

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

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

Thursday 23 November 2017, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Sir Andrew Burns KCMG (Chair)
Alison Allden OBE
Rolande Anderson – items 7-14
Aidan Christie QC
Justine Davidge
Judith Farbey QC
Andrew Mitchell QC
Nicola Sawford
Anne Wright CBE
- Bar Council in attendance:** Malcolm Cree (Chief Executive, Bar Council) – items 1-9
Mark Hatcher (Special Adviser to the Chair of the Bar Council)
Andrew Walker QC (Vice Chair, Bar Council)
- By invitation:** James Wakefield (Director, COIC)
- BSB Executive in attendance:** Jake Armes (Projects and Operations Officer)
Sam Benton (Professional Support Lawyer)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Regulatory Assurance)
Jaspal Kaur-Griffin (Senior Programme Manager)
Sara Jagger (Director of Professional Conduct)
Cliodhna Judge (Head of Supervision & Authorisation)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Victoria Stec (Head of Training Supervision & Examinations)
Wilf White (Director of Communications and Public Engagement)

Item 1 – Welcome

1. The Chair welcomed Members and guests to the meeting, in particular Jaspal Kaur-Griffin who was attending her first meeting.
2. He noted that this was the last formal Board meeting to be attended by Rolande Anderson and Anne Wright, each having given six years of service. He warmly thanked them for their enormous contribution in that time both on the Board and across a number of BSB Committees and Task Completion Groups.
3. He also referred Members to a tabled press release concerning the appointment of Baroness Tessa Blackstone as the new Chair of the BSB after he steps down from this role at the end of December 2017. He expressed his sincere gratitude to the Board Members for their work during his period of office and wished his successor well for the future.

Item 2 – Apologies

4.
 - Naomi Ellenbogen QC
 - Steven Haines
 - Zoe McLeod
 - Adam Solomon
 - Anu Thompson
 - Andrew Langdon QC (Chair, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - Rebecca Forbes

Item 3 – Members’ interests and hospitality

5. Vanessa Davies made a declaration in respect of hospitality received on 10 November 2017 as a guest at the Criminal Bar Association’s Dinner for its retiring Chair.

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

6. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 26 October 2017.

Item 5 – Matters Arising

7. None.

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

8. The Board noted the updates to the action list.

Item 6b – Forward Agenda (Annex C)

9. The Board noted the forward agenda list including recent changes to items for the December Board Away Day.

Item 7 – Performance Report for Q2 (July 2017 – September 2017)

BSB 083 (17)

10. Anne Wright highlighted the following:
 - the overall picture on performance is encouraging with most of the current business projects running to time;
 - of those off target, some are out of the control of the BSB eg the delivery of the s69 order which is delayed pending Parliamentary approval;
 - a significant amount of progress has been made on the Future Bar Training (FBT) programme;
 - expenditure levels are projected to be on budget by year-end and there has been a substantial increase in income from BPTC fees (student numbers have risen unexpectedly).
11. Regarding the latter point, the PRP Committee now recommends that the current budget bid be amended so that projected income is set at £720k (from £500k). This will be for 2018/19 financial year only. The Committee expects BPTC income to fall in subsequent years.
12. She also commented as follows:
 - the Authorisation Team has consistently missed the target for its first operating performance indicator on application turnaround. The Committee discussed this at length but decided not to amend the KPIs as performance may well improve in the light of ongoing efforts to clear backlogs and cross-skill staff within the team;
 - overall staff turnover has fallen to 18% (voluntary turnover is now 11%);
 - work is ongoing to revise Service Level Agreements with Resource Group Departments and the underlying principles that will govern these.

13. She stated that Steven Haines has been appointed as the new Chair of the PRP Committee with effect from January 2018. She also thanked current committee members and the staff involved for the support she had received during her period of office.
14. In response to a question about the use of the income budget surplus (cf min 10 above), Vanessa Davies confirmed that this will be ring fenced for regulatory purposes, most likely in relation to the FBT project.
15. **AGREED**
- a) to note the report.
- b) that the provision for non-PCF income for the 2018-19 budget be increased to £720k.

VLD

Item 8 – Education and Training Committee: Annual Report for 2016-17
BSB 084 (17)

16. Justine Davidge commented as follows:
- the paper covers a two-year period as the last formal report to the Board covered work undertaken during 2015;
 - the Committee has been reduced in size but is operating effectively and overseeing considerable change in the education and training of barristers;
 - it was due to be disestablished in the near future but, for the reasons identified in paragraph 15 of the report, this should be reconsidered. An extension to at least September 2018 is proposed at which point the position can be reviewed again.
17. Victoria Stec highlighted the key activities identified in the report eg:
- development of the Professional Statement;
 - introduction of the new CPD scheme;
 - changes to the assessment format of some examinations;
 - the Curriculum and Assessments review and the redraft of the BPTC Handbook;
 - the commencement of the pupillage pilot scheme;
 - the consultations on the Future Bar Training programme.
18. She also made the following points:
- the higher number of BPTC students is probably due to:
 - an increase in the number of validated places at the Bristol and Cardiff centres;
 - an apparent decision by students to apply for the course now prior to the implementation of changes to the qualification route;
 - the next phase of work for the Committee will focus on the delivery of the new rules for qualification.
19. Members commented as follows:
- the paper is well written and comprehensively summarises the recent work of the Committee;
 - the proposed extension to the life of the Committee is sensible and should be approved.
 - there may be some lessons to learn from the work of the E&D Committee prior to its disestablishment ie how it reviewed its various workstreams and agreed how they would be managed for the future;
 - it is unfortunate that an Annual Report was not produced in 2016 as a regular reporting cycle is integral to good governance;

20. In response to the latter point, the following comments were made:
- the Annual Report should have been included in the handover between staff and the departing Director of Education and Training last year (which coincided with other staff changes in the Department). This did not occur, however, which was a regrettable oversight;
 - notwithstanding this, Members remained informed about progress during the year through monthly updates in the Director General's report to the Board.

