

Our Proposed Strategy for the Next Three Years

2022-23 to 2025-26

Consultation Document

If you would like a version of this publication in hard copy, or in an alternative format, please contact the Equality and Access to Justice (E&AJ) Team by telephone on 020 7611 1305 or: equality@barstandardsboard.org.uk

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest.

Foreword

By the Director General

At the Bar Standards Board we review our strategy for delivering our Regulatory Objectives every three years. This is a good discipline because it enables us to step back and engage with our stakeholders on the risks and opportunities confronting the profession and on how the regulator should respond.

This latest strategy review is timely because it comes in the wake of the health emergency which has created new challenges for the Bar in meeting the needs of consumers and in sustaining the rule of law. Alongside the important continuing challenges of promoting diversity and sustaining high standards, the profession must now adapt to the growing use of technology in the delivery of its services to consumers and in its own working practices. These challenges would be demanding for any profession to absorb, but are especially taxing for a decentralised and largely self-employed profession like the Bar. It underlines one of the central themes of our consultation: the need for the Bar Standards Board to work with both individuals and chambers to promote both high standards and inclusivity.

We are also keen to work closely with our fellow legal regulators and we have been conscious in drawing up our strategy of the Legal Service Board's strategy (https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf) for the legal sector as a whole. We very much share their aims of achieving "fairer outcomes" for both the public and those seeking to enter the profession, "stronger confidence" ensuring access to redress and consistently competent and ethical legal services and "better services" so that consumers can drive stronger competition, and providers can innovate and redesign legal services that respond to their needs.

And we have also taken the opportunity of our review of strategy to look hard at the capabilities the Bar Standards Board will need in the new decade if it is to be effective in realising our vision and in delivering our regulatory objectives. We very much welcome your observations on the evolution of the Bar Standards Board itself, and how we can reinforce our identity as an independent regulator.

Please let us know what you think. We are eager to engage with you on our future priorities.

Mark Neale

The BSB's Strategy for 2022-25

The BSB has clear statutory objectives which are set out in the Legal Services Act 2007. They are:

-  **protecting and promoting the public interest;**
-  **supporting the constitutional principle of the rule of law;**
-  **improving access to justice;**
-  **protecting and promoting the interests of consumers;**
-  **promoting competition in the provision of services;**
-  **encouraging an independent, strong, diverse and effective legal profession;**
-  **increasing public understanding of citizens' legal rights and duties; and**
-  **promoting and maintaining adherence to the professional principles.**

Our strategy seeks to be driven by a clear vision of the role of regulation in improving outcomes for consumers, in supporting the administration of justice and in strengthening the profession itself. In proposing our new strategy we have therefore begun by considering the risks and opportunities in the market for barristers' services that affect our ability to meet our regulatory objectives.

Risks and Opportunities

Our research suggests that some of the main areas of challenge and opportunity facing the market for barristers' services and the delivery of our statutory regulatory objectives are:

COVID and the Courts

- The ongoing impact of the pandemic including its accelerating effect on court reform and the increase in remote hearings and remote working.¹

Evidence from the Regulatory Return shows that chambers have set themselves up to deal with remote working, while some chambers have responded well to clients' concerns and have supported hybrid hearings by bringing clients without digital access into chambers. However, concerns remain that some clients find the online experience leaves them feeling removed or isolated from the process.²

Access to Justice

- Continuing pressures on public funding and the need for innovative solutions to meet consumer demand.

Technology and innovation have an important role in helping to deliver our regulatory objectives, especially around improving access to justice, and helping to deliver transparency for consumers to navigate legal services. But the take up of new technology depends on individual barristers and chambers and cannot improve access to justice for the digitally excluded. Meanwhile funding pressures continue to increase the number of people who are forced to represent themselves.

Skills and Training

- The need for barristers to be supported in maintaining and developing a range of skills, knowledge and competences.

Decentralisation largely places the burden on individual barristers to identify whether they require support or training, for example to adapt their advocacy to remote hearings and to support vulnerable witnesses.

¹ The House of Lords Select Committee on the Constitution: COVID-19 and the Courts Published 31 March 2021 <https://publications.parliament.uk/pa/ld5801/ldselect/ldconst/257/25702.htm>

² Nuffield Family Justice Observatory, <https://www.nuffieldfjo.org.uk/wp-content/uploads/2021/07/remote-hearings-in-the-family-court-post-pandemic-report-0721.pdf>

Promoting a Fairer and more Inclusive Bar

- The continuing need to improve the culture at the Bar, tackling discriminatory practice in all its forms and ensuring a supportive environment for all barristers and pupils.

