

BAR STANDARDS BOARD

REGULATING BARRISTERS

Regulatory Update – November 2015 edition

News

Publication of the Professional Statement

We have published a Professional Statement which describes the knowledge, skills and attributes that a newly qualified barrister should have when issued with a Full Practising Certificate.

The Statement provides a high level indication of the characteristics needed to be a barrister. More detailed “threshold standards” will be developed based on the statement and will be consulted on in early 2016.

Using a Professional Statement to define what a newly authorised barrister should be able to do from ‘day one’ of practice – the point of being issued a full practising certificate – could be the key to making qualification routes to the Bar more flexible and innovative.

The Professional Statement is an essential part of our [Future Bar Training programme](https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/) <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/> which was launched in 2014. The Statement applies to all areas of practice and comprises four elements:

- barristers’ distinctive characteristics;
- personal values and standards;
- working with others; and
- management of practice.

We hope the Statement will allow for more freedom in the ways in which formal Bar training and pupillage are delivered.

The Statement has been developed following comprehensive and active consultation with members of the Bar, consumer panels and other interested parties.

You can read the Professional Statement on our website:

https://www.barstandardsboard.org.uk/media/1707496/bsb_professional_statement_2015.pdf

High-impact supervision returns report

Last month we published our high impact supervision returns report

https://www.barstandardsboard.org.uk/media/1707974/2015_10_supervision_report_high_impact_themes_comms.pdf. In 2014, we assessed all chambers for “impact” (that is, how serious the consequences would be if something were to go wrong within the chambers) and rated them as either “high”, “medium” or “low”.

Most of the 170 barristers' chambers which we rated as "high impact" embraced the opportunity to tell us how they operate. Thanks to their help and engagement, we were able to examine what they do in more detail. It is worth noting that the vast majority of barristers are operating out of, for the most part, effective and well-run chambers.

Where there is room for improvement, our Supervision Team is working constructively with the chambers to make changes. We now have the information needed to help manage risks to chambers' clients appropriately.

Of the 170 chambers we assessed as being a "high impact", we only assessed 16 as having a "high risk" of something *actually* going wrong. We have visited those chambers.

Overall, chambers felt that engaging in the supervision returns was worthwhile because it gave them the opportunity to review and improve their internal processes. Importantly, it provided an opportunity for them to get to know us and to understand better our approach to regulation.

Our supervision process is about facilitating a constructive relationship with chambers. We hope to maintain a healthy dialogue.

QASA Consultation

Earlier this month, as part of the Joint Advocacy Group (JAG – comprised of the BSB, the Solicitors Regulation Authority (SRA) and CILEx Regulation), we launched a new consultation in preparation for the implementation of the Quality Assurance Scheme for Advocates (QASA).

The consultation is the first phase of the implementation of the Scheme following the decision by the Supreme Court in June that the Scheme is lawful.

The consultation seeks views on the following technical changes to the Scheme:

1. Amendment to the Criminal Advocacy Evaluation Form (CAEF) to require an advocate to identify when they were first instructed.
2. Amendment to the CAEF to require an advocate to identify whether advice on evidence was provided.
3. An amendment to the Scheme Handbook to permit a Judge to decline to carry out an evaluation if they believe, because of the circumstances, it would not be fair to do so. In that event, the evaluation would be made at the next trial.
4. An amendment to the Scheme Handbook to provide that, in the event of a third judicial evaluation becoming necessary, it should be of the first trial conducted by the advocate in front of a different Judge to either of the Judges who conducted the first two assessments.
5. Removal of some areas of ambiguity from the Scheme's written material.
6. Clarification of BSB and SRA QASA rules in relation to appeals.

For further information about the consultation, including how to respond, please visit our website: <https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/>

The Consultation period ends on 24 December.

Public access top-up training deadline what next?

The deadline for barristers registered to undertake Public Access work on 4 October 2013 to complete the top-up Public Access training was **4 November 2015**. Barristers who did not undertake the top-up training by this deadline are not permitted to accept new public access instructions until they have completed the full public access training.

We have appointed the Bar Council, Barristers Direct and HJT Training to provide the training. The contact details of the training providers are as follows:

Bar Council: 020 7242 0082, PAenquiry@BarCouncil.org.uk or <http://www.barcouncil.org.uk/supporting-the-bar/member-services-training-courses/>

Barristers Direct: 020 7822 7000, lc@barristersdirect.co.uk or <http://barristersdirect.co.uk/home/training.asp>

HJT Training: 020 3405 2942, enquiries@hjt-training.co.uk or <http://www.hjt-training.co.uk/public-access>

You and your regulator

Blog: Monthly message from our Chair Sir Andrew Burns KCMG

October was certainly a busy month for the BSB. The Bar Conference and Young Bar Conference was held on Saturday, 17 October and I chaired the BSB session “You cannot be serious!” about serious misconduct at the Bar and the fair allocation of work. Fellow board members Naomi Ellenbogen QC and Aidan Christie QC led a lively discussion focussed on a case study which got many members of the Bar talking and tweeting. Regulatory Policy Director Ewen MacLeod and Policy Manager Amit Popit led a presentation about the fair allocation of work and equality and access to justice issues. We had some excellent contributions from those present about how to address allocation issues within chambers.

Of course, we also had our display stand where many members of the Bar engaged with us about topical issues, such as our latest consultations. We had directors Amanda Thompson and Ewen on hand to answer your questions about dual practising certificates, public access, the BSB Handbook and more. It was a great opportunity for our team to speak to so many delegates.

