

## **ANNEX A**

### **REGULATION OF BARRISTERS IN CHAMBERS: SUMMARY OF CONSULTATION RESPONSES**

#### **Introduction**

1. Between October 2023 and February 2024, the BSB undertook a public consultation on its initiative to clarify regulatory expectations of chambers. The consultation paper can be found [here](#). This report summarises the written responses received; the discussions from nine roundtables (between November 2023 and April 2024) with chambers and with representatives of the Bar Council, the Legal Practice Management Association, and the Institute of Barristers' Clerks; feedback from social media; and comments from clerks. The roundtables were held in London (2), Manchester, Swansea, Bristol, Birmingham and Newcastle.

#### **The consultation**

2. The proposals in the paper seek to provide chambers with greater clarity about regulatory expectations in the areas of maintaining standards, pupillage, equality and inclusion, bullying and harassment, wellbeing, access, sanctions and anti-money laundering, information security and governance. The BSB's aim is to consolidate those expectations into a single online resource which we hope would be complemented by resources from the Bar Council, the Specialist Bar Associations, the Inns and Circuits, the Legal Practice Management Association, the Institute of Barristers' Clerks and other professional organisations designed to promote the sharing of good practice between chambers.
3. We received 22 responses to the consultation. Of the responses, three were from individual barristers, 15 from chambers, two from Legal Regulatory/Representative Bodies, one professional organisation, and one from a Specialist Bar Association.
4. We also analysed information from seven roundtables from November 2023 to April 2024; feedback from social media; and comments from Clerks.
5. Most of the respondents answered all five groups of (?) questions, with one exception from an individual barrister who only answered three questions. Nine respondents endorse the Bar Council's responses for all questions, and three of them added additional comments.
6. In responding to certain questions, some respondents gave general feedback rather than (or in addition to) direct replies to the consultation questions. Throughout this paper, where such comments are relevant to other questions, they have been included in the summary of responses to those questions. However, this paper does not seek to summarise each individual point that has been raised by respondents and much of the feedback can be grouped together by theme.

7. We are very grateful to all those who took the time to respond to the consultation. The responses have greatly assisted us in developing our final guidance and have led to a range of changes which we have set out in this paper. Of the three individual barristers who responded to the consultation, one of them broadly agreed with the proposals stated in all the questions, one agreed with four of them, and one agreed with only one question (of three questions they responded).
8. Of the 19 legal organisations (chambers, representative/regulatory bodies/ legal professional associations) who responded the consultation, one of them broadly agreed with the proposals stated in all the questions, four broadly agreed with four of them, twelve agreed with three questions, and two agreed with two questions.

**Do you agree with our proposed approach of parallel websites to set out regulatory expectations and supporting guidance and good practice? Do you agree with the proposed coverage of the Bar Standards Board website? Do you have suggestions about how the proposed websites could be made as accessible and useful to chambers as possible?**

9. Out of the 22 responses received, 19 broadly agreed with the proposed approach of parallel websites to outline regulatory expectations and provide supporting guidance. Two respondents neither agreed nor disagreed, and one stated that they had no position on the matter.

*“The Panel does not have a position generally on whether barristers should go to parallel websites of the BSB and the Bar Council and other professional websites to find standards as well as specific guidance and best practice.”<sup>1</sup>*

10. The responses that expressed general agreement with the BSB’s position were from 13 chambers, one representative/regulatory body, three individual barristers, and two from professional organisation/specialist Bar association. One of the main reasons given by most respondents for agreeing with the parallel websites was that it would be helpful for barristers to find clear and easy to access information about regulatory expectations and guidance.

*“A Bar Standards Board website which sets out minimum regulatory expectations and requirements on barristers, aimed at improving professional standards and compliance across the Bar, would be very helpful.”<sup>2</sup>*

*“In principle, the members of Atkin Chambers (“Chambers”) agree with the proposed approach of parallel websites. Parallel websites already exist but it is Chambers’ understanding that the proposal is for another section on the current BSB website designated specifically to support Chambers by setting out regulatory expectation, supporting guidance and good practice, and that the intention is for that section to signpost to other resources which seems sensible.”<sup>3</sup>*

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<sup>1</sup> LSCP

<sup>2</sup> 4PB Chambers

<sup>3</sup> Atkin Chambers

11. Conversely, during six of the seven roundtables, there was a general consensus that consolidating all resources into a single website—a one-stop model—would be preferable to a two-stop model.
12. In two roundtables it was also mentioned the need to avoid conflicting guidance between BSB and the Bar, while in three of them it was said that regulatory expectations need to be clearly defined on the website. In another roundtable, it was mentioned the need to keep the website up to date.
13. Among the 22 responses received, 14 did not indicate whether they agreed with the proposed areas of guidance to be covered on the website<sup>4</sup>. Eight respondents agreed with the proposal. Among these eight, two provided additional suggestions, recommending the inclusion of practice management requirements concerning direct access.

