

# BAR STANDARDS BOARD

REGULATING BARRISTERS

## Regulatory Update – December 2015 edition

News

### **Youth Court Advocacy Review findings published**

We have published the results of our review into advocacy standards in youth court proceedings which we commissioned alongside CILEx Regulation:

<https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

Whilst recognising that there were examples of good practice amongst advocates appearing in youth court proceedings, the report found that the overall quality of advocacy was “highly variable”.

Although the report was commissioned to gather evidence about advocacy standards, it clearly found that the reason for the mixed quality standards is at least partly linked to systemic problems with the way in which youth justice is administered. Such problems include – but are not limited to – the time pressure on advocates brought about by legal aid reform.

With this in mind, we have called for a collaborative response to the issues raised in our review. We have called on all parties including the Ministry of Justice and the Youth Justice Board, to work alongside us to address the issues highlighted.

We are also going to consider what we – as the regulator acting in the public interest – can do to address the issue of advocacy standards amongst those working with young offenders.

It is important to stress that we have made no firm decisions yet about what regulatory action we and the other regulators should take in response to the report’s findings. However, we have accepted in principle the recommendations set out in the report. These include ways to improve specialist training for all advocates appearing in the youth courts. You can read the full report on our website:

<https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

### **Future Bar Training: Future of Education and Training for the Bar consultation closes**

The consultation on the future of education and training for the Bar closed on Friday 30 October. We received a good response from a range of individuals and organisations, including practising barristers and legal academics.

The consultation considered the strengths and weaknesses of the current academic (law degree or conversion course), vocational (Bar Professional Training Course (BPTC) and professional requirements of training which must be met to become a barrister.

All submissions will be carefully considered in the development of our proposals, and we will publish a summary of consultation responses early in 2016. A further consultation will set out our detailed proposals, late in 2016.

For more information about Future Bar Training visit our website: <https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/future-bar-training/>. Earlier this month, we announced important developments in the 2016 BPTC: <https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bar-regulator-announces-important-developments-in-the-2016-bar-professional-training-course/>

## **Research into public access**

In partnership with the Legal Services Board (LSB) we are commissioning research into the provision of public access work by barristers. The aim of the research is to provide an overview of the services being provided in this way by the Bar and to learn about the perceptions of barristers in relation to the current regulatory arrangements. We are also interested in hearing perspectives about the impact of these schemes on clients and the regulatory objectives more broadly.

The research will be a key source of evidence for both the LSB's market evaluation exercise, due for publication next year, and our ongoing review of our public and licensed access rules. We have appointed Pye Tait Consulting and they will be conducting online and telephone surveys during December and January followed by a smaller number of in-depth interviews. It is intended that a final report will be produced by around March 2016.

## **Public Access**

Were you registered to undertake Public Access work prior to October 2013, but did not complete a top-up training course by 4 November 2015?

Rule C120.2 of our Handbook states that barristers registered to undertake Public Access work prior to October 2013 were required to complete a top-up training course by 4 October 2015, or cease to undertake Public Access work. This deadline was extended until 4 November 2015. **If you did not complete a top-up training course by 4 November 2015, you will be removed from the register of barristers who can undertake Public Access work in due course.**

You may continue to act for Public Access clients whose instructions you accepted on or prior to 4 November 2015. However, you must not accept new Public Access instructions before completing or obtaining a waiver from the full training course. If you do not complete or obtain a waiver from the full training course and accept new Public Access instructions, you could be subject to disciplinary action.

We appointed the Bar Council, Barristers Direct and HJT Training to provide the training. The contact details of the training providers are available on our website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/public-access/>.

You may be eligible for a waiver from the training, but you must apply for this. You are most likely to be eligible for a waiver if you can demonstrate extensive experience of undertaking Public Access work and legal aid cases involving vulnerable clients, and the associated knowledge and understanding required. Applications may take up to eight weeks to be processed. The waiver application form, and the criteria and guidelines for waiver applications, are available on our website: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/public-access/>

## **Changes to the provision of the Forensic Accounting Course**

During pupillage, all pupils must attend certain compulsory courses including the Forensic Accounting Course. The Pupillage Handbook 2015 states that 'the Forensic Accounting Course must be undertaken *either* in pupillage *or* within the first three years of practice'.