There is a significant amount of evidence³ telling us that bullying, discrimination and harassment have been experienced by many at the Bar. Barristers who are female, from a minority ethnic background, LGBT+ or who have a disability are particularly likely to encounter such behaviour. Discrimination can arise in many forms, and may be unintentional. It can particularly occur during the recruitment and training of pupils and in the allocation of work. Culture and working practices can perpetuate these issues. It is clear, therefore, that chambers have a significant role to play in helping us to deliver our vision of a Bar that is diverse, accessible, independent, knowledgeable, skilled and inclusive.

Chambers also have an important role to play in:

- mediating feedback to individual barristers from judges, solicitors and consumers on their professional competence
- supporting pupils and junior barristers
- supporting barristers in maintaining and developing a range of skills, knowledge and competences.

A Bar for the Future

- The sustainability and resilience of the Bar to meet demand.

Research shows that the Bar is ageing⁴ which, along with evidence of a reduction in pupillage numbers⁵, could create real challenges in terms of future barrister provision and an exacerbation of access to justice concerns for consumers. The problems are likely to be hardest felt within the publicly funded Bar but could also unevenly affect women and those from minority ethnic backgrounds, which could in turn effect our aim of achieving a more diverse Bar.

³ YouGov Research <https://www.barstandardsboard.org.uk/uploads/assets/896b55e0-72b2-4388-be291617735b8a25/ea23e7ad-cc4a-438f-b50d6929f2001c5d/October-2020-BDH-at-the-Bar-full-report.pdf>. The Bar Council's Barristers Working Lives Survey 2021 <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

⁴ BSB Research <https://www.barstandardsboard.org.uk/uploads/assets/12aaca1f-4d21-4f5a-b213641c63dae406/Trends-in-demographics-and-retention-at-the-Bar-1990-2020-Full-version.pdf>

⁵ BSB Research <https://www.barstandardsboard.org.uk/uploads/assets/3330b2d0-5190-434b-900a893947c33522/Pupillage-Covid19-impact-report-Feb-2021.pdf>. Pupillage registrations have recovered somewhat since this report was published but still fell by around 21% in 2020-21

Public Legal Education

- The continuing need to support improvement in consumer education in navigating legal services.

Although there is now greater price transparency, individuals and businesses with legal problems usually have a poor understanding of their legal rights and duties and of the full range of services offered by barristers, particularly the scope to access barristers' services directly and the potential to unbundle services. Consumers may also be daunted by the prospect of contacting chambers.⁶ Where individuals and businesses are referred to barristers by solicitors or other legal professionals, our evidence is that they are often offered no choice.

Q1: With reference to our regulatory objectives do you agree that these are the main risks and opportunities facing barristers and the market for barristers' services: is there anything you would add or omit?

Our Vision

We suggest that our vision should be as follows:

We will ensure that the Bar and the BSB deliver diversity and high standards, and promote the public interest

We want to see a market for barristers' services where:

- barristers provide a range of good value legal services which are well-understood by, and accessible to, consumers;
- the quality of legal advice and of customer service is consistently high;
- barristers' duties to the Court, to their clients and to the rule of law are upheld; and
- the profession itself reflects the society it serves, works to eliminate all forms of bullying, discrimination and harassment and maintains its independence and cohesion.

To achieve this vision we need to work in collaboration with others (indeed, some work might be led by others.) We want to know whether you agree that this is the right vision and, if you do, we want to understand what other organisations are doing and whether we can collaborate more effectively to achieve our shared vision.

Q2: Do you agree with this vision for the BSB and the Bar: is there anything you would add or omit?

⁶ CMA Transparency Review <https://www.gov.uk/cma-cases/review-of-the-legal-services-market-study-in-england-and-wales#review-report>

Priorities for the BSB over the Next Three Years

A number of activities from our current strategic plan will continue into the next period. These include, for example, our work on assuring competence, equality and diversity, greater transparency for consumers and updating the Handbook. These continue to be compatible with the priorities that are identified in this paper.

The challenges and opportunities set out above suggest that our priorities for the next three years should be as follows:

Providing consumers with confidence in using the services of barristers

- defining and enforcing standards of professional conduct and ensuring that reports about the conduct of barristers are handled swiftly and efficiently
- setting and overseeing the training requirements for barristers and ensuring that authorisations and requests for waivers are dealt with swiftly and efficiently.

Maintaining and improving access to justice

- ensuring that new barristers join the profession in sufficient numbers to meet the future demand for barristers' services both across the profession as a whole and in discrete specialisms, including the publicly funded Bar, and that new recruits are drawn from diverse backgrounds to reflect the society they serve
- ensuring that individuals and small businesses and the organisations advising them have a good understanding of the services barristers can provide
- working with other regulators and frontline advice providers to ensure that the public have a better understanding of their legal rights and duties, the legal services market and how to access legal advice
- building a better understanding of how solicitors choose barristers on behalf of their clients, enabling the benefits and mitigating the risks of innovation and technology.

