

## **BSB submission to LSB proposed statement of policy on upholding professional ethical duties**

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### **OVERVIEW**

This is the Bar Standard Board's (BSB) response to the Legal Services Board's (LSB) consultation on a proposed statement of policy on upholding professional ethical duties.

We welcome the LSB's work in this area and the proposals that have been set out in the consultation. We acknowledge that there is work to do across the legal services sector on these issues. However, we strongly believe that our existing approach and ongoing and planned work will ensure that we are able to meet both the outcomes and the supporting expectations within the timeframes given, albeit with two areas of concern, detailed below.

We believe the proposed Statement of Policy will complement both our planned work and our strategic direction for the next five years, which we will set out later this year.

On the central focus of the proposals, improving lawyers' understanding of and commitment to ethical behaviour, we would note that ethical competence is a core domain of professional competence, which intersects with, but is distinct from, others such as technical legal knowledge. Ethics is embedded in our competence framework, including the Professional Statement, and informs both the Bar qualification and ongoing competence.

Further to this we would highlight our existing work to support ethical good practice:

- Our pre-qualification tools include Bar training (vocational and pupillage components) ethics examinations, underpinned by the Professional Statement and Curriculum and Assessment Strategy.
- Our post-qualification tools include the New Practitioners' Programme (NPP) continuing professional development (CPD) requirements regarding ethics, the CPD requirements set out in our Established Practitioners' Programme (EPP)<sup>1</sup>, our Youth Proceedings Competences, our Coroners Courts' Competences, and work to collect information about barristers' CPD through spot-checks and our annual Authorisation to Practise (AtP) process.
- Our Code of Conduct sets out core duties for those we regulate which align to ethical standards.
- Our Supervision Team works with barristers (directly and via chambers) identified as needing support to ensure they can meet the expectations set out in the Code. The Team also undertakes thematic reviews and risk profiling to identify emerging issues, which may also highlight information needs, such as guidance on specific subjects or areas of practice.
- Our enforcement team has the power to provide advice to barristers in response to failings that fall short of being a breach of the requirements set out in the Handbook. We can also take disciplinary action where appropriate and publish outcomes.

We view supporting and encouraging ethical behaviour as a shared endeavour, undertaken by the Bar Standards Board as the regulator and the Bar Council as the profession's representative body. This

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<sup>1</sup> See: [BSB Continuing Professional Development Guidance](#)

approach is best illustrated by the Bar Council's Ethical Enquires Helpline<sup>2</sup>, which is a confidential service, independent of the regulator. This is an important element of support for the profession on ethical matters.

Of specific note, over the past year we have developed new webpages for Chambers, to help officers and staff better support barristers. We are also working on guidance for the employed Bar, developed in collaboration with the Bar Association for Commerce, Finance and Industry (BACFI), the professional body representing employed and non-practising barristers working in-house.

Alongside these efforts we have also recently published a Data and Intelligence Strategy<sup>3</sup> that will run to 2027, and which sets out our plans to ensure we are better at both gathering and using data to identify new and emerging concerns and to ensure we better target our regulatory interventions, from issuing guidance and notices to taking enforcement action.

There are two issues from the proposals for which we would like to raise concern:

- There is a clear focus on employed lawyers in the document (specifically under Outcome 3), which comprise only a small part of our regulated community. As noted, we have work in train for the employed bar which should be delivered within the proposed timeframe. Some of the requirements may require further thought in relation to the self-employed Bar as part of our Handbook review, given the nature of practice in chambers or sole practice. Please see our answer to question 17 on timescales. Generally, we think the timescales are achievable, because they are largely met by current arrangements.
- More broadly we would ask the LSB to consider the cumulative impact on our operations of having to provide new and more detailed data and analysis against a rapidly growing list of Outcomes. We note that this is one of a number of similar initiatives being introduced by the LSB over the next year; those on first tier complaints and economic crime are currently in consultation, and more are promised in the recently published business plan for 2025-2026. We would welcome a discussion on how we can better use data across the sector, to reduce the burden on those we regulate and ensure we are securing value for money from our activities, for example by refreshing the LSB's annual assessment process.

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<sup>2</sup> See: [Bar Council Ethical Enquiries Helpline](#)

<sup>3</sup> See: [BSB Data and Intelligence Strategy 2024-2027](#)

## RESPONSE TO CONSULTATION QUESTIONS

### General Approach

#### 1. Do you agree with our proposed definition of professional ethical duties?

We note that the LSB's proposed definition reiterates the Legal Services Act's professional principles and additionally sets out the long-established common-law principles concerning which of these must override duties to the client, as reflected in the BSB Handbook. We are unconvinced of the benefit of including such a definition. The professional principles are set out in the Act, and the regulators' regulatory arrangements set out the duties for the professions.

