

*Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.*



REGULATING BARRISTERS

## Meeting of the Bar Standards Board

Thursday 27 July 2023, 5.00 pm (Hybrid meeting - in person and online)

Rooms 1.4 – 1.7, First Floor, BSB Offices / MS Teams

### Agenda - Part 1 – Public

**This meeting will be recorded for the purposes of minute taking as previously agreed by the Board. Your consent to this is assumed if you decide to attend. The recording will be deleted once the minutes are formally approved at the next meeting**

*Note: this meeting will be preceded by a seminar for Board Members commencing at 3.45 pm (same venue). It will be a discussion on our approach to supervision*

				Page
1.	<b>Welcome / announcements</b> (5.00 pm)		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of minutes from the last meeting</b> <b>(25 May 2023)</b>	Annex A	Chair	<b>3-6</b>
5.	a) <b>Matters arising &amp; Action List</b> b) <b>Forward agenda</b>	Annex B Annex C	Chair Chair	<b>7</b> <b>9</b>
6.	<b>Legal Services Board: Regulatory</b> <b>Performance Assessment</b> (5.10 pm)	BSB 031 (23)	Mark Neale	<b>11-38</b>
7.	<b>Conduct in Non-Professional Life Project</b> (5.30 pm)	BSB 032 (23)	Rhys Bevan	<b>39-91</b>
8.	<b>The BSB Annual Report for 2022-23</b> (5.50 pm)	BSB 033 (23)	Wilf White	<b>93-129</b>
9.	<b>Director General's Strategic Update – public</b> <b>session</b> (5.55 pm)	BSB 034 (23)	Mark Neale	<b>129-130</b>
10.	<b>Chair's Report on Visits &amp; External Meetings</b> (6.00 pm)	BSB 035 (23)	Chair	<b>131</b>
11.	<b>Any other business</b>		Chair	
12.	<b>Date of next meeting</b> • Thursday 5 October 2023			
13.	<b>Private Session</b> (6.00 pm)			

**John Picken**  
**Governance Officer**  
20 July 2023



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

**Part 1 - Public****Minutes of the Bar Standards Board meeting****Thursday 25 May 2023 (5.00 pm)****Rooms 1 & 2, 4<sup>th</sup> Floor, Inner Temple, Crown Office Row EC4Y 7HL**

- Present:** Kathryn Stone OBE (Chair)  
Gisela Abbam (via Teams)  
Alison Allden OBE  
Jeff Chapman KC  
Emir Feisal JP  
Simon Lewis  
Andrew Mitchell KC  
Irena Sabic KC  
Professor Leslie Thomas KC (via Teams)  
Stephen Thornton CBE
- By invitation:** Malcolm Cree (Chief Executive, Bar Council) (via Teams)  
Sam Townend KC (Vice Chair, Bar Council)
- In attendance:**  
**BSB Executive** Christopher Fitzsimons (Communications Manager)  
Rebecca Forbes (Head of Governance & Corporate Services)  
Oliver Hanmer (Director of Regulatory Operations)  
Teresa Haskins (Director of People, BSB) (via Teams)  
Ewen Macleod (Director of Strategy & Policy) (via Teams)  
Mark Neale (Director General)  
John Picken (Governance Officer)  
Wilf White (Director of Communications & Public Engagement)  
Alex Williams (Head of Operational Support)
- Press** Neil Rose, Legal Futures (via Teams)

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

1. Kathryn Stone welcomed those present to the meeting and explained that noise from building works adjacent to the BSB's offices had required a change of venue. She also made the following announcements:
  - Irena Sabic KC has been appointed a Deputy King's Bench Master with effect from May 2023 for four-years on renewable terms;
  - Oliver Hanmer, the Director of Regulatory Operations, leaves the BSB on 9 June 2023 after nearly 25 years to take up a new role with the Payment Systems Regulator. He has made a very positive difference to the work of the BSB and will be much missed. Saima Hirji will replace him on a temporary basis following her appointment as Acting Director of Regulatory Operations.
  
2. **Item 2 – Apologies**
  - Steve Haines;
  - Lorinda Long (Treasurer, Bar Council);
  - Nick Vineall KC (Chair, Bar Council);
  - James Wakefield (Director of COIC);
  - Sara Jagger (Director of Legal and Enforcement).

**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 30 March 2023.

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

5. There were no matters arising. The Board **noted** progress on the action list.

**Item 5b – Forward agenda**

6. The Board **noted** the forward agenda. The Chair also reminded Members of the opportunity to raise any points for discussion under “any other business”. This should be done in advance of the meeting via the Governance Team.

**Item 6a – Director General’s Report: Performance Report Q4**

BSB 022 (23)

7. Mark Neale referred to the report which showed:
- a strong increase in productivity for both the completion of investigations and the initial assessment of reports. Twice as many investigations were completed in the second half of the year compared to the first and a record 541 reports were cleared in Q4;
  - we are now on track to meet the “timeliness” KPI later in the year once all the older (and already overdue) cases are resolved;
  - there are challenges in the management of authorisation caseloads which continue to rise. There is currently a backlog of 400 applications.
8. In respect of the latter, he commented that:
- Authorisations comprise a range of work, some of which is seasonal and complex, and all of which is difficult to plan given that work volumes can vary considerably;
  - we will focus on triage processes in the immediate term, but a more fundamental review of Authorisations is currently underway under the direction of Professor Mike Molan, Chair of the BSB Centralised Examinations Board.
9. In response to questions raised by Members, the Executive stated that:
- there is no obvious reason to explain the sudden increase in applications for transfer from legally qualified individuals currently resident abroad;
  - hitherto we have tended to address applications on a sequential basis as they arrive. However, we may now decide to prioritise those applications where there is a more pressing need for early resolution;
  - there is no excess resourcing in the team so any time lost due to staff sickness will have an immediate and detrimental impact on productivity.
10. Jeff Chapman KC welcomed the news that the Independent Reviewers upheld the original decisions for all 24 referrals made to them during the quarter. This demonstrates that increased throughput of cases has not affected the quality of our decision making.
11. Sam Townend KC also expressed his satisfaction with progress made notwithstanding the concerns around Authorisations. He noted the plan set out in the paper to manage this. He also referred to the Code of Conduct review, which has already been delayed, and urged this be addressed as soon as possible. This should encompass readability and usability of the Code as well as its overall content.
12. The Executive confirmed that “quick fixes” to the Code have been identified and will be addressed as a priority over the forthcoming year. More fundamental changes will follow. A planning paper will be presented to the Board in July 2023.

13. In response to other questions raise, Mark Neale stated that:
- the Performance & Strategic Planning (PSP) Committee will receive progress reports about Authorisations and efforts to improve productivity. It will also be included in his strategic update to the Board;
  - the reference to “litigation” in the report relates to those cases where the BSB is being legally challenged about its decisions. This is not unusual for a regulator, and we provide six-monthly reports about this to the Governance, Risk and Audit Committee.

14. **AGREED**  
to note the report.

**Item 6b – Director General’s Report: Strategic Update**  
BSB 023 (23)

15. The Board **noted** the report. Sam Townend KC referred to the section about equality and disability, specifically that concerning access to historic buildings of the type occupied by sets of chambers. He expressed some disquiet about the potential duplication of effort here, given the Bar Council already works collaboratively with the Inns on access and equality issues. The Chair **noted** this comment.

**Item 7 – Reform: progress in implementing action plan**  
BSB 024 (23)

16. Mark Neale commented on progress against the action plan for transformational change previously requested by the Legal Services Board (LSB). The Board also agreed to his suggestion that an update be provided to the LSB after each Board meeting.
17. Members commented as follows:
- it is encouraging to hear that the BSB is building a more collaborative relationship with the LSB. The tone and content of the draft letter is helpful in this regard;
  - Matthew Hill’s original letter (Annex B) refers to evaluating the “impact” of the actions included in the plan. We might, therefore, wish to allude to this in subsequent iterations of update reports to the LSB.
18. The Chair agreed with the latter point and endorsed ongoing efforts to develop constructive relationships with all the BSB’s stakeholders. With that in mind, she will invite the LSB to attend the public session of the next meeting in July.

19. **AGREED**
- a) to note progress to date on implementing the action plan for transformational change.
  - b) to approve the assurance letter to the LSB set out at Annex B of the report and to consider extending the list to cover the impact of actions taken.
  - c) to invite the LSB to attend the public session of the Board meeting on 27 July 2023.

**MN to  
note  
MN to  
note**

**Item 8 – Performance and Strategic Planning Committee (PSP) Annual Report 2022/23**  
BSB 025 (23)

20. Mark Neale highlighted the following:
- the Committee was reconstituted during the course of the year to include “performance” within its remit;
  - it subsequently focused on accelerating investigations and the development of a balanced scorecard for performance;
  - it also fulfilled its role in overseeing the business plan and budget for 2023-24 as well as our pay reform proposals.
21. The Chair also noted that the Committee will now report to the Board biannually.
22. **AGREED**  
to note the report.

**Item 9 – Chair’s Report on Visits and External Meetings**

BSB 026 (23)

23. The Chair highlighted the following:
- the continuation of roundtable visits to different parts of England and Wales and her thanks to Chris Fitzsimons for organising these events;
  - the benefit of hearing from barristers in the Circuits about their thoughts on regulation and the insight she gained from these meetings;
  - a summary of the feedback from the roundtables and options for next steps will be discussed at the July Board meeting;
  - her attendance at the BSB People Conference on 26 April 2023 which she found enjoyable and interesting;
  - her meeting with Advocate (a charitable organisational that finds free legal assistance from volunteer barristers).

24. **AGREED**  
to note the report.

**Item 10 – Any Other Business**

25. None.

**Item 11 – Dates of next meetings**

26. Thursday 6 July 2023 (Board Away Day) – etc venues.  
Thursday 27 July 2023 (ordinary meeting).

**Item 12 – Private Session**

27. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 30 March 2023.
  - (2) Matters arising and action points – Part 2.
  - (3) The BSB’s Public Legal Education Strategy.
  - (4) KPI and performance monitoring pilot.
  - (5) Corporate Risk Register.
  - (6) Director General’s Strategic Update – Private Session.
  - (7) Any other private business.
28. The meeting finished at 5.30 pm.

**BSB – List of Part 1 Actions**  
**27 July 2023**  
*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
31 (30/03/23) – Handbook amendments	consult on amendments to the Handbook as set out in Annex A of the report	Ewen Macleod	by end May 2023	16/05/23	<p><b>Completed</b> – consultation has been published and will conclude on 2 August</p> <p><b>To be completed</b> – a consultation has been drafted and will be published shortly</p>
20b (26/01/23) – Annual Diversity Data Report	refer the survey questions about disability to the Disability Task Force and to include Simon Lewis in this discussion	Ewen Macleod	before 30 March 2023	18/07/23	<b>To be completed</b> – this remains on the agenda for the next meeting
				16/05/23	<b>To be completed</b> – the April meeting focused on discussions with the Inns about accessibility. This is on the next meeting’s agenda.
				22/02/23	<b>To be completed</b> - the next meeting of the Task Force will be in April (exact date TBC) and we will invite Simon.





## Forward Agenda

### Thursday 5 October 2023

- Governance: Policies on Declaration of Interests, and Gifts and Hospitality, and Board Code of Conduct
- Consolidated Risk Report
- Budget proposal – 2024 / 25 financial year
- Director General's Report (performance report and strategic update)
- LSB Action Plan – progress report
- IDB Annual Report
- Regulatory Decisions Annual Report 2022/23
- Review of the Independent Reviewer process
- Board Evaluation
- Board Reappointments

### Thursday 30 November 2023

- The Bar Standards Board Equality and Diversity Strategy 2022 to 2025: update on progress
- Mid-year report from the PSP Committee
- GRA Annual Report
- Annual report – Bar Training
- Corporate Risk Report (summary)
- Discussion on re-validation
- LSB Regulatory Performance Assessment, and BSB's self-assessment on performance against LSB Regulatory Performance Framework
- Director General's Report (performance report and strategic update)
- LSB Action Plan – progress report

### Thursday 25 January 2024

- Annual Diversity Data Report
- Director General's Report (strategic update)
- LSB Action Plan – progress report
- Annual "deep dive" on the corporate risk register

### Thursday 21 March 2024

- BSB Business Plan 2024/25
- Consolidated Risk Report
- Director General's Report (performance report and strategic update)
- LSB Action Plan – progress report
- KPI pilot evaluation
- Outcome of consultation on our expectations of chambers



<b>Meeting:</b>	Board	<b>Date:</b>	27 July 2023
<b>Title:</b>	Legal Services Board: Regulatory Performance Assessment		
<b>Author:</b>	Mark Neale		
<b>Post:</b>	Director General		

<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion</b> <input checked="" type="checkbox"/>	<b>Noting</b> <input type="checkbox"/>	<b>Other:</b> <input checked="" type="checkbox"/> Recommendation
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<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>	
(a)	<b>protecting and promoting the public interest</b>
(b)	<b>supporting the constitutional principle of the rule of law</b>
(c)	<b>improving access to justice</b>
(d)	<b>protecting and promoting the interests of consumers</b>
(e)	<b>promoting competition in the provision of services</b>
(f)	<b>encouraging an independent, strong, diverse and effective legal profession</b>
(g)	<b>increasing public understanding of citizens' legal rights and duties</b>
(h)	<b>promoting and maintaining adherence to the professional principles</b>
<input type="checkbox"/>	Paper does not principally relate to Regulatory Objectives

## Purpose

1. This paper responds to the Legal Service Board's request of 8 June – annex A – for information to inform its annual regulatory performance assessment which this year takes place against a new framework<sup>1</sup>. The proposed response reflects work undertaken by the Executive to map sources of assurance against the new framework, together with an audit of that mapping by our Internal Auditors, and the latest update on progress in taking forward the reforms approved by the Board as part of the Business Plan for 2023/24 and reflected in the Action Plan sent to the Legal Services Board.

## Recommendations

2. That the Board:
  - i. approves the draft letter to the Legal Services Board at annex B responding to its information request;
  - ii. notes the supporting evidence which consists of: a mapping exercise to set down our sources of assurance against the standards of the LSB performance framework (annex C); the latest update on progress in implementing the reforms adopted by the Board in March (annex D); and answers to specific questions asked by the LSB but not addressed elsewhere (annex E); and
  - iii. notes that we have also commissioned from our Internal Auditors an independent assessment of the level of assurance we can take about our compliance with the regulatory framework on the basis of the evidence available to us. We shall circulate the Internal Audit report separately as soon as it is available.

## Background

3. As the Board knows, the Legal Services Board assesses all the front-line legal services regulators annually against a regulatory performance framework. This year's assessment takes place against a revised framework which the Legal Services Board adopted at the beginning of the year following consultation. The framework establishes 20 standards or

<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Regulatory-Performance-Assessment-Framework-Sourcebook.pdf>

characteristics under the broad headings of: *well-led*; *effective approach to regulation*; and *operational delivery*.

4. The Legal Services Board is also approaching the assessment somewhat differently. Under the new regime, it is primarily seeking evidence that the front-line regulators themselves have assurance against these standards. As you will see if you follow the link, the LSB framework provides helpful guidance on the sorts of evidence which it regards as relevant to these judgements.
5. The Board will also want to look at the last such assessment<sup>2</sup>, published in January, which recorded that the Legal Services Board felt that it had insufficient or only partial assurance about the BSB's performance in relation to the standards of the previous performance framework. The reforms approved by the Board in March, though driven by our own assessment of where the BSB can and should improve, will help to address the concerns reflected in that assessment.

### Our response

6. The Legal Services Board seeks both general and specific assurances in its commissioning letter of 8 June. We have, accordingly, approached our response from three main angles. First, we have comprehensively mapped the sources of assurances available to the Board and to the Senior Management Team against the new performance framework and also asked for independent assurance from our Internal auditors, RSM. Second, we have continued to take forward the reforms agreed in March and updated the action plan to reflect progress since the last Board meeting and report in May. And, third, we have addressed specific issues raised by the LSB which are not covered by either the mapping exercise or the update on the reforms.

### Mapping assurance

7. We set this exercise in hand well before we received the Legal Service Board's commissioning letter and, consequently, it covers all three elements of the performance framework and not simply the *well-led* and *effective approaches to regulation* dimensions highlighted by the Legal Services Board. We have discussed the mapping exercise in the Senior Management Team and also exposed it to the Internal Auditors for independent assurance (see paragraph 9 below).
8. As you will see from the map, we judge that, generally, we have comprehensive flows of information and data which enable the Board and Senior Management Team to form a view of our performance and, in most cases, to take assurance. We did nevertheless identify some gaps. We think that there is more that we could do to ensure that a consumer perspective is brought to bear consistently on our work. We have relied on commissioned research (and indeed have more in the pipeline), but this is necessarily episodic. Accordingly, we intend to make more consistent use of the consumer experts on Advisory Pool of Experts (and indeed of the Advisory Pool itself.) The development of the 2023/24 Business Plan this Autumn is an early opportunity to do this. We also intend to explore how best to gather stakeholder feedback on the performance of the BSB. Options here include a bespoke stakeholder survey or piggy-backing on a broader survey run by one of the market research organisations.
9. We have separately commissioned an independent audit from RSM of the level of assurance we can take from the evidence available to us. We shall circulate the RSM report as soon as we receive it.

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<sup>2</sup> <https://legalservicesboard.org.uk/our-work/regulatory-performance/current-regulatory-performance-assessments>

*Progress with implementing reform*

10. Amplitude of information is not, of course, the same thing as evidence of strong performance. We are, as annex D shows, nevertheless making good progress with the reforms adopted in March. Over the last two months:
- we have commissioned Fieldfisher to undertake the independent end-to-end review of our enforcement process after an open competition: workshops and other evidence gathering will begin over the Summer;
  - the Board endorsed, for piloting this year, a balanced scorecard to provide a more rounded perspective on the quality, timeliness, productivity and responsiveness of our operational work;
  - we completed our roundtables on the role of chambers and will be consulting on the way forward in the early Autumn;
  - the Board discussed reforms to our regulatory Risk Framework at its off-site in July and endorsed the direction of travel; and
  - we have opened discussions with our partners to re-join *Legal Choices* consistent with the Board's decision in May.
11. Other important elements of our reforms – our plans to revise the Handbook and the revision of our guidance on regulatory competence in non-professional life are also on the Board agenda for its meeting on 27 July. The Board will be discussing our supervision strategy at the informal strategy seminar preceding the Board.
12. The only substantial delay to a reform commitment is to the review of the role of independent review in our operational work. This reflected the need to take account of the learnings from a specific case. The report will now go to the Board at its meeting in October.

*Other issues*

13. Taken together the mapping exercise and the update on our reforms should, we expect, give the Legal Services Board a good basis for assessing the assurance it can take about BSB's performance. There were, however, a number of further specific questions set out in the annexes to the LSB letter. We have responded separately to these at Annex E (indicating where we think answers are to be found elsewhere).
14. The Board is invited to comment on the progress we have made and the draft letter to the Legal Services Board.

**Annexes**

Annex A – Legal Services Board commissioning letter of 8 June

Annex B – Draft covering letter in response by the Director General

Annex C – Annex to the letter above mapping sources of assurance to the LSB Regulatory Performance standards

Annex D – Annex to the BSB letter updating on progress against the reform plan

Annex E – Annex to the BSB letter responding to other specific questions in the LSB letter of 8 June

**Mark Neale**  
**Director General**



**By email only**

Mark Neale  
Director General  
Bar Standards Board

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8 June 2023

Dear Mark

**2023 Annual Regulatory Performance Assessment: Information request**

1. This letter explains the process and timelines for our 2023 assessment and sets out the information that we will require from the BSB.
2. The new regulatory performance framework came into force in January 2023. This will be the first assessment under the new framework and will cover the period from October 2022 to May 2023. We have engaged with regulators bi-laterally and at an all-regulator Q&A event about how to prepare for the new approach and we trust that these discussions have been helpful.

*Scope*

3. Our annual assessment information request asks **all regulators** to provide assurance about their performance against two of the three new standards - **well-led** and **effective approach to regulation**. In relation to these standards we will particularly be seeking assurance about the following common issues we identified in our 2022 assessment:
  - transparency of decision-making
  - capacity and capability
  - use and deployment of evidence
  - levels of proactiveness in supervisory work, and
  - resources, capability, and capacity for enforcement
4. We will also be seeking assurance about how regulators are implementing the ongoing competence and consumer empowerment statements of policy.

*Information request*

5. Your response to our information request should include:
  - Your assurance mapping or other analysis and/or explanation as to how you provide your Board with assurance that the BSB demonstrates the new framework's characteristics and, adding these together, meets the standards.
  - Supporting evidence including links to relevant published documents (eg Board papers), including actions which have been completed in the BSB Reform Action Plan of 30 May 2023. There is no need to provide large amounts of information. We are seeking the documents that you judge as the most relevant documents and evidence to provide assurance.
6. We expect that regulators will be frank and open in sharing information with the LSB and that this will be available in documents already provided or that have been published. You should assume that we will be familiar with your published board papers and other key corporate documents and therefore signposting will be sufficient. Where necessary, confidentiality will be maintained in how we present information in our assessment. Please identify any documents you consider to be confidential when responding to this request.
7. In November 2022, we assessed the BSB as having provided the following and consequently we agreed actions that you would undertake and we have monitored your performance against these actions:
  - partial assurance against Regulatory Approach, Authorisation, Supervision;
  - insufficient assurance against Well-led and Enforcement.
8. For this year's assessment we ask that you provide assurance as to how the BSB:
  - demonstrates the characteristics of each of the **well-led** and **effective approach to regulation** standards including responses to our specific questions set out in the Annex;
  - has addressed the specific areas for improvement under the **operational delivery** standard relating to [authorisation, supervision, and/or enforcement] that we identified in our 2022 assessment including responses to our specific questions set out in the Annex; and
  - responses to any other specific questions set out in the Annex.
9. When preparing your response, in line with the well-led standard and your Board's role in monitoring the BSB's performance, we would be happy for you to use information in the form that you have already provided to your Board, supplemented by any additional information you consider necessary to provide assurance.



10. Our assessment of your performance will take account of information that we have gathered since our last annual assessment in November 2022. This will include: our regular contacts such as relationship management meetings, CEO and Board-level meetings; applications submitted to us for approval; any information that you may have provided since the last assessment round; and information from other sources including publicly available material.
- 11. Please provide us with your response to this information request by 31 July 2023.**

*The LSB's assessment*

12. Our assessment will also use a narrative format and our new grading system. As we did in our 2022 assessment, we will apply a red/ amber/ green rating against each standard, but not against each characteristic. However, to help regulators understand the LSB's assessment, we will include references to individual characteristics.
13. As we have requested that all regulators provide assurance against the whole of the well-led and effective approach to regulation standards, our assessment will include full assessments of your performance against them.
14. In the case of the operational delivery standard, we have only requested that regulators provide assurance on issues relating to authorisation, supervision and enforcement that were noted in last year's assessment and any that have arisen since.

*Next steps*

15. As we have previously, we will work with you to agree any new actions and milestones stemming from our assessment. We will ensure that you have time to review and comment on our final assessment before its publication in November.
16. If you have any questions about the assessment process, the request for information set out in this letter and its annex, or the deadline for response please either contact me or Sally Al-Saleem, your relationship manager.

Yours sincerely



Angela Latta,  
Head, Performance and Oversight

**Annex: Information request for BSB****Well-led: Regulators are well-led with the resources and capability required to work for the public and to meet the regulatory objectives**

1a. Please provide assurance to the LSB on how the BSB meets this standard, in particular:

- transparency of decision making,
- capacity and capability and
- resources, capability, and capacity for enforcement.

As part of your response please also answer the specific questions below.

b. Please provide an update on whether the pilot balance scorecard proposals to measure the BSB's core regulatory operations have been approved by the Board.

c. The DG's strategic update in the Board paper for the 25 May Board meeting, provides an update on performance to the end of the fourth and final quarter in March 2023 and notes a rise in caseloads and applications. Please set out the BSB's planned actions to ensure its operational performance improves over the coming quarters.

**Effective approach to regulation: Regulators act on behalf of the public to apply their knowledge to identify opportunities and address risks to meeting the regulatory objectives**

2a. Please provide assurance to the LSB on how the BSB meets this standard, in particular:

- use and deployment of evidence and
- levels of proactiveness in supervisory work.

As part of your response, please also answer the specific questions below.

b. Please provide an update on the Data and Intelligence Strategy work set out in the BSB's Action plan, how it is progressing and provide the Report of the Risk Framework Review.

c. Please provide examples where the BSB has demonstrated a robust evidence-base for the proposals it puts forward to provide us with assurance that this outcome has been met.

**Questions on progress on empowering consumers statement of policy:**

3. With reference to the [empowering consumers policy statement](#), please provide information on any relevant work you have undertaken in the last year to ensure the **provision of useful information** that best enables effective consumer choice **on the quality of legal services providers** to consumers.
4. Please set out when you expect to have met the specific expectations in the empowering consumers policy statement.
5. Please provide information on how you have considered revising your transparency rules, following publication of your transparency reports in summer 2022. Please explain how you have taken account of the empowering consumers policy statement in doing so.
6. Please provide information on the effectiveness of your activities to support public legal education since our last assessment

**Question on progress on ongoing competence statement of policy:**

7. Please provide any relevant updates on progress since January 2023 toward meeting the outcomes in the ongoing competence policy statement, including any changes to your expected timeline for meeting the outcomes.

***Operational delivery: Regulators' operational activity (eg education and training, authorisation, supervision, enforcement) is effective and clearly focused on the public interest.***

8. Please explain how the BSB has made improvements to its operational delivery. As part of your reply, please also answer the specific questions below.

**[Authorisation]**

9. Please provide an update on the review into ongoing competence and review of rules for admission for qualified lawyers regarding being a fit and proper person.
10. Please provide a follow up on dates and progress of the review into the decision-making framework for authorisation decisions.

**[Supervision]**

11. Please provide evidence of the BSB prioritising the pro-active identification and monitoring of risks amongst its regulated community, particularly those that pose direct risks to consumers and the public interest.
12. Please provide an update on the BSB's decision to suspend remote online assessments.

**[Enforcement]**

13. Please provide update on the review of the BSB's Case Management System
14. Please also provide an update on the recruitment of staff to manage the backlog of complaints
15. Please provide an update on the progression of the review of the role of the Independent Reviewers in enforcement and authorisations processes and the impact that the parallel confidential work (highlighted in the latest BSB board minutes) may have on delivery of the review.
16. Please provide an update on the review of enforcement policies and process, communications and customer care processes.
17. Please provide a follow up on the success of implementation of the Lessons Learned Report on the *Eve* case.

**DRAFT LETTER TO:**

Angela Latta  
Head, Performance & Oversight  
Legal Services Board

**BAR STANDARDS BOARD: REGULATORY PERFORMANCE ASSESSMENT**

Thank for your letter of 4 June seeking information to inform your annual regulatory performance assessment. This letter and its attachments reflect a discussion in the public session of the Bar Standards Board on 27 July which [colleagues from the Legal Services Board] attended.

As you know, our practice is to undertake six monthly internal self-assessments of how we measure up to the Legal Services Board regulatory performance framework. We had, accordingly, already set in train work to map the sources of assurance on which our Board and the Senior Management Team can draw in assessing performance against the new framework. I am attaching that map – annex A - which we presented to the Board at last week's meeting.

Although there is more work to do to develop and update the map, our view is that it gives assurance that the Board and Senior Management Team is able to draw on comprehensive evidence from a wide range of sources in assessing performance. We do, however, recognise a number of areas where the evidence base could be improved. For example, we want to supplement our existing research evidence on consumer experiences by drawing more consistently on the expertise of our consumer expert advisers. We shall also explore how best to obtain better feedback on our performance from stakeholders. A periodic stakeholder survey is an option here.

Our mapping includes links to published documents. Other Board papers are published on our website. We shall be pleased on request to provide other, unpublished documents referred to in the map. [Meanwhile, I am attaching an independent audit commissioned from our Internal Auditors who have reviewed the level of assurance we are able to take from the available evidence.]

I am also taking this opportunity to provide the latest update on our progress in implementing the reforms approved by our Board in March and set out in Kathryn Stone's letter of 4 April. This will, I hope, give you further assurance about our regulatory performance. As reported to our Board, you will see that, since the last update in May, we have made substantial progress. Over the last two months:

- we have commissioned Fieldfisher to undertake an independent end-to-end review of our enforcement process after an open competition: workshops and other evidence gathering will begin over the Summer;
- the Board endorsed, for piloting this year, a balanced scorecard to provide a more rounded perspective on the quality, timeliness, productivity and responsiveness of our operational work;
- we completed our roundtables on the role of chambers and will be consulting on the way forward in the early Autumn;

Part 1 – Public

- the Board discussed reforms of our regulatory Risk Framework at its off-site in July and endorsed the direction of travel; and
- we have opened discussions with our partners to re-join *Legal Choices* consistent with the Board's decision in May and expect to do so from September. Meanwhile, we are continuing to work with a number of third sector organisations to which consumers in vulnerable circumstances turn for advice on legal matters and to encourage our fellow legal regulators to do so.

At its meeting on 27 July, our Board also discussed and approved:

- updated guidance on the scope of regulatory interest in conduct in non-professional life and in social media usage following a consultation earlier this year; and
- our plans to revise the Handbook and Code of Conduct over the next two years both to implement important reforms, including to our *Equality Rules*, and to improve navigability and intelligibility for both barristers and consumers.

At a strategic seminar preceding the Board meeting, Board members reviewed our Supervision strategy which, among other things, explains how our Supervision Team balances proactive and reactive work. We should be happy to share the material discussed at the seminar.

You also ask a number of specific questions in the annex to your letter. Many of those will be covered by the assurance map and update on progress against our reform plan. I attach at annex C responses to those questions, cross-referencing the latter documents where relevant.

We should, of course, be happy to discuss any matters covered in these documents or to provide further information.

**MARK NEALE**  
**DIRECTOR GENERAL**

**Regulatory performance assessment framework**

For the public, with the professions: Framework for effective regulation in the legal services sector.

**Standard 1: Well-led**

Regulators are well-led with the resources and capability required to work for the public and to meet the regulatory objectives effectively.

