

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Part 1 - Public
Minutes of the Bar Standards Board meeting
Thursday 11 April 2024 (5.00 pm)

Hybrid Meeting, Rooms 1.4-1.7, BSB Offices & MS Teams

- Present:** Andrew Mitchell KC (Acting Chair)
Gisela Abbam – via Teams
Jeff Chapman KC
Emir Feisal JP
Steve Haines
Simon Lewis – via Teams
Kathryn Stone OBE – via Teams
Irena Sabic KC
Stephen Thornton CBE
- By invitation:** Ian Busby (Consultant at Fieldfisher)
Sarah Ellson (Partner, Fieldfisher)
Malcolm Cree CBE (Chief Executive, Bar Council)
Ailís Lockhart (BTAS Registrar and Head of Administration)
Lorinda Long (Treasurer, Bar Council);
Sam Townend KC (Chair, Bar Council)
James Wakefield KC (Hon) (Director, COIC)
- Press:** Jonathan Ames, The Times
Neil Rose, Legal Futures – via Teams
- BSB Executive** Jameelah Bangali (Project Manager) – via Teams
Laura Cassidy (Stakeholder Engagement Officer)
Christopher Fitzsimons (Communications Manager)
Rebecca Forbes (Head of Governance & Corporate Services)
Teresa Haskins (Director of People, BSB)
Saima Hirji (Acting Director of Regulatory Operations)
Sara Jagger (Director of Legal and Enforcement)
Ewen Macleod (Director of Strategy & Policy) – via Teams
Rupika Madhura (Interim Director of Standards) – via Teams
Mark Neale (Director General)
John Picken (Governance Officer)
Paul Pretty (Head of Investigations & Enforcement) – via Teams
Wilf White (Director of Communications & Public Engagement)

Item 1 – Welcome / Announcements

Action

Note: Andrew Mitchell KC kindly agreed to chair the meeting as the Chair was participating online

1. The Acting Chair welcomed those present, in particular Ian Busby and Sarah Ellson from Fieldfisher.

2. **Item 2 – Apologies**

- Alison Alden OBE
- Professor Leslie Thomas KC

Item 3 – Bar Standards Enforcement Review: Final report from Fieldfisher

BSB 024 (24)

3. At the Acting Chair’s invitation, Mark Neale commented as follows:
- the current approach to investigations was put in place in 2019;
 - over the past five years, the volume and complexity of reports received from barristers, and their investigation, has significantly increased;
 - our enforcement work has nevertheless delivered consistently high quality results, as well as recent improvements in productivity;
 - that said, the Board also agreed that a review to benchmark BSB operations against best regulatory practice would be timely. That report, commissioned by Fieldfisher, has now been completed.
4. Sarah Ellson and Ian Busby (collectively “Fieldfisher”) stated that:
- the report focused on the end-to-end enforcement process including the Bar Tribunal and Adjudications Service (BTAS) as well as the BSB;
 - its scope related to the fitness for purpose of enforcement processes, the effectiveness of its decision making, and the potential for improvement;
 - the report concluded that the BSB enforcement model is both in line with, and appropriate to, other regulatory bodies, but there is still capacity to further improve its function.
5. In this respect the key themes identified were:
- a senior executive role responsible for the effectiveness of the end-to-end process of enforcement (including BTAS interface) needs to be created;
 - staff sometimes face challenges in accessing the right knowledge and expertise in order to deliver timely and effective operations;
 - improvements are needed to the case management system ie better communication and co-ordination;
 - many individuals submitting reports lack knowledge about the BSB’s enforcement process and what it can, and cannot, achieve.
6. Members welcomed the thorough and comprehensive nature of the report. In response to the Board’s observations, Fieldfisher stated that:
- they consider a one-stage triaging system would be more efficient ie the Contact and Assessment Team (CAT) would be responsible for identifying which cases to investigate further. Other regulators have used similar models successfully. *Note currently we have a two-stage process involving case recommendations by CAT and acceptance (or non-acceptance) of these by the Investigations Team;*
 - systemic problems that were present around IT functionality and the business process model are now being actively addressed with the aim of achieving much closer interaction between IT and staff using those systems;
 - the BSB relies heavily on remote working and this creates a general challenge around knowledge sharing and communication. Our recommendations therefore seek an achievable balance between modern working practices and effective knowledge management;

