

<p>BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

**Part 1 - Public****Minutes of the Bar Standards Board meeting****Thursday 27 July 2023 (5.00 pm)****Hybrid Meeting, Rooms 1.1-1.7, BSB Offices & MS Teams**

- Present:** Kathryn Stone OBE (Chair)  
Gisela Abbam  
Alison Allden OBE  
Jeff Chapman KC  
Steve Haines  
Simon Lewis  
Andrew Mitchell KC (via Teams)  
Irena Sabic KC (via Teams)  
Professor Leslie Thomas KC (via Teams)  
Stephen Thornton CBE
- By invitation:** Malcolm Cree CBE (Chief Executive, Bar Council) (via Teams)  
Matthew Hill (Chief Executive, Legal Services Board)  
Sam Townend KC (Vice Chair, Bar Council)
- In attendance:**  
**BSB Executive** Jameelah Bangali (Project Manager) (via Teams)  
Rhys Bevan (Head of Legal Support) (via Teams)  
Angela Dickinson (Policy Officer)  
Christopher Fitzsimons (Communications Manager)  
Rebecca Forbes (Head of Governance & Corporate Services)  
Saima Hirji (Acting Director of Regulatory Operations) (via Teams)  
Teresa Haskins (Director of People, BSB)  
Sara Jagger (Director of Legal and Enforcement)  
Jaspal Kaur-Griffin (Head of Programmes)  
Ewen Macleod (Director of Strategy & Policy)  
Anna McNee (Legal Support Lawyer) – items 7 to 13  
Rupika Madhura (Head of Policy & Research) (via Teams)  
Mark Neale (Director General)  
Richard Parnham (Policy Manager)  
John Picken (Governance Officer)  
Paul Pretty (Head of Investigations and Enforcement) (via Teams)  
Fibi Ward (Legal Support Officer) (via Teams) – items 7 to 13  
Wilf White (Director of Communications & Public Engagement)
- Press** Neil Rose, Legal Futures (via Teams)

**Item 1 – Welcome / Announcements****Action**

- Kathryn Stone welcomed those present in particular those attending their first Board meeting ie:
  - Matthew Hill, Chief Executive, Legal Services Board;
  - Angela Dickinson, Policy Officer;
  - Saima Hirji, Acting Director of Regulatory Operations.
- She also informed the Board that, since the last meeting, Rupika Madhura has been appointed interim Director of Standards. She will commence that role on 4 September 2023.

3. **Item 2 – Apologies**

- Emir Feisal JP;
- Lorinda Long (Treasurer, Bar Council);
- Nick Vineall KC (Chair, Bar Council);
- James Wakefield KC (Hon) (Director of COIC).

4. **Item 3 – Members’ interests and hospitality**

4. None.

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

5. The Board approved the Part 1 (public) minutes of the meeting held on 25 May 2023.

6. **Item 5a – Matters arising & Action List**

6. There were no matters arising. Ewen Macleod confirmed that, since issuing the agenda papers, both outstanding actions can now be deemed as completed.

**JP to  
note**

7. **Item 5b – Forward agenda**

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

8. **Item 6 – Legal Services Board: Regulatory Performance Assessment**

BSB 031 (23)

8. Mark Neale referred to a letter from the LSB (Annex A) concerning information it requires to conduct its Regulatory Performance Assessment. He commented as follows:

- our long-standing practice has been to self-appraise against the performance framework and map relevant evidence to the assessment criteria (set out in Annex C);
- the current draft will be further revised to reference:
  - ❖ the annual service complaints report we provide to the GRA Committee;
  - ❖ our series of meetings with the LSB Consumer Panel.

9. He also referred to a recent internal audit on compliance with the Performance Framework. This found that sources of assurances were relevant and suitable but also noted a gap in respect of evidence of engagement with the profession and stakeholder groups. This will now be addressed as a priority. *Note: a copy of this report was circulated to Members under separate cover in advance of the meeting.*

10. He sought Members’ views on the draft letter to the LSB (Annex B) in response to its information request. He added that:

- our performance continues to improve, and we have already completed several of the reforms approved by the Board as part of the Business Plan for 2023/24;
- the end-to-end enforcement review is now underway;
- the Board endorsed the format of the new “balanced scorecard” for performance at its last meeting, and this is being piloted;
- we shall publish a consultation on our expectations of chambers in due course.

