

BAR STANDARDS BOARD

REGULATING BARRISTERS

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

Thursday 21 May 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair)
Rolande Anderson
Malcolm Cohen
Simon Lofthouse QC
Andrew Sanders
Adam Solomon
Richard Thompson (items 7-15)
Anne Wright
- By invitation:** Keith Baldwin (Special Adviser)
Matthew Nicklin QC (Special Adviser)
Nicola Sawford (Board Member designate)
James Wakefield (COIC) (items 1-9)
Emily Windsor (Special Adviser) (items 7-15)
- Bar Council attendance:** Stephen Crowne (Chief Executive, Bar Council) (items 1-9)
- BSB Executive in attendance:** Viki Calais (Business Manager)
Sarah Charlesworth (Senior Policy Officer, E&D)
Vanessa Davies (Director General)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision) (items 7-15)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Bernard MacGregor (CPD Supervision Officer) (items 1-9)
Ewen Macleod (Director of Regulatory Policy) (items 7-15)
John Picken (Governance Officer)
Amit Popat (Policy Manager - Equality and Access to Justice)
Pippa Prangley (Regulatory Risk Manager)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)
Natasha Williams (Business Support Officer)

Item 1 – Welcome and introductions

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

ACTION2. **Item 2 – Apologies**

- Rob Behrens;
- Justine Davidge;
- Andrew Mitchell QC;
- Tim Robinson;
- Sam Stein QC;
- Sarah Brown (Special Adviser);
- Alistair MacDonald (Chairman, Bar Council);

- Chantal- Aimée Doerries QC (Bar Council Vice Chairman);
- Lorinda Long (Treasurer, Bar Council);
- Mark Hatcher (Special Advisor to the Chairman on Representation and Policy).

Item 3 – Members’ interests and hospitality

3. The following declarations were made:
- Patricia Robertson QC – hospitality provided by the Chancery Bar Association following a talk given by her (20 May);
 - Vanessa Davies & Patricia Robertson QC – guest of Bevan Brittan at the Dinner for the Association of Regulatory and Disciplinary Lawyers (15 May 2015);
 - Vanessa Davies – Magna Carta Lecture and Dinner, Lincoln’s Inn (12 May 2015).

Item 4 – Approval of Part 1 (public) minutes (26 March 2015)

(Annex A)

4. The Board approved Part 1 of the minutes of the meetings held on Thursday 26 March 2015.

Item 5 – Matters Arising

None.

Items 6a & b – Action points and Forward Agenda

Action points and progress (Annex B)

6. The Board noted progress on the action list.

Forward Agenda (Annex C)

7. The Board noted the forward agenda list. Vanessa Davies referred to the item on Education consultations to be discussed at the next meeting. She advised that it may be possible to organise a briefing for members about this topic immediately before the start of the Board meeting on 25 June 2015.

Item 7 – PRP Committee Report (including Year-End Performance Report)

BSB 035 (15)

8. Anne Wright commented as follows:
- the year-end performance report prompted a useful discussion at the last PRP Committee. This highlighted:
 - ❖ improved financial control demonstrated in the year-end expenditure accounts;
 - ❖ the summary of achievements (Annex 4 of the paper) and positive outcomes from service level agreements;
 - ❖ continuing concern over high staff turnover and overrun on projects;
 - ❖ the missed KPI targets for the Professional Conduct Department, particularly in relation to the Assessment Team;
 - the Committee is keen to see:
 - ❖ greater agility in managing resources and prioritising effectively;
 - ❖ improvements in forward planning that anticipate foreseeable delays and external impacts;
 - ❖ that the Annual Report highlights the BSB’s achievements as well as the lessons learned from Year End report and the action the BSB will take in this light of this.