- it is for the BSB to determine which of the options for an end-to-end enforcement process it wishes to approve. *Note: Fieldfisher reviewed the CAT Team only in the context of enforcement, but its remit extends beyond that. The BSB therefore needs to bear this in mind when making a final decision on structure.*
7. Jeff Chapman KC referred to those making reports about barristers ie
- 1,500 – 1,700 of these are received each year;
 - typically, 85% of these are found to have no prima facie basis for proceeding and are dismissed;
 - the Fieldfisher report comments negatively on the amount of time spent on these “low value” reports (cf. para 2.2.5) but these enquiries are still received and need a reply. In many cases the person making the report was coming to the BSB as a last resort and was unlikely to be deterred from doing so.
8. In response, Fieldfisher stated that:
- we need to strike a balance that gives proper care and respect to those making enquiries but avoids prolonged communication if the criteria necessary to continue reports has not been met.
 - misperception about the BSB’s enforcement role (and consequent dismissal of reports) is unfortunate because these then correlate to high dissatisfaction rates on the part of those making reports;
 - there needs to be a change in emphasis so that misguided reports are not pursued, either through appropriate re-direction or early closure.
9. Simon Lewis asked about the cost of enforcement regulation. Fieldfisher replied that:
- their remit was around fitness for purpose and seeking improvements. Costs were therefore considered out of scope as it was not designed as an efficiency review;
 - their report identifies several recommendations which may have cost implications but how and when these are accepted / implemented is a matter for the BSB to decide.
10. **AGREED**
to thank Fieldfisher for the insightful report and recommendations.

**Item 4 – Executive response to the Enforcement Review
Recommendations**

BSB 025 (24)

11. Sara Jagger highlighted the executive’s response as follows:
- all the report’s recommendations were agreed in principle and our initial responses are set out in Annex 1 (BSB) and Annex 2 (BTAS);
 - we have several options / interdependencies as to how recommendations might be addressed (cf. paragraph 5) and we shall aim to work up a detailed implementation plan by July 2024;
 - the operational aspects of the report can proceed without formal Board approval, though others require further consideration (cf. min 15);
 - many of the recommendations will be implemented during the current financial year. With the exception of the Part 2 Code Review of the Handbook, we would aim to complete any others by year end 2025-26.

12. Members discussed the report's reference to low satisfaction rates of those who send reports (cf. min 8). The following points were made:
- BSB satisfaction surveys have run at low levels over many years, so this finding is not surprising. Every regulator across all remits has had challenges in disaggregating outcome with satisfaction;
 - better explanations as to why reports do not proceed might help but we are nevertheless unlikely to see high satisfaction rates.
Note: these rates were low even when decision letters used to be drafted by barristers from the Professional Conduct Committee;
 - finding the balance between time, cost and fair process has always been difficult. Any decision we make to dismiss reports still needs to be properly stated, otherwise we could risk judicial review;
 - some financial regulators make initial contacts by telephone and that can prove helpful. *The Acting Chair noted this point but expressed concern that it would not reduce (and could increase) transaction time;*
 - we use the BSB's website as the principal conduit to assist those making reports but, even though survey respondents thought the site was helpful, this did not translate to reasonable satisfaction rates on outcomes;
 - it suggests that those concerned choose to make reports irrespective of the site's explanations on eligibility because other factors, in some cases emotionally driven ones, have overriding priority. Moreover, reports are often made at a point when those concerned have previously engaged in a legal process which has already left them disappointed.
13. Steve Haines asked about future implementation costs and the net effect of this ie whether additional costs early on might be compensated by greater efficiencies later leading to a zero-sum outcome. In response, the executive stated that:
- the review was not predicated on a cost neutral basis;
 - the budget already makes provision for implementation costs, some of which will be one-off and others which are currently "in principle" only;
 - there may be additional costs, but these will be for the Board to determine as and when they arise. *Note: Steve Haines emphasised that any costs in excess of the existing budget for enforcement review implementation must then require prior approval by the Board.*
14. Stephen Thornton asked that future iterations of the executive response clarify timescales for the implementation plan. In response to other points made by the Board, the executive commented that:
- the enforcement review is one part of a larger, overall reform programme;
 - we support the concept of a one-stage triage system (cf. min 6) but implementation of associated recommendations may mean amending our Handbook regulations. Appropriate staff training will be needed;
 - prior to 2019, assessment and investigation teams were managed as a single Department. The current proposals on structure are similar in essence to this but not an exact replica;
 - the preferred choice of a "single owner" for the end-to-end process (cf. para 3.1.4. iii) is considered the best long-term option. Others ie cross-departmental groups / matrix management structures, may be difficult to operate in the context of the wider organisation and may not be as sustainable.

