

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting****Thursday 1 December 2022 (4.30 pm)****Hybrid Meeting (etc Venues, 50-52 Chancery Lane, London WC2A 1HL & MS Teams)**

- Present:** Kathryn Stone OBE (Chair)
Gisela Abbam
Alison Alden OBE
Emir Feisal JP (items 9 – 16)
Steve Haines
Andrew Mitchell KC
Irena Sabic
Adam Solomon KC
Professor Leslie Thomas KC (items 1 - 9)
Stephen Thornton CBE
- By invitation:** Iain Christie (Chair, BSB Independent Decision Making Body) (item 8)
Mark Fenhalls KC (Chair, Bar Council) (items 1-9)
Lorinda Long (Treasurer, Bar Council)
Professor Mike Molan (Chair, Centralised Examining Board) (item 9)
Nick Vineall KC (Vice Chair, Bar Council)
James Wakefield (Director, COIC)
- BSB Executive in attendance:** Julie Carruth (Supervision Manager) (items 7- 9)
Christopher Fitzsimons (Communications Manager)
Rebecca Forbes (Head of Governance & Corporate Services) – via Teams (item 10-16)
Oliver Hanmer (Director of Regulatory Operations)
Teresa Haskins (Director of People, BSB)
Charlie Higgs (Examinations Manager) (item 9)
Oliver Jackling (Research and Evaluation Manager) (items 1-9)
Sara Jagger (Director of Legal and Enforcement) – via Teams (items 7 – 16)
Ewen Macleod (Director of Strategy & Policy)
Mark Neale (Director General)
John Picken (Governance Officer)
Dr Victoria Stec (Head of Authorisation) – items 1-9
Julia Witting (Head of Supervision) – items 1-9
Wilf White (Director of Communications & Public Engagement)

Item 1 – Welcome / Announcements

- Kathryn Stone welcomed those present to the meeting and made the following announcements:
 - the Board offers its sincere condolences to the family of Al Tucay who passed away suddenly on 9 November 2022. Al was the BSB's Head of Conduct Assessment and a very much respected and admired colleague who will be greatly missed;
 - the Board welcomes Gisela Abbam, a newly appointed lay Member, to her first formal meeting;
 - Adam Solomon KC stands down from the Board on 31 December 2022 after eight years of service. The Board sincerely thanks Adam for his tremendous support and contribution over this period which has been greatly appreciated;
 - Mark Fenhalls KC stands down as Chair of the Bar Council at the end of the year. The Board has been grateful for his contribution to BSB meetings and the kind and generous support he gave to the incoming Chair when she first took on this role.

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2. She also informed those present that Part 1 meetings are now recorded to assist with minute taking. This is in accordance with a decision taken by the Board at its last meeting and will continue for the future.
3. **Item 2 – Apologies**
 - Malcolm Cree (Chief Executive, Bar Council)
4. **Item 3 – Members’ interests and hospitality**

None.
5. **Item 4 – Approval of Part 1 (public) minutes (Annex A)**

The Board approved the Part 1 (public) minutes of the meeting held on 22 September 2022.
6. **Item 5a – Matters arising & Action List**

There were no matters arising. The Board **noted** progress on the action list.
7. **Item 5b – Forward agenda**

The Board **noted** the forward agenda.
8. **Item 6a – Director General’s Report: Performance Update**

BSB 058 (22)

Mark Neale updated the Board about changes in case handling processes following some recent high-profile cases which received press coverage. He stated that:

 - in cases where a review decision implicitly or explicitly criticises a barrister, we will ensure that this individual is consulted, even when the decision upholds our view that no action is warranted;
 - we are revising our communications and customer care procedures to make them more systematic so that those making reports, and those reported on, both receive more timely updates.
9. In respect of the report, he highlighted the following:
 - good progress has been made in reducing the backlog of reports and authorisation applications caused by a loss of service following the cyber attack. We expect to fully catch up in the early part of the New Year;
 - the quality of our decision making remains very high;
 - our plan to accelerate investigations is continuing and we expect to double the number of completions in the third quarter of the year.
10. In response to questions raised, he stated that:
 - notwithstanding the progress made, we shall not close as many investigations as we had hoped to do in quarter 3. This adds to pressure for quarter 4, but we shall marshal our resources accordingly;
 - the business plan summary identifies many “high priority” items, which reflects our prioritisation of performance. A number of project-oriented tasks have an amber status because frontline regulatory staff are currently focused on core work.
 - the report references service quality (paragraph 10) in the context of cases with operational urgency or reputational risk. Criteria for these will be drafted and shared with the Board.
11. The Chair confirmed the Board’s commitment in keeping performance as a priority issue. She also thanked the Executive for the ongoing efforts to reduce backlogs and invited comments.

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12. Mark Fenhalls KC reiterated the points he made at the Bar Council Conference about BSB performance and perceived LSB overreach. In noting that, Adam Solomon KC confirmed the Board is aware of the need to improve performance and the BSB has already made good strides in that direction. He therefore called for the Bar Council to acknowledge and support the BSB when progress is made rather than just highlighting its concerns.
13. **AGREED**
 a) to note the report.
 b) to circulate the criteria for the process of identifying urgent / high risk cases (cf. min 10).

