

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public
Minutes of the Bar Standards Board meeting
Thursday 26 January 2023 (5.00 pm)

Hybrid Meeting (Rooms 1.4-1.7, BSB Offices & MS Teams)

- Present:** Kathryn Stone OBE (Chair)
Alison Alden OBE
Jeff Chapman KC
Emir Feisal JP (items 6-11)
Steve Haines
Simon Lewis
Andrew Mitchell KC
Irena Sabic
Professor Leslie Thomas KC
Stephen Thornton CBE
- By invitation:** Nick Vineall KC (Chair, Bar Council) (items 3-11)
Lorinda Long (Treasurer, Bar Council)
Sam Townend KC (Vice Chair, Bar Council)
Malcolm Cree (Chief Executive, Bar Council)
James Wakefield (Director, COIC)
- BSB Executive in attendance:** Christopher Fitzsimons (Communications Manager)
Rebecca Forbes (Head of Governance & Corporate Services)
Oliver Hanmer (Director of Regulatory Operations) – via Teams
Teresa Haskins (Director of People, BSB) – via Teams (items 6-11)
Sara Jagger (Director of Legal and Enforcement)
Ewen Macleod (Director of Strategy & Policy)
Ben Margerison (Research & Evaluation Officer) – via Teams (items 2-7)
Mark Neale (Director General)
John Picken (Governance Officer)
Wilf White (Director of Communications & Public Engagement)
- Press:** Dan Bindman, Legal Futures

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting in particular Jeff Chapman KC and Simon Lewis who were both attending their first meeting as barrister Board Members. She also congratulated the following:
 - Nick Vineall KC in becoming Chair of the Bar Council;
 - Sam Townend KC in becoming Vice Chair of the Bar Council;
 - Irena Sabic for her recommendation for the award of King's Counsel;
 - Andrew Mitchell KC for his appointment as a Deputy High Court Judge;
 - James Wakefield for his Honorary KC award (*note: these congratulations were extended after the meeting*)
2. **Item 2 – Apologies**
 - Gisela Abbam
 - Oliver Jackling (Research and Evaluation Manager)

Item 3 – Members' interests and hospitality

3. None.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on 1 December 2022.

Item 5a – Matters arising & Action List

5. There were no matters arising. The Board **noted** that actions from the previous meeting had all been completed.

Item 5b – Forward agenda

6. The Board **noted** the forward agenda.

Item 6 – Director General’s Report: Strategic Update

BSB 001 (23)

7. Mark Neale introduced his paper and acknowledged recent criticisms of the BSB which had appeared in the legal press. These primarily focused on investigations. He stated that:
- our actual performance profile is mixed. The high quality of our regulatory decisions has been maintained throughout, but timeliness has suffered due to a mix of rising caseloads (both number and complexity), recruitment issues and a major cyber attack;
 - our action plan to improve turnaround time is working. There is no longer a backlog of cases awaiting acceptance for investigation and we are on track to meet the performance target for case closure in the second quarter of the new financial year;
 - productivity has increased substantially. To its great credit, and following a prolonged period of intensive work, the Investigations Team closed 61 cases in Q3 (this equals the combined total for Q1 and Q2);
 - one effect of clearing long running cases is for the key performance indicator (KPI) to appear worse in the short term due to how it is formulated. We expect to hit the target during Q2 of 2023/24 when these older cases are replaced by newer ones;
 - we are taking additional action to improve efficiency for the short and medium term ie:
 - ❖ a consultant-led review of operational work in the assessment team to identify any quick wins for better case management, customer care and communication;
 - ❖ an independent review of our end-to-end enforcement process.
8. He also referred to other criticisms but highlighted the apparent contradictory nature of these, insofar as they claim that the BSB is either over- or under- regulating depending on the source. He confirmed his intention to give a speech in the Spring setting out his views about the proper regulatory role of the BSB. For the meantime, he commented that:
- we shall continue to make independent decisions about the risks to the public interest at the Bar and take action to mitigate these, either through direct regulation or by working in collaboration with stakeholders;
 - the risks we identify will reflect the circumstances of the Bar and will not necessarily accord with those of other legal professions and, though we shall always be ready to work with other legal services regulators, we must reach decisions that are independent of their judgements as well.
9. The Chair underlined the Board’s commitment to ensure that the BSB discharges its statutory duties properly, fairly, and expediently and to maintain its independence as a regulator. At the same time, it remains interconnected to the “ecosystem of the Bar” and will continue to promote standards that help preserve the Bar’s global reputation for excellence.
10. Simon Lewis stated that, as a new Board Member, he will look to a variety of sources for assurance that performance improvements are delivered. He added that:
- he would find it helpful to:
 - ❖ observe a meeting of the BSB’s People Forum;
 - ❖ see the results from the last staff survey;
 - ❖ have a briefing about the BSB’s wellbeing offer for its employees;
 - he welcomed the focus on the Code of Conduct set out in the report which follows from the ethical standards seminar with Professor Richard Moorhead (7 December 2022).

11. Stephen Thornton referred to Mark Neale's earlier comments (cf. min 7). He emphasised the need to continue with the implementation of the action plan even though we can expect performance data to get worse before it gets better.
12. Alison Alden noted the successful recruitment of additional staff in the Investigations Team and enquired about progress with training. In response, Sara Jagger stated that:
- some new colleagues have only recently joined but training plans are already in place and they have adapted well to their new roles;
 - we were able to attract a high calibre of candidates at recruitment stage and are pleased with the appointments made.
13. At the Chair's invitation, Nick Vineall KC commented as follows:
- the Bar Council is appreciative of the openness with which the BSB has shared its recovery plan;
 - he still considers it right to be cautiously optimistic on the delivery of this plan, as he expressed in his inaugural address to the Bar on 10 January 2023.
14. **AGREED**
- a) to note the report
 - b) to ask Teresa Haskins to contact Simon Lewis in respect of the HR related issues raised at the meeting (cf. min 10).