AGREED

21. a) to note the report.
b) that the Education and Training Committee remain extant until at least the end of September 2018, at which point its status be reconsidered. **RF / VS to note**

Item 9 – Review of the standard of proof applied in professional misconduct proceedings

BSB 085 (17)

22. The Board received tabled papers with comments from the following Board Members:
- Zoe Macleod;
 - Anu Thompson;
 - Naomi Ellenbogen QC;
 - Adam Solomon.
23. The first two submissions fully supported the proposal to change the standard of proof to the civil standard (from the criminal standard). The latter two were also supportive but made the following points:
- notwithstanding that the change should occur, there is a risk that a barrister and solicitor facing the same charge could be tried to a different standard of proof (given the Solicitors Disciplinary Tribunal - SDT uses the criminal standard);
 - the paper notes that the Royal College of Veterinary Surgeons (RCVS) currently retains the criminal standard of proof but does not give the rationale for this or state whether any discussion to change this had taken place;
 - the paper asserts there will be no equality impact from the proposed change but this may be debateable;
 - some of the consultation feedback suggested that the change could prompt an increase in unmeritorious complaints. We need to be sure that our procedures are sufficiently robust, particularly as more decision-making powers have been delegated to staff;
 - the date from which cases will be assessed against the new standard needs clarification.

Note: the tabled papers included replies from the Executive on these points but were also addressed in the subsequent comments from Members (see below). Regarding the RCVS, the Executive stated that the criminal standard of proof had been used since the enactment of the Veterinary Surgeons Act (1966) but there had been no consultation on this issue since that time.

24. Members commented as follows:
- there is a compelling public interest case that supports the change in the standard of proof. This is true in other regulatory arenas eg medical and financial where the civil standard already applies;

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- the paper suggests an implementation plan ie effective from 1 April 2019 and in respect of conduct that takes place on or after that date. This should be endorsed;
- we need to ensure that any regulations governing the incoming Independent Decision Making Body (IDMB) appropriately converge with the implementation of changes to the standard of proof;
- if we are convinced of the legitimacy of the policy change, then we should proceed regardless of the views of the SDT;
- we already have robust procedures in place to assess incoming complaints in a fair and consistent manner. This will not alter even if the standard of proof is changed so we can reassure the profession on this point. Moreover, the potential impact on volume may be overstated because aggrieved litigants tend to be sufficiently self-motivated to proceed with complaints regardless;
- the point about equality impact is relevant and we should ensure that effective monitoring processes are in place;
- the consultation responses show that the Bar is evenly split on this matter and we need to appreciate the concerns expressed. The profession is unique in that a practitioner's first duty is to the Court rather than the client and this is not well understood by the public;
- the stakeholder viewpoints referenced in the summary of responses document (Annex A) need clarification. For example, the Bar Council's response reflects different strands of opinion among the profession and this needs to be made clear in the comments quoted.

25. **AGREED**

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|----|--|-------------------|
| a) | to make an application to the Legal Services Board to change the BSB's regulatory arrangements such that the civil standard of proof should be applied to professional misconduct allegations. | SJ |
| b) | that this application should proceed independently of the Solicitors' Disciplinary Tribunal. | SJ to note |
| c) | that the summary of responses document be revised to make clear how differing strands of opinion are reflected in the response from the same, individual stakeholder. | SJ |
| d) | to introduce the civil standard of proof with effect from 1 April 2019 and for it to apply to conduct that takes place on or after this date. | SJ to note |

Item 10 – Chair's Report on Visits and Meetings: November 2017
BSB 086 (17)

26. **AGREED**

to note the report.

Item 11 – Director General's Report
BSB 087 (17)

27. Vanessa Davies referred to the consultation roadshows on the CMA transparency recommendations and the BSB's Future Bar Training programme, both currently underway. She stated that:
- the early London based events were successful with very helpful feedback received from the delegates who attended;
 - the roadshows will now take place in other parts of England and Wales and we would welcome help to increase the number of registrations for these.

28. She also expressed her profound thanks for the leadership and support for staff provided by Sir Andrew Burns during his time as BSB Chair. Aidan Christie QC spoke on behalf of the Board and applauded Sir Andrew for his good humour, courtesy and the commitment he brought to the role.
29. In response, Sir Andrew extolled the contribution of the Board in overseeing the radical changes to the BSB's governance arrangements which have made it a much more efficient and effective organisation.

AGREED

30. to note the report.

Item 12 – Any Other Business

31. None.

Item 13 – Date of next meetings

32. Thursday 7 December 2017 (Away Day).
Thursday 25 January 2018 (Board Meeting).

Item 14 – Private Session

33. The following motion, proposed by the Chair and duly seconded, was agreed. That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 26 October 2017
 - (2) Matters arising
 - (3) Action points and progress – Part 2
 - (4) Delegation of Handbook Powers (Papers A & B)
 - (5) Regulatory Risk Update
 - (6) Women at the Bar Research – Interim Findings
 - (7) Corporate Risk Register
 - (8) Regulatory Operations Programme Update
 - (9) LSB consultation – Reviewing the Internal Governance Rules
 - (10) Any other private business
 - (11) Review of the Board meeting in terms of conduct and outcomes.
34. The meeting finished at 5.25 pm.