	Characteristics	Examples of Evidence	Relevant LSB publications	BSB assurance for Board	Exec lead(s)
1	A clear sense of purpose and strategy focused on regulation in the public interest and ensuring public confidence in the regulator.	<ul style="list-style-type: none"> <li>▪ Strategy/vision</li> <li>▪ Values statement</li> <li>▪ Business plan</li> <li>▪ Board involvement in development and direction of strategy</li> <li>▪ Board away day</li> <li>▪ Comprehensive evidence base</li> </ul>		<ul style="list-style-type: none"> <li>▪ <a href="#">Strategy</a> (includes vision)</li> <li>▪ <a href="#">Values statement</a></li> <li>▪ <a href="#">Business plan</a></li> <li>▪ Board development of strategy</li> <li>▪ Board away day</li> <li>▪ Comprehensive evidence base (Risk framework/index, commissioned and internal research projects - eg current projects on technology and pupillage, analysis of enforcement outcomes)</li> </ul>	MN / RF / EM
2	Board takes ownership of and accountability for the organisation's performance and for meeting the regulatory objectives; holds its executive to account.	<ul style="list-style-type: none"> <li>▪ Governance manual/handbook</li> <li>▪ Board and Committee attendance levels</li> <li>▪ Number of Board and Committee meetings</li> <li>▪ Board agendas and minutes – evidence of Board taking decisions</li> <li>▪ Progress against planned activity</li> <li>▪ Performance against KPIs</li> <li>▪ Complaints about the regulator</li> <li>▪ Board effectiveness reviews</li> <li>▪ Annual accounts and reporting of data to Board and publicly</li> <li>▪ Board and Executive meet regularly to foster collaborative relationships</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Internal Governance Rules 2019 (July 2019)</a></li> <li>▪ <a href="#">LSB Guidance on Internal Governance Rules (July 2019)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Board &amp; Board Committee agenda, papers and notes of meetings</li> <li>▪ Governance manual</li> <li>▪ Quarterly Performance updates – DG reports (Board reports)</li> <li>▪ Annual Regulatory Decision Report (<a href="#">Regulatory-Decision-Making-Annual-Report-2021-22.pdf</a>)</li> </ul>	MN / RF
3	Independent of the regulated professions but understands and collaborates effectively with the profession and representative groups to meet the regulatory objectives.	<ul style="list-style-type: none"> <li>▪ Compliance with IGRs</li> <li>▪ Examples of collaborative work and attempts at collaboration</li> <li>▪ Examples of innovative work</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Internal Governance Rules 2019 (July 2019)</a></li> <li>▪ <a href="#">LSB Guidance on Internal Governance Rules (July 2019)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Compliance with IGRs</li> <li>▪ Compliance with protocol for ensuring regulatory independence agreed with the Bar Council – logs etc</li> <li>▪ Regular meetings with range of stakeholders</li> <li>▪ DG speech of 3 July 2023</li> </ul>	MN / RF / EM
4	Understands the needs of consumers and the public interest and assesses the impact of its work in meeting their interests.	<ul style="list-style-type: none"> <li>▪ Research into public concerns</li> <li>▪ Research into levels of public confidence in the regulator</li> <li>▪ Assessment of impact of regulator's work in addressing concerns raised by and issues facing the public</li> </ul>		<ul style="list-style-type: none"> <li>▪ Research reports regularly shared with the Board</li> <li>▪ Board regularly reviews Comms and PLE strategies</li> <li>▪ Innovative work: innovation research; on-line comparison market study; role of chambers initiative</li> <li>▪ Consumer research, gap analysis against consumer empowerment statement</li> </ul>	EM / WW
5	Delivers high levels of transparency, including ensuring decisions are clear and accessible to all those with an interest.	<ul style="list-style-type: none"> <li>▪ Publication policy</li> <li>▪ Annual Report</li> <li>▪ Annual accounts and reporting of data to Board and publicly</li> <li>▪ Board papers and minutes</li> <li>▪ Costs report</li> <li>▪ KPIs and performance reports</li> <li>▪ Complaints about the regulator</li> <li>▪ Regulator engagement with stakeholders</li> <li>▪ Process in place to ensure plain English approach to communications</li> <li>▪ Consumer engagement strategy including vulnerable consumers</li> <li>▪ Diversity report</li> <li>▪ Clear terms of reference for the Board and associated committees (and for staff)</li> <li>▪ Consideration of diversity of the Board (and of staff)</li> <li>▪ Board review processes</li> <li>▪ Appointment processes and terms</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Applications to Alter Regulatory Arrangements Rules 2021 (December 2021)</a></li> <li>▪ <a href="#">Well-led review of the Bar Standards Board: findings report (July 2021)</a></li> <li>▪ <a href="#">Well-led review of the Faculty Office: findings report (September 2021)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Quarterly Performance updates – DG reports (Board reports)</li> <li>▪ Annual Regulatory Decision Report (<a href="#">Regulatory-Decision-Making-Annual-Report-2021-22.pdf</a>)</li> <li>▪ Board meetings partly held in public and Press always invited to those parts of the meeting</li> <li>▪ Consumer engagement through consumer pool, quarterly consumer news bulletin and during public consultations</li> <li>▪ Regular publication of diversity reports – relating to the profession, the BSB and the Board</li> <li>▪ Anti-racist working group and examples of diversity training for Board and staff</li> </ul>	MN / RF / EM / WW

	Characteristics	Examples of Evidence	Relevant LSB publications	BSB assurance for Board	Exec lead(s)
		<ul style="list-style-type: none"> <li>▪ Code of conduct (for Board and staff)</li> <li>▪ Disciplinary processes</li> <li>▪ Skills review processes</li> <li>▪ Internal/External Audit</li> <li>▪ Risk outlook</li> <li>▪ Risk policy</li> <li>▪ Risk assessment policy</li> </ul>		<ul style="list-style-type: none"> <li>▪ Board and Committee constitution / TORs and scheme of delegation</li> <li>▪ Board away day / self-evaluation activities</li> <li>▪ Board/Committee appointment processes</li> <li>▪ Disciplinary processes, staff Handbook</li> <li>▪ L&amp;D strategy</li> <li>▪ Evidence of audits</li> <li>▪ Risk documentation (NB risk outlook wasn't undertaken independently of the Strategic Plan this time)</li> </ul>	
6	Understands, secures and deploys the necessary resources to support meeting the regulatory objectives, including through collaboration where relevant.	<ul style="list-style-type: none"> <li>▪ Numbers of staff assigned to regulatory activities against number of vacancies</li> <li>▪ Training available to staff and decision makers</li> <li>▪ Cost of regulation information</li> <li>▪ Practising Certificate Fee</li> <li>▪ HR monitoring of staff turnover rates</li> <li>▪ Contingency planning (to deal with resource pressures)</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">LSB Practising Fees Rules 2021 (January 2021)</a></li> <li>▪ <a href="#">LSB Guidance on Practising Fee Rules 2021 (January 2021)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Review of resources and capability as part of development of current strategy for 2022/23-2024/25</li> <li>▪ Business Planning and budget rounds and Board and Board committee discussions of Business Plans and Budgets</li> <li>▪ Ad hoc decisions to increase resources where warranted by demands on operational capability</li> </ul>	MN / RF / TH
7	Understands the legislative and policy framework within which it operates; works constructively and in collaboration with the LSB, other relevant authorities and relevant stakeholders.	<ul style="list-style-type: none"> <li>▪ Consideration and evaluation of Board engagement with the regulated community and others (eg OPBAS, CMA)</li> <li>▪ Horizon scanning</li> <li>▪ Feedback from stakeholders</li> <li>▪ Information about the market that is available</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Applications to Alter Regulatory Arrangements Rules 2021 (December 2021)</a></li> <li>▪ <a href="#">Statement of policy: Cancellation of designation as a licensing authority (April 2011)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Regular horizon scanning of PSP Cttee and Board (see away day agenda)</li> <li>▪ Risk monitoring and research activities show awareness of the market</li> <li>▪ Regular consultation with stakeholders (including on strategy)</li> </ul>	MN / EM
8	Has fit for purpose governance systems that align to best practice.	<ul style="list-style-type: none"> <li>▪ Governance manual/handbook</li> <li>▪ Clear terms of reference for the Board and associated committees (and for staff)</li> <li>▪ Consideration of diversity of the Board (and of staff)</li> <li>▪ Board review processes</li> <li>▪ Appointment processes and terms</li> <li>▪ Code of conduct (for Board and staff)</li> <li>▪ Disciplinary processes</li> <li>▪ Skills review processes</li> <li>▪ Internal/External Audit</li> <li>▪ Risk outlook</li> <li>▪ Risk policy</li> <li>▪ Risk assessment policy</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Well-led review of the Bar Standards Board: findings report (July 2021)</a></li> <li>▪ <a href="#">Well-led review of the Faculty Office: findings report (September 2021)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Governance manual</li> <li>▪ Board constitution and standing orders, Committee TORs, scheme of delegation</li> <li>▪ Board and staff diversity publications</li> <li>▪ Board away days and self-review activities</li> <li>▪ Appointment processes and terms</li> <li>▪ Staff handbook</li> <li>▪ Disciplinary processes</li> <li>▪ L&amp;D strategy and Board development activities</li> <li>▪ Audit reports</li> <li>▪ Risk documentation and ongoing review (NB no standalone Risk Outlook produced recently)</li> </ul>	RF / EM (BB)



**Standard 2: Effective approach to regulation**

Regulators act on behalf of the public to apply their knowledge to identify opportunities and address risks to meeting the regulatory objectives.

	Characteristics	Examples of Evidence	Relevant LSB publications	BSB assurance for Board	Exec lead(s)
9	Has a comprehensive understanding of the market it regulates, including the consumers of services, and proactively identifies risks to the regulatory objectives; has a clear programme of activity to address those risks.	<ul style="list-style-type: none"> <li>▪ Investment in research and research plan</li> <li>▪ Published programmes of activity</li> <li>▪ Strategic and business plans</li> <li>▪ Risk management policy which explains approach to identifying current and future policy developments and their impact including risks</li> <li>▪ Risk outlook and explanation as to how this has informed regulatory activity</li> <li>▪ Sectoral risk assessments to identify where further information needed</li> <li>▪ Description of evidence used to inform regulatory activity</li> <li>▪ Feedback on regulatory processes from those under review</li> <li>▪ Outcomes of regulator's collaborative work to understand consumers' needs</li> <li>▪ Learning from and using other bodies' experience and evidence to inform regulatory activity</li> <li>▪ Regulatory community engagement survey</li> <li>▪ Feedback surveys and outcomes</li> <li>▪ Full consultation responses and decision documents</li> <li>▪ Use of new and different channels to engage with stakeholders and publicise consultations</li> <li>▪ Publication of annual reports, accounts and reporting of data</li> <li>▪ Examples of engagement with stakeholders</li> <li>▪ Strategy/Vision</li> <li>▪ Business Plan</li> <li>▪ Processes to ensure use of plain English</li> <li>▪ Strategy for engaging consumers, including vulnerable consumers</li> <li>▪ Examples of how stakeholders, including consumers, have informed decisions</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Statement of policy on empowering consumers (April 2022)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Research budget and plans for current year</li> <li>▪ Strategic and business plans</li> <li>▪ Risk framework documentation (and regular reports to Committees and Board)</li> <li>▪ Risk outlook incorporated into strategic planning process</li> <li>▪ Thematic reviews and risk analysis highlighting key sectors (see strategic plan, for example)</li> <li>▪ Comms and Public Engagement and Public Legal Education strategies regularly reviewed by the Board</li> <li>▪ Work done with frontline legal help providers to identify legal need (eg Law for Life research in area of employment and Refugee Action research with those in need of immigration law help) shared with other legal regulators through PLE MTCOG Group and shared with Board.</li> <li>▪ All consultations promoted via Press releases, the website and on social media</li> <li>▪ Research roundup (internal doc) and collaboration with joint regulators research forum. Shared work on DCTs with SRA / Cilex</li> <li>▪ Consultation responses, Apex input, and consumer research that have contributed to policy developments</li> </ul>	EM / WW
10	Engages proactively and meaningfully with a diverse range of interested stakeholders, including the public, consumers and regulated community to inform decisions.	<ul style="list-style-type: none"> <li>▪ Strategy for engaging consumers, including vulnerable consumers</li> <li>▪ Strategy for engaging regulated community</li> <li>▪ Research into public concerns</li> <li>▪ Research into levels of public confidence in the regulator</li> <li>▪ Regulator engagement with stakeholders</li> <li>▪ Consideration and evaluation of Board engagement with the regulated community and others</li> <li>▪ Horizon scanning</li> <li>▪ Feedback from stakeholders</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Statement of policy on empowering consumers (April 2022)</a></li> </ul>	<ul style="list-style-type: none"> <li>• CPE strategy regularly reviewed by the Board</li> <li>• Research plan</li> <li>• Examples of consultations</li> <li>• Horizon scanning – Board and Committee agendas</li> </ul>	EM / WW
11	Understands the range of formal (eg rules) and informal (eg influence) regulatory levers at its disposal and how to best make use of them; implements appropriate regulatory interventions and evaluates their impact, changing the approach where necessary to improve outcomes.	<ul style="list-style-type: none"> <li>▪ Documented use of both formal and informal levers and evaluation of their respective impacts</li> <li>▪ Issues and risks addressed (eg complaints on particular topics)</li> <li>▪ Examples where stakeholders have influenced thinking</li> <li>▪ Systematic approach to reviewing regulatory interventions including periodic reviews</li> <li>▪ Responses to issues raised in between periodic reviews</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Applications to Alter Regulatory Arrangements Rules 2021 (December 2021)</a></li> <li>▪ <a href="#">Guidance on the Applications to Alter Regulatory Arrangements Rules 2021 (December 2021)</a></li> </ul>	<ul style="list-style-type: none"> <li>• Examples of rule changes and accompanying evaluations.</li> <li>• Plans for BSB regular evaluation of its regulatory tools have been included in the provisional report of the BSB's Risk Framework Review</li> </ul>	EM

	Characteristics	Examples of Evidence	Relevant LSB publications	BSB assurance for Board	Exec lead(s)
12	Obtains and makes effective use of data, including by making it available to others, to inform how it meets the regulatory objectives.	<ul style="list-style-type: none"> <li>▪ Data underpinning research results is published</li> <li>▪ Tracker and stakeholder perception surveys</li> <li>▪ Examples of data collected from the regulatory community</li> <li>▪ Performance against KPIs</li> </ul>		<ul style="list-style-type: none"> <li>▪ Data collected from the regulated community – see AtP and supervision returns</li> <li>▪ Published research reports</li> <li>▪ Quarterly Performance updates – DG reports (Board reports)</li> <li>▪ Annual Regulatory Decision Report (<a href="#">Regulatory-Decision-Making-Annual-Report-2021-22.pdf</a>)</li> </ul>	EM
13	Actively encourages innovation and innovators in the interests of improving access to services; identifies and mitigates risks appropriately without allowing them to become obstacles.	<ul style="list-style-type: none"> <li>▪ Regulator has own innovation policy</li> <li>▪ Regulator demonstrates in-house innovation and technology capability or shows it has access to such capability</li> <li>▪ Horizon scanning</li> <li>▪ Engagement with stakeholders, including innovators, about benefits and risks of innovation</li> <li>▪ Changes to regulatory activities as a result of engagement</li> <li>▪ Use of waivers and exemptions to facilitate innovation</li> </ul>		<ul style="list-style-type: none"> <li>▪ Evidence of engagement with other regulators and innovators on innovation. Example: DCT market study</li> <li>▪ Published waiver process</li> </ul>	EM
14	Committed to improving the diversity of, and reducing inequalities in, the profession at all levels and implements actions to reduce barriers to equality and inclusion.	<ul style="list-style-type: none"> <li>▪ Regulator has own professional diversity and inclusion policy that takes account of current best practice</li> <li>▪ Regulator focuses on the protected characteristics in the Equality Act 2010 and socio-economic diversity</li> <li>▪ Regulator takes action to address the barriers to equality, diversity and inclusion that it has uncovered</li> <li>▪ Diversity data collection, awareness and understanding of diversity initiatives and work being undertaken by others</li> <li>▪ Use of diversity data and analysis to evaluate effectiveness of actions and inform policy development</li> <li>▪ Collaboration with others to share data, insights from own initiatives and examples of good practice.</li> <li>▪ Regulator leads changes by setting aspirational goals for the profession and recommending examples of effective initiatives to achieve them</li> <li>▪ Regulator promotes the value of training for legal professionals on equality, diversity and inclusion</li> <li>▪ Regulator highlights the importance of inclusive recruitment and working practices in the profession</li> <li>▪ Regulator has effective processes in place to deal with professional misconduct, such as bullying and harassment</li> <li>▪ Use of equality impact assessments</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Guidance for legal services regulators on encouraging a diverse workforce (February 2017)</a></li> <li>▪ <a href="#">Encouraging a diverse workforce: LSB Decision Document (February 2017)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Annual Diversity Data Report</li> <li>▪ Equality strategy</li> <li>▪ Task forces</li> <li>▪ Engagement with other regulators on EDI issues</li> <li>▪ Published EIAs</li> <li>▪ Equality rules (and details of current review)</li> <li>▪ Regulatory return questions</li> <li>▪ Role of chambers round tables</li> <li>▪ Bullying and harassment report and actions</li> <li>▪ Programme board to govern the different strands of EDI work taking place.</li> </ul>	EM
15	Committed to improving, and reducing inequalities in, access to services for the public and consumers in all their diversity.	<ul style="list-style-type: none"> <li>▪ Regulator has own diversity and access to justice policies</li> <li>▪ Regulator's policies take account of current best practice</li> <li>▪ Actions taken by regulator to address diversity issues it has uncovered</li> <li>▪ Diversity data collection, awareness and understanding of diversity initiatives and work being undertaken by others</li> <li>▪ Use of equality impact assessments</li> <li>▪ Use of diversity data and analysis</li> </ul>		<ul style="list-style-type: none"> <li>▪ As above</li> </ul>	MN / EM

**Standard 3: Operational delivery**

Regulators' operational activity (eg education and training, authorisation, supervision, enforcement) is effective and clearly focused on the public interest.

	Characteristics	Examples of Evidence	Relevant LSB publications	BSB assurance for Board	Exec lead(s)
16	Ensures that authorised persons have and maintain the right skills, knowledge, behaviours and professional ethics to practise throughout their careers.	<ul style="list-style-type: none"> <li>▪ Published data on providers' pass rates</li> <li>▪ Information for students about choosing a training provider and financial protection</li> <li>▪ Published entry and ongoing practice requirements</li> <li>▪ Quality assurance mechanisms to test rigour of entry and ongoing competence assessments</li> <li>▪ Authorisation information requirements</li> <li>▪ Ongoing competence policy and monitoring plans</li> <li>▪ Information on ongoing competence checks undertaken and the outcome of those checks</li> <li>▪ Standards for the regulated community</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Guidance on regulatory arrangements for education and training (March 2014)</a></li> <li>▪ <a href="#">Statement of policy - ongoing competence (July 2022)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Regular reports on AETOs (see annual report to the Board)</li> <li>▪ Information on website for students</li> <li>▪ Authorisation framework</li> <li>▪ Supervision of AETOs</li> <li>▪ Published plans re Standards Programme on ongoing competence</li> <li>▪ Professional statement (incl. review work) and BSB Handbook (incl review)</li> </ul>	EM / RM
17	Maintains accessible and accurate registers of authorised persons, including information on disciplinary and enforcement action.	<ul style="list-style-type: none"> <li>▪ Consumer-facing guidance about who is regulated and what this means</li> <li>▪ Consumer-facing information on the content of the register and what it means to be on it</li> <li>▪ Information on how to access the register</li> <li>▪ Information on: <ul style="list-style-type: none"> <li>○ How and when register is updated</li> <li>○ How and when its accuracy is checked</li> <li>○ What enforcement information is publicly available and what will not be disclosed</li> <li>○ How the regulator is assured the register is used and checked by employers and other interested parties</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Registers of licensed bodies: section 87(4) rules (April 2018)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Barristers Register is kept up to date and widely used</li> <li>▪ Website explains how we regulate the Bar and what it means to be a practising barrister</li> <li>▪ BSB fully participates in the <i>Check Your Lawyer</i> facility on Legal Choices</li> </ul>	SH / SJ / WW
18	Sets out clear, accessible criteria for taking decisions about the authorisation, supervision of authorised persons and enforcement proceedings against them to protect the public; adheres to the criteria when taking decisions.	<ul style="list-style-type: none"> <li>▪ Published authorisation, supervision and enforcement policies which transparently describe the regulator's approaches</li> </ul>	<ul style="list-style-type: none"> <li>▪ <a href="#">Guidance on referral fees, referral arrangements and fee sharing to approved regulators (May 2011)</a></li> </ul>	<ul style="list-style-type: none"> <li>▪ Relevant policies are published on the website (enforcement)</li> <li>▪ <a href="https://www.barstandardsboard.org.uk/about-us/how-we-regulate/the-decisions-we-take/our-regulatory-decision-making-policies.html">https://www.barstandardsboard.org.uk/about-us/how-we-regulate/the-decisions-we-take/our-regulatory-decision-making-policies.html</a></li> </ul>	SH / SJ
19	Takes concerns raised by the public, the profession and other stakeholders seriously; pursues those concerns with appropriate rigour and pace under a transparent process.	<ul style="list-style-type: none"> <li>▪ Published policy for handling complaints/issues including updates for those involved, deadlines for responses and closure of case</li> <li>▪ Process for managing complaints from LeO and/or other regulators</li> <li>▪ Evidence of how activity is focused on the public interest and the needs of vulnerable members of the public</li> <li>▪ Published guidance for staff and decision makers</li> <li>▪ Template letters used</li> <li>▪ Complaints resulting in regulatory action where appropriate</li> <li>▪ Process for review and risk assessment of cases during their lifetime</li> <li>▪ Outcomes of checks on the process/reviews</li> <li>▪ Uses data gathered from complaints and issues raised to identify thematic issues and develop responses to them</li> <li>▪ Evidence of follow-up activity in relation to thematic issues</li> <li>▪ Guidance issued to regulated community</li> </ul>		<ul style="list-style-type: none"> <li>▪ Relevant policies are published on the BSB website including information on timescales (see link above)</li> <li>▪ Relevant enforcement guidance published on the BSB website (see link above)</li> <li>▪ Extensive range of template letters embedded in CMS</li> <li>▪ Independent Reviewer (IR) quarterly audits and annual reports</li> <li>▪ IR reviews of individual cases</li> <li>▪ Example: work on Social Media guidance and Conduct in Non-Professional Life Project</li> </ul>	SH / SJ / EM

	<b>Characteristics</b>	<b>Examples of Evidence</b>	<b>Relevant LSB publications</b>	<b>BSB assurance for Board</b>	<b>Exec lead(s)</b>
20	Proactively seeks to maintain appropriate standards of conduct and responds to thematic issues arising from operational activity, including ensuring that those they regulate take action, where relevant.	<ul style="list-style-type: none"> <li>▪ Uses data gathered from operational activity to identify thematic issues and develops appropriate responses</li> <li>▪ Evidence of follow-up activity in relation to thematic issues</li> <li>▪ Guidance issued to regulated community</li> </ul>		<ul style="list-style-type: none"> <li>▪ Example: work on Social Media guidance and Conduct in Non-Professional Life Project</li> <li>▪ Data and intelligence project</li> <li>▪ Supervision thematic reports (eg sanctions)</li> </ul>	EM

**BAR STANDARDS BOARD****ACTION PLAN – TRANSFORMATIONAL CHANGE****Introduction**

1. The Bar Standards Board has adopted this plan for reform, which brings together a range of changes which the Bar Standards Board and Senior Management Team have commenced or have planned, in order to bring transformative change to the BSB. This change is being managed via the deployment of transformational programmes of work that each have appropriate governance and gated controls. The overall theme is one of continuous improvement. It seeks to bring about major change to the culture and capacity of the organisation, significantly to improve some of our key processes, and to tackle areas of underperformance. By the end of the plan we will be:
  - operationally excellent in delivering our core regulatory services. We already take consistently high quality decisions. We have markedly improved our productivity in the last year, particularly in concluding investigations. To high quality decision-making and high productivity we want to add consistently prompt and responsive service so that members of the public or barristers who use our services can be sure we shall take the right decision and do so efficiently and quickly;
  - on the front foot as a regulator, anticipating risks and opportunities, not just reacting to them. This means reforming our approach to capturing and analysing intelligence about the Bar. It means joining up the information we receive to build up a picture of emerging risks and empowering our front-line teams to act on the risks we identify. And it means gaining assurance that chambers are themselves effective in overseeing standards, equality and access. The result of this regulatory approach will be an engaged and proactive regulator which addresses risks to the public interest before the public sees or suffers any harm;
  - a force for change in the service that the Bar provides to the public. That means that the BSB deals not just with regulatory operations, but develops a broad and evidence-based understanding of the standards and skills the Bar will need to meet the future needs of consumers and the administration of justice. This aspiration is well expressed by our current strategic priorities of standards, equality and access. We shall take forward strategic change in collaboration with the profession, where that makes sense, or through targeted and proportionate regulation where necessary;
  - a collaborative regulator working closely with other legal regulators, with consumer groups and with the profession because we know we can achieve more through collaboration than by acting unilaterally. We shall, of course, regulate and take enforcement action where necessary but we know that a culture in which the public interest always comes first cannot be achieved through regulation alone; and
  - a self-confident and well-respected independent regulator. We shall achieve that by embedding a culture of continuous improvement which advances our values of fairness and respect, independence and integrity and excellence and efficiency. We shall see it reflected in our organisational performance results, the results of our annual People Survey and in the credibility BSB commands among its stakeholders.
2. The prospectus captures the Board's reform agenda under a number of key headings:
  - Performance;
  - Regulatory approach (including strategic change, intelligence and data, and reforming our Handbook and rules); and
  - Culture and capacity.
3. The Board will own and hold itself accountable for the delivery of the plan and receive reports on its implementation from the Director General and Senior Management Team at every meeting until completion.

Theme	Action	Lead	Contact	Milestone and timetable	Progress report	
					Date of update	Update on progress / completion
Performance	We will conduct an independent end-to-end review of our enforcement policies and processes to identify improvements and ensure that the system is operates effectively and efficiently in the public interest.	SJ	SJ / SH	Tender process – April – July 2023. Completion of review – by end of 2023 but dependent on outcome of tender process. Consideration and implementation of recommendations – 2024/25 dependent on extent of changes.	July 2023	Following completion of the tender process, Fieldfisher LLP has been appointed to carry out the Review. The detailed project plan and contract, including the final Terms of Reference (based on section 3 of the Invitation to Tender) will be in place by end July. An all staff briefing on the Review was held on 12 July and work will start in earnest in August. The intention is to complete the evidence gathering phase and produce an interim report on emerging recommendations by the end of 2023 with final recommendations for change being put to the Board in March 2024.  The LSB has been provided with a copy of the ITT and the Terms of Reference will be sent when finalised.
	We will conclude the ongoing review into our decision-making processes for authorisations and implement its recommendations	OH	RM / VS / SH	Delivered in phases with the first phase proposals for the overarching framework to be discussed with the Board before the Summer and consulted, where necessary, in early Autumn.	July 2023	Timeframe for phase 1 (covering initial qualification) recast to enable work to progress in parallel with the Supervision thematic review of admissions. Recommendations will go to the Board in November, with a view to a consultation in late 2023/early 2024. Phase 2 will be discussed internally in June 2023 and further work on Phase 2 proposals by the Curriculum and Assessments Review working group due by end August 2023. It is unlikely that the review will conclude, with recommendations fully implemented, until 2024/25.

Theme	Action	Lead	Contact	Milestone and timetable	Progress report	
					Date of update	Update on progress / completion
<b>Performance (cont.)</b>	We will implement the recommendations arising from the Deloitte review of the fitness for purpose and durability of our key operating systems	MN	MN	Milestones will be aligned with the end-to-end review of enforcement processes, but changes to the operating systems are unlikely to be implemented before 2024-25		First step will be to implement the Deloitte recommendation to appoint a <i>Solution Owner</i> to assume responsibility for CRM/CMS systems and to take part in the end-to-end review of enforcement process. The post has now been evaluated and a recruitment process has been launched.
	We will review the role of the Independent Reviewers in our enforcement and authorisations processes to identify improvements in the operation of this assurance mechanism and to ensure that it is procedurally fair.	SJ	RB	Review complete – end April 2023. Consideration of review outcomes by the Board – July 2023. Consultation and approval of any Handbook changes arising (subject to approval by the Board and the LSB) – July – December 2023. Implementation of revised approach – early 2024.	July 2023	The timetable for completion of the review was put back to take account of a confidential piece of work that was happening in parallel. That work was directly related to the past operation of the IR process and it was considered premature to conclude the review of the policy prior to the outcome being known. The piece of work is now concluded, but the timing did not allow for the review to be completed in time for the July Board meeting. The outcome of the review will be put to the Board in October.
	We will agree and pilot a balanced scorecard to measure BSB's performance in delivering core regulatory operations	MN	AW	Year one: <ul style="list-style-type: none"> <li>Agree shadow measures for piloting in May 2023</li> </ul> Year 2: <ul style="list-style-type: none"> <li>Begin formally reporting against new measures</li> </ul>	July 2023	The Board approved a balanced scorecard at its meeting on 25 May. The scorecard will now be piloted during 2023/24
<b>Regulatory approach – Strategic change</b>	Establish a standards assurance framework which will set out clearly our expectations of barristers and their chambers and employers on how to maintain standards of practice at the Bar	RM	JB	Develop framework during 2023/24 business year and implement in Q1 of 2024/25	July 2023	On track – outputs from the roundtables with chambers will be discussed with the Board at its July Away day, with a view to a consultation in early Autumn 2023.
	Refine our approach to assuring professional competence of barristers including a refresh of the competences we expect barristers to demonstrate, our approach to CPD and the regulation of competence and standards in the early years of a barrister's career	RM	HL	Complete reform to CPD and commence supervision against the new arrangements by April 2024	July 2023	On track – review of the Professional Statement has commenced and this will feed into refinements in the regulation of CPD.
	We will undertake a thematic review of the quality of vocational Bar training providers, how they ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point	RM	JW	Research and analysis carried out during 2023/24 with final report and recommendation considered by the Board by April 2024.	July 2023	On track. Scoping and planning underway.

Theme	Action	Lead	Contact	Milestone and timetable	Progress report	
					Date of update	Update on progress / completion
<b>Regulatory approach – Strategic change</b> (cont.)	We will focus on promoting public legal education in collaboration with our fellow regulators and with other frontline providers of help to those in legal need	WW	WW	This is an ongoing commitment and the Board last reviewed our PLE strategy in May. All our projects are evaluated in terms of their reach and impact.	July 2023	The Board reviewed our PLE strategy at its meeting on 25 May. They agreed that we should continue our work with frontline legal help providers but also discuss rejoining Legal Choices with our fellow regulators.
	We will continue to ensure that our transparency rules are being complied with and are being effective	EM	RM / JW	Compliance checks are ongoing and we will consider next steps on transparency in the light of our DCT market study and other evaluation work undertaken to date.	July 2023	Compliance checks continue to be conducted whenever Supervision engages with a barrister, chambers or entity.  On-line comparison market study is due to conclude in September 2023 and the process of bringing together findings into a draft report aims to finish by the end of 2023-24.
	We will continue our examination of the role of new technology in the legal services market and our participation in the work of LawtechUK and we will also be looking at whether consumers' interests can be well served by online comparison or by other intermediaries offering to broker access to barristers	EM	RM	This is an ongoing commitment (we now have dedicated policy staff taking this work forward) and we will review the DCT pilot following its conclusion.	July 2023	New Policy Manager started in November 2022. New senior policy officer started in June 2023. The work plan has now been developed by the policy manager. In parallel the tender to commission research on use of technology at the Bar was issued and we are in the process of appointing the successful bidder.
<b>Regulatory approach – Intelligence &amp; data</b>	We will overhaul our approach to the gathering, collation and analysis of the intelligence we receive from a wider range of sources	EM	BB	Year one: <ul style="list-style-type: none"> <li>Create and publish a data and intelligence strategy</li> </ul> Year two <ul style="list-style-type: none"> <li>Commence implementation of agreed strategy</li> </ul>	July 2023	The Data and Intelligence Strategy work is progressing. We have considered the planned vision and objectives of the strategy, and are currently working on the current state analysis. This is due to be completed in August 2023, with the remainder of the strategy due for completion by late 2023 or early 2024.
	We will review our current risk framework to make sure that intelligence is joined up and that our front-line teams have more discretion to act promptly in response to emerging risks	EM	BB	Year one: <ul style="list-style-type: none"> <li>Complete review</li> </ul> Year two: <ul style="list-style-type: none"> <li>Implement new processes</li> </ul>	July 2023	The Provisional Report of the Risk Framework Review has been completed. The elements of the review that involve BSB strategy were discussed at the Board Away Day.
	We will continue to use our research team and commissioned providers to publish evidence in support of policy changes, to better understand the market for barristers services and to evaluate the impact of any reforms. We will seek to collaborate with the other legal regulators on cross-cutting matters, such as on consumer-focused research.	EM	EM	Year one: <ul style="list-style-type: none"> <li>We shall undertake research with pupillage providers to investigate the recruitment outcomes of different approaches aimed at increasing diversity.</li> <li>We aim to complete our evaluations of our DCT pilot and our Bar training reforms by end of 2023-24.</li> <li>We also plan to undertake analyses of enforcement outcomes and begin to build a more substantive evidence</li> </ul>	July 2023	On track.

Theme	Action	Lead	Contact	Milestone and timetable	Progress report	
					Date of update	Update on progress / completion
<b>Regulatory approach – Intelligence &amp; data</b> (cont.)				base in relation to the use of technology and innovation at the Bar in 2023-24.  Year two: <ul style="list-style-type: none"> <li>In 2024-25 we intend in particular to look at the extent to which solicitors offer their clients a choice of barrister and at whether access to justice in future may be threatened by a lack of barristers as the profession ages</li> </ul>		
<b>Regulatory approach - Reforming our Handbook &amp; rules</b>	We recognise the need to revise the Handbook, to ensure that it is easily navigable and easily understood by both barristers and the public alike, and represents good regulatory practice. We shall be making design changes to the layout of the Handbook and Code of Conduct with this in mind, in the meantime taking forward essential amendments to the Code of Conduct and Handbook, including amendments flowing from other priority work programmes.	EM	EM / RM	In year one: <ul style="list-style-type: none"> <li>We will identify any urgent Handbook changes that are needed to address gaps or improve efficiency in the short to medium term.</li> <li>We will complete our review of the regulation of standards in non-professional life and of barristers' use of social media in the light of our recent consultation.</li> <li>We will complete our review of the Equality Rules to ensure that they remain fit for purpose and clearly set out minimum standards for chambers' and employers' oversight of diversity, including appropriate governance.</li> <li>We will also be looking at our "association rules" which regulate how barristers interact with intermediaries which provide information about their services.</li> </ul> In year two: <ul style="list-style-type: none"> <li>We will begin systematically consulting on more strategic changes to the Handbook, taking on board challenge and feedback from a variety of stakeholders.</li> </ul>	July 2023	The non-professional life/social media project is continuing and the outcome of last year's consultation will be taken to the Board in July 2023.  SMT agreed our new approach to coordinating, prioritising and standardising Handbook changes in March 2023. This planned approach, and future project timeframes, will be considered by the BSB Board in July 2023.
	We will develop arrangements for the assessment of advocacy and negotiation skills during pupillage as the final part of our reforms to Bar training	RM	VS	New means of assessment for advocacy will be in place by Sept 2024 and negotiation in Sept 2025	July 2023	On track – series of 5 workshops to develop learning outcomes and assessment criteria for advocacy and negotiation skills have taken place and requirements are now being developed in detail. A group of barristers with specialist negotiation skills has offered to assist in finalising requirements. Ongoing consultation with the Inns takes place regularly.



