

*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 16 July 2020, 4 pm**

**via MS Teams**

**Agenda - Part 1 – Public**

				<b>Page</b>
1.	<b>Welcome / announcements (4.00 pm)</b>		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of Part 1 (public) minutes</b>			
	• 21 May 2020	Annex A	Chair	<b>3-6</b>
5.	a) <b>Matters arising (no action list included as all previous items completed)</b>		Chair	
	b) <b>Forward agenda</b>	Annex B	Chair	<b>7</b>
6.	<b>Health emergency: update on risks and longer-term implications (4.05 pm)</b>	BSB 028 (20)	Mark Neale	<b>9-10</b>
7.	<b>Establishment of Board Reference Group for the Code of Conduct Review (4.15 pm)</b>	oral report	Ewen Macleod	
8.	<b>Director General's Strategic Update (public session) (4.20 pm)</b>	BSB 029 (20)	Mark Neale	<b>11-12</b>
9.	<b>Chair's Report on Visits and External Meetings (*)</b>	BSB 030 (20)	Chair	<b>13</b>
10.	<b>Any other business (4.30 pm)</b>			
11.	<b>Date of next meeting</b>			
	• Thursday 24 September 2020 (Board Away Day & Board meeting)			
12.	<b>Private Session</b>			
	<b>John Picken Governance Officer 9 July 2020</b>			

*\*Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](#) before the meeting.*



BAR STANDARDS BOARD
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REGULATING BARRISTERS

**Part 1 - Public**  
**Minutes of the Bar Standards Board meeting**  
**Thursday 21 May 2020 (5.00 pm)**  
**via Star Leaf**

- Present:** Baroness Tessa Blackstone (Chair)  
 Naomi Ellenbogen QC (Vice Chair, BSB)  
 Alison Alden OBE  
 Lara Fielden  
 Steve Haines  
 Andrew Mitchell QC – by phone  
 Irena Sabic  
 Nicola Sawford  
 Adam Solomon QC  
 Kathryn Stone OBE – by phone  
 Leslie Thomas QC – by phone  
 Stephen Thornton CBE
- 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 Executive in attendance:** Joseph Bailey (Policy Manager – Handbook Review)  
 Rebecca Forbes (Head of Governance & Corporate Services)  
 Oliver Hanmer (Director of Regulatory Operations)  
 Sara Jagger (Director of Legal and Enforcement)  
 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

**Item 1 – Welcome / Announcements**

1. The Chair welcomed Members to the meeting and congratulated Leslie Thomas QC on the birth in May of his daughter, Alisa.
2. **Item 2 – Apologies**
  - Elizabeth Prochaska
  - Amanda Pinto QC (Chair, 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 Thursday 19 March 2020.

**Item 5a – Matters arising**

5. (i) **Proposed arrangements for centralised examinations**  
BSB 017 (20)
- I. Victoria Stec asked the Board to ratify its earlier decision in respect of online arrangements for the BSB's examinations in August 2020. She confirmed that a contract with Pearson Vue has now been agreed.
  - II. The Chair welcomed the paper and thanked the Examinations Team for their work in making these arrangements possible. She noted that results are due out in November but asked the team to investigate whether this could be done any sooner.
  - III. **AGREED**  
to confirm the Board's decision, taken out of cycle, to approve the development of a computer based system for centralised assessments in August 2020.
- (ii) **Action List (Annex B)**  
The Board noted progress on the action list.

VS to  
note**Item 5b – Forward Agenda (Annex C)**

6. Members noted the forward agenda list.

**Item 6 – Health Emergency: BSB response**

BSB 018 (20)

7. Mark Neale summarised the salient points of the paper which concerned the BSB's response to the coronavirus health emergency (both short and longer term action).
8. Derek Sweeting QC commented as follows:
- there is growing evidence that the detrimental effect on barrister income will affect many sections of the Bar and not just those mentioned in the report;
  - these include some, eg the Chancery and Commercial Bars, which contribute substantially to overall income from the practising certificate fee;
  - the Bar Council intends to survey chambers about the impact of lockdown and is willing to share any feedback with the BSB.
9. He also queried the decision to continue with the planned investment in the BSB's case management system and so forego a short term saving of £170k.
10. Grant Warnsby noted the decision not to furlough BSB staff for the present. He asked whether this might be introduced, even for a short period, in the near future. He also highlighted a potential longer-term effect of lockdown on social mobility within the Bar and asked for the BSB's comment on this point.
11. Mark Neale acknowledged the emerging nature of the financial impact on the Bar and welcomed the offer of data sharing. In respect of the other points he commented that:
- an automated system for student registration is necessary because we now have several different pathways to qualification. The alternative of using manual systems to monitor student progress would be complex and resource intensive and offer less value for money overall;

- the BSB will keep the option to furlough under review. In the meantime, and with well-being in mind, we are encouraging staff to take annual leave (notwithstanding that many have already cancelled their original plans);
- the BSB's Senior Management Team is aware of the possible impact on diversity at the Bar as a result of changes brought about by the health emergency. This featured in discussions about the infrastructure of support that chambers currently provides and remains a point of concern.