*“We agree with the list proposed and would suggest the addition of practice management requirements concerning direct access. Such an addition would be of utility not only for members of the profession but also for clerking/practice management staff in developing and supporting direct access barristers.”<sup>5</sup>*

14. Regarding the first point of coverage; standards, one respondent said that they *“would like to see consumer research and stakeholder engagement inform specific standards as they apply to chambers including encouraging requesting feedback from consumers and having strong systems for first tier complaints”*<sup>6</sup>, while another respondent expressed their concern about this point and said that barristers are self-employed individual practitioners responsible for the “standard” of their work and that chambers only have a supporting role here.

*“We do have some concerns as regards the first bullet point “Standards”. It is important to appreciate that barristers are self-employed individual practitioners and are therefore individually responsible for the “standard” of their work, conduct and compliance with regulatory obligations such as CPD. Chambers have only a supporting role to play here. The scope and extent of these areas reach must be limited to what is necessary, proportionate and clear.”<sup>7</sup>*

15. Only one respondent made additional comments about the different points of coverage. They stated that *“Equality standards should relate to the culture of a chambers and how it is experienced by consumers as well as barristers and staff. Access for consumers should consider not only continued improvement of the transparency of the price and quality of a service but also how direct access or unbundled services are offered and how this information is shared. The BSB’s ability to authorise chambers to train pupils means that the BSB can ensure chambers provide their pupils with the necessary skills to provide effective and accessible communication, to understand a consumer’s situation*

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<sup>4</sup> Standards; Pupillage; Equality and Inclusion; Bullying and harassment; Well-being; Access; Sanctions and Anti-money laundering; and Information Security

<sup>5</sup> Chancery Bar

<sup>6</sup> LSCP

<sup>7</sup> St John’s

*and to appreciate and accommodate vulnerability. Finally, governance arrangements should be clear and work effective”.<sup>8</sup>*

16. Six respondents expressed concern about the potential overlap of roles between the BSB and the Bar Council, particularly regarding the delineation of best practice guidance. Some respondents felt this responsibility falls within the view of the Bar Council rather than the BSB.

*“There should, however, be a clear distinction between regulatory information and best practice information provided by the BSB and the Bar Council, respectively, so not to confuse the roles of each entity to the Bar.”<sup>9</sup>*

*“I thoroughly endorse the Bar Council’s call for clarity about the BSB’s role in setting required minimum standards and the Bar Council’s role in advising on best practice. The BSB should avoid provide guidance which is no practical assistance to barristers”<sup>10</sup>*

17. Five respondents mentioned that it would be very helpful if the website and resources used clear and simple language for it to be practical to access information and regulations guidance. Some of them also mentioned that the current website and regulations are not always clear, which makes it difficult to understand.

*“The underlying content needs to be clear if a change in website approach is to make a positive difference. I know these documents are written for lawyers, but they have to be comprehensible to lay staff too if they are to support barristers in meeting regulatory requirements.”<sup>11</sup>*

18. Eight respondents mentioned that it would be useful to have links in the BSB website which signpost to different websites, such as the Bar Council’s website and their Ethics and Practice hub.

*“If regulatory expectations and guidance could sit alongside each other, even if that were by signposting between parallel sites, this would lessen the duplication of efforts and reduce the possibility of confusion.”<sup>12</sup>*

*“Clear signposting to resources available on the Bar Council’s Ethics and Practice hub so resources can be easily found and accessed.”<sup>13</sup>*

19. Several respondents offered additional suggestions regarding website functionality. Five respondents emphasised the importance of a practical and user-friendly interface to facilitate barristers’ access to information. They noted that the current BSB website lacks clarity and practicality. Additionally, two respondents highlighted the need for synchronisation between the BSB website and other parallel websites to ensure information consistency and timeliness.

