

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting****Thursday 30 November 2023 (5.00 pm)****Hybrid Meeting, Rooms 1.4-1.7, BSB Offices & MS Teams****Present:**

Kathryn Stone OBE (Chair)
Gisela Abbam
Alison Allden OBE
Jeff Chapman KC
Emir Feisal JP
Steve Haines
Simon Lewis
Irena Sabic KC
Stephen Thornton CBE

By invitation:

Clare Brown (Regulatory Policy Manager, Legal Services Board)
Malcolm Cree CBE (Chief Executive, Bar Council) (via Teams)
Professor Mike Molan (Chair, Central Examinations Board)
Sam Townend KC (Vice Chair, Bar Council) (via Teams)
Nick Vineall KC (Chair, Bar Council)
James Wakefield KC (Hon) (Director, COIC) (items 1-10)

Press:

Neil Rose, Legal Futures (via Teams)

In attendance:**BSB Executive**

Ahmet Arikan (Senior Policy Officer) (items 1-8)
Ben Bray (Head of Risk-Based Regulation) (items 8-17)
Ben Burns (Policy Manager)
Julie Carruth (Supervision Manager) (via Teams) (items 1-7)
Christopher Fitzsimons (Communications Manager) (via Teams)
Rebecca Forbes (Head of Governance & Corporate Services)
Charlie Higgs (Examinations Manager)
Teresa Haskins (Director of People, BSB)
Saima Hirji (Acting Director of Regulatory Operations) (via Teams)
Oliver Jackling (Research & Evaluation Manager) (via Teams) (items 1-7)
Sara Jagger (Director of Legal and Enforcement) (items 1-8)
Poornima Karunacadacharan (Policy Manager)
Ewen Macleod (Director of Strategy & Policy) (via Teams)
Sophie Maddison (Authorisations Manager) (via Teams) (items 1-7)
Rupika Madhura (Interim Director of Standards)
Mark Neale (Director General)
Richard Parnham (Policy Manager)
John Picken (Governance Officer)
Natasha Ribeiro (Assessment Lead) (via Teams) (items 1-7)
Dr Victoria Stec (Head of Qualifications)
Wilf White (Director of Communications & Public Engagement)
Julia Witting (Head of Supervision) (items 1-7)

Item 1 – Welcome / Announcements

1. Kathryn Stone welcomed those present in particular those attending their first Board meeting ie:
 - Clare Brown
 - Sophie Maddison

Item 2 – Apologies

- Andrew Mitchell KC
- Professor Leslie Thomas KC
- Lorinda Long (Treasurer, Bar Council)

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 5 October 2023.

Item 5a – Matters arising & Action List

5. There were no matters arising. The Board **noted** the update to the action list.

Item 5b – Forward agenda

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

Item 6 – Performance Report: Quarter 2 (2023/24)

BSB 051 (23)

7. Mark Neale highlighted the following:
 - a continuing trend of high quality decision making as evidenced by the endorsement of our Independent Reviewers;
 - productivity gains for enforcement and authorisations; however, for the latter team the volume of applications received still exceeds capacity to administer. As previously reported, this is primarily due to a high volume of transferring qualified lawyer (TQL) applications, principally from lawyers based in Bangladesh and Pakistan.
8. To address this, he confirmed that some temporary posts have been created which, along with other colleagues, will constitute a Task Force to focus entirely on clearing TQL applications. This will last around 9 months.
9. He added that:
 - backlogs in the Contact and Assessment Team (CAT) have reduced but not at a quick enough rate so, it too, will need some extra short-term support;
 - early indications from the Fieldfisher review on enforcement suggests we need to strengthen the middle management of CAT in order to increase its resilience.
10. The Chair thanked both the authorisations and enforcement teams and acknowledged the sustained effort it has taken in addressing backlogs. Members commented as follows:
 - the number of disciplinary tribunals doubled in Q2 compared to Q1 which suggests this may become a performance concern for the future;

