

BAR STANDARDS BOARD

REGULATING BARRISTERS

Part 1 - Public
Minutes of the Bar Standards Board meeting
Thursday 30 March 2023 (5.00 pm) via MS Teams

- Present:** Kathryn Stone OBE (Chair)
 Gisela Abbam
 Alison Alden OBE
 Jeff Chapman KC
 Emir Feisal JP
 Steve Haines
 Simon Lewis
 Andrew Mitchell KC
 Irena Sabic KC
 Professor Leslie Thomas KC
 Stephen Thornton CBE
- By invitation:** Nick Vineall KC (Chair, Bar Council)
 Malcolm Cree (Chief Executive, Bar Council)
 James Wakefield KC (Hon) (Director, COIC)
- In attendance:**
BSB Executive Eloise Denchfield (Casework Manager)
 Christopher Fitzsimons (Communications Manager)
 Rebecca Forbes (Head of Governance & Corporate Services)
 Oliver Hanmer (Director of Regulatory Operations)
 Teresa Haskins (Director of People, BSB)
 Sara Jagger (Director of Legal and Enforcement)
 Samantha Jensen (Corporate Services Manager)
 Ewen Macleod (Director of Strategy & Policy)
 Rupika Madhura (Head of Policy and Research)
 Mark Neale (Director General)
 John Picken (Governance Officer)
 Wilf White (Director of Communications & Public Engagement)
- Resource Group** Richard Cullen, Director of Finance
- Press** Neil Rose, Legal Futures

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting. She referred to the ceremony on 27 March 2023 to appoint new KCs and Honorary KCs, and again congratulated Irena Sabic KC and James Wakefield KC (Hon) on their respective awards.
2. She also acknowledged receipt of self-referral reports from barristers who have signed a “declaration of conscience” as members of the “Plan B” group of lawyers. They have stated that they will neither act for companies supporting new fossil fuel projects nor prosecute peaceful climate change protesters. This potentially puts them at odds with the “cab rank rule” of the Code of Conduct, hence their decision to self-refer.
3. She stated that it is not for the Board to become involved in operational matters but the Director General had given her an assurance that these reports will be assessed in confidence in the usual way.
4. **Item 2 – Apologies**
 - Lorinda Long (Treasurer, Bar Council);
 - Sam Townend KC (Vice Chair, Bar Council).

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 26 January 2023.

Item 5a – Matters arising & Action List

7. There were no matters arising. The Board **noted** the action list. In respect of min 20b (26/01/23), Ewen Macleod confirmed that Simon Lewis will be invited to join the next meeting of the Disability Task Force, once a date for this has been set.

Item 5b – Forward agenda

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

Item 6a – Director General’s Report: Performance Report Q3

BSB 009 (23)

9. Mark Neale highlighted the following points in respect of the Q3 performance report:
- the increase in the number of investigations concluded. Overall caseload has fallen from 178 (September 2022) to 109 (March 2023) and the number of cases over 6 months old has also decreased from 71 to 49;
 - by closing more cases *after* the KPI threshold date has passed, we adversely affect the timeliness KPI figures quoted on the dashboard. That is because it simply measures the percentage completed *within* the target period.
 - productivity in handling the initial receipt of reports and authorisation applications marginally fell during the quarter. The reasons for this are stated in the report and recovery action plans are already underway;
 - more fundamental reforms to processes are expected once we receive the outcome of both the authorisations review and the end-to-end review of enforcement;
 - we are recruiting an Assistant Director for Regulatory Operations whose role will focus on performance improvement issues.
10. Kathryn Stone referred to an earlier joint Board meeting with the Office for Legal Complaints which oversees the Legal Ombudsman (LeO) service. She stated that:
- LeO previously faced a number of challenges concerning backlogs;
 - there may be operational lessons we can learn from its experience in addressing them.
11. Stephen Thornton highlighted an apparent lack of resilience within the organisation such that performance is noticeably affected by staff turnover. Were this to continue, it would also pose a threat to deliverability of our Annual Business Plan (see item 7 below).
12. Mark Neale replied as follows:
- we have already strengthened the operational teams during the current financial year;
 - initial challenges in recruitment have been addressed through our work on pay reform;
 - the Investigations Team is now at full capacity, as reflected in its increased productivity;
 - for the future, we need to consider how best to manage fluctuations in workload as well as departures or long-term absence of staff. We are therefore considering greater use of contractors to deal with these situations and so prevent creation of backlogs.
13. **AGREED**
to note the report.