Further to this point, we recognise that the use of 'proper' aligns with its use in the LSA professional principles but would note that it is not in line with language used in our Core Duties, which require that barristers provide a 'competent standard of work and service' (CD7). We would not want to have to adopt a prescribed form of words.

We note that the definition makes no mention of honesty, which is an important expectation on regulated professionals, and is set out as an expectation in our Core Duties, which require that barristers 'act with honesty and with integrity' (CD3).

#### 2. Do you agree with our proposal to set general Outcomes?

We welcome the approach of setting a short list of general Outcomes, whilst noting our overarching point about recognising the cumulative effect of reporting expectations.

#### 3. Do you agree these proposed Outcomes address the harms and behaviours presented in the evidence? Are there any further Outcomes we should consider?

We think that the proposed Outcomes represent sensible and enduring statements of the regulators' roles in establishing and safeguarding high ethical standards among regulated professionals. We think these statements stand regardless of the particular evidence assembled or the weight attached to that evidence. We would observe that the ethical challenges faced by lawyers will vary according to their profession and according to whether they are employed or self-employed. Consequently, we would expect front-line regulators to have discretion to take a risk-based approach appropriate to their own responsibilities.

#### 4. Do you agree that the proposed general Outcomes should be met by regulators through a set of specific expectations?

We agree with each set of Outcomes being underpinned by a set of tailored expectations.

However, we note that while the proposals describe the approach as being 'permissive and flexible' this seems at odds with how the expectations are set out, i.e., as something regulators 'must' do.

We would welcome LSB support to share good practice between the regulators on how they approach addressing the general outcomes and expectations.

#### 5. Do you agree that regulators should demonstrate that evidence-based decisions have been taken about which expectations are appropriate to implement for those they regulate?

We agree with the proposal for each regulator to have some discretion in how they reference and address the expectations in line with their regulated communities. It will be important that we are able

to fit activities to deliver on the LSB's expectations to the specific needs of those we regulate, including entities.

We would welcome further guidance from the LSB on any preferred approaches to assessment and reporting, noting the need to balance securing data to demonstrate change with ensuring the regulatory burden placed on those we regulate is proportionate.

## **Individual Outcomes**

### **6. Do you agree with the proposed Outcome 1?**

We agree with the Outcome as proposed.

We would note that ethical competence is a core domain of professional competence, which intersects with but is distinct from others, such as technical legal knowledge. This is embedded in our competence framework, including the Professional Statement, and informs both our Bar training qualification and ongoing competence framework.

### **7. Do you agree with the specific expectations proposed under Outcome 1?**

We agree with the expectations set out for Outcome 1, which are in keeping with our current and planned work on competence and assurance. We set the standards for education and training regarding professional ethics, and ethics forms part of our curriculum and assessment strategy. Bar students must pass an ethics assessment as part of the vocational component of training (via the Authorised Education and Training Organisations' (AETOs) Ethics exams). Pupil barristers must be deemed competent in ethics (via passing a pupillage Ethics exam) to have their pupillage signed off and, therefore, obtain a full practising certificate.

We would welcome LSB support to develop arrangements for sharing good practice.

However, we would like greater clarity on what is meant in point c,

*Using appropriate resources to deliver effective training, such as case studies, which include good practice examples and lessons learned from real-life;*

as this could be understood as requiring regulators to provide frontline training. We do not think this an appropriate role for regulators. We will consider how to we can extend the range of guidance we currently provide, for example case studies in our Anti-Money Laundering Guidance, to cover ethical matters<sup>4</sup>.

Our qualification framework, rooted in the Professional Statement and delivered through vocational and work-based learning AETOs, integrates ethical competence at multiple levels of assessment and assurance. We are committed to ensuring these established mechanisms are appropriately recognised and built upon

Our work to strengthen how we ensure professional competence, including ethical competence, is embedded in our approach to qualification and ongoing competence. We continue to actively explore

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<sup>4</sup> See: [BSB Anti-Money Laundering \(AML\) Guidance](#)

and implement mechanisms to better identify, support, and address competence issues throughout a barrister's career, including those that relate specifically to professional ethics.

**8. Do you agree with the proposed Outcome 2?**

We agree with the Outcome as proposed.

**9. Do you agree with the specific expectations proposed under Outcome 2?**

We agree with the expectations set out for Outcome 2. The approach set out in expectation IV aligns well with the work we are undertaking to refresh and improve our investigation and disciplinary processes. We are also intending to review and revise of Code of Conduct within the next two years.

As noted, our Data and Intelligence Strategy is now moving forward and aims to gather more data and make better use of it to support our regulatory activities, and to ensure we are more speedily and effectively responding to regulatory risks as and when they arise.

**10. Do you agree with the proposed Outcome 3?**

We agree with the Outcome. However, we would note that the discussion of this outcome and the expectations are focused heavily on employed or firm-based lawyers, which represent only part of the regulated community that the BSB oversees. Self-employed practice represents different challenges, particularly in terms of providing 'support'. We provide guidance to barristers' chambers (although we do not regulate chambers) but we see a role also for the representative bodies, and others, in providing support to the profession on ethical matters.

