantly lessened.

Part 1 – Public

12. VHCC had demonstrated that the Bar could take action in response to address decisions by third party funders but in doing so could take steps to mitigate the risk of harm to lay clients and the public in general. The consultation exercise raised a number of issues for the Board to consider and it was therefore no longer convinced that a change to the guidance as outlined in the consultation paper was necessary. Given the experience of the way in which the Bar coped with the challenges raised by VHCC and importance of third party funders to all areas of work the Board indicated that it would commission further work to reconsider the scope and detail of the relevant rules and guidance.
13. Given the level and detail of the responses received the Board took the view that the BSB was now well sighted on all the issues around the guidance at gC87. The guidance at gC87 will be kept under review and in the event that it is revised the themes and issues recorded in this summary will be taken into account. In the light of the consultation and the way the guidance was applied by the Bar there is no immediate need for it to be changed. However it was noted by the Board that it remained essential that Handbook remained relevant to address the challenges faced by a modern Bar. The Handbook is intended to be both a regulatory document and a valuable tool to assist the Bar to continue to achieve the highest standards.

Summary of Responses

14. Of the responses 150 provided answers to all four questions. 240 responses were received in total many of which addressed themes and raised issues not specifically included in the consultation document. A number of the responses were lengthy and dealt with a wide range of issues, some of which amounted to a fairly complex line by line assessment of the guidance and rules. While the consultation document posed a number of questions it was clear during the analysis that the themes and issues raised transcended the questions posed and were therefore most effectively dealt with separately.

Core ThemesContract Law

15. More than half of the responses received raised concerns over possible incompatibility between the proposed guidance, contract law and private law rights. While the consultation document stated that it was not the intention of the regulator to inhibit the Bar from entering into or enforcing rights under a contract it was generally felt that this would be the net result.
16. Levels of detail varied from a comprehensive assessment of the law and the way in which contracts for service had developed across the Bar to basic assertions of contractual interference by the regulator. Barristers asserted that they should be able to enforce their rights under a contract following a material or repudiatory breach without first referring to regulatory guidance. In the event that a barrister felt that they could not enforce their contractual rights as to do so would bring them into conflict with their regulator this would amount to an interference with their private law rights.
17. More fundamentally it was alleged that the guidance would create a situation where there had been a repudiatory breach of contract effectively ending the contract yet the guidance indicated that the barrister should continue to discharge that contract. As one barrister put it:

'Professional rules of conduct cannot override basic legal principles. An attempt to unilaterally vary the terms of a contract means that the contract comes to an end. The other contracting party cannot be forced to fulfil their side of the bargain, because there is no bargain.'

18. In some instances the requirement to apply the guidance was said most likely to result in the barrister being compelled to act to their disadvantage. Other concerns related to the inequality in bargaining position created by the guidance once it was known that in specific circumstances a barrister may be obliged to continue to represent a client notwithstanding a clear breach of contract. This was put in clear and direct language in a response from a barrister who felt that:

'A contract for services would, in ethical terms as well as legal terms, become a contract for slavery were the BSB to enforce a barrister under prescriptive compulsion to continue to act in a case where there is no longer adequate, or any, consideration.'

19. It was felt that the guidance specifically supported the position of the LAA and would encourage both public and private sector third party funders to divest themselves of any responsibility to consider the wider implications of their decisions. In essence the Bar was to act as the conscience of the funders. It was felt to be singularly unfair for the Bar to be held accountable if the interests of justice, courts and lay clients were harmed following a funder withdrawing support. The following was typical of the responses received from individual members of the Bar:

'If the LSC [LAA] or any other party responsible for remunerating a barrister decides to change the agreed remuneration, they will be responsible for any knock-on effect of the barrister withdrawing to e.g. the lay client and witnesses.'

'[it should be seen as in the public interest that where the funding is reduced] if a case cannot proceed wasted costs should be ordered against the lay client or third party funder.'

20. There was specific criticism of the additional considerations, their meaning and application. The guidance was considered to effectively undermine the contract to such an extent as to make its terms meaningless. Examples given included where a payment schedule had been agreed and the funder defaulted: in that situation it was said that the barrister should have to look no further than the schedule. If a barrister could be compelled by virtue of guidance from the regulator to continue in a contract following a breach of the agreed payment schedule then the schedule would become a meaningless document. A change to remuneration or breach of the payment schedule was in most cases considered to amount to a repudiatory breach and any restriction on the barrister's right to withdraw their services inappropriate. The response from a regional circuit concisely noted that the:

'The rate of payment is a fundamental term of any contract for the supply of services.'

21. The guidance in requiring the Bar to look beyond the terms of the contract was said to be undermining the agreement from the outset by introducing uncertainty as to the consequence of a breach. It was argued that on entering into a contract a third party funder should know the consequences of breach, which in most cases for a barrister will be the withdrawal of their labour. If a client is represented by a solicitor the onus should be on the solicitor to explain the implications of any contract for funding. In the latter circumstances a barrister should be able to rely on their professional client to clearly explain the implications of a breach.

22. It was suggested that as the proposed guidance was clearly primarily intended to mitigate the impact of the decision by the LAA to vary, without agreement, the terms of engagement after instruction that the guidance should only apply to publicly funded work. There was a widely held belief that the consultation was overly focused on addressing the issues caused by the LAA and as a result the BSB had failed to consider its impact on relationships with other funders. Third party funders in civil and commercial matters if aware of the guidance could seek to take advantage of a barrister's professional obligations to impose last minute fee variations.

The Cab Rank Rule

23. Those responses that considered the wider impact of the guidance on other rules argued that the proposed guidance at gC87 fundamentally undermined the cab rank rule as it could compel a barrister to work for less than a proper fee or no fee. This was based on rule C30.8 exempting a barrister from the cab rank rule in the absence of proper fee. In applying the proposed guidance at gC87 a barrister could feasibly find themselves working for a level of remuneration that would not constitute a proper fee in accordance with the cab rank rule. It would therefore be possible for a barrister to be obliged to accept instructions on the basis of a proper fee only for that fee to be reduced later. On this issue a representative body summarised the issue as follows:

'The cab rank rule is central to the ethos of the Bar. Barristers are bound to represent anyone when a proper basis for the barristers' remuneration has been agreed. The proposed guidance renders the cab rank rule meaningless since where the clients are not funding the litigation themselves, a barrister can be instructed on the basis a proper fee has been agreed and then forced to act for an inadequate fee at a late stage.'

Regulatory Uncertainty

24. There was a general consensus that the existing guidance at gC87 was clear and unambiguous. Despite being in guidance there was no criticism of the use of prescriptive language. The guidance in stating that in the event of a change in the level of remuneration a barrister 'should' treat that change as a withdrawal of instructions had come to be viewed as a part of the rule itself. This view was repeated across the returns with the guidance seen to provide certainty for all parties as to the consequences of a breach of contract. A regional circuit noted that the guidance provided certainty and therefore acted as a disincentive to funders but:

'this disincentive would be weakened if the funder was able to play upon the barrister's concern that professional disciplinary consequences might follow'

25. Under the existing construction an offered variation of remuneration or terms was deemed to be an offer of new instructions. Barristers could choose to accept the offer made to them if they wished to continue to represent a client. As a new instruction the barrister could seek alternative terms that allowed them to continue to represent a client on a strictly limited basis to progress a case to a point at which the barrister felt they could reasonably withdraw. Many respondents argued that, if they were to find themselves in a position where they felt their client would suffer a negative impact if they ceased to represent them, they would accept the new terms on a limited basis. Such behaviour was consistently argued to be in the best traditions of the Bar and as such would be adopted without regulatory compulsion.

