

BAR STANDARDS BOARD

REGULATING BARRISTERS

Part 1 - Public
Minutes of the Bar Standards Board meeting
Thursday 16 July 2020 (4.00 pm)
via MS Teams

- Present:** Baroness Tessa Blackstone (Chair)
Naomi Ellenbogen QC (Vice Chair, BSB)
Alison Allden OBE
Lara Fielden
Steve Haines
Elizabeth Prochaska
Irena Sabic
Nicola Sawford
Adam Solomon QC
Kathryn Stone OBE
- By invitation:** Derek Sweeting QC (Vice Chair, Bar Council)
Grant Warnsby (Treasurer, Bar Council)
Malcolm Cree CBE (Chief Executive, Bar Council)
James Wakefield (Director, COIC)
- BSB & RG Executive in attendance:** Richard Cullen (Director of Finance)
Rebecca Forbes (Head of Governance & Corporate Services)
Oliver Hanmer (Director of Regulatory Operations)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
Mark Neale CB (Director General)
John Picken (Governance Officer)
Victoria Stec (Head of Authorisation)
Wilf White (Director of Communications and Public Engagement)
- Press:** Jemma Slingo, Law Society Gazette
Neil Rose, Legal Futures
Catherine Baksi, The Times

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting.

2. **Item 2 – Apologies**

- Andrew Mitchell QC
- Leslie Thomas QC
- Stephen Thornton CBE
- 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 Thursday 21 May 2020.

Item 5a – Matters arising

5. None.

Item 5b – Forward Agenda (Annex B)

6. Members noted the forward agenda list.

Item 6 – Health Emergency: update on risks and longer-term implications

BSB 028 (20)

7. Mark Neale referred to the centralised examinations taking place in August, under remotely proctored conditions in association with Pearson VUE. He stated that BSB fully acknowledged its responsibility to ensure that, as far as reasonable, the examinations were accessible to students. He also paid tribute to the substantial extra work undertaken by the Examinations Team in this respect.
8. Oliver Hanmer summarised the scale of the task. The salient points were:
- 2619 students are taking assessments in August (this equates to 6487 “bookings” since each student sits several examinations). Of these, 364 have made requests for “reasonable adjustments” (a total of 871 bookings);
 - some requests can be accommodated in a way which still means examinations can be taken at home. For others, the best fit solution is either to offer a place at a Pearson VUE assessment centre or via course providers;
 - to date 216 bookings for reasonable adjustments have been made for home-based students and 209 attending test centres, leaving 446 to be completed;
 - bookings remain open until 29 July 2020 and can be re-opened if necessary. Every reasonable effort will be made to find solutions for students who have not yet been accommodated, either through test centres or via online proctoring. At present there are only 9 of these (6 in the UK and 3 overseas).
9. Members acknowledged the work done to make the examinations operate in as fair and accessible way as possible, given the circumstances. In response to questions raised, Oliver Hanmer stated that:
- we are in contact with the nine candidates identified above and are actively seeking solutions. However, we also need to preserve the integrity of the examinations meaning we need to strike a balance between what is reasonably feasible and what is not;
 - course providers are supporting their students and sending us relevant information. There will be an opportunity to further review our operational relationships with them after the examinations are completed.
10. Amanda Pinto QC noted this update and, with the Chair’s agreement, will now reference the ongoing work in a statement to the Bar on 17 July 2020.
11. Mark Neale also referred to pupillage and commented that:
- we have discussed this issue with the Bar Council and the Inns of Court;
 - the full effect on recruitment cannot, as yet, be accurately estimated but it is likely that some pupillages will be withdrawn next year;
 - there is no immediate risk for existing pupils, but some may have their pupillage period extended causing a knock-on effect for future recruitment.
12. In the context of the health emergency, and for Members’ information, Amanda Pinto QC summarised headline figures from the most recent survey of the Bar (the findings of which are yet to be formally published) ie
- 29% of publicly funded practitioners and 38% of criminal barristers are unsure that they will renew their practising certificates;
 - barrister incomes are expected to drop very significantly this year. Fee income has been reduced by an average of just under 60% across the board.

