



REGULATING BARRISTERS

Candidate Brief

Bar Standards Board Experts

Members of the Advisory Pool of Experts

2018

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 businesses 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 an 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 are being developed to meet the requirements of a changing landscape.

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; and
- Setting the qualifications and conditions for entry to the profession.

The 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.

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

Governance reform

The Bar Standards Board has recently adopted a new governance structure. The purpose behind the changes is to distinguish more clearly between policy-making and decision-making on individual cases and to ensure that all policy development is undertaken by the executive staff, led by the Director General, and directly overseen by the Board itself.

In January 2017, our Board agreed a new set of governance principles. The principles clarify how we make decisions, our governance structures and how we gather expert input to inform our work. They confirm that the Board continues to have overall oversight within our new governance structure. The principles also confirm our commitment to independence and openness, effectiveness, and our duty to promote Equality and Diversity. The Board believes that the changes it is implementing will further strengthen public confidence in the independence of the BSB and its ability to regulate the barrister profession to a consistently high standard.

Our ongoing governance reforms have seen a reduction in both the number of committees and the number of their members. This is intended to speed up policy development, to increase our adaptability and capacity to respond to new regulatory demands. To support this, we established the Advisory Pool of Experts (APEX) at the beginning of 2017, to complement our move towards more staff-led decision making.

Why we need Experts

As a small organisation, we know that we will never have a large enough staff to provide all the types of knowledge and expertise that we 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 our governance changes included establishing a pool of independent subject matter experts, including members of the Bar as well as people with other kinds of relevant expertise.

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

Current members of APEX

Lay members to support staff working on policy development have been appointed in the areas of:

Competition and Economics
Equality and Diversity
Higher Education
Insurance
Regulatory Policy and Theory (currently vacant)
Regulatory Risk

Barrister members to support staff working on policy development have been appointed in the areas of:

Competition Law
Equality and Diversity Law
Regulatory Law

Staff taking regulatory decisions on authorisations and waivers can seek advice from an expert in the teaching of Foundation of Law subjects on the qualifying law degree, EU law and Equality legislation.

Short biographies of current APEX members can be found on our website [here](#).

The Roles

We are now seeking to appoint an additional five experts to join APEX. We are looking for expertise in the following areas:

- Continuing Professional Development;
- Information Law and Data Protection;
- Money Laundering and Terrorist Financing Regulations;
- Regulatory Policy and Theory; and
- Statistics.

The expert in Information Law and Data Protection **must** be legally qualified, have five years' post-qualification experience and be currently authorised to practise by an approved regulator under the Legal Services Act 2007 eg the BSB, Solicitors Regulation Authority, etc. ("approved regulator" means any body specified as an approved regulator in paragraph 1 of Schedule 4 of the LSA).

For all other roles there is no restriction on the type of qualification or expertise applicants hold. The key factor is the ability to provide the specific subject expertise required and having appropriate experience or qualifications in the field.

We have a set of general selection criteria which all experts must meet, 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 11 to 15.

All applicants are expected 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 of 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 11 to 15.

Continuing Professional Development – see page 11

Information Law and Data Protection – see page 12

Money Laundering and Terrorist Financing Regulations – see page 13

Regulatory Policy and Theory – see page 14

Statistics – see page 15

More about APEX

APEX functions as a pool of external expert resources we call upon to provide expertise where an in-depth or more independent view is useful. The initial ten appointments to APEX provided support for our policy development activities only. As we continue to implement our governance reforms, some regulatory decisions are now being taken by staff (rather than by committees). All decisions on authorisations to practise or waivers from requirements of the Handbook are now taken by our staff, and we have appointed another member of APEX to give us advice when that is needed.

Experts are engaged to provide advice to the executive on policy questions or individual regulatory decisions, and sometimes also assist with training or are 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.

The expert in Information Law and Data Protection **must** be legally qualified. For all other roles there is no restriction on the type of qualification or expertise applicants hold. The key factor is the ability to provide the specific subject expertise required and having appropriate experience or qualifications in the field.

Time commitment

We 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 come together regularly giving the opportunity to hear and learn from other members, who 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;
- 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; and
- Any other matter, which if it was in the public domain, might risk diminishing public confidence in the regulator.

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 are 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 12 March 2018, 9:00am**.