Theme	Action	Lead	Contact	Milestone and timetable	Progress report	
					Date of update	Update on progress / completion
Culture & capacity	We shall ensure that the Board itself exemplifies the values of the BSB, refreshes its equality and diversity training regularly and undertakes annual reviews of its governance, including an independent review every third year	KS	MN / RF	An annual Board self-appraisal will take place in Summer 2023; an independent appraisal will take place in Summer 2024. Equality and diversity training, delivered in Q4 2022/23, will be refreshed in 2024/25.	July 2023	Analysis of 2023 Board self-appraisal to be discussed at October Board meeting.
	We will continue to implement our programme of embedding our values and behaviours to deliver a culture of continuous improvement	TH	TH	Delivery of the 2023/24 organisational learning plan, to be launched in April 2023 and completed by March 2024  On going delivery of senior leadership development and teambuilding, plus delivery of a leadership development programme by April 2024	July 2023	Delivery of the 2023/24 organisational learning plan is continuing. Further events have been scheduled including development of a Learning and Development intranet page to highlight opportunities. Options for increased e-learning provision are being explored.  Our leadership development event in late May 2023 resulted in a range of practical plans and measures to take forward to develop collective leadership, including the establishment of a new Leadership Group comprising of Directors and operational heads
	We will review our processes for recognition and performance management to ensure that they support our values and help to deliver continuous improvement	TH	TH	Launch of a revised recognition scheme by September 2023  Launch of a revised performance management system by April 2024	July 2023	We have analysed feedback from our April 2023 People Conference and are developing an updated recognition policy based on views.  Work on performance management will commence in late July.
	We will periodically review our implementation of the Internal Governance Rules, with the aim of enhancing regulatory independence within the current legislative framework.	MN	MN	To be conducted annually.	July 2023	Review completed by end 2022/23 and letter sent to Bar Council proposing reforms to operation of shared services. BSB proposals now under discussion with the Bar Council.
	We will continue to pursue the governance reforms in our Well Led Action Plan and in this action plan in response to the LSB's Regulatory Performance Review	MN		To be concluded by Summer 2023 where not continuing		Continuing
	We will promote engagement and collaboration with consumer organisations, the profession and other regulators	WW		This is an ongoing commitment.	July 2023	Continuing



**ADDITIONAL INFORMATION REQUESTS****Well-led**

*1a. Please provide assurance to the LSB on how the BSB meets this standard, in particular: • transparency of decision making, • capacity and capability and • resources, capability, and capacity for enforcement.*

See covering letter and accompanying annexes, Business Plan 2023/24 and Annual Report 2022/23 and cost transparency metrics.

*1b. Please provide an update on whether the pilot balance scorecard proposals to measure the BSB's core regulatory operations have been approved by the Board.*

See covering letter.

*1c. The DG's strategic update in the Board paper for the 25 May Board meeting, provides an update on performance to the end of the fourth and final quarter in March 2023 and notes a rise in caseloads and applications. Please set out the BSB's planned actions to ensure its operational performance improves over the coming quarters.*

See DG's *Strategic Update* for the public session of the Board on 27 July.

**Effective approach to regulation**

*2a. Please provide assurance to the LSB on how the BSB meets this standard, in particular: • use and deployment of evidence and levels of proactiveness in supervisory work. As part of your response, please also answer the specific questions below.*

See covering letter and accompanying annexes.

*2b. Please provide an update on the Data and Intelligence Strategy work set out in the BSB's Action plan, how it is progressing and provide the Report of the Risk Framework Review.*

The question relates to two separate, though related, pieces of work currently being undertaken by the BSB.

The BSB's Data and Intelligence Strategy project seeks to develop the BSB's strategic approach to the capture, use and sharing of data and intelligence. The strategy will describe the BSB's vision, objectives, and approach to improving its data and intelligence capability.

So far, the project has established a provisional vision and set of objectives for data and intelligence at the BSB and is conducting its current state analysis. The current state analysis is a detailed assessment of the BSB's existing data and intelligence approach, and has involved gathering evidence from staff, mapping data flows, reviewing decision-making frameworks and investigating other key areas to understand how the BSB currently uses data in decision-making. This is expected to be completed by September 2023. Following on from this, the project will:

- conduct analysis into desired future state, which will forecast data needs and identify required improvements (likely to be completed in late 2023) and
- synthesise all analysis into a high-level, principles-based document that describes how the BSB plans to be more data-driven and intelligence-led in the future. This will include an implementation plan on how the BSB will seek to meet the objectives of the strategy over the next 3-5 years (likely to be completed in late 2023, or early 2024).

The BSB's Risk Framework Review seeks to assess the effectiveness of the BSB's current regulatory risk framework in identifying, managing, and responding to risks to its regulatory objectives.

The provisional report of the review was completed in June 2023. The provisional findings are that while the underlying principles of the Risk Framework are generally mature, and there is a strong appreciation for risk among staff, several issues undermine its overall effectiveness. The provisional report argued that if it is to meet its obligations going forward, the BSB requires a more dynamic risk framework that prioritises a proactive approach to regulatory risk. The report makes 19 provisional recommendations for the improvement of the risk framework.

The Board discussed and endorsed these recommendations in principle at its off-site meeting on 6 July 2023. A copy of the report is attached. The final report of the Review, including implementation plan, is now being prepared for completion in late 2023. Implementation is planned to take place in 2024.

*2c. Please provide examples where the BSB has demonstrated a robust evidence-base for the proposals it puts forward to provide us with assurance that this outcome has been met.*

The paper and accompanying guidance on conduct in non-professional life discussed in the public session of the Board on 27 July provide a good example of the BSB updating its guidance on the scope of regulation in an area of public and professional interest in the light of consultation responses and of an Equality Impact Assessment.

### **Empowering consumers**

*3. With reference to the empowering consumers policy statement, please provide information on any relevant work you have undertaken in the last year to ensure the provision of useful information that best enables effective consumer choice on the quality of legal services providers to consumers.*

We have taken forward a market study of on-line comparison which we expect to complete by September 2023. In the light of the study, we shall re-visit our transparency rules and consider how the BSB might influence the future development of on-line comparison in the interest of consumers.

*4. Please set out when you expect to have met the specific expectations in the empowering consumers policy statement.*

See the DG's letter to Robin Geddes of 12 July 2022 and accompanying mapping analysis of BSB programmes against the *Empowering consumers* statement.

*5. Please provide information on how you have considered revising your transparency rules, following publication of your transparency reports in summer 2022. Please explain how you have taken account of the empowering consumers policy statement in doing so.*

See the answer to question 3 above and annex updating progress against our reforms.

*6. Please provide information on the effectiveness of your activities to support public legal education since our last assessment*

We continue to take forward collaborative work with partners in the third sector, including *Citizens Advice*, *Refugee Action*, *Law for Life* and *Support through Court*. We are actively seeking, through the MTCOG public legal education group, to broaden this activity by

agreeing common principles for action with other front-line regulators and a common market segmentation. For example, we have funded a programme of research by *Law for Life* on emerging legal needs in the employment field. Subject to agreement that a renewed BSB contribution to *Legal Choices* will be additional to this broader programme of work, we expect to re-join *Legal Choices* in September 2023.

### **Continuing competence**

*7. Please provide any relevant updates on progress since January 2023 toward meeting the outcomes in the ongoing competence policy statement, including any changes to your expected timeline for meeting the outcomes*

The BSB published its response<sup>1</sup> to the continuing competence policy statement on 14 February and held a constructive meeting with LSB colleagues to discuss progress on 4 May. Work is being taken forward under the umbrella of our Assuring Competence Programme, with a focus on:

- improving flows of intelligence about professional competence at the Bar;
- updating the *Professional Statement* to reflect changing consumer expectations and professional competences, including new technologies: we expect to consult later in 2023 in light of the views of a stakeholder group, including consumer representatives;
- revising CPD requirements in the light of the updating of the *Professional Statement*; and
- improving feedback to barristers on their performance and clarifying chambers' role in brokering such feedback and remediating weaknesses.

### **Operational delivery**

*8. Please explain how the BSB has made improvements to its operational delivery. As part of your reply, please also answer the specific questions below.*

See covering letter and accompanying annexes and also DG's *Strategic Updates* for Board meetings on 25 May and 27 July.

*9. Please provide an update on the review into ongoing competence and review of rules for admission for qualified lawyers regarding being a fit and proper person.*

See answer to Q7 on continuing competence. See answer to Q10 on Authorisations Review

*10. Please provide a follow up on dates and progress of the review into the decision-making framework for authorisation decisions.*

The review is in four phases. The phase 1 paper, dealing with initial qualification as a barrister, went to the Senior Management Team in June. In the light of consideration by SMT, we shall draft a consultation document for Phase 1 which will go to the Board at its November meeting, with consultation to conclude in early Spring 2023. Phase 2 proposals have been drafted and are at the stage of discussion with the Curriculum and Assessment Review working group. A phase 2 proposal paper covering transferring qualified lawyers, will go to SMT in autumn 2023.

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<sup>1</sup> <https://www.barstandardsboard.org.uk/uploads/assets/101082bb-7448-4be0-8e61cf21adca21ef/20230131-Bar-Standards-Board-response-to-the-LSB-statement-on-ongoing-competence.pdf>

*11. Please provide evidence of the BSB prioritising the pro-active identification and monitoring of risks amongst its regulated community, particularly those that pose direct risks to consumers and the public interest.*

Please see the BSB's *Business Plan 2023/24*<sup>2</sup> which sets out a proactive programme of work under our strategic priorities of: *standards, equality and access*. See also the answer to paragraph 2b. dealing with the refreshing of the BSB Risk Framework.

*12. Please provide an update on the BSB's decision to suspend remote online assessments*

Update already provided to LSB specifically in relation to equality impacts attached. We can confirm that we are moving forward with consultations with relevant groups as described and that all providers have arrangements in place for the summer exams.

We are confident that none of our systems has been breached - the potential malpractice that was identified was with a provider system - but we have engaged with IT consultants, Dionach, to try to establish the extent to which any compromised material may be circulating online. The Supervision team requested that the provider whose system was identified as having been potentially used in the malpractice should investigate. We understand that so far their investigations have been inconclusive but are continuing.

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<sup>2</sup> <https://www.barstandardsboard.org.uk/uploads/assets/d19c1807-3e38-4c83-ba5f01473f9c8bad/v3-DHABSB-Business-Plan-2023-24.pdf>

# THE BAR STANDARDS BOARD

## LSB Regulatory Performance Framework

Internal audit report 1.23/24

Final

24 July 2023

This report is solely for the use of the persons to whom it is addressed.  
To the fullest extent permitted by law, RSM UK Risk Assurance Services LLP will accept no responsibility or liability in respect of this report to any other party.

# 1. EXECUTIVE SUMMARY

## Why we completed this audit

We undertook a review of LSB Regulatory Performance Framework at The Bar Standards Board as part of the approved Internal audit plan for 2023/24. The objective of this review was to provide assurance with regards to how The Bar Standards Board is preparing and collating supporting evidence for the Legal Services Board (LSB) new regulatory Performance Framework. The LSB regulatory performance framework will assess the performance of The Bar Standards Board against three standards :

1. *Well-led,*
2. *Effective approach to regulation , and*
3. *Operational delivery.*

There are twenty characteristics outlined within the three standards. We selected three characteristics and reviewed evidence of all sources of assurance prepared by the BSB in full. We also selected two sources of assurance from each of additional seven characteristics and reviewed evidence collated.

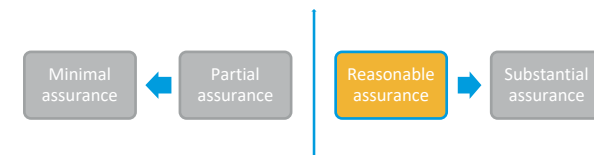
The BSB compiled a template to assist in the collation of evidence and a member of the Senior Management team was nominated for each of the characteristics. The BSB has been collating and compiling evidence/information to provide assurance that the BSB meets the characteristics. As the audit has been completed during the process of compilation of sources of assurance, we have only reviewed the process and not the final prepared submission to the LSB.

## Conclusion

We confirmed that The Senior Management Team (SMT) has completed assurance mapping to align the BSB information pack with LSB standards. The mapping and BSB sources of assurance were found relevant and suitable. The BSB Executive Leads were allocated responsibility for gathering evidence of the sources of assurance to the three standards. The BSB also designed a template to aid the process of information gathering. Our observation of the SMT meeting also noted that there was adequate discussion on sources of assurance and identification of improvement areas. We have raised one Medium action recommending that the BSB creates additional opportunities to provide assurance that they are working in collaboration with the profession and representative groups. This would satisfy one of the characteristics under the Well led standard for which the LSB requires assurance.

### Internal audit opinion:

Taking account of the issues identified, the Board can take reasonable assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied and effective. However, we have identified issues that need to be addressed in order to ensure that the control framework is effective in managing the identified risks.





## Key findings

We have agreed one 'Medium' priority management action. Further details of the management actions can be found in section 2 of this report:



### Completeness of information pack

An assurance mapping exercise evaluated the Board's performance in alignment with the LSB regulatory framework across three standards: well-led, effective approach to regulation, and operational delivery. Our testing confirmed that the BSB had compiled evidence against each of the three standards. We selected one characteristic from each of the three standards and reviewed evidence of all assurances compiled and evaluated whether these met the LSB expectations. We were satisfied with evidence against the characteristics reviewed under the two standards: Effective approach to regulation, and Operational delivery. We noted however, the evidence provided under the Well-Led standard (specifically the third characteristic) was not sufficient to support evidence of the BSB working more collaboratively with the profession and representative groups (**Medium**)

We noted the following tests to be satisfied, and/or the controls to be adequately designed and operating effectively:



### Evidence Identification Process

We reviewed an email dated 1 June, 2023 sent by the Director General to the management team outlining instruction on the process of evidence gathering for the sources of assurance to the LSB Regulatory Performance Framework. The process involved instructions in completing a template with evidence identified and information to demonstrate compliance with the new framework, identification of assurance gaps, and reporting the BSB assurance to the Board.



### Roles and Responsibilities

We were provided with the LSB assurance mapping for the regulatory performance framework. This outlined the characteristics under each standard, examples of evidence required, relevance to LSB publication, and the BSB source of assurance. We confirmed that the assurance mapping indicated the Executive leads responsible for gathering the required evidence for each characteristic. We also confirmed that the evidence presented in the mapping, as compiled by the Senior Management Team, aligned with the required evidence specified by the LSB.



### Senior Management Team responsibilities

We observed the Senior Management Team meetings(SMT) meeting held on 5 July 2023 and noted that there were adequate discussions regarding the areas of the LSB regulatory framework for which the BSB have existing assurance, the areas requiring improvement, and an adequate plan to address the areas in need of improvement. We confirmed that the draft minutes of the SMT meeting held on 5 July 2023 highlighted the recognition of gaps in understanding the consumer perspective and the need for improved communication.



### Guidance and Assurance map template

During the review, we found that a template has been designed to assist the Senior Management Team (SMT) in compiling sources of assurance for the LSB Regulatory Framework. The template served as a tool to streamline the process of gathering relevant information and ensuring compliance with regulatory requirements. We confirmed that the BSB's template of the assurance map included all requirements of the LSB's Regulatory performance assessment framework (Sourcebook of Standards and Characteristics).



### Testing assurance of Standard 2 - *Effective approach to regulation*

We obtained the BSB assurance map for the Standard -*Effective approach to regulation*. We reviewed all sources of assurance identified under the following characteristics:

- Ref 9 “Has a comprehensive understanding of the market it regulates, including the consumers of services, and proactively identifies risks to the regulatory objectives; has a clear programme of activity to address those risks”.
- Ref 12 “Obtains and makes effective use of data, including by making it available to others, to inform how it meets the regulatory objectives”.

We further selected two sources of evidence for each of the following characteristics:

- Ref 14 “Committed to improving the diversity of, and reducing inequalities in, the profession at all levels and implements actions to reduce barriers to equality and inclusion”.
- Ref 15 “Committed to improving, and reducing inequalities in, access to services for the public and consumers in all their diversity”.

We were satisfied that sources of assurances identified aligned with the LSB’s examples of assurances expected. Additionally our inspection of provided evidence found that it was sufficient to meet the characteristics in the LSB regulatory performance framework.



### Testing assurance of Standard 3- *Operational delivery*

We obtained the BSB assurance map for the Standard - *Operational delivery*. We reviewed one source of assurance evidenced for each of the following characteristics for testing.

- Ref 17 “Maintains accessible and accurate registers of authorised persons, including information on disciplinary and enforcement action”.
- Ref 19 “Takes concerns raised by the public, the profession and other stakeholders seriously; pursues those concerns with appropriate rigour and pace under a transparent process”.
- Ref 20 “Proactively seeks to maintain appropriate standards of conduct and responds to thematic issues arising from operational activity, including ensuring that those they regulate take action, where relevant”.

We were satisfied that sources of assurances identified aligned with the LSB’s examples of assurances expected. Additionally our inspection of evidence provided found that it was sufficient to meet the characteristics in the LSB regulatory performance framework. .

## Additional Information



### Reporting

The BSB is scheduled to submit the assurance pack to the LSB on 31st July, 2023. Our observation of the 5 July 2023 SMT meeting noted that assurances as well as gaps to the LSB submission were discussed. We are satisfied that the process being followed is sound however due to the timing of the Internal Audit, we are unable to review the completed pack to note the finalised assurance map and specifically the gaps identified. At the time of the completion of our audit fieldwork, the prepared pack had not been presented for approval to the Board.

## 2. DETAILED FINDINGS AND ACTIONS

This report has been prepared by exception. Therefore, we have included in this section, only those areas of weakness in control or examples of lapses in control identified from our testing and not the outcome of all internal audit testing undertaken.

This report is a full report and includes the outcome of all internal audit testing undertaken.

Risk or Area: Completeness of Information pack				
<b>Control</b>	The assurance mapping is populated by the Senior Management Team and the members of SMT will review the templates to ensure completion of the information pack against the three standards and identified characteristics within the LSB framework.	<b>Assessment:</b>		
		<b>Design</b>	✓	
		<b>Compliance</b>	✗	
<b>Findings / Implications</b>	<p>The LSB Regulatory performance consists of three standards: Well-led; Effective approach to regulation; and Operational delivery and our testing identified an exception in evidence identified for the Well-led standard.</p> <p>We reviewed all sources of assurance identified for one characteristic under the Well-Led standard: "A clear sense of purpose and strategy focused on regulation in the public interest and ensuring interest and ensuring public confidence in the regulator".</p> <p>We further selected two examples of evidence testing for each of the following characteristics:</p> <ul style="list-style-type: none"> <li>Independent of the regulated professions but understands and collaborates effectively with the profession and representative groups to meet the regulatory objectives.</li> <li>Understands the legislative and policy framework within which it operates; works constructively and in collaboration with the LSB, other relevant authorities and relevant stakeholders.</li> </ul> <p>Our testing found that evidence for sources of assurance were identified, however, we noted that there was insufficient evidence demonstrating the BSB's efforts at working collaboratively with the profession and representative groups.</p>			
<b>Management Action 1</b>	The BSB will evidence their engagement of collaboration within the profession and also representative groups. The sources of assurance will be mapped to the LSB regulatory framework.	<b>Responsible Owner:</b>	<b>Date:</b>	<b>Priority:</b>
		Wilf White, Director of Communications and Public Engagement	31 January 2024	Medium

## APPENDIX A: CATEGORISATION OF FINDINGS

### Categorisation of internal audit findings

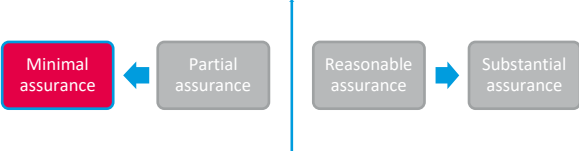
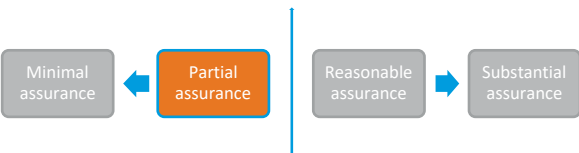
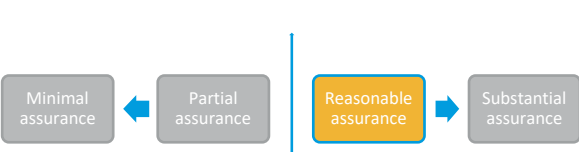
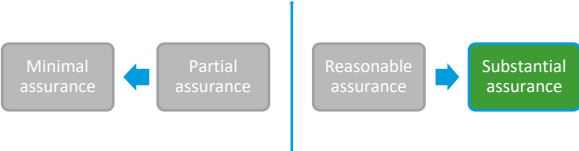
Priority	Definition
Low	There is scope for enhancing control or improving efficiency and quality.
Medium	Timely management attention is necessary. This is an internal control risk management issue that could lead to: Financial losses which could affect the effective function of a department, loss of controls or process being audited or possible reputational damage, negative publicity in local or regional media.
High	Immediate management attention is necessary. This is a serious internal control or risk management issue that may lead to: Substantial losses, violation of corporate strategies, policies or values, reputational damage, negative publicity in national or international media or adverse regulatory impact, such as loss of operating licences or material fines.

The following table highlights the number and categories of management actions made as a result of this audit.

Risk	Control design not effective*	Non Compliance with controls*	Agreed actions		
			Low	Medium	High
There is a risk the LSB assesses the BSB as not compliant with its regulatory performance standards.	0 (5)	1 (5)	0	1	0
<b>Total</b>			<b>0</b>	<b>1</b>	<b>0</b>

Shows the number of controls not adequately designed or not complied with. The number in brackets represents the total number of controls reviewed in this area.

## APPENDIX B: INTERNAL AUDIT OPINIONS

Graphic	Opinion
	<p>Taking account of the issues identified, the board can take minimal assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied or effective.</p> <p>Urgent action is needed to strengthen the control framework to manage the identified risk(s).</p>
	<p>Taking account of the issues identified, the board can take partial assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied or effective.</p> <p>Action is needed to strengthen the control framework to manage the identified risk(s).</p>
	<p>Taking account of the issues identified, the board can take reasonable assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied and effective.</p> <p>However, we have identified issues that need to be addressed in order to ensure that the control framework is effective in managing the identified risk(s).</p>
	<p>Taking account of the issues identified, the board can take substantial assurance that the controls upon which the organisation relies to manage this risk are suitably designed, consistently applied and effective.</p>

## APPENDIX C: SCOPE

The scope below is a copy of the original document issued.

### Scope of the review

The scope was planned to provide assurance on the controls and mitigations in place relating to the following risk:

Risks relevant to the scope of the review	Risk source
There is a risk the Legal Services Board (LSB) assesses the BSB as not compliant with its regulatory performance standards.	Corporate risk register

#### When planning the audit, the following areas for consideration and limitations were agreed:

- We will review the process for identifying required evidence for the regulatory framework return.
- We will review the prepared information pack and assess whether the information is complete.
- We will assess the relevance and suitability of the identified evidence to support individual characteristics of the regulatory framework.
- We will review the information pack to identify any gaps in meeting the LSB requirements and whether there are planned actions to remediate future submissions.
- For agreed sample reports, we will assess accuracy and completeness of the information being reported

#### Limitations to the scope of the audit assignment:

Our work does not provide assurance that material error, loss or fraud do not exist.

Please note that the full scope of the assignment can only be completed within the agreed budget if all the requested information is made available at the start of our fieldwork, and the necessary key staff are available to assist the internal audit team. If the requested information and staff are not available we may have to reduce the scope of our work and/or increase the assignment budget. If this is necessary we will agree this with the client sponsor during the assignment.

To minimise the risk of data loss and to ensure data security of the information provided, we remind you that we only require the specific information requested. In instances where excess information is provided, this will be deleted, and the client sponsor will be informed.

**Debrief held** 20 July 2023  
**Draft report issued** 24 July 2023  
**Responses received** 24 July 2023

**Final report issued** 24 July 2023

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**Client sponsor** Mark Neale - Director General  
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**Distribution** Mark Neale - Director General  
Rebecca Forbes - Head of Governance and Corporate Services  
Wilf White, the Director of Communications and Public Engagement

We are committed to delivering an excellent client experience every time we work with you. Please take a moment to let us know how we did by taking our brief survey. Your feedback will help us improve the quality of service we deliver to you and all of our clients. If you have are you using an older version of Internet Explorer, you may need to copy the URL into either Google Chrome or Firefox.

[RSM post-engagement survey](#)

We thank you again for working with us.

**rsmuk.com**

The matters raised in this report are only those which came to our attention during the course of our review and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Actions for improvements should be assessed by you for their full impact. This report, or our work, should not be taken as a substitute for management's responsibilities for the application of sound commercial practices. We emphasise that the responsibility for a sound system of internal controls rests with management and our work should not be relied upon to identify all strengths and weaknesses that may exist. Neither should our work be relied upon to identify all circumstances of fraud and irregularity should there be any.

Our report is prepared solely for the confidential use of The Bar Standards Board, and solely for the purposes set out herein. This report should not therefore be regarded as suitable to be used or relied on by any other party wishing to acquire any rights from RSM UK Risk Assurance Services LLP for any purpose or in any context. Any third party which obtains access to this report or a copy and chooses to rely on it (or any part of it) will do so at its own risk. To the fullest extent permitted by law, RSM UK Risk Assurance Services LLP will accept no responsibility or liability in respect of this report to any other party and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any person's reliance on representations in this report.

This report is released to you on the basis that it shall not be copied, referred to or disclosed, in whole or in part (save as otherwise permitted by agreed written terms), without our prior written consent.

We have no responsibility to update this report for events and circumstances occurring after the date of this report.

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<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	27 July 2023
<b>Title:</b>	Conduct in Non-Professional Life Project		
<b>Author:</b>	Rhys Bevan		
<b>Post:</b>	Head of Legal Support		

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion:</b> <input checked="" type="checkbox"/>	<b>Noting:</b> <input type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>	
(a)	<b>protecting and promoting the public interest</b>
(b)	<b>supporting the constitutional principle of the rule of law</b>
(c)	improving access to justice
(d)	<b>protecting and promoting the interests of consumers</b>
(e)	promoting competition in the provision of services
(f)	<b>encouraging an independent, strong, diverse and effective legal profession</b>
(g)	increasing public understanding of citizens' legal rights and duties
(h)	<b>promoting and maintaining adherence to the professional principles</b>
<input type="checkbox"/>	Paper does not principally relate to Regulatory Objectives

## Purpose

- Following the conclusion of the BSB's consultation on conduct in non-professional life, the purpose of this paper is to ask the Board to approve the publication of the final outputs of the project which include the revised Social Media Guidance, Guidance on the Regulation of Non-Professional Conduct and revisions to non-mandatory BSB Handbook guidance. The Board is also asked to consider and approve the publication of a consultation response document which seeks to identify the key themes raised in the consultation responses and the action the BSB has taken in response.

## Recommendations

- The recommendations are that the Board approves the publication of:
  - Guidance on the Regulation of Non-Professional Conduct – Annex 1;
  - revised Social Media Guidance – Annex 2;
  - amendments to the non-mandatory guidance in the BSB Handbook (specifically gC25 to gC28) – Annex 3; and
  - the consultation response document, subject to final editing by the executive ahead of publication – Annex 4.

## Introduction

- The BSB's conduct in non-professional life project was established to clarify where the boundaries lie in terms of the regulation of conduct that occurs in a barrister's private/personal life. The project came about because our current rules and guidance may not always be clear about the circumstances in which the BSB will have a regulatory interest in such conduct and because our enforcement action, and the approach taken by the Disciplinary Tribunal, may not fully align with the non-mandatory guidance which is currently included in the BSB Handbook.
- The introduction and growth of social media platforms, many of which are not private, has also led to an increase in barristers regularly using these platforms. This has highlighted a need to update our guidance to clarify the extent of our regulatory interest in non-professional life, and the use of social media.

5. In July 2022, the Board approved a public consultation on draft guidance developed by the project team and the publication of Interim Social Media Guidance. The consultation ran from 21 July 2022 until 20 October 2022.
6. These papers seek to:
  - a. summarise how the project team has responded to the feedback that we obtained via the public consultation and subsequently from a number of key stakeholders; and
  - b. set out the project team’s proposals for the final versions of the various guidance, which it recommends the Board approves for publication.

### **The response to our public consultation and subsequent stakeholder feedback**

7. There were 26 responses to the consultation and responses were received from across the profession, including the Bar Council, a number of specialist Bar Associations, sets of Chambers, individuals and groups of barristers, and also the SRA.
8. The project team has considered in detail all of the consultation responses and has amended the draft guidance to incorporate elements of the feedback.
9. The project team’s analysis and proposed revisions to the draft guidance have also been the subject of further external stakeholder feedback, including from the SRA and a member of the Board. The Board member was invited to act as a critical friend to the executive and to review the final guidance documents ahead of bringing the final versions to the full Board, in place of two former Board members who were members of the project’s “Stakeholder Reference Group” but who have since left their positions.
10. A draft consultation response document, which includes a summary of the consultation responses and the project team’s analysis and conclusions on the same, is included at **Annex 4**. The Board is invited to consider this analysis as it has informed the final drafts of the guidance that are now presented to the Board for approval. A brief overview of the key revisions that have been made to the draft guidance post-consultation is set out below.
11. The draft guidance has also undergone some internal testing by members of the Contact and Assessment Team (CAT). The main feedback was that the new and/or revised guidance did not alter the outcome of CAT’s assessment. This is aligned with the purpose of the guidance which does not seek to introduce new requirements, but to provide further clarification on the approach we already take to considering cases involving conduct in non-professional life and social media. Other practical points were flagged by CAT which will be dealt with as part of internal training on how to apply the guidance.

### **Overview of key revisions to draft guidance post-consultation**

#### Guidance on the Regulation of Non-Professional Conduct (Annex 1)

12. Revisions to the draft guidance have been made to:
  - a. clarify that the guidance may also apply to a barrister’s conduct which occurs in a professional capacity other than as a barrister (such as an MP or academic etc.);
  - b. acknowledge that other human rights (beyond freedom of expression and the right to private life) may be engaged in certain cases, e.g. Article 9 (the right to freedom of thought, conscience and religion);

- c. clarify the circumstances in which the BSB may have a regulatory interest in non-professional conduct on the basis of its proximity to the profession – the closer the conduct is to a barrister’s *professional activities, workplace or relationships, or the more it reflects how they might behave in a professional context*, the more likely we are to have a regulatory interest; and
  - d. give greater clarity to the fact that there may be instances of non-professional conduct that are so serious that we may have a regulatory interest in it regardless of the context and environment in which it occurred, such as discrimination.
13. We consulted on two questions that we propose regulatory decision-makers ask when determining whether the BSB should have a regulatory interest in non-professional conduct. There was general agreement with the first question, regarding criminal conduct.
14. The project team have re-drafted the second question in light of the consultation responses (see paragraph 31 of Annex 1). The revisions are designed to achieve greater clarity by removing ambiguous concepts such as “analogous conduct” and by aligning the wording more closely with the Core Duties and Conduct Rules in the BSB Handbook.
15. The majority of the case studies have also been revised in light of feedback that was received about their original drafting.