26. The use of prescriptive language in the revised guidance was particularly criticised for creating what was viewed to be a veiled threat of enforcement for a failure to apply the guidance. This criticism flowed from the second sentence of the first paragraph of gC87 requiring that a barrister when deciding if they may withdraw from a case ‘must consider (and the BSB will have regard to) all the circumstances’. There was a considerable depth of feeling a barrister commented that:

‘The implied threat “(and the BSB will have regard to)” is unpleasant.’

Other responses reflected the view that the construction amounted to a veiled threat of enforcement action if a barrister failed to comply with the guidance. One barrister concluded that:

‘Barristers will be intimidated into carrying on with the contract [despite the change] because of the fear that they will be reported to the BSB’

27. The guidance was deemed to leave too much scope for different conclusions to be drawn from the number of and subjective nature of the factors listed. It was feared that a barrister who properly and judiciously applied the guidance might still be deemed to have reached the wrong conclusion in the view of the regulator and be liable to sanction. The following comment was typical of this perspective:

‘There is inevitable scope for different conclusions to be drawn from the number of and subjective nature of the factors listed.’

28. A lack of any guidance as to how competing considerations should be weighted when applied was raised. It was felt that the guidance was insufficient to give any real indication of the significance of the considerations:

‘The guidance gives no indication as to the weight that the BSB would give to consideration .7, as against considerations .1 - .6. The absence of any such indication places any Barrister faced with the decision as to whether to withdraw from third party funded cases in an invidious position, which almost inevitably compels the Barrister to remove from the balance consideration .7 and, in third party funded cases, to almost inevitably refrain from withdrawal.’

‘...it is not clear whether there is any significance to the order in which the considerations appear and whether it is intended that they should be weighted in any way. In my view, number 7 should be the most important factor and yet it appears last in the list.’

29. Where raised the consensus was that any change amounted to a reduction in the agreed fee and warranted withdrawal of service. However the use of the words a ‘fundamental breach’ raised the concern that a small reduction in fees might not be deemed to warrant a withdrawal by the BSB. It was questioned whether, for example, a £5000 brief that was reduced to £4500 amounted to a fundamental change to the level of overall remuneration. A fee that is reduced may still represent a reasonable fee depending on the work involved but was not that agreed and would still ordinarily be a breach of a contract.

Simply Unnecessary

30. The vast majority of responses recognised that the actions of the LAA had highlighted a risk of harm to lay clients but felt strongly that the responsibility for dealing with the repercussions of that decision should not sit with the Bar. Further it was argued that in the best traditions of the profession it was likely that no barrister would simply abandon a client without first attempting to assist them to secure new representation or progress their case. It was clearly put in a response from a chambers specialising in civil, family and criminal law that:

'...late changes in remuneration and consequent returns have occurred for years, but they have been managed without ill-effect upon anyone or the legal system at large. This management has been due in large part to the decent and honourable behaviour of barristers. If this be right, there is no need for regulatory change.'

31. Further it was argued that the Courts were more than accustomed to dealing with this type of situation and as far as the representation of a client was concerned would give time to the client. This was the view of a criminal advocate:

'If the basis of funding is withdrawn, and counsel chooses to withdraw, then the Court will (and always has) allowed time for the client to secure alternate representation.'

32. In reviewing the consultation responses the Board considered the recent conduct of those members of the Bar who had found themselves in the exact situation envisaged by the guidance. While instructions had been returned those involved had clearly acted with the highest level of integrity and clearly taken steps to protect the interests of their lay clients. The fact that the BSB was not aware of any complaint being made against a barrister as a consequence of their handling of a case impacted by the VHCC decision was viewed as significant.

Wider Consequences for the Public

33. It was widely argued that the removal of an automatic right to withdraw from a case on the basis of a unilateral change in the level of remuneration would so increase the level of associated risk as to make publicly funded work untenable. As a result of increased risk exposure for the barrister, it was believed that the pool of barristers willing to undertake work funded by third party providers would be reduced as barristers sought better remunerated work with guaranteed fees elsewhere or ceased self-employed practice. The following were typical of the comments received:

'fewer and fewer barristers will take on publically funded work [resulting in] a diminution in the quality and choice of advocates available to the public'

'If this proposal is carried through it will result in yet a further reduction in the pool of able and experienced barristers prepared to undertake VHCC work.'

'Considering the Administration of Justice is at much greater risk from poor barristers, or No barristers, than anything else. If publicly funded lawyers are not properly remunerated, the brightest and the best will no longer consider doing publicly funded work.'

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34. As a consequence of a fall in the pool of barristers available to undertake publically funded work there would be a clear diminution in the quality and choice of advocates as those able to work elsewhere left. Losing what was described as the brightest and the best represented a significant threat to the administration of Justice and wider public interest. There was recognition that any gap left by barristers withdrawing could be filled by solicitors with higher rights who while capable would not offer the public the same level of service as the Bar. The Bar was felt to offer a highly specialised advocacy service underpinned by significant training not replicated in the solicitor profession or elsewhere. Others felt that the guidance in combination with other factors at play, particularly at the publically funded Bar, would have far more reaching impacts:

'if barristers found themselves unable to rely upon the professional propriety of refusing to continue to work in circumstances when a 3rd party sought to make unilateral changes to the terms of engagement. It is wholly predictable that the current system of barristers accepting publicly funded work would collapse.'

35. Concerns about the long term viability of the bar were linked to funding and concerns were raised that if the regulatory framework did not assist the Bar it would risk irrevocably damaging it with a net impact on the wider public good:

'The wider public interest is best served by a fully functioning and properly remunerated independent bar. Similarly, the administration of justice. In particular, in legally aided work, the public has to have confidence that those from whom representation might be received are not likely to have their terms altered in such a way as to adversely affect their representation mid-stream. This has to apply with the interests not only of defendants in mind, but also the interests of witnesses, jurors and victims and their relatives.'

36. Wider implications were linked to aspects such as diversity. It was noted that while the Bar attracted skilled professionals from across society diversity remained an issue. Where raised it was said that the publically funded Bar was arguably the most diverse and under the most pressure from cuts. The revised guidance in raising the possibility of a barrister reliant on publically funded instructions being forced to work for less money might well cause more barristers to leave the profession as:

'...inadequate remuneration limits in a real and immediate way the diversity of the profession'

Lack of Evidence

37. The consultation document was heavily criticised for the absence of any qualitative research or other evidence substantiating the risk to the public posed by the current rules and guidance. As a public interest regulator it was felt that the BSB should have undertaken to consult with the representative Bar associations to assess the impact of the change to VHCC and develop an appropriate response. The following comments reflect the general view of those who raised this point:

'It is almost always possible for another advocate to take a returned brief and give equivalent or better advice or advocacy than the person returning it. Please refer to evidence of returns causing harm to clients, the administration of justice, or the wider public interest.'

'What is the basis for saying "The presumption underlying gC87 is that the fundamental change to counsel's remuneration is directly attributable to the client"? I am not aware of anything in the documentation relating to the development of the new Handbook to suggest this.'

'A change of this sort should not be made unless there is evidence that demonstrates that the existing rule does not serve the regulatory objectives. The need for change should be evidence based.'

Incompatibility between the Guidance and Rules

38. Issues of inconsistency between the rules and guidance were highlighted. Specifically rule C26.5 allowing a barrister to return their instructions if they do not receive payment when due in accordance with the agreed terms. The revised guidance at gC87 identified a change to the 'basis of your remuneration' a situation also covered by rC26.5. It was therefore argued that if the revised guidance at C87 were to apply to rC25.5 its application would add a qualification not contained in the rule itself.
39. Since rC26.5 is clear as to what action a barrister need take to be able to return instructions it was questioned how the proposed guidance could apply. In their response a representative body drew a distinction between the guidance at gC87 and rule C26.5:

'It is far from clear how the proposed gC87 can qualify rC26.5 where that rule applies. In addition, the proposed gC87 refers specifically to the wording of rC26.8 ("some other substantial reason"), and not to rC26.5'

Points of Clarification

40. A number of responses demonstrated a lack of awareness of the BSB, its statutory basis and function. It was widely felt that the BSB in proposing to change the guidance was supporting government policy and failing in its duty to represent or defend the interests of the Bar.

