

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Appointment of Independent Reviewer

Application Pack

May - July 2019

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Bar Standards Board

Introduction

The Bar Standards Board (BSB) regulates barristers and specialised legal services businesses in England and Wales in the public interest.

We are 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; and
- Handling complaints against barristers and the organisations we authorise and taking disciplinary or other action where appropriate.

The work that we do is governed by The Legal Services Act 2007 (the Act) as well as a number of other statutes.

Our objectives are laid down in the Legal Services Act. We share them with the other legal services regulators. They are:

- Protecting and promoting the public interest;
- Supporting the constitutional principle of the rule of law;
- Improving access to justice;
- Protecting and promoting the interests of consumers;
- Promoting competition in the provision of services;
- Encouraging an independent, strong, diverse and effective legal profession;
- Increasing public understanding of citizens' legal rights and duties; and
- Promoting and maintaining adherence to the professional principles.

The Board comprises 15 people. There are seven practising barristers and eight lay people. The Board has a lay majority, as required by the Internal Governance Rules made by the Legal Services Board¹. The Board is committed to regulating in the public interest and to following best practice for modern regulators.

The intention is that from 15 October 2019, the Board will only have two committees to help it discharge its responsibilities:

- Governance, Risk and Audit; (responsible for ensuring the Board's corporate governance standards and internal controls are maintained. The Committee keeps under review and advises the Board on all matters relating to the risk management framework and the BSB's internal audit function); and
- Planning, Resources and Performance (leads work in relation to developing strategic direction and plans for the BSB, advises the Board on developments to the planning, resource setting and performance monitoring processes and

¹

[https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Versio
n%203_Final.pdf](https://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf)

considers whether financial and operational resources are properly and effectively allocated and efficiently managed across the BSB).

All committees have barrister and lay members. All Board and committee members, as well as those who have official roles within the BSB, are appointed in accordance with the Seven Principles of Public Life, a copy of which is at Annex 1.

Our organisational values

The way in which we undertake our work is very important to us. We do this by adhering to a number of organisational values, which are currently under review. These are:

Fairness and Respect

We strive to achieve equal access and equal treatment, valuing and respecting our differences.

Independence and Integrity

We are objective and evidence-based, open, honest and accountable, and we expect everyone to meet these same ethical standards.

Excellence and Efficiency

We are committed to learning and improving, seeking to maximise our effectiveness by making the best possible use of our resources.

Governance changes

The BSB has, over the last few years (since 2015) been carrying out a governance review programme designed to distinguish more clearly between policy-making and regulatory decision-making on individual cases and to ensure that all policy development is undertaken by the executive staff, led by the Director General, directly overseen by the Board.

As part of the governance review programme, we have streamlined the Committee structure by reducing the number of Committees from eight to the current four and transferred all policy making functions to the executive and the Board.

One of the final stages in the governance review programme is to modernise our regulatory decision-making to ensure that it is risk based and, where appropriate, independent of the profession. We will therefore be disbanding the current Professional Conduct Committee (PCC) and replacing it with an Independent Decision-Making Body (see below for more details). The IDB will be solely a decision-making body and the current advisory functions performed by the PCC will, in future, be provided by members of our Advisory Panel of Experts (APEX) specifically recruited for that purpose.

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

The changes are a significant step in our evolution as a modern and efficient regulator: reflecting our desire to be flexible in approach and have the ability to adapt to a wide variety of circumstances.

Under our current system, reviews of individual decisions on enforcement cases are taken by relevant line managers or members of the PCC. The PCC also provide assurance that decisions taken by the Executive (staff) have been made in accordance with the agreed procedures and are reasonable in the circumstances. The PCC does this via a Quality Review Sub-Committee (QRSC).

With the disbandment of the PCC, the BSB wishes to ensure that these oversight functions are retained, and we intend to do so by recruiting an Independent Reviewer (see below for more information).