11. At the invitation of the Chair, Steve Haines (Chair of the Performance and Strategic Planning Committee) gave his perspective on how circumstances had changed over the past 12 months. He contrasted the significant challenges faced at the start of that period to the much-improved current position now and highlighted the following:

- the positive impact of our revised reward framework which directly addressed issues around recruitment and retention of appropriately skilled staff;
- the improved resilience of the organisation which, hitherto, had been too lean;;
- increased performance reporting at Committee and Board level, combined with better quality management information and changes in operational processes;
- setting revised, and more appropriate, performance targets to drive desired outcomes.

12. In terms of case management, he added that:
- work backlogs have noticeably decreased compared to the same time last year;
  - the age profile of outstanding cases has correspondingly reduced;
  - there may be further scope for improvement which the ongoing operational reviews are seeking to identify. This will consider the integration of IT systems and the progression of cases between different teams.
  - notwithstanding the above, we should acknowledge that some factors that delay case management are outside of the control of the BSB. Nor we can accurately model outcomes given the unpredictable pattern of demand.
13. The Chair noted the above and expressed her gratitude to relevant operational staff for their hard work in making such a marked improvement in performance as well as members of the PSP Committee for their input. For the record, she also contextualised the challenges that the BSB had faced at the time ie:
- there had been an increase in cases both in number and complexity;
  - we were recovering from a cyber attack that had severely affected the organisation's overall capacity;
  - we had faced challenges around staff retention and recruitment for a prolonged period;
  - the performance measures we were using were too narrowly focused on timeliness and ultimately misleading about productivity.
14. Members commented as follows:
- the annex to our draft letter (Annex E) is incomplete insofar as it does not reference questions about enforcement included in the LSB's original request. *Note: this was omitted from the papers in error but relevant answers have been circulated.*
  - the Chair has made a substantial and positive difference both to the culture of the Board itself and in improving relations between Members and the Executive;
  - our response to characteristic 15 (Annex C) about reducing inequality for consumers uses the same answers that we give in response to a similar question about the profession. In fact, we could enhance our evidence by citing examples from our public legal education strategy listed Annex D.
  - documents such as that in Annex C, can be a useful comparative point of reference. This is the first time we have received the assessment in this format so, providing it does not change, we can compare and contrast returns for subsequent years;
  - the recent series of roundtable visits were very useful in establishing better engagement with the profession and should be highlighted.

*Note: in discussing the Part 2 item on "accelerating investigations", the Board also agreed to include relevant performance data from this project in the letter to the LSB.*

15. Mark Neale acknowledged the above and agreed to amend the draft response letter / annexes. In response to other questions raised, the Executive stated that:
- we will organise a meeting of the BSB's Advisory Pool of Experts (APEX) in the early Autumn to inform our business planning process and interested Board Members can also attend if they wish;
  - the final report from the Field Fisher end-to-end review of enforcement is due in March 2024 (though, given the likely time required to consider this, the Board may be convened for a special, single item only meeting in early April 2024). Any emerging issues will be discussed at the January 2024 Board meeting;
  - given the holistic nature of the review, it will not be possible to implement perceived "quick wins" early on. Changes can have a knock-on effect for other processes, so it is necessary to map these all out fully before making any recommendations.

16. **AGREED**

- a) subject to the amendments identified above (cf. min 14), to approve the draft letter and annexes to the Legal Services Board as set out in Annexes B-E.
- b) to note the satisfactory outcome to the internal audit about sources of assurance on which the Board relies when considering its compliance with the Regulatory Framework.

MN

Board  
to note**Item 7 – Conduct in Non-Professional Life Project**

BSB 032 (23)

17. At the Chair's request, and to assure the Board, Rhys Bevan confirmed the following:
- the report is the end product of a project spanning several years;
  - the key features to highlight are:
    - ❖ the extensive research work on the approach of other regulators, including face to face meetings with them;
    - ❖ our analysis of relevant case law, in particular, Ryan Beckwith v Solicitors Regulation Authority [2020] and the Human Rights Act;
    - ❖ the engagement of a stakeholder reference group to act as a critical friend during the project (comprised APEX Members, former Board Members, representative of another regulator and a partner from a leading law firm);
    - ❖ development of the guidance document approved last year for public consultation;
    - ❖ consideration of the consultation responses and creation of another, smaller reference group to review the final version of the guidance (comprised current Board Member, Jeff Chapman KC, external Counsel and a representative from the Solicitors Regulation Authority).
18. Jeff Chapman KC stated that:
- the revised guidance takes into account new case law and recent technological developments;
  - in his view, it represents a considerable improvement on the existing version and demonstrates the impressive input of contributors earlier in the project.
19. Members commented as follows:
- some consultation responses queried the evidence base for amending the guidance. Our proposed response to this (paragraph 15 to Annex 4) does not address this directly even though the evidence base is very strong;
  - it would be helpful to understand the next steps leading to adoption and implementation of the new guidance;
  - notwithstanding the excellent work completed to date, we can expect changes both in technology and societal norms as to what is (or is not) considered acceptable behaviour. It would therefore be useful to understand our longer-term strategy for keeping this under review.
20. In response, Rhys Bevan commented as follows:
- the document at Annex 4 is still in draft and the point made in respect of the evidence base will be addressed in the final version;
  - in terms of next steps, the salient points are:
    - ❖ we have already tested the draft guidance with our Contact and Assessment Team and that will be followed by further internal training on its detail;
    - ❖ we plan to publish in September 2023, as to do so now would clash with the holiday season;
  - we did have the future in mind when developing the new guidance so sought to include as much flexibility as possible within the wording. That said, new case law may provide further clarifications and we shall respond to that as and when it arises.

