

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**Memorandum of Understanding between
The Bar Standards Board**

And

The Council of the Inns of Court

And

The Honourable Society of The Inner Temple

And

The Honourable Society of The Middle Temple

And

The Honourable Society of Gray's Inn

And

The Honourable Society of Lincoln's Inn

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The Parties

1. This Memorandum of Understanding (MOU) is between:
 - 1.1. The Bar Standards Board (BSB) whose principal office is at 289-293 High Holborn, London, WC1V 7HZ; and
 - 1.2. The Council of the Inns of Court (COIC), whose principal office is 9 Gray's Inn Square, London, WC1R 5JD; and
 - 1.3. The Honourable Society of The Inner Temple, Crown Office Row, London EC4Y 7HL; and
 - 1.4. The Honourable Society of The Middle Temple, Middle Temple Lane, London EC4Y 9BT; and
 - 1.5. The Honourable Society of Gray's Inn, 8 South Square, London, WC1R 5ET; and
 - 1.6. The Honourable Society of Lincoln's Inn, London WC2A 3TL.
2. The BSB is the independent regulatory body established by the General Council of the Bar for the regulation of legal services by barristers and BSB authorised entities in England & Wales¹. The BSB's powers arise from various statutes and regulations including the Legal Services Act 2007 ("the Act").
3. COIC is a charity (no. 1155640) and Company Limited by Guarantee (no.8804708) with objects that include advancing education in the administration and practice of law and promoting the sound administration of the law. It also provides administrative support to the Inns' Conduct Committee (ICC), which organises hearings to consider misconduct by student members of, or applicants to, the Inns of Court, and whether this means they are 'fit and proper' individuals to become practising barristers.
4. The four Inns of Court are the professional membership associations for barristers in England and Wales dedicated to promoting the rule of law and providing excellent education and training to their members. Under the Act at s207(1) a "barrister" means an individual who has been Called to the Bar by an Inn of Court and is not disbarred by an order of an Inn of Court.

Scope and Purpose of this MOU

5. This MOU sets out the roles and responsibilities of the Parties in relation to the education, training and qualification of barristers of England and Wales and is concerned with matters prior to Call to the Bar. "MOU" refers to this document and its accompanying Schedules. The MOU provides transparency as to the governance arrangements for the roles and responsibilities which the BSB, each of the four Inns and COIC (including the ICC) mutually agree to perform in relation to qualification for the Bar. The MOU provides the Parties with assurance that only those who are fit and proper to practise are Called to the Bar and that the Inns and COIC foster the development of a community of professional practice in the public interest, and in

¹ Under the Legal Services Act 2007 (the Act), the General Council of the Bar (or "Bar Council") is an Approved Regulator (as defined in the Act) for barristers in England and Wales. The Bar Council must under the Act delegate responsibility for all regulatory functions and arrangements to an independent body and has duly constituted the Bar Standards Board (BSB) for this purpose.

accordance with the four principles of Bar Training: flexibility, accessibility, affordability and high standards.²

6. For the avoidance of doubt, this MOU does not cover COIC's activities with the Bar Tribunal and Adjudication Service (BTAS) or COIC's resourcing of the Inns Conduct Committee (ICC). Such service level arrangements are set out separately.³ This MOU does not apply to the activities of the Inns of Court College of Advocacy (ICCA).
7. This MOU is not intended to be legally binding and no enforceable contract is being entered into by the Parties. The Parties agree to perform their allocated roles and responsibilities in accordance with this MOU, the law and any other relevant policies, rules and procedures which may be updated from time to time. This may include, for example, updates to the procedures for sharing data, or amendments and revisions to the BSB Handbook Part 4 Qualification Rules. The Parties agree to inform each other of changes to any relevant policies, rules or procedures and as applicable to consult each other on them or agree them between each other. Any changes or reviews of such documents will not necessarily lead to the MOU needing to be varied.

Effective Date

8. This MOU is effective from 1 April 2019 until further notice, subject to paragraph 46. Start and end dates for specific activities will be agreed between the Parties.