MN

Item 6b – Director General’s Report: Strategic Update

BSB 059 (22)

14. The Board **noted** the report.

Item 7 – Regulatory Decisions Annual Report 2021/22

BSB 060 (22)

15. Oliver Hanmer confirmed that the report covers the period April 2021 – March 2022. It would have been presented earlier, were it not for the impact of the cyber attack. The Chair welcomed the report noting that it includes many important “good news” accounts.
16. Alison Alden suggested the timeline be made explicit in a preface to the report. She also considered there was scope to include hyperlinks to other sources of information on our website eg the roles of particular teams and further advice for members of the public.
17. Stephen Thornton noted that this is a public facing document which we intend to publish. He therefore highlighted several areas where it may help to provide further clarity eg:
- a definition of the term “holding out as a barrister”;
 - a definition of an unregistered barrister and why this restricts the regulatory action the BSB can take;
 - the distinction between a “dismissed” case and one “not proceeded with” (paragraph 61 of the report refers).
18. **AGREED**
 to receive the report and proceed with publication subject to further editing taking into account about the points raised above (cf. mins 16-17).

OH/
SJ**Item 8 – IDB Annual Report 2021/22**

BSB 061 (22)

19. The Board welcomed Iain Christie, Chair of the Independent Decision Making Body, to the meeting. He highlighted the following:
- the report covers the period March 2021-April 2022 during which time the ruling on the *Eve* case was handed down. A “lessons learned” report on this case was prepared by both himself, as IDB Chair, and the BSB and all the subsequent recommendations have been implemented.
 - the table on outcomes of authorisation meetings shows that fewer Executive decisions were affirmed by the IDB compared to the previous year (7 out of 18 compared to 24 out of 29). This might imply a greater sense of empowerment within the IDB;
 - there are currently no ongoing reviews of IDB decisions made during 2021-22 as evidenced by the table in paragraph 4.18;
 - the period covered by the report precedes the project to accelerate investigations. Since then, the scale of IDB activity has increased significantly. In the first two months of the current quarter, it made 30 decisions (about half the number it made in the whole of the year covered by the report).
20. The Board welcomed the report and the action taken in the light of the lessons learned. Irena Sabic referred to figures on outcomes of authorisation meetings and asked about any feedback loops to initial decision makers within the Executive.

21. Oliver Hanmer confirmed that a review of authorisation decision making is ongoing covering both the rules and a cultural shift in how the Executive engages with those seeking to make applications. The effect of this will filter through over the next few months and may impact the appeal figures.
22. **AGREED**
- a) to note the report and authorise its publication.
 - b) to thank members of the IDB for their continuing support, especially as part of the project to accelerate investigations.

SJ

Item 9 – Annual Report to the Board on Bar Training

BSB 062 (22)

Note: the Board held a seminar on this issue immediately prior to the meeting.

23. The Board welcomed Mike Molan, the Chair of the Centralised Examinations Board. Members commented as follows:
- the criminal and civil litigation assessment pass rates for Dec 202- Aug 2022 show marked differences between AETOs (high of 93% - low of 36%). This might raise concerns for students who intend to study at centres where results are lower. It would be helpful to know what, if any, action can be taken;
 - we are now seeing a number of successful candidates from non-Russell Group universities and this is encouraging;
 - what is also notable is the gap between the most successful AETO (93%) and the second most (67%).
 - in terms of student enrolment, few have chosen to study using the integrated academic and vocational pathway and numbers for this route have fallen by half over a two year period (now only 18 students). This is puzzling and begs the question as to whether the BSB can influence take-up rates.
24. In response, Mike Molan and others commented as follows:
- the Centralised Examinations Board (CEB) is focused on standards, not pass rates. Simply extending access does not guarantee similar result profiles between providers. We can expect to see variations in pass rates between cohorts and centres, given the variety of candidates each year (some may be taking the examination for the first time but others may be re-sits);
 - in the light of these results, we shall check that AETOs are meeting authorisation framework requirements that govern student admissions processes and programme delivery. However, if they are, the variation is likely to reflect a complex interaction of multiple factors;
 - candidates have five years in which to complete Bar Training and courses have only been running two years so far. We can expect result profiles to change over time;
 - the lack of interest in the integrated pathway is an issue to raise with the quarterly Bar Training Forum. However, it is not the BSB's role to regulate the market or promote individual pathways;
 - a number of entrants to Bar Training either come from overseas for that specific purpose or via the Graduate Diploma in Law. In contrast entrants to the integrated pathway would need to be located in the UK at the point of enrolment and commit to studying law as a first degree. Most who apply for Bar Training do so later in life – deciding to make that choice as an eighteen year-old is rarer.
25. At the Chair's invitation, Nick Vineall KC stated that the Bar Council is keen to see an appropriate balance struck for enrolment purposes and, with this in mind, would be interested to understand whether the superseded aptitude test was a useful independent predictor of success at Bar training and pupillage.