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<sup>8</sup> LSCP

<sup>9</sup> 4PB

<sup>10</sup> Forum

<sup>11</sup> Keating

<sup>12</sup> Twenty Essex

<sup>13</sup> LPMA

*“BSB should make the website clear and practical. Its scope should be limited to only what is necessary and proportionate.”<sup>14</sup>*

*“The websites should use key words effectively, creating useful Google links, to make it easier to find information. The search function on the websites should recognise key words to make it easier to find information.”<sup>15</sup>*

**Do you agree that regulations bearing on chambers should largely be expressed in terms of outcomes, but with an indication of where we would expect to see policies or other measures in place to support delivery of those outcomes? Do you agree that chambers would be aided by parallel Bar Council and other professional websites providing guidance and examples of good practice in meeting those outcomes?**

20. Regarding the proposal to express regulation in terms of outcomes, seven respondents (two individual barristers, four chambers, and one legal representative body<sup>16</sup>) broadly agreed, while 11 of respondents (one individual barrister, one legal regulatory body, one legal professional organisation and seven chambers) disagreed with the proposal. Three respondents didn't express a position, and one respondent said that they “believe there to be a middle-ground between expressing regulations either as outcome or being prescriptive, which can be achieved by provision of best practice guidance and toolkits.”<sup>17</sup>

*“Yes, Chambers agrees that regulations bearing on chambers should largely be expressed in terms of outcomes as this is what is generally done currently and is less prescriptive than the alternative.”<sup>18</sup>*

*“In general, I would prefer to have clear rules to adhere to rather than to have to spend time working out how to achieve an outcome.”<sup>19</sup>*

*“I am not convinced that the suggested approach will ensure easier compliance given the particular structure of the Bar”<sup>20</sup>*

21. From those seven who agreed with the proposal, four of them (chambers) expressed that these outcomes should be clearly defined to understand the regulatory obligations, one respondent said that it was less prescriptive than the alternative, one respondent said that it would suit them as a larger chamber, and another one (LSCP) explained that it would focus the attention on the consumers and instigate change and innovation.

*“In principle, we do not disagree with regulations being expressed in terms of outcomes, but there must be sufficient explanation of what this means in practice in order to allow chambers to understand what is required and to allow the BSB to*

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<sup>14</sup> St John's

<sup>15</sup> Atkin

<sup>16</sup> LSCP

<sup>17</sup> Garden Court

<sup>18</sup> Atkin

<sup>19</sup> Forum

<sup>20</sup> Keating

*apply the regulations..... The regulations bearing on chambers should be capable of being expressed simply and clearly, whilst giving sufficient flexibility for different chambers to comply with them in a proportionate manner, appropriate to their circumstances..*<sup>21</sup>

*“However, there should be clarity of language- the “must do” versus “may do” or “should do” - so that chambers are clear what boxes they need to tick in terms of compliance to reach the minimum standard, with scope to reach best practice by focusing on the desired outcomes.”*<sup>22</sup>

22. From those 11 respondents who didn't agree with the regulation in terms of outcomes, one said that “outcomes without clear rules or processes are ambiguous and lead to uncertainty as well as being perceived as difficult to comply with”<sup>23</sup>, another respondent said that they would prefer to have clear rules to adhere rather than spending time working out how to achieve an outcome, one respondent (LPMA) said that this might cause confusion within the profession, and two more said that it will imply spending time and resources for the chambers. Seven respondents didn't explain their decision.

*“Outcomes focused regulation poses some significant challenges, outlined below. Part of the reason, it seems, that outcomes as a concept are challenging, is because of a lack of awareness of the existence of outcomes in the BSB Handbook. It is not a well-publicised aspect of the Code of Conduct. Framing outcomes upon chambers instead of barristers is unlikely to lead to ‘chambers actively debating these issues’ or ‘senior members of chambers identifying with, and actively championing, these objectives’, as is hoped for at paragraph 21 of the Consultation Paper.”*<sup>24</sup>

*“It must be recognised that outcomes that demand or require the establishment of specific policies or procedures often require Chambers to employ external consultants at considerable cost or else cause individual members to spend significant un-paid time drafting such policies or procedures. For smaller Chambers, this can represent a significant financial obligation.”*<sup>25</sup>

23. In five roundtables, there was mentioned the need for the BSB to set out broad expectations and minimum standards requirements in a clear language and with up-to-date information. In two roundtables, it was said that this kind of approach would be more useful for smaller chambers than for larger chambers. Finally, in one roundtable it was mentioned that it would be useful for them if the BSB set up support guidance on how to conduct checks, such as in anti-money laundering.