- the KPI figure for investigation of allegations (31.6% closure rate within the allotted time against a target of 80%) is, on the face of it, a concern;
 - the reason for the increase in TQL applications is not clear, nor why a backlog was allowed to develop, if the upward trend had been identified;
 - the KPI figures given in Annex A are mixed and some fall below 50%. The report should distinguish between standard and more complex cases so that the figures can properly account for outliers;
 - we should investigate the scope for cross-skilling staff so that peaks in demand can be managed across more than one team;
 - we should bear in mind the potential long-term benefits of transferring lawyers as this could eventually lead to greater commonality of standards;
 - the report states that 24 of the 64 live investigations are on hold for *reasons outside the BSB's control*. It would be helpful if future reports explained why.
11. In response to the first two points, Sara Jagger stated that:
- the increase in tribunals is a short-term consequence of the Accelerating Investigations programme. Numbers should fall back to normal levels soon;
 - a high proportion of the investigation caseload is complex and subject to delay. When any of these cases are resolved, they have already missed the KPI deadline so the figures look worse. The overall age profile of cases is now much younger and most of these should be closed within target time.
12. In respect of authorisations, the Executive commented that:
- the number of TQL applications now average 50 per month. This is well in excess of earlier years, and, despite strengthening the Team, we have not had the capacity to cope with this increased workload whilst still maintaining service levels in other areas;
 - the reason for the increase is still unclear but the Task Force will be in place for January so we can respond relatively quickly;
 - these applications are complex and conditional decisions are often challenged leading to requests for reconsideration. We are introducing a new and tighter policy on reconsiderations as part of the January launch;
 - more UK based solicitors are seeking to cross qualify as well.
13. Regarding other points raised, the Executive stated that:
- poor KPI figures are a product of the calculation process which places pre-eminence on timeliness. But they do not show, for example, that increased productivity from a targeted approach to older reports significantly reduced the age profile of cases. The balanced scorecard for performance due to launch in April 2024 will give a fairer picture;
 - we have already introduced a complexity rating for cases that go to investigation, and this will filter through in subsequent reports;
 - there is no objection to cross-skilling but equally no capacity among other teams to achieve it.
14. The Chair highlighted the need for more data on TQL applications to identify the cause for the uplift in numbers. Sam Townend KC restated the Bar Council's willingness to assist with any research undertaken. He also noted that chambers had not seen any appreciable rise in the number of barristers originating from either of the two countries identified. This suggests they are seeking Call but have no intention of practising at the Bar in England and Wales. Sophie Maddison confirmed that this seems to be the case.

15. In the light of this, Steve Haines queried the efficacy of the current situation given there is no obvious means to stem demand. He also followed up on a query raised by Nick Vineall KC about cost. Though we have agreed to increase fees in line with inflation with effect from 2024/25 we have yet to complete a full cost recovery analysis, and this is not due until the early part of next year. In his view, this is too late.
16. **AGREED**
- a) to note the report and the continuing high quality of work delivered by the regulatory decision making teams.
 - b) that future reports give a fuller explanation of cases where delays to progress are outside the control of the BSB. SJ to
note
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 - c) to investigate the reasons for the rise in applications from overseas lawyers seeking to transfer to the Bar for England and Wales and to involve the Bar Council as necessary.
 - d) that the Executive considers expediting its full cost recovery analysis of authorisation applications. RF

Item 7 – Annual report to the Board on Bar Training

BSB 052 (23)

17. The Board considered the annual report on Bar Training (the second in the series) and spoke positively about the document's coverage and readability. In response to questions raised, the Executive stated that:
- the pupillage uptake in Figure 1 of the report only applies to the 2021/22 cohort. The remaining places would have been taken up by barristers from earlier cohorts. We are aware that some places were not filled in the Northern Circuit but action is in hand to address that;
 - the comment in the report about bullying and harassment reflect themes identified through supervision work. BSB has worked directly with Authorised Education Training Organisations (AETOs) and addresses this issue through pupil supervisor training courses. A key objective of our chambers' initiative is to reform working cultures so that this type of behaviour is not tolerated.
18. The Chair reinforced the latter point. She also welcomed the support of the Bar Council Chair who has likewise challenged inappropriate behaviour at the Bar. She emphasised that training providers must act in line with their policies and in a consistent manner.
19. Members also commented as follows:
- it would be concerning to lose any pupillage providers but the report states that some Pupillage Training Organisations have yet to formally apply for AETO status;
 - a limited pool of pupillages creates extra challenges for achieving diversity targets. It would be helpful to know the publication date for the research work on barriers to diversity in pupillage recruitment. *Note: the Executive confirmed this should be available in the early part of the New Year,*

20. Simon Lewis raised the following points:
- we should follow up on the points about pupillage which the report identifies;
 - the evidence about cheating requires a decision to revert to pen and paper but we might reconsider the position in the longer term, possibly learning from other organisations in terms of good practice;
 - some of our assessments still require students to complete answers via a computer (eg for Drafting). Where students do use computers (but not online exam delivery systems) for AETO assessments, it would be helpful to know the effectiveness of the software used by them to detect plagiarism;
 - the report identifies a fall in part-time students. This is unfortunate because alternative pathways are an effective means to diversify the profession and the reasons for the decline (possibly a lack of course availability) might usefully be investigated.
21. In response, Mike Molan and Victoria Stec stated that:
- the integrity of our examinations is paramount so reverting to pen and paper was the only option available to us at the time. This decision will be kept under review, but we have to be satisfied there is no risk to the assessment;
 - the plagiarism detection software only applies to provider-based assessments, not the BSB central examinations, but used properly (ie not in isolation, but with human intervention) it has proved useful.
22. **AGREED**
- a) to note the report and authorise its publication.
 - b) that the Executive provides in due course further information on the re-authorisation of pupillage providers and on the uptake / availability of part-time courses.