#### Social Media Guidance (Annex 2)

16. Many of the proposed amendments to the draft Social Media Guidance are cosmetic and have been made in an attempt to reformat the guidance so that it is clearer, more succinct, and removes repetition. Other amends are to:
- a. acknowledge that barristers may want to participate in online debate and discussion on a range of matters;
  - b. clarify that the BSB is more likely to be interested in the *manner* in which a barrister expresses themselves on social media, as opposed to the *substance* of the views or opinions they express (however unpopular they may be);
  - c. acknowledge that other human rights (beyond freedom of expression and the right to private life) may be engaged in certain cases, e.g. Article 9 (the right to freedom of thought, conscience and religion);
  - d. amend the way we define social media so as to remove explicit reference to private messaging features or platforms (e.g. WhatsApp), given the lack of clarity as to whether this is truly a “social media” issue, and to acknowledge Instagram as an identified social media platform;
  - e. incorporate two further examples of social media use which *may* amount to a breach of the BSB Handbook depending on the circumstances (see paragraph 17 of Annex 2).
17. The project team has also re-drafted the social media case studies in light of significant feedback that was received in response to the consultation.

#### *Case Study 3 of the Social Media Guidance*

18. The original Case Study 3 of the Social Media Guidance, which concerned the expression of gender-critical views and intentional misgendering on social media, generated a lot of criticism and feedback in particular. In fact, a significant proportion of responses received (six) solely or predominantly responded to the consultation to raise issues with that case study.

19. Many respondents – individuals and groups alike – raised concern with the BSB’s identification of issues of potential regulatory interest. While most agreed with the BSB that “threatening” people on social media was a regulatory issue, many disagreed when it came to “misgendering” and considered that this should not be seen as a regulatory issue and/or that it was not a valid concept altogether. Some respondents commented that, in observance of the Public Sector Equality Duty,<sup>1</sup> the BSB should not ally itself with one side over the other in the gender debate. Many criticised the BSB for not giving enough weight to the protection afforded to gender-critical beliefs pursuant to recent caselaw (e.g. *Forstater, Bailey and Miller*).
20. We appreciate that there is an ongoing, complex, and rapidly changing debate about views on the immutability of gender and the rights of transgender people, and this debate is political in nature (meaning expressions concerning this debate are likely to be afforded a high level of protection) and that equality issues in this area may intersect with human rights considerations, such as Article 9 (freedom of thought, belief and religion) and Article 10 (freedom of expression).
21. We also recognise that gender-critical views as well as the belief that a person can change their sex or gender are both capable of amounting to philosophical beliefs which are protected under the Equality Act 2010 (“EqA”). There may be some tension between the protection afforded to those with gender-critical views and the rights of transgender people not to be discriminated against, harassed or victimised on the basis of gender reassignment (should they fall within the scope of the statutory definition), which is also protected under the EqA.
22. Reflecting on the contents of Case Study 3, particularly in relation to “misgendering”, the decision in *Forstater v CGD Europe* [2022] ICR 1 (which many respondents cited) is clear that “misgendering” a transgender person on a particular occasion, gratuitously or otherwise, *may* amount to *unlawful* harassment in arenas covered by the EqA. However, the EqA is unlikely to apply to a barrister’s use of social media (particularly in a non-professional context), and so the intentional misgendering of a transgender person by a barrister outside the scope of the provision of a legal service or in the context of their work relationships is *unlikely* to be unlawful under the EqA.
23. Further, the UK Supreme Court’s decision in *Lee v Ashers Baking Company Ltd and Ors* [2018] UKSC 49 (also cited by various respondents) indicates that it may be a limitation on someone’s Article 9 and Article 10 rights to be obliged to manifest beliefs one does not hold. This applies to both religious and political beliefs.
24. Bearing in mind the points raised in the consultation responses and those outlined above, we have taken the decision to remove this Case Study from the Social Media Guidance.
25. We tried to re-formulate Case Study 3 so as to contrast between the gender-critical belief that is protected (which we will have no regulatory interest in) and the manifestation of that belief in an objectionable way (which we may have a regulatory interest in). However, we decided that, on reflection, these issues do not lend themselves well to a general case study which is intended to provide guidance to the public and the profession. This is because of the particular complexities engaged by these issues, the rapidly changing nature of the gender debate, the emerging caselaw in this area and the inherently fact-specific nature of the issues in these types of cases

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<sup>1</sup> Which includes the need to “foster good relations between persons who share a relevant protected characteristic and persons who do not share it”.

for regulators where the conduct arises in a non-professional/social media context. Whether or not such (or similar) conduct might be regarded as a breach of the BSB Handbook will depend on an intricate analysis of the particular facts of the case. Further, given the fast-changing nature of the issues involved, it would also be undesirable to offer guidance to the profession through a case study that may quickly become outdated.

26. However, our decision to remove Case Study 3 does not mean that the BSB will never be interested in barristers' conduct involving the gender debate, the expression of philosophical beliefs, or deliberately misgendering a transgender person. Reports of such conduct will be assessed on a case-by-case basis and the wider context, circumstances, and manner of expression will be taken into account in determining whether we have a regulatory interest, and if so, whether there is a potential breach of the BSB Handbook. We have captured the BSB's response to this issue at paragraphs 81 to 86 of the draft Consultation Response document at Annex 4.
27. The position is likely to be different where a barrister is acting in a professional capacity (for example, liaising with clients, employees, opponents, witnesses, court staff etc).

#### Amendments to gC25 to gC28 (Annex 3)

28. The public consultation elicited limited feedback in relation to the proposed amendments to the BSB Handbook guidance. The minor additional amendments that the project team proposes to make to the guidance when it is published are to:
  - a. Introduce a more modern example of how a barrister may use their professional status in a way that constitutes an abuse of their professional position (acknowledging the use of email as a more common method of communication than letterheaded paper).
  - b. Amend the reference in the new gC27 from "factors" to "questions". This is because the original intention had been to produce a set of factors, but what we now have are questions.
  - c. Amend the reference to "private or personal life" to "non-professional life" so as to include things done publicly in other roles (which may include political or academic roles, for example), which will not be regarded as purely "private or personal" and to align this more closely with the guidance that we have developed.
29. **The Board is invited to approve the publication of each of the revised guidance documents outlined above. The aim is, subject to any other approvals that may be required, for publication to take place in September 2023.**

#### **Consultation Response Document**

30. Subject to the Board's approval of the publication of the draft guidance and agreement with the project team's analysis of the feedback received via the consultation, the project team proposes to publish a public consultation response document which will summarise the key themes emerging from the consultation and the BSB's response to the same. As mentioned above, a working draft of that document has been prepared and is enclosed with these papers at **Annex 4**.
31. **The Board is invited to approve the publication of the consultation response document, subject to final editing by the executive ahead of publication.**

### Resource implications / Impacts on other teams / departments or projects

32. There are limited resource implications for the remainder of this project and any resource implications are in line with the current budget and business plan.

### Equality and Diversity

33. The project team sought views on any potential equality impacts (that we had not already identified in the Equality Impact Assessment (“EIA”)) as part of the public consultation. Responses to that question almost exclusively related to concerns that the BSB had not had sufficient regard to “philosophical belief” as a protected characteristic, particularly in relation to gender-critical beliefs. We have updated the analysis in the EIA in relation to “Religion or Belief” (see **Annex 5**) accordingly. There were no further equality impacts in relation to other protected characteristics identified as part of the consultation response.
34. Notwithstanding the above, the project team remains of the view that our proposals do not indicate any adverse equality impacts in relation to philosophical beliefs. The BSB does not take regulatory action because of the barrister’s belief. Any action that may be taken will be because the barrister’s conduct (perhaps in the manner in which they express their belief) amounts to a potential breach of the BSB Handbook. Further, our regulatory approach to non-professional conduct and social media use could also have positive equality impacts by contributing to a stronger and more diverse profession.

### Risk implications

35. These pieces of guidance address the risk that the BSB’s regulation may not keep up to date with good regulatory practice. Further, the matters engaged are important matters of public interest.
36. Additionally, the lack of clear guidance on when the BSB has an in-principle regulatory interest in non-professional conduct could lead to enforcement action being taken where it is not appropriate, or action being taken which is subsequently dismissed by the Disciplinary Tribunal due to a lack of clarity about when regulatory intervention is appropriate. This could negatively affect the BSB’s ability to meet the regulatory objectives, and the trust and confidence which the public places in the regulator and the profession.

### Regulatory objectives

37. Our regulation of non-professional conduct particularly impacts on the following regulatory objectives (as defined in the Legal Services Act 2007):
38. **Protecting and promoting the public interest:** We believe it is in the public interest to ensure that barristers’ conduct, whenever it occurs, does not diminish public trust and confidence in individual barristers or the profession as a whole. Our work on this project ensures our regulation remains fit for purpose in protecting the public. It is also in the public interest more generally that regulators balance the rights of different parties when weighing whether to take regulatory action.
39. **Improving access to justice:** Barristers are central to the effective operation of the legal system. Misconduct by barristers in their non-professional life can negatively impact the public’s willingness to engage with the profession and thereby affect access to justice. It may also call into question a barrister’s suitability to act in certain cases.

40. **Protecting and promoting the interest of consumers:** Having a clear approach to the regulation of non-professional conduct should contribute to a greater understanding by the public and consumers of what behaviours can be expected of barristers (and what may be reported to the BSB if those expectations are not met). Taking regulatory action in the right cases will promote public confidence and protect the interests of consumers by addressing conduct which is of regulatory concern and acting as a deterrent to others.
41. **Encouraging an independent, strong, diverse and effective legal profession:** It is important that barristers' personal rights are taken into account in the exercise of regulatory functions. Taking regulatory action in relation to conduct in a barrister's non-professional life may lead to a stronger and more effective and independent profession by stopping behaviour that might affect confidence in barristers. If a barrister's non-professional conduct were discriminatory or harassing, regulatory action by the BSB may have a positive impact on diversity of the profession by assisting with ensuring that the Bar is a safe place for all people to work.
42. **Promoting and maintaining adherence to the professional principles:** Our approach to the regulation of non-professional conduct will ensure adherence to the BSB Handbook, including the professional principle to act with independence and integrity, by clarifying the types of conduct which we consider are unacceptable when a barrister is not providing legal services and taking regulatory action when appropriate.

### Communications and Stakeholder Engagement

43. Approved guidance documents will be published on the BSB's website and changes to the BSB Handbook guidance will be incorporated into the online and downloadable versions of the BSB Handbook. Staff within the BSB will be notified about the changes and the public and profession will be alerted via a press release, through the monthly Regulatory Update email which goes to all practising barristers (and a version of which is also published in the magazine *Counsel*), through our quarterly Consumer News bulletin and via social media.
44. BSB decision-makers (both staff and members of the Independent Decision-Making Body) will receive training on the application of the new guidance, ensuring that the approach across the organisation is consistent.

### Annexes

45. Annex 1 – Guidance on the Regulation of Non-Professional Conduct  
 Annex 2 – Social Media Guidance  
 Annex 3 – Amendments to the BSB Handbook guidance (gC25 to gC28)  
 Annex 4 – Working draft of the consultation response document  
 Annex 5 – Equality Impact Assessment (updated July 2023) – *in the reading room*





## Guidance on the regulation of non-professional conduct<sup>1</sup>

### Introduction

1. The Bar Standards Board (“**BSB**”) is the regulator of barristers and other specialised legal services businesses, and their employees and managers, in England and Wales. While this guidance applies to all individuals that we regulate, for ease we refer to “barristers” throughout ~~this guidance~~.
2. The BSB Handbook serves as the key regulatory tool for setting standards for those we regulate. In doing so, we seek to promote the regulatory objectives set out in s1 Legal Services Act 2007. These include:
  - protecting and promoting the public interest;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - encouraging an independent, strong, diverse and effective legal profession; and
  - promoting and maintaining adherence to the professional principles (in particular, the requirement to act with integrity).<sup>2</sup>
3. Although our key role is the regulation of barristers’ conduct in the course of their professional activities, the BSB Handbook also sets standards of conduct which apply to barristers at all times (see below). This is because conduct by barristers outside their professional activities can impact on public confidence in them or the profession and can be contrary to the regulatory objectives.
4. This guidance is designed to clarify where we think the boundaries lie in the regulation of conduct that occurs ~~in~~outside the scope of a barrister’s ~~private/personal~~professional life (as a barrister) and gives guidance on the circumstances in which we are likely, in principle, to have a regulatory interest in such conduct. Such conduct might include where a barrister is acting in a professional capacity other than as a barrister. By “regulatory interest” we mean the circumstances in which ~~we~~the BSB, as a regulator of the profession, may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is ~~apt~~suitable for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.
5. Having an in-principle regulatory interest in conduct does not mean that regulatory action will necessarily follow, and. As a risk-based and proportionate regulator, we focus our resources on cases that pose the most harm to the regulatory objectives. In all cases, ~~the BSB~~we will be guided by the statutory regulatory objectives, human rights considerations, and relevant case law.

<sup>1</sup> We refer to “non-professional conduct” or “non-professional life” because we recognise that we have no interest in matters that arise in a barrister’s private or personal life which have no bearing on them as barristers or the wider profession.

<sup>2</sup> The BSB has a duty under s28 Legal Services Act 2007 to act, so far as is reasonably practicable, in a way which is compatible with, and that is appropriate to meet, the regulatory objectives.

## Human Rights Act 1988

6. We recognise that our regulation of the profession needs to strike the right balance between the public interest in preserving public confidence in the profession and individual barristers, and a barrister's rights which are guaranteed under the Human Rights Act 1998 and the European Convention on Human Rights (ECHR).
7. We recognise that our regulation of non-professional conduct is likely to engage a barrister's rights under Article 8 ~~of the European Convention on Human Rights~~ ECHR (the right to respect for private and family life, home and correspondence).
8. In some cases, Article 10 (the right to freedom of expression) may also be engaged where reported conduct involves the barrister exercising their right to express themselves, e.g. by expressing their views on social media (although Article 10 may be engaged in relation to conduct in professional life as well).
9. Article 8 and Article 10 are both qualified rights, which means we may take regulatory action in circumstances where a barrister's conduct is potentially in breach of the standards set out in the BSB Handbook ~~and our regulatory action (which may interfere with a barrister's Article 8 and Article 10 rights), and such action~~ can be justified and is proportionate.
10. For example, Article 10 may protect a barrister's right to hold and express an opinion ~~on social media~~, but the manner in which it is expressed could be a potential breach of the BSB Handbook and therefore we may have a regulatory interest in it.
11. Other qualified rights may also be engaged in particular cases, such as Article 9 (the right to freedom of thought, conscience and religion) or Article 11 (the right to freedom of assembly and association).
- 11.12. In deciding whether we have a regulatory interest in a matter (and, if so, what, if any, action should be taken) we will undertake a careful balancing exercise on a case-by-case basis to determine whether any ~~proposed~~ regulatory action that may interfere with a barrister's human rights can be justified, ~~and any further action is proportionate.~~

## General Principles

- 12.13. Barristers are central to the effective operation of the legal system, and it is important that our regulation serves to maintain public trust and confidence in them as individual practitioners, and in the profession as a whole.
- 13.14. While barristers cannot be held to unreasonably high standards and are not to be viewed as "paragons of virtue", barristers are nevertheless held to a higher standard of conduct than ordinary members of the public.
- 14.15. Members of the public must feel able to access an independent, strong, diverse, and effective profession. This means we have an important role in ensuring that any member of the profession, whether practising or unregistered, acts in a way that maintains public trust and confidence in the profession.

~~15-16.~~ When a barrister’s behaviour in their non-professional life is incompatible with the high standards the public expects of them, we may take regulatory action in the public interest. This approach has long been recognised by the courts.<sup>3</sup>

~~16-17.~~ The case law is clear that the closer non-professional conduct is to professional practice, the greater the justification for regulatory action ~~on the basis that~~. We are of the view that the closer any non-professional conduct is to a barrister’s professional activities, workplace or relationships and/or the more it reflects how they might reflect on how the individual could behave in a professional context and/or, the more likely we are to have an impact on a regulatory interest in it. However, we may also have a regulatory interest where the nature of the conduct is so serious that it is capable of diminishing public trust and confidence in the barrister or the profession, regardless of the context and environment.

~~17-18.~~ We are unlikely to have a regulatory interest where we receive information about conduct in a barrister’s private or personal life which has little or no impact on their professional practice, or on public trust and confidence in the profession.

#### **Our regulation of non-professional conduct**

~~18-19.~~ The Code of Conduct for barristers is contained in Part 2 of the BSB Handbook. The Code of Conduct sets out the standards expected of barristers and includes ten mandatory “Core Duties”, supplemented by a range of mandatory “rules” and non-mandatory guidance and outcomes. Most of the Core Duties and rules only apply when a barrister is “*practising*”<sup>4</sup> or “otherwise providing *legal services*”.<sup>5</sup>

~~19-20.~~ The term “*practising*” is broadly defined in the BSB Handbook. It includes means all activities, including the business-related activities, of a practising barrister. This means that chambers-related events, for example, are likely to be treated as being part of a barrister’s professional life<sup>6</sup>, so ~~their~~ conduct during such events engages all the Core Duties and rules that apply to practising barristers.

~~20-21.~~ If an unregistered barrister practises as a barrister in accordance with rS9 of Part 3 of the BSB Handbook (the Scope of Practice Rules) (i.e. if they supply, or offer to supply, legal services and hold themselves out as a barrister) then the Core Duties and rules which apply to practising barristers also apply to them. Unregistered barristers should read our ‘Unregistered Barristers Guidance’ for more information on how the BSB Handbook applies to them.

~~21-22.~~ This guidance on the regulation of non-professional conduct covers the circumstances in which a barrister is not practising (in the broad sense set out above) or otherwise providing legal services. This might include, for example, a barrister’s use of social media when it is unrelated to their work, or their conduct during personal litigation. Barristers

<sup>3</sup> See, for example, R (on the application of Remedy UK Ltd) v General Medical Council [2010] EWHC 1245 (Admin), Khan v Bar Standards Board [2018] EWHC 2184 (Admin) and Ryan Beckwith v Solicitors Regulation Authority [2020] EWHC 3231 (Admin); AB v Bar Standards Board [2020] EWHC 3285 (Admin)

<sup>4</sup> The rules governing when a barrister (including an unregistered barrister) is deemed to be ‘practising’ as such can be found at rS9 and rS10 of the Scope of Practice Rules at Part 3 of the BSB Handbook.

<sup>5</sup> See the “application” provisions at Section A of the Code of Conduct. The definition of ‘legal services’ is in Part 6 of the BSB Handbook.

<sup>6</sup> See Howd v Bar Standards Board [2017] EWHC 210 (Admin)

should also read our ‘*Social Media Guidance*’ for more information about how we will consider conduct that has occurred on social media (both in a professional and non-professional context).

~~22-23.~~ Of the Core Duties and mandatory rules that apply to barristers (including unregistered barristers) at all times, the following are most likely to be relevant to non-professional conduct:

**Core Duty 5 (CD5)**

*You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.*

**Rule C8 (rC8)**

*You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).*

~~23. We will therefore have a regulatory interest in conduct which occurs in a non-professional context which:~~

- ~~a. is likely to diminish the trust and confidence which the public places in the barrister or in the profession; and/or~~
- ~~b. could reasonably be seen by the public to undermine the barrister’s honesty, integrity, and independence.~~

**Determining whether we have a regulatory interest**

24. It is our aim, as a transparent and risk-based regulator, to ensure that barristers and the public have a clear understanding of the standards expected of barristers and the circumstances in which we might have a regulatory interest in non-professional conduct.

25. When considering whether, ~~in principle,~~ we have a regulatory interest in non-professional conduct ~~which is reported to us,~~ the first question we will ask is:

**Question 1**

**Has the barrister been:**

- a. Charged with an indictable offence in England and Wales;**
- b. Charged with a criminal offence of comparable seriousness elsewhere; or**
- c. Convicted of, or accepted a caution for, any criminal offence other than a minor criminal offence<sup>7</sup> (subject to the Rehabilitation of Offenders Act 1974 (as amended))-?**

<sup>7</sup> “*Minor criminal offence*” is defined at Part 6 of the BSB Handbook and includes:

a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;

Criminal conduct

26. A barrister could be the subject of criminal charges and ultimately a criminal conviction (or caution). Such charges, cautions or convictions ~~are more likely to may~~ arise from their non-professional life (e.g. a conviction for drink driving or harassment in a domestic context), but they could also be associated with their professional life (e.g. convictions for a failure to pay tax or VAT in relation to their practice).
27. It is not our role to ~~determine~~ make a finding as to whether a barrister has committed a criminal offence; this is the responsibility of the criminal justice system. However, we take the view that it is incompatible with the high standards expected of the profession for barristers to engage in criminal conduct. This is because we consider it to be important that all barristers, both practising and unregistered, are (and are seen to be) rule-abiding citizens in order to maintain public trust and confidence in them and in the profession. Engaging in criminal conduct is likely to be inconsistent with CD5 and rC8.
28. Barristers have a duty to report promptly certain types of criminal conduct (but not “minor criminal offences”) to us by virtue of rC65.1 and rC65.2 of the BSB Handbook. This obligation applies at all times to both practising and unregistered barristers. The first question we will ask (above) when deciding whether we have a regulatory interest in a barrister’s non-professional conduct therefore reflects this duty to self-report. A failure to report promptly is, in itself, a breach of the BSB Handbook that could attract enforcement action.

**Case Study 1**

The BSB receives a report from a barrister who has been given a fixed-penalty notice for failing to wear a seatbelt while driving.

As this is a fixed-penalty offence under the Road Traffic Offenders Act 1988 and therefore a “minor criminal offence” (as defined in the BSB Handbook) it is unlikely that we would have a regulatory interest in this conduct.

~~29. Consistent with this duty to self-report, we have a regulatory interest in criminal conduct where a barrister has been:~~

- ~~a. Charged with an indictable offence in England and Wales;~~
- ~~b. Charged with a criminal offence of comparable seriousness elsewhere; or~~
- ~~c. Convicted of, or accepted a caution for, any criminal offence other than a minor criminal offence (subject to the Rehabilitation of Offenders Act 1974 (as amended)).~~

~~30.~~ 29. However, the fact that we may have a regulatory interest in a charge for an indictable offence does not mean we will necessarily take regulatory action prior to a conviction. What action we do take will depend on all the circumstances of the case, including the nature of the alleged offence, the barrister’s area of practice, and the risk posed.

- 
- b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence;
  - c) an offence whose main ingredient is the unlawful parking of a motor vehicle

**Case Study 2**

The BSB receives a report that a barrister was charged with causing death by dangerous driving while on a family holiday in Scotland. The barrister did not promptly self-report this incident under rC65 of the BSB Handbook.

As the barrister has been charged with a criminal offence of comparable seriousness to an indictable offence in England and Wales, we will have a regulatory interest in this conduct.

We may also consider taking regulatory action for the barrister's failure to self-report promptly under rC65 of the BSB Handbook.

As the barrister has only been charged and not yet convicted, it is likely that we would put any assessment of potential breaches on hold pending the conclusion of the underlying criminal proceedings, in particular as the outcome may be an acquittal. If the charge gave rise to particular concerns about the barrister's risk to the public, we may consider in parallel pursuing an interim suspension.

However, in the event that the barrister is ultimately convicted of an indictable offence we would assess the conduct on the basis of a potential breach which would likely result in referral for enforcement action given the conviction for a serious criminal offence.

**Case Study 2**

The BSB receives a report that a barrister (**B**) was charged with causing death by dangerous driving while on a family holiday.

B has allegedly committed an indictable offence, which is a serious criminal offence. The BSB takes the view that it is incompatible with the high standards expected of the profession for barristers to engage in criminal conduct, because the BSB considers it to be important that all barristers, both practising and unregistered, are (and are seen to be) law-abiding citizens in order to maintain public trust and confidence in them and in the profession. Engaging in criminal conduct is therefore likely to be inconsistent with CD5 and rC8: as such, the BSB is likely to have a regulatory interest in B's conduct.

In this case, B has only been charged with, and not convicted of, the criminal offence; it is possible that B may be acquitted at the conclusion of the criminal process. It is therefore likely that the BSB would put any assessment of potential breaches on hold, pending the conclusion of the underlying criminal proceedings. However, if the charge gave rise to particular concerns (e.g. if the barrister was a risk to the public or clients), the BSB may consider taking interim action to suspend them pursuant to its powers in the Interim Suspension and Disqualification Regulations.

If B had been charged with a similar offence in another jurisdiction (e.g. in Scotland), the BSB would still have a regulatory interest if the criminal offence was of comparable seriousness to an indictable offence in England and Wales.

31.30. There may be circumstances where barristers engage in conduct which could constitute a criminal offence but, for various reasons, they have the conduct is not reported to the police or it has been reported but the barrister has not been charged or criminal

conduct is not proved. We may nevertheless have a regulatory interest in such conduct, but it will be considered in line with the principles applicable to “other conduct” below.

#### Other conduct

~~32.31.~~ If the conduct reported to us does not fall within the scope of the principles relating to criminal conduct above, then when considering whether we have a regulatory interest in relation to any other conduct the second question we will ask is:

Is the conduct sufficiently relevant or connected to the practice or standing of the profession such that:

- a. it is likely to diminish public trust and confidence in the barrister or the profession; and/or
- b. it could reasonably be seen by the public to undermine the barrister’s honesty, integrity or independence?

In determining whether the conduct is sufficiently relevant or connected to the practice or standing of the profession, we will take into account:

- i. the nature of the alleged conduct; and
- ii. the context and environment in which the conduct is said to have occurred.

Is the conduct:

- ~~a) conduct which is, or is analogous to, conduct that could breach relevant standards of the BSB Handbook that apply to practising barristers; and~~
- ~~b) sufficiently relevant or connected to the practice or standing of the profession such that it could realistically:
 
  - ~~a. affect public trust and confidence in the barrister or the profession; or~~
  - ~~b. be reasonably seen by the public to undermine the barrister’s honesty, integrity and independence~~
 taking into account the context and environment in which occurred?~~

~~33.32.~~ Both limbs of this question must be answered in the affirmative for us to have a regulatory interest in the conduct. This is a question that requires careful assessment according to the particular facts and circumstances of each case. It is not possible to set a firm line between the types of conduct in which we will or will not have a regulatory interest.

**Case Study 3**

The BSB receives a report from a bank about a barrister's failure to make repayments on a personal loan.

We do not consider it is appropriate for a regulator to get involved in private financial matters when there are better routes available to try to resolve the dispute (e.g. court action) and there is little demonstrable relevance between the reported conduct and the practice or standing of the profession. Therefore, we are unlikely to have a regulatory interest in this conduct and it would be more appropriate for the parties to explore other avenues (such as private law action) to resolve their dispute.

However, if the bank later obtained a court order to enforce repayment of the outstanding debt, which the barrister failed to comply with the barrister's conduct in failing to comply with the terms of a court order could be analogous to, conduct which could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD1** and **CD3**, on the barrister's duty to the court or to act with honesty and integrity, as well as **CD5** and **Rule C8**).

A barrister's failure to comply with a court order could call into question their ability to comply with their overriding duty to the Court and to the administration of justice. A barrister's disregard of an order made by a court could diminish public trust and confidence in them, and the wider profession, and could reasonably be seen by the public to undermine their honesty and integrity, such that we would have a regulatory interest in this conduct. Whether or not action would be taken in relation to the conduct would be dependent on the reasons for the non-compliance, including the barrister's means to pay.

**Case Study 3**

The BSB receives a report about a barrister's (B) failure to repay a substantial loan provided by a friend (F), and there is evidence to show that B had agreed to repay the loan on a number of occasions. In this case, there is no evidence that B has acted dishonestly. The loan has no relevance to B's professional practice.

A dispute about a private financial arrangement is unlikely to be sufficiently relevant or connected to the practice or standing of the profession and therefore the BSB is unlikely to have a regulatory interest in this conduct.

However, the BSB may take a regulatory interest in B's conduct if a judgment/order has been obtained by F in relation to the debt, and B failed to pay the debt in accordance with that order. In those circumstances, B would be in breach of an order of the court, and although it would very much depend on the reasons for this breach, B's conduct may diminish the trust and confidence the public places in B or in the profession (CD5).

Whether or not action would be taken in relation to such conduct would depend on the reasons for B's non-compliance, including the barrister's means to pay. The BSB is more likely to take a regulatory interest where the issues have been explored during a civil hearing in relation to the debt, and the barrister has simply ignored the final order, or where the barrister has exhausted the appeal process and still refuses to comply with the order.



~~34. The case law is clear that the closer non-professional conduct is to professional practice, the greater the justification for regulatory action on the basis that the conduct might reflect on how the individual might behave in a professional context or have an impact on public trust and confidence in the profession.~~

~~Therefore, in relation to any other conduct that is reported to the BSB, we are more likely to have a regulatory interest in conduct that is, or is analogous to, conduct that would contravene other relevant provisions of the BSB Handbook (or standards that are necessarily implicit from it) if it occurred during a barrister's professional life. This is because such conduct is more likely to have a bearing on the public's trust and confidence in the barrister or the profession.~~

~~*The Nature of the Alleged Conduct*~~

~~33. When considering the nature of the conduct, we will look at what the barrister has allegedly done and its impact on the Guidance C25 relevant Core Duties and Conduct Rules in Part 2 of the BSB Handbook includes. A non-exhaustive list of the types of conduct which is are likely to be treated as a breach of CD3 and/or CD5. This list provides examples is set out in gC25 (in Part 2 of the types of behaviour BSB Handbook). We may have a regulatory interest in this conduct, even if it occurs in a non-professional context, and this includes conduct which is seriously offensive<sup>8</sup> towards others or conduct which is dishonest, discriminatory, victimising or harassing.~~

~~34. We might may have a regulatory interest in conduct which is discriminatory, for example, because conduct which demonstrates how a barrister's attitude towards people from might perceive certain groups (particularly minoritised and/or vulnerable groups) might indicate how they will interact with people from that group in the future, including how they may provide legal services to them. Such conduct might also alienate clients, future clients, and members of the public who identify themselves as members of that group. This may make them feel uncertain about engaging with the barrister and/or the profession or trusting that the barrister and/or the profession will act in their best interests. This could be seen as a risk to access to justice, and it is therefore likely to be in the public interest to regulate such conduct.~~

<sup>8</sup> Whether conduct is "seriously offensive" is determined objectively by reference to how reasonable members of the public would perceive the conduct.

**Case Study 4**

The BSB receives a report about a barrister who has posted a series of comments in a private Facebook group (consisting of at least 50 members) which were seriously offensive, disparaging, misogynistic, included references to physical and sexual violence, and all of which targeted female members of the public.

As the conduct occurred on social media, we would also have regard to our 'Social Media Guidance'.

The barrister's conduct is, or is analogous to, conduct which could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD3**, **CD8**, **Rule C12** on the barrister's duty to act with integrity and to not discriminate unlawfully against any person, as well as **CD5** and **Rule C8**, supported by **gC25.5** and **gC25.7**).

The conduct is of a nature that means it would likely diminish trust and confidence in the barrister and in the wider profession, would be reasonably seen by the public to undermine the barrister's integrity, and is incompatible with the high standards expected of members of the profession.

As the conduct involves an expression of opinion, we would take the barrister's Article 10 rights into account before making a decision to take any further regulatory action.

**Case Study 4**

The BSB receives a report about a barrister (B) who has posted a series of comments in a private Facebook group (consisting of at least 50 members) which referred to physical violence and violent sexual fantasies about a female member of the public (P), and used derogatory sexist slurs targeted at her.

The posting of violent, sexual and derogatory content on social media is serious conduct that is likely to diminish the trust and confidence which the public places in B or the profession (CD5), regardless of the context in which it occurred. The fact that B's conduct is only visible to a limited audience does not prevent the conduct potentially diminishing the public trust and confidence in B or the profession. As such, the BSB is likely to have a regulatory interest in this conduct.

However, as the conduct occurred on social media, we would also have regard to our 'Social Media Guidance' and B's Article 8 and Article 10 rights before making a decision on whether regulatory action is appropriate.

**Case Study 5**

The BSB receives a report about a barrister who sexually assaulted another person (A) while at a nightclub after work hours. The conduct was witnessed by various people, including staff working at the nightclub, who eventually removed the barrister from the premises. A did not want to report the matter to the police, but did bring the conduct to the attention of the BSB.

The barrister's conduct in sexually assaulting A would likely be, or be analogous to, conduct which could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD3** on the barrister's duty to act with integrity, as well as **CD5** and **Rule C8**, supported by **gC25.5** and **gC25.7**).

This conduct could be capable of amounting to a criminal offence, which is incompatible with the high standards expected of the profession. This conduct is likely to be sufficiently relevant to the practise or standing of the profession because all barristers must be, and be seen to be, rule-abiding citizens in order to maintain public trust and confidence.

