



REGULATING BARRISTERS

Candidate Brief

Bar Standards Board Experts

Members of the Advisory Pool of Experts

2016

Background

The Bar Standards Board (BSB) was established in January 2006 as a result of the Bar Council separating its regulatory and representative functions. The BSB is an independent regulator responsible for regulating barristers and specialised legal business in England and Wales.

Barristers occupy a key position in the justice system and their work is integral to the rule of law in a democratic society. The profession is a historic one with important traditions, but the market in which barristers work is changing. There is continued pressure in publicly-funded areas of law such as crime and family, as well as significant economic growth in the provision of specialist commercial legal services in the UK and internationally. Regulatory reform in recent years has made new business models possible across the legal services market and significant new developments in legal education and training to meet the requirements of a changing landscape are being developed.

The Bar Standards Board has been responding to these challenges and fostering change and modernisation in the profession in the public interest since its establishment in 2006.

In discharging its regulatory responsibilities, the BSB must have regard to, and act in a way that is compatible with the regulatory objectives in the Legal Services Act 2007, which are to:

- Protect and promote the public interest;
- Support the constitutional principle of the rule of law;
- Improve access to justice;
- Protect and promote the interests of consumers;
- Promote competition in the provision of services;
- Encourage an independent, strong, diverse and effective legal profession;
- Increase public understanding of the citizen's legal rights and duties; and
- Promote and maintain adherence to the professional principles.

The BSB regulates the profession by setting standards of entry to the profession and by ensuring that professional practice puts consumers first. Its responsibilities cover the following key activities:

- Setting the education and training requirements for becoming a barrister;
- Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- Setting standards of conduct for barristers;
- Authorising organisations that focus on advocacy, litigation, and specialist legal advice;
- Monitoring the service provided by barristers and the organisations we authorise to assure quality;
- Handling complaints against barristers and the organisations we authorise and taking disciplinary or other action where appropriate;
- Setting the qualifications and conditions for entry to the profession.

The BSB's Board comprises 15 members. There are eight lay people and seven practising barristers. The Board has a lay majority and a lay Chair, as required by the Internal Governance Rules made by the Legal Services Board (the oversight regulator). The Board is committed to regulating in the public interest and to following best practice for modern regulators.

Five committees help to manage the Board's primary duties. They all have barrister and lay members.

Governance reform

The BSB has agreed a new governance structure, which we have started to put in place.

A main purpose of the new structure is to make sure that policy making and decision making are carried out separately and that all policy development is undertaken by the executive staff, led by the Director General, and directly overseen by the Board itself.

The Board believes that the changes it has in mind will further strengthen public confidence in the independence of the BSB and its ability to regulate the barrister profession to a consistently high standard.

The changes have resulted in the removal of several committees. This should speed up policy development and increase our adaptability and ability to respond to new regulatory demands. We must balance this with the ongoing need to show that we are a robust, independent, dependable and optimally-resourced organisation with a clear separation between policy and implementation.

Why we need Experts

As a small organisation, however, we know that we will never have a large enough staff to provide all of the types of knowledge and expertise that we might need to complete our work to the required standard. Historically, some of that expertise came from within committee membership. With fewer committees, that is no longer the case but we want to ensure that we continue to have a range of expertise available to us. It is with this in mind that the governance changes also include the establishment of a pool of independent subject matter experts, including members of the Bar as well as people with other kinds of relevant expertise. This will be named APEX (Advisory Pool of Experts).

As we make appointments to APEX, we will publish details of the people appointed on our website and acknowledge their input into the work that we undertake. We'll be bringing the members of APEX together regularly to keep them up to date with what we're doing. This will also provide the opportunity for experts from a variety of different fields to exchange views between themselves and with our staff and Board.

The Roles

We are now seeking to appoint 7 Bar Standards Board Experts to become the first members of APEX. We are looking for expertise in the following areas:

- Competition;
- Economics;
- Equality and diversity;
- Higher education;
- Insurance;
- Regulatory policy and theory; and
- Regulatory risk.

There is no restriction on who may apply for these roles so legally qualified people are eligible. The key factor is the ability to provide the specific subject expertise required.

We have a set of general selection criteria which all experts must meet, as set out below. We also have a specific set of criteria for each role. For ease of reference, the general criteria are given here and then the specific criteria in pages 10 to 16.

In time we anticipate that APEX will expand to include experts able to support a wider range of the work that we undertake. Sometimes we may need to specify particular types of qualification as a result. These initial seven roles are intended to provide support for our policy development activities only so we are open-minded about applicants' backgrounds and types of qualification. We do, however, expect them to have a level of professional integrity and judgement that will contribute to public confidence in how we regulate, and hold the respect of our stakeholders including the profession.