21. He added that:
- the new guidance is informed and underpinned by the BSB Handbook; our current regulatory practice and case law;
  - we are therefore not seeking to amend how the Handbook applies to barristers – the guidance is simply a clarification of existing rules;
  - since circulation of papers to the Board, the executive has reconsidered a suggested amendment to rule gC26 (Annex 3), concerning the use of chambers e-mail accounts and signatures, which it no longer considers appropriate. It therefore recommends that this is abandoned.

22. **AGREED**

to approve the publication of:

- i. Guidance on the Regulation of Non-Professional Conduct (Annex 1).
- ii. revised Social Media Guidance (Annex 2).
- iii. amendments to the non-mandatory guidance in the BSB Handbook as set out in Annex 3 with the exception of one proposed amendment to gC26 (cf. min 21).
- iv. the consultation response document (Annex 4) subject to inclusion of a reference to the evidence base (cf. min 19) and any necessary final editing by the Executive.

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**Item 8 – The BSB Annual Report for 2022/23**

BSB 033 (23)

23. Wilf White commented as follows:

- the report has already been scrutinised by the Performance and Strategic Planning Committee and incorporates its comments;
- since sending out agenda papers, some further amendments have been made to the text but these are not substantive;
- the report includes a higher amount of financial information compared to previous editions and also seeks to improve our transparency by comparing what we actually achieved with our original aims.

*Note: the Board also revisited this item under Part 2 of the meeting and agreed some further amendments to the introductory text.*

24. **AGREED**

to publish the BSB Annual Report for 2022-23.

**WW**

**Item 9 – Director General’s Strategic Update – public session**

BSB 034 (23)

25. Mark Neale explained that the date of the Board meeting meant there had been insufficient time to prepare the usual quarterly performance report. This will be formally presented to the Board at its next meeting but, in the meantime, he asked Saima Hirji to give an oral report on some of the headline figures. The salient points were:

- in respect of the Contact & Assessment Team, the Q1 results showed that:
  - ❖ 430 reports were dealt with by the Team (similar in volume to the previous 3 quarters);
  - ❖ the age profile for cases has decreased;
  - ❖ all decisions audited by the Independent Reviewers were found to be correctly assessed;
- a new Assessment Officer is now in post and recruitment is underway for two further positions (one temporary; one permanent);
- implementation of new procedures is continuing based on advice from an external operational consultant;
- in respect of the Authorisations Team, the Q1 results showed:
  - ❖ improved performance in four out of five KPIs compared to the last quarter;
  - ❖ application numbers have increased (nearly double compared to last year) and the number of open cases is now 580;
  - ❖ fewer decisions are now taken outside KPI targets compared to last year with fewer referrals to the Independent Decision Making Body (IDB);

- we are looking to strengthen the Team with additional posts (temporary and permanent) and to streamline operational procedures.

26. In response to a question raised, Saima Hirji stated that the cause for the sudden increase in applications for authorisation is unknown. There are no identifiable themes as such so there could be several factors in play.

27. **AGREED**  
to note the report.

**Item 10 – Chair’s Report on Visits and External Meetings**  
BSB 035 (23)

28. The Board **noted** the report. The Chair confirmed that follow up visits to the Circuits would commence in Autumn.

**Item 11 – Any Other Business**

29. None.

**Item 12 – Date of next meeting**

30. Thursday 5 October 2023.

**Item 13 – Private Session**

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

- (1) Approval of Part 2 (private) minutes – 25 May 2023.
- (2) Matters arising and action points – Part 2.
- (3) Accelerating Investigations.
- (4) Handbook Review options, 2023-2025.
- (5) Review of non-executive fees.
- (6) Director General’s Strategic Update – Private Session.
- (7) Any other private business.

32. The meeting finished at 6.00 pm.