Roles and responsibilities

Student membership of an Inn

9. An individual must be admitted as student member of an Inn in order to complete compulsory aspects of training before Call to the Bar and to facilitate the fit and proper person checks that are required as part of that process. The BSB Authorisation Framework specifies the latest point for a student to become a member of an Inn of Court. It will be for each Inn to determine if a student should be allowed to join at an earlier point.
10. The Inns administer admissions and will have regard to the matters which are in the scope of the MOU when deciding their arrangements in respect of other aspects of student membership of an Inn.
11. The Inns shall publish comprehensive, accurate and up to date information in relation to:
 - Eligibility for and cost of membership;
 - Availability of and procedures for applying for scholarships and other possible contributions to costs of membership and qualification for the Bar;
 - Availability of relevant collegiate activities in London and outside London;
 - Feedback and complaints procedures for student members; and
 - The circumstances and processes for the termination of membership.

² A definition of these principles can be found in the BSB's *Authorisation Framework* for Authorised Education and Training Organisations.

³ Such service arrangements with the ICC are likely to be set out in the agreement between the BSB and COIC in respect of BTAS from 2019/20 onwards.

12. Application deadlines for membership and for scholarships or other financial assistance in relation to qualifying as a barrister should, as far as reasonably possible, be consistent across the four Inns.
13. The BSB and the Inns need to assure themselves that the arrangements in place support:
 - the BSB's principles of Bar training; and
 - the fulfilment of the BSB's and the Inns' objectives and obligations.

The BSB receives assurance regarding student membership of an Inn as set out in Schedule 4.

Administration of fit and proper person checks

14. The BSB and the ICC will agree guidelines for determining whether an individual is a fit and proper person⁴ and the Inns and/or the ICC will be responsible for incorporating these guidelines into their rules. Such consideration will include:
 - matters disclosed on admission to an Inn or at any point as student member; and
 - pre-Call declarations and checks.⁵

The BSB will be responsible for approving any revisions to ICC rules. Any relevant internal Inn rules must be consistent with the ICC Rules, including amendment as necessary.

15. The Inns and COIC administer the fit and proper checks at all stages. The BSB receives assurance on fit and proper person checks as set out in Schedule 4.

On admission to an Inn

16. Students complete an admission declaration when applying to become a student member of an Inn. This enables the Inn to identify any issues which may call into question whether they are a fit and proper person to practise as a barrister.
17. The BSB will agree with COIC and the Inns the content of the admissions declaration, which must be completed by students or others when seeking to join or re-join an Inn. The Inns shall use this to determine whether they are a fit and proper person to practise as a barrister and be admitted. If there is any doubt, the Inns shall refer the student to the ICC for a determination. For the avoidance of doubt, this does not prevent the Inns from requiring additional information to consider whether the applicant is a fit and proper person to become a member, subject to BSB Guidelines.
18. The Inns shall request from the BSB, at the point at which they receive applications for admission to an Inn from transferring lawyers and those seeking re-admission to an Inn, any information pertinent to their application. In relation to transferring lawyers, the BSB will request certificates of good standing and share any concerns with the Inns.

⁴ This will include applicants for admission and Call, as well as the duration of the student membership.

⁵ Criminal records disclosures will be made on admission via self-declaration and at Call via a 'Standard' DBS check, and/ or overseas equivalent.

Student conduct

19. Once a student is a member of an Inn, and before they are Called to the Bar, their conduct will be overseen, and any concerns managed, by their Inn to ensure that only those who are fit and proper to practise as a barrister can be Called to the Bar.
20. Matters of student conduct will be administered by each of the Inns for their student members. In doing so, the Inns and the ICC will refer to Guidelines developed by the BSB in consultation with them to determine whether an individual is a fit and proper person to become a practising barrister. The BSB will redirect any person seeking to report student misconduct to the BSB to the student's Inn.
21. If conduct matters are raised in respect of a student member, the relevant Inn will conduct an investigation in accordance with its internal disciplinary procedures and the ICC rules, referring to the ICC any matter that calls into question a student's fitness to become a practising barrister.
22. If, after investigation, a matter is not sufficiently serious to call into question fitness to become a practising barrister, the Inn may deal with it through internal disciplinary procedures. The ICC will comply with its obligations, as set out in a separate agreement⁶, when conducting hearings of either misconduct matters or appeals against an Inn's internal decision.
23. Decisions on misconduct matters should be shared with the student as soon as reasonably practicable after the conclusion of the proceedings. The outcome of decisions taken by the ICC shall be shared with the BSB in accordance with the data sharing protocol, attached at Schedule 3.