We published our long-awaited Professional Statement last month, which ties in with our Future Bar Training consultation which has now closed. We look forward to considering your responses to the consultation and potentially making sweeping reforms to ensure a newly qualified barrister meets the requirements of the Professional Statement.

We also recently published our report on the High Impact Supervision Returns. It tells us that the majority of chambers which are “high impact” (that is, the potential impact of something going wrong at, say, chambers which primarily deal with vulnerable lay clients) are actually

doing a great job and cooperating well with their regulator. See what Supervision Director Oliver Hanmer had to say about it in his blog on Legal Futures:
<http://www.legalfutures.co.uk/blog/what-risk-based-supervision-at-the-bar-means-for-you>.

We hope you enjoy this edition of the Regulatory Update and if there are consultations about which you have knowledge and opinions, we need to hear them. We have the consultation about the employed Bar open now, so please do not hesitate to be in touch if this issue affects you.

Recruitment of Vice Chair of the BSB

We are advertising for a new Vice Chair of the BSB to replace Patricia Robertson QC who is stepping down from that role at the end of this year. If you are interested in applying for the position, visit our website <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/the-bsb-is-recruiting-a-new-vice-chair/> for full details before 9 November.

Risks to the public interest and rule of law: how you can help us

As outlined in Sir Andrew's speech on 5 October <https://www.barstandardsboard.org.uk/media-centre/speeches/bsb-chair-sir-andrew-burns-sets-his-vision-for-the-future-of-the-bar-regulator/>, as part of our new approach we are focusing on three key areas where we have identified not just straightforward compliance risks, but possible problems in our market. We are working to understand what can be done in these areas to improve access to justice and better support the rule of law.

Our themes are:

- **Meeting consumer needs**
The legal market is complex to navigate, and funding is squeezed: many struggle to find a suitable advisor or representative to meet their particular needs. How can the Bar be an effective part of the solution, and be catering for the needs of those consumers who may be in particularly vulnerable circumstances? Do you have examples of good practice to share? Get in touch.
- **Promoting diversity and anti-discriminatory cultural practices**
We want to better understand the true scale of issues faced by different groups within the profession and amongst consumers. Get in touch if you have insights to share. We are looking at tangible ways the profession can take action. Also look out for more on communicating effectively across cultural boundaries.
- **Responding to economic pressures on providers**
How are funding changes and commercial strain impacting your practice? These are difficult times for many and we are looking to understand more about how, why, and when practitioners are responding. We will be putting out a call for barristers from a range of practice areas and locations around the country to speak to us on a no-names basis to feed into development of our Risk Outlook 2016. Please do let us know if you would like to share your experience to help us build a rounded picture of the issues, via contactus@barstandardsboard.org.uk

You can contact our Risk team at: contactus@barstandardsboard.org.uk

For more information, visit our website <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/risk-based-regulation/>.

BSB Handbook Explained – Barristers who are also qualified as solicitors

Are you a barrister who is also qualified as a solicitor and wondering whether you can practise as both?

It is not currently permitted to hold a barrister's and a solicitor's practising certificate at the same time. Rule S43 of the BSB Handbook states that "If you are authorised by another *Approved Regulator* to carry on a *reserved legal activity* and currently permitted to *practise* by that *Approved Regulator*, you must not *practise* as a *barrister* and you are not eligible for a *practising certificate*." If you are qualified as both a barrister and solicitor, you must therefore make a choice about which capacity you wish to practise in.

If you are a barrister who is switching to practise in an authorised non-BSB body such as a law firm, you will need to obtain an amended practising certificate from our Records Office records@barcouncil.org.uk.

Have we got correct details of your primary practice address?

Please ensure that you have informed us of your correct primary practice address in accordance with rS69 of our Handbook. If your practice address changes, you must inform our Records Department within 28 days.

Your views matter

Employed barristers consultation

We are seeking to broaden the definition of employment for barristers working in-house https://www.barstandardsboard.org.uk/media/1703338/consultation_document_-_changing_definition_of_employed_barrister_151015.docx.pdf for organisations that are not authorised law firms, in our new consultation.

This will give more flexibility for barristers and their employers, allowing them to work through agencies or other corporate vehicles.

The current "scope of practice" rules do not permit some of the more flexible working practices that are becoming commonplace. This includes temporary or locum work, and other arrangements where the employer's preference is to contract with an entity or agency for the provision of in-house services.

Barristers who wish to work in this way are currently required to seek a waiver from us.

For example, if an employed barrister wished to work for a non-authorised body (for example, a local authority, a large corporate body or a charity), it may not be possible for them always to be employed directly by that non-authorised body, as it is now common practice for such bodies to procure "in-house" services through agencies.

Barristers may also wish to provide consultancy services through companies wholly owned and directed by them (although the company itself would not be held out as providing legal services) with a contract for services in place between the company and the end user of legal services.

The plan is to change the definition of “employed barrister (non-authorised body)” so as to remove unnecessary restrictions on the way in which employed barristers can practise.

This is the first step in a wider review of scope of practice restrictions.

If you believe you may be affected by the current arrangements, please do not hesitate to get in touch with our Regulatory Policy Department via regulatorypolicy@barstandardsboard.org.uk.

You can read the full consultation paper on our website: https://www.barstandardsboard.org.uk/media/1703338/consultation_document_-_changing_definition_of_employed_barrister_151015.docx.pdf. It closes on 15 December at 5pm.

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.

Please let us know (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).