Notwithstanding the potential criminal nature of the conduct, the conduct is also inappropriate, seriously offensive, harassing, and shows a lack of integrity and respect for others. Non-consensual sexual conduct, such as in this case, would diminish public trust and confidence in a barrister and undermine the barrister's integrity. Further, if no regulatory interest was taken in this conduct by the BSB in this case, there would likely be a negative effect on the trust and confidence the public places in the profession, and in the BSB as a regulator, by allowing a barrister who has conducted themselves in such a manner to continue to practise at the Bar without some form of regulatory action. Therefore, we are likely to have a regulatory interest in this conduct.

**Case Study 5**

The BSB receives a report about a barrister (B) who sexually assaulted another person (A) while at a nightclub after work hours. The alleged conduct was witnessed by various people, including staff working at the nightclub, who eventually removed B from the premises. Whilst A reported the matter to the BSB, A did not report the matter to the police.

B has not been charged with a criminal offence; however, the evidence provided with the report shows that the nature of B's alleged conduct may have been capable of amounting to a sexual assault contrary to s.3 Sexual Offences Act 2003 (this offence would not fall into the definition of a 'minor criminal offence').

Whilst the alleged conduct occurred outside of the barrister's practice (i.e. in a nightclub, after work hours, and not involving other members of the Bar), the nature of the alleged conduct is so serious, and may have amounted to assault or harassment, that it is likely to be sufficiently relevant or connected to the standing of the profession such that it is likely to diminish public trust and confidence in B or in the profession (**CD5**). The BSB is therefore likely to have a regulatory interest in this conduct.

The Context and Environment

35. ~~When deciding whether non-professional conduct might have an impact on the public's trust and confidence in the barrister or the profession, t~~The closer the link between the

context or environment in which the conduct occurred and that of the profession, the greater the likelihood that we will have a regulatory interest in it.

- 36.** This means, for example, that misbehaviour by a barrister involved in private litigation may well be of regulatory interest to us if, for example, a barrister engages in vexatious behaviour that wastes the court's time or fails to comply with court orders.

#### **Case Study 6**

~~The BSB receives a report about a barrister, who had been a party to family law proceedings in their personal capacity, deliberately giving untruthful evidence to obtain a divorce.~~

~~The barrister's conduct in misleading the court is analogous to conduct that could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD1**, **CD3**, **Rule C3**, **Rule C6**, **Rule C9** on the barrister's duty to the court, to act with honesty and integrity, and to not knowingly or recklessly mislead the court or anyone, as well as **CD5** and **Rule C8**).~~

#### **Case Study 6 (cont'd)**

~~The barrister's involvement in proceedings before the court, albeit in a personal capacity, means that the conduct is sufficiently related to or connected to the profession such that misconduct in those proceedings could realistically affect public trust and/or confidence in the barrister or the profession. This conduct could also realistically be seen by the public to undermine the barrister's honesty and integrity. If a member of the public witnessed or heard about this conduct, they are likely to be concerned that the barrister would not discharge their professional duties with complete trustworthiness. We would therefore have a regulatory interest in the conduct.~~

#### **Case Study 6**

The BSB receives a report about a barrister (**B**), who had been a party to family law proceedings in their personal capacity, deliberately giving untruthful evidence to the court. B has not been charged with contempt of court or a separate criminal offence.

Bearing in mind the nature of the alleged conduct (i.e. that it was dishonest and misleading), and the fact that dishonesty is a serious matter for a legal professional, and taking into account the context and environment in which the conduct occurred (i.e. it occurred in the context of court proceedings), it is likely that we would take the view that B's alleged conduct is sufficiently relevant or connected to the practice or standing of the profession such that it is likely to diminish the trust and confidence which the public would place in B or in the profession (**CD5**), and could reasonably be seen by the public to undermine B's honesty or integrity (**rC8**). As such, the BSB is likely to have a regulatory interest in this conduct.

37. Whilst the ability to identify somebody as a barrister is not a necessary ingredient for us to have a regulatory interest in non-professional conduct, it is likely to strengthen the link between the conduct and the profession, ~~and thus engage the relevant duties and rules in the BSB Handbook.~~ This is because, by virtue of being identifiable as a barrister, there may be a greater risk of the conduct diminishing public trust and confidence in the barrister or in the profession. This is also likely to include situations in which a barrister uses their status as a barrister to obtain an advantage or to the detriment of others.

#### **Case Study 7**

~~The BSB receives a report that a barrister, who is also one of several directors of a company, has breached their duties of confidentiality as a company director while speaking before a large audience at a formal dinner. After introducing themselves as a practising barrister and the director of a successful company, the barrister disclosed confidential information about the company's operations and future business plans. The company's business has no link to the legal profession.~~

~~The barrister's failure to respect the duty of confidentiality (in their capacity as a company director) could be analogous to conduct which could be a breach of the BSB Handbook if it occurred whilst the barrister was practising (see, for example, **CD3**, **CD6**, **Rule C15** on the barrister's duty to act with integrity and to keep the affairs of each client confidential, as well as **CD5** and **Rule C8**).~~

~~A company director owes fiduciary duties to the company (and if applicable, its members and shareholders): such duties include confidentiality and acting in the best interests of the company. If a barrister (who was known to be both a company director and a practising barrister, as in this case) breached their duty of confidentiality as a company director by disclosing confidential and commercially sensitive information, this could call into question the barrister's ability to keep the affairs of their clients confidential. In this case, acknowledging the context (that the disclosure took place in a professional environment, before a large audience who knew the barrister was both a company director and a practising barrister), the barrister's breach of their duty of confidentiality is likely to diminish public trust and confidence in them as a barrister and undermine the barrister's integrity.~~

~~Consequently, we are likely to have a regulatory interest in this conduct.~~

**Case Study 7**

The BSB receives a report from a member of the public about a barrister (B) who was involved in a climate change protest. The report described how B had been arrested on suspicion of aggravated trespass after climbing a tree in a bid to stop it from being cut down (where the local authority had issued a permit for the tree to be cut down). It is clear from the report and from coverage of the issue in the press that B had identified their professional status during the protest and was therefore recognisable as a barrister. However, notwithstanding the arrest, B was not ultimately charged with an offence.

B has not been charged or convicted of a criminal offence. Bearing in mind the nature of B's conduct (climbing a tree as part of a political protest) which occurred in the context of B exercising their Article 10 and Article 11 rights, it is unlikely that B's conduct is sufficiently relevant or connected to the standing of the profession such that it is likely to diminish the trust and confidence which the public would place in B or in the profession (CD5), or could reasonably be seen by the public to undermine B's honesty, integrity or independence (rC8). The BSB is unlikely to have a regulatory interest in this conduct.

36-38. However, we may also have a regulatory interest in conduct that is so serious that it is capable of diminishing public trust and confidence in the barrister or the profession, regardless of the context and environment, for example discrimination.

**Annex 1**

**Determining whether we have a regulatory interest**

**1. Has the barrister been:**

- ~~a. Charged with an indictable offence in England and Wales;~~
- ~~b. Charged with a criminal offence of comparable seriousness elsewhere; or~~
- ~~c. Convicted of, or accepted a caution for, any criminal offence other than a *minor criminal offence* (subject to the Rehabilitation of Offenders Act 1974 (as amended))?~~

A “minor criminal offence” includes:

- ~~a. An offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;~~
- ~~b. An offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence;~~
- ~~c. An offence whose main ingredient is the unlawful parking of a motor vehicle.~~

**2. Is the conduct:**

- ~~a. Conduct which is, or analogous to, conduct that could breach relevant standards of the BSB Handbook that apply to practising barristers; and~~
- ~~b. sufficiently relevant or connected to the practice or standing of the profession such that it could realistically:~~

- ~~i. affect public trust and confidence in the barrister or the profession; or~~
- ~~ii. be reasonably seen by the public to undermine the barrister's honesty, integrity and independence~~

~~taking into account the context and environment in which it occurred?~~





## Social Media Guidance

### Introduction

1. The BSB recognises that you are likely to want to use social media for a variety of ~~private~~personal and professional reasons. However, your obligations as a barrister mean that you must also act in a way that complies with the BSB Handbook.
2. We have written this guidance to help you understand your duties under the BSB Handbook as they may apply to your use of social media. This applies to you in both a professional and personal capacity.
3. Although~~In~~ relation to your personal social media use or where you might use social media in a professional capacity other than as a barrister, you should also have regard to our *Guidance on the Regulation of Non-Professional Conduct*, which sets out what we will consider when assessing whether we are likely to have a regulatory interest in non-professional conduct. In general terms, the closer your non-professional conduct is to professional practice as a barrister, the more likely we are to have a regulatory interest in it.

### General principles

4. Social media use includes (but is not limited to) posting or commenting on material online, sharing content, promoting your business as a barrister, or networking. This might be on social networking sites like Facebook, Instagram, LinkedIn or Twitter, content communities such as YouTube, or online forums. However, the principles from the BSB Handbook, case law and statute which are discussed in this guidance may also be relevant to other forms of communication.

2.5. We recognise that you may want to participate in online debate and discussion on a range of issues, including matters of general public importance. The BSB also understands that your use of social media is likely to engage your right to freedom of expression is protected under the Human Rights Act 1998 (Article 10 of the European Convention on Human Rights (“ECHR”)),<sup>1</sup> which includes the right to hold and express opinions and to receive and impart information and ideas. However, Article 10 is a qualified right which must be balanced against other rights and values guaranteed~~protected~~ by the ECHR (such as the rights and ~~reputation~~reputations of other members of the profession or consumers of barristers’ services).

3.6. The European Court of Human Rights has recognised that lawyers, by virtue of their profession, have a special status which justifies placing certain restrictions on their conduct:

*“...~~that~~ the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar... Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein.”<sup>2</sup>*

<sup>1</sup> See Section 1 and Schedule 1 to the Human Rights Act 1998.

<sup>2</sup> *Nikula v Finland* (2004) 38 E.H.R.R. 45.

~~4. The BSB may consider taking regulatory action against you where your conduct is potentially in breach of the standards set out in The BSB Handbook and such action is proportionate and justifiable in all the circumstances. We will undertake a careful balancing exercise on a case-by-case basis to determine whether any proposed regulatory action that may interfere with your Article 10 rights is justified and proportionate.~~

~~5. The BSB has written this guidance to help you understand your duties under the BSB Handbook as they apply to your use of social media. This applies to you in both a professional and personal capacity.~~

~~6. Social media use includes posting material online, private messages to individuals, organisations or groups, sharing content, promoting your business as a barrister, or networking. This might be on social networking sites like Facebook, LinkedIn or Twitter, content communities such as YouTube, or Internet forums.~~

~~7. We may consider taking regulatory action against you where your conduct on social media is such that it is potentially in breach of the BSB Handbook. The BSB is more likely to have a regulatory interest in social media use where the *manner* in which you express yourself is inconsistent with your obligations under the BSB Handbook. We are less likely to have an interest in the *substance* of the views that you hold (however unpopular they may be). However, there may be cases where the views or opinions that you express may mean that regulatory action is justifiable, for example, where you post material online which is dishonest or discriminatory.~~

~~7.8. For example, conduct which is discriminatory may demonstrate a barrister's attitude towards people from certain groups (particularly minoritised and/or vulnerable groups) and might indicate how the barrister will interact with those people in the future, including how they may provide legal services to them. Such conduct may also alienate clients, future clients, and members of the public who identify as part of those groups and make them feel uncertain about engaging the barrister and/or the profession, or trusting that the barrister and/or the profession will act in their best interests. This could be seen as a risk to access to justice and it is therefore likely to be in the public interest to regulate such conduct.~~

~~8.9. If you are the subject of a report concerning Before taking any regulatory action in relation to your use of social media, the BSB we will consider the each matter carefully and in line with the processes explained on the BSB's our website and. We will also take this guidance into account, while also having regard to your Article 10 rights and any other rights that may be engaged (e.g. Article 8 (the right to respect for private and family life, home and correspondence) or Article 9 (the right to freedom of thought, conscience and religion)). We will undertake a careful balancing exercise in each case to determine whether any proposed regulatory action is justified and proportionate.~~

~~You (and, where appropriate, your clerks and other staff connected with barristers' professional practices) can contact the Bar Council's confidential Ethical Enquiries Service on 020 7611 1307 or Ethics@BarCouncil.org.uk to obtain assistance with identifying, interpreting and complying with professional obligations under the BSB Handbook.~~

## What rules of the BSB Handbook are relevant to this Guidance?

~~9-10.~~ If you use social media whilst acting in a professional capacity, your conduct could bring into question your compliance with certain Core Duties and rules in the BSB Handbook that apply to you when you are practising or otherwise providing legal services.<sup>3</sup> These include:

- **Core Duty 3:** You must act with honesty, and with integrity.
- **Core Duty 5:** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
- **Core Duty 6:** You must keep the affairs of each client confidential.
- **Core Duty 8:** You must not discriminate unlawfully against any person.

~~10-11.~~ The term “*practising*” is to be interpreted broadly ~~defined in the BSB Handbook.~~ It includes all activities, including the business-related activities, of a practising barrister<sup>4</sup>.

~~11-12.~~ ~~Given the very public nature of social media, it is not always easy to say whether comments made on social media are made in one’s professional or non-professional capacity.~~ However, if you ~~do~~ use social media outside your professional life ~~and the nature of the communication is private~~, your conduct could still bring into question your compliance with certain Core Duties and rules in the BSB Handbook which apply to you at all times. Such rules and so you should always be mindful of what you post or share online. Of the rules that apply to you at all times, the ones that are most likely to be relevant to your use of social media include:

- **Core Duty 5:** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
- **Rule C8:** You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).

### Case Study 1

~~The BSB receives a report that a barrister has sent seriously offensive private messages on LinkedIn to a person with whom the barrister had recently “connected” on the platform (but did not know offline).~~

~~As this conduct occurred on a professional social networking platform, which the barrister joined and used in a professional capacity (e.g. to advertise their services and network) we would regard this conduct as having occurred in a professional capacity (as we consider it is a business-related activity of a practising barrister). This means that the provisions of the BSB Handbook that apply when ‘*practising*’ or ‘*otherwise providing legal services*’ are relevant. The conduct involves seriously offensive communications for which the barrister is likely to be regarded as in breach of the duty to act with integrity (**CD3**) and to not behave in a way which is likely to diminish the trust and confidence the public places in them or the profession (**CD5**).~~

<sup>3</sup> Both the terms “*practising*” and “*legal services*” are ~~is~~ defined in Part 6 of the BSB Handbook.

<sup>4</sup> See the definition of “*practice*” in Part 6 of the BSB Handbook.

**Case Study 1**

The BSB receives a report about a barrister (B) using a racist slur on Twitter when responding (in opposition) to a post by another user, who is Black, who had invited a local authority to remove a public statue of a historical figure who had profited from the Transatlantic slave trade. B identifies as a barrister in her Twitter bio.

As this conduct occurred in B's non-professional life, the BSB would first have regard to the Guidance on the Regulation of Non-Professional Conduct to determine whether the BSB has a regulatory interest in B's conduct. The use of racist language targeted at an individual in an online, public social media post in which it is easy to identify B as a barrister means B's conduct is likely to diminish public trust and confidence in B or in the profession, contrary to CD5. As such, the BSB is likely to take regulatory action in relation to B's conduct, and any interference with B's Article 8 and Article 10 rights is likely to be justifiable on the basis of the protection of the rights and reputations/freedoms of others.

12.13. Remember that CD5 and rC8 apply to you at all times, even if you are an unregistered barrister. However, the rules that apply to practising barristers, such as CD3, CD6, and CD8, will also apply to unregistered barristers if they are practising in accordance with rS9 of Part 3 of the BSB Handbook (i.e. if they are supplying, or offering to supply, legal services and hold themselves out as a barrister). Unregistered barristers should read our '[Unregistered Barristers Guidance](#)' for more information on how the BSB Handbook applies to them.

**What type of conduct may be in breach of the BSB Handbook?**

13.14. In general terms, any conduct on social media which might be said to be inconsistent with the standards expected of barristers may amount to a breach of the BSB Handbook. ~~For example, your conduct on social media may demonstrate a lack of integrity, it may breach client confidentiality, or it may be conduct which is likely to diminish the trust and confidence which the public places in you or in the wider profession.~~

14.15. The inherently public nature of social media means that anything you post online could theoretically be at risk of being read by anyone and could be linked back to your status as a barrister, regardless of whether you identify yourself on social media as a barrister. This ~~degree of~~ exposure can have an impact on the extent to which public confidence in you or the profession is likely to be diminished by your use of social media. Posts or comments visible only to a limited audience may nevertheless amount to a potential breach of the BSB Handbook because there is a risk they could resurface or be shared more widely than intended (such as through saving or screenshotting).

15-16. Given the potentially wide scope of conduct that might engage relevant provisions of the BSB Handbook, it is not possible to provide an exhaustive list of the types of conduct that might amount to a potential breach. You should therefore at all times consider whether your conduct risks contravening any of the Core Duties and rules which apply to you, bearing in mind any other relevant BSB guidance.

### **Case Study 2**

~~The BSB receives a report that, during the course of a court hearing, a barrister sent a group WhatsApp message to several people involved in the proceedings (including the instructing solicitors and the client) about the case. At the time the message was sent, the barrister's client was sworn in and was still involved in giving evidence as a witness.~~

~~Unless the court had given its permission for the communication, the barrister would likely have breached **CD3** and/or **Rule C9.5** when communicating with their client about the case while the client was giving evidence. This conduct could also be a potential breach of **CD5** and/or **Rule C8**.~~

### **Case Study 2**

The BSB receives a report about a male barrister's (B) conduct on LinkedIn, in which, over a period of months, he publicly commented and posted about a female barrister (F). Both B and F use LinkedIn for networking and marketing opportunities in relation to their practice as barristers.

The report indicates that B and F know each other professionally, having represented opposing parties in a long-running civil litigation case, which concluded shortly before B started commenting and posting about F. F's client was successful in that claim. It is reported that whenever B writes about F on LinkedIn, it is always in response to content F has posted herself, including her comments on posts made by others whom B does not know. In doing so, B tends not to engage with the substance of F's posts (whatever they may be), but instead, mounts a personal attack on F's character and credibility as a barrister. For example, B often alleges that F lied in the civil litigation case to win her client's case, aggressively belittles her intelligence, and uses derogatory and sexist terms. F alleges that this is a campaign of harassment against her due to the ongoing nature of the conduct.

Although this conduct occurred on a professional social networking platform, which B joined and used in a professional capacity (e.g. to advertise his services and network) we would need to consider the facts carefully to assess whether the conduct occurred while 'practising' or 'otherwise providing legal services' (and thus potentially engaging all of the Core Duties and Conduct Rules in the BSB Handbook).

However, in any event, B's series of posts, spanning a number of months, are likely to amount to bullying, harassing and sexist behaviour and his conduct is likely to be treated as a breach of **CD5**. The BSB is likely to take regulatory action in relation to B's conduct on social media in these circumstances, and any interference with B's Article 8 and Article 10 rights is likely to be justifiable on the basis of the protection of the rights and reputations/freedoms of others.

~~16-17.~~ The following is a non-exhaustive list of examples of the types of conduct on social media that may amount to a breach of the BSB Handbook, depending on the particular circumstances and the risk posed to the regulatory objectives<sup>5</sup>:

- Posting material online that is dishonest, as this may be a breach of **CD3, CD5** and/or **rC8**.
- Making comments that target a person or groups of people which are seriously offensive, discriminatory, harassing, threatening, or bullying. Comments of this nature may be a breach of **CD5** and/or **Rule C8rC8**. This includes making comments which are of an indecent, obscene, or menacing character or which are gratuitously abusive. However, the use of foul language alone is unlikely to amount to a breach of the BSB Handbook.
- Sharing communications or hyperlinks to content posted by others which are seriously offensive, discriminatory, harassing, threatening or bullying, without making it clear that you disagree with the content, as this may be taken as an endorsement of that content. Such conduct may be a breach of **CD5** and/or **rC8**.
- Making comments that are critical of Comments about judges or, the judiciary beyond what is “discreet, honest and dignified”<sup>6</sup>, or the justice system which involve gratuitous attacks or serious criticisms that are insults, or that are so serious that they overstep the permissible expression of comments without misleading and do not have a sound factual basis,<sup>7</sup> as Comments of this nature may be a breach of **CD1, CD3, CD5, rC3rC8** and/or **rC8rC9**.
- You should also be alive to the potential risks to your ability to keep the affairs of your client confidential (**CD6**) when you are using social media. Such risks could arise if you send confidential communications to a client over social media in circumstances where confidentiality cannot be guaranteed, or if you reveal your location on social media at a particular time, thereby linking you to a particular client (perhaps via a “geotagged” status, update, or post). You should familiarise yourself with the settings of the social media you use, as well as any privacy policies.

~~Sending confidential communications to a client over social media where confidentiality cannot be guaranteed, as this could risk breaching your duty to keep the affairs of each client confidential (**CD6**).~~

~~17. You should also be alive to the potential risk of revealing on social media that you are in a particular location at a particular time (perhaps via a “geotagged” status, update, or post), as this may inadvertently provide a link between you and a particular client. This could risk breaching your duty under **CD6**, which requires you to keep the affairs of your client confidential. You should check the settings of the social media you use, as well as any privacy policies.~~

<sup>5</sup> Section 1 of the Legal Services Act 2007.

<sup>6</sup> Stour v Netherlands (2004) 39 EHRR 33 at [38].

<sup>7</sup> Morice v France (2016) 62 EHRR 1 at [139]; Ottan v France (Application no. 41841/12).

**Case Study 3**

The BSB receives a report about a barrister who frequently tweets about their gender critical views using their personal Twitter account. A transgender woman (who openly states their transgender status in their Twitter profile) responded to one of the barrister's tweets, challenging their views. The barrister then sent several tweets directed at the transgender woman, in which the barrister deliberately misgendered and threatened them.

In this case, the barrister's conduct in specifically targeting the transgender woman, threatening, and intentionally misgendering them are likely to be considered seriously offensive and discriminatory. This conduct could diminish public trust and confidence in the barrister and/or the profession (and thus be a breach of **CD5**) and/or could reasonably be seen by the public to undermine the barrister's integrity (and thus be a breach of **Rule C8**).

**Case Study 3**

The BSB receives a report about a barrister's (**B**) conduct on social media, specifically regarding his involvement in an anonymous Instagram account "@theanonymouslawyer". @theanonymouslawyer is a public Instagram account that posts about legal issues and high-profile cases and has several thousand followers. B's ownership of the account was exposed by a legal journalist on Twitter. Another barrister (**K**) reported that B published a series of posts and stories about K which contained untruthful statements that K had lied about their academic history as part of a "smear campaign". K provided evidence with their report proving B's statements were untrue.

As this conduct occurred in B's non-professional life, the BSB would first have regard to the Guidance on the Regulation of Non-Professional Conduct to determine whether the BSB has a regulatory interest in B's conduct. The posting of false and misleading content about another barrister in a public online environment could reasonably be seen by the public to undermine B's honesty and integrity contrary to **rC8**, and is likely to diminish public trust and confidence in B or in the profession contrary to **CD5**. As such, the BSB is likely to take regulatory action in relation to B's conduct in these circumstances. Interference with B's Article 8 and Article 10 rights is likely to be justifiable on the basis of the protection of the rights and reputations/freedoms of others.

18. There are certain types of conduct which we consider are likely to be a breach of **CD3**, **CD5**, **CD8** and/or **rC8**. This is conduct which is not afforded the protections guaranteed by Article 10 ECHR, by virtue of Article 17 ECHR (i.e. conduct which is aimed at the destruction of the rights and freedoms of others). Case law from the European Court of Human Rights has found that this includes: extreme or grave forms of hate speech, a threat of or incitement to violence, xenophobia, racial discrimination, Antisemitism,<sup>8</sup> Islamophobia,<sup>9</sup> and Holocaust denial.<sup>10</sup>

19. Expressing a view on something could also impact others and may amount to a breach of the BSB Handbook if it diminishes public trust and confidence in the barrister or in

<sup>8</sup> *Pavel Ivanov v Russia* (dec.) (2007) 35222/04.

<sup>9</sup> *Norwood v the United Kingdom* (dec.) (2004) 23131/03; *Seuret v France* (dec.) (2004) 57383/00.

<sup>10</sup> *Lohideux and Isorni v. France* (1998) at [47]; *M'Bala M'Bala v. France* (dec.) (2015) 25239/13; *Garaudy v. France* (dec.) (2003) 65831/01; *Witzsch v. Germany (no. 2)* (dec.) (2005) 7485/03.

~~the profession as a whole (CD5). For example, conduct which might demonstrate how a barrister perceives certain groups (eg where a barrister expresses discriminatory views) might alienate members of the public who identify themselves as part of that group and make them feel uncertain about engaging a barrister or trusting that the profession will act in their best interests.~~

### What will the BSB consider when assessing whether conduct on social media may be in breach of the BSB Handbook?

~~20-18.~~ In considering a potential breach of the BSB Handbook relating to your conduct on social media, ~~the BSB~~we will take into account:

- a. How a hypothetical, ordinary reasonable ~~reader/listener/viewer~~person<sup>11</sup> would be likely to respond to your conduct ~~on social media~~, having regard to the wider context in which it occurred. This will involve an objective assessment based on ~~the~~ “natural and ordinary meaning” of what you post. The social media platform which you ~~used~~use may also be relevant. ~~Case law~~<sup>12</sup> ~~tells us that the hypothetical reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; is allowed a certain amount of loose thinking without being avid for scandal; and does not, and should not, select one bad meaning where other meanings are available.~~ The views and/or reaction of any individual who reported the conduct to us, while potentially relevant, is unlikely to be determinative.
- ~~b.~~ The ~~contents~~substance of your conductwhat you post (including the type of speech engaged, such as whether it is “mere gossip”<sup>13</sup> or contributes to a debate in the public interest<sup>14</sup>). We recognise that political speech is afforded the highest level of protection under Article 10 and is something in which we are unlikely to have a regulatory interest. However, we are likely to have a regulatory interest in conduct which is not afforded the protections guaranteed by Article 10, by virtue of Article 17 ECHR (i.e. conduct which is aimed at the destruction of the rights and freedoms of others). ~~); the manner in which it was expressed~~Case law from the European Court of Human Rights has found that this includes extreme or grave forms of hate speech, a threat of or incitement to violence, xenophobia, racial discrimination, Antisemitism,<sup>15</sup> Islamophobia<sup>16</sup> and Holocaust denial.<sup>17</sup>
- ~~b.c.~~ The manner in which you express your views (including the language used), the mode of publication, and the broader context. While the right to hold a view and say something may be protected by Article 10, if there is something objectionable about the manner in which it is expressed, this could be a potential

<sup>11</sup> See, for example, *Jeynes v News Magazines Ltd & Anor* [2008] EWCA Civ 130, *Koutsogiannis v The Random House Group* [2019] EWHC 48 (QB), and *Sivanathan v Vasikaran* [2022] EWHC 837 (QB).

<sup>12</sup> See, for example, *Jeynes v News Magazines Ltd & Anor* [2008] EWCA Civ 130, *Koutsogiannis v The Random House Group* [2019] EWHC 48 (QB), and *Sivanathan v Vasikaran* [2022] EWHC 837 (QB).

<sup>13</sup> *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin).

<sup>14</sup> *Vajnai v Hungary* (2010) 50 E.H.R.R. 44.

<sup>15</sup> *Pavel Ivanov v Russia (dec.)* (2007) 35222/04.

<sup>16</sup> *Norwood v the United Kingdom (dec.)* (2004) 23131/03; *Seurot v France (dec.)* (2004) 57383/00.

<sup>17</sup> *Lehideux and Isorni v. France* (1998) at [47]; *M’Bala M’Bala v. France (dec.)* (2015) 25239/13; *Garaudy v. France (dec.)* (2003) 65831/01; *Witzsch v. Germany (no. 2) (dec.)* (2005) 7485/03.



breach of the BSB Handbook and therefore we may have a regulatory interest in ~~it~~your conduct.

- ~~e.d.~~The impact of your conduct. This may include the impact on individuals or organisations, and/or on public trust and confidence in you or the profession. The purpose behind your conduct may not always be relevant.

#### **Case Study 4**

~~The BSB receives a report that a barrister has posted a series of tweets on Twitter in which they were highly critical of various domestic political figures and the current government. The reporter has concerns that the tweets indicate that the barrister will not be able to represent clients independently who hold opposing political views.~~

~~As the content of the barrister’s expressions in this case are of a political nature, which sits at the top of the hierarchy of free speech values, the barrister’s Article 10 rights are engaged. The manner in which the barrister expressed those views in this case was not in breach of the standards set out in, or necessarily implicit from, the BSB Handbook (e.g. they were not seriously offensive). Further, a barrister expressing their political opinion on social media does not necessarily mean they cannot independently represent a client in a case where the subject matter is political or where the client has opposing political views. The BSB is unlikely to have a regulatory interest in this conduct.~~

#### **Case Study 4**

The BSB receives a report that a barrister (B) has posted a series of posts in a private Facebook group in which she is highly critical of the actions of the government of a foreign country. The reporter, who is from that country, expressed concerns to the BSB that the posts indicate that B may not be able to represent properly clients who are also from that country.

As this conduct occurred in B’s non-professional life, the BSB would first have regard to the Guidance on the Regulation of Non-Professional Conduct to determine whether the BSB has a regulatory interest in B’s conduct. B’s posts were of a political nature, were aimed at a government, and did not target individuals or deploy seriously offensive or discriminatory language. As such, the BSB is unlikely to have a regulatory interest in B’s conduct.

B’s posts are also likely to be protected by her Article 8 and Article 10 rights, and as B’s views are political in nature, they are likely to attract a high degree of protection. Interference with B’s rights is unlikely to be justifiable in these circumstances.

- ~~21. If you use social media whilst you are acting in a non-professional context, we will also consider the matters set out in the ‘Guidance on the Regulation of Non-Professional Conduct’ when considering whether we have a regulatory interest<sup>18</sup> in your conduct. In particular, we may have a regulatory interest in your conduct where:~~

<sup>18</sup>By “regulatory interest” we mean the circumstances in which we, as a regulator of the profession, may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is apt for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.

~~a. it involves criminal conduct which you have a duty to report promptly to the BSB in line with rule C65.1 and rule C65.2 of the BSB Handbook<sup>19</sup>;~~

~~b. it is, or is analogous to, conduct that might contravene relevant standards of the BSB Handbook that apply to practising barristers (including standards that are necessarily implicit from the Handbook); and~~

~~it is sufficiently relevant or connected to the practice or standing of the profession so as to engage the Core Duties and rules which apply to you at all times, taking into account the context and environment in which the conduct occurred.~~

### **Further support**

~~22.19. You (and, where appropriate, your clerks and other staff connected with barristers' professional practices) can contact the Bar Council's confidential Ethical Enquiries Service on 020 7611 1307 or [Ethics@BarCouncil.org.uk](mailto:Ethics@BarCouncil.org.uk) to obtain assistance with identifying, interpreting and complying with professional obligations under the BSB Handbook.~~

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<sup>19</sup> ~~Namely, if you are charged with an indictable offence in England and Wales (or an offence of comparable seriousness elsewhere) or you are convicted, or accept a caution, for a criminal offence which is more than a minor criminal offence (as defined in Part 6 of the BSB Handbook).~~

### Proposed new drafting of the BSB Handbook

Set out below is the new proposed wording for the Handbook guidance. This version is the re-draft we consulted on in July 2022. Track changes highlight any new recommended amendments post-consultation.

#### gC25

Conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

1. breaches of rC8;
2. breaches of rC9;
3. breaches of rC10;
4. criminal conduct which you are under a duty to report to the *Bar Standards Board* pursuant to rC65;
5. seriously offensive conduct towards others;
6. dishonesty;
7. unlawful *discrimination, victimisation or harassment*; or
8. abuse of your professional position.

#### gC26

For the purposes of gC25.8 above, referring to your status as a *barrister* in a context where it is irrelevant but may influence others may constitute abuse of your professional position and thus involve a breach of CD3, CD5 and/or rC8. An example of this might be using a professional letterhead, notepaper, or a chambers email address and/or email signature in a private dispute.

#### gC27

The application provisions at Section A of Part 2 of this *Handbook* (the Code of Conduct) set out which Core Duties and rules apply to you and when they apply. Certain Core Duties and rules (such as CD5 and rC8) apply to you at all times and may therefore also be relevant to conduct which occurs in your private or personal life.