Overview of BSB regulatory decision-making functions

The BSB makes a range of regulatory decisions which fall into three main areas:

1. **Enforcement decisions:** i.e. decisions on whether to bring disciplinary action against a regulated person (primarily barristers) or take other types of enforcement action, for breaches of the BSB Handbook. Breaches can be brought to the BSB's attention via what is currently termed "complaints" and also from other external and internal sources such as: internal referrals for breaches of practising requirements, press reports or reports submitted by barristers under their reporting obligations. Currently, complaints and referrals/reports are treated under slightly different processes but from 15 October 2019, all incoming information will be classed as "reports" and assessed centrally by a Contact and Assessment Team (CAT). The CAT will assess the information and refer any relevant matters to the Enforcement Team for formal investigation. It will then be that for the Enforcement Team to, or the IDB, to decide whether disciplinary, or another form of, action should be taken.
2. **Supervisory decisions:** the BSB has a Supervision Team which mainly supervises chambers as opposed to individuals. Nevertheless, it has responsibility for acting on information received that would be more appropriate for supervisory action, such as a chambers visits, than for enforcement action. Currently such decisions are taken on a relatively informal basis in conjunction with other Teams. However, in future CAT will determine the most appropriate route by which incoming information should be handled. This could result in simultaneous action being taken by both the Supervision and the Enforcement Team.
3. **Authorisations** – the BSB has the power to grant a number of authorisations. These include: authorising entities (corporate bodies such as Alternative Business Structures) and waivers from the practising requirements. Such authorisations are granted via applications direct to the Authorisations Team.

Further details about the BSB can be found on our website

<https://www.barstandardsboard.org.uk/about-bar-standards-board/> and information about the changes described above can be found at

https://www.barstandardsboard.org.uk/media/1924546/modernising_regulatory_decision_making_consultation_paper.pdf and

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

The role of the Independent Reviewer

The Board wishes to appoint an **Independent Reviewer** to provide assurance and review functions in relation to processes operated by, and decisions taken, by the CAT, Enforcement Team and Supervision Team. In time the remit may go wider.

The role will be responsible for providing independent audit of decisions devolved to the Executive in these areas. This will consist of conducting biannual, or more regular, reviews of a random sample of cases handled by the Teams to provide assurance they were taken in accordance with the laid down procedures and the decisions were within the bounds of what could be considered reasonable. This work may also include carrying out thematic reviews of specific areas of the systems at the behest of the Governance, Audit and Risk Committee.

The role will also be tasked with carrying out 'requests for review'. These are reviews of the decisions taken in individual cases where the person making a report, or the person subject to such a report, is not content with the decision taken and requests that it be reviewed. The basis for deciding such reviews will be either that new information has come to light since the decision was taken or there is another good reason which indicates the previous decision needs to be re-assessed.

Most "requests for reviews" currently arise from decisions taken at the initial assessment stage (i.e. those that will be taken by CAT in the future). A small number arise from decisions taken by the Enforcement Team after investigation. Currently there is no formal process for review of decisions taken in relation to supervisory action, but it is anticipated that these may arise in the future: e.g. where CAT decides to refer a matter to the Supervision Team as opposed to the Enforcement Team.

In relation to the audit function, the Independent Reviewer will not be tasked with considering the merits of any individual decisions but instead will be required to focus on systematic issues such as the proper application of the relevant policies and procedures and where improvements to processes could be made.

However, in relation to "requests for reviews", the Independent Reviewer will be expected to consider the merits of the decision and make recommendations to the Executive where he/she considers that a decision should be overturned or looked at again.

Applicants

We welcome applicants who will bring a new and fresh perspective and there is no mandatory requirement to have recent experience of regulation in the legal field.

Nevertheless, it is essential that the person appointed understands, and has experience of, the application of rules, regulations and procedures in a decision-making context. It would be preferable if they had sound knowledge and experience of the legal field. There is no requirement that the Independent Reviewer is a barrister but direct experience of the Bar and the environment in which it operates would be advantageous.