Currently, the Forensic Accounting Course is provided by BPP Professional Education and is delivered as a (consecutive) two day attendance-based training course offered in five set locations. We are now making changes to the format and delivery of the course, which will be delivered online from 2016.

The current face-to-face, attendance-based course will cease in December 2015, to make way for a more flexible approach to training, designed to be more affordable and accessible.

Further details can be found on our website:

<https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/pupillage/training-during-pupillage/>.

## **Women's experiences at the Bar**

In January 2016 we will be launching a survey focused on women's experiences of our Equality Rules. This is part of an ongoing effort to address gender inequality faced by women at the Bar. This research will help us understand any perceived barriers to women's progression and retention, and it will be used to inform future regulation of the Bar.

*You and your regulator*

## **Blog: Monthly message from our Chair Sir Andrew Burns KCMG**

As we approach the end of the year, we have been thinking hard about our future governance.

Last month we published details of the new structure, which we plan to put in place over the coming months. We believe that these changes, which will more clearly distinguish between policy development and decision-making in individual cases, will strengthen public confidence in our independence and our ability to regulate the profession to a consistently high standard.

Many decisions currently reserved at Committee level will be devolved to our knowledgeable and professional staff. This should speed up case work and policy development and increase our adaptability and ability to respond to new regulatory demands. The new arrangements are aimed at ensuring that we are a robust, independent, dependable and optimally-resourced organisation with a clear separation between policy and implementation.

The governance structure is going to look quite different when the changes are completed in eighteen months' time or so. Eventually only two permanent committees will remain: one focusing on finance and performance and one focusing on risk and assurance. But we shall be setting up new arrangements for drawing on expert legal and lay advice. You can read more about our governance changes on our website:

<https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bar-standards-board-announces-new-governance-structure/>.

At our away day on 17 December my fellow Board members and I will be discussing the implications for the Board itself and how we might best equip ourselves for the future. Members of the Legal Services Consumer Panel are coming for part of the day to help us think harder about the consumers of the legal services which barristers provide and their perspective. This will lead into discussions about our Strategic Plan for 2016-19.

Lastly, I wish to express our warmest thanks to Patricia Robertson QC, who steps down as our Vice Chair at the end of this month. She has served six years on the Bar Standards Board and we are all hugely indebted to her for the dedication, wide experience and intellectual rigour she has brought to our deliberations. I also extend my thanks to Sam Stein QC who leaves us at the same time. Sam has brought important expertise in publicly funded criminal practice to the Board and has over the last six years helped develop many aspects of our supervision activity.

These changes mean we shall also be welcoming new members to the Board. Judith Farbey QC joins in January as Sam's replacement. We are in the process of recruiting a new Vice Chair. We invited a strong short-list for interview and will be announcing Patricia's successor later this month.

### **Committee members wanted at the BSB**

We are seeking new members for two of our Committees.

We need:

- Barrister members for the Professional Conduct Committee; and
- Barrister members for the Qualifications Committee.

We would welcome barristers from any practice area, with expertise in crime, family and equality and diversity areas of practice particularly welcome.

The organisation

As the independent regulator for barristers in England and Wales, the BSB is responsible for setting the education, training and conduct requirements for being a barrister; handling complaints and disciplinary matters and assuring the quality of the profession.

We are going through a period of change, having recently reviewed its governance arrangements in relation to many of its committees. The Professional Conduct and Qualifications Committees are also under review, which may result in changes to how the committees operate. Appointments will therefore be for an initial period of up to two years.

Meetings will take place in London, but some UK travel may be necessary.

For more information and to apply please visit the About Us section of our website: <http://www.barstandards.board.org.uk/>. Candidates are required to apply online; however, if you have a disability or for any other good reason are seeking a reasonable adjustment to the recruitment process, please contact us to make arrangements. Closing date for applications: 9am Monday 11 January 2016.

### **BSB Handbook Explained**

Are you a practising barrister who has not worked with a "qualified person" for three years?

If so, you are probably under three “years’ standing” and the three year rule (rS20 – rS22 in the BSB Handbook) applies to you. This means that you must have an appropriate “qualified person” to undertake each of the following activities:

- Exercising rights of audience;
- Supplying legal services to the public;
- Conducting litigation; and/or
- Undertaking Public Access work (rC121.1 in the BSB Handbook).