The following is intended to assist in clarifying some of the points raised in the consultation responses.

Purpose and Remit of the BSB

41. The Bar Council is the official regulator of the Bar but since 2006 has delegated its regulatory functions to the BSB. In accordance with its obligations under the Legal Services Act 2007 the BSB regulatory objectives are:
- Protecting and promoting public interest;
 - Supporting the constitutional principles of the rule of law;
 - Improving access to justice;
 - Protecting and promoting the interests of consumers;
 - Promoting competition in the provision of services;
 - Encouraging an independent, strong, diverse and effective legal profession;
 - Increasing public understanding of the citizen's legal rights and duties;
 - Promoting and maintaining adherence to the professional principles

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42. In common with other legal regulators in England and Wales the BSB is obliged to act in the wider public interest which may appear, on occasion, to diverge with the perceived interests of the Bar. As a part of this consultation the BSB received responses from representative bodies including the Bar Council, a number of Bar Associations and Circuits. The representative bodies made strong cases against the proposed guidance and heavily criticised the LAA over VHCC.

The BSB and the Legal Aid Agency

43. There were numerous allegations that the BSB had been coerced or otherwise ‘lent on’ by the LAA to launch the consultation. The timing of the consultation was seen to be at best unfortunate and at worst deliberately intended to weaken the representative bodies bargaining position with the LAA.
44. It is correct that the consultation specifically identified the changes made by the Legal LAA to r VHCC contracts and levels of remuneration as a point of concern. It is not correct that the BSB developed the proposed guidance exclusively to address the VHCC issue as the BSB had been looking at the implications of decisions made by third party funders in advance of the LAA decision.
45. In the light of the wider implications for access to justice and the public interest it was entirely appropriate for the BSB to review whether or not the applicable rules and guidance remained fit for purpose. As an independent regulator the BSB must act without fear or favour and any appearance of a correlation between the position taken by the BSB and government policy was purely co-incidental. At no time was the BSB involved in the decision by the LAA, nor was it in any way prevailed upon to issue the consultation, nor did it act with the intention to support or bolster the government’s position.

Timing and length of the Consultation

46. As the consultation opened at the end of March the period encompassed the Easter holiday. It was the view of a number of responses that the timing and length was significant as it was less likely that individuals and their representative bodies would be in a position to formulate a considered response over the holiday period.
47. At a time of change and uncertainty in the legal services market it is essential that regulators respond to new challenges and risks to ensure the long term public interest. Following the announcement by the LAA in November 2013 of significant changes to its VHCC and fee structure the BSB issued interim guidance and gave a commitment to consult fully on any changes to the new Handbook in 2014. There was no significance in the timing of the consultation and the proposed changes were consulted on following their consideration by the BSB Standards Committee. The length of the consultation period was in line with that of past consultations. In response to a request from a representative body of the Bar the BSB extended the deadline for submissions.

The Difference between Rules and Guidance

48. The consultation asked for views on proposed changes to guidance in the Handbook at gC87. While the majority of responses recognised that the proposed change was to the accompanying guidance many referred to gC87 as a rule.

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49. When the BSB moved to an outcome focused regulation it incorporated a significant amount of guidance into the Handbook to assist members of the Bar in interpreting the required outcomes and rules. While guidance may be used by the BSB in assessing whether or not a barrister has adequately applied their mind to all the relevant considerations when applying the Handbook a barrister may still comply with the rules and achieve required outcomes without strict adherence to the guidance. A number of responses referred to the proposed change to the guidance at gC87 as a rule change and therefore their comments on the application of the guidance as a rule. Guidance issued by the BSB is not mandatory and can be departed from in the application of Handbook rules. Barristers who depart from the guidance may be called on to demonstrate that they have given due regard to their duties under the Handbook when applying the rule.

List of respondents

50. The BSB received 240 responses of which 238 were from members of the bar, representative bodies or chambers. A number of responses from the Bar endorsed or otherwise supported the comments made by their representative body or chambers. The remaining two responses were from an individual member of the public and an LLP.

Representative bodies and Specialist Bar Associations:	Circuit Responses:	Chambers Responses:
<ul style="list-style-type: none"> • Technology & Construction Bar Association • Personal Injuries Bar Association • The Chancery Bar Association • The Honourable Society of the Inner Temple • The Commercial Bar Association (COMBAR) • The Bar Council • The Criminal Bar Association 	<ul style="list-style-type: none"> • The Northern Circuit • Western Circuit • South Eastern Circuit 	<ul style="list-style-type: none"> • Guildhall Chambers • No. 1 High Payment Chambers • Artesian Law • 39 Essex Street • 3 Paper Buildings • Charter Chambers • Garden Court Chambers • 2 Bedford Row • One Paper Buildings • Albion Chambers • Bank House Chambers • No. 1 High Payment Chambers • 9 - 12 Bell Yard • St Ives Chambers • 25 Bedford Row • Guildhall Chambers • 2 Pump Court • Guildhall Chambers • Red Lion Court Chambers • Lincoln House Chambers • No. 1 High Payment Chambers

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Representative bodies and Specialist Bar Associations:	Circuit Responses:	Chambers Responses:
		<ul style="list-style-type: none"> • Crown Office Chambers • 1 Pump Court Chambers • The Tim Collins Consultancy • 39 Essex Street • St Ives Chambers • 1 High Pavement • Fountain Chambers

Individual Responses were received from members of the following Chambers:

<ul style="list-style-type: none"> • 1 Gray's Inn Square • 1 Inner Temple Lane • 1 Pump Court Chambers • 10 King's Bench Walk • 12 College Place • 187 Fleet Street • 2 Bedford Row • 2 Dr Johnson's Buildings • 2 Kings Bench Walk • 2 Pump Court • 23 Essex Street • 25 Bedford Row • 3 Paper Buildings • 1 Paper Buildings • 3 Temple Gardens • 36 Bedford Row • 37 Park Square Chambers • 39 Essex Street • 4 Kings Bench Walk • 4 Pump Court Chambers • 49 Chambers • 5 Pump Court • 7 Bedford Row • 9 Bedford Row 	<ul style="list-style-type: none"> • 7 Harrington Street Chambers • 9 - 12 Bell Yard • 9 King's Bench Walk • 9 Park Place Chambers • Albion Chambers • Artesian Law • Bank House Chambers • Byrom Street Chambers • Furnival Chambers • Staple Inn Chambers • Carmelite Chambers • Charter Chambers • Chavasse Court Chambers • Citadel Chambers • Cornwall Street Chambers • Crown Office Chambers • Deans Court Chambers • Dere Street Barristers • Devon Chambers • Exchange Chambers • Farringdon Law • Fountain Chambers 	<ul style="list-style-type: none"> • Garden Court Chambers • Garden Court North • Guildhall Chambers • Harrington Street Chambers • Kings Chambers • Lincoln House Chambers • New Park Court Chambers • No. 1 High Pavement Chambers • Deans Court Chambers • Red Lion Court Chambers • Sovereign Chambers • St Ives Chambers • St Paul's Chambers • Atkin Chambers • Hardwicke • Exchange Chambers • Westbourne Chambers • Woolwich Crown Court • Zenith Chambers
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Consultation Paper on Changes to the Guidance on Returning Instructions

