

BAR STANDARDS BOARD

REGULATING BARRISTERS

Part 1 - Public
Minutes of the Bar Standards Board meeting
Thursday 26 November 2020 (5.00 pm)
via MS Teams

- Present:** Baroness Tessa Blackstone (Chair)
 Alison Alden OBE
 Lara Fielden
 Steve Haines
 Leslie Thomas QC
 Andrew Mitchell QC
 Elizabeth Prochaska
 Irena Sabic
 Nicola Sawford
 Adam Solomon QC
 Kathryn Stone OBE
 Stephen Thornton CBE
- By invitation:** Amanda Pinto QC (Chair, Bar Council) – item 1 only
 Derek Sweeting QC (Vice Chair, Bar Council)
 Grant Warnsby (Treasurer, Bar Council)
 Malcolm Cree CBE (Chief Executive, Bar Council)
 Cindy Butts (Vice Chair, Independent Decision Making Body)
 Aidan Christie QC (former Chair, Independent Decision Making Body)
 Iain Christie (Chair, Independent Decision Making Body)
- Observers:** Holly Perry (Director, Enabling Services, LSB)
 Margie McCrone (Regulatory Policy Manager)
- BSB & RG Executive in attendance:** Rebecca Forbes (Head of Governance & Corporate Services)
 Oliver Hanmer (Director of Regulatory Operations)
 Teresa Haskins (Head of People, BSB)
 Sara Jagger (Director of Legal and Enforcement)
 Andrew Lamberti (Communications Manager)
 Ewen Macleod (Director of Strategy and Policy)
 Mark Neale CB (Director General)
 John Picken (Governance Officer)
 Amit Papat (Head of Equality and Access to Justice)
 Wilf White (Director of Communications and Public Engagement)
- Press:** Catherine Baksi, freelance
 Neil Rose, Legal Futures
 Jemma Slings, Law Society Gazette

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting, particularly guests and observers. She referred to the resignation from the Board of Naomi Ellenbogen QC following her appointment as a High Court Judge on 2 November 2020. She thanked Naomi for her unstinting efforts on behalf of the BSB over many years, which the Board fully endorsed.

Part 1 - Public

2. She also noted that Amanda Pinto QC and Grant Warnsby will stand down from their respective roles as Chair and Treasurer of the Bar Council at the end of this year and will be replaced by Derek Sweeting QC and Lorinda Long. She thanked them for their help and co-operation during their time in office.
3. Amanda Pinto QC welcomed the improvement in working relations between the Bar Council and BSB and thanked the Board for fostering this collaborative approach.
4. **Item 2 – Apologies**
- James Wakefield (Director, COIC)
- Item 3 – Members’ interests and hospitality**
5. None.
- 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 24 September 2020.
- Item 5a – Matters arising**
7. None.
- Item 5b – Forward Agenda (Annex B)**
8. Members **noted** the forward agenda list.
- Item 6 – Proposed changes to the BSB Constitution and Standing Orders**
BSB 042 (20)
9. Rebecca Forbes summarised the changes recommended to the BSB’s Constitution and Standing Orders. In respect of the Constitution she stated that:
- the purpose of the amendment is to enable a Vice Chair to be appointed by the Board from its serving members based on a recommendation from the Chair. The Bar Council was consulted on this with no objections received;
 - one respondent asked that the lay majority of one be restored as soon as practicably possible (the lay majority would be two if the Board appoints one of its barrister members as Vice Chair, and would remain the case until a lay member stands down from office). This is addressed in the proposed amendment to paragraph 3 (4).
10. In respect of Standing Orders (SO), she advised that:
- some proposals are in response to the Board’s previous decision to take back ownership of performance monitoring;
 - other amendments either reflect changes brought about by the new Internal Governance Rules (IGR) or seek more transparency eg the Terms of Reference and appointments process for the Centralised Examinations Board (CEB).
11. Lara Fielden referred to SO 23 concerning mandatory training on equality and diversity. She noted that she and some other Board Members received interim training because their appointment coincided with a change in supplier. She therefore suggested the full training be offered to any who had not yet received this. **RF to note**
12. In response to a question about the Terms of Reference of the CEB Rebecca Forbes explained these are set at a high level and just make clear the delegated authority. This approach was agreed in advance with the Chair of the CEB and also reflects the style used for the Terms of Reference of the Independent Decision Making Body.
13. **AGREED**
- to approve the proposed amendments to the BSB Constitution at Annex A of the report and to its Standing Orders at Annex B. **RF**