We welcome applications from all people who meet the role requirements regardless of background and particularly encourage those from groups that are currently underrepresented in our independent decision-making processes such as women, and members of the LGBT, disability and BME communities.

Time commitment

The expected time commitment will be the equivalent of 1.5 days per week, based on 46 weeks over a 12-month period. The role will inevitably involve some time spent at the BSB's offices, but it is envisaged that most of the work can be conducted from home via remote working facilities provided by the BSB.

Criteria for appointment

The role is open to both legally and non-legally qualified people.

However, if you are a barrister, whether practising or not, you cannot concurrently be a member of a BSB Committee or be a member of the Bar Council or any of its representative committees. Barristers who are members of any of these "bodies" will be expected to resign the role prior to appointment.

Competencies, Experience and Attributes

All applicants are expected to be able to demonstrate a commitment to the public interest and the Seven Principles of Public Life.

Please refer to the attached role description and person specification, as this sets out the skills, experience, knowledge and attributes required for the role.

Terms and conditions

The following is intended as a general guide; specific terms and conditions will accompany letters of appointment.

The appointment of Independent Observer will be for an initial period of three years, subject to satisfactory annual appraisals.

The role will be remunerated at the rate of £154 per half day or £308 per day (plus VAT, if the individual is registered), with a half day being three and a half hours and a day being seven hours. The post-holder will be able to claim travel costs for essential travel required by the BSB, but travel time will not be paid.

Travel costs will also be paid for applicants asked to attend an interview: this will be limited to standard class travel fares or other reasonable travel costs, which will only be reimbursed upon production of receipts.

Applicants should not normally be the subject of criminal charges, directors' disqualification orders or be undischarged bankrupts, and should expect any declarations to be explored by the selection panel. The same applies to any findings of professional misconduct by a regulator other than the BSB, which should be declared on application.

Barrister applicants must not be the subject of orders or undertakings under the Fitness to Practise Rules or Interim Suspension Rules. They should also not have previous disciplinary findings against them, but the nature of such findings and their age will be taken into account.

Unspent criminal convictions, cautions, reprimands or final warnings and any previous or pending supervisory action, complaint, investigation, or disciplinary proceedings or findings will not preclude further consideration of your application.

Such information should be provided on application. It will be considered by the selection panel during the recruitment process and may be explored further with candidates at interview by the selection panel if this is deemed appropriate.

Any declaration will be treated in confidence by the BSB.

How to apply

CV and covering letter

To apply please visit the About Us section of our website
www.barstandardsboard.org.uk

Candidates are asked to provide a covering letter outlining how they meet the core competencies for the role(s), together with a brief CV of no more than 2 pages in font size 12. The covering letter should consist of no more than 3 pages of supporting information directly addressing the required competencies.

Applications will be assessed only against the application, which will be anonymised. As such, it is important that candidates include all details they consider relevant. A Supporting Details form must also be submitted.

Candidates with queries regarding the position, should contact Rebecca Forbes, Head of Governance and Corporate Services at:

RForbes@BarStandardsBoard.org.uk

Please send completed applications to:

BSBapplications@BarStandardsBoard.org.uk

Equality & Diversity Monitoring form

It is important that the BSB should reflect the diversity of the society that the Bar serves, and applications from all sections of the community are welcomed. To enable us to monitor this properly, you are asked to complete the Equality & Diversity monitoring form supplied with this pack.

Timetable

The timetable for the process is as follows:

Closing date for applications: **9am Monday 03 June 2019.**

Interviews will take place in London on **9 and 10 July 2019.**

Interviews

Interviews will be conducted by a selection panel made up of the Chair of the Governance, Risk and Audit Committee (GRA), a senior staff member and an independent external person.

Annex 1

The Seven Principles of Public Life (“Nolan” Principles)

The Committee on Standards in Public Life in its First Report has set out '**Seven Principles of Public Life**' that it believes should apply to all in the public service. These are:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.