Deadline for responses: 25 April 2014

Introduction

1. The new Bar Standards Board (BSB) Handbook came into force on 6 January 2014. A new development in the regulation of barristers, the Handbook is built around the principle of outcomes focused regulation. Less prescriptive than the Code of Conduct that preceded it, the Handbook places more focus on the required outcome of the BSB's regulatory arrangements, rather than attempting to define how a barrister should act in every possible situation. The rules and associated guidance are not only therefore a key tool for barristers, but also ensure that clients and members of the public are aware of what they can expect when instructing a barrister and can understand what action can be taken in the event of improper behaviour by that barrister.
2. Shortly before the introduction of the Handbook, the BSB considered the issue of returning instructions where there were substantive changes to the basis of a barrister's remuneration. Responding in particular to the Legal Aid Agency's Very High Cost Cases (VHCCs) contract changes the BSB issued a policy statement, dated 25 November 2013, clarifying the rules and guidance applicable to barristers considering returning instructions following a change in their remuneration. This drew on the BSB's existing guidance that a change in remuneration would amount to a withdrawal of instructions by the client, meaning that a barrister was entitled to withdraw from the case without regard to the potential detriment to the client.
3. Whilst issuing that guidance, a commitment was made to consult fully on future changes to the guidance on this topic following the Handbook's launch. This was because the issues raised highlighted some wider risks to the regulatory objectives that may not have been adequately addressed by existing guidance. In particular, the Board felt that there was a risk of undue detriment to clients, who through no fault of their own found themselves without legal representation, for example because a third party such as the Legal Aid Agency had changed the rate of remuneration for the barrister. In such cases, the previous guidance was perhaps too a blunt instrument that may not have taken into account all of the relevant regulatory issues.
4. This consultation invites views on updated guidance on returning instructions.

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Current Position and the need for change:

5. The new Handbook came into force on 6 January 2014. While as a regulator the BSB allows barristers significant flexibility in the way they operate provided that they achieve specified regulatory outcomes, the Handbook does include a number of prescriptive rules. Each rule underpins one or more of the required regulatory outcomes and the accompanying guidance assists barrister in applying the rule. The relevant outcomes that the BSB is seeking to achieve are:
 - a. BSB authorised persons do not accept instructions from clients where there is a conflict between their own interests and the clients' or where there is a conflict between one or more clients except where permitted by the BSB Handbook;
 - b. Instructions are not accepted, refused or returned in circumstances which adversely affect the administration of justice, access to justice or (so far as compatible with these) the best interests of the client; and
 - c. Clients and BSB authorised persons are clear about the circumstances in which instructions may not be accepted or may or must be returned.
6. Clients “instruct” barristers when they ask them to provide legal services, such as advice or advocacy. In certain circumstances, barristers may be entitled (or in fact obliged by their regulatory duties) to “return instructions”, in which case they will stop representing a client. When a barrister ceases to act this may have serious consequences for a client and the wider administration of justice, especially if the client is left without legal representation close to a trial. Given the potentially serious consequences, the BSB has retained a number of prescriptive rules in this area, to ensure that both barristers and clients understand what is expected. Rules C25 – 26 in the Code of Conduct section of the BSB Handbook outline the situations where a barrister is either entitled to or obligated to stop representing a client. The associated guidance at gC83 – 87 provides examples of when it would be appropriate for a barrister to return instructions and what other factors they should consider when deciding whether or not to do so. Guidance, while not mandatory, gives a clear steer as to the wider considerations a barrister should have in mind when applying a rule to their own circumstances.
7. The current guidance at gC87 states that a barrister who, having previously agreed a fee, is made aware of a fundamental change to the basis of their remuneration is to treat that change as amounting to a withdrawal of instructions by the client. Generally, when a client withdraws instructions this means that they have either decided to engage alternative representation, represent themselves or have decided to end their case. If instructions are withdrawn the barrister need not consider his professional obligations any further. The presumption underlying gC87 is that the fundamental change to counsel's remuneration is directly attributable to the client. Therefore provided that the client has been properly informed of the potential consequences of such an action any resulting prejudice suffered would be a direct result of their own informed action.
8. Whilst a barrister's fee may be funded directly by the lay client, in many cases this will be paid by a third party funder. Third party funders include, for example, insurance companies, special interest groups and the Legal Aid Agency. The presumption behind gC87 does not reflect the position where a decision is made by a third party funder, who may not consult the lay client on that decision, to make a

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fundamental change to the basis of the remuneration. The BSB is concerned that the current guidance does not reflect the risk caused to the public interest by decisions made by third party funders. Legal proceedings can be a stressful time for clients and a sudden change or loss of representation that impacts on the proceedings adds to that burden and may impact on the client's ability to access justice. The BSB has also considered a barrister's duties in wider circumstances where a client fails to comply with previously agreed contractual terms (in full or in part). In both scenarios, it is important that the barrister exercises his professional judgment in deciding how to respond. Although the barrister may be entitled to withdraw from the case, doing so may be disproportionate and cause detriment to the client, the administration of justice or third parties.

9. Barristers who enter into contracts for the supply of services are entitled, as would any other professional providing a service to the public, to reconsider their position if the agreed terms of that contract are changed. It would be unfair for barristers to be obligated in all circumstances to continue to represent clients if the terms of the contract between them had been unilaterally changed. In most cases, if the contractual terms were clear, the revised guidance will not prevent instructions being returned. Only in cases where returning instructions will result in a disproportionate impact on the lay client, administration of justice or public interest will it be necessary for a barrister to continue.
10. The BSB is required by the regulatory objectives of the Legal Services Act 2007, amongst other things, to promote and protect the interests of clients, the rule of law, access to justice, administration of justice and adherence by barristers to the professional principles. Depending on the circumstances a withdrawal of representation, following a decision made by a third party funder, may cause serious prejudice not only to the lay client but to other consumers, witnesses, jurors and the administration of justice as a whole. The proposed changes to the relevant guidance are intended to ensure that the public interest is adequately protected in circumstances where the person whom the barrister represents is not himself responsible for adversely altering the basis of the barrister's engagement and/or where exercising his/her right to withdraw may be disproportionate in view of the degree of prejudice to that person and/or to the administration of justice.
11. The revised guidance is intended to protect the client, and the wider public interest, by requiring barristers to consider the wider implications of treating instructions as having been withdrawn. For example under the current construction of gC87 a barrister can consider their instructions to have been withdrawn and cease to act for a lay client without further consideration. The revised guidance requires a barrister to consider whether the lay client was responsible for the change or default and whether ceasing to act has any wider implications. This additional consideration does not necessarily prevent a barrister from returning instructions but it does ensure that all factors relevant to a barrister's professional duties are part of that decision.
12. There may be situations where it is not possible for instructions to be returned immediately but it does not necessarily follow that the barrister is then obligated to continue until the case concludes. It may be that a barrister can undertake necessary residual work to bring a case to a point where those instructions can reasonably be returned in accordance with the guidance. Once instructions have

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been returned, the barrister is not obliged to undertake any further action on the case, for example to assist the client to secure new representation.

Proposed amendments

13. In line with its regulatory objectives and the risk of prejudice to lay clients and/ or to the administration of justice the BSB proposes to make the amendments to the Handbook guidance that are identified by deletion or insertion (bold type) in the guidance associated with rC26 (gC83 – gC87) set out below. In drafting this guidance, the BSB has had regard to the various competing factors that a barrister should have in mind when deciding whether it is appropriate to return instructions. In applying this guidance, the barrister should exercise his professional judgement, having regard to the relevant Handbook outcomes, in particular that instructions are not accepted, refused, or returned in circumstances which adversely affect the administration of justice, access to justice or (so far as compatible with these) the best interests of the client.