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Item 7 – Annual Diversity Data Report

BSB 002 (23)

15. Ewen Macleod commented on the annual diversity report which is an essential point of reference in delivering our regulatory objective of encouraging an independent, strong, diverse and effective legal profession. It shows that:
- the Bar is continuing slowly to become more diverse;
 - disclosure rates are steadily rising. Those relating to sexual orientation, type of school attended and caring responsibilities for children are now at a level which makes the findings statistically more reliable;
 - we still need to improve disclosure rates for some areas ie religion / belief, gender identity, first person in the family to attend university and other caring responsibilities. We shall again encourage barristers to provide these data as part of the annual authorisation to practise process;
 - around 60% of pupils are female, though representation of women at senior levels in the profession remains lower. Likewise, representation of barristers from minority ethnic backgrounds is also disproportionately lower at more senior levels;
 - on ethnicity, the report suggests the experience of Black barristers is different from those of Asian backgrounds;
 - one longer-term trend is that the Bar is ageing, and we shall need to consider the consequences of that for the future.
16. Simon Lewis referred to data on disability. He stated that:
- the data suggests an underrepresentation compared to figures for the general public;
 - it would help to understand the extent of the questions asked about disability and what, if any, associated guidance is provided. There may be an element of underreporting;
 - based on his experience of other Boards, when the questions on disability were more specifically stated, the subsequent responses produced very different results. It may be useful to compare what we ask with that of other regulators.
17. Ewen Macleod confirmed that the questions are reasonably standard for this type of survey and that we provide guidance for what we mean. Nevertheless, it would be helpful to raise this further with the Disability Task Force and include Simon Lewis in this discussion.

18. Members also commented as follows:
- in respect of the percentage of female pupils at the Bar, Alison Alden queried why the report that this was “likely to be” the highest proportion of female pupils. This was primarily because our reliable data only extend from 1990 onwards. The report might therefore say that this was the “highest recorded” proportion of female pupils;
 - the number of pupillages has reduced compared to last year. It would help to understand the reasons for this;
 - the report states that 20.7% of male barristers have caring responsibilities for children but is not clear if this figure is an increase or decrease compared to previous years;
 - outside of a planned review of the Equality Rules, it would be helpful to know how else the data will be used by the BSB.

The Executive accepted the first point. The following comments were made about the rest:

- 2021 was unusual for pupillages because there was a big rebound from 2020, which was badly affected by the pandemic. The figures for 2022 are more typical of longer term trends;
 - the number of barristers with caring responsibilities for children appears to have increased for both genders. Compared to five years ago, the figure for men has increased by 5%. That said, we need to take care in making definitive statements because in previous years the non-disclosure rate was higher making true comparisons more difficult to establish;
 - the data inform our decision making for:
 - ❖ our equality impact assessments;
 - ❖ our future policies / equality strategy eg findings about the varying experiences between different minority ethnic groups;
 - ❖ clarifying our expectations of chambers (given that many of the issues identified by the report can be addressed through chambers rather than regulation).
19. Nick Vineall KC referred to the report findings on the ageing of the Bar (cf. min 15). He stated that:
- the overall conclusion about an ageing Bar is true but we should be aware of other historical factors which help explain the pattern. Around 25 years ago, after extensions to legal aid, the size of the Bar suddenly increased;
 - numbers subsequently fell back but those who began practising during that period remained. This created a disproportionately higher number of barristers for a particular age bracket and members of this group are now approaching retirement.

20. **AGREED**

- a) to note the report.
- b) to refer the survey questions about disability to the Disability Task Force and to include Simon Lewis in this discussion.

EM

Item 8 – Chair’s Report on Visits and External Meetings

BSB 003 (23)

21. Kathryn Stone referred Members to her report. She also mentioned forthcoming roundtable discussions in Cardiff, Birmingham, Bristol, Newcastle and Leeds. She emphasised the importance of liaison with the Circuits and Specialist Bar Associations and looked forward to meeting them at these events. She also encouraged fellow Board Members to attend.
22. **AGREED**
to note the report.

Item 9 – Any Other Business23. Bar Council induction programme for lay Board Members

Nick Vineall KC updated the Board on the above topic which was raised at the previous meeting. He stated that:

- the date for the event has been set for 28 February 2023 and the BSB Chair has already confirmed her attendance together with one other lay member;
- two more places are available so other lay Members are invited to attend;
- it would be particularly useful to have feedback because, if successful, a similar invite will be extended to lay Members of the Legal Services Board.

24. The Chair thanked Nick for taking this forward. Alison Allden also confirmed her wish to be included.

**NV to
note**

Item 10 – Date of next meeting

25. Thursday 30 March 2023.

Item 11 – Private Session

26. The Board resolved to consider the following items in private session:

- (1) Approval of Part 2 (private) minutes – 1 December 2022.
- (2) Matters arising and action points – Part 2.
- (3) Accelerating investigations.
- (4) Business Plan 2023/24.
- (5) Relations with the Legal Services Board.
- (6) Maintaining standards at the Bar.
- (7) Director General's Strategic Update – Private Session.
- (8) Any other private business.

27. The meeting finished at 5.40 pm.