If you wish to seek a reasonable adjustment to the recruitment process for any reason, please contact Emiko Etete 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:
Emiko Etete, Corporate Support Officer
(eeete@barstandardsboard.org.uk or 020 7611 1342)

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

Rebecca Forbes, Governance Manager
(rforbes@barstandardsboard.org.uk or 020 7092 6806)

Timetable

- Closing date: Monday 12 March 2018, 9:00am
- Week commencing Monday 16 April: invitation to interview for shortlisted candidates
- Interviews will be conducted on the following dates for the various roles:
- Monday 30 April – Regulatory Policy and Theory
- Tuesday 1 May – Continuing Professional Development
- Monday 2 May – Money Laundering and Terrorist Financing Regulations
- Tuesday 8 May – Statistics
- Wednesday 9 May – Information Law and Data Protection
- Week commencing 14 May: offer of appointments made
- Wednesday 27 June (afternoon): induction session

Continuing Professional Development (CPD) Expert

The BSB has introduced a new approach to CPD that moves away from a requirement to complete a prescribed number of hours to placing responsibility on barristers to decide on their own learning and development. Now that the new CPD system for barristers has been implemented, the BSB wishes to be able to draw upon an appropriate level of expertise to ensure that the system is working effectively. The CPD expert will advise BSB staff responsible for the oversight of the new CPD system; they may also be asked to contribute to the development of further guidance and best practice in relation to CPD.

In addition to the general selection criteria, the CPD expert should demonstrate the following essential competences and as many of the desirable aspects as possible.

Essential Competencies

- Experience of assessing information against a defined set of criteria and ensuring consistency of decision making;
- Experience of competency based assessment and decision making;
- Experience of professional development; and
- Experience of quality assurance processes.

Desirable Competencies

- Understanding of the BSB requirements and guidance in relation to CPD;
- Understanding of developing learning outcomes, e.g. through teaching activity; and
- Experience of the professional development of barristers or other legal professionals.

Information Law and Data Protection Expert

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

Essential Competencies

- Understanding of the Data Protection Act 1998 and its interaction with other legislation, for example the Human Rights Act 1998 and Article 8 thereof;
- Understanding of ongoing developments in data protection compliance, the General Data Protection Regulations and Data Protection Bill, and their implications for regulatory bodies;
- Ability to interpret and advise on guidance issued by the EU's Article 29 Working Party;
- Experience of working with public or private bodies and/or regulators to secure compliance with data protection legislation;
- Experience of providing complex legal advice on data protection and Freedom of Information matters;
- Application of data protection principles to the development and implementation of policy;
- Understanding of Freedom of Information law and its potential applicability in a regulatory environment; and
- Experience and understanding of the Information Commissioner's Office processes.

Desirable Competencies

- Experience of advising on DPA duties in the context of disciplinary action by professional regulatory bodies;
- Expertise in advising on disclosure and exemptions in relation to subject access requests and disciplinary action by professional regulatory bodies;
- Experience of providing advice in Information Tribunal cases;
- Expertise in relation to data sharing (including data sharing protocols and agreements);
- Experience and understanding of data protection impact assessment;
- Experience of participating in or responding to ICO investigations effectively;
- Publication of academic research and/or professional publications in the field of information law; and
- Experience of providing training on information law and best practice.

Money Laundering and Terrorist Financing Regulations Expert

In addition to the general selection criteria, the money laundering and terrorist financing regulations expert should demonstrate the following essential competencies and as many of the desirable aspects as possible.

Essential Competencies

A thorough understanding of the Regulations ¹, the National Crime Agency's Suspicious Activity Reports regime, the financial sanctions regime and the implications for the Bar Standards Board, as a risk-based regulator, and for legal professionals. This may have been gained through significant practical experience in one or more of the following in the legal sector:

- At a senior level as a Money Laundering Reporting Officer, Nominated Officer, Risk and Compliance Officer or a similar role;
- Developing and implementing guidance, policies, controls and procedures relating to the Regulations;
- Applying legislation to the development of guidance for legal professionals; and
- As a legal professional working in an area that falls within the scope of the Regulations.

Desirable Competencies

- Understanding of FCA supervision and regulatory practice;
- Previous experience of working in a law enforcement position concerned with economic or financial crime;
- Understanding of the legal services market, particularly the role of barristers; and
- Understanding of the legal services regulatory framework.

¹ The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

Regulatory Policy and Theory Expert

In addition to the general selection criteria, the regulatory policy and theory expert should demonstrate 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.

Statistics Expert

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

Essential Competencies

- Experience of using statistical modelling in social research;
- Experience using a range of statistical techniques and tools, in particular:
 - i) Experience of regression analysis;
 - ii) Experience of multivariate analysis;
 - iii) Experience of hypothesis testing;
- Experience of sampling design (simple random sampling, stratified sampling, probability proportional to size, cluster sampling); and
- Experience peer reviewing quantitative research, and the relationship with assurance, corporate governance and risk management.

Desirable Competencies

- Experience of providing training in statistical analysis;
- Experience of Differential Item Functioning analysis;
- Professional accreditation as a Chartered Statistician from the Royal Statistical Society;
- Experience of applying statistical analysis to support policy making and regulatory decision making;
- Publication of academic research and/or professional publications using statistical analysis;
- 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.

Other Useful Information

Bar Standards Board

www.barstandardsboard.org.uk

BSB APEX

<https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/advisory-pool-of-experts/>

BSB Committees

<https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/our-committees/>

BSB Constitution

<https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/more-about-our-governance/>

BSB Statement on New Governance Structure

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