14. The Handbook includes the following rule (the BSB is not amending the rule):

rC26 You may cease to act on a matter on which you are instructed and return your instructions if:

- .1 your professional conduct is being called into question; or
- .2 the client consents; or
- .3 you are a self-employed barrister and:
 - .a despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available; or
 - .b illness, injury, pregnancy, childbirth, a bereavement or a similar matter makes you unable reasonably to perform the services required in the instructions; or
 - .c you are unavoidably required to attend on jury service;
- .4 [not currently in force];
- .5 you do not receive payment when due in accordance with terms agreed, subject to Rule C26.7 (if you are conducting litigation) and in any other case subject to your giving reasonable notice requiring the non-payment to be remedied and making it clear to the client in that notice that failure to remedy the non-payment may result in you ceasing to act and returning your instructions in respect of the particular matter; or
- .6 you become aware of confidential or privileged information or documents of another person which relate to the matter on which you are instructed; or
- .7 if you are conducting litigation, and your client does not consent to your ceasing to act, your application to come off the record has been granted; or
- .8 there is some other substantial reason for doing so (subject to Rules C27 to C29 below).

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15. The following guidance is provided on Rule 26 (the BSB proposes to make the highlighted changes):

gC83 In deciding whether to cease to act and to return existing instructions in accordance with Rule C26, you should, where possible and subject to your overriding duty to the court, ensure that the client is not adversely affected because there is not enough time to engage other adequate legal assistance.

gC84 If you are working on a referral basis and your professional client withdraws, you are no longer instructed and cannot continue to act unless appointed by the court, or you otherwise receive new instructions. You will not be bound by the cab rank rule if appointed by the court. For these purposes working on a “referral basis” means where a professional client instructs a BSB authorised individual to provide legal services on behalf of one of that professional client’s own clients.

gC85 You should not rely on Rule C26.3 to break an engagement to supply legal services so that you can attend or fulfil a non-professional engagement of any kind other than those indicated in Rule C26.3.

gC86 When considering whether or not you are required to return instructions in accordance with Rule C26.6 you should have regard to relevant case law including: English & American Insurance Co Ltd & Others -v- Herbert Smith; ChD 1987; (1987) NLJ 148 and Ablitt -v- Mills & Reeve (A Firm) and Another; ChD (Times, 24-Oct-1995).

~~gC87 If a fundamental change is made to the basis of your remuneration, you should treat such a change as though your original instructions have been withdrawn by the client and replaced by an offer of new instructions on different terms. Accordingly:~~

~~— .1 — you must decide whether you are obliged by Rule C29 to accept the new instructions;~~

~~— .2 — if you are obliged under Rule C29 to accept the new instructions, you must do so;~~

~~— .3 — if you are not obliged to accept the new instructions, you may decline them;~~

~~— .4 — if you decline to accept the new instructions in such circumstances, you are not to be regarded as returning your instructions, nor as withdrawing from the matter, nor as ceasing to act, for the purposes of Rules C25 to C26, because the previous instructions have been withdrawn by the client.~~

gC87 **A fundamental change made to the basis of your remuneration or a substantial failure to meet agreed contractual terms may well amount to “some other substantial reason” justifying your withdrawing from a case or returning instructions within Rule C26. However before doing so you must consider (and the BSB will have regard to) all relevant circumstances in deciding whether your withdrawing from the case can reasonably be justified, including:**

Part 1 – Public

- .1 the materiality of the default or change and the notice you were given of it;**
- .2 whether the client or some other person is responsible for the default or change;**
- .3 the likelihood of it being remedied within a reasonable time and, where the client is responsible for the default or change, whether reasonable notice was given to him to remedy the default, with a warning of the consequences of failing to do so;**
- .4 whether the risk of your withdrawing from the case in the event of a change or default was clearly explained to the client;**
- .5 the likely consequences (if any) that withdrawing from the case at that stage would have, in particular the nature and extent of any prejudice that is likely to be caused to:**
 - .a the client (for example whether the client is likely to be able represent himself in the proceedings or is likely to be able to have sufficient time to engage other adequate legal assistance);**
 - .b other parties, witnesses and other persons immediately affected by the case; and**
 - .c the administration of justice;**
- . 6 Specific consideration needs to be given to any prejudice that is likely to be caused by withdrawal to third parties who are vulnerable (whether clients, other parties or witnesses)**
- .7 the nature and extent of any prejudice that is likely to be caused to you if you do not withdraw from the case and the extent to which you have other means of effective redress for the change or default, including redress against any third party.**

16. The main differences from the current provisions of the Handbook are:

- a. A fundamental change in the basis of remuneration will no longer automatically entitle a barrister to treat the instructions as having been withdrawn by the client and hence he should cease to act.
- b. Barristers must consider who is actually responsible for any breach of agreed terms including remuneration. Due consideration must also be given to the client's awareness of both the breach and implications for their continued representation.
- c. An obligation for a barrister fully to consider the wider impact of withdrawal including to the lay client, the administration of justice and other parties affected by the case. Specific consideration must be given to any person impacted by the withdrawal who is vulnerable.
- d. The addition of new grounds to return instructions on the basis of a substantial failure to meet contractual terms by the client.
- e. Guidance on the applicability of Rule C29 (cab rank), following a withdrawal of instructions, to accept further instructions on the same matter has been deleted. It is intended that should new instructions, on the same matter, be offered that rC29 will apply and further guidance is not therefore required.

Part 1 – Public

Consultation questions and how to respond

Question One:

Have we adequately identified the risks to clients, the administration of justice, third parties and the wider public interest where a barrister withdraws from a case? Are there any additional impacts or any unintended consequences arising from this guidance?

Question Two:

Are the additional considerations included in gC87 .1 - .7 adequate to assist a barrister in deciding whether or not they would be justified in withdrawing?

Question Three:

Do you consider it proportionate to remove the automatic assumption in guidance that instructions are withdrawn if there is a fundamental change in remuneration? Does the revised guidance achieve the right balance between the interests of the barrister and of clients, witnesses and the interests of justice? If not what safeguards would you propose to protect the wider public interest?

Question Four:

Are there any further matters the BSB should take into account that are relevant to this guidance?

How to respond

17. If you wish to respond, please complete the response form at the end of this document and email it to:

rpragnell@barstandardsboard.org.uk

Alternatively, you can post completed forms to:

The Bar Standards Board
Regulatory Policy Team
289-293 High Holborn
London
WC1V 7HZ

The deadline for responses is 25 April 2014.

CONSULTATION RESPONSE FORM:

BSB consultation on Changes to Returning Instructions Guidance

About you

Name:

Contact details:

Are you responding on behalf of an organisation (if so, please provide details)?

Are you content for your response to be made public?

Q.1: Have we adequately identified the risks to clients, the administration of justice, third parties and the wider public interest where a barrister withdraws from a case? Are there any additional impacts or any unintended consequences arising from this guidance?

Q.2: Are the additional considerations included in gC87 .1 - .7 adequate to assist a barrister in deciding whether or not they would be justified in withdrawing?

Q.3: Do you consider it proportionate to remove the automatic assumption in guidance that instructions are withdrawn if there is a fundamental change in remuneration? Does the revised guidance achieve the right balance between the interests of the barrister and of clients, witnesses and the interests of justice? If not what safeguards would you propose to protect the wider public interest?

Q.4: Are there any further matters the BSB should take into account that are relevant to this guidance?

Once you have completed this form, please email it to:

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The Bar Standards Board
Regulatory Policy Team
289-293 High Holborn
London
WC1V 7HZ

The deadline for responses is 25 April 2014.

