

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Invitation to Tender

**LEGAL WORK RELATING TO REGULATORY DECISIONS
BY THE BAR STANDARDS BOARD**

To be supplied to the Bar Standards Board

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BACKGROUND INFORMATION

1. Bar Standards Board

1.1. The Bar Standards Board (BSB) is the approved regulator for barristers in England and Wales. The Legal Services Board, established by the Legal Services Act 2007, oversees the activities of the BSB. The BSB is responsible for:

- 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.

1.2. One of the main functions of the BSB is to investigate and take appropriate action relating to complaints about the conduct of barristers and those we regulate as well as acting on other information that may indicate that there has been a breach of the BSB Handbook, including the Code of Conduct. The Professional Conduct Department is responsible for assessing incoming information/complaints, regulatory investigations, disciplinary proceedings and appeals. Legal challenges can arise in all of these areas of work.

1.3. The organisation also receives legal challenges against decisions made by or involving the Regulatory Assurance Department, which includes challenges by barristers against exemption decisions; by students against refusals of admission to an Inn or call to the Bar, failure to pass the professional entrance exams and refusals to allow former barristers readmittance to an Inn of Court. In addition, the Department's role in authorising entities to carry out reserved legal activities means that there is potential for challenge to any refusal to grant authorisation to a proposed entity.

1.4. From October 2018, the BSB will also have the statutory power to intervene in entities or into the practice of individuals regulated by the BSB. Such decisions to intervene may also bring about legal challenge to the decision to intervene or steps taken after intervention.

1.5. The BSB must:

- act in the public interest;
- protect the public and consumers of legal services;
- promote access to, and the proper administration of, justice;
- maintain high standards of behaviour and performance of the Bar;

- provide appropriate and fair systems of redress for those who receive poor service;
 - provide appropriate and fair systems for the barrister who is the subject of the complaint or disciplinary process;
 - ensure that complaints are dealt with fairly, expeditiously, and consistently; and
 - ensure that equality and diversity issues are dealt with in accordance with the equality and diversity policies of the Bar Standards Board.
- 1.6. Previously, when legal challenges have arisen the BSB has acted through insurers to instruct solicitors to act on its behalf. The firms so instructed have been those on the insurers' approved list. The BSB has, however, recently decided that insurance premiums are no longer cost effective. Therefore, we are now seeking to retain directly one or more firms to undertake our legal work arising from regulatory decisions. We are looking for a provider who can work in partnership with the BSB staff to respond to such challenges in an appropriate manner.
- 1.7. As such, the BSB invites tenders from providers with the knowledge, experience and capability to act on behalf of the BSB in legal proceedings and, if necessary, undertake regulatory investigations

2. Regulatory Framework

- 2.1. The BSB Handbook sets out the regulatory framework and includes the Code of Conduct, Practising Regulations, Authorisation Regulations and essential guidance. The Equality and Diversity Rules and Guidance are published separately but the principles run through all BSB work.

3. Regulatory Investigations

- 3.1. Complaints against barristers or entities are received from a variety of sources but they are usually made by clients, members of the public, solicitors, other barristers or Judges. The BSB also has the power to raise complaints of its own motion from information it has obtained for example from supervisory visits or in the future from interventions into entities. The process for considering and investigating complaints is set out in Part 5, Enforcement Regulations, Section A: The Complaints Regulations and all decisions and investigatory work is carried out under authorisation from the Professional Conduct Committee, in line with publicly available policies.
- 3.2. The test for deciding if a complaint should be referred to a Disciplinary Tribunal is whether there is a realistic prospect of a finding of professional misconduct being made and whether the regulatory objectives would be best served by pursuing disciplinary action. The standard of proof for findings of professional misconduct is currently the criminal standard i.e. beyond reasonable doubt. Evidence gathered during the course of the investigation including any witness statements must be able to stand up to both the criminal and civil requirements for evidence.

