

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting****Wednesday 25 May 2022 (5.00 pm)****Progress 2, etc venues, 50-52, Chancery Lane, London WC2A 1HL**

- Present:** Baroness Tessa Blackstone (Chair)
Alison Allden OBE
Emir Feisal JP
Steve Haines
Andrew Mitchell QC (items 6 – 12)
Irena Sabic – via MS Teams
Adam Solomon QC
Kathryn Stone OBE
Stephen Thornton CBE
- By invitation:** Malcolm Cree (Chief Executive, Bar Council) – via Teams
Nick Vineall QC (NV) (Vice Chair, Bar Council)
James Wakefield (JW) (Director, COIC)
- BSB Executive in attendance:** Shadae Cazeau (Head of Equality and Access to Justice) – via MS Teams
Rebecca Forbes (Head of Governance & Corporate Services) – via MS Teams
Oliver Hanmer (Director of Regulatory Operations) – via MS Teams
Teresa Haskins (Director of People, BSB) – via MS Teams
Ewen Macleod (Director of Strategy & Policy)
Mark Neale (Director General)
John Picken (Governance Officer)
Wilf White (Director of Communications & Public Engagement)
Christopher Young (Policy Manager) – via MS Teams
- Press:** Dan Bindman, Legal Futures – via Teams

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting.

Item 2 – Apologies

- Elizabeth Prochaska
- Leslie Thomas QC
- Mark Fenhalls QC (Chair, Bar Council)
- Lorinda Long (LL) (Treasurer, Bar Council)
- Sara Jagger, Director of Legal and Enforcement

Item 3 – Members' interests and hospitality

3. None.

Item 4 – Approval of Part 1 (public) minutes (Annex A)

4. The Board approved the Part 1 (public) minutes of the meeting held on 31 March 2022.

Item 5a – Matters arising & Action List

5. There were no matters arising. The Board **noted** progress on the action list.

Item 5b – Forward agenda

6. The Board **noted** the forward agenda.

Item 6 – Enabling the strategy

BSB 027 (22)

7. The Board considered a paper that set out two enabling strategies (Equality and Research) and a policy statement on wellbeing. The enabling strategies are designed to support the Board’s previously agreed strategic plan. In both cases, the BSB will seek appropriate collaboration with other stakeholders.
8. a) Equality Enabling Strategy 2023-25
- (i) Members and guests commented as follows:
- each objective has several supporting actions. In some cases these are clear and measurable, but others are less distinct making it more difficult to assess if they have been achieved. Either a reduced number of actions or a stronger overall focus on measurability would be useful;
 - the term “meaningful change” is open-ended and might be better replaced using a more specific term;
 - the strategy involves setting *mandatory* requirements of the profession to promote equality, diversity and inclusion. The action plan should therefore identify how this will be policed by the regulator;
 - action 1 (equality objective 3) could include the employed Bar as there may be areas of good practice we can identify from other employers;
 - the reference to social mobility (equality objective 3) is helpful. The Bar Council is already heavily engaged in this area but would welcome a collaborative approach;
 - we might amend the last word of action 1 (equality objective 4) to read “workforce and governance” to ensure that diversity at a leadership level is also covered.
- (ii) In answer to other questions raised, the Executive stated that:
- the focus on race for equality objective 2 reflects its priority status identified from previous research work;
 - the employed Bar tends to be more diverse than chambers and employers are likely to have more structured HR functions (and in the case of regulated entities may already be addressing equality at a strategic level). This explains our focus on chambers and why we require them to appoint an Equality and Diversity Officer to champion this issue;
 - developing statements of our expectations around diversity gives a benchmark for chambers against which we can monitor progress though the regulatory return and other supervision activity;
 - equality objective 4 principally refers to our own decision making in the BSB rather than data about representation. **Note: notwithstanding this Teresa Haskins confirmed that she had responded to a request from Emir Feisal about equality data for BSB operational staff and associated bodies;**
 - our capacity to deliver the equality objectives will be enhanced by:
 - advice from our advisory pool of experts (APEX) who specialise in diversity;
 - contributions from our existing Equality Task Force bodies that cover race, disability and religion / belief;
 - additional budgeted staff resource in the Supervision Team.