Chair's Report on Visits and Meetings September – October 2014**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:

- | | |
|---------|---|
| 18 Sept | Attended the BSB Board meeting |
| 20 Sept | Attended Bar Council AGM |
| 23 Sept | Met with Sir Andrew Burns at Inner Temple |
| | Met with CEO and President of CILEx |
| | Attended Finance Committee meeting |
| 24 Sept | Attended dinner given by Brian Doctor QC |
| 29 Sept | Attended reception for the publication of Eleanor of Castile: The Shadow Queen by Sara Cockerill QC |
| 30 Sept | Met with UCL Professor of Law, Michael Freeman |
| | Attended Reception and Dinner for the Opening of the New Legal Year |
| 01 Oct | Attended Lord Chancellor's breakfast at Westminster Hall |
| 02 Oct | Attended Regulators' Summit follow up meeting |
| | Met with Lord Walker at BSB offices |
| | Attended Inner Bench Table |
| 08 Oct | Lunch with Guy Mansfield QC at Middle Temple |
| 09 Oct | Met with Liz Cooke, Law Commissioner |
| 13 Oct | Attended House of Lords |
| | Attended Women of the Year Lunch |
| 14 Oct | Spoke at London Law Expo |
| | Attended Select Committee on Communications at the House of Lords |
| 15 Oct | Met with MP Simon Hughes, Minister for Justice and Civil Liberties |
| 16 Oct | Lunch with John Bowers QC, Principal-elect of Brasenose College |

Part 1 – Public

- 21 Oct Attended Select Committee on Communications at the House of Lords
- Attended House of Lords meeting of the All Party Parliamentary Group on litigants in person in the Family Court
- 22 Oct Attended briefing for BSB Board meeting
- Attended launch of memoirs by S African Constitutional Court judge Justice Edwin Cameron at Inner Temple
- 23 Oct Attended meeting of the Academic Board of Gresham College

Equality Impact Assessment

3. No Impact

Risk implications

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

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Baroness Ruth Deech QC (Hon)

Director General's report - BSB meeting 23 October 2014

For consideration and noting.

Director General

1. Externally-facing work this month has centred on the Court of Appeal outcome in the QASA judicial review; and on preparation for and attendance at the LSB-led Regulators' Summit (see elsewhere on agenda).
2. Internally I have had close involvement in ensuring continued progress in relation to shared and BSB Human Resources matters. With the Bar Council CEO and Tim Robinson, I have interviewed a number of HR Director candidates and a new recruit is expected to start on 27 October. I have also worked with our external HR consultant on a discrete project to further the implementation of the competence framework and performance management system for staff. Finally, we have been able to make considerable progress in rolling out our learning and development plans for the next 12 – 18 months, with a clear outline of activity in a number of areas being sent to all staff.
3. Key features of this are
 - A focus on building capability in relation to risk-based regulation this autumn.
 - Commissioning a general introductory course in Law and Practice for all support staff who do not need legal qualifications. This will come on stream in the new year and we will make further detailed announcements about this at the November Board.
 - Refreshing arrangements for induction training (including for new Board members).
 - Increasing the spread and frequency of our "knowledge share" sessions – one hour sessions on a wide range of subjects, open to all. I delivered two of these myself this month.
4. I continue to be closely involved in the Entity Regulation Working group which has met this month to consider issues relating to the s69 order and to insurance in particular.
5. Finally, I have worked closely with the business management team to refine our half year re-forecast and our 2015/16 budget bid.

Regulatory Policy***Immigration advice and supervision***

6. The Standards Committee proposes to launch a consultation. The old Code of Conduct included a prohibition on self-employed barristers acting as a supervisor of unregulated advisers which is permitted by s84 of the Immigration and Asylum Act 1999. This prohibition was not replicated in the new Handbook.
7. Following an approach by the Office of Immigration Services Commissioner, the Standards Committee has been reviewing the wider implications of members of the self-employed Bar entering into arrangements to supervise immigration advisers. Such relationships create potential regulatory difficulties around ensuring that barristers provide an appropriate level of supervision and ensuring that clients understand the nature of the relationship (including the limits of the relationship and the fact that they are not in fact instructing the barrister direct, which may affect access to professional indemnity cover and whether they may complain to the Legal

Ombudsman, because the adviser/supervisor relationship would not be one of employment and therefore would not fall within LeO's remit).

8. The Standards Committee has been in touch with LeO to establish whether a voluntary jurisdiction might be established for these cases. The Committee has agreed that further evidence of the risks in this area is needed. It also believes that new Handbook rules may be necessary to clarify the supervising barrister's duties. It therefore proposes to consult on new rules that would require a barrister to:
 - notify the BSB before beginning to supervise an immigration adviser;
 - ensure that all such arrangements are placed on a formal basis so that evidence may be provided to the client and the regulators of the level of supervision being provided;
 - only act as an immigration supervisor if authorised to work directly with the public.
9. This will address concerns about risk to the public and enable the BSB to gather more evidence about the risks in the market. The BSB is planning a formal thematic review of immigration activity in 2015 which will gather further information.
10. A report on the consultation and any proposals for rule changes will be brought to the Board for approval in due course. If Board members would like further information about the planned consultation, please contact Ewen Macleod.

Risk

11. Planning activity for the next chapter of work to embed regulatory risk management is now well underway, following on from the review undertaken by InfluenceInc for the Senior Management Team.
12. A fairly intensive schedule of activity has been identified, with timescales driven by a number of factors, key to which are:
 - the target set against the LSB's Regulatory Standards Framework, with the next self-assessment to be undertaken in Autumn 2015;
 - the new strategic planning cycle, as part of which we will re-validate our regulatory purpose and approach with new Board members and Chair and plan together for the future; and
 - the opportunity afforded by the review of the BSB and indeed wider Bar Council's information management system requirements to be undertaken over the coming months which will inform the development of a strategic roadmap for IT development to support modern regulation.
13. During this quarter, we will be:
 - Providing training and development opportunities for all staff to work through questions about risk-based regulation and ensuring that we are talking the same language, based on common understanding across different areas of the business;
 - Updating the regulatory risk framework document to ensure that it can be meaningfully applied across the business and in time, communicated externally;
 - Developing a single risk index that we can all subscribe to and use to share what we know about risks (working with the Regulatory Knowledge Group, RKG). Part

of this will be clarifying with staff the differences and relationship between regulatory and corporate risks;

- Pooling our current information from each department about those risks to produce regulatory risk reporting (also through RKG representatives); and
- Work with teams across the BSB to understand their regulatory processes, how risks are identified and controlled, and to get feedback from staff as to how the approach could be improved.

14. A great deal of good work has been done already in terms of process mapping and documenting assessment methodologies already in use and the team will be drawing upon this as a starting point for discussions. The steps outlined have been designed specifically build common understanding and mutual purpose, providing a strong foundation for further development work during 2015. A small team from InfluenceInc will be supporting this next phase of work in order to ensure that we are in the best possible position early next year, given the limited buffers we have both time-wise and with internal resources. A discussion of the Board's involvement in this work will be initiated in November and feature again at the December Awayday.

Equality and Diversity

Equality and Diversity Training for Board and Committee Members

15. The Equality and Diversity Team have now created an online equality and diversity training course for all Board and Committee members. This training was previously delivered in classroom session; the online training will be fully accessible to all members and they can complete it when it is convenient for them. The team have reviewed various versions to ensure it was correct and provided the voiceovers for the training. The course will be launching this month and all new members will receive an email from their Board or Committee secretary inviting them to complete the session.

Diversity Data on the Profession

16. In August the E&D team undertook the annual extraction of diversity data on the profession from the Core database. The data has been anonymised, aggregated, analysed and broken down by protected characteristics and seniority. A draft report on the diversity of the profession is being produced and will be presented to the Equality and Diversity Committee in November and will be presented to the Board in January for approval and publication. The report must be published by the end of January 2015 in order for the BSB to meet its legal and regulatory obligations.

Equality and Diversity Officer (EDO) Network

17. The Equality and Diversity Team went to the EDO Network event hosted by the Bar Council to present the recent chambers monitoring exercise that was conducted in 2014 in order to assist EDO's to gain a greater understanding of the Equality Rules and share best practice. In particular, the team focused on providing further support in relation to flexible working policy requirements and the monitoring of unassigned work as these are rules that chambers often struggle with.