- 3.3. Whilst there are likely to be some alterations to this (for example a change to the standard of proof from April 2019 and possible alteration to the post investigation decision making body – see Modernising Regulatory Decision Making consultation paper) it is not envisaged that the components of the decision making processes will alter significantly, nor the reasons for challenges that arise.
- 3.4. Legal challenges may be received at any stage of the complaints process and in particular key points of challenge are:
- The decision to investigate
 - The decision to dismiss a complaint (either before or after investigation)
 - Claims in discrimination for bringing disciplinary proceedings or other enforcement action.
- 3.5. Conduct investigations are carried out by trained staff in the Professional Conduct Department. However, from time to time, cases arise where it would be more appropriate for the investigation to be carried out externally. Resourcing issues may also sometimes, although rarely, create the need for outsource investigations.
- 3.6. The staff in the Professional Conduct Department also prepare all cases for presentation to Disciplinary Tribunals. The BSB is represented at Disciplinary Tribunals, and most appeals, by members of our Prosecution Panel. While there may be changes to the way we appoint representatives for these purposes, the intention is to continue to have separate arrangements for preparing Tribunal cases and accessing Tribunal representation. However, from time to time, we may require assistance with these matters

4. Regulatory Assurance

- 4.1. The Regulatory Assurance Department (RAD), and Authorisation Review panels make decisions in a range of areas. These include:
- Waivers of training and/or scope of practice requirements;
 - Grants of authorisation to BSB licensed bodies and entities;
 - Appeals from the decision of an Inn of Court to refuse entry;
 - Oversight of centralised assessments undertaken by students as part of the vocational stage of training;
 - Authorisation of training providers.
- 4.2. Given the breadth of decisions made, there is scope for challenge in a number of areas. However, those points more likely to occur are:
- Challenges to decisions not to grant exemption from the qualification rules;

- Challenges to decisions to refuse admission to an Inn of Court;
 - Challenges to exemption decisions relating to examinations which are part of the Bar Vocational Qualification Certificate
 - Challenges to refusals to authorise a training provider.
- 4.3. Over the coming year there is likely to be some changes to the structure of the training requirements both before call to the Bar and during pupillage. Although these changes may alter the detail of challenges that may arise, it is not envisaged that they will have a significant impact on the type that of challenges received as outlined above.

5. Intervention powers

5.1. As of October 2018, the BSB will be in a position where, if it deems it appropriate, steps can be taken to intervene in an authorised entity or individual. The intervention itself will be carried out by agents or the BSB themselves, and it is envisaged that the relevant powers will be exercised rarely. However, there is scope for challenge in relation to any decisions to intervene, particularly:

- By the intervened individual/ entity challenging the decision to intervene
- By those affected by the intervention (eg: clients/ employees)
- Claims in discrimination for the decision to intervene.

SCOPE OF WORK REQUIRED

6. Areas of legal work

6.1. The main areas where legal, or other, assistance will be required are set out below. The list is not exhaustive and other types of legal assistance may be required from time to time.

- a) Managing and advising on legal challenges from those we regulate, including but not limited to, Judicial Reviews of decisions, Appeals to the High Court in authorisation decisions, claims in the Employment Tribunal and Human Rights Act claims.
- b) Managing and advising on Judicial Review, discrimination and other legal challenges to decisions brought by interested parties, for example complainants.
- c) Undertaking regulatory investigations and/or taking cases to Disciplinary Tribunal where circumstances are such that it is inappropriate or impractical for the work to be carried out by staff in the Professional Conduct Department/the Prosecution Panel.

- 6.2. The BSB cannot predict with any degree of certainty how many cases of the type outlined above are likely to arise each year. It is, therefore, seeking to enter into a call-off contract with a firm of solicitors for the conduct of such cases.