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note**

Item 8 – Interim Suspension – Consultation response

BSB 053 (23)

23. Sara Jagger confirmed that, following a suggestion from the Legal Services Consumer Panel, we are now seeking to add a new criterion of “*protecting the public or the public interest*” in addition to those of clients, as grounds for referral of a barrister to an interim suspension panel. This is a clarification of wording only because we have always interpreted client protection / interests as having this wider context. There are no other changes to the documents from those seen earlier in the year by the Board.
24. Jeff Chapman KC welcomed the proposal which he regarded as necessary to fill gaps in the powers of Disciplinary Tribunals. Alison Allden sought assurances around the time it will take to launch the revised regulations.
25. In response, Ahmet Arikan confirmed that a two-week turnaround time is likely to be required. We need to seek approval from the Legal Services Board to implement the change after which it will take immediate effect.
26. **AGREED**
- a) to approve publication of the consultation response document (Annex A).
 - b) to approve the final proposed changes to Disciplinary Tribunal Regulations and the Interim Suspension and Disqualification Regulations (Annex B).

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Item 9 – Governance, Risk & Audit (GRA) Committee Annual Report 2023

BSB 054 (23)

27. Stephen Thornton introduced the report and highlighted in particular the insightful contributions of the Committee's independent members. He also thanked Andrew Mitchell KC for chairing meetings in his absence and Rebecca Forbes for her administrative support. The Board **noted** the report.

Item 10 – Performance & Strategic Planning Committee – Mid Year Report 2023/24

BSB 055 (23)

28. Steve Haines highlighted the progress made on the balanced scorecard for performance. Though this is welcome, there remains a residual risk that necessary changes to IT software will not be ready in time for the planned launch in April 2024. The Committee has therefore asked the Executive to prepare the minimum viable product that will meet this deadline. The Board **noted** the report.

Item 11 – Reform of the BSB's Regulatory Capacity

BSB 056 (23)

29. Mark Neale highlighted:
- the continuing good progress in the delivery of the plan;
 - some amendments to the milestones / timetable as set out in Annex A;
 - the stock take of our "Assuring Competence" programme which has identified four projects to take forward.
30. The Chair also welcomed the revised RAG rating scheme as requested at the last meeting.
31. In response to questions raised, Mark Neale stated that:
- plans are in hand to revise our operating model in 2024. This needs to be informed by the ongoing review of enforcement and authorisations;
 - the final report from Fieldfisher will be presented to the Board in April 2024.
32. **AGREED**
- a) to note the latest analysis of progress against the reform commitments as set out in Annex A.
 - b) to note the new RAG rating scheme.
 - c) to approve the draft assurance letter to the Legal Services Board as set out in Annex B.

MN**Item 12 – Director General's Report – Public Session**

BSB 057 (23)

33. The Board **noted** the report. Members commented positively on the Chair and Director General's contribution to a recent meeting of the Justice Select Committee.

Item 13 – Dates of Board Meetings January 2024 – March 2025

BSB 058 (23)

34. The Board **approved** the schedule of meetings as set out in the paper.

Item 14 – Chair’s Report on Visits and External Meetings

BSB 045 (23)

35. The Board **noted** the report.

Item 15 – Any Other Business

Nick Vineall KC

36. Nick Vineall KC stands down as Chair of the Bar Council at the end of the year and the Chair expressed her thanks for his contribution as a critical friend for the BSB. She welcomed the appointment of Sam Townend KC who takes over the role with effect from January 2024.

Item 16 – Date of next meeting

37. Thursday 25 January 2024.

Item 17 – Private Session

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

- (1) Approval of Part 2 (private) minutes – 5 October 2023.
- (2) Matters arising and action points – Part 2.
- (3) Authorisations Review Project
- (4) Handbook Review update, 2023-2025
- (5) Corporate Risk Report.
- (6) Bar Standards Board Business Plan & Budget 2024/25
- (7) Director General’s Report – Private Session.
- (8) Reappointment of Board Members
- (9) Any other private business.

39. The meeting finished at 5.55 pm.