To assist in considering whether conduct which occurs in your ~~private or personal~~non-professional life is likely to be treated as a breach of CD5 and/or rC8, the BSB considers that the factors-questions set out in the Guidance on the Regulation of Non-Professional Conduct are likely to be relevant.

#### gC28 (remove)



**The regulation of non-professional conduct – DRAFT Consultation Response**

1. Between July 2022 and October 2022, we undertook a public consultation on our proposals to clarify where we think the boundaries lie in the regulation of conduct that occurs in a barrister's non-professional life and on social media. The consultation paper can be found at:  
<https://www.barstandardsboard.org.uk/uploads/assets/112831ca-8191-45ac-96700492cac1640b/CNPL-Consultation-Paper.pdf>. This report summarises the responses received and the BSB's response to the same.

The consultation

2. To provide clarity about when we may have a regulatory interest in non-professional conduct and social media use, we consulted on newly developed, draft guidance on the regulation of non-professional conduct and a number of proposed changes to some of our non-mandatory guidance in the BSB Handbook and our Social Media Guidance.
3. The consultation asked a series of questions about our proposals, including whether we had struck the right balance between the public interest in preserving public confidence in the profession/barrister and a barrister's individual rights which are guaranteed under the Human Rights Act 1998 ("HRA") and the European Convention on Human Rights ("ECHR"). We also sought general feedback on our proposals, including on a number of case studies that we had developed for inclusion in the guidance.
4. We received 26 responses to the consultation. Of the responses, 15 were from individual barristers or groups of barristers, three were from other legal professionals, two were from representative or regulatory bodies within the legal profession (the Bar Council and the Solicitors Regulation Authority), three were from Specialist Bar Associations (the Chancery Bar Association, Personal Injuries Bar Association and the South Eastern Circuit), one was from a not-for-profit organisation (Sex Matters), one was from a campaigning organisation (Behind the Gown), and one was from a barrister organisation (Clerksroom).
5. Not all respondents answered all of the questions. A significant proportion of responses received (six) solely or predominantly responded to the consultation in order to raise issues with one of the case studies that had been included in the draft social media guidance – these six responses consisted of the not-for-profit organisation, three individual barristers/groups of barristers, and two other legal professionals.
6. In responding to certain questions, some respondents gave general feedback rather than (or in addition to) direct replies to the consultation questions. 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 and every 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.

**Guidance on the Regulation of Non-Professional Conduct**

**Q1: Overall, have we struck the right balance between the public interest in preserving public confidence in the profession and individual barristers and a barrister’s rights which are guaranteed under the Human Rights Act 1998 and the European Convention?**

8. While this question was intended to relate to the draft guidance on the regulation of non-professional conduct specifically, some responses also addressed (or only addressed) the BSB’s draft Social Media Guidance. In some cases, it was not clear whether comments respondents made related to the draft guidance on the regulation of non-professional conduct specifically, or to the BSB’s approach to non-professional conduct in general.

9. Of the 26 responses received, nine broadly agreed that the BSB had struck the right balance, 16 disagreed, and one response said that it was difficult to determine and would depend on how the guidance was applied in practice.

*“It is difficult to answer this question in the abstract because we understand that the question of whether the right balance is struck in any particular case will depend on a risk assessment and balancing exercise before a decision is made.”*

10. Of the responses that expressed general agreement with the BSB’s position, two were from legal regulatory/representative bodies (the Bar Council and the SRA), two were from individual barristers, two were from other legal professionals, one was from a barrister organisation (Clerksroom), one was from a Specialist Bar Association, and one was from a campaigning organisation (Behind the Gown).

*“In our view, the right balance appears to have been struck. As we note below, the position in respect of barristers who commit criminal conduct remains effectively the same. We agree that there is no need for change and the balance is in the right place. We also think that the BSB has more or less struck the right balance in relation to non-professional non-criminal conduct, subject to our comments below.”*

*“Both guidance documents make clear that barristers’ ECHR rights may be engaged by proposed regulation. Until the guidance is applied in practice it is difficult to properly assess whether the right balance has been struck. However, the guidance acknowledges a potential tension, and emphasises the nexus that must exist between the non-professional conduct and professional practice before a regulatory interest exists. As such, an appropriate balance appears to have been articulated.”*

11. The majority of the responses that disagreed with the BSB’s position (13) were from individual barristers or groups of barristers, but also included the not-for-profit organisation (Sex Matters), a Specialist Bar Association, and other legal professionals. There were a range of reasons for why those respondents disagreed with the BSB’s position. Some thought the new guidance was unnecessary, and others thought that there should not be any regulation of a barrister’s conduct in their personal or private life. One respondent felt that the draft guidance was not sufficiently precise to ensure that its application would be compatible with barristers’ human rights – in particular, their rights to freedom of expression (Article 10) and respect for their private lives (Article 8).

12. Four responses expressed concern that the BSB had not provided evidence that changes to the current regime were necessary.

*“Although the balance may be struck where the non-professional conduct is of a criminal nature, the proposal in respect of non-criminal conduct is wide and there does not appear to be an evidence basis for this extension of scope or indeed its likely impact/effectiveness.”*

*“I would be interested to know what is the nature and extent of the data relied on by the BSB in support of:- the proposition that in general the public’s confidence in the Bar is at such a low ebb that it requires to be bolstered; the proposition that the remedy for the public’s lack of confidence in the Bar is the regulation of a barrister’s private life; and the proposition that the regulation of a barrister’s private life would not be regarded as a disproportionate interference with his human rights.”*

13. Five responses argued that the changes amounted to an unwarranted and significant expansion of the BSB’s role. Three responses argued that the risk of the actions of a single barrister damaging public confidence in the profession as a whole was very low, and therefore the BSB’s position was not justifiable. Other issues raised were that the changes would impact on the wellbeing of the profession (mentioned in two responses), and that the existing rules were sufficient to achieve the BSB’s stated objectives (mentioned in two responses).

*“The amendment to the guidance represent a significant expansion of the BSB’s regulatory function, for which no clear need has been identified.”*

*“We think the circumstances in which non-criminal conduct, carried out outside the professional context, could seriously be said to diminish public confidence in the profession as a whole (as opposed to confidence in that particular barrister) are likely to be very limited.”*

*“It will expose more barristers to complaints made in bad faith and will undermine the good functioning and wellbeing of the profession both as a whole and as individuals.”*

14. Many of those who felt that the correct balance had not been struck expressed concerns that the proposed approach would breach a barrister’s human rights, in particular by having a chilling effect on barristers’ rights to freedom of expression (Article 10). This concern was mentioned in eight consultation responses that disagreed with the BSB’s approach. Several highlighted particular areas where the BSB’s approach could risk impacting on areas where barristers should be able to express themselves, such as around areas of public policy, criticism of the judiciary, or the expression of ‘gender-critical’ views.

*“As regards regulatory intervention in relation to social media use and freedom of expression as protected by Article 10 of the ECHR and the HRA, I am against any such intervention as disproportionate, unless the individual wrongly professes to express opinions which are his own as representative of the Bar as a profession.”*

*“The rights of the barrister under Articles 9 and 10 ought to be given much greater weight as compared to confidence in the profession.”*

**BSB's response**

15. We consider that the concerns that we are seeking to expand our regulatory remit by introducing this new guidance, and that we had not given any evidence of the need for such expansion, are misguided. Our proposals do not include any changes to the existing Core Duties and Conduct Rules or the way they currently apply to barristers. The guidance that has been developed is informed and underpinned by the current BSB Handbook and is consistent with our existing regulatory practice and case law. The guidance therefore seeks to clarify, rather than shift, our regulatory approach to non-professional conduct and offer guidance on how regulated persons may comply with the terms of the BSB Handbook that they are already subject to. The guidance reflects how we approach our regulation of the Bar and the types of conduct we may have a regulatory interest in.
16. We have addressed our response to concerns about the impact of our proposals on barristers' freedom of expression (Article 10) in the questions about the draft Social Media Guidance below. However, in terms of more general concerns about the human rights impact of our guidance, we have made a number of revisions to the draft guidance in light of the responses received, including to acknowledge that other human rights (beyond Article 8 and Article 10) may be engaged in certain cases. We have also sought to clarify the guidance as to the circumstances in which the BSB may have a regulatory interest in non-professional conduct on the basis of its proximity to the profession.
17. We consider the final guidance strikes the right balance between the proper regulation of the profession and the rights of individual barristers. The guidance makes clear that each case needs to be considered on its individual facts and so much will therefore depend on the analysis that is undertaken on a case-by-case basis.

**Q2: Do you have any observations on the questions we are proposing to ask when considering whether we have a regulatory interest in non-professional conduct?**

18. Eight consultation responses gave specific observations on the BSB's proposed questions for considering regulatory interest – the remainder of the consultation responses either did not provide any observations or referred to more general comments they had made elsewhere.
19. None of the responses disagreed with the first question regarding the BSB's regulatory interest in criminal conduct.
20. However, we received a number of responses that provided substantive feedback on the second question regarding the BSB's regulatory interest in non-criminal conduct.
21. One respondent gave observations which were relevant to the drafting of question two in response to the first consultation question. Their comments raised concern about the need for more precision and suggested we develop an exhaustive list of non-professional conduct that the BSB may have a regulatory interest in beyond criminal conduct.
22. Several responses said that the second question was confusing or insufficiently clear – in particular, two respondents had concerns about the reference to conduct that is "*analogous to conduct that could breach relevant standards that apply to practising barristers*". Some thought that wording could be seen as an attempt to bring in rules of the BSB Handbook that do not technically apply to barristers at all times.



23. Another response stated that the document should make clearer that the second question was an alternative to the first (rather than both questions needing to be answered in the affirmative before we would establish a regulatory interest). Respondents also felt that, as drafted, question two was not easily understood or helpful, as it did not identify the type of conduct the BSB might be interested in.

*“The use of the phrase “analogous to” is perhaps slightly confusing, as it suggests that the BSB could have an interest in regulating conduct which was not in fact a breach of any applicable rules or duties.”*

*“We agree with the first question, as to the commission of a criminal offence. We have some concern as to whether the second question is expressed in a sufficiently helpful way.”*

24. Two respondents (including the Bar Council) put forward suggested revisions to question two which aligned the wording with the relevant Core Duties in the BSB Handbook, while one of those respondents also suggested drafting another subsection to question two listing the factors we would take into account when determining whether the conduct is sufficiently relevant or connected to the practice or standing of the profession.
25. One response stated that the BSB’s current position struck a better balance and that the expansion of our regulatory role was unwelcome, and one stated that more regard should have been given to barristers’ rights to free speech.

*“The current guidance that “we are unlikely to treat conduct in a barrister’s private or personal life as a breach of the BSB Handbook unless it involves an abuse of professional position (or involves criminal conduct that is more than a minor criminal offence)” strikes the correct balance.”*

### **BSB’s response**

26. We do not consider it is possible or desirable to construct a question or guidance that prescribes all the types of non-professional conduct in which the BSB might be interested. Guidance needs to be flexible enough to adapt to different contexts and changes in societal norms that may emerge in the future. The purpose of the Guidance on the Regulation of Non-Professional Conduct is to provide greater clarity on the BSB’s approach to considering whether it will have a regulatory interest in non-professional conduct when read alongside the BSB Handbook and the guidance contained within that.
27. However, on reflection and in light of the helpful responses received, the BSB agrees that the previous drafting of question two was insufficiently clear. Bearing in mind the various suggestions put forward, the BSB has re-drafted the second question as follows:

*Is the conduct sufficiently relevant or connected to the practice or standing of the profession such that:*

- i. it is likely to diminish public trust and confidence in the barrister or the profession; or*
- ii. it could reasonably be seen by the public to undermine the barrister’s honesty, integrity or independence?*

*In determining whether the conduct is sufficiently relevant or connected to the practice or standing of the profession, we will take into account:*

- a) The nature of the alleged conduct; and*
- b) The context and environment in which the conduct is said to have occurred.*

28. The amendments to the second question are designed to remove ambiguous concepts such as “analogous conduct”, which, although it stems from caselaw, we agree is not particularly clear or helpful and might be interpreted as seeking to apply rules of the BSB Handbook which do not technically apply to a barrister outside of practice or providing legal services.
29. Further amendments have been made to align the wording of the question more closely with the Core Duties and Conduct Rules in the BSB Handbook, whilst providing a new subsection which indicates the factors that we will take into account when assessing whether conduct is “*sufficiently relevant or connected to the practice or standing of the profession*”.
30. As there were no concerns about question one (concerning criminal conduct) we intend to adopt the wording of that question in the form we consulted on, without amendment.

**Q3: Are the case studies included in our draft guidance helpful?**

31. Ten consultation responses said that the case studies included in the draft guidance were helpful or mostly helpful, while six said they were unhelpful.
32. One respondent thought that the case studies were helpful to an extent, but they were weighted towards conduct that was arguably independently unlawful and therefore did not give good examples of the precise boundary between conduct that is not independently unlawful that will, or will not, amount to professional misconduct. Some invited more case studies covering situations which may be less easy to identify as situations where the BSB would be interested.
33. Some respondents raised concerns that the case studies generally invoked the Core Duties or Conduct Rules in a way that they felt were not genuinely or sufficiently engaged by the actions described in the case studies themselves, particularly in relation to “integrity”.
 

*“We are concerned that the case studies frequently invoke core duties (in particular, CD3) and rules as a basis for the BSB claiming a regulatory interest in non-professional conduct, in circumstances where those core duties and rules are unlikely to be properly engaged.”*
34. Seven consultation responses raised issues with Case Study 4, the most common case study raised as an issue in the consultation responses. Points made included that it was insufficiently clear that the questions to determine relevance had been applied properly, that the test for ‘offensiveness’ was too ambiguous when applied to the case study, that the nature of the conduct involved was not spelt out sufficiently clearly, and that the barrister’s status was not relevant to the conduct described.

*“Case study 4 however fails to apply the questions proposed to the facts of the case study; referring to the nature of the conduct rather than its relevance to the profession in its context, as the question requires.”*

*“The example given has been expressed in fairly extreme terms, but it is far from clear to me why the BSB should consider intervening. I do not see why the barrister’s status as a barrister is of any relevance to the situation described.”*

35. Other case studies which drew criticism were Case Studies 2, 3, 5 and 7. Four consultation responses stated that more case studies should be included, for example covering gendered bullying or a barrister's right to participate in a protest, or to illustrate areas that did not fall under criminal conduct but would still engage the BSB's interest.

*"I don't believe the case study (Case Study 3) about non-payment of a debt is very useful. Arguably, non-payment of a debt should not have sanctions beyond potential insolvency."*

*"Case Study 5 – I would hope the BSB, on receiving such a report, would question A's motives in reporting an alleged sexual assault to the BSB but not to the police. It is not the job of the BSB to police the criminal law. I cannot see how a barrister's conduct at a nightclub could be sufficiently connected to a barrister's status / functions as a barrister to justify the BSB's intervention".*

*"The BSB needs to include a case study which provides an example of gendered experiences, ideally of a male barrister offensively criticising a female barrister for sharing their views about sexual violence trials or the gendered nature and experiences of the law."*

### **BSB's response**

36. The BSB has taken on board all the helpful feedback received about the draft case studies and has amended or developed new case studies which take into account that feedback.

### **Q4: Do you have any general comments or feedback on our draft guidance on the regulation of non-professional conduct?**

37. Eleven consultation responses gave specific observations on the BSB's draft guidance – the remainder of consultation responses either did not provide any observations or referred to more general comments they had made elsewhere.
38. Two responses stated that they generally agreed with the BSB's position.
39. Four responses raised concerns that the guidance impacted on barristers' freedom of expression and could restrict barristers freely expressing their views. Two of these responses particularly highlighted the ability of barristers to express views on public policy as being an area of concern.

*"I am also concerned that the BSB should not seek to regulate the right of barristers to express views about the state of government, funding, legal aid, and the courts. This guidance may be misused to suggest that such views are incompatible with the duty of the barrister to the court, when plainly that is wrong."*

40. Two responses argued that there needed to be more clarity on how the BSB would treat complaints from 'interested parties' – i.e. those holding views in conflict to those held by the barrister who was the subject of a complaint, who could use the complaints process to stifle views with which they disagreed.
41. The response from the SRA stated that their own guidance clarified that the closer a solicitor's conduct with to impacting on their professional life, the more likely they were to view it as a potential breach – but that some conduct was sufficiently serious to call into question whether the individual met the high standards expected of the profession they would take action, even if it was unrelated to professional conduct.

**BSB's response**

42. We value all the feedback provided through this consultation and have revised the final guidance to take into account much of this feedback.
43. We respond to concerns about our regulatory impact on barristers' freedom of expression in relation to the questions about the draft Social Media Guidance below.
44. We agree with the SRA that there may be cases where the conduct is so serious that it calls into question whether the individual can meet the high standards expected of the profession, even if it is unrelated to professional practice. We have sought to emphasise this point in the final guidance. However, we consider that the second question that we will ask when assessing whether we have a regulatory interest in non-professional non-criminal conduct also adequately captures this type of serious conduct. This is because we consider that conduct which is particularly serious (such as dishonesty or discrimination) is likely to be sufficiently relevant or connected to the practice or standing of the profession.

**BSB Handbook Guidance (gC25 to gC28)****Q5: Do you consider our proposed drafting changes to the non-mandatory guidance provisions in the BSB Handbook assist in clarifying our approach to the regulation of non-professional conduct?**

45. Sixteen consultation responses gave views on whether the proposed drafting changes to the BSB Handbook guidance helped clarify our approach – the remainder of responses either did not provide any observations or referred to more general points they had made elsewhere. Of the sixteen responses, ten agreed or broadly agreed that the BSB's drafting changes clarified the approach to non-professional conduct, whereas six disagreed.
46. Of the ten that agreed that the drafting changes helped to add clarity, one stated that further detail in the guidance to explain the threshold for regulatory intervention would be helpful, and another commented that the BSB Handbook as a whole was difficult to navigate.
47. The Bar Council, although broadly supportive of the changes, suggested that the concept of "*seriously offensive conduct towards others*" should be changed to "*gratuitously offensive conduct towards others*", as this was more likely to be an effective definition to pick up when barristers' actions were likely to harm the reputation of the profession.

*"We think therefore that the best formula is to refer to conduct which is "gratuitously offensive conduct towards others"; reflecting the idea that conduct, though highly offensive, which serves to convey an opinion, belief or point of view, and also the strength of conviction with which it is held, is legitimate; but that offensive conduct which goes beyond what is necessary for those purposes may well cross the boundary into professional misconduct."*

48. Different challenges to the concept of "seriously offensive" conduct as an appropriate yardstick against which to measure barristers' conduct were also raised in other consultation responses. For example, some respondents argued that whether conduct was "seriously offensive" was too subjective to constitute the threshold for potential regulatory interest and would be open to abuse.

*"It might be worth noting the potential for the BSB's processes to be used by individuals as a way of advancing political disagreements or causes. The BSB should be clear that it is alert to this possibility and will ensure that it does not get involved in such cases."*

## Part 1 – Public

*“We are concerned about the proposal for gC25 (5) which states that “Conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to)... seriously offensive conduct towards others”. This is a subjective criterion and the social media guidance encourages it to be interpreted broadly.”*

49. Of those that argued the drafting changes did not help with clarity, one stated that the changes to gC26 (which gives an example of a potential abuse of professional position) in particular did not help to clarify the BSB’s approach and they suggested that the example of using professional notepaper could be updated to better reflect modern ways of working.
50. Two respondents stated that the previous guidance was sufficient and changes should not be made.
51. Concern was also expressed that the drafting changes would not represent merely a clarification of the BSB’s approach, but would represent an expansion of the BSB’s powers.

**BSB’s response**

52. Our response to the concerns about whether our proposals amount to a significant expansion of our regulatory remit are addressed above.
53. As regards the concerns raised about “seriously offensive” conduct towards others, we note that this is an existing feature of the BSB Handbook, is not new and does not appear to be a source of difficulty in cases that we deal with.
54. Many respondents suggested that “seriously offensive” conduct was too subjective and could be open to abuse. However, we note that the idea of conduct being assessed according to a level of offensiveness already exists in the criminal law (see s127(1)(a) Communications Act 2003) and that case law confirms that whether the appropriate threshold is met is determined by reference to whether reasonable people would consider the communication to be *grossly offensive* (see e.g. Collins v Director of Public Prosecutions [2006] UKHL 40). “Seriously offensive” is therefore assessed objectively.
55. We do not consider, therefore, that a threshold based on conduct meeting a certain level of offensiveness, which is more than mere offensiveness, is either unique, subjective, or unclear. We would expect decision-makers to consider the question through the eyes of a reasonable person (i.e. objectively), which is necessary in any event when considering the public impact under CD5 and/or rC8.
56. We also note that our current approach is not inconsistent with that of other regulators, as “seriously offensive” is also used, for instance, in guidance published by the SRA and the Consultative Committee of Accountancy Bodies.
57. We considered alternative formulations (as suggested by some respondents), but did not consider they were appropriate. For example, the Bar Council suggested that we adopt the concept of “gratuitously offensive” instead. However, we felt that this was insufficiently clear, could create evidential issues in terms of establishing whether or not something was “gratuitous”, and pitched the conduct at a threshold that was perhaps higher than the BSB felt was appropriate.

58. However, it must be stressed that retaining the phrase “seriously offensive” does not mean that all conduct which is arguably seriously offensive will be the subject of an investigation and/or other enforcement action. Any report of potentially seriously offensive conduct will first be assessed by the BSB’s Contact and Assessment Team to determine whether it discloses evidence of a potential breach of the BSB Handbook, and if so, it will be risk assessed to ensure any proposed enforcement action is appropriate in the circumstances.
59. In the case of allegedly seriously offensive conduct, the relevant provision of the BSB Handbook will usually be CD5 (“*You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession*”), and this means the conduct will be assessed in the context of whether it is likely to diminish public trust and confidence in the barrister or the profession, as opposed to the narrow question of whether or not it is “seriously offensive”. Further, as regards any expressions which might be said to be “seriously offensive”, any regulatory action taken by the BSB could potentially interfere with the barrister’s Article 10 rights, meaning the BSB must justify such interference.
60. In relation to the feedback received on our proposed amendments to the BSB Handbook guidance, we agree that gC26 could benefit from a more current example of how abuse of one’s professional position could occur in practice. As such, we have amended gC26 as follows:
- For the purposes of gC25.8 above, referring to your status as a barrister in a context where it is irrelevant but may influence others may constitute abuse of your professional position and thus involve a breach of CD3, CD5 and/or rC8. An example of this might be using a professional ~~letterhead~~ ~~notepad~~, or a chambers’ email address and/or email signature in a private dispute.*
61. However, we do not consider that use of one’s professional email address will always constitute a breach of the BSB Handbook and, as ever, it will require an assessment on a case-by-case basis. The amended gC26 makes clear that we would be looking at the risk that referring to one’s status as a barrister (where it is irrelevant) may influence others.
62. We have also further amended the new gC27 to:
- amend the reference to “factors” to “questions”. This is because the original intention had been to produce a set of factors but we have developed a set of questions instead; and
  - amend the reference to “private or personal life” to “non-professional life”. This change has been made to capture conduct that may occur in different professional capacities (which may include political or academic roles, for example) but which may not be regarded as purely “private or personal”. This also aligns the terminology more closely with our Guidance on the Regulation of Non-Professional Conduct.

**Q6: Do you have any general comments or feedback on any of the proposed drafting changes to the non-mandatory guidance?**

63. Three consultation responses expressed general views on the BSB’s proposed drafting changes to the guidance – the remainder of consultation responses either did not provide any observations or referred to points they had made in response to other consultation questions elsewhere.
64. Of these three responses, two stated that they supported the changes, whereas the remaining response expressed opposition to the changes. Of the two responses that supported the changes, one drew particular attention to the changes to gC27, while the other stated that the updated guidance was an improvement over the previous guidance. The response that opposed the changes stated that they displayed insufficient regard to section 13 of the HRA and Article 9 rights (freedom of thought, belief and religion).

*“We particularly welcome the re-drafting of gC27 to make clear that certain core duties and rules apply at all times and may therefore be relevant to non-professional conduct. As an additional matter, we think it might be useful if gC27 included a reference to the Social Media Guidance in addition to the Guidance on the Regulation of Non-Professional Conduct. In part, this is because social media use appears to generate a large proportion of complaints regarding registered barristers’ non-professional conduct.”*

*“[The proposed changes are] chilling, profoundly worrying, and pays insufficient regard to s 13 of the Act and Article 9.”*

**BSB’s Response**

65. We have decided not to include specific reference to the Social Media Guidance in the re-drafted gC27. This is because gC27 is primarily concerned with our approach to non-professional conduct, whereas the Social Media Guidance applies to both professional and non-professional life.

**Social Media Guidance****Q7: Do you have any feedback or comments on the new Social Media Guidance?**

66. Nineteen consultation responses gave specific observations on the new Social Media Guidance – the remainder of consultation responses either did not provide any observations or referred to points they had made elsewhere in response to other consultation questions. Four of these responses expressed support for the changes, and/or argued that the new guidance was valuable. The remaining fifteen either expressed concern with elements of the guidance or opposition to the guidance generally.
67. The most common issue raised by responses that opposed the Social Media Guidance was that it would impact on barristers’ freedom of expression (raised in five responses) and/or that the guidance endangered or should have paid more attention to barristers’ rights under the HRA (raised in four responses). A further – otherwise supportive – response also gave the view that the BSB should have paid more attention to barristers’ rights under the HRA when drafting the guidance.

*“Yes. We are concerned at the scope of the BSB’s interest in barristers’ private lives and cultural debates online as expressed in the social media guidance and case studies. It is concerning that the BSB seeks to restrain barristers from expressing views, beliefs or opinions on social media (in a non criminal/lawful way) on subjects which some*

*people/groups may find offensive as opposed to the manner in which they express such unpopular views.”*

*“Paragraph 15 and 16’s reference to a non-exhaustive list of the guidance is unsafe for the reasons already given in answer to question 1 and which I will not repeat. This lack of safety is especially serious in the context of something that directly restricts a person’s fundamental right to freedom of expression.”*

*“If this guidance is passed in this form the BSB will be swamped with complaints about any barristers who continue to exercise their article 10 rights in discussing this issue in the public domain. And it will have a chilling effect.”*

68. Some responses (including one which was generally supportive of the new guidance) set out concerns that the “seriously offensive” test was too vague or open to abuse (the BSB’s response to this is set out in our reply to Q5 above). Another issue (raised in three consultation responses) was that “interested parties” may seek to use the BSB’s processes improperly to stifle barristers’ expression of views with which they disagreed.

*“The potential result of the proposed changes is that barristers and their regulator are going to be distracted into litigating intractable social issues, sometimes at the behest of individuals whose motives are dubious.”*

*“In my view the guidance should make clear that the BSB will address the possibility that complaints are made for ulterior purposes when considering whether (a) the non-professional conduct complained of might have an impact on the public’s trust and confidence in the barrister, as opposed to a section of the public; and (b) whether regulatory steps (or further steps) are objectively appropriate or necessary.”*

69. Some responses raised issues with particular sections of the guidance, in particular:
- paragraph 19 was mentioned in three responses that opposed the new guidance and one response that was broadly supportive;
  - paragraph 16 was criticised in two responses;
  - paragraph 15 was mentioned in one response; and
  - paragraph 20 was the subject of suggestions made in one response.

*“Paragraph 19 is even more concerning, to the point of deeply disturbing, in that it suggests that the BSB is arrogating to itself the power to police the content of people’s views that they may express. This is plainly unsafe, and plainly incompatible with Article 10.”*

*“The non-exhaustive list in Paragraph 16 of examples of conduct on social media that may amount to misconduct is far too broad, particularly when we see how easy to frame almost any kind of conduct as falling within these allegations.”*

*“In paragraph 20, I would suggest adding a paragraph (d), explicitly stating that the BSB will take into account the evident intention of the barrister when making the statements giving rise to the alleged misconduct”*

70. Other issues raised in responses that disagreed with the Social Media Guidance were that it needed to do more to highlight and address the misogyny and bullying faced by women at the Bar on social media (raised in two responses) and that the BSB had not provided any evidence that the changes were necessary (raised in two responses).

*“We believe the BSB has a duty to ensure that female barristers do not experience harassment and bullying on social media by male barristers, as this forms an extension of the abuse experienced by women offline in the legal profession, [see the IBA report 2019].*



*We invite the regulator to highlight the link between online misogyny and women who speak out on issues such as those identified above, so that members of the profession with an online presence are, at the very least, cognisant of the problem.”*

*“What evidence is there that increasing the scope of regulatory span will either (i) discourage such behaviour or (ii) improve public trust and confidence in the Bar? There does not seem to be an evidence basis for the extension of this scope or its likely impact/effectiveness.”*

### **BSB’s Response**

71. In relation to the concerns that the Social Media Guidance violates barristers’ rights to freedom of expression, we recognise that barristers are entitled to express their views in exercise of their Article 10 rights (however unpopular those views may be). In general terms, we have no interest in regulating the opinions, beliefs or views of barristers where those views are afforded protection by Article 10, and we have sought to emphasise that in the revised Social Media Guidance.
72. However, Article 10 is a qualified right and if barristers express themselves in such a way that might engage the BSB Handbook (for example, if what they say is discriminatory or abusive or if there is wholly unnecessary rudeness which can be separated from the content of an opinion, belief, or view), then that may nevertheless trigger our regulatory interest. There are different levels of seriousness which will affect how individual cases are handled and this will be accounted for when we undertake a proportionality assessment which is necessary to justify any proposed regulatory interference with a barrister’s Article 10 rights.
73. We have therefore sought to re-emphasise in the Social Media Guidance that the BSB is more likely to have a regulatory interest in relation to the *manner* in which a view is expressed, as opposed to the *substance* of the view itself (although there may be instances where a view is such that we nevertheless have a regulatory interest in it – such as racist or homophobic material).
74. We have made further revisions to the Social Media Guidance in light of all of the feedback received. Our amends seek to:
  - acknowledge that barristers may want to participate in online debate and discussion on a range of matters;
  - acknowledge that other human rights (beyond freedom of expression and the right to private life) may be engaged in certain cases, e.g. Article 9 (the right to freedom of thought, conscience and religion);
  - amend the way we define “social media”;
  - highlight the risk that, when using social media, content initially posted to a small audience could be made available to a wider audience than originally intended;
  - clarify the basis on which a barrister’s criticisms of the judges, judiciary or justice system may amount to a potential breach, to ensure consistency with ECtHR authorities; and

- incorporate further examples of social media use which *may* amount to a breach of the BSB Handbook depending on the circumstances, which are:
  - i. Posting material online that is dishonest; and
  - ii. Sharing communications or hyperlinks to content posted by others which is itself seriously offensive, discriminatory, harassing, threatening or bullying, without making it clear that the barrister disagrees with the content (given this may be taken as an endorsement).

75. We note the concerns raised about the treatment of women on social media. This is a form of potentially discriminatory, harassing and bullying behaviour which is already captured in the Social Media Guidance. However, to address this particular issue we have developed a new case study which seeks to tackle gendered bullying on social media.

**Q8: Are the case studies in our draft Social Media Guidance helpful?**

76. Twenty-three consultation responses expressed views on whether the case studies in the Social Media Guidance were helpful – of these 23 responses, 13 stated that they were not helpful, and ten stated that they were helpful or were mostly helpful. Three responses stated that adding more case studies would be helpful.
77. The case study which proved most controversial was Case Study 3 (six responses solely or predominantly were submitted to express concerns about this particular case study). Responses which disagreed with this case study commonly focused on the rights of barristers (including those with “gender-critical” beliefs, which may be protected philosophical beliefs under the Equality Act 2010 (“**EqA**”)) to freedom of expression. Some concerns were expressed that “misgendering” should not be seen as a regulatory issue or that the language used in the case study (such as the concept of “misgendering”) was contested and that including it in the BSB’s guidance was not appropriate.
78. Five responses argued that Case Study 3 should be updated to distinguish between the ‘threatening’ element of the case study (which most of these five responses saw as a valid basis for BSB involvement) and the ‘misgendering’ element (which most of these five responses did not agree should be a basis for BSB involvement).
79. Five responses argued that the fact that Case Study 3 raised ‘misgendering’ as an issue showed that the BSB itself was promoting a ‘gender ideology’ which they either saw as false or something the BSB should avoid taking a stance on.