12. **AGREED**

to note the paper and endorse the Executive's response to date in meeting its short, and longer-term objectives arising from the health emergency.

**Item 7 – Year-end report of the Planning, Resources & Performance Committee (PRP)**

BSB 019 (20)

## 13. Steve Haines highlighted the following:

- the dashboard summary that was originally circulated referred, in error, to the performance figures for Q4 rather than those for Year End. A corrected version will be published on the website after the meeting;  
*[Note: this is now [available](#) and shows that 7 key performance indicator (KPI) targets were met by year end and 6 missed – 1 only marginally]*
- the Committee has reflected on the lean resourcing model and considers this to be a contributory factor in missing KPI targets. There were several periods of under staffing during the year which impacted our overall capacity, particularly for the Investigations Team;
- teams are now at full strength with a “get well” plan in place. Subject to no additional impact from Covid 19, KPIs should be met in full by Q3.

## 14. In response to a question about how the KPIs have changed following Departmental restructure, the Executive commented as follows:

- for the new Contact and Assessment Team (CAT), the KPIs set response time targets for:
  - answering initial enquiries;
  - referral of cases to other Departments and their subsequent conclusion.
- for Enforcement, the points to note are:
  - a new KPI for turnaround times on cases referred from CAT;
  - a modified KPI for investigation of allegations measuring the time to conclude cases as from the date of referral;
  - additional quality indicators concerning decisions by the Independent Reviewer and appeals against administrative sanctions.

15. **AGREED**

to note the year-end performance report and the assurance given by the PRP Committee in respect of its scrutiny of the quarterly performance reports.

**Item 8 – Proposed amendments to the Standing Orders for Joint Committees and the BSB Constitution**

BSB 020 (20)

## 16. Rebecca Forbes commented as follows:

- the proposed changes to the Standing Orders for Joint Committees are required for compliance with the new Internal Governance Rules (IGR);
- the proposed constitutional changes relate to the reappointment of Members. No concerns were raised by the Bar Council following consultation;
- the LSB require the Board to send it a Certificate of Compliance with the IGR by 23 July 2020 together with an appropriately worded Board resolution.

17. **AGREED**
- a) to approve the proposed amendments to the Standing Orders for Joint Committees, including authority for the Executive to make the necessary changes to language for gender neutrality only. **RF**
- b) to approve the proposed amendments to the BSB's Constitution. **RF**
- c) to request the GRA Committee to review a draft of the Certificate of Compliance and associated Board resolution at its meeting on 7 July 2020 and for the Board to consider any recommendation arising from this by email prior to 23 July 2020. **RF**

**Item 9 – Handbook Review**

BSB 021 (20)

18. Ewen Macleod commented as follows:
- the scope and timescales of the Review (to be rebranded “Review of the Code of Conduct”) have been changed in line with the Board’s earlier guidance;
  - the paper also addresses how wider policy issues will now be managed, given they no longer form part of the review.

**19. AGREED**

to approve the revised scope and timescales of the Review of the Code of Conduct.

**Item 10 – Director General’s Strategic Update (public section)**

BSB 022 (20)

20. The Board **noted** the Director General’s report.

**Item 11 – Chair’s report on visits and external meetings**

BSB 023 (20)

21. The Board **noted** the report.

**Item 12 – Any Other Business**

22. None.

**Item 13 – Dates of next meetings**

- 23.
- Tuesday 7 July 2020 (joint meeting with OLC Board);
  - Thursday 16 July 2020 (Board Away Day);
  - Thursday 24 September 2020 (Board meeting, preceded by joint meeting with the LSB).

**Item 14– Private Session**

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

- (1) Approval of Part 2 (private) minutes – 19 March 2020;
- (2) Matters arising and action points – Part 2;
- (3) LSB Strategy Review;
- (4) Corporate Risk Report;
- (5) Revised Financial Forecasts 2020/1, 2021/22, 2022/23;
- (6) Director General’s Strategic Update – private session;
- (7) Any other private business.