- b) Draft Policy Statement on wellbeing and wellbeing scenarios
- (i) Ewen Macleod invited comments on the draft wellbeing policy statement. This arose from representations from the Criminal Bar Association (CBA) about pressures placed on barristers to accept unreasonably high workloads. The CBA also supplied “wellbeing scenarios” reproduced at Annex C of the report, though these are not endorsed by the Executive.
- (iii) In answer to other questions raised, Ewen Macleod stated that:
- the reference to child care in the statement derives from issues raised with us and our concerns about work life balance in the profession;
 - the statement would not change the ethical expectations of barristers: we would not, for example, tolerate unethical conduct because someone was ill or busy, but we could apply the statement when assessing whether a barrister had acted reasonably (for example in an allegation of failure to comply with a request).
- (ii) Members commented as follows:
- we should benchmark the draft statement against those used in other bodies eg the Judiciary;
 - the value of wellbeing as a principle is accepted, but we should be cautious of how this statement might then interface with regulated professional practice. Appropriate guidance would be required;
 - the inference of the statement is that those in senior positions should not use their authority to create a working culture that customarily includes extended hours. That would imply an environment where staff are directly employed. But work in chambers is target driven and undertaken by a range of self-employed barristers who should be able to make personal decisions about their own availability;
 - the scenarios provided by the CBA are not convincing, either because they give insufficient weight to the interests of the client / court or that they understate junior barristers’ ability to make their own decisions. Moreover a high volume of work could be generated from overtrading by a barrister, for which that individual needs to take responsibility.
- (iii) Mark Neale stated that the policy statement is a set of principles, rather than obligations, which justifies why the BSB considers the wellbeing of barristers is relevant to meeting its regulatory objectives and will guide the BSB in exercising its responsibilities.
- c) Research Enabling Strategy 2023-25
- (i) Members commented as follows:
- what the annex describes are principally good evidence-based management actions rather than research projects;
 - It may be more accurate to describe it as a “research *and evaluation strategy*” since evidence-based decision-making relies on the accurate interpretation of relevant data;
 - the statement of intent in paragraph 8 is quite broad, leading to a risk of mission creep. Our focus must remain on the barrister profession. Research on the range of choice of barristers available to the clients of solicitors (paragraph 20) could be addressed by the SRA, for example;
 - we should emphasise our desire not to duplicate the work of other regulators. We could distinguish between primary areas of research for the Bar which we could either conduct ourselves or in collaboration with a stakeholder and secondary areas where we might rely on interpreting the research findings of other organisations eg LSB Consumer Panel.

- (ii) In answer to questions raised, the Executive stated that:
- paragraph 14 (strategic aim 2) refers to earlier research about barristers who work in either immigration, youth courts or coroners' courts. Practitioners in these areas need to meet a specific set of competencies and make appropriate declarations on compliance;
 - some projects might lend themselves to joint ventures with other regulators and identifying the key issues involved will be to our benefit. For the example quoted in paragraph 20 (cf. min 8c(i)), in order to understand the consumer's experience we need to appreciate the factors that drive the referral decisions of solicitors and the participation, if any, of clients in this process.

9. **AGREED**

- a) to approve the enabling strategies for equality and for research subject to consideration of the above comments.
- b) to revisit the policy statement on wellbeing taking into account the points made at the meeting.

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Item 7 – Amendments to the Minimum Terms of Cover for Professional Indemnity Insurance

BSB 028 (22)

10. The Board considered proposed amendments to the Minimum Terms of Cover (MTCs) for professional indemnity insurance (PII). These clarify the expected level of cover provided by insurers to barristers' clients in the event of losses from a cyber attack. They also permit insurers to exclude liability in order to comply with sanctions regimes.
11. Adam Solomon QC noted that BMIF provide PII cover of up to £2.5m for all barristers. He asked if there were any regulatory implications of the amendment for insurance arrangements above this figure.
12. Andrew Mitchell QC confirmed this was not the case. The MTCs only apply to the £2.5m threshold and for figures above this, barristers are obliged under existing regulatory arrangements to have adequate cover in place (though the terms of that cover are not specified as such).