Item 7 – Regulatory Decisions Annual Report 2019 / 20

BSB 043 (20)

14. Oliver Hanmer stated that:
- this is the first report of its type ie one that covers the full remit of the BSB's regulatory decision making functions;
 - subject to any comments, the report will be published on the BSB's website.
15. Members welcomed the scope of the report, which will also provide a useful reference point for the future. In response to a question about communication plans and messaging the Executive confirmed that a press release has been drafted. This gives headline statistical data and summarises the key regulatory decisions during the year which have positively impacted the profession.
16. The Chair suggested that, in future, draft press releases accompany the paper so that the Board is aware of the messaging involved.
17. **AGREED**
- a) to note the contents of the report and approve this for publication.
 - b) to request that, in future, draft press releases be included in papers for the Board.

**WW to
note****Item 8 – Independent Decision-Making Body (IDB) Annual Report 2019 / 20**

BSB 044 (20)

18. Adam Solomon QC congratulated Aidan Christie QC for achieving such a smooth transition to the new structure. He also referred to the current practice of anonymising documentation for IDB Panels for names and gender. He reiterated earlier comments from Aidan Christie QC on the resource intensive nature of this process and asked for views as to whether it should continue.
19. Sara Jagger commented that:
- anonymisation was first introduced for the PCC and only applied to the covering report that the Committee received. The IDB receives the whole file so many more documents now have to be anonymised;
 - the work is time consuming and is possibly disproportionate to the risk. In addition it is difficult to be completely accurate as it means redacting not just names but pronouns as well;
 - it is the only part of the decision making process where anonymisation is used (it does not apply to decisions taken either by BSB staff or the Tribunal Service);
20. SJ confirmed that the Task Completion Group responsible for implementing IDB did not originally recommend retaining anonymisation. It was a decision taken subsequently because we were able to engage a redaction service (though now more has to be done in-house due to changes in our IT infrastructure). In view of the above, the Board agreed a review of the practice would be appropriate.
21. Nicola Sawford highlighted the report finding (para 1.5) of no discernible decrease in the quality of the decision making of IDB panels compared to the PCC. She welcomed this news and congratulated all those concerned.
22. **AGREED**
- a) to note the contents of the report and approve this for publication.
 - b) to request a review of the current process of anonymising IDB documentation and for a report to be presented to the next Board meeting.

SJ

Item 9 – BSB Planning, Resources & Performance Committee (PRP) mid-year Report

BSB 045 (20)

23. Steve Haines highlighted the following:
- major programmes remain on track;
 - the KPI targets have been missed. On one level this is disappointing but, perhaps, understandable given the impact of the health emergency and ensuing additional workload. It is situational rather than systemic;
 - it highlights the risk of a lean resource model which, in adverse conditions, is insufficiently flexible to manage significant increases in demand;
 - we should review our KPIs to ensure they are actually driving the right behaviour.
24. Mark Neale agreed with the comments on lean resourcing. He referred, in this respect, to the PRP Committee's approval for early recruitment of two posts in the Regulatory Operations Department which have been built into next year's budget. He also stated that an additional post to support the IDB is under consideration. Other planned actions to improve productivity concern the integration of case management software and developing better management information.
25. Nicola Sawford supported the suggestion of reviewing KPIs and offered to assist the Executive in this respect. **MN to note**
26. **AGREED**
- a) to note the performance dashboard and the assurances provided by the PRP Committee in the report.
 - b) to note the Committee's approval to accelerate the timetable for the recruitment of additional staff in the Regulatory Operations Directorate.
 - c) to request the Executive to review the fitness for purpose of existing performance KPIs. **MN / NS**

Item 10 – Annual Report of the Governance Risk and Audit Committee (GRA)

BSB 046 (20)

27. Nicola Sawford outlined the main elements to the GRA Committee's Annual Report, in particular its early work on updating the Business Continuity Plan (BCP). This was fortunate timing given the later impact of Covid 19. She also thanked Peter Astrella and Rebecca Forbes for the improved quality of reports to the Committee.
28. **AGREED**
to note the report.