24. Out of the 22 respondents, 18 broadly agree that chambers would be aided by parallel Bar Council and other professional websites providing guidance and examples of good practice in meeting the outcomes. Four respondents didn't express agreement or disagreement with the proposal.

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<sup>21</sup> 5KBW

<sup>22</sup> Atkin

<sup>23</sup> Bar Council

<sup>24</sup> Bar

<sup>25</sup> Chancery Bar

*“Yes, as long as they are they are completely consistent. Formal regulatory guidance as to what is required or expected of chambers (and individual barristers) should be provided only by the regulator, i.e. the BSB. Any guidance must make things clearer. If it doesn’t it should not be offered as guidance.”<sup>26</sup>*

*“There is no reason why the Bar Council and other professional websites should not provide guidance of good practice.”<sup>27</sup>*

**Do you agree that small and medium chambers are best supported through informal networks of support such as those outlined above? Do you have any suggestions about how these networks can be encouraged and promoted?**

25. Only two consultation responses (one chambers and one individual barrister) indicated that small and medium chambers are best supported through informal networks of support, as outlined in the consultation. 18 respondents disagreed with this assertion, while two did not explicitly state their position (one chambers and one individual barrister).

26. Among those who disagreed with the approach, nine explicitly expressed concerns about the voluntary consolidation of chambers. Six respondents stated that it is not appropriate for the regulator to pursue voluntary consolidation of chambers, while another respondent said that this approach fails to recognise that individual self-employed barristers of chambers are independent entities. One respondent mentioned that this approach was anti-competitive, while the other one stated that it is “sensitive, complex and challenging”.

*“We agree that it is not for the BSB actively to promote consolidation between chambers; the approach each chambers takes to achieving compliance with the regulations is a matter for them to decide.”<sup>28</sup>*

*“Chambers equally does not think the answer lies in voluntary consolidation between smaller chambers. Again, this fails to recognise that individual self-employed barrister members of chambers are independent entities. Chambers would not be in favour of any clarification of requirements that may pressure/incentivise chambers to explore the option of consolidation (but recognises that the BSB is not proposing an active policy of bringing about consolidation).<sup>29</sup>*

27. Nine respondents who disagreed that small and medium chambers are best supported through informal networks of support expressed concerns about sharing "back-office" functions between chambers. Four of the respondents said that this approach was not practical, unrealistic and inappropriate, while three others said that this approach would imply a larger burden for them, and two more said that it was anti-competitive, as chambers are in competition with each other.

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<sup>26</sup> St John's

<sup>27</sup> Bar

<sup>28</sup> 5KBW

<sup>29</sup> Atkin

*“We therefore do not see that any sharing of information, whether informal or otherwise is either practical, desirable, or appropriate. It would have a disproportionate burden on our own resources in terms of time and funding. As a leading chambers within our own specialist field, we would anticipate that many other smaller chambers would look to us to emulate and replicate our own successful model, thus adding further to our own burden.”<sup>30</sup>*

*“Whilst some support may be capable of being provided from the specialist bar associations, not all are in the position to provide, for example, template policies or procedures if only because they do not have the funding available to engage and pay for external advisers (assuming any were prepared at reasonable cost to draft a profession-wide proposal). It would be unrealistic to expect an unpaid officer/officer of a specialist bar association to assume the role.”<sup>31</sup>*

28. Regarding this question, one small chamber mentioned that they disagreed with this proposal as it *“is wholly impractical and betrays a lack of understanding of the market in which barristers operate. Individual barristers are members of Specialist Bar Associations which provide opportunities to learn best practice suited for their fields of expertise. Our clerks have friendships with clerks at other sets. The idea, however, that small sets should merge or share outsourced back-office functions in order to meet enhanced regulatory requirements is a classic example of putting the needs of bureaucracy above those of the profession and the public interest it exists to serve. It is anti-competitive, and especially frustrating for someone who has successfully broken through the barriers to entry by setting up a new set of Chambers.”<sup>32</sup>*

29. In three roundtables, there was general agreement with the use of informal networks to support small and medium chambers, although with some concerns about the need to clearly set minimum standards to comply with. In three of the roundtables there was no explicit agreement or disagreement, and one roundtable didn't address this question.