At Call to the Bar

24. To ensure that only those who are fit and proper persons to practise as barristers are Called to the Bar, the Inns undertake checks and seek declarations from each student prior to Call.⁷ The same requirement applies to those seeking readmission. These checks must include a standard DBS check (and/or the equivalent for those who have lived outside the UK for 12 months within a period of 5 years).
25. The BSB, COIC and the Inns agree required content of a Call Declaration, which must be completed by individuals prior to being Called to the Bar. This includes those who are seeking to be readmitted or transfer to the Bar.

Review and appeal

26. When the outcome of an internal conduct process or ICC hearing panel is communicated, an applicant (for admission or Call) must be informed about:
 - their right to have such decisions reviewed, as set out in the ICC rules;
 - how to make an application for review; and
 - the deadline for any application for review.
27. A student may apply for:

⁶ Expected to be the revised agreement between BTAS and BSB in 2019.

⁷ This includes the admissions and Call declarations, guidance for students on the fit and proper person checks and guidelines for the Inns and the ICC in making decisions as to whether the student is fit and proper.

- An internal decision of an Inn to be reviewed by the ICC;
- A decision of the ICC to be reviewed by an Independent Decision-making Panel, in accordance with BSB Handbook Part 4; and
- A decision of the Independent Decision-making Panel to be appealed to the High Court.

28. The BSB may appeal a decision of the ICC to the High Court⁸. Where appropriate an Inn may request that the BSB consider initiating an appeal.

Training

29. Staff or panel members involved in decision-making on matters of admission, readmission or student conduct, either at the ICC or the Inns, will have the necessary skills, experience and training to ensure proportionate, consistent and fair decision-making.

Funding

30. The Parties each agree to fund the administration of their roles and responsibilities for student conduct, which may include, but not necessarily be limited to, salaries, insurance, facilities and training costs.

Qualifying Sessions

31. Before being Called to the Bar, students (including transferring lawyers) are required to complete a minimum number of “Qualifying Sessions”. These are professional development events of an educational and collegiate nature which complement the vocational component of training for the Bar and foster a community of professional practice⁹.

32. Pursuant to rQ6.3 of the BSB Handbook, the BSB will set out from time to time in consultation with the Inns minimum requirements for the delivery of Qualifying Sessions. This will include the mandatory number of Sessions and approval of a framework for the delivery of and assurance in relation to the Qualifying Sessions, as set out in Schedules 2 and 4, respectively.

33. Any such framework must set out:

- How the programme of Qualifying Sessions meets the four principles underpinning Bar training;
- The requirement for learning outcomes relevant to the Professional Statement for barristers to be specified for each Qualifying Session;
- The themes around which the Qualifying Sessions will be designed;
- How the Inns will offer sessions outside London;

⁸ Section 24 Crime and Courts Act and rQ40 of the BSB Handbook.

⁹ See BSB Policy Statement March 2018.

https://www.barstandardsboard.org.uk/media/1935316/fbt_pupillage_af_and_car_policy_statement_-_may18.pdf

- Attendance requirements, including in relation to regional Qualifying Sessions and events which count for more than one session;
 - A requirement for diversity and inclusion to be systematically considered in the development of each Inn's Qualifying Session programme;
 - How any requests for waivers from Qualifying Sessions will be considered¹⁰; and
 - Quality assurance mechanisms and processes, including feedback from students and internal and external observers.
34. Each Inn shall develop a programme of Qualifying Sessions which adheres to this framework.
35. The Inns administer these arrangements and the BSB receives assurance regarding Qualifying Sessions as set out in Schedule 4.

Assurance

36. COIC (on behalf of the ICC) and the Inns will submit to the BSB an Annual Self-evaluation Report, reflecting the requirements of Schedule 4 and incorporating elements of external, independent review of education and training activity within the scope of this MOU. If the BSB identifies a risk to the regulatory objectives or to its principles of flexibility, accessibility, affordability and high standards through this assurance process it may seek further information from the Inns, including through undertaking visits to the Inns. The BSB will adopt a risk-based approach consistent with its procedures for regulatory supervision, ensuring it is proportionate to the activities undertaken.