Item 6b – Director General’s Report: Strategic Update

BSB 010 (23)

14. Kathryn Stone highlighted the meeting on 21 March 2023 with the Black Barristers’ Network about the BSB’s digital comparison tools pilot. Mark Neale confirmed this arose from an earlier meeting at Gray’s Inn, and that the discussion was both helpful and informative.

15. **AGREED**

to note the report.

Item 7 – Bar Standards Board – Business Plan and final budget 2023/24

BSB 011 (23)

16. Mark Neale commented on the proposed Business Plan. The salient points were:
- it identifies four key targets ie
 - ❖ achieving operational excellence;
 - ❖ greater proactivity as a regulator, so anticipating risks before they materialise;
 - ❖ completing our current strategic programmes on standards, equality and access;
 - ❖ developing a culture of continuous improvement at the BSB based on core values.
 - the plan reflects a realistic assessment of the time and resources available to us;
 - projects on the future supply of barristers and consumer choice through the referral process will now be delayed until 2024/25 at the earliest.
17. Kathryn Stone invited views from the two Committee Chairs ie Steve Haines (Performance, & Strategic Planning) and Stephen Thornton (Governance, Risk & Audit). Both supported the plan and commented as follows:
- the focus on improving process and performance is very welcome and, in overall terms, it is a balanced plan which sets the right tone;
 - the current programme portfolio, which the plan aims to complete, includes over twenty ongoing projects. Some PSP Committee members expressed concerns about workload ie how to manage this and also meet service standards throughout the year;
 - delivery may still be at risk if staff turnover remains high (cf. min 11);
 - though the wording of the plan can remain, there may have been some merit in distinguishing between essential performance related work and other activities which we will deliver assuming there is no significant impact on resources;
 - there is a need for *continuous* prioritisation so that the Board can adapt its external communications as necessary as it monitors progress on delivery;
 - it might have been preferable to have placed a stronger emphasis in the plan on collaborative working with stakeholders. That would have aligned with the theme of continuous improvement.
18. The following comments were also made by Members:
- the document is well presented and logically structured with useful references to budget and key service standards;
 - the linkage between business and regulatory objectives is very helpful to see;
 - we might state that implementation of the plan will take account of data and intelligence received ie that choices around prioritisation will be evidence and risk based.
19. In response to the above points, the Executive stated that:
- the need for close monitoring and prioritisation are accepted but we believe the plan to be deliverable;
 - we are actively engaged with stakeholders despite the apparent lack of reference to this in the plan. For example the budget was adjusted only very recently to enable some joint research work to take place.
20. Emir Feisal referred to an entry on the 2022/23 business plan monitoring summary about apprenticeships - Annex B of BSB Paper 008 (23). This is marked as 6 months overdue and is not specifically referenced in the 2023/24 plan. He asked:
- what work has been completed in this area so far;
 - when are we likely to see apprenticeships in place.