30. Four of the respondents expressed their suggestions for supporting small and medium chambers. One of them mentioned reducing the burden of complying with regulatory requirements, which can be supported by the BSB by making the requirements simple, clear and proportionate. Two respondents expressed that it would be helpful to have podcast/webinar style training sessions across the main areas of compliance, while another respondent mentioned that it would be helpful if the BSB creates a chambers forum and send staff to make visits to chambers to monitor compliance, to facilitate pilots and to advice on the collection and analysis of data.

*“In our view the best way to support chambers, including smaller chambers, is to reduce the burden of complying with regulatory requirements. The BSB can assist in this by making the requirements simple, clear and proportionate, and by targeting*

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<sup>30</sup> 4PB

<sup>31</sup> Chancery Bar

<sup>32</sup> Forum



*supervision where perceived risk is highest. High quality guidance being available on a single website such as the Bar Council Ethics website would also assist.”<sup>33</sup>*

*“It would be beneficial for there to be more podcast/ webinar style training sessions available across the main areas of compliance. This would make information sharing easier and more accessible for all chambers (members and staff)”<sup>34</sup>*

**Do you agree that the Bar Standards Board should not seek to revive a kitemarking scheme for chambers, but should instead develop a graduated supervision strategy on the lines outlined above? Do you believe that, as part of this strategy, the Bar Standards Board should make public its assessment of individual chambers? Do you support ending comprehensive quinquennial Regulatory Returns in favour of targeted surveys of risk and compliance?**

31. Out of the 22 responses to this question, 20 respondents agreed that the BSB should not seek to revive a kitemarking scheme for chambers. One respondent did not answer the question, and only one respondent expressed a desire to see a kitemarking scheme.

*“The Panel would have liked to see a kitemarking scheme for chambers as this would be a useful way to inform consumers that there are no major issues with a chambers when due to the information asymmetry in the legal services marketplace, they have no way of easily assessing that fact for themselves.”<sup>35</sup>*

32. Of those respondents who agreed with the BSB not to revive the kitemarking scheme, five mentioned that it would mean a larger burden for chambers, two said that it added little value and was only useful in very few circumstances, and one stated that it was a retrograde initiative which “assumes that those instructing the Bar will be more persuaded by a logo /badge rather than other forms of quality control”<sup>36</sup>, and the other respondents didn’t explain their decision.

*“A kitemarking scheme, like Bar Mark, is a large administrative burden to any size chambers, but would disproportionately disadvantage smaller chambers who might not have the administrative capacity to join the scheme.”<sup>37</sup>*

*“We believe that the introduction of a kitemark scheme (which would inevitably be similar in scale to the quinquennial Regulatory Returns) would only serve to advantage a small proportion of sets with significant infrastructure, many of whom would likely still find the process a burdensome one (as they did with BarMark)”<sup>38</sup>*

33. Among the 22 responses to this question, 14 respondents (One individual barrister, one legal regulatory body, one specialist Bar association, one legal representative body, and eleven chambers) agreed that the BSB should develop a graduated supervision strategy. Two chambers disagreed with this

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<sup>33</sup> 5KBW

<sup>34</sup> Garden Court

<sup>35</sup> LSCP

<sup>36</sup> LPMA

<sup>37</sup> Atkin

<sup>38</sup> Bar

approach; five did not mention whether they agreed or disagreed, and one respondent stated that they would need more information about the strategy to provide detailed comments.

*“Chambers is not averse to a graduated supervision strategy in principle but would need more information from the BSB about what this strategy would mean for chambers to comment in detail. Chambers would be in favour of a graduated supervision strategy which reduces the volume of regulatory questionnaires for chambers with a history of compliance, in the interest of proportionality and of focusing resource on those chambers most in need of support. Chambers would not be in favour of a graduated supervision strategy which increased the administrative burden on Chambers.”<sup>39</sup>*

34. Those who agreed with developing a graduated supervision strategy, one said that it would mean that the burden on chambers would be more proportionate to perceived regulatory risks, one respondent said that it’s appropriate that the regulatory oversight is directed towards those who pose greater risk to the public and/or are more serious offenders, but that this approach should be called “regulatory risk based/directed supervision strategy” instead. Another respondent said that although they agree, there needs to be a proper understanding of the regulatory risk, and one more respondent mentioned that this strategy would also benefit consumers. The other respondents didn’t mention why they agreed with the approach.