**11. Do you agree with the specific expectations proposed under Outcome 3?**

We mostly agree with the expectations set out for Outcome 3.

The approach aligns with planned work for the employed Bar, due to complete later this year. We would note that members of the employed Bar work in a wide variety of organisations, some of which fall under other regulatory regimes (e.g. Financial Conduct Authority, Solicitors Regulation Authority, Office for Professional Body Anti-Money Laundering Supervision / OPBAS) creating an extremely complex landscape for monitoring and supervision.

However, as noted, self-employed barristers make up approximately 80% of the barrister profession and operate in a different environment to employed barristers. We have underlined as part of our wider work on the role of chambers our expectation that chambers play a part in overseeing professional standards. However, this role is not the same as that of a law firm. It would be helpful if the expectations recognise this more autonomous practice model.

We would welcome LSB support to develop arrangements for sharing good practice with other legal services regulators and relevant regulators in other sectors. For example, the LSB could facilitate the sharing of learning from regulators in sectors such as healthcare and financial services, where ethical judgement and professional integrity are monitored in similarly high-stakes environments.

**12. Do you agree with the proposed Outcome 4?**

We agree with the Outcome as proposed.

### **13. Do you agree with the specific expectations proposed under Outcome 4?**

We agree with the expectations set out for Outcome 4.

These expectations align with our existing supervision activities, and the plans set out in our Data and Intelligence Strategy and underpinned by our Regulatory Risk Framework review<sup>5</sup>.

They also support the work we are currently undertaking to refresh and improve our investigation and enforcement processes via our reform programme<sup>6</sup>. Additionally, they will connect to the work we are undertaking on first tier complaints, aiming to access new data and enable us to connect it with data we receive from the Legal Ombudsman.

### **14. Do you agree with the proposed Outcome 5?**

We agree with the Outcome as proposed.

### **15. Do you agree with the specific expectations proposed under Outcome 5?**

We agree with the expectations, which align with the approach set out in our Data and Intelligence Strategy and underpinned by the Risk Framework Review.

In respect of the developing use of technology, and specifically AI, we would note our recent work in this area<sup>7</sup>. We intend to build on this research, for instance by working with the Bar Council to ensure barristers understand the expectations we have of them when adopting and using this technology.

## **Implementation**

### **16. Do you agree with our proposed timelines for implementation?**

We believe the timelines are achievable for this work. However, we note that they will need to be achieved in conjunction with other LSB Objectives (agreed or planned), i.e., on economic crime, first tier complaints, and equality and diversity.

We would highlight the risk of these additional requirements (delivery and reporting) cumulatively diverting resources away from both existing and planned operational and policy priorities<sup>8</sup>, with the potential to over time undermine operational independence.

### **17. Is there any reason why a regulator would not be able to meet the statement of policy Outcomes within the timeframes proposed? Please explain your reasons.**

As stated, we judge that we are already substantially meeting the requirements of outcomes 1-3. To the extent that any changes to our Code of Conduct are required, we would expect to take them forward as part of our review of the Code, planned for late 2026. Changes to expectations in respect of training and CPD for barristers may require more time to introduce and bed in.

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<sup>5</sup> See: [BSB Regulatory Risk Framework Review - 2024](#)

<sup>6</sup> See: [The Bar Standards Board re-organises to improve its efficiency and effectiveness](#)

<sup>7</sup> See: [Technology and Innovation at the Bar Research - a report for the Bar Standards Board, March 2025](#)

<sup>8</sup> See: [BSB Business Plan for 2025-26](#)

We will liaise with the LSB should either issue arise and indicate any risk in respect of the relevant timeframes.

**18. Have you identified any equality impacts, we haven't considered which, in your view, may arise from our proposed statement of policy?**

We have not identified any additional equality impacts from those given in the consultation document.

However, it is possible that impacts will emerge as we develop plans to implement the statement's proposals once agreed. We will ensure they are communicated to the LSB and other affected regulators, as quickly as possible when identified.

**19. Do you have any evidence relating to the potential impact of our proposals on specific groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?**

We are aware that ethnic minority barristers from minoritised ethnic backgrounds are more likely to be sole practitioners. This means they have less direct access to training and advice arrangements than those working in firms and consequently may bear higher cost burdens from the introduction of any new mandatory training needs.

**20. Are there any other wider equality issues or impacts that we should take into account and/or any further interventions we should take to address these in our statement of policy?**

We have not identified any further issues or impacts.

**21. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?**

As noted, any increase in reporting requirements is likely to increase the burdens placed on our regulated community. This burden is likely to fall more heavily on the self-employed bar.

**22. Do you have any further comments?**

We have no further comments.

**ENDS**