Item 11 – BSB Anti-Racist Statement

BSB 047 (20)

29. Amit Popat summarised action taken to date as part of the BSB's Equality and Diversity Strategy. The Race Equality Task Force and those involved in the reverse mentoring scheme suggested that the regulator needs to give further direction on race equality, hence the development of the Anti-Racist Statement.
30. The Statement sets out the BSB's expectations of chambers in this respect, though the actions identified are advisory and not mandatory. A thematic review in 2021/22 will assess progress.
31. Members welcomed the report and thanked Amit Popat for his work on this project. They made several suggestions ie:
- the potential to introduce a kitemark to distinguish those chambers which do commit to the four actions identified in the Statement;

- escalate results of the staff survey to the PRP Committee (now the SPR Committee);
- that Board Members access the same training provided for barristers on race equality (we should collaborate with the Bar Council in this respect);
- to dovetail our work in this area with that of Bar Council and specialist Bar Associations;
- to consider further reform of the Pupillage Gateway system.

32. Amit Popat agreed to investigate the first three of these suggestions. He gave an assurance that work in the other two areas is already in hand.

33. **AGREED**

- a) to approve for publication the anti-racist statement as set out in the report.
- b) to investigate the proposed additional actions as discussed in the meeting (cf. min 31).

AP

Item 12 – How can the BSB improve its engagement with consumers?

BSB 048 (20)

34. Wilf White confirmed the paper's recommendation to re-establish a Consumer Panel. He caveated this, however, noting that a previous attempt to do so was not successful, so the new body will need to avoid the pitfalls of the former.

35. Members commented as follows:

- we need to avoid duplicating the work of the LSB's Consumer Panel so should consult on our proposals. We also need to broaden our thinking about membership so we do not replicate the old Panel;
- there are alternative arrangements to consider which might also complement a panel ie:
 - a targeted register;
 - commissioning research (as referenced in the Director General's Strategic Update about the Code of Conduct review);
 - using a consumer impact / toolkit approach;
 - use virtual meetings to increase our scope for participation (and reduce travel expense costs).

36. In response Wilf White commented that:

- we plan to consult the LSB once we have the Board's "in principle" approval. That said, its Consumer Panel operates across the whole legal sector so is not just concerned with the barrister profession;
- we already have a consumer register and do take a targeted approach to consultations. However, this does not always generate engagement. Membership of a Panel might encourage a greater sense of obligation as well as discussion between stakeholders and so enrich our feedback;
- a Consumer Panel would be additional and complementary to our existing practice. We would revert to a targeted approach when this was appropriate.

37. Kathryn Stone offered to assist in identifying potential stakeholders for the Panel. The Chair thanked her for this offer. She also suggested that the Panel be subject to a review mechanism so that the Board can decide whether or not to retain it.

38. **AGREED**

- a) to endorse, in principle, the establishment of a BSB Consumer Panel along the lines expressed in the report, subject to further consideration.
- b) to request a further report on the membership and Terms of Reference of the Panel and to include a means of evaluating its effectiveness.

WW /
KS
WW

Item 13 – Director General’s Strategic Update

BSB 049 (20)

39. Nicola Sawford noted with concern both the fall in pupillage supply and the income disparities between barristers as referenced in the report. She asked for an update as and when more data is available.
40. Mark Neale gave an assurance that pupillage numbers are being closely monitored. They appear to be rising but should we still meet with a shortfall, the BSB will consult with stakeholders on further action to protect supply. Likewise the Executive is keeping under review any impacts on diversity caused by the health emergency.
41. **AGREED**
to note the report.

Item 14 – Schedule of Board meetings (2021 / 22)

BSB 050 (20)

42. The Board **approved** the schedule of meetings for 2021 / 22.

Item 15 – Chair’s report on visits and external meetings

BSB 051 (20)

43. The Board **noted** the report.

Item 16 – Any Other Business

44. None.

Item 17 – Date of next meeting

45. Thursday 28 January 2021.

Item 18 – Private Session

46. The Board resolved to consider the following items in private session:
- (1) Approval of Away Day Notes and Part 2 (private) minutes – 24 September 2020.
 - (2) Matters arising and action points – Part 2.
 - (3) Corporate Risk Report.
 - (4) Director General’s Strategic Update (private session).
 - (5) Any other private business.
47. The meeting finished at 6.20 pm.