*“The Panel also approves of the targeted use of a regulator’s resources and understands that a comprehensive supervision and enforcement strategy would also benefit consumers, especially if the resulting regulatory information is made available to consumers.”<sup>40</sup>*

*“To the extent that there is regulatory oversight, then it is clearly appropriate that it is directed towards and concentrated on those who pose the greatest risk to the public and/or are the most serious of offenders. In this sense a ‘graduated supervision strategy’ is appropriate”<sup>41</sup>*

35. One of the two respondents who disagreed with the graduated supervision strategy mentioned that they *“do not agree to the ‘tiered’ or graduated approach of chambers on the basis of size, where the governance of barristers by the BSB is on an individual level. Compliance based on size is neither practical, evidence-based or makes allowance for the business model, resources, or merits of any particular chambers”<sup>42</sup>*. The other one didn’t give a reason for their disagreement.

36. Of the 22 responses to this question, only one respondent agreed that the BSB should make public its assessment of individual chambers. 16 respondents disagreed with this proposal, four did not answer the question,

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<sup>39</sup> Atkin

<sup>40</sup> LSCP

<sup>41</sup> Bar

<sup>42</sup> 4PB

and one mentioned that they needed more information before providing a comment.

*“More information is required before we would be able to comment. For example (not an exhaustive list):*

- What are the outcomes the Bar Standards Board would be hoping to achieve through publishing assessments?*
- Where would the assessment be published?*
- What information would be published, in what format and with what level of detail?*
- What would the assessment be based on?*
- Does this unfairly set chambers against each other?*
- Can the BSB guarantee that it can provide a sufficient level of resources to assess chambers regularly?*
- What if a chambers does not agree an assessment, what is the appeal process? What would be the impact of assessment publishing?”<sup>43</sup>*

37. Of the 16 respondents who disagreed with making public the assessments of individual chambers, nine respondents didn't give a reason to why they opposed to the proposal, two respondents said that this approach will create resentment against the regulator and damage to the reputation of the chambers, two more (chambers) said that it was not productive, another two respondents opposed to the proposal because the BSB should not or cannot regulate chambers (Bar and one chambers), and one respondent mentioned that it this would be likely to reduce confidence on the Bar.

*“Naming and shaming does not usually have the desired effect of increasing compliance but instead breeds resentment towards the Regulator from the chambers who are affected. In addition, one slightly negative comment about a chambers from the Regulator could destroy or seriously damage the members of that chambers, even if it is a relatively minor infraction that was immediately corrected.”<sup>44</sup>*

*“This approach to name and shame serves to create resentment and damage to reputation and practice, detrimental to chambers. There should be an open approach to achieving compliance with dialogue between the BSB and chambers.”<sup>45</sup>*

*“We do not support this. We consider that this is likely to reduce confidence in the Bar. That suggestion ignores the fact that the Bar is largely a referral profession: solicitors and other instructing professionals are sophisticated purchasers and already have a good understanding of individual chambers and barristers' capabilities and performance. The Bar is, generally, not a “consumer facing” profession and should not be regulated as such.”<sup>46</sup>*

38. The respondent who agreed with this proposal stated that *“Direct access users and all consumers may find this type of regulatory information, including chambers assessments, very useful in informing their choice of barrister. Efforts must also be put into ensuring this regulatory information is accessible*

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<sup>43</sup> Garden Court

<sup>44</sup> Atkin

<sup>45</sup> 4PB

<sup>46</sup> St John's

*and easily understood, along with other quality indicators that consumers can easily compare and contrast to make meaningful decisions about which legal professional to engage.”<sup>47</sup>*

39. Out of the 22 responses to this question, 17 regulatory returns respondents agreed that the BSB should end comprehensive quinquennial Regulatory Returns in favour of targeted surveys of risk and compliance. None disagreed with this proposal, four respondents did not answer the question, and one respondent stated that "It would be preferable if the return were broken up, and different areas were addressed on a rolling basis."

*“As a small set, we found it helpful to have to review our documentation and processes in a number of areas as part of the quinquennial regulatory return. However, there was a heavy burden in having to look at all areas at once. It would be preferable if the return was broken up and different areas were addressed on a rolling basis”<sup>48</sup>*

40. Of those respondents who agreed, five said that it was a burdensome exercise, and three said that it was unnecessary and disproportionate. The others didn't give an explanation on why they agreed with ending regulatory returns.