Part 1 - Public

13. Malcolm Cree confirmed that a fall in barrister incomes this year will result in much reduced funding for the General Council of the Bar (GCB) in 2021/22. In consequence the GCB will seek a bank loan under the government backed Coronavirus Business Interruption Loan Scheme (CBILS) to bridge this gap.
14. Members expressed serious concern about the survey findings. Were barristers to leave the profession in the numbers predicted, it would severely affect and imperil the justice system, to the detriment of access to justice and the public interest.
15. In response to questions raised, Amanda Pinto QC stated that:
- the underlying assumption in Government seems to be that matters will resolve themselves once courts return to normal business. This does not address the immediate needs of barristers already in financial hardship who cannot wait for longer term solutions to emerge;
 - the Inns and the Barristers' Benevolent Association (BBA) continue to support barristers (the latter has already given out one quarter of its available finance);
 - it may be possible to segment the survey data further eg sector of the Bar / level of call / geographical area which would enhance our understanding of risk;
 - there are risks around diversity. The Government's introduction of out of hours hearings and extended court hours underappreciates the detrimental effect on childcare arrangements. This disproportionately affects women barristers and is another fact which, cumulatively, could result in a decision to stop practising;
 - the Bar Council is heavily engaged with key players about the backlog of cases. Numbers are still increasing in part due to social distancing measures which the courts now have to observe;
 - the MoJ's modelling to reduce the backlog assumes that Covid-19 will no longer be an issue from May 2021, though the basis for this assumption is not clear;
 - the new "Blackstone Courts" are better suited to non-criminal work (due to lack of security measures). Existing combined courts will therefore be used primarily for criminal cases, but that estate has limited technological and staff capacity;
 - productivity would improve were cases listed more efficiently than at present but actually effecting this change through the MoJ is proving very difficult to achieve.
16. In response to a question about government backed bridging finance, Bar Council representatives commented as follows:
- CBILS is unpopular because most chambers do not wish to take on more debt and the scheme incorporates personal guarantees. This means if practitioners leave chambers, those remaining increase their liability. In addition many barristers use private accounts and CBILS is built around business accounts;
 - the bounce back loan is more popular though many practitioners have reported difficulties in accessing the scheme;
 - furloughing has helped chambers to reduce costs (average figures are 71% furloughed clerks and 46% furloughed staff).
17. The Chair acknowledged the very serious position faced by the profession and gave an assurance that the BSB's own business plans would take this into account. She noted the regulatory issues around the sustainability and diversity of the Bar and accordingly supported the efforts of the Bar Council to engage with Government.
18. **AGREED**
- a) to note the report and to endorse the Executive's approach to managing the risks to our regulatory objectives.
 - b) to thank the Bar Council for sharing its latest survey results and to note with concern the serious threat to the Bar, especially the publicly funded sector, and by extension the risks to access to justice and the diversity of the Bar.
 - c) to also note the increased risks around next year's financing of the GCB and thereafter.

Item 7 – Establishment of a Board Reference Group for the Code of Conduct Review

No paper

19. Ewen Macleod referred to a previously circulated request for volunteers to form a Reference Group for the Code of Conduct Review. Four Board Members have since offered to help (two barristers, two lay) so we will now proceed as planned. We can also accommodate additional Members (particularly lay) if anyone further would like to volunteer.

(Post meeting note: since the meeting, one more lay and one more barrister Members have volunteered to join the Reference Group).

20. AGREED

to note the report.

Item 8 – Director General’s Strategic Update (public session)

BSB 029 (20)

21. In the light of the Black Lives Matter protests, Mark Neale supplemented his report with an oral update on actions around racial equality. The salient points were:

- we will issue a statement in the Autumn setting out our expectations of chambers in promoting racial equality and combating discrimination;
- the BSB will survey its own BME staff with the aim of identifying any perceived equality issues and introduce reverse mentoring.

22. Amanda Pinto QC welcomed this initiative which can dovetail with others discussed at a meeting held earlier in the day between the Law Society, the SRA, the BSB and the Bar Council.

23. AGREED

to note the report and to request the draft statement be presented at the September Board meeting.

(Post meeting note: due to the consultation time required, the draft statement will not be ready in time for the September meeting. It will be circulated to Members out of cycle as soon as possible thereafter).

MN

Item 9 – Chair’s report on visits and external meetings

BSB 030 (20)

24. The Board **noted** the report.

Item 10 – Any Other Business

25. None.

Item 11 – Date of next meeting

26. • Thursday 24 September 2020 (Board Away Day / Board meeting)

Item 12– Private Session

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

- (1) Approval of Part 2 (private) minutes – 21 May 2020 & 26 June 2020;
- (2) Matters arising and action points – Part 2;
- (3) IGR Certificate of Compliance;
- (4) Financial prospects: framing the Bar Standards Board Business Plan and Budget 2021/22;
- (5) Director General’s Strategic Update – private session;
- (6) Any other private business.

28. The meeting finished at 4.50 pm.