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21. Oliver Hanmer replied that a “trailblazer” group has been established to develop the model for the apprenticeship route. We are supporting this but the timeframe for our involvement is dependent on the group’s rate of progress. In consequence, we cannot be certain when a scheme will be up and running.
22. The Chair invited comments from observer members. Nick Vineall KC stated that:
- the Bar Council welcomes the focus on core functions in the business plan;
 - there are still areas of duplication between the BSB and Bar Council which ongoing discussions are seeking to resolve.
23. James Wakefield KC (Hon) referred to comments about the trailblazer group (cf. min 21). He confirmed that a meeting between the Inns and that group had taken place earlier in the morning and that there was a momentum and commitment to take this idea forward.
24. **AGREED**
- a) to approve the business plan for publication in the first week of April 2023. **WW**
 - b) to approve the associated budget for 2023/24.
 - c) to note that a self-standing action plan has been extracted from the business plan in response to the concerns expressed by the Legal Services Board.
25. **Item 8 – BSB review of governance documents**
BSB 012 (23)
Rebecca Forbes highlighted the following:
- we have already consulted the Bar Council on the proposed change to the constitution;
 - changes to the Scheme of Delegation relate to those powers delegated by the Board to the Director General (not his own sub-delegations);
 - changes to the joint Standing Orders of the Bar Council and BSB require the approval of both bodies, so, assuming the Board is in favour, the same request will be made of the Bar Council in due course;
 - the proposed change to the PSP Committee Terms of Reference means that responsibility for approving new posts would then lie with the SMT, on the proviso that overall costs remain within the Board approved budget envelope.
26. In response to questions raised, the following comments were made:
- the number of decisions made under the sub delegations from the Director General to individual staff members are very considerable. In consequence we do not keep a log of regulatory decisions made under these powers however there are audit trails within teams which enable them to be checked should circumstances require it;
 - one option is to request that our internal auditors investigate the management of the Scheme of Delegations and report to the Governance, Risk & Audit Committee. *Note: Stephen Thornton, Chair of the GRA Committee agreed to add this item to the list of potential audit topics for Members to discuss.* **JP to note**
27. Members supported the format for the Scheme as set out in Annex 3 of the report subject to assurances around version control.
28. **AGREED**
- a) to approve the proposed amendments to the BSB Constitution, its Scheme of Delegations, the Terms of Reference for the Performance and Strategic Planning Committee, the Terms of Reference for the Independent Decision Making Body and the Standing Orders for joint Committees of the General Council of the Bar and the BSB. **RF**
 - b) to approve the proposed generic changes to the Term of Reference for the BSB’s Committees and Decision-making Bodies.
 - c) to confirm the Board’s preference for the matrix spreadsheet format in respect of the Scheme of Delegations (cf. min 27). **JP to note**
 - d) to delegate authority to the Senior Management Team to approve additional members of staff where that is within the approved budget. **RF to note**

29. **Item 9 – Handbook amendments**

BSB 013 (23)

Ewen Macleod requested the Board's approval for amendments to the Handbook. This arose from a recent Tribunal case which highlighted a need to:

- broaden the scope of the BSB's powers of referral to an interim panel, and
- extend to a Disciplinary Tribunal the power to impose an interim suspension order.

30. James Wakefield KC (Hon) welcomed the BSB's prompt action in taking this forward.

31. **AGREED**

to approve the rules changes outlined at Annex A for the purposes of consultation.

EM

Item 10 – Chair's Report on Visits and External Meetings

BSB 013 (23)

32. Kathryn Stone spoke positively about the "induction day" organised by the Bar Council on 28 February 2023. This was conceived as a means by which new lay Board Members (of the LSB as well as the BSB) could learn more about the Bar Council and the criminal justice system. She thanked the Chair of the Bar Council for arranging this event.

33. Alison Alden and Gisela Abbam also attended the event and added that:

- it was very well organised;
- speaking to members of chambers and the Bar Council was very insightful;
- notwithstanding the usefulness of the day, it would have been helpful to have had more time with Bar Council staff.

34. Nick Vineall KC welcomed this feedback and confirmed that another session would be arranged towards the end of the year. This will be principally for lay members of the LSB but he will keep in touch with the BSB about arrangements.

35. Simon Lewis and Leslie Thomas KC referred to the training day on equality and diversity (referenced in the report under 6 February 2023). They thought this was an outstanding event and commended the content. Teresa Haskins confirmed that the same course would now be extended to senior managers at the BSB.

36. **AGREED**

to note the report.

Item 11 – Any Other Business

37. None.

Item 12 – Date of next meeting

38. Thursday 25 May 2023.

Item 13 – Private Session

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

- (1) Approval of Part 2 (private) minutes – 26 January 2023.
- (2) Matters arising and action points – Part 2 / summary of ongoing projects.
- (3) Ratification of decision taken out of Board cycle: pay reform.
- (4) Accelerating investigations plan – update.
- (5) Legal Services Board (LSB) Action Plan.
- (6) BSB Consolidated Risk update for the Board: March 2023.
- (7) Director General's Strategic Update – Private Session.
- (8) Board dynamics and cohesion.
- (9) Any other private business.

40. The meeting finished at 6.05 pm.