*“We agree that there should be targeted surveys of risk and compliance rather than continued quinquennial regulatory returns. This would mean that the burden on chambers would be more proportionate to perceived regulatory risks.”<sup>49</sup>*

*“We support the BSB’s proposal to end the comprehensive quinquennial Regulatory Returns, which we concluded was disproportionate and unnecessarily burdensome to both chambers and the regulator who struggled to process the completed returns in a timely fashion.”<sup>50</sup>*

41. One respondent suggested *“an approach of continuous improvement invokes an evidence based, positive, learning approach to compliance.”<sup>51</sup>*

42. In two of the seven roundtables, participants agreed with ending the kitemarking scheme, while in two others, they expressed that the kitemarking scheme was a useful framework for reviewing policies. In another roundtable, it was mentioned that although the kitemarking scheme has some advantages, it is a tedious process. In the other roundtables there was no mention about the kitemarking scheme.

**Do you agree with the approach to re-defining chambers outlined in paragraph 38 above? Do you agree that the Bar Standards Board should not prescribe governance arrangements for chambers meeting this definition, but expect chambers themselves to establish appropriate leadership and governance arrangements?**

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<sup>47</sup> LSCP

<sup>48</sup> Forum

<sup>49</sup> 5KBW

<sup>50</sup> Bar

<sup>51</sup> Garden Court

43. 20 respondents agreed with the approach to redefining chambers as outlined in paragraph 38 of the consultation, and none of them disagreed with this proposal. Two respondents did not answer the question.

44. One respondent suggested a new definition for chambers: *“chambers means a place at or from (a) an entity or organisation through which two or more self-employed barristers or BSB entities carry on their practices (whether entirely or in part) and also refers where the context so requires to all the barristers (excluding pupils) and BSB entities who for the time being carry on their practices at or from that place through or by virtue of that entity or organisation or (b) a single self-employed barrister or BSB entity carrying on practice (whether entirely or in part) outside of an entity or organisation within subparagraph (a) above”*<sup>52</sup>

45. 19 respondents agreed that the BSB should not prescribe governance arrangements for chambers meeting the definition outlined in paragraph 38 of the consultation, while three did not answer the question.

46. Of those respondents who agreed with the proposal, five said that it is for each chambers to ensure they comply with BSB’s regulatory requirements, that it falls outside BSB’s role, one respondent said that it has no public benefit, one other mentioned that rules already prescribe the governance arrangements that should be in place. The other respondents didn’t mention why they agreed with the statement.

*“It is for each chambers to ensure they are managed in such a way as to comply with the BSB’s regulatory requirements.”*<sup>53</sup>

*“There is no public benefit in doing so and it would be contrary to a focus on outcomes rather than formalities”*<sup>54</sup>

47. In two roundtables, it was mentioned that a redefinition of chambers is necessary and there was agreement with a broader definition. In the other roundtables, this question was not addressed.

## **GENERAL THEMES**

48. Regarding what is good or bad for clients, one respondent mentioned that sharing information between chambers wouldn’t be beneficial for consumers because of their confidentiality with clients’ information, one respondent said that implementing a new supervision programme would imply more resources from the Practising Certificate Fee (PCF), and there is a risk that this will be passed onto higher fees for clients. One respondent said that a kitemarking scheme “would be useful to inform consumers that there are no major issues with chambers”. They also said that the targeted use of a regulator’s resources, and a comprehensive supervision and enforcement strategy

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<sup>52</sup> Chancery Bar

<sup>53</sup> 5KBW

<sup>54</sup> Forum

“would also benefit consumers, especially if the resulting regulatory information is made available to consumers.”<sup>55</sup>

## **Social Media**

49. From the feedback from social media, three accounts said that the BSB could adjust the regulatory burden, so they are more proportionate and targeted, because chambers are consistently complaining about this. One account said that BSB should demonstrate that it really understands how central the chambers system is to the Bar and delivery of its service, while another account mentioned that it was surprising that there was no acknowledgment that chambers are mostly (if not always) unincorporated associations.

## **Clerks**

50. From the engagement with clerks, three of them said that there is a lack of expertise among barristers, particularly in relation to managing risk. Three of them also stated that the Handbook and Code of Conduct are “unreadable” and it is difficult to find information there. Two more suggested that BSB should work with the LPMA for building relationships with barristers, and another one mentioned that there is a need for documents which demonstrate good practice.

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<sup>55</sup> LSCP