15. The Acting Chair noted the indicative nature of the statement on end-to-end processes ie that this should just be a preferred steer at present, pending further discussion on formal proposals about structure and associated costs. Members agreed this and also approved the remaining recommendations in paragraph 4 of the executive’s report about BTAS and Tribunal arrangements and other operational matters.
16. With the permission of the Acting Chair, Sam Townend KC, Chair of the Bar Council, in an observer capacity, reflected on the Fieldfisher report as well as earlier changes to Key Performance Indicators (KPIs). He expressed several concerns ie:
- KPI results on the timeliness of investigations are still poor even though the number of new investigations per month is now quite low (under 20);
 - the Board’s decision in March 2024 to change KPIs for investigations from 25 weeks to 38 weeks is surprising given existing feedback on the need to improve timeliness. In addition, Fieldfisher considers a 25 week target achievable once its recommendations have been implemented;
17. The BSB is facing significant demands on its time and there is a limit to what it can reasonably achieve. In consequence it should dial back on wider “before the event” compliance activities and instead focus on performance improvements for (i) investigations and (ii) authorisations.
18. Although observer comments are noted but not generally debated, the Acting Chair invited a response from the DG. Mark Neale agreed the need for performance improvement, and said that the BSB expects to see better productivity and faster turnaround of investigations as a result of the recommendations. KPIs should not, however, be regarded as “norms” but rather as “tolerance parameters”. A minority of investigations will still be complex and contested so would be unlikely to be completed within 25 weeks.
- Note: our new target is to complete 80% of investigations in **no more than 38 weeks** (with many likely to be achieved much earlier, though we also know that very complex cases will take longer).*

19. **AGREED**

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| a) | to approve the steers set out in paragraph 4 of the executive’s report on the enforcement review concerning: | MN to note |
| | <ul style="list-style-type: none">• creation of a senior executive role to take full responsibility for the end-to-end enforcement process (cf. para 4 i)• “in principle” acceptance of proposals to improve the BTAS and Tribunal arrangements (cf. para 4 ii and para 44, 8.1, 8.2 and 8.4)• other operational matters and proposals for future amendments to the Handbook (cf. para 4 iii) | MN |
| b) | that these steers be developed into formal proposals that also include relevant timelines and cost estimates. | MN |
| c) | that the executive seeks prior Board approval for any costs in excess of budget of the enforcement review. | MN |
| d) | to note the comments made by the Chair of the Bar Council (cf. mins 16-17). | |

Item 5 – Any Other Business

20. None

Item 6 – Date of next meeting

21. Thursday 23 May 2024, 2 pm

Item 7 – Private Session

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

(1) Reform & re-structure of the Bar Standards Board

23. The meeting finished at 6.05 pm.