General selection criteria

Candidates for APEX membership should normally hold a post-graduate degree, a professional qualification or have equivalent knowledge and experience. They must meet the following core competencies and qualities:

Technical

- A genuine expert in their field, who is regarded as a “thought leader”; someone who is always looking ahead to identify the changes needed to respond to policy and best practice developments in the wider environment;
- Expert knowledge, and extensive experience and application, of professional/technical concepts and principles;
- Communicates technical and complex information effectively whether in writing or orally, tailored to the needs to each audience;

- Appreciates the regulatory environment within which the BSB operates; and
- Understands the issues that are relevant to regulating the Bar and its relationship with consumers, society and the economy.

Planning and Thinking

- A record of addressing difficult issues; able to ask probing questions which go to the heart of an issue;
- Offers fresh thinking from a range of perspectives; and
- Looks at strategic and longer term implications and not simply at short term solutions.

Working with Others

- Well-developed interpersonal, communication and presentation skills with a collaborative style;
- Confidently and constructively challenges others' views;
- Committed to the highest possible standards of ethics and personal integrity and to behaving at all times in a fair, balanced and non-discriminatory manner; and
- Committed to promoting equal opportunities for all, treating people fairly whilst responding sensitively to differences.

Outputs and Delivery

- Maintains a clear focus on results whilst ensuring professional and quality standards are met; and
- Promotes excellence and continuous improvement at all times.

Specific selection criteria

As stated above, each role has specific criteria that apply to it. The specific criteria are provided for each role in pages 10 to 16.

Competition – see page 10

Economics – see page 11

Equality and diversity – see page 12

Higher education – see page 13

Insurance – see page 14

Regulatory policy and theory – see page 15

Regulatory risk – see page 16

More about APEX

In the first instance, APEX members will assist BSB staff with regulatory policy-making, and will be a pool of external expert resources called upon to provide expertise where an in-depth or more independent view would be useful. Members will engage with the executive on matters of technical policy, strategic policy, business risk and other matters requiring knowledge and specialist skills not found within the BSB or only present to a more limited extent. They will also provide more objective challenge to the work of the executive or Board, as requested.

They will be engaged to provide advice to the executive on policy questions, perhaps also assisting with training or being invited to be part of a Task Completion Group. These are *ad hoc* groups established by the BSB to complete a specific task or tasks, and may include other experts as well as APEX members.

There is no restriction on what type of qualification or expertise applicants have for the various roles. The key factor is the ability to provide the specific subject expertise required and having appropriate experience or qualifications in that field.

Time commitment

We will expect candidates to be available for a maximum of 10 days per year. We do not guarantee that all of those days will be used. Depending on the particular work programme, input may be sought in short periods of consecutive days or spread out over the entire year. The BSB may seek to add additional days, by agreement with the Expert, if that becomes necessary.

Payment

APEX members will enter into a consultancy agreement for services with the BSB, and will not be employed by the BSB.

All positions are to be remunerated at the following rates: £308 per day and £154 per half-day, plus expenses as permitted by our expenses policy.

APEX members will be engaged by the executive on a case-by-case basis and paid on invoice.

APEX members will be paid at the rates above as a gross figure and will be responsible for their own tax and national insurance. Given the advisory nature of the roles we anticipate that APEX members will usually be covered by BSB insurance arrangements. Should there prove to be a need for any additional insurance, responsibility for obtaining and funding this will lie with APEX members.

The consultancy agreement will last for up to three years, with voluntary break clauses where the APEX member or the BSB would prefer to terminate the agreement. Annual reviews of individual member performance will be conducted as part of this process.

Expectations of APEX members

Members of APEX will be expected to play a full part in the work they are asked to contribute to, preparing fully and contributing actively whenever called upon.

APEX members will be required to participate in a full induction and then regular engagement and training sessions, for which they will be remunerated. The BSB intends to keep APEX members up to date with the wider work of the BSB and the issues being faced so that they are well informed when asked to contribute to particular projects. All experts will come together regularly giving the opportunity to hear and learn from other members, who will come from different as well as complementary fields of expertise.

All Experts will be expected to adhere to the BSB's policies, including health and safety, dignity at work, confidentiality and data security, declarations of interest (including dealing with conflicts of interest), gifts and hospitality, and equality and diversity.

Eligibility criteria

The BSB is required to keep its regulatory activities separate from any representative activities in relation to barristers, and specifically we must remain independent of the Bar Council. We therefore require that Experts do not at the same time have any close relationship with the Bar Council, eg as a member of a Bar Council representative committee, working group or as an advisor to the Bar Council. Members will be asked to confirm their eligibility at the time of appointment and throughout the duration of their appointment.

We will also ask members to declare any close association with other bodies that represent or are strongly affiliated to the Bar, for example the Inns of Court or Specialist Bar Associations.