9. Vanessa Davies commented as follows:
- the Committee provided a helpful and constructive challenge to the Executive and identified the balance that needs to be struck between the momentum for change and realistic expectations for delivery;
 - the Committee was concerned that there would be a “bow wave” of unfinished work that would impact on the 2015/16 business plan. In fact that possibility had already been taken into account and the plan adjusted accordingly;
 - in accordance with the Committee’s wishes, the performance dashboard will be amended to take account of the relative importance and scale of business plan objectives. Currently there is no “weighting” indicated;
 - there was a fall in income in 2014-15 and we shall need to improve forecasting for the future so that managers are made aware as early as possible so that they can adjust their spending.
10. The following comments were made:
- the Executive Summary of the paper is helpful and clearly sets out the key issues, particularly the need to address timeline slippage;
 - it would help to see analyses of cost / resource before projects proceed. That said, the Board itself needs to be aware of the cost implications of policy initiatives and to bear in mind the potential impact on resources and deadlines of any unplanned activities, especially when proposed at a late stage;
 - the 2015-16 budget assumes a considerable rise in income from educational and qualifications which seems hard to justify;
 - there is a concern about income shortfall across the organisation, including the Bar Council. The Finance Committee discussed this issue at its last meeting. We need to assess whether we are more vulnerable to income variation compared to other regulators given we have to maintain capability to respond to all types of qualification / education enquiries;
 - the missed KPI figures for PCD are explained with reference to staff shortages. This needs fuller explanation. Staff vacancies occur only after due notice with the consequent need for appropriate management of remaining resources.
11. In response the following comments were made:
- the income projection for qualifications is dependent on full cost recovery (FCR) proposals being reviewed and for demand not to be affected. In fact the PRP Committee has already expressed concern about the significant increases that FCR would cause. The income projections are therefore at risk and the Finance Committee has been informed;
 - a paper will be prepared on FCR for the July 2015 Board meeting. This will include comparative data on other regulators as well as the cost base of qualification / education functions;
 - the Board was put on notice of a likely fall in performance targets at the last meeting. The PCD Assessment Team lost two of its three senior staff in quick succession. This meant relying on committee members to fill the breach as only they had the knowledge and experience to undertake the task;
 - whilst KPI targets were missed, the delay in most cases was not significant. The Team is now fully staffed and it is expected that KPI figures will be on target in due course.

12. **AGREED**

- a) to note the BSB's performance against the 2014-15 business plan and the key messages from the PRP Committee;
- b) to endorse the conclusions set out in the Executive Summary and the need to improve forward planning;
- c) to note the achievements set out in Annex 4 of the paper and to endorse the comments made by the PRP Committee on the Annual Report.

**AT / VC to
note
AT to
note**

Item 8 – Proposed BSB Equality Objectives 2015-16

BSB 036 (15)

13. Rolande Anderson commented as follows:

- the publication of equality objectives is a statutory requirement under the Equality Act 2010;
- the proposed objectives link to the BSB's strategic plan and focus on:
 - ❖ learning about the effect of changes to Equality Rules;
 - ❖ data collection;
 - ❖ contributing to effective supervision work;
 - ❖ wider engagement with stakeholders.

14. A question was raised about progress on existing equality objectives (Annex 2 of the paper); in particular objective 4 concerning E&D data for Board & Committee members. In response, it is apparent that data requests have been made in the past but replies have not been comprehensively stored. Action planned following the governance review should fully resolve this issue.

15. **AGREED**

- a) to approve the transfer of completed equality objectives from the current published list to an archive list.
- b) to approve the incorporation of ongoing objectives to the 2015-16 equality objectives.
- c) to approve the four aims and eleven new objectives set out in Annex 1 for publication.

SC

**SC to
note
SC**

Item 9 – Future Bar Training – Continuing Professional Development Consultation

BSB 037 (15)

16. Bernard MacGregor highlighted the following:

- proposals for a new CPD scheme have been finalised. This moves the emphasis away from a prescriptive hours-based scheme to one that is designed by individuals around their own development needs;
- the new scheme will prioritise supervisory action but retain enforcement as a last resort;
- the proposed consultation period will run from the end of May to the end of August with a second consultation planned in early 2016;
- a pilot scheme will run in parallel;
- the new CPD scheme will be launched from January 2017.

17. The following comments were made:

- there should be several more examples included under the section "compiling learning objectives";
- the first section on reflection (immediately prior to Q4 and Q5) needs greater clarity. The individual needs to reflect on what s/he is doing differently as a result of CPD. If there is no change in behaviour or application of skills, then it begs the question of whether the training undertaken was effective;