Meeting with Rethink

18. The Regulatory Policy team, Bar Council, SRA and Law Society met with the mental health charity Rethink. Rethink presented a resource they created with the Prison Reform Trust for magistrates, district judges and court staff on mental health and learning disabilities in the criminal courts. They want to create something similar for

legal professionals (barristers and solicitors) in order to raise awareness of mental health issues and how to work with and represent clients who have a mental health illness.

Supervision

19. Work in this area is covered by other items on this month's agenda.

Education and Training

Post LETR Plan

20. The Post LETR Programme Board met for the first time on 29 September, and finalised the Programme Initiation Document.
21. The Communications Plan for the programme was being finalised at the time of writing, in preparation for public launch.
22. Initial focus groups to inform the development of the Professional Statement (which describes essential knowledge and skills required of all barristers at Authorisation) are scheduled to be held in November.
23. The Working Group on the Academic Stage will have met twice by the time of the Board meeting.

Operational updates

Vocational Training

24. The BPTC Online admissions system has closed for the last time, to be replaced with a course provider-led system that will be open for applications in November. The new system promises to offer a significantly higher degree of functionality and ease of use for candidates. The application fee will remain unchanged.

Centralised Assessments

25. Initial progress has been made in a review of the Centralised Assessments, chaired by Prof Paul Kohler (a member of the Education & Training Committee), planned for publication in Spring 2015.

Pupillage

26. Guidance to support the Rules on pupillage funding was agreed by Education & Training Committee in September, in light of a significant amount of anecdotal evidence of problems for Pupillage Training Organisations in interpreting the Rules, and some instances of technical compliance that did not appear to reflect the intended purpose and desired outcome.

CPD

27. A revised approach to CPD accreditation has been agreed by the Education & Training Committee, for introduction from January 2015 and establishing a framework upon which the revised CPD scheme may operate from 2017. Training providers will be themselves be accredited, rather than the individual courses they run, and new quality assurance measures will be introduced.

Qualification Regulations

28. The Qualifications Committee has been reviewing its application fees and fee waiver policy to see how it can achieve full cost recovery, as required by the Board. It is seeking legal advice on the extent to which it can restrict the circumstances in which it grants fee waivers in respect of applications for waivers from CPD requirements without this amounting to discrimination.

Professional Conduct***General***

29. The PCD have welcomed Paul Pretty to the post of Investigations and Hearings Team Manager. Paul joins us from the Nursing and Midwifery Council and commenced work on 6 October 2014.
30. The Assessment Team have successfully recruited to the post of Assessment Officer following the departure of Natalya Browning at the beginning of September 2014. The new Assessment Officer will take up her post at the beginning of December 2014 and arrangements are in place to cover the vacancy during the interim period.
31. As part of the PCD in-house training programme designed to ensure staff are equipped with relevant specialist knowledge, a session on disclosure, led by Jeff Chapman QC and Marianne Butler of Fountain Court Chambers, was held in September 2014. The training looked in detail at the current BSB rules governing disciplinary proceedings which deal with disclosure and the newly published guidelines. The training session covered what the BSB needs to provide to the defendant barrister; the extent to which the BSB needs to search lines of enquiry; issues of timing; and, exceptions.

KPIs

32. The Q2 KPI results have just been published. The PCD is pleased to report that we have exceeded or met all the targets and, in the case of external investigations, have hit 90% compared to a target of 80%.
33. The results are a significant increase against the target in comparison with Q1 statistics, with many more cases being concluded. More details will be reported in the interim report.

Judicial Reviews

34. The PCD were previously handling four applications for Judicial Review. Three of these remain and are at the permission stage. The fourth, a long running case, was determined on 8 October 2014. The Court decided that the BSB's regulations on cost claims against the BSB were valid and that the wording of the BSB's regulations had correctly been construed in the past: thus it found in favour of the BSB.
35. A further Judicial Review application was issued against the Visitors to the Inns of Court in October 2014, with the BSB named as an interested party. Appeals are now made directly to the High Court. The Visitors' Panels used to be comprised of a Judge, barrister member and lay member. The application seeks to challenge this composition of the Visitors, in claiming that only judges were empowered to sit as Visitors.

36. The position regarding appeals that have been lodged against the decision to dismiss a Judicial Review on the COIC appointment issues has progressed in that the applications for permission to appeal to the Court of Appeal are due to be heard on 26 or 27 November 2014.

Strategy and Communications

37. The Director of Strategy and Communications attended the Regulators' Forum on 25 September. The forum runs in two parts: the first involves the Legal Services Consumer Panel and the Legal Ombudsman; the second involves just the front line legal services regulators. This is a useful forum for discussing cross-cutting issues, particularly those of a more practical or operational nature. Topics at the last forum included finalisation of the terms of reference for the forum, discussion on an MOU regarding the exchange of information between regulators, sharing of consumer engagement strategies and a demonstration of the Legal Ombudsman's complaints portal. The Legal Services Consumer Panel also presented an early read out of its latest Consumer Impact report, which is scheduled for publication shortly. The next Forum will take place in January 2015.

Communications

38. During the past month, the following press releases and announcements have been issued:
- Launching a consultation about the proposed fees for BSB entity regulation. This consultation closed on 10 October and a number of reminder communications were issued prior to its closure.
 - Press release to announce the publication of the Independent Observer's report into the BSB's complaint handling process following the Board's consideration of the report last month.
 - Press release to announce the publication of annual PCD report following the Board's consideration of the report last month.
 - Press release to announce the forthcoming new appointments onto the Board.
 - A reminder to Public Access barristers who have not yet undertaken the required top-up training that they have 12 months left to do so.
 - A widely reported and quoted BSB statement, following the handing down of the QASA Judicial Review judgement.
 - Launching a call for evidence to assist with the BSB's work into standard contractual terms and the cab rank rule.

Post-LETR education and training

39. Communications work for the post-LETR programme is well underway. A series of communications activities are planned imminently to launch this programme.

Press enquiries

40. Several press enquiries were received in the past month which necessitated us issuing statements. These included a statement to *The Sunday Times* concerning protection for vulnerable witnesses and a comment to Legal Futures about the LSB issuing a "warning notice" about our entity regulation application.

Authorisation to Practise

41. The team were also heavily involved in the recent Bar Council announcement about the 2015 changes to the way in which the Practising Certificate Fee is calculated; the detail of which is on the BSB website.

Online and social media

42. During September 27,494 users visited the BSB website and, at the time of writing, we have over 9,600 followers on Twitter.

Conferences/events

43. The BSB had a stand at the Young Bar Conference held on 18 October

Business Support***Freedom of information***

44. As per our Business Plan commitment, work has commenced on the development of a Freedom of Information compliance system. A business case and project plan have now been drafted.

Business Plan and Budget

45. The budget bid was presented to the Board on 11 September and will be put to the BC's Finance Committee in October 2014. The team are also pulling together the Q2 performance and forecast report which the Board will receive in November 2014. In preparation for strategic planning the team is also collating a spread of benchmarking information and is supporting the LSB with its Cost of Regulation research work, which is due to be published in March 2015.

Contract Management

46. The PRP Committee endorsed the newly revised overarching Service Level Agreement between the Bar Council and the BSB; this includes a refreshed dispute resolution (escalation) process and a number of schedules that are currently being finalised.
47. The last Bar Tribunals and Adjudication Service (BTAS) quarterly monitoring visit has taken place prior to the Annual Report being drafted which the Board will receive in November 2014. The outcomes of the visit were positive; quarterly visits will continue.

Regulatory knowledge and information***Research***

48. Significant progress has been made by the contracted researchers in drafting the BCAT Impact Evaluation research project report with continuous heavy support from the Research team. The complementary Performance Evaluation strand has started.
49. The Change of Status survey (which collects information about people leaving the profession) is now live. A process has been agreed between the Bar Council, the Records department and the Research team to collect, analyse and report on findings.