13. **AGREED**

to adopt the proposed amendments to the MTCs as drafted in Annex A of the report and to seek approval of these from the Legal Services Board.

CY

Item 8 – Director General's Strategic Update – public session

BSB 029 (22)

14. Mark Neale referred to the Q4 performance report. He highlighted the following:
- service levels in delivering core regulatory operations improved in Q4, although we struggled to meet the service levels for taking forward Investigations and Enforcement. This reflected an increase in the number of referrals, with 30% more investigations opened this year compared to 2020/21. This relates to an earlier corresponding increase in assessments which have since been processed. However 10% more investigations have been completed compared to last year;
 - the cyber attack in April 2022 severely impacted operational services and inevitably will detrimentally affect future performance figures;
 - we are prioritising the reduction of backlogs both by recruiting temporary staff and focusing existing resources on this area at the expense of longer-term project work;
 - we are also reviewing service levels with the aim of focusing more closely on productivity.

15. In response to questions raised, he stated that:
- it is not clear how long it will take to recover from the cyber attack and the Board will continue to receive quarterly progress reports;
 - the Investigations and Enforcement Department has had problems finding appropriately qualified and experienced staff, so slowing the recruitment process;
 - we can achieve long term efficiency savings by investing further in the stability of our IT, particularly in the case management system.
16. Nick Vineall QC commented as follows:
- only 16% of investigation decisions occurred within 25 weeks, against a target of 80%. This has a detrimental effect on those barristers under investigation, which the BSB should acknowledge given its focus on wellbeing (cf. mins 8c (i) – (iii));
 - the graph showing workload volumes for referrals identifies a rise in January 2021 which continues thereafter, meaning this problem has been foreseeable for a year;
 - a recovery plan with appropriate milestones would therefore be helpful.
17. Mark Neale agreed with the latter point. In respect of the former two, he stated that:
- the Department was reinforced with extra staff, but also suffered from high turnover which to some extent negated that investment;
 - it is often the case that barristers themselves extend timelines by challenging the investigative process.
18. Members also commented as follows:
- the cyber attack has been extremely disruptive. We need to learn lessons from this so that we can avoid losing operational capacity on this scale again;
 - a recovery plan would be welcome but also needs to make clear any knock-on effect for our business plan;
 - the presentation of the data might be improved if any “red flag” items were highlighted early in the report so the Board can give this proper attention.
19. James Wakefield noted the rise in investigations. He asked to be kept sighted of numbers coming through as this will ultimately impact on the frequency of Bar Tribunals. Mark Neale agreed to this request.
20. **AGREED**
- a) to note the report.
 - b) to request that the Director General prepares a recovery plan on performance in the light of the cyber attack and longer standing issues around missed targets. **MN**
 - c) to ensure the Director of COIC is kept informed about the number of cases under investigation and thereby assist in planning for future disciplinary tribunals. **SJ**
 - d) to request that the presentation of performance data is reviewed with a clearer emphasis on any “red flag” items. **SJ / AW**

Item 10 – Chair’s report on visits and external meetings

BSB 030 (22)

21. The Board **noted** the report.

Item 11 – Any Other Business

22. None.

Item 12 – Date of next meeting

23. • Thursday 14 July 2022

Item 13 – Private Session

24. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 31 March 2022
 - (2) Ratification of decisions made from papers circulated out of cycle: Annual Pay Review for BSB People 2022
 - (3) Matters arising and action points – Part 2.
 - (4) Regulatory Performance
 - (5) The role of chambers in promoting standards, equality and access.
 - (6) Appraisal of Chair and Board Members
 - (7) Director General’s Strategic Update – Private Session.
 - (8) Any other private business.
25. The meeting finished at 6.10 pm.