Enabling the benefits and mitigating the risks of innovation and technology

- ensuring that barristers are trained to use technology effectively and, in particular, understand its implications for vulnerable clients and participants in the administration of justice

- being ready to regulate the use of technology where necessary to protect the public interest while ensuring we do not create barriers to innovation, particularly that which allows greater access to legal services.

Promoting best practice in chambers' oversight of standards and diversity

- working with chambers and others in the profession to promote best practice in: meeting consumers' interests; upholding standards and assuring competence; developing barristers; supporting remote working; and promoting diversity.

Q3: Do you agree that these should be the BSB's priorities: is there anything you would add or omit and how would you rank these priorities?

Developing our Capacity and Capability

Much has changed for the BSB over the course of the health emergency - volumes of core regulatory work have risen sharply⁷ and new strategic challenges have emerged. We are currently missing our service levels in turning around requests for authorisations, in handling reports of alleged professional misconduct and in taking forward investigations. Those seeking authorisations or those making, or being the subjects of, reports deserve a faster service. To regulate the Bar efficiently and effectively in the public interest, maintaining high standards, promoting diversity and furthering the interests of consumers, the Bar Standards Board must be able to:

- discharge efficiently, effectively and inclusively our own core functions of handling reports about barristers, supervising barristers and their chambers, setting and administering standards of qualification; and taking forward investigations and disciplinary cases;
- engage confidently and independently with consumers, the profession and other external stakeholders;
- bring to bear high order research and analytical skills; and
- recruit, develop and engage people with the skills, experience and confidence to do these things well.

⁷ In the first quarter of 2021/22 reports on barristers were running at four times the level of the first quarter of the previous year; applications for authorisation were also on a rising trend in 2020/21

To deliver our strategy we believe that we will need to:

- enhance our core operational professionalism and resilience in managing flows of work and in investing in and designing our processes to secure improvements in efficiency, in effectiveness and in customer service;
- demonstrate that the Bar Standards Board is itself diverse and inclusive and committed to understanding the equality impacts of its policies, services and interventions;
- strengthen our ability to reach out and to engage with chambers, the profession and the public so that we can identify and promote good practice in the way the profession operates to provide effective services, to sustain high professional standards, to develop barristers and to ensure diversity;
- improve and deepen the intelligence we have and our research evidence bearing on professional competence, standards of service and the operation of the market for barristers' services;
- enhance our understanding of consumers' needs and experience in using barristers' services; and
- increase capacity to support our people in developing the skills and capabilities they need both to deliver current and future organisational goals as well as develop their own careers.

The BSB is already independent of the Bar Council in its decision-making but we think that it may help to ensure that we are seen as having a distinct and independent identity if we were to be a separate corporate body, with the link to the Bar Council maintained through ownership of the corporate entity rather than, as now, through a confusing joint, but segregated, enterprise model. We have not yet decided whether to do this but we think it is important that we explore this option.

Q4: Do you agree that these are the key areas where the BSB needs to develop as an organisation?

Collaboration

As we have noted above, we will not deliver our vision and priorities without collaboration with others. We welcome views on how we might better do that.

Q5: Are there any particular areas on which we might collaborate with you, or with others, to further the priorities set out above?

Equality Impact Assessment

As we develop our strategy, we are undertaking an equality impact assessment. A number of the priorities in this document are designed to promote equality within the profession and in relation to access to legal services. We welcome views on whether there are additional areas we must address to promote equality or whether there are any risks to particular groups from the priorities we have outlined above.

Q6: Have you identified any risks or opportunities in relation to promoting equality, diversity and inclusion for the profession or the public?

How to Respond to this Consultation

The deadline for this consultation is **5pm on Friday 10 December 2021**. You do not need to wait until the deadline to respond. Please submit your response to: communications@BarStandardsBoard.org.uk or visit our website to download a submission form at <https://www.barstandardsboard.org.uk/news-publications/consultations.html>.

If you have a disability and have a requirement to access this consultation in an alternative format, such as larger print or audio, please let us know. Please let us know if there is anything else we can do to facilitate feedback other than via written responses.

Whatever form your response takes, we will normally want to make it public and attribute it to you or your organisation and publish a list of respondents. If you do not want to be named as a respondent to this consultation, please let us know in your response.

Decision Timeline

We expect to announce our decision about our Strategy after this consultation has closed and the responses have been analysed.

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Write to Us:

Bar Standards Board

289-293 High Holborn

London WC1V 7HZ DX: 240 LDE

Tel: 020 7611 1444

contactus@barstandardsboard.org.uk

www.barstandardsboard.org.uk

Twitter: [@barstandards](https://twitter.com/barstandards)

www.linkedin.com/company/the-bar-standards-board