25. The meeting finished at 5.30 pm.

## Forward Agenda

### **Thursday 24 September 20 (BOARD AWAY DAY)**

- Handbook Review – principles and approach
- Mayson Review

### **Thursday 24 September 20 (Board Meeting)**

- Regulatory Decision Making Performance Report 2019/20
- IDB Annual Report
- Budget 2021/22
- Consolidated Risk Report
- Assuring Competence
- Proposed changes to BSB Standing Orders
- Board Evaluation Survey – outcome

### **Thursday 26 November 20**

- PRP mid-year performance report
- GRA Annual Report
- Corporate Risk Report (summary)
- Computer based assessment – review
- Fee proposals – ethics examination

### **Thursday 28 January 21**

### **Thursday 25 March 21**

- Consolidated Risk Report
- Regulatory Return





## Health emergency: update on risks and longer-term implications

### Status

1. For noting and discussion.

### Executive Summary

2. This paper sets out how the Executive has identified risks (both corporate and regulatory) arising out of the health emergency and updates the Board on the actions in hand to manage the risks in a number of key areas. The Governance, Risk & Audit Committee reviewed the detailed logs (not attached to this paper) at its meeting on 7 July and expressed itself satisfied that the risks were well managed.

### Recommendation

3. The Board notes and endorses our approach to managing the risks to our regulatory objectives arising from the health emergency and notes the progress on a number of fronts.

### Identifying and managing risks

4. At the last meeting of the BSB Board, during discussion of the most recent Corporate Risk Report, the Board questioned whether “our risk response was properly comprehensive in its scope”, including of the risks arising from the health emergency. The Executive maintains a separate COVID 19 log which captures the decisions taken by BSB in response to the many issues thrown up by the crisis. The log has been populated by colleagues in the Risk Forum. The log also allows us to capture information on the wider implications for our teams or stakeholders arising from the issues and the decisions taken. SMT now reviews the log every month. This provides an opportunity to reflect on any decisions or actions taken, but also to look at the longer-term implications. SMT also considers the log alongside the Corporate Risk Register and has agreed a number of new risks and revisions to the corporate risk register itself.
5. Turning to the longer-term implications of the crisis, we maintain a separate analysis in the log to allow us to identify and track all those future implications including those which the Governance, Risk and Audit Committee identified in response to the Executive’s May paper on the emerging repercussions of the crisis. The Risk Forum also assesses these longer-term implications, as does the Equality and Access to Justice Team in respect of the diversity concerns. These discussions enable us to capture evidence bearing on the materialisation of the risks we have identified.

### Commentary

6. The Governance, Risk and Audit Committee scrutinised these logs at its meeting on 7 July and was satisfied as to their completeness. It may, however, be helpful to use this paper to update the Board on a number of dimensions of the crisis, both short- and longer-term.

#### *Centralised assessments*

7. The Board will recognise that a major focus of our work since the outset of the crisis has been on the centralised assessments - in civil and criminal litigation and ethics – which contribute to the overall assessment of students’ performance in Bar training. Following the abandonment of the April sitting of the examinations, we have sought to keep two objectives in balance. We want to ensure that students are able to take forward their

careers and, in particular, that those students seeking to enter pupillage in Autumn 2020 are able to pursue that option. At the same time, we want to maintain the rigour and fairness of the examinations themselves and, in particular, to ensure the examinations continue to be accessible to all students. Given the uncertainties created by the health emergency and the differing restrictions applying worldwide, we decided, with the Board's agreement, that these objectives were best fulfilled by computer-based examinations which most students will sit at home in August under a regime of remote proctoring provided by Pearson VUE.

8. We are, however, very conscious of the access difficulties which remote proctoring creates for some students and, accordingly, have made arrangements for those students who wish to do so to take the examinations – also on computer – at Pearson's extensive network of testing centres. We have strongly encouraged the universities and organisations providing Bar training to engage with their students in order to understand their needs and to support them in making decisions about how to access the examinations. We expect providers, in consultation with us, to make bespoke examination arrangements for the very small number of students unable to sit the examinations at home or at a testing centre where possible. We published [a detailed guide](#) for students on these arrangements on 29 June.

