

Regulatory Update – May 2015 edition

Future Bar Training Update

We recently published a new pamphlet, which outlined in greater detail our vision for reforming legal education and training as part of our Future Bar Training programme: (<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/get-involved/>). The key idea animating this pamphlet is that of establishing a Professional Statement: (<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/professional-statement/>) that clearly sets out what a barrister needs to be able to do from “day one” in practice. You may have read about it in our recent press release: (<https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/%E2%80%9Cprofessional-statement%E2%80%9D-could-be-the-key-to-unlocking-flexible-routes-to-the-bar.-says-regulator/>)

We hope that by clearly describing the knowledge, skills and attributes all barristers should have when being issued a full practising certificate, we can put in place measures which facilitate routes to qualification that are more flexible, creative and affordable.

But we cannot do this alone. We are currently consulting on plans: (https://www.barstandardsboard.org.uk/media/1661549/professional_statement_consultation.pdf) to create a Professional Statement and we would appreciate your help. Please take a look, get involved, and share your experience and expertise.

This is just the beginning. Once we have a defined destination we can then see how we can help carve out new routes to the Bar.

So, in summer we will consult on our ideas for the future of all three phases of training: the academic stage, the Bar Professional Training Course, and pupillage. With your insight and ideas we can together make sure that legal education and training is fit for future generations.

Licensing Authority Application

We have recently submitted our application to the Legal Services Board (LSB) to become a licensing authority for organisations that include non-lawyers as owners or managers – known as “alternative business structures” (ABSs). If we are successful it will mean that barristers will be able to join non-lawyers in a business or entity and continue to be regulated by us. We see this as an important step in giving barristers greater flexibility in the way that they provide legal services and in opening up the market to greater choice for consumers.

You can read our full application on the LSB’s website: http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/current_designation_applications.htm.

We would like your views on our consultation to extend and strengthen our powers

We have launched an open consultation: <https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/> in which we set out our plans to extend and strengthen our powers so that we can carry out our regulatory duties more effectively and efficiently. Some of these new powers relate to the regulation of entities, but others will potentially apply to the whole Bar.

It is our mission as the barristers' regulator to regulate the Bar so as to promote high standards of practice and safeguard clients. It is our job to protect the public and promote the interests of those who rely upon barristers and their services.

To do this job properly, we believe that in rare instances of serious failure to comply with regulatory requirements, dishonesty, insolvency, or where it is otherwise necessary to protect clients' interests, we should have statutory powers to take control of client money and client files in order to obtain alternative representation for clients and secure any papers and assets that belong to them. We envisage that such functions would be used in exceptional circumstances, but we think that they may be necessary to protect the interests of clients. Other regulators already have similar controls so we think it is fair to ensure that consumers have consistent levels of protection across different regulatory regimes.

We are also seeking statutory powers to:

- Establish, and require contributions to, a compensation fund or similar arrangement (although we do not think that such a fund is necessary at the moment);
- Require disclosure of information or documents to the regulator; and
- Place on a statutory footing our power to disqualify any individual from being employed by a business or person that comes under our regulatory remit.

For entities only, we are seeking to place on a statutory footing our power to discipline non-barristers (including entities, their owners and managers) and to permit the BSB to provide for an appeal to the General Regulatory Chamber of the First Tier Tribunal in relation to entity authorisation decisions.

You can read about our proposals in more detail on our website:

<https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/>. Our consultation will remain open until 31 July 2015.

Sir Andrew's blog

A few weeks ago we published our 2015/16 Business Plan.

This outlines the key things we will start doing, and have already started doing in this new financial year.

More than that, it sets out the actions we will take as part of our third and final push towards the goals we set for ourselves back in 2013 as part of our current Strategic Plan. Over the coming months we will be mapping out a fresh destination – to be reached in 2019 – and how we plan to get there. I have no doubt we will need your help and so we will be in touch later in the year to share with you some of our ideas.

But for now, I thought it useful to provide a snapshot of just some of the things we will be working on over the coming months.

You can, of course, read the full 2015/16 Business Plan on our website:

https://www.barstandardsboard.org.uk/media/1658569/bsb_business_plan_2015-16.pdf, if you wish, but I will sketch out some of its highlights below:

- We want to become a licensing authority for barrister-led businesses with non-lawyers as owners – otherwise known as ABSs. We are now authorising entities and so this will be the latest effort in our endeavours to encourage new business models to emerge and thrive and so increase client choice.

- Our ambitious programme of reform to legal education and training – Future Bar Training programme – will gather pace over the coming months. We want to make sure regulation does not impede training the next generation of barristers in the best possible way. Thank you to all of you who have been involved so far.
- We will review the way in which we regulate immigration advice and services. As many of you know, those seeking immigration and asylum advice are often especially vulnerable – particularly now that recent legislative changes are showing their full impact.
- We will revise our governance structures to ensure we do the job we need to do as efficiently as possible – to make sure the way in which we make decisions does not mean unnecessary complexity, cost, or delay. And we will strive to make our limited resources work most effectively in our efforts to safeguard clients.