The same person may act as a “qualified person” for different activities, as long as they meet the requirements set out for each in the Handbook at rS22. You must have the appropriate “qualified person(s)” at your main place of practice or (if you are practising in a dual capacity, i.e. both self-employed and employed) each of your main places of practice. Your “qualified person(s)” must be readily available to provide guidance to you.

If you are an employed barrister in a non-authorized body and you are only exercising rights of audience or conducting litigation for those persons listed at rS39.1 - .6 of the BSB Handbook, you will only require a “qualified person” if you are under one year’s standing.

You must inform the Bar Council Records Office of any changes to your “qualified person(s)”.

If you wish to apply for a waiver from the three year rule, please contact the BSB Qualifications Team: [qualifications@barstandardsboard.org.uk](mailto:qualifications@barstandardsboard.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 considering expanding the definition of “employed barrister non-authorized body” to allow barristers to work through agencies or corporate vehicles. The current scope of practice rules prevent this, and the purpose of the proposal to change the definition is to ensure that we are not putting unnecessary restrictions on the way in which employed barristers can practise.

We welcome views on the proposal to change the definition and any risks that may be associated with this.

**The consultation closes on 15 December. To respond, please visit our website:**

[https://www.barstandardsboard.org.uk/media/1647662/150211\\_-\\_nfa\\_-\\_consultation\\_paper\\_-\\_final\\_pdf.pdf](https://www.barstandardsboard.org.uk/media/1647662/150211_-_nfa_-_consultation_paper_-_final_pdf.pdf).

### **QASA Consultation**

The consultation on the Quality Assurance Scheme for Advocates (QASA) is due to end this month. Please ensure that you submit your responses to the consultation by **24 December 2015**.

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/>

## **Background**

In October, 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 2015 that the Scheme is lawful.

## **Alternative Business Structures – Fees Consultation**

Yesterday we opened a consultation on **the cost of licensing of a BSB-regulated Alternative Business Structure (“ABS”)**: <https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/>

The consultation runs from 10 December 2015 to 10 January 2016 and invites comments on the proposed fee structure for the licensing of ABSs.

We intend to operate ABS regulation on a full cost recovery basis, and proposes that the fee structure will be separated into three elements:

- An application fee – payable by all applicants.
- An authorisation fee – payable by those who have been successful in their application and wish to be authorised by the BSB.
- An annual fee – payable by those authorised ABSs who wish to retain their authorisation.

The infrastructure established to authorise and supervise ABS builds upon our existing systems and resources, most particularly those already in place for entities.

The consultation contains two questions:

- Do you have any comments on our proposed approach to ABS fees?
- In particular, do you have any views on the apportioning of fees between application, authorisation and annual fees?

**To view the full consultation, please visit our website:**

<https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/>. Responses to the consultation should be sent to [entityregulation@barstandardsboard.org.uk](mailto:entityregulation@barstandardsboard.org.uk).

## **Background**

We submitted an application to the Legal Services Board in April 2015 to permit us to license ABS. It was made with a view to extending our entity regulation regime launched in April 2015.

If the application is approved, we will be able to license, or authorise, bodies where there is non-lawyer management or ownership-type interest as provided for in the Legal Services Act 2007.

### **Fees and Charges consultation**

On Thursday 10 December we launched a consultation about how we raise some of our revenue: <https://www.barstandardsboard.org.uk/about-bar-standards-board/consultations/open-consultations/>

We are consulting on the fees and charges we currently levy on those who use specific regulatory services such as overseas lawyers, education and training providers and entities.

An online survey and supporting information was provided to key stakeholders to enable them to provide us with their views about what is the fairest way to fund the cost of certain aspects of regulation. This includes the history of how we have been funded and changes that have prompted us to conduct a thorough review.

We want to make sure that fees and charges imposed are fully accountable, transparent and fairly applied.

This consultation is quite separate from the one conducted by the General Council of the Bar on 2016 practising certificate fees under s51 of the Legal Services Act 2007.

Our consultation closes on Monday, 15 February 2016 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](mailto:contactus@barstandardsboard.org.uk).

*Please let us know ([records@barcouncil.org.uk](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).*