Confidentiality and data protection

37. The Parties acknowledge that in the course of the activities covered by this MOU, a Party may come into possession of information confidential to the other Parties or third parties. Subject to any requirement on a Party to disclose confidential information to any court, tribunal or government authority with competent jurisdiction (including the Legal Services Board), the Parties undertake to maintain the confidentiality of such information in line with their duties under GDPR and other relevant legislation.
38. The Parties will comply with their responsibilities as set out in the Data Sharing Protocol at Schedule 3.

Liability and insurance

39. The Parties will ensure they have the benefit of appropriate and sufficient indemnity arrangements to cover the costs and liabilities that may arise under or connected with this MOU, including for example employers' liability insurance, public liability insurance and professional indemnity insurance. Each Party will indemnify the other Parties against any claim or liability arising from a failure by that Party to adequately fulfil its responsibilities under this MOU.
40. The Parties will notify each other if any indemnity arrangement or policy for any relevant insurances is (or will be) cancelled or its terms subject to any material change.

¹⁰ This arrangement is without prejudice to the BSB's power under rQ10 and rI5 of the BSB Handbook.

In the event that one of the Parties, acting reasonably, believes that the insurances or indemnity arrangements are not being maintained the Parties shall meet at the earliest opportunity to discuss alternative ways of ensuring that liabilities arising from failure to fulfil the roles and responsibilities set out in this MOU are adequately and appropriately insured against, and the Parties shall take any steps agreed as soon as practicable following such meeting. COIC and/or the Inns will take account of any disciplinary, criminal, employment or similar issues in considering the suitability of employees and others who fulfil responsibilities within the scope of this MOU.

41. The Parties will notify each other of other matters that might reasonably undermine public confidence in them.

Complaints

42. The Parties publish their arrangements for complaints about the administration of their roles and responsibilities under this MOU and keep a record of all written complaints. The BSB may seek information from the Inns and COIC regarding the handling of complaints they have received as part of the assurance arrangements set out in Schedule 4.

Review

43. The BSB undertakes to assist the other Parties to resolve any ambiguities or to advise on the nature of their responsibilities within the scope of this MOU promptly. The Parties also agree that any amendment to the MOU must be in writing and are effective only when signed by all Parties. The Parties agree that a review of Schedules or other associated guidelines and documents will not necessarily require a variation to the MOU.
44. The Parties will review this MOU annually, at a time mutually agreed between them. Any amendments to the MOU or Schedules will only be made with the agreement of all Parties.

Dispute resolution procedure

45. In the event of a dispute between the BSB and any of the other Parties arising out of this MOU, any of the Parties may inform the others in writing of the dispute, setting out full details. During any dispute all Parties will continue their performance of roles and responsibilities. Any dispute between the BSB and the other Parties will first be discussed by the signatories to this MOU at an ad-hoc meeting convened with the purpose of resolving the dispute at a time agreed between the Parties. In the event it is not possible to resolve the dispute, the BSB reserves the right to review the relevant aspects of its regulatory arrangements.

Termination

46. Notwithstanding any other provision of this MOU, the Parties may mutually agree in writing to terminate this MOU, and if the Parties so agree, they shall agree the date upon which that termination will take effect and any further terms upon which this MOU should be terminated. The Parties undertake to have particular regard in the event of termination to the best interests of student members of an Inn who have not yet been Called to the Bar, as well as any other ongoing legal obligations the Parties may have.

Publication

47. This MOU will be published on the website of the BSB. The BSB may with the prior consultation of the other Parties publish reports from time to time arising from its arrangements for regulatory assurance under this MOU.

Signature Tessa Blackstone

Date 27.3.19

Baroness Tessa Blackstone

Chair of the Bar Standards Board

Signature Desmond Browne

Date 27.iii.19

Mr. Desmond Browne QC

President of the Council of the Inns of Court

Signature Richard McCombe

Date 27.3.19

The Right Honourable Lord Justice Richard McCombe

Treasurer of the Honourable Society of Lincoln's Inn

Signature Anthony Hughes

Date 27 March 2019

The Right Honourable Lord Anthony Hughes
Treasurer of the Honourable Society of the Inner Temple

Signature David Bean

Date 27 March 2019

The Right Honourable Lord Justice David Bean
Treasurer of the Honourable Society of the Middle Temple

Signature Stephen Irwin

Date 27. III. 2019

The Right Honourable Lord Justice Irwin
Vice-Treasurer of the Honourable Society of Gray's Inn