#### *Pupillage*

9. As foreshadowed in item 1 of the longer-term implications log, the senior management team considered a paper on 30 June by the head of Supervision drawing together survey and other information about the prospects for pupillage in 2020, 2021 and 2022. This evidence shows, on the positive side, that many chambers remain committed to pupillages, have been able to maintain supervision and assess existing pupils against the *Professional Statement* despite the crisis and intend to recruit pupils this Autumn. However, we have also gathered evidence of existing pupillages being extended because of lack of opportunities to demonstrate the competencies required by *Professional Statement*. These extensions of pupillages then knock on into the deferral of some pupillage start dates for 2020 and withdrawal from recruitment for 2021 and 2022, with possible long-term consequences for the supply of pupillage places in 2021 and 2022. In the light of this emerging evidence, we have arranged a meeting with the Bar Council and the Inns of Court on 16 July to test our understanding against theirs and to consider what, if any action is needed to sustain the supply of pupillage places and to guard against adverse impacts on the diversity of the Bar.

#### *Technology*

10. In the May Board paper, we flagged that we would be keeping in view the potential implications for initial training and continuing professional development of the growing use of remote technology. This remains a central concern, especially as we gather more evidence about the challenges posed by the use of remote technology for effective participation by vulnerable litigants and witnesses. In recent discussions with the professional Bar associations, we have also, however, become aware of growing concerns about the implications of technology for the experience and development of junior barristers who are, in some cases, finding their opportunities to practise squeezed by competition from both solicitors and more senior barristers. SMT will be meeting shortly to review the evidence bearing on the use of technology and its implications for both access to justice and the profession.

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

## Bar Standards Board – Director General’s Strategic Update – 16 July 2020

### Public session

1. This paper provides a high-level strategic update on external issues and trends that are of relevance to the BSB but that are not the subject of substantive separate papers for the Board, to be noted by the Board.

### Central examinations

2. A separate paper on the Board agenda – for discussion the public session – updates on the work in hand to ensure the rigour, fairness and accessibility of the computer-based central examinations which will take place in August.

### Public Legal Education

3. We convened a meeting of the legal services regulators on 1 July to explore the scope for the development of a joint strategy on public legal education which would support consumers, particularly vulnerable consumers, in navigating the system and securing access to good value legal services. It became clear in discussion that the majority of regulators see the *Legal Choices* website as their preferred framework for joint action, although we identified some opportunities for collaboration between sub-sets of regulators – for example on immigration advice – which we are following up separately.

### Health emergency

4. The Board has a separate paper on BSB’s regulatory response to the health emergency. BSB itself continues to work very effectively remotely. However, we are re-opening our office in High Holborn from 13 July in order to host some meetings and in order to give those colleagues who would like to do so for reasons of well-being the opportunity to work from the office. The re-opening has been meticulously prepared by our Facilities Team which has ensured that we shall meet all relevant health & safety guidelines and have undertaken the necessary risk assessments.
5. We expect the great majority of our people to continue to work from home for the foreseeable future in line with the Government guidance to work from home wherever possible. We have no plans to require attendance at the office.

### Bar Tribunal and Adjudication Service (BTAS)

6. Antony Townsend has been appointed as the Chair of the Bar Tribunals and Adjudications Service (BTAS) Strategic Advisory Board (SAB). The SAB is responsible for: ensuring the provision of accurate, timely and clear information to BTAS and/or the Council of the Inns of Court to assist them in meeting their organisational and performance requirements; developing and overseeing strategies to deliver tangible improvements to the adjudication of barristers, student and applicants to the Inns; and ensuring the interests of all stakeholders, and the influence of those who additionally advise the SAB, are fairly balanced.
7. Antony is the Complaints Commissioner for the Financial Services Regulators; a Board member of the Professional Standards Authority for Health and Social Care; a member of the Determinations Panel of the Pensions Regulator; a member of the Appointments Board of the Association of Chartered Certified Accountants; an Independent

**Part 1 – Public**

Investigator of the House of Commons Independent Grievance Service; the Independent Chair of the NHS England Continuing Healthcare Review Panels; Director of the Ombudsman Association; and Director of South Warwickshire Citizens Advice. Previously, he was the inaugural Chief Executive of the SRA from 2006 to 2014; Chief Executive of the General Dental Council; a Director of the General Medical Council; and was previously a civil servant in the Home Office working principally on criminal justice issues.

**Chair’s Report on Visits and External Meetings from 21 May 2020 to 16 July 2020**

**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:**

12 June	Introductory meeting with Elisabeth Davies, Chair, Office for Legal Complaints
12 June	Discussion with Richard Evans, Crowe
26 June	Attended Single Issue Board meeting