*“It needs to be reworked to distinguish between the making of comments that are not accepted by everyone (i.e. gender critical views) and the commission of an offence (threatening someone). Further, until misgendering, misogyny, and misandry are offences, the reference in the example to misgendering is not a breach of the CDs.”*

*“You appear to equate ‘deliberate misgendering’ with ‘threatening’ and both are likely to be considered ‘seriously offensive’. This makes no sense. A direct threat to an individual is inevitably a regulatory matter. For ‘deliberate misgendering’ to be a regulatory matter there would have to be far more detailed consideration of the context in which this was done, including the direct contact made by the person claiming offence.”*

*“The use of the word “misgendered” in the case study (for referring to someone male as “he” or as a “man”) indicates that the BSB itself subscribes to ideas about gender which are*

*extremely controversial, contrary to basic facts about humans, and in some respects positively dangerous.”*

*“We consider that the approach being adopted in case study 3 is misguided, because it has potential to allow political opponents in ‘culture wars’ debates to weaponise the regulated status of a barrister in order to raise complaint and cause difficulty for individuals.”*

*“The BSB may wish to ask itself whether it is advisable for the BSB, as impartial regulator, to become involved in the “culture wars”, let alone attempt to police them.”*

80. Other criticisms of the case studies in the Social Media Guidance included:
- they were unhelpful because they did not explain in sufficient detail the nature of the barrister’s behaviour;
  - one of the case studies related to professional conduct, which would be subject to the BSB’s existing rules;
  - they referred to private messaging, which should not properly be regarded as “social media use”; and
  - the case studies referred to too many different types of conduct so that it was unclear what aspect(s) of the conduct would make a difference between there being, or not being, a potential breach of the BSB Handbook.

### **BSB’s Response**

81. We are grateful for all of the feedback that has been given about the draft case studies. We have amended or developed new case studies which take into account that feedback.
82. In relation to Case Study 3, we recognise that the case study we consulted on grappled with a complex issue and we are sensitive to the strength of feeling on both sides of the gender debate. We are also familiar with the emerging case law on the issue of “gender-critical” views and the fact that such views are capable of amounting to a protected philosophical belief under the EqA (see *Forstater* and *Bailey*).
83. We are, however, also mindful of the rights of transgender people not to be discriminated against, harassed or victimised on the basis of gender reassignment, which is also protected under the EqA. Further, the BSB’s Public Sector Equality Duty includes the need to “*foster good relations between persons who share a relevant protected characteristic and persons who do not share it*”.
84. The decision in *Forstater v CGD Europe* [2022] ICR 1 (which many respondents cited) warned that “misgendering” a transgender person on a particular occasion, gratuitously or otherwise, *may* amount to *unlawful* harassment in arenas covered by the EqA.
85. However, having reflected on the consultation responses, we recognise that Case Study 3 raises complex issues and that the law in this area continues to develop. Whether or not such (or similar) conduct might be regarded as a breach of the BSB Handbook will depend on an intricate analysis of the facts of the case which, we now recognise, does not lend itself well to a case study that is designed to provide guidance based on generalities. Further, given the fast-changing nature of the issues involved, it is undesirable to offer guidance to the profession through a case study that may quickly become outdated.

86. We have therefore decided to remove Case Study 3 from the final guidance. However, there may be individual cases that we become aware of in which we decide there is a regulatory issue. While we are clear that we do not have a regulatory interest and will not take enforcement action against a barrister *because of* the belief they hold, the case law recognises an important distinction between the protection afforded to the belief itself and the manifestation of that belief (see, for example, *Page v NHS* and *Mackereth v the Department of Work and Pensions*). If a barrister manifests a belief in a way that is particularly objectionable (such as through the deployment of discriminatory slurs or wholly unnecessary and abusive behaviour), the BSB may be interested. However, any case will need to be assessed carefully on its particular facts.

### **Equality Impacts**

#### **Q9: Are there any other potential equality impacts that you think we should be aware of?**

87. Seven consultation responses gave specific observations on potential equality impacts – the remainder did not provide any observations or responses to this question or referred to points they had made elsewhere in response to other consultation questions. Some consultation responses were centred around respondents' concerns about barristers' freedom of expression being restricted, particularly in relation to the expression of "gender-critical" views. These responses stressed that case law has established that "gender-critical" views may amount to protected philosophical beliefs. It was argued that the proposed guidance would lead to or encourage discrimination and/or harassment against barristers with protected "gender-critical" beliefs.
88. Concerns were also expressed about the impact on barristers' freedom to express their views on matters of public policy and to engage in protests (such as in relation to legal aid funding).

*"You appear to have had no regard to the protected characteristic of philosophical belief, and particularly the impact of these proposals on those with protected gender-critical beliefs."*

*"This guidance encourages discrimination and harassment of people with gender critical viewpoints, and more broadly discrimination on the basis of belief of people with any belief that may be judged by some to be offensive."*

*"Barristers are already suffering under the weight of pre-judged BSB action against those who are exercising their right to protest legal aid funding. It is cruel and unnecessary to add yet another layer of rules."*

### **BSB's Response**

89. The BSB recognises that gender-critical views are capable of amounting to a protected philosophical belief (as per *Forstater v CGD Europe* [2022] ICR 1) under the EqA. However, we also recognise that a protected "philosophical belief" could include the belief that a person can change their sex or gender.
90. We have updated our Equality Impact Assessment in light of the feedback received through this consultation. There are some limits on our ability to assess the equality impacts of our approach to the regulation of non-professional conduct and social media on philosophical beliefs because the BSB does not hold data on the types of philosophical beliefs that may be held by members of the Bar and this is part of a developing area of law.

91. Nevertheless, we are satisfied that our approach is unlikely to have negative equality impacts on those with philosophical beliefs. We do not take regulatory action *because of* a barrister's belief. Action may be taken because the barrister's conduct (perhaps in the manner in which they have expressed that belief) is a breach of the BSB Handbook. Barristers should be capable of expressing their philosophical beliefs in a manner that does not breach the standards set out in the BSB Handbook.
92. Therefore, we remain of the view that our proposals do not indicate any negative equality impacts in relation to philosophical belief, and that, in any event, the guidance we have developed is a proportionate means of achieving a legitimate aim (i.e. the proper regulation of the Bar in the public interest).

DRAFT



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	27 July 2023
<b>Title:</b>	The BSB Annual Report for 2022-23		
<b>Author:</b>	Wilf White		
<b>Post:</b>	Director of Communications & Public Engagement		

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>	
(a)	<b>protecting and promoting the public interest</b>
(b)	<b>supporting the constitutional principle of the rule of law</b>
(c)	<b>improving access to justice</b>
(d)	<b>protecting and promoting the interests of consumers</b>
(e)	<b>promoting competition in the provision of services</b>
(f)	<b>encouraging an independent, strong, diverse and effective legal profession</b>
(g)	<b>increasing public understanding of citizens' legal rights and duties</b>
(h)	<b>promoting and maintaining adherence to the professional principles</b>
<input type="checkbox"/>	Paper does not principally relate to Regulatory Objectives

### Purpose

1. To seek the Board's approval of the draft Annual Report which reflects comments and amendments proposed by the Performance and Strategic Planning Committee on 23 June.

### Background

2. The draft Report is self-explanatory and largely follows the precedents set by previous annual reports so that readers can track performance over time. There are, however, a few innovations which are aimed at increasing our transparency and accountability:
  - We have linked the report more closely to the Business Plan by adopting a "What we said we would do" and "What we did" structure with the items in the former listed and numbered as they were in the Business Plan and the latter cross-referring back to those numbered items;
  - To reduce duplication and increase transparency and with the support of the LSB, we have merged the section giving financial information with the Cost Transparency Metrics, which was previously a separate document; and
  - we have included the previous year's figures in the key tables so that readers can more easily see how our income and expenditure is changing from year to year.

### Resource implications / Impacts on other teams / departments or projects

3. The cost of the annual report is met from within the Communications budget.

### Equality and Diversity

4. This is a report on past activities so does not in itself have any equality impact. In terms of its own accessibility we offer it in alternative formats on request.

### Risk implications

5. The report deals with our responses to regulatory risk over the past year.

### Annex

Annex 1 – Draft Annual Report. (NB This is a draft and has not yet been to the designers who will correct minor infelicities of layout etc)





**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

# Annual Report 2022-2023

If you would like a version of this publication in an alternative format, please contact the Equality and Access to Justice (E&AJ) Team by telephone on 020 7611 1305 or: [equality@barstandardsboard.org.uk](mailto:equality@barstandardsboard.org.uk)  
BSB 270723

# Introduction

The Bar Standards Board (BSB) has Regulatory Objectives which are set out in the Legal Services Act 2007. These are:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of the citizen's legal rights and duties; and
- promoting and maintaining adherence to the professional principles. These are that barristers should act with independence and integrity, maintain proper standards of work, act in the best interests of their clients, comply with their duty to the court to act with independence in the interests of justice, and keep the affairs of their clients confidential.

The Board of the BSB seeks to ensure that all the BSB's activities focus on those key regulatory objectives. Those activities include:

- prescribing the education and training requirements for becoming a barrister and for ensuring that barristers' skills are maintained throughout their careers;
- authorising businesses that focus on advocacy, litigation, and specialist legal advice;
- setting standards of conduct and taking action where it appears that they are not being met;
- monitoring the service provided by barristers and the organisations the BSB authorises to ensure they meet the BSB's requirements;
- assuring the public that everyone the BSB authorises to practise is competent to do so;
- promoting equality, diversity and inclusion at the Bar; and
- seeking to improve access to justice and supporting public legal education.

The BSB seeks to do this by taking a proportionate, risk-based approach to regulation. We monitor the market for barristers' services in order to identify the risks that could prevent the Regulatory Objectives from being met. We then focus our attention on those risks that we think pose the biggest threats to the public interest and take action to try to prevent those risks from occurring, or to reduce their impact.

Our [Business Plan for 2022-23](#) was set as part of the BSB's [2022-25 Strategic Plan](#). That strategy, which was developed after extensive consultation, led the BSB to adopt a vision that

*“we will ensure that the BSB regulates the Bar in the public interest by promoting high standards, equality and access to justice”.*

We also agreed the following five strategic aims:

<b>Efficiency</b>	delivering our core regulatory operations quickly, economically and to a high standard
<b>Standards</b>	ensuring that barristers provide a high quality and responsive service throughout their careers
<b>Equality</b>	promoting equality, diversity and inclusion at the Bar and at the BSB and the profession's ability to serve diverse consumers
<b>Access</b>	promoting consumer understanding of legal services and choice and good value in using those services and
<b>Independence</b>	strengthening the BSB's independence, capability, self-confidence and credibility.

This report sets out how the BSB took forward those strategic aims in 2022/23.

# Foreword by the Chair of the Bar Standards Board, Kathryn Stone OBE



The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest. This report covers our activities between April 2022 and March 2023.

Almost a year into my role as Chair, I am proud to be part of an organisation which continues to play an important role in promoting and maintaining standards at the Bar. I should like to pay tribute here to those in the teams dealing with regulatory decision-making for the way that they have risen to the challenge of improving the responsiveness and speed of our service without sacrificing the consistently high standards of our decisions. Despite a serious cyber attack in the first half of the year, the latter part of the year saw a significant increase in productivity - 119 investigations were closed in the second half of the year compared to 60 in the first half. Productivity has also risen in the area of authorisations but, by contrast, caseloads continue to rise. So there is still some way to go and improving our performance remains the Board's highest priority now in 2023-24.

The year also saw the BSB take forward important strategic initiatives. Our work to encourage best practice in the way chambers promote standards, equality and access took me to meet barristers in every circuit in England and Wales. I would like to thank the chambers that hosted us and the barristers that came out to meet with us. I hope that this was as helpful and interesting for them as it was for me. We hope to have the chance to set up a further series of roundtables in the Autumn to discuss our proposals, once my Board has had the opportunity to consider how best to proceed with this work.

At the same time the Board has also made real progress in implementing the reforms set out in our Well Led Action Plan which include improving the way we manage performance and how we deal with risk. Our reform of pay and reward has also enabled marked improvement in our ability to recruit and retain high calibre people in what remains a very tight labour market.

Other reforms remain central to the BSB's business plan for 2023/24: aiming for operational excellence; encouraging more proactive regulation; and bringing about strategic change in the BSB's culture and capability.

These achievements were against the background of a challenging year in several respects: in April we and the Bar Council were affected by a serious cyber attack which meant that we had to take our systems down for several weeks in order to protect their security and to ensure that the data we hold was not compromised. We also faced considerable difficulties in recruiting and retaining people and that included recruitment to key operational posts which we had established to improve the timeliness of our regulatory decision-making.

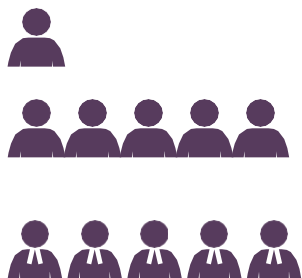
Accordingly, we significantly re-prioritised work in the year to reflect short-term pressures and in order to focus on the regulatory operations which are central to our work. So in place of the planned evaluations of the regulatory processes introduced in 2019 the BSB decided to undertake a root and branch review of the end-to-end enforcement process; we also launched an important initiative to clarify and consolidate expectations of chambers which will subsume a number of other initiatives, including the review of the *Equality Rules*; and we postponed a number of other initiatives – including the unbundling of legal services and the review of the Code of Conduct – in order to allow our front-line teams to focus on raising the productivity and timeliness of our core operations.

The BSB is aiming to deliver a culture of continuous improvement in every area of its work and the Board is very confident that the BSB will succeed in this ambitious programme of transformation. We shall certainly be ensuring that it does.

I became Chair of the Board in September 2022, succeeding Baroness Blackstone. Adam Solomon KC and Elizabeth Prochaska also left the Board during the year. I should like to thank them all for their years of dedicated service to the BSB. I should also like to welcome Gisela Abbam, who joined as a new lay member, and Jeff Chapman KC and Simon Lewis, who joined as new barrister Board members, during the year.

**Kathryn Stone OBE**  
**Chair of the Bar Standards Board**

# The BSB's year in numbers



Our Board has **6** lay members (including the lay Chair) and **5** barrister members



At 31 March 2023 we were responsible for regulating **17,418** practising barristers and around a further **58,000** barristers who were not practising (we regulated 17,170 practising and around 56,000 non-practising barristers in 2021-22)

We authorised **145** specialised legal services businesses in 2022-23 (compared to 130 in 2021-22)



Our income in 2022-23 was **£13,990k** and our expenditure was **£13,599k** (compared to income of £12,094k and expenditure of £11,176k in 2021-22)



**Students sat 7,198 centralised examinations in 2021-22 as part of their Bar training** (compared to 7,381 in 2021-22)



**We received 498 applications from solicitors, EU lawyers, overseas lawyers and legal academics wanting to transfer to the Bar** (compared to 325 last year)



**We processed 2,011 applications for waivers and exemptions from the qualification rules set out in the BSB Handbook** (compared to 2,134 in 2021-22)



**667,083 users visited our website** (compared to 684,295 in 2021-22)



**427,246 page views of our Barristers Register** (compared to 461,487 in 2021-22)



**We received 1,911 new reports about the conduct of barristers** (compared to 2,199 in 2021-22)

**18 barristers were the subject of a disciplinary finding** following a Disciplinary Tribunal and **4** barristers chose to accept a decision under the Determination by Consent procedure (compared to 22 and 4 barristers respectively in 2021-22)

**4 barristers were suspended and 9 barristers were disbarred** (compared to 6 and 6 respectively in 2021-22)

### **Promoting diversity at the Bar**

In December 2022 (excluding non-responses):

39.7 per cent of the Bar, 19.2 per cent of KCs and 59.9 per cent of pupils were female

16.3 per cent of the Bar, 10.5 per cent of KCs and 22.7 per cent of pupils were from minority ethnic backgrounds

7.3 per cent of barristers responding and 12.5% of pupils said they had a disability



# Strategic Aim 1 – Efficiency

Delivering our core regulatory operations quickly, economically and to a high standard

## What we said we would do

In our Business Plan for 2022-23 we said that, while the quality of our decisions remained high, and our productivity had increased, we were determined to improve the timeliness of our operations and to deliver an increase in people and investment which would enable us to meet all our key performance indicators.

We said that we would continue to:

- |    |   |
|----|---|
| 1. | assess reports of potential professional misconduct and risks to our regulatory objectives, taking enforcement or other action where necessary; and |
| 2. | deal with requests for authorisation, exemptions and waivers.   |

And we would continue with reviews of:

- |    |   |
|----|---|
| 3. | the appropriate scope of regulation of barristers' non-professional life in consultation with our stakeholders;   |
| 4. | the rules governing how barristers market their services and receive instructions;  |
| 5. | our Code of Conduct, starting with the Core Duties; and   |
| 6. | the current rules bearing on professional indemnity insurance to clarify the expected level of cover provided by insurers to barristers' clients (or other third parties) in the event of a cyber-related incident. |

We said that we would also begin to review:

- |     |  |
|-----|--|
| 7.  | our regulatory operations and key performance indicators, both to evaluate the changes we introduced in 2019 and to look at whether there are any further changes which would help us to increase our efficiency and to improve the transparency of our performance; |
| 8.  | our decision-taking for authorisations in order to apply the lessons of recent cases and to update our policies in the light of those lessons;   |
| 9.  | our customer relationship management system, including our case management system; and   |
| 10. | the Enforcement Regulations set out in Part 5 of our Handbook.   |

## What we did

We continued to assess reports of potential professional misconduct and to deal with requests for authorisations, exemptions and waivers throughout the year. **(1 & 2)**. Our independent reviewers confirm the continuing high quality of our decisions. However, the cyber-attack which we experienced in the first quarter of the year severely set back our efforts to improve the timeliness of our decision-making. We were also constrained by difficulties in recruiting and retaining people with the right skills.

Significant improvements in our productivity were achieved in the latter part of the year, with no loss of quality. Following an internal re-organisation and efficiency and customer care improvements, the Contact & Assessment Team cleared a record 541 reports in the last quarter of the year and, in the second half of the year, with the assistance of some temporary external support, the Investigations and Enforcement Team closed 119 investigations compared to 60 in the first half. These improvements in productivity are bringing enforcement caseloads down, although our timeliness key performance indicators can sometimes appear to show a drop in performance as more overdue cases are cleared.

By contrast authorisation caseloads are continuing to rise. Despite solid productivity, we ended the year with a caseload of over 400 applications, with 220 overdue. There were a number of reasons for this including the need to balance disparate streams of work; the demands of a major exercise to re-authorise pupillage providers; a rise in applications from transferring overseas lawyers; and people shortages.

The need to improve our performance therefore remains urgent and we took a number of steps during the year to deliver that improvement:

- we recruited more staff and contracted out work where we could;
- we took steps to improve the remuneration package for some operational staff;
- we employed an independent delivery consultant to assist the Contact and Assessment Team to prioritise their work and to find immediate efficiency improvements;
- we set up a review of our authorisations processes **(8)** which continues;
- we commissioned Deloitte to conduct a review of our customer relationship management system including our case management system **(9)**, which has now been completed; and
- we merged our proposed reviews of our regulatory operations and Enforcement Regulations **(7 & 10)** into an end-to-end review of our enforcement processes which will take place in 2023-24.

The need to prioritise this work meant that we postponed our reviews of the Code of Conduct **(5)** and of how barristers market their services and receive instructions **(4)**, but we were able to conduct a wide ranging review and public consultation about the regulation of barristers' conduct in non-professional life and their use of social media **(3)**. New guidance, reflecting the consultation, will be published in 2023-24. We also amended the rules regarding professional indemnity insurance **(6)** making clear that insurance policies must cover losses incurred by clients and others if a barrister or entity is subject to a cyber-attack.

Fuller accounts of our regulator decision-making during the year will be published later in the autumn in our Regulatory Decision-Making Report and in the accompanying Report from the Independent Decision-Making Body.

# Strategic Aim 2 – Standards

Ensuring that barristers provide a high quality and responsive service throughout their careers

## What we said we would do:

We said that the core work that we would conduct through the year would focus on:

1.	supervising the bodies which offer vocational training and the chambers and employers which provide pupillage to ensure standards and to promote equality;
2.	designing, setting and marking the centralised assessments in civil and criminal litigation and professional ethics;
3.	assuring, maintaining and enhancing standards across the profession by assessing the adherence to the standards set out in the BSB Handbook of both the individuals we regulate and the chambers and entities in which they practise. This includes a risk-based approach to supervision, the authorisation of new entities, the regulation of Continuing Professional Development and taking regulatory action where necessary; and
4.	continuing to meet our obligations under the Money Laundering Regulations to conduct risk based supervision of relevant barristers and to liaise with relevant stakeholders, including other regulators, the Office for Professional Body Supervision (our oversight regulator), HM Treasury and law enforcement agencies.

We also said that our project work in this area would focus on continuing our work to reform Bar training:

5.	evaluating the reforms we have already made;
6.	specifying how negotiation and advocacy are assessed during pupillage; and
7.	concluding our review of the Bar Course Aptitude Test.

We also said that we would begin some new projects as part of our wider programme of **Assuring Competence** to ensure that barristers maintain high standards of legal knowledge and customer service throughout their careers:

8.	examining how we can encourage individual barristers to gather and reflect on feedback from a range of sources when planning their continuing professional development;
9.	evaluating our joint work with the Solicitors Regulation Authority and CILEx regulation in which we set common standards for those practising in the Coroners' Courts;
10.	continuing our work in relation to the regulation of barristers in their early years of practice and their continuing professional development; and
11.	reviewing what wider regulatory or supervisory action may be needed in the light of responses to the 2020 Regulatory Return.

We also said that as part of our work to clarify our regulatory expectations of chambers and to promote best practice:

12. we will work with the profession to promote best practice in Chambers' oversight of standards.

### What we did:

Our work to maintain standards in Bar training - through our supervision of training providers and our setting and marking of centralised examinations - continued throughout the year **(1&2)** and in March we published three reports - an [interim report from AlphaPlus](#) evaluating four recent reforms **(5)**; the [BSB's 2023 Bar Training Report](#), showing the performance of students and providers during the period from 2011/12 to 2022/23 and the [Central Examinations Board \(CEB\) Chair's Report](#), which presented the results for candidates sitting the centralised assessments in civil and criminal litigation in December 2022.

The reports demonstrated that the BSB's reforms have succeeded in making Bar training more flexible, accessible, and affordable while maintaining high standards: a wider range of courses is now being offered by more providers at more venues and at lower cost. But we are not complacent – the reports also show the variation in pass rates between different providers and, although the reports also explain some of the factors that may lead to these variations, we will be examining this issue in our forthcoming thematic review of providers' admission arrangements. The review will also look at how providers ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential.

During the year we also continued our work with the Inns of Court to set out how advocacy and negotiation skills should be assessed during pupillage **(6)** and we concluded our review of the Bar Course Aptitude Test **(7)** which we concluded no longer served any useful purpose and which we abolished with effect from 31 July 2022.

We also continued our work to assess the information we have received from the Regulatory Return and will be issuing reports of our findings in the coming year. **(11)** Meanwhile our Supervision Team is managing the higher risks identified by responses to the Regulatory Return through close and proactive engagement with chambers and entities **(3)**.

In October we published our [annual report setting out the action that we have taken to counter money laundering and terrorist financing](#). Although very few barristers are involved in transactions that engage the Money Laundering Regulations, the BSB is determined to ensure that the Bar plays its part in combatting illicit financing. **(4)**

During the annual renewal of their practising certificates, or authorisations, all barristers and BSB entities have to declare whether they engage in work that falls within the scope of the Regulations. We continue to work closely with the profession to ensure that they do so accurately, so that our supervisory activity is properly focused.

In July 2022, the LSB issued a [statement of policy](#) that sets expectations of the regulators to assure the ongoing competence of those they regulate. We [responded](#) to the LSB's policy statement, which was supported by our [action plan](#).

Evaluation of the standards we introduced with the SRA and CILEx Regulation for those practising in the Coroner's Court will now commence in Q3/Q4 of 2023-24 to allow further time for the competences and toolkit to become embedded with the profession. **(9)**

We are continuing to gather evidence on Early Years of Practice, and continuing professional development (CPD) for both new and established practitioners. As part of this work, we are considering how to incorporate feedback into the CPD process and how to strengthen our guidance relating to reflection. The work slowed down in pace due to the departure of two key personnel on this project. **(8 & 10)**

Finally we began a series of roundtables with barristers, practice managers, clerks and the Bar Council in circuits around England and Wales to consider what we can do to promote best practice in chambers' oversight of standards, equality and access to justice. We concluded those roundtables in May 2023 and are now evaluating the responses we received and how we can best work with the Bar Council and others to promote best practice without increasing the burden of regulation. **(12)**

# Strategic Aim 3 – Equality

Promoting diversity and inclusion at the Bar and the BSB and the profession's ability to serve diverse customers

## What we said we would do:

We said that our core work would focus on:

1.	continuing to promote equality, diversity and inclusion at the Bar with the support of our Race Equality, Disability, and Religion & Belief Taskforces;
2.	ensuring that chambers are implementing the actions we set out in our Anti-Racism Statement in November 2020;
3.	completing research into differential attainment during vocational training at the Bar; and
4.	continuing our Reverse Mentoring scheme under which Bar students and pupil barristers from minority ethnic backgrounds mentor senior barristers from White backgrounds.

We said that our policy work, in partnership with stakeholders, would focus on continuing to:

5.	improve our regulatory approach towards tackling bullying, discrimination and harassment at the Bar;
6.	promote good practice in the equality and diversity policies and practices of vocational training providers;
7.	explore the possibility of apprenticeships as a training pathway for the Bar and produce additional guidance to support pupillage in employed practice; and
8.	publish good practice case studies about the inclusion of people with different types of disability at the Bar.

And as part of our work to clarify our regulatory expectations of chambers and to promote best practice we said that we would also:

9.	review the Equality Rules to ensure that they remain fit for purpose and clearly set out minimum standards for chambers' and employers' oversight of diversity, including appropriate governance; and
10.	work with the profession to encourage best practice in chambers with regard to promoting equality, diversity and inclusion and eliminating bullying, discrimination and harassment in the light of evidence from the Regulatory Return; and consider how chambers and employers can be incentivised to adopt best practice.

**What we did:**

In July we published our new Equality Strategy **(1 & 2)** which set out our four main objectives which are to:

- clarify the BSB's expectations of the Bar concerning equality, diversity and inclusion and to highlight opportunities for change;
- hold the Bar to account for reducing racial and other inequalities across the profession;
- promote a culture of inclusion at the Bar and in legal services more generally; and
- build a diverse and inclusive workforce ensuring that the BSB is itself an example of the approach the BSB is promoting.

We also set out some of the key actions arising from these objectives including:

- reviewing the obligations of barristers and chambers under the Equality Rules in the BSB Handbook
- collaborating with the Bar Council and others to promote greater equality at the Bar
- ensuring that chambers promote inclusion, and strengthening chambers' governance, including the role of the Equality and Diversity Officer
- continuing to tackle bullying, discrimination and harassment at the Bar and
- reviewing the BSB's recruitment processes and undertaking research into recruitment at the Bar.

Central to that strategy is the review of the *Equality Rules* which set out barristers' obligations with respect to practice management. We are now taking this work forward as an integral part of our initiative to clarify our expectations of chambers **(9)**. We expect to consult on revised rules later in 2023-24.

In July 2022 we also published a new report on differential outcomes on the former Bar Professional Training Course **(3)** which analysed outcomes against a wide range of characteristics and found that the most significant variables were ethnicity and previous academic attainment. This attainment gap is not unique to Bar training but remains a cause for concern and, although the BPTC has now been replaced following the reforms to Bar training, we believe that this research highlights some important issues that we will wish to consider when evaluating our reforms to Bar training and in our wider work on equality and diversity.

In August we also published two new research reports covering the equality and diversity policies of Bar vocational training providers and the experience of students on those courses **(6)**. The first report found that vocational training providers had a wide variety of initiatives and approaches in place to promote equality and diversity on their courses, though some perhaps could do more to mirror best practice. The second report found that the pandemic had restricted the interaction of students with their Bar training providers but that they would welcome more information on their providers' equality and diversity policies, events, training and support and greater clarity on the role and responsibilities of the BSB.

The Reverse Mentoring pilot scheme concluded in 2022-23 and we are now evaluating its impact and reviewing how the initiative might best be taken forward **(4)**

In September we also published a Religion and Belief Toolkit which is designed to provide chambers and entities with practical information and guidance relevant to the most common religions and beliefs in the UK with the aim of increasing inclusivity.

In October we published a [Report on Addressing Bullying and Harassment at the Bar](#) as part of our efforts to reduce the risks of bullying and harassment at the Bar **(5)**, to ensure that effective systems are in place in chambers to handle reports of bullying and harassment, and to encourage the profession to tackle this issue effectively. After engaging with a wide range of stakeholders, the BSB is now seeking to clarify what role chambers should play in promoting culture change and addressing bullying and harassment, which behaviours should be reported to the BSB, what reporting routes are available, and how the BSB deals with such reports. **(10)**

We also published a [Commitment to Wellbeing Statement](#) which acknowledges that the wellbeing of barristers is essential to the achievement of the BSB's broader regulatory objectives. The commitments detailed in the Statement will inform and guide the implementation of a range of activities under the Equality Strategy.

In December, with the kind support of 7 Bedford Row Chambers, we held our first Disability Taskforce event to hear from disabled barristers about their experiences at the Bar, the barriers that they have faced and what factors have helped them to progress and to learn about disability inclusion best practice across the profession **(8)**.

Finally in January we published our annual report looking at diversity at the Bar and in March a similar report looking at the diversity of our own Board and workforce. At the Bar we found that the proportion of practising barristers who are female; who are from a minority ethnic background; who have primary care of a child; who have a disability; or who are aged 55 or more all continue to increase with the most noticeable increase being a rise of 3.3 percentage points in the proportion of pupils who are female to 59.9 per cent.

The percentage of barristers from minority ethnic backgrounds at the Bar had increased to 16.3 per cent which compares to an estimate of 16.4 per cent of the working age population in England and Wales as of July-September 2022. But barristers from Black/Black British backgrounds remain more noticeably underrepresented at 3.4% of the Bar compared to 3.8% in the working age population as a whole.

The key findings of our report looking at the BSB were that 39 per cent of our workforce was from a minority ethnic background and that the proportion of our workforce who are female has increased to 74 per cent both figures being significantly higher than in the UK working age population. But only 4 per cent of our workforce declared a disability which is significantly below the current estimate that around 20 per cent of the UK working age population have a disability.



# Strategic Aim 4 – Access

Promoting consumer understanding of legal services and choice and good value for those who use those services

## What we said we would do:

We said that our core work would focus on improving consumer choice and increasing their understanding of the legal services market by:

1. providing information to the public about barristers in partnership with consumer organisations, the profession and other legal regulators;
2. continuing to develop and implement our strategy for wider public legal education in partnership with other regulators and organisations in order to improve our understanding of how best to identify those in legal need, the nature of that need and how best to help them;
3. completing our evaluation of, and continuing to ensure compliance with, our transparency rules which are designed to help consumers understand the price and service they will receive, what redress is available and the regulatory status of their barrister; and
4. examining the role of new technology in the legal services market, in collaboration with others and taking part in joint activities with other regulators, tech companies and other stakeholders as appropriate.

We said that our project work would focus on new projects to:

5. collaborate with other regulators and consumers to understand the possible benefits to the public of unbundling legal services (enabling consumers to contract for parts of a legal service, whilst managing the rest of the matter themselves) through a pilot aimed at the Bar;
6. work with other regulators and consumers (launching a market study for the Bar this year) to understand the possible benefits of digital comparison tools (such as online sites which seek to rate the services provided by legal advisers); and
7. work with other regulators and consumers to develop a Regulatory Information Service which will provide a single portal for finding out regulatory information about all regulated legal service providers.

## What we did:

The Competition and Markets Authority (CMA) undertook a market study into legal services in 2016. Its recommendations fell broadly into four categories: delivering a step change in standards of transparency, promotion of the use of independent feedback platforms, making data more accessible and making better information available to assist consumers. Our work under Access theme continues to take forward recommendations from the CMA, in addition to looking at the use of new technology and innovation to improve access to justice.

Our work in public legal education continued to focus on working with our fellow regulators to agree common approaches to meeting legal need and with frontline legal help providers such as Law for Life, Citizens Advice, Refugee Action, Support through Court and Advocate, the Bar's pro bono unit **(1&2)**.

With Law for Life we focused on employment law, supporting research which provided detailed evidence of the emerging need for help in the wake of Covid-19; with Citizens Advice, who run the Witness Service on behalf of the Ministry of Justice, we have funded two videos for children giving evidence in the Crown Courts and Magistrates Courts; with Refugee Action we have supported research into the barriers to complaints faced by those seeking advice on immigration issues; and we have been helping Support through Court to find funding so that they can continue to offers emotional and practical support (but not legal advice) to the increasing number of people who have to appear in the civil and family courts without legal representation.