But this will also be a year of reflection, as well as reform:

- We will review our approach to Public Access and the impact of certain aspects of the new Handbook, introduced in January 2014.
- We will reassess our new enforcement strategy and develop further an authorisation and supervision regime for BSB-regulated entities.
- We will evaluate the operation of the Bar Course Aptitude Test and re-examine the Academic and Professional Stages of qualifying as a barrister.

Clearly, there is much to do and I am looking forward to leading the BSB through the next phase of our journey.

Medium impact supervision returns: what happens next?

In April 2014, all chambers were asked to complete an Impact Audit Survey. This survey sought to measure the potential impact of a range of risks should they materialise at a chambers. Based on the answers given to the Impact Audit Survey, each chambers was grouped into one of three categories: Low Impact, Medium Impact and High Impact.

If you were assessed as Medium Impact last April, you will shortly be hearing from the Supervision Team at the BSB. All Medium Impact chambers will be asked to complete a supervision return which will assess them as Low, Medium or High risk. The supervision return will be asking a series of open questions about how chambers are administered and regulatory compliance is achieved. Essentially, this is an opportunity for chambers to explain how effectively potential risks are being managed, to help the BSB determine the likelihood of these risks actually materialising and to establish the level of supervision and support that chambers might need.

Chambers that are seen to be managing risks effectively – categorised as Low Risk - will largely be left to "get on with it" and receive relatively little supervision attention. This will leave the BSB free to work with those chambers that seem to be managing risk less effectively – categorised as Medium or High Risk - to address these issues without needing to resort to enforcement action.

If you have any further questions, feel free to get in contact with us:

supervision@barstandardsboard.org.uk.

If you'd like to find out more about the role which Supervision plays at the BSB, please consult the Supervision pages of our website

[\(https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/\)](https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/).

Consultation: Insurance Requirements for Single-Person Entities

We are currently consulting on insurance requirements for single-person entities:

https://www.barstandardsboard.org.uk/media/1662760/consultation_paper_on_insurance_requirements_for_single_person_entities_-_pdf_-_final.pdf). A single-person entity is a company which comprises just one barrister who both owns and manages that entity. The consultation discusses whether single-person entities should be required to purchase their primary layer of professional indemnity insurance from a single provider – the Bar Mutual Indemnity Fund (BMIF) – or should continue to be allowed to purchase their insurance on the open market.

The consultation also considers the consequences that allowing single-person entities to purchase their primary layer of insurance on the open market might have for the viability of BMIF, and for the availability and cost of professional indemnity insurance for barristers as a whole. The scope of the consultation is limited to single-person entities and does not extend to multi-person entities at this stage.

The consultation can be found on our website:

https://www.barstandardsboard.org.uk/media/1662760/consultation_paper_on_insurance_requirements_for_single_person_entities_-_pdf_-_final.pdf). Responses should be sent to our Regulatory Policy Department via regulatorypolicy@barstandardsboard.org.uk, by no later than 30 June 2015.

Equality and Diversity Guidance for Entities

We have published tailored supporting information on the BSB Handbook Equality Rules for entities. It provides all BSB authorised bodies with guidance on how they can meet their legal and regulatory duties, and follow best practice in equality and diversity. You can read the full guidance on our website:

https://www.barstandardsboard.org.uk/media/1664178/bsb_equality_rules_for_bsb_authorised_bodies_2015.pdf.

For further information on becoming authorised as an entity, please visit the For Prospective Entities (<https://www.barstandardsboard.org.uk/regulatory-requirements/for-prospective-entities/entity-authorisation-application-process/>) section of our website, which includes details on how to apply.

Important Reminder – Public Access Training: Five Months to Go!

Were you registered to undertake Public Access work prior to October 2013? If so, you must complete top-up training by **4 October 2015** or cease to undertake Public Access work.

More information on the training providers (including their contact details) is available on our website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/public-access/>

BSB Handbook, second edition

We have now published the second edition of our Handbook. The updated version includes new rules relating to entities. This is available to download from our website:

<https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/>

Useful links: FBT get involved

<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/get-involved/>

Give us your feedback

If you have any thoughts about how we can improve the Regulatory Update or what content you would like to read, please email contactus@barstandardsboard.org.uk.

Have we got correct details of your primary practice address?

We would like to remind all barristers to ensure that you have informed us of your correct primary practice address in accordance with rS69 of our Handbook. If your practice address changes, please inform our Records Department within 28 days.

Please let us know (<mailto:records@barcouncil.org.uk>) about any changes to your contact and practising details so that we can work together to maintain accurate records as per the requirements set out within our Handbook (rC64.1).