



REGULATING BARRISTERS

Candidate Brief

Bar Standards Board Experts

Members of the Advisory Pool of Experts

- provision of advice in support of regulatory decision-making

2019

Background

The Bar Standards Board (BSB) was established in January 2006 as a result of the General Council of the Bar separating its regulatory and representative functions in anticipation of the requirements that were subsequently enshrined in the Legal Services Act 2007. The BSB is now an independent regulator responsible for regulating barristers and specialised legal services 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 models for Bar training have been developed to meet the requirements of a changing landscape.

The Bar Standards Board has been responding to these challenges and supporting 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 compliance with the requirements set out in the Code of Conduct and BSB Handbook. 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; and
- Handling reports and allegations against barristers and the organisations we authorise and taking enforcement or other action where appropriate.

The Board comprises up to 15 members, with both lay people and practising barristers. The Board has a lay majority and a lay Chair, as required by the Internal Governance Rules set 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 currently help to manage the Board's primary duties. They all have lay and barrister members. By the conclusion of our programme of governance reform in mid 2019, only two committees will remain, the Board's Governance, Risk and Audit Committee and Planning, Resources and Performance Committee.

Governance reform

In January 2017, our Board agreed a new set of governance principles and to continue implementing its revised governance structure. 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 was 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.

One of the next stages in our governance reform programme is to modernise our regulatory decision-making processes by creating an Independent Decision-Making Body (IDB) to replace our current Professional Conduct Committee (PCC) and Authorisations Review Panels.

The IDB will comprise a pool of barrister and lay members from which three or five-member panels, with a lay majority, will be drawn to take regulatory decisions that require input independent of the Executive. The Executive will continue to take a broad range of regulatory decisions and the main area of decision making for the IDB will be in relation to whether allegations of breaches of the BSB Handbook should be subject to disciplinary action for professional misconduct. The IDB will also determine appeals from decisions taken by the Executive in relation to authorisation and waiver decisions.

APEX members will be used to advise either the IDB or the Executive in cases where specialist practitioner input is required to inform the BSB's decision-making.

Why we need experts

As a small public interest organisation, we recognise that it would not be reasonable for us to carry a staff complement of sufficient size to provide all the types of knowledge and expertise that we need to complete our work to the required standard. Historically, most of that expertise came from within our committee membership. With fewer committees, that is no longer possible but we want to ensure that we continue to have a range of expertise available to us in performing our functions. It was with this in mind that our governance reforms included creating APEX to act as a pool of independent subject matter experts that we can call on at any time to provide us with the expertise we might need. The pool includes 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 the vital role they now play in supporting us in regulating the Bar. We bring 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 Executive staff.

APEX functions as a pool of external expert resources we call upon to provide expertise to assist us in performing our regulatory functions. The initial appointments to APEX when it was first created were solely to provide support for our policy development activities. However, as we continue to implement our governance reforms, the need has arisen to appoint a slightly different type of APEX member who can provide advice on issues to inform our regulatory decision-making. Such advice will be provided in the context of specific cases and factual situations as opposed to general policy matters.

More regulatory decisions are already being taken by the Executive (rather than by committees) and all decisions on authorisations to practise or waivers from qualification requirements are already taken by our Executive staff. We have previously appointed one member of APEX to provide advice on the latter and are seeking another to share that work.

Further, with the planned disestablishment of the Professional Conduct Committee on 1 June 2019, the APEX pool needs to be extended to cover the provision of advice to the IDB and the Executive on specific practice and legal issues in the areas of law most commonly encountered when considering enforcement cases.

APEX members appointed to provide advice on enforcement cases will generally not be expected to give a view on whether the relevant conduct represents a breach of the BSB Handbook: this will be for the relevant decision makers to assess. They will also not be expected to provide advice on the application of the BSB processes. The advice requested will normally relate to issues such as: the legal implications of specific conduct issues; accepted practice in the relevant area of law; advice on issues that should be explored in a conduct investigation; and practice issues arising from Tribunal decisions, appeal hearings in the High Court or litigation against the BSB.

The position is similar in relation to APEX members appointed to advise on authorisations and waivers. Such members will not be expected to advise on whether an authorisation should be made or a waiver granted. The advice required will centre on issues such as the evaluation of legal content in overseas/professional qualifications and the interpretation of published criteria and guidelines.

All APEX members may be asked to provide training to the Executive in their relevant field.

Time commitment

We expect APEX members to be available for a maximum of 10 days per year. We do not guarantee that all of those days will be required and, by the same token, depending on the volume of relevant cases, we might request greater assistance by agreement. Input is likely to be spread out over the year although it may be, particularly in relation to enforcement cases, that the complexity of the issues and/or volume of documentation may require the equivalent of several days work on one case.

Payment

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

All positions will be remunerated at the following rates: £308 per day and £154 per half-day, plus expenses as permitted by our expenses policy (usually travel to and from the BSB Offices when attendance is required).

APEX members will be engaged by the BSB on a case-by-case basis and paid on submission of an invoice to us.

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 thoroughly and contributing actively whenever called upon.

APEX members will be required to participate in an induction and thereafter regular engagement and training sessions, for which they will be remunerated. The BSB intends, by this means, 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 provide advice.

All APEX members are 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.

The BSB will need to share personal data with APEX members providing advice on regulatory cases. Such data will be provided in our role as Data Controller and APEX members will handle it as Data Processors. APEX members will therefore be expected to comply with all relevant statutory requirements for the handling and security of data as a Data Processor. These requirements will be set out in the contract for services.