50. A preferred supplier has been selected for the Youth Courts Advocacy Review following interviews with, and presentations from, four tenderers. A joint submission from Birkbeck, University of London and Just for Kids Law was deemed to offer the best potential. The proposal has been reviewed and suggestions made to maximise the benefits through more effective engagement and data collection.
51. The Research team has been involved in reviewing the data collection approach and tools for the BPTC providers' Annual Reflective Review to inform E&T department discussions with providers.
52. Feedback was offered on the design and overall approach to the LSB-led Cost of Regulation research project in order to guarantee better outputs. Our recommendations were not taken on board fully but the survey is now live. We have agreed to distribute information about the survey as part of our normal communications with the profession.
53. Initial discussions have taken place between Research and the Professional Conduct Department regarding the research that the Board has previously agreed to undertake in order to better understand the experience of users of our disciplinary system.
54. The Bar Council has enquired about the Research team's possible involvement in the Pupillage Gateway survey. This will be assessed to ascertain the resource requirements before any contribution is agreed.
55. A new Research and Information Officer, Oliver Jackling, has been recruited and started on 13 October 2014.

Resources Group

Current Key Business Projects

Document Management System

56. The project closure process is underway to review success of project and monitor benefits realisation. DMS workflow development is ongoing: BSB service complaints are in the prototype stage. Further refresher training will be offered to all staff and is planned during October.

Authorisation to Practise 2015

57. An Initial communication was issued to the profession at the end of September on the change to an income-based PCF; further communications are planned over the next few months as part of an awareness phase. A first prototype of the technical developments is being tested ahead of schedule.
58. Monitoring of questions from the profession is underway and detailed guidance is under development.
59. Knowledge sharing sessions are planned over the next few months with teams most affected by the changes to ensure the organisation has an understanding of the new policy.

Intranet

60. A preferred supplier has been selected and is now being subject to due diligence and early contract negotiation. Early iterations of the Intranet information architecture, intranet standards are being developed. Content development planning is underway with the business due to take place over the next five months for initial launch; supported by the content editor.

Developing Barrister Connect

61. The requirements analysis has been ongoing and a business case is being developed. Performance of the current supplier continues to be monitored.

CPD Regulation Implementation

62. The project has been re-prioritised for a 2017 launch as part of BSB business planning process. The fee structure for the CPD provider level accreditation scheme has been approved by the Education and Training Committee and is awaiting approval by PRP. The process review for the CPD provider level accreditation scheme is complete and a review of guidance/forms is underway. The CPD policy development process has been initiated for the 2017 scheme.

Entity regulation

63. The PMO and IT are providing business analysis support to the development of the authorisation process. The PMO is also providing coaching and support in project management. The authorisation process has been agreed in principle subject to small amendments. The specification has been delivered to Netextra and NFP for the authorisation process; timescales and costs are being negotiated. A pilot authorisation process is under development utilising Uengage.

Finance and HR processes and systems

64. A process review has been initiated with business teams. An initial review of the market and available suppliers has been undertaken. Planning has been completed and the project board is constituted. The projects will be treated as two separate activities with a single source of support.

Bar Course Aptitude Test

65. A first year evaluation has been completed and analysis and a report are underway. The evaluation working group is working closely with the supplier to ensure quality. The BCAT test cycle has been completed and an operational review meeting undertaken.

Post Legal Education and Training Review Change Programme

66. The PMO is playing a programme assurance role. Formal initiation has been authorised by the Education and Training Committee and LETR Change Programme Board.

Property strategy development

67. And initial project meeting has been held to scope first steps.
68. The project mandate process has been initiated in order to seek Senior Leadership Team vision for next 5-10 years.

Case Management System

69. A project mandate process is underway with the BSB. The PMO will lead on the business analysis and requirements gathering exercise for a new case management system and will be built to the overall review of information management architecture.
70. The BSB PCD and Supervision Team will manage the implementation to meet short term requirements for case management.

Upcoming projects*Bar Business Standard*

71. The PMO is supporting the project team in RPS to scope out and plan the implementation of the Bar Business Standard for 2015.

Functional & Team Updates*Project Management Office – Richard Thompson*

72. Project Gateway knowledge sharing sessions are planned throughout the next few months
73. Project management guidelines are under development at present in preparation for the design of an organisation wide training programme for delivery Jan – March 2015.

Projects PMO is managing	Projects PMO is providing business analysis to	Projects PMO is supporting
<ul style="list-style-type: none"> • Document Management System • Document Management System Workflow • Intranet • Authorisation to Practise 2015 • Bar Course Aptitude Test • CPD Reform Implementation • Pupillage Gateway 	<ul style="list-style-type: none"> • Entity Regulation Authorisation • Intranet • BSB Case Management System 	<ul style="list-style-type: none"> • Entity Regulation • PCF Allocation and Budget Consultation • Freedom of Information Compliance • Review of Barrister Connect • Ethics Service Review • BSB Case Management System • Finance System • HR System • Legal Education and Training Review • Property Strategy

Records – Smita Shah

74. Authorisation to Practice 2015-16 Income Model – The team has now commenced testing on the core database with the income model fee structure. The team will be testing the Barrister Connect portal for the income based PCF model from next week.
75. The annual cycle of general housekeeping activities for the Core database is near completion. BMIF Insurance validation activities should be completed by mid-October.
76. The Knowledge Sharing programme, exchanging experience and knowledge of the core database between Records, BSB Research and IT has been completed with excellent feedback received from all teams.
77. Public Access Record Keeping. Records have taken on responsibility for updating barrister records for Public Access training.
78. The service level agreement with the Bar Standards Board has been finalised to ensure that the relevant aims and objectives for Bar Standards Board are met. The Records Manager has commenced a review of the roles of the team to ensure support for the SLAs with BSB and RPS in light of ongoing system and business process developments.
79. Work continues with IT with regards to improving automation on the Core Database, extra fields and reporting.
80. Records are working with E&D department to assist with the set-up of their exit survey of barristers leaving practice. Thereafter, E and D staff will be responsible for running monthly reports.
81. Advance notification of the change to PCF fee structure has been sent. We sent 15,688 notifications to the practising bar, SBA's, Circuits, unregistered door tenants and online administrators. We have received 27 queries covering technical, general and legal matters and all have been responded to in the first instance.

Finance – David Botha

82. We appointed an Interim Financial Controller, Patricia Payne, to ensure senior technical accounting continuity in the team following a change in staff.
83. The PMO is supporting the finance team in collecting the user requirements for a replacement finance and payroll systems as a step towards completion for the business case.
84. The Management Accounting team is leading on the Q2 and 2015/16 Budget forecasting activity to complete the first stage at the end of October.

Facilities – Sam Forman

85. Internal moves for the Finance team are to take place over the weekend of 8/9 November and 15/16 November.

Part 1 – Public

86. Handover of the Landlord's works to the Ground Floor Reception and upper floors not occupied by Bar Council or BSB, successfully took place on 13 October. The costs, programme of works and timescales are being discussed for Phase II works, encompassing the common parts on floors occupied by Bar Council/BSB, basement to 4th floor.
87. Starleaf installation (a Video & Audio 'Virtual Meeting Room' conferencing solution) is to take place on Friday 24 October with rollout to staff on Monday 27th October.
88. The Bar Council marketing team are assisting with publicising the printing services offered by the print room for third parties.
89. A Meeting Room Occupancy Study was reported to the Senior Leadership Team. Further investigation and analysis is required before a meeting room policy document is produced.
90. Staff ID cards have been implemented and issuing has been built into new starter process.
91. Contracts for stationery, cleaning, and water dispensers have been renegotiated with significant cost savings on previous contracts.
92. iPoint Media have been appointed as a replacement phone conferencing provider. All departments have been issued with new codes and operating details.

IT – see item in Part 2 Agenda.

Vanessa Davies
Director General BSB
16 October 2014