We introduced new transparency rules for the profession in July 2019 (with compliance required by January 2020). These rules required barristers to provide information on their regulatory status, complaints procedures, services and pricing models either on their websites or as part of a fact sheet for prospective clients. These rules were intended to drive a 'step change' in levels of transparency, following both the research and recommendations by the CMA, and additional research and piloting undertaken by the BSB. We published two new reports looking at the impact of our transparency rules in July 2022 **(3)**. The first report looked at compliance with the rules and found that only 6% of those assessed during the period in question were neither compliant nor partially compliant with the rules. The second examined the impact on consumers of our rules which are designed to improve the information available to the public about the services a barrister can offer, their likely costs and how barristers are regulated so that consumers have more information to help them engage the services of a barrister. The report found that among barristers' clients, the proportion who obtained details of service or price before choosing a barrister has increased significantly while complaints that relate to the overall cost and clarity of information around costs and timescales have declined. The percentage of clients 'shopping around' when choosing a barrister has increased as has awareness among clients of the regulatory status of their barrister. Meanwhile awareness of complaints procedures has also increased although the number of complaints from clients has fallen.

We launched a market study looking at online comparison at the end of September. This study is looking at whether and how such tools can promote access to barristers' services for consumers and, depending on its outcome, we shall be considering how the transparency rules should evolve to reflect the lessons learned **(6)**. Our work to look at unbundling legal services has been postponed due to resource constraints and priorities. **(5)**

We have hired two new members for our Strategy and Policy team to develop our work on technology and innovation. We are also partnering with other legal regulators, for example through participation in the LawtechUK Regulatory Response Unit, to develop a coherent technology policy across the legal services professions. **(4)**

We continue to work with other regulators to develop the Regulatory Information Service which is currently being provided through the "*Can you trust your legal adviser?*" facility on the Legal Choices website. The BSB participates in that facility, which allows the public to establish the regulatory status of their lawyer without necessarily knowing what type of lawyer they have.**(7)**

# Strategic Aim 5 – Independence

Strengthening the BSB’s independence, capability, self-confidence and credibility

## What we said we would do:

We said that our aim here is to ensure that the BSB has the culture, values and associated policies appropriate for an independent regulator and that our core work would focus on:

1. our annual review of our implementation of the Internal Governance Rules, which govern the relationship between regulators and professional bodies, with the aim of enhancing regulatory independence within the current legislative framework;
2. continuing to pursue the governance reforms in our Well Led Action Plan; and
3. promoting engagement and collaboration with consumer organisations, the profession and other regulators.

We said that our project work would focus on continuing to:

4. review the reward and recognition framework for our people;
5. examine measures to promote wellbeing;
6. develop and deliver our Learning and Development strategy;
7. promote diversity and inclusion at the BSB; and
8. ensure that the BSB’s values (of fairness and respect, independence and integrity, excellence and efficiency) guide all our activities.

We said that we would also begin a new project:

9. to review the case for incorporating the BSB as a separate entity in order to streamline governance, enhance our operational freedom and reinforce our credibility and identity.

## What we did:

We concluded at the end of the year a review of how the current Internal Governance rules and shared service arrangements are working and will be discussing our findings with the Bar Council **(1)**, although we decided to put our work on incorporation **(9)** on hold given other priorities. We made good progress in implementing the reforms set out in our Well Led Action Plan **(2)** and our Business Plan for 2023-24 includes further reforms which we intend to make in order to promote continuous improvement in both our performance and our governance. We continued to engage with all our stakeholders in our work regularly consulting consumer groups, our fellow regulators and the profession **(3)**.

We made significant progress in reforming our approach to pay and reward, promoting wellbeing and creating a new Learning and Development strategy. After an in-depth review, we have established the direction of travel for future BSB reward and have implemented a range of reward reforms **(4)**. We continue to focus on wellbeing **(5)** and are taking forward actions arising from our last people survey.

We have established, and are delivering, the BSB's first Organisation Learning Plan based on learning needs from our Strategic Plan and feedback from colleagues **(6)**. We have also established a programme of on-going leadership development for the Senior Management Team

We continue to seek to promote diversity and inclusion at the BSB and, as our last diversity and people surveys showed, we are having some success **(7)**. We are also working hard to promote and entrench the distinctive values of the BSB. We have developed a framework of behaviours linked to our values to help to define our culture and underpin our people policies **(8)**.

## Part 4: Our teams and their work



Two further teams report directly to the Director General:

- **Governance and Corporate Services** led by Rebecca Forbes with 3 people
- **Programme Management** led by Jaspal Kaur Griffin with 3 people

We also share the following support services with the Bar Council: Facilities, Finance, Information Services, Records, the Project Management Office, and those centralised Human Resources services not provided by the dedicated BSB function.

## What our teams do

### Regulatory Operations

Our Regulatory Operations Department brings together all our assessment, supervision and authorisation functions.

Its aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing the adherence to the standards set out in the BSB Handbook of both the individuals we regulate and the chambers and entities in which they practise. This includes a risk-based approach to supervision, the authorisation of new entities and the regulation of Continuing Professional Development.

The Department oversees the academic, vocational, and pupillage / work-based learning components of training that must be completed in order to qualify as a barrister. It sets and marks centralised examinations for prospective barristers. It also decides on individual applications from people wishing to qualify and/ or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

The Department also contains our Contact and Assessment Team which is the central point of contact for anyone getting in touch with us, including anyone contacting us with concerns about barristers.

### Strategy and Policy

Our Strategy and Policy Department is responsible for collecting evidence about the effectiveness of our rules and policies, assessing regulatory risk, and, where necessary, changing existing rules or introducing new ones.

The Department gathers evidence about what is happening in the market and the impact that our actions are having by conducting research (either by itself or with others) and by collaborating with stakeholders who have an interest in our work. Where necessary, it uses this knowledge to set or revise standards and introduce rules and guidance for barristers and entities. These rules are contained in the BSB Handbook. It develops policy on the educational pathways into the profession, and on the conduct of practice in areas such as chambers' complaints handling and direct public access to barristers. Another important area is equality and diversity, where the Department is responsible for setting and seeking to achieve the objectives within our Equality Strategy.

### Legal and Enforcement

Our Legal and Enforcement Department is responsible for ensuring that the professional obligations set out in the BSB Handbook are adhered to and, if necessary, taking enforcement action where those obligations have not been met. It also provides legal support services across the organisation in relation to regulatory decision-making, including handling any litigation.

The department carries out investigations of potential breaches of the Handbook. Where an investigation reveals sufficient evidence, and the conduct poses a risk to the Regulatory Objectives, enforcement action will be taken in accordance with the processes described on [our website](#).

Decisions on what action, if any, to take can be made by staff and the BSB's Independent Decision-Making Body. Staff decision-making is limited to dismissing allegations or imposing non-disciplinary administration warnings or fines (up to £1,000 for individual barristers). Our Independent Decision-making Body, sitting as five person lay majority panels, has wider powers: they can also refer cases of professional misconduct to a Disciplinary Tribunal and have the power to decide less serious charges of professional misconduct, with the barrister's consent, under the Determination by Consent procedure.

The department is responsible for preparing and presenting charges of professional misconduct to independent tribunals, convened and administered by an independent organisation called the Bar Tribunals and Adjudication Service (BTAS). In doing so, the BSB is assisted by our [Tribunal Representation Panel](#) which provides representation at tribunals and other hearings. It is for the independent tribunal to decide whether the charges brought by the BSB are proven and to determine any sanction.

The Legal and Enforcement department also deals with concerns about barristers' fitness to practise for health reasons, and with interim suspensions from practice pending conclusion of disciplinary proceedings.

## Communications and Public Engagement

Our Communications and Public Engagement Department is responsible for all our internal and external communications including our publications, website, social media activity and media relations. It helps our other teams to engage with the profession and other stakeholders to make sure that we discuss our policy development plans in an open and consultative way. The Department helps make sure we fulfil our transparency and accountability functions, and our obligations to promote public legal education.

## Governance and Corporate Services

The Governance and Corporate Services team supports strategic and business planning and budgeting. It coordinates performance reporting and monitoring of our corporate risks. The team ensures that we act in accordance with good governance practice, and also provides administrative support for the Chair, Vice Chair and Director General.

## Programme Management

The Programme Management team provides guidance and ensures that best practice is followed in the setup, running and closure of all our major programmes and projects so that the maximum benefits can be realised. It provides project management training to officers in other teams.

## BSB People

Our dedicated People team is responsible for setting and delivering our people strategy and for guiding the leadership team in defining and developing the BSB's culture as an independent regulator. It also provides a wide range of operational services to BSB managers and staff, assisted by administrative and transactional support from the Bar Council shared service.

## Our governance

We are governed by a Board made up of a combination of lay people and barristers. It has five lay and five barrister members and a lay chair which gives the board a lay majority.

The Board met 7 times during 2022-23: there were 6 ordinary meetings and 1 Away Day. Selected Members also attended 2 Board to Board meetings during the year (one with the Legal Services Board and one with the Office for Legal Complaints). Ordinary Board meetings are partly held in public and we invite members of the legal press to attend all public sessions. Board meetings during 2022-23 continued to be hybrid meetings where some members joined online.

During 2022-23 our Board members were:

**Chair:** Baroness Tessa Blackstone (until 31 July 2022)  
Kathryn Stone OBE (from 1 September 2022)

**Vice-Chair:** Mr Andrew Mitchell KC

### Barrister members:

Jeff Chapman KC (from 1 January 2023)  
Simon Lewis (from 1 January 2023)  
Ms Elizabeth Prochaska (until 30 June 2022)  
Ms Irena Sabic KC  
Mr Adam Solomon KC (until 31 December 2022)  
Professor Leslie Thomas KC

### Lay members:

Ms Gisela Abbam FRSA (from 1 October 2022)  
Ms Alison Allden OBE  
Mr Emir Feisal  
Mr Steven Haines  
Mr Stephen Thornton CBE



## Accountability and how we manage risk

Under the Legal Services Act 2007, the Legal Services Board is responsible for overseeing the approved regulators for legal services in England and Wales. The approved regulator for barristers is the General Council of the Bar (GCB), which is also the representative body for the Bar.

The Act requires the separation of regulatory and representative activities, so the GCB has established the Bar Standards Board to exercise its regulatory functions independently. We have a protocol in place with the GCB to ensure that the exercise of the regulatory functions is not prejudiced by the Bar Council's representative functions.

Our Board manages its work with the help of four sub-committees:

- The **Governance, Risk and Audit Committee** (GRA) is responsible for ensuring that our corporate governance standards and internal controls are maintained. The Committee keeps all our risk management framework and internal audit arrangements under review and advises the Board accordingly. The corporate risk register is reviewed at least quarterly by our Senior Management Team and the GRA Committee. In addition, the GRA Committee conducts regular in-depth risk reviews throughout the year, and considers Internal Audit reports.
- The **Performance and Strategic Planning Committee** (PSP) oversees the development of our strategic direction and plans and advises the Board on developments to our planning and resource setting. PSP also considers whether financial and operational resources are being properly and effectively allocated and efficiently managed.
- The **Nomination Committee** seeks to ensure that recruitment to the Board and senior executive roles is fair, inclusive and transparent
- The **Remuneration Committee** makes recommendations to the Board on the remuneration and terms of engagement of BSB staff, its non-executive members and advisers. It also considers appeals by the Director General and his direct reports against decisions relating to dismissal, disciplinary sanction, grievance, promotion or demotion.

## Our income and expenditure and Cost Transparency Metrics

The Bar Standards Board (BSB) is firmly committed to the principle of transparency and publishes financial and other transparency metrics as part of the Annual Report and Business Plan in accordance with the recommendations of the Legal Services Board's (LSB) Cost of Regulation Project. We are now combining our Cost Transparency Metrics, which we used to publish separately, with the figures here in our annual report so that all our financial reporting can be found in one place.

We pay close attention to how we spend our money:

- Our budgets are set annually and our budget envelopes are informed by our business plans;
- The budget is divided up into departmental budgets which our Directors manage;
- Each month we receive detailed management accounts which enable us to keep a close eye on our business;
- Each quarter we think about what we might need to spend in the future and produce forecasts;
- We tightly monitor our largest area of spend which is our staffing costs;
- We make sure that our resources are directed at our key priorities; and
- Our financial performance is scrutinised by the Board and its Performance and Strategic Planning Committee (PSP).

### Income

#### Practising Certificate Fees (PCF)

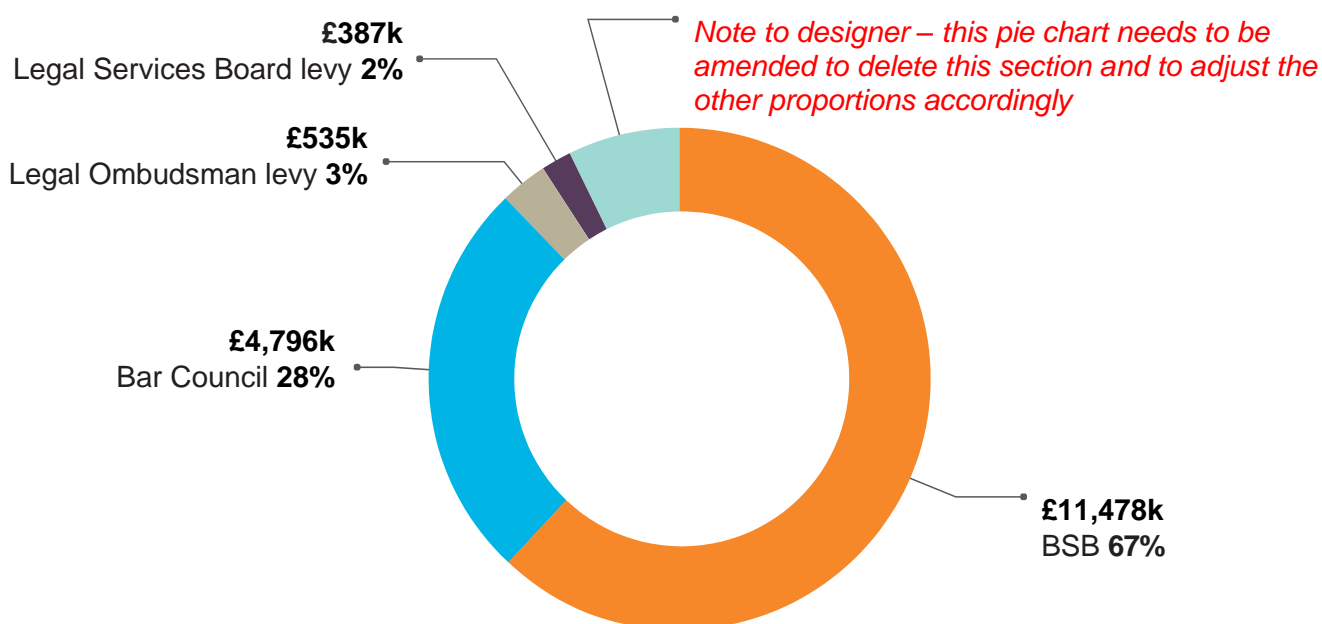
Barristers are only legally entitled to undertake reserved legal activities if they are authorised to do so by the BSB. They do so by holding a current Practising Certificate renewed annually via a process known as Authorisation to Practise, which includes payment of a Practising Certificate Fee (PCF). The PCF funds the expenditure that falls within the 'permitted purposes' as defined by the Legal Services Board (LSB). The PCF is shared between the Bar Standards Board who deliver the regulatory functions, the Bar Council who deliver non-regulatory permitted activities, and levies for the Legal Services Board and the Legal Ombudsman (LeO).

	thousands	thousands
Metric	2021-22	2022-23
Total PCF Reported	£15,341	£17,196

In 2022-23 Practising Certificate Fees were set as follows:

Band	Income Band	2022-23 Fees
1	£0 - £30,000	£100
2	£30,001 - £60,000	£253
3	£60,001 - £90,000	£509
4	£90,001 - £150,000	£926
5	£150,001 - £240,000	£1,406
6	£240,001 - £350,000	£1,906
7	£350,001 - £500,000	£2,017
8	£500,001 - £750,000	£2,575
9	£750,001 - £1,000,000	£2,725
10	£1,000,001 - £1,500,000	£3,090
11	£1,500,001 and above	£3,270

### Allocation of PCF between Bar Council, the BSB, LSB and LeO



Portion of PCF funding 'non-regulatory permitted purposes'	38%	33%
Total Permitted Purposes reserves	£3,874	£3,331

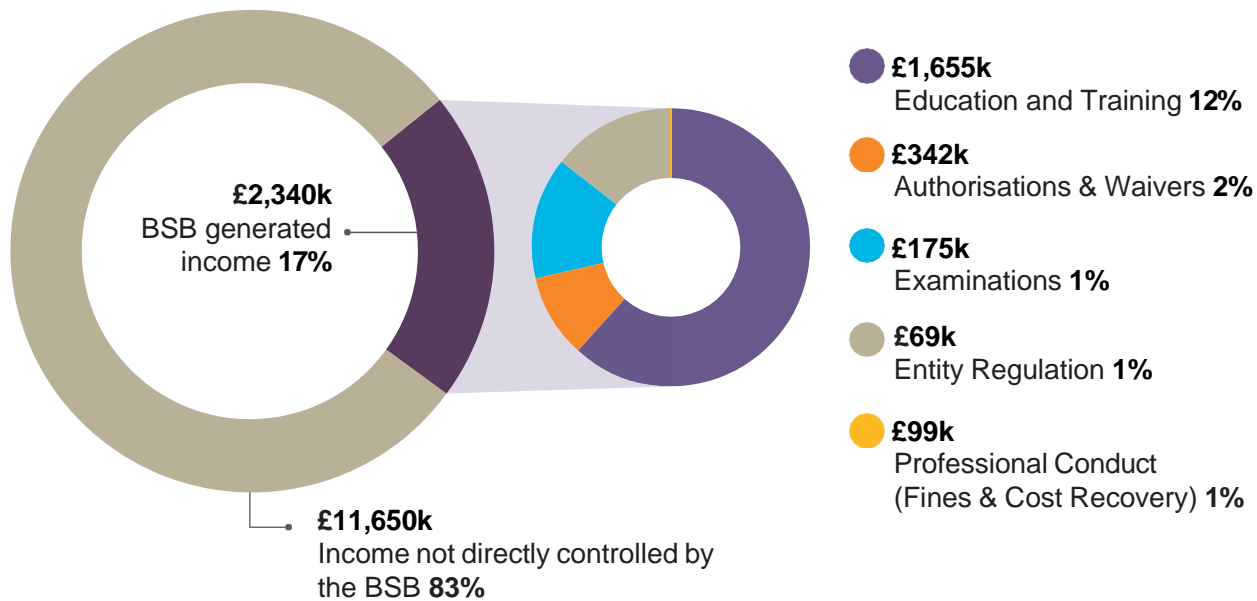
Apart from the PCF, some of our income comes from charges we make for specific services we provide to individuals and organisations. These income streams include the fees from Bar training providers, and the Bar Transfer Test.

Income Area	£ thousands 2021-22	£ thousands 2022-23
Education and Training	1,924	1,655
Authorisations and Waivers	269	342
Examinations	259	175
Entity Regulation	69	69
Professional Conduct (Fines & Cost Recovery)	94	99
<b>Total BSB Generated Income</b>	<b>2,615</b>	<b>2,340</b>

As with previous years, income from fees for Bar training remained the most significant proportion of the BSB controlled income during 2022-23. The forecast income for Bar training was set at £1,350,000 based upon expectations modelled on the 2020-21 uptake. However, we generated an additional £305k of income as student numbers increased. Overall, the BSB exceeded its (non-PCF) income target by £543k (30%).

Total Income for the BSB	£ thousands 2021-22	£ thousands 2022-23
PCF Contributions	9,398	11,478
Income from GCB Resources Group	81	172
Planned Contributions from Reserves	0	0
<b>Total income not directly controlled by the BSB</b>	<b>9,479</b>	<b>11,650</b>
<b>Total BSB Generated Income</b>	<b>2,615</b>	<b>2,340</b>
<b>Total regulatory income</b>	<b>12,094</b>	<b>13,990</b>

## BSB Income 2022-23



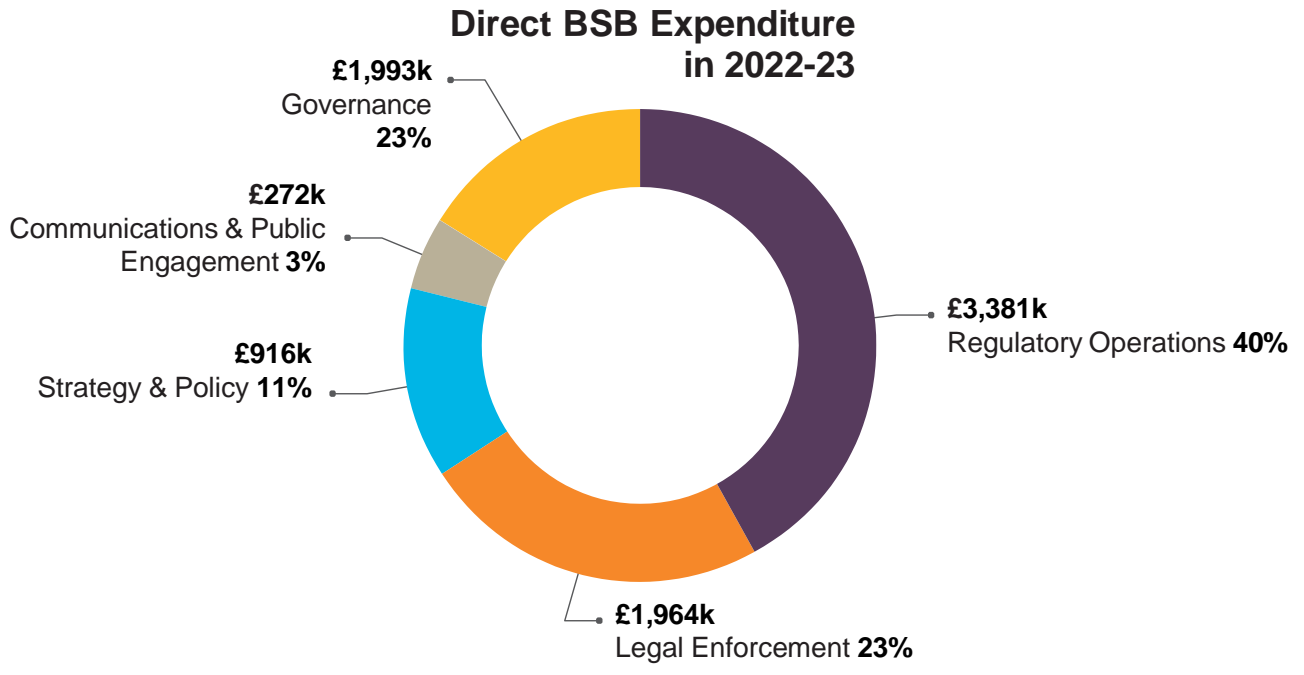
## Expenditure

BSB directly controlled expenditure was £8,526k against a budget of £8,197k, a £329k (4% overspend). The reasons for this overspend were unbudgeted external reviews, additional legal advice and costs relating to our plan to accelerate our investigations.

The full cost of regulation includes an allocation of shared costs (IT, Finance, HR and Premises costs) from the Bar Council Resources Group. The Resources Group expenditure budget is managed separately, outside the direct control of the BSB, and is apportioned to the organisation.

Department	£ thousands 2021-22	£ thousands 2022-23
Regulatory Operations	2,823	3,381
Legal Enforcement	1,539	1,964
Strategy and Policy	880	916
Communications and Public Engagement	307	272
Governance (including Corporate Services, Chair, HR and Programmes costs)	1,567	1,993
<b>Total Direct BSB Expenditure</b>	<b>7,116</b>	<b>8,526</b>
Resources Group allocation & adjustments	4,060	5,073
<b>Total cost of regulation</b>	<b>11,176</b>	<b>13,599</b>
<b>Average cost of regulator for each authorised individual<sup>1</sup></b>	<b>£547</b>	<b>£659</b>

<sup>1</sup> The average cost of the regulator for each authorised individual is calculated by dividing total BSB PCF income (£11,478k in 2022-23) by the number of practising barristers at 31 March 2023 (17,418).



	2021-22	2022-23
Headcount	90 (85.1 FTE)	104 (98.6 FTE)

## Remuneration of the Board and Executive

Chair of Board total remuneration	£91,300	£105,684
Vice Chair total remuneration	£39,836	£38,690
Director General total remuneration	£153,550	£157,942

The median staff salary at the BSB in 2022-23 was £40,975, the ratio between this and the Director General (salary: £158k) was 1: 3.87. As well as the Director General, the Bar Standards Board has five Senior Managers paid in a salary band which in 2022-23 was between £81k and £111k.

Staff costs	£4,894,922	£5,693,210
Board costs	£221,994	£224,044

Overall staff related costs were £6,227k (3% underspent). We ended the year with staff turnover of **18%**. Any salary savings achieved from vacancies were offset by recruitment related expenses and temporary cover for business critical roles.

## Board Remuneration and Expenses in 2022-23

Name	Salary / Fees	Pension	Allowance	Total	Expenses incurred in relation to BSB business
Baroness Tessa Blackstone	£30,217	£0	£0	£30,217	£0
Kathryn Stone OBE	£69,157	£0	£0	£69,157	£4,387
Mr Andrew Mitchell KC	£38,690	£0	£0	£38,690	£0
Ms Gisela Abbam	£4,620	£0	£0	£4,620	£0
Ms Alison Alden OBE	£9,240	£0	£0	£9,240	£0
Mr Jeff Chapman KC	£2,310	£0	£0	£2,310	£0
Mr Steven Haines	£13,860	£0	£0	£13,860	£0
Mr Simon Lewis	£2,310	£0	£0	£2,310	£0
Ms Elizabeth Prochaska	£2,310	£0	£0	£2,310	£0
Ms Irena Sabic	£9,240	£0	£0	£9,240	£0
Mr Adam Solomon KC	£9,240	£0	£0	£9,240	£0
Mr Emir Feisal	£9,240	£0	£0	£9,240	£0
Professor Leslie Thomas KC	£9,240	£0	£0	£9,240	£0
Mr Stephen Thornton CBE	£9,240	£0	£0	£9,240	£743

## Non-staff costs

Total non-staff expenditure was £2,299k (a £149k overspend).



# Further reading

To obtain a fuller picture of who we are, what we do, and the context in which this Annual Report was produced, please visit the following pages on our website:

- This Annual Report is designed to be in read in conjunction with our [Business Plan for 2022-23](#) and our [2022-25 Strategic Plan](#).
- More information about our work around [equality and diversity](#) can be found there.
- Our [organisational values](#) describe the way in which we conduct all our work including the activities described in this Plan.



BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

## Contacting us

We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent, and proportionate. We welcome your feedback on our services, particularly where the level of service has exceeded or fallen below your expectations.

Your comments and suggestions are important to us as they will help us to meet our obligations to you and to improve our performance.

### Contact us:

Bar Standards Board  
289-293 High Holborn  
London  
WC1V 7HZ

Tel: 020 7611 1444

Email: [ContactUs@BarStandardsBoard.org.uk](mailto:ContactUs@BarStandardsBoard.org.uk)

Twitter: [@BarStandards](https://twitter.com/BarStandards)

Youtube: [/barstandardsboard](https://www.youtube.com/barstandardsboard)

LinkedIn: [/thebarstandardsboard](https://www.linkedin.com/company/thebarstandardsboard)

**Bar Standards Board – Director General’s Strategic Update – 27 July 2023****For publication****Performance**

1. Circulation of papers for the Board meeting on 27 July comes too soon for the collation of the operational performance information for the first quarter of 2023/24. Saima Hirji and/or I will, however, make an oral report at the meeting. The usual analysis will be prepared for the next Board meeting on 5 October. (To avoid a similar issue in 2024, we shall consider whether the equivalent Board meeting next year could be slipped into the first week of August.)
2. Meanwhile, I can report that, thanks to work by Saima Hirji, Sophie Maddison and our external consultant, Jimmy Barber, an action plan is in place to address the caseload of authorisation applications which had passed 400 by the end of 2022/23. The plan, to which the Team is committed, involves:
  - i. the commitment of extra resources to help address the backlog of overdue applications;
  - ii. work management changes, including an improved triage process;
  - iii. changes to team structure to enhance delegation and to strengthen administrative support; and
  - iv. a continued focus on performance culture.
3. In parallel Professor Mike Molan is taking forward a structural review of our authorisations work and has now brought forward recommendations on phase 1 which deals with the initial qualification process. We expect to bring advice to the November Board about these recommendations as a prelude to a public consultation. If implemented, the effect will be significantly to reduce the volume of applications dealt with now by the Team.

**Legal Choices**

4. Consistent with the decision taken by the Board at its meeting on 25 May, Wilf White and I met colleagues from the SRA and the current chair of the *Legal Choices* Board to discuss a renewal of BSB’s engagement and contribution. The meeting was positive. We were able to agree that a renewed BSB contribution would be additional to the current *Legal Choices* budget and that our existing collaboration with third sector organisations would continue as part of a broader public legal education initiative. We expect formally to rejoin *Legal Choices* in September.

**Westminster Legal Policy Forum, 17 July: Improving standards of legal education**

5. I shared a platform at this event with Matthew Hill of the Legal Services Board and Julie Swan, the Director of Education and Training at the SRA. I made two big points.
6. First, though maintaining standards is of cardinal importance, flexibility, accessibility and affordability are also essential to Bar training if the profession is to be a good reflection of the society it serves. I briefly recounted the evaluation evidence published in March which shows that, while maintaining standards, we have seen new providers enter the market, new course structures developed and costs fall. This has contributed to strong demand for Bar training and an increase, in particular, in the proportion of UK domiciled students from minority backgrounds. I particularly underlined the work we are doing with a trailblazer group to establish an apprenticeship route to the Bar.

7. Second, I emphasised that standards cannot stand still. We need to ensure that Bar training, and the profession more generally, is keeping pace with the opportunities of technology, ethical challenges and changing consumer expectations. To that end, we expect in due course to propose updating the *Professional Statement* which sets out the skills and understanding we expect all barristers to bring to bear.

### Internal organisation

8. I am pleased to say that, following an open competition, I have appointed Rupika Madhura as the interim Director of Standards. She will bring to our work on standards at the Bar deep insight into regulation built up over seventeen years at regulators, including BSB itself and Ofgem, Ofwat and Office of Rail and Road. Most recently, Rupika has headed our Policy and Research Teams since 2020 and has led our work on access, on technology and on the revision of the Handbook. She also sits as a NED on the Consumer Challenge Group of South-East Water to represent the interest of consumers. Rupika holds an MSc in Regulation from London School of Economics, MSc in Business Economics from City University and a B.A. (Honours) in Economics from Delhi University.

**Mark Neale**  
Director General

**Chair’s Report on Visits and External Meetings from May to Jul 2023****Status:**

1. For noting

**Executive Summary:**

2. In the interests of good governance, openness and transparency, this paper sets out the Chair’s visits and meetings since the last Board meeting.

**List of Visits and Meetings:****Introductory meetings**

8 June	Met with Jonathan Rees, Chair, Cilex Regulation Met with Sir Robert Francis KC, Treasurer Inner Temple
9 June	Met with Tim Grey, new IDB Chair
14 June	Met with John Petrie MBE, Director of Chambers Crown Office Row

**Meetings**

8 June	Met with Andrew Mitchell KC and Mark Neale
19 June	Met with Chambers Management Working Group with Mark Neale
20 June	Met with The Rt Hon Stephen Irwin & attended the Bar Council
26 June	Attended Extra Chairs’ Committee meeting
11 July	Met with Stephen Hockman KC, Six Pump Court Chambers
25 July	Attended the Board Briefing meeting

**1-2-1 Meetings**

14 June	Met with Saima Hirji, Interim Director of Regulatory Operation
4 July	Met with Alison Allden
25 July	Met with Rupika Madhura, Incoming Interim Director of Standards
25 July	Met with Lady Nicola Davies, Treasurer, Gray’s Inn
27 July	Chaired BSB Board meeting

**Events**

8 June	Attended Institute of Barristers’ Clerks Annual Dinner
28 July	Attended the Treasurers’ Reception, Gray’s Inn