- it is not clear whether “reflection” is meant to be an internal process for the individual alone or one involving discussion with colleagues;
- we might encourage the use of mediators to help develop plans and reflect upon performance;
- a model form was attached with an earlier version of the consultation paper but this has now been removed. It is not clear why this action was taken;
- as currently written, the document is likely to prompt questions on whether “reflection” should take place at the end of the CPD year or after each training event. This issue needs to be stated in more specific terms;
- the paragraphs in the document need to be numbered so that respondents can cross reference in their replies;
- the covering report does not reflect the concerns expressed by the Supervision Committee ie:
 - ❖ the model presupposes that an individual will discuss training requirements with a line manager. In the context of self-employed barristers in chambers, however, this is neither likely or realistic;
 - ❖ it is not clear how the minority who refuse to participate in the scheme will ever be identified or, if they are, how they will be made to comply;
- there is an obvious link between CPD and QASA. Whilst this does not need to be included in the document, it would be helpful to know how this linkage will work in practice;
- whilst we might hope for a reasonable response rate to the consultation document, we may find this is not the case – particularly as the questions seem to require in-depth replies.

18. In response, the following comments were made:

- “reflection” is primarily intended to be a personal process where an individual considers outcomes against learning objectives. It does not, however, preclude discussion with others;
- the emphasis is on self-tailoring CPD needs. A single, catch-all form is not therefore appropriate as that recalls prescription;
- there needs to be an end of year assessment of CPD objectives but the process of reflection is not just restricted to this point. It can, and may, usefully be used as an ongoing assessment tool if that is the individual’s preference;
- the CPD scheme is aimed for established practitioners only. The New Practitioners Programme will continue as now;
- it is a reasonable expectation that barristers will be able to manage their own CPD requirements and critically self-assess their needs. Moreover it is not something which we should impose as a responsibility for chambers – it is for the individual barrister to resolve;
- there will be sampling procedures in place to monitor compliance and supervisory intervention to give advice and guidance where required. Ultimately enforcement action can be taken on the grounds on non-cooperation with the regulator were it necessary.
- an unsatisfactory performance in QASA will in most cases result in specific CPD requirements which can be monitored as part of a supervisory intervention. It would not be helpful to re-ignite the QASA debate within the context of the consultation paper, however.
- a good response rate is anticipated – the questions are not as time consuming to answer as they might first appear.

19. **AGREED**
- a) to endorse the consultation document on CPD subject to the above comments concerning:
- clarification of the term “reflection”;
 - more examples of “compiling objectives”;
 - inclusion of paragraph numbers in the formatting.
- b) to consult with the profession directly regarding the new approach to CPD and that the relevant document be published by the end of May 2015.

BM / OH

BM / OH

Item 10 –Complaints Regulations: Amendment to the Professional Conduct Committee’s power to taken “no further action”

BSB 038 (15)

20. Sara Jagger confirmed that one response had been received to the above consultation from the Bar Council. The proposed amendments address existing anomalies in the Handbook regarding the powers of the Professional Conduct Committee and also change the wording of how professional misconduct is defined.

21. **AGREED**

to approve the revisions to the Complaints Regulations (Part 5, Section A of the BSB Handbook – “the Handbook”) and consequential changes to the definition of professional misconduct (Part 6, definition 166), as set out in Annexes 1 and 2 of the paper, to allow for submission to the LSB for final approval.

SJ

Item 11 – Chair’s Report on Visits and Meetings – April-May 2015

BSB 039 (15)

22. The Board **noted** the Chair’s report on visits and meetings.

Item 12 – Director General’s Report

BSB 040 (15)

23. Vanessa Davies highlighted the following:
- 22 staff members took up the offer of a formal CILEx qualification and will take their final examinations in early June.
 - the Press Officer, Eugene Grant, leaves the BSB on 22 May 2015.
24. Nicola Sawford referred to the lessons learned from the Authorisation to Practise exercise for 2015. She suggested that the main points be summarised and circulated to members for information.

AGREED

25. to note the report.
that the key points from the Authorisation to Practise exercise be circulated to the Board.

VLD / PA

Item 12 – Any Other Business

26. None.

Item 13 – Date of next meeting

27. • Thursday 25 June 2015.

Item 14 – Private Session

28. 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 – 26 March 2015 (Annex A);
- (2) Matters arising;
- (3) Action points and progress – Part 2;
- (4) Corporate Risk Register;
- (5) Updates to the BSB Regulatory Risk Framework and Index
- (6) Principles on Board consideration of consultation documents
- (7) Media handling process
- (8) Governance Restructure - update
- (9) Regulators' Summit Programme – sign off for deregulatory status report
- (10) Any other private business.

29. The meeting finished at 5.50 pm.