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26. The Chair referred to attainment gap (paragraph 7c of the report) and noted that BSB staff are taking part in the SRA's project on this issue. She therefore looked forward to hearing the outcome of this in the New Year.
27. The following additional comments were made;
- one of our planned reviews by Supervision focuses on the support structures that AETOs have in place to maximise the chances of success for students. The outcome of this may help inform some of the points raised at the meeting;
 - we will soon publish a cohort analysis of those who have successfully completed Bar Training. This still shows dispersion in achievement, but the range is narrower compared to just the examination results.
- Note: a comment was made that it would be more helpful to publish such reports prior to Board meetings so that full consideration can be given to the issue in hand. Mark Neale accepted this point.*
28. **AGREED**
- a) to receive the Annual Report on Bar Training.
 - b) where possible, to publish research reports relevant to Board agenda items in advance of Board meetings.

**MN to
note**

Item 10 – BSB review of governance documents – Governance Manual

BSB 063 (22)

Note: though observing the meeting online, Rebecca Forbes was unable to present the report due to illness.

29. Mark Neale introduced the paper and highlighted the following proposals:
- to reconstitute the Strategic Planning and Resources (SPR) Committee as the Performance and Strategic Planning (PSP) Committee and revise its Terms of Reference to include scrutiny of performance;
 - that the membership of PSP be the same as the SPR Committee with the addition of Emir Feisal;
 - to amalgamate several existing governance documents into a single Governance Manual and that this also defines those powers which are reserved to the Board and so cannot be delegated;
 - that the Board determines overall policy on fees but that setting fee levels be delegated to the Executive;
 - that in place of a *right* to speak at Part 1 meetings, the Bar Council and COIC representatives be invited to comment at the invitation of the BSB Chair similar to all other observers;
 - that, when eventually available through SharePoint, Committee minutes be accessible to Members through a shared online "reading room".
30. Members commented that:
- paragraph 30 IX (f) needs greater clarity. It is meant to confirm that the schedule of matters reserved for the Board can, itself, only be amended by the Board;
 - the Statement on the Role of the Board is superfluous and can be deleted;
 - barrister members on the IDB should all be practising.
31. **AGREED**
- a) to approve the Governance Manual and its appendices subject to further amendments taking into account the above comments (cf. min 30).
 - b) in the light of the above approval, to rescind its previous Standing Orders (edition approved 27 May 2021).
 - c) to establish the Performance and Strategic Planning (PSP) Committee in place of the Strategic Planning and Resources (SPR) Committee.
 - d) that membership of the PSP Committee be the same as the SPR Committee with the addition of one lay member (Emir Feisal).
 - e) to include approved minutes of Committees in the Board reading room (cf. min 29).

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Item 11 – Governance, Risk & Audit Committee (GRA) Annual Report

BSB 064 (22)

32. Stephen Thornton referred to the independent reviews and “lessons learned” exercises referenced in the report. These proved very useful, and the Committee has ensured that all recommendations have been implemented.
33. **AGREED**
to note report.

Item 12 – Chair’s Report on Visits and External Meetings

BSB 065 (22)

34. Kathryn Stone highlighted the following:
- the Bristol roundtable meeting was postponed and will be rescheduled;
 - the London and Manchester roundtables generated a good deal of useful discussion and engagement;
 - some candid but very productive meetings have taken place with the Bar Council.
35. **AGREED**
to note the report.

Item 13 – Schedule of Board Meetings Jan 2023 – Mar 2024

BSB 066 (22)

36. The Board **approved** the schedule of meetings for the period January 2023 – March 2024 as set out in the report. The meeting in March 2023 will now be preceded by a Board to Board meeting with the Office for Legal Complaints (OLC).

Item 14 – Any Other Business

37. a) Bar Council induction programme for new lay Board Members
Nick Vineall KC referred to “familiarisation visits” for lay Board Members which the Bar Council intends to organise. This will cover courts, chambers and the Bar Council. He will be in contact again once dates have been confirmed. The Board welcomed this initiative and thanked Nick for his work on it.
- b) Board Papers
Kathryn Stone asked the Executive to be mindful of the size of Board papers in future.

Item 15 – Date of next meeting

38. Thursday 26 January 2023.

Item 16 – Private Session

39. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 22 September 2022.
 - (2) Ratification of a decision made from papers circulated out of cycle: Risk Index and Risk Appetite Update.
 - (3) Matters arising and action points – Part 2.
 - (4) Performance: update on action plan for accelerating investigations.
 - (5) Board Away Day: action plan.
 - (6) The BSB’s Communication and Public Engagement Strategy.
 - (7) Corporate Risk Register.
 - (8) Appointment and reappointment of Board members.
 - (9) Director General’s Strategic Update – Private Session.
 - (10) Any other private business.
40. The meeting finished at 5.50 pm.