Current members of APEX

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

Competition and Economics
Equality and Diversity
Higher Education
Insurance
Regulatory Policy and Theory
Regulatory Risk
Statistics

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

Competition Law
Equality and Diversity Law
Information Law and Data Protection
Regulatory Law

Currently, staff taking regulatory decisions on authorisations and waivers can seek advice from an APEX member with expertise in the teaching of Foundation of Law subjects on the qualifying law degree, EU law and Equality legislation.

Staff responsible for oversight of the revised Continuing Professional Development (CPD) system can seek advice from an APEX member with relevant CPD knowledge; that member may also be asked to contribute to the development of further guidance and best practice in relation to CPD.

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

The Roles

We are now seeking to appoint additional members to join APEX specifically to provide advice to support us in our regulatory decision-making functions. We are looking for expertise in the following areas:

Enforcement cases:

- Chancery Law;
 - Civil Law;
 - Criminal Law x 2 (general and specific expertise in handling sexual offences cases);
 - Discrimination Law;
 - Employment Law;
 - Family Law;
- and

Authorisations.

Selection and Eligibility criteria

There are three different sets of criteria that applicants must meet, or make declarations in relation to, in order to be considered for interview:

- General selection criteria;
- Specific selection criteria for members providing advice on enforcement cases and for members providing advice on authorisations and waivers; and
- General eligibility criteria.

The relevant criteria are set out under the corresponding headings below.

General selection criteria

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 and the public.

Candidates for APEX membership should normally hold:

- a post-graduate degree; and
- a professional qualification or have equivalent knowledge and experience.

Candidates must also meet the following general core competencies and qualities:

Technical

- A genuine expert in their field, who is recognised by their peers as able to provide a definitive view on practice in that specialism; someone who can discern and articulate both minimally acceptable practice and current best practice;
- 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; 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 criteria for members advising on enforcement cases

APEX members appointed to provide advice on enforcement cases **must**:

- be qualified as a barrister;
- have five years' post-qualification experience; and
- be currently authorised to practise by the Bar Standards Board.

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

Essential Competencies

- Understanding of the rules and regulations that apply to the procedures before the Courts and/or Tribunals;
- Understanding of ongoing developments in the area of specialism, including any implications for regulatory bodies;
- Experience of providing advice on procedure and process to public or private bodies and/or regulators;
- Experience of providing complex legal advice in the area of specialism;
- Experience of appearing before both Courts and/or Tribunals of first instance and those exercising an appellate function;

Desirable Competencies

- Experience of advising on the specialist area in the context of disciplinary action by professional regulatory bodies;
- Experience of, and/or awareness of, professional regulation principles and best practice; and
- Experience of providing training in the area of practice.

Specific criteria for members advising on authorisations and waiver cases

For the APEX member appointed to provide advice on authorisations issues, 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.

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

Essential Competencies

- Ability to apply knowledge to a variety of different situations;
- Ability to communicate technical and complex information clearly and concisely;
- Commitment to providing high quality professional advice within agreed timescales;
- Ability to understand and to apply regulations and guidelines;
- Integrity and impartiality; and
- Commitment to equality and diversity.
- Expert knowledge/experience of one or more of the following is *essential*.
Knowledge/experience in additional areas is *desirable*:
 - The teaching of the foundation of law subjects on a Qualifying Law Degree or Graduate Diploma in Law
 - Teaching on the Bar Professional Training Course
 - Provision of pupillage
 - Advocacy training
 - Supplying legal services to the public either as a barrister or authorised by another approved regulator
 - Mutual recognition of qualifications
 - Equality legislation

General 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 APEX members do not 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, at the same time as appointment to the APEX panel. If a person wishes to be appointed to APEX, they will be required to give up their membership of relevant bodies.

Members will be asked to confirm their eligibility at the time of appointment and throughout the duration of their appointment.

We 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 associations and declarations listed above do not necessarily make a candidate ineligible for APEX membership. We will consider any information provided on its individual facts and we may ask for more information before progressing an application further or we may explore with the candidate at interview. However, the BSB reserves the right to deem a candidate as ineligible for APEX membership if we consider the nature of any associations and/or declarations make the candidate unsuitable for selection.

The BSB also 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, declarations and associations relevant to membership (as detailed in this candidate brief), 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 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 role, as your expertise permits.

The closing date for receipt of applications is **Monday 25 February 2019, 9:00am**.

If you require any reasonable adjustment to participate in this recruitment process, we will take all reasonable steps to make appropriate adjustments. Please contact Emiko Etete if you have any such requests or would like to discuss in confidence. Emiko's contact details are set out 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.

Further information and queries

For any queries or requests for reasonable adjustments, please contact:

Emiko Etete, Corporate Support Officer
(emetete@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)

Alex Williams, Operational Support Team Manager
(awilliams@barstandardsboard.org.uk or 020 7611 1361)

Timetable

- Closing date: Monday 25 February 2019 9:00am
- Week commencing 18 March – invitation to interview for shortlisted candidates

Interview dates for area of expertise:

- Tuesday 2 April - Civil Law
 - Wednesday 3 April – Family Law
 - Thursday 4 April – Discrimination Law
 - Tuesday 9 April – Criminal Law (General), Employment Law
 - Wednesday 10 April – Authorisations, Criminal Law (Sexual Offences)
 - Thursday 11 April – Chancery Law
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- Week commencing 15 April – offer of appointments made
 - May 2019 - induction

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 Consultation on modernising regulatory decision-making (March 2018) and our responses to submissions

https://www.barstandardsboard.org.uk/media/1924546/modernising_regulatory_decision_making_-_consultation_paper.pdf

https://www.barstandardsboard.org.uk/media/1957528/mrdm_consultation_response_final.pdf