We ask that all candidates notify us of:

- Any previous or pending supervisory action, complaint, investigation, disciplinary proceedings or disciplinary findings against them under any applicable disciplinary system; and
- Any other conduct which calls into question their honesty, integrity, financial position or respect for the law. Such conduct includes, but is not limited to, both personal and professional activities and media comment (including social media comment), which may or may not have given rise to adverse publicity.

The BSB reserves the right to make its own enquiries and checks to verify the declarations made.

Application Process

Applications should be made to apexapplications@barstandardsboard.org.uk, including:

- **A full CV** detailing your qualifications, employment, skills and experience;
- **A covering letter** (of no more than three pages) stating **why the position you are applying for interests you, how you meet the general selection criteria** (as detailed in this candidate brief), and **how you meet the specific selection criteria for the position you applying for** (as detailed in this candidate brief);
- **A completed Supporting Details Form** including daytime and evening telephone numbers, an email address to which confidential messages may be sent and names and contact details of a minimum of two professional referees; and
- **A completed Equality & Diversity Monitoring Form** (if you wish to complete it). This form is confidential, will be kept separately from your application and is for monitoring purposes only. We are asking for this information from you to help us meet our equality duties and to ensure that we understand the impact of our recruitment practices in relation to the protected characteristics. By monitoring and analysing this information we can understand then act to ensure our practices promote equality and remove any practices that could lead to unlawful discrimination.

You may apply for more than one position, as your expertise permits. The closing date for receipt of applications is **Monday 15 August 2016, 9:00am**.

If you wish to seek a reasonable adjustment to the recruitment process for any reason, please contact Joseph Bailey using the contact details provided below.

The BSB aims to recruit talented candidates and values diversity in background, skills and experience. We are committed to providing equality of opportunity for all applicants irrespective of race, sex, disability, age, religion or belief, sexual orientation, maternity or pregnancy, marital or civil partnership status or gender re-assignment.

Further information and queries

For any queries, please contact:

Joseph Bailey (jbailey@barstandardsboard.org.uk or 020 7611 1414)

For a confidential discussion regarding the positions and the operation of the Bar Standards Board, please contact:

Amanda Thompson, Director for Governance Reform
(athompson@barstandardsboard.org.uk or 020 7611 1371)

Timetable

- Closing date: Monday 15 August, 9:00am
- Week commencing Monday 22 August: invitation to interview for shortlisted candidates
- Interviews will be conducted on the following dates for the various roles:
- Tuesday 30 August – Regulatory Risk
- Wednesday 31 August – Regulatory Policy and Theory
- Thursday 1 September - Higher Education
- Monday 5 September – Equality and Diversity
- Tuesday 6 September – Insurance
- Thursday 8 September – Economics
- Friday 9 September – Competition
- Week commencing Monday 12 September: offer of appointments made.

Competition Expert

In addition to the general selection criteria, the competition expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Awareness of suitable analytical and research methods to support analysis of competition;
- Experience and understanding of competition impact assessment;
- Experience of working with public or private bodies and/or regulators to promote competition within markets;
- Understanding of ongoing developments in competition policy, the economic and political context of these changes and their implications for regulation; and
- Understanding of market regulation.

Desirable Competencies

- Application of competition analysis to the development and implementation of regulatory policy and/or decision-making;
- Awareness of suitable analytical and research methods to support analysis of regulatory risks;
- Experience of advising on regulatory best practice, in particular balancing the promotion of competition with the public interest;
- Understanding of consumer protection issues and their implications for regulation;
- Understanding of the legal services market, particularly the role of barristers;
- Understanding of the legal services regulatory framework; and
- Understanding of the legal services training market, or other training markets.

Economics Expert

In addition to the general selection criteria, the economics expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Experience of cost-benefit analysis, economic feasibility assessment and economic impact assessment;
- Experience of regression analysis;
- Understanding of market regulation; and
- Understanding of the statutory economic growth duty.

Desirable Competencies

- Application of economic analysis to the development and implementation of regulatory policy;
- Experience and understanding of competition impact assessment;
- Experience of developing econometric modelling;
- Experience of providing training in economic theory and/or impact assessment;
- Publication of academic research and/or professional publications on relevant economic theory and practice;
- Understanding of behavioural economics;
- Understanding of the legal services market, particularly the role of barristers;
- Understanding of the legal services regulatory framework; and
- Understanding of the legal services training market, or other training markets.

Equality and Diversity Expert

In addition to the general selection criteria, the equality and diversity expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Experience of equality impact assessment in a complex policy or organisational environment;
- Experience of working with public or private bodies and/or regulators to develop and support equality and diversity initiatives;
- Understanding of ongoing developments in equality and diversity policy and practice, the political and social context of these changes and their implications for regulation;
- Understanding of the Equality Act 2010 and the public sector equality duty;
- Understanding of anti-discriminatory theory and practice; and
- Understanding of unconscious bias.