TENDER TIMETABLE

7. Timetable

- 7.1. **Tender period opens:** Monday 18 June 2018
- 7.2. **Confirmation of receipt of this document:** Confirmation to be made, via email, within two working days of receipt.
- 7.3. **Deadline for written tender submissions:** Friday 13 July 2018
- 7.4. **Selection of providers for interview:** Each of the written bids received will be short-listed applying the criteria set out below. The preferred providers will then be asked to present oral submissions to the BSB evaluation team in the week beginning 6 August 2018, most likely on Tuesday 7 August 2018.
- 7.5. **Contract commencement date:** On or around 1 September 2018.
- 7.6. **Contract completion date:** Initially three years after commencement with the option to renew annually by mutual agreement up to a maximum of five years from initial commencement.
- 7.7. **Training/ Induction for successful tender:** Week commencing 3 September 2018

RESPONSE GUIDELINES

8. Guidelines

- 8.1. You are invited to submit a written proposal as part of the response, which should be set out in the format below. You should submit two hard copy sets of written responses and an electronic copy of the document. All should be labelled clearly.
- 8.2. Responses should be on A4 paper, with sequential page numbering. Your Bid Manager should sign all responses. The sections should use the same paragraph numbering system as this Invitation to Tender (ITT) and should specifically address the criteria set out below.
- 8.3. Please deliver the written responses and electronic copy to:

Paul Pretty, Head of Investigations and Hearings, Bar Standards Board

PPretty@BarStandardsBoard.org.uk

289-293 High Holborn, WC1V 7HZ

- 8.4. The Bar Standards Board reserves the right to disregard any response submitted after the timetable deadline.
- 8.5. You are expected to supply all required information, or clearly state the reason for being unable to do so.
- 8.6. Any assumptions used in preparing responses should be clearly stated. Any appropriate supporting documents should be included and clearly labelled.
- 8.7. Questions relating to clarification of the ITT will only be accepted in writing, via email, to the Bar Standard Board's representative (Paul Pretty, Head of Investigation and Hearings ppretty@BarStandardsBoard.org.uk). Likewise, all responses from the Bar Standards Board will be in writing, via email, and may also be made available to other providers (subject to confidentiality). The Bar Standards Board will attempt to answer any question within 2 working days of receipt of that request; otherwise it will respond within that timescale notifying you of the estimated time to obtain the information.
- 8.8. Although unlikely to occur, additional criteria can be added and the Bar Standards Board reserves the right to modify the provisions of this ITT at any time prior to the scheduled date for written responses. Notification of such changes will be sent to all providers.
- 8.9. Should you wish to propose a deviation from the specifications, please ensure that you clearly identify and highlight where appropriate in your response.
- 8.10. By submitting a response, you confirm that you understand the requirements and have sufficiently addressed all aspects of the tender and information contained within, and that you have checked all stated details to be correct and as intended.
- 8.11. All information supplied by the BSB in connection with this tender, and any further information supplied during the tender process, is confidential and should not be disclosed without the prior consent of the BSB.

TENDER CRITERIA

9. Criteria

- 9.1. All written responses will be assessed against the criteria listed below. As stated in section 7 above; the preferred providers will be short-listed and asked to make an oral presentation to the BSB evaluation team.
- 9.2. The successful provider will:

- Demonstrable experience in defending public law actions on behalf of public and/or regulatory bodies.
- Have relevant expertise and experience of professional regulatory work, in particular dealing with disciplinary investigations and evidence gathering in large and legally/ factually complex cases as well as having day to day conduct at the disciplinary tribunal stage.
- Set out the qualifications, experience and availability of staff who will work under the contract.
- Offer a competitive price under a clearly defined price structure which whether any or all of these services will be provided at a fixed fee and/or an hourly rate basis.
- Demonstrate clear methods of work and delivery capability in collaboration with the BSB in-house team.
- Demonstrate a clear understanding of the legal regulatory environment.
- Be willing to provide any necessary training for BSB staff and those contracted with the BSB to provide input to the regulatory processes outlined, in particular to ensure staff are up to date with obligations in respect of disclosure, civil appeal and judicial review processes.
- Confirm how cases will be reported as matters progress and to ensure BSB staff are aware of and can act upon any “lessons learned”.
- Demonstrate robust Quality Assurance procedures.
- Demonstrate they can provide effective safeguards against conflicts of interest.
- Demonstrate compliance with obligations as a Data Controller under the General Data Protection Regulations (GDPR).

OTHER DOCUMENTS

For assistance in preparing the bid, the documents mentioned above are available on the BSB’s website at www.barstandardsboard.org.uk