Desirable Competencies

- Application of equality and diversity principles to the development and implementation of regulatory policy and/or decision-making;
- Experience of advising on equality and diversity best practice in higher education and/or regulation;
- Experience of providing equality and diversity training;
- Publication of academic research and/or professional publications on equality and diversity;
- Understanding of access to justice issues and their implications for regulation;
- Understanding of market regulation;
- Understanding of the legal services market, particularly the role of barristers;
- Understanding of the legal services regulatory framework;
- Understanding of the legal services training market, or other training markets; and
- Understanding of wellbeing issues and experience of related initiatives.

Higher Education Expert

In addition to the general selection criteria, the high education expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Experience of assessment/examinations, including analysis and comparison of examinations results data, and advising on best practice;
- Experience of educational quality assurance processes, including advising on best practice and how the student learning experience can be enhanced;
- Understanding of equality and diversity issues and their implications for higher education;
- Understanding of qualifications regulation;
- Understanding of the complex and rapidly changing higher education policy environment, the political and social context of these changes and the inherent challenges and opportunities, i.e. a strategic view of higher education and its role in supporting social inclusion;
- Understanding of the diverse approaches to the assessment and measurement of outcomes, their limitations and how they can be addressed, i.e. understanding of how confidence in standards can be achieved; and
- Understanding of the legal services training market, or other training markets.

Desirable Competencies

- Experience of developing and implementing higher education policy;
- Understanding of higher education market regulation;
- Understanding of the legal services market, particularly the role of barristers; and
- Understanding of the legal services regulatory framework.

Insurance Expert

In addition to the general selection criteria, the insurance expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Experience of working in the legal professional indemnity insurance market, gained in a brokerage or underwriting capacity (or similar); and
- Understanding of ongoing developments in the insurance market and their implications for regulation.

Desirable Competencies

- Experience of working in or understanding of the after-the-event insurance market;
- Experience of working with or understanding of mutual insurance providers;
- Understanding of market regulation;
- Understanding of the legal services market, particularly the role of barristers; and
- Understanding of the legal services regulatory framework.

Regulatory Policy and Theory Expert

In addition to the general selection criteria, the regulatory policy and theory expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Experience of advising on regulatory best practice;
- Experience of applying regulatory theory to the development and implementation of regulatory policy;
- Experience of working with regulators to develop and support robust regimes;
- Understanding of market regulation;
- Understanding of outcomes-focused and risk-based regulation; and
- Understanding of ongoing developments in regulatory policy and theory, the political and social context of these changes and their implications for regulators.

Desirable Competencies

- Experience of applying regulatory theory to regulatory decision-making;
- Experience of providing regulatory policy and theory training;
- Experience of the regulatory policy environment across multiple sectors and/or jurisdictions;
- Publication of academic research and/or professional publications on regulatory policy and theory;
- Understanding of consumer protection issues and their implications for regulation;
- Understanding of the legal services market, particularly the role of barristers;
- Understanding of the legal services regulatory framework; and
- Understanding of the legal services training market, or other training markets.

Regulatory Risk Expert

In addition to the general selection criteria, the regulatory risk expert should display the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

- Experience of achieving effective communication and engagement with key stakeholder groups about risk and regulatory approach;
- Experience of applying risk concepts to the development and implementation of regulatory policy and/or decision-making;
- Experience of developing and supporting robust risk-based regulatory regimes;
- Experience of effectively building risk capability and risk culture with staff, leadership and non-executives;
- Understanding of ongoing developments in risk management, the wider context of these changes and their implications for regulation; and
- Understanding of outcomes-focused and risk-based regulation, and the relationship with assurance, corporate governance and risk management.

Desirable Competencies

- Awareness of suitable analytical and research methods to support analysis of regulatory risks;
- Experience of applying a risk-based approach in the context of regulating both firms/organisations and individuals;
- Experience of risk-based regulation across multiple sectors and/or jurisdictions;
- Publication of academic research and/or professional publications on risk or risk-based regulation;
- Understanding of consumer protection issues and their implications for regulation;
- Understanding of the legal services market, particularly the role of barristers;
- Understanding of the legal services regulatory framework;
- Understanding of the legal services training market, or other training markets; and
- Understanding of market regulation.

Other Useful Information

Bar Standards Board

www.barstandardsboard.org.uk

BSB Committees

www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-committees

BSB Constitution

www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-board

BSB Statement on New Governance Structure

<https://www.barstandardsboard.org.uk/media-centre/press-releases-and-news/bar-standards-board-announces-new-governance-structure/>