

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting****Thursday 14 July 2022 (5.00 pm)****Hybrid Meeting (Rooms 1.4-1.5, BSB Offices & MS Teams)**

- Present:** Baroness Tessa Blackstone (Chair)
Alison Allden OBE – via Teams
Emir Feisal JP – via Teams
Steve Haines – via Teams
Irena Sabic – via Teams
Adam Solomon QC
Kathryn Stone OBE – via Teams
Stephen Thornton CBE – via Teams
- By invitation:** Mark Fenhalls QC (Chair, Bar Council) – via Teams
Nick Vineall QC (NV) (Vice Chair, Bar Council)
- BSB Executive in attendance:** Jameelah Bangali (Project Manager) – via Teams
Rhys Bevan (Head of Legal Support) – via Teams
Christopher Fitzsimons (Communications Manager)
Rebecca Forbes (Head of Governance & Corporate Services)
Oliver Hanmer (Director of Regulatory Operations)
Teresa Haskins (Director of People, BSB)
Sara Jagger (Director of Legal and Enforcement)
Ewen Macleod (Director of Strategy & Policy)
Anna McNee (Legal Support Lawyer) – via Teams
Mark Neale (Director General)
John Picken (Governance Officer)
Paul Pretty (Head of Investigations and Enforcement) – via Teams
Wilf White (Director of Communications & Public Engagement)
- Press:** Nick Hilborne, Legal Futures – via Teams

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting and introduced Chris Fitzsimons, the newly appointed Communications Manager.
2. **Item 2 – Apologies**
 - Andrew Mitchell QC
 - Leslie Thomas QC
 - Malcolm Cree (Chief Executive, Bar Council)
 - Lorinda Long (Treasurer, Bar Council)
 - James Wakefield (Director, COIC)

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 25 May 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 – Addressing KPI performance in Investigations and Enforcement

BSB 035 (22)

7. Sara Jagger introduced the paper and highlighted the following:
- we need to accelerate the throughput of work in the Investigations and Enforcement Department to address the current performance shortfalls against key performance indicators (KPIs);
 - a barrier to improvement is staff turnover and difficulties in recruitment. This was, made more acute recently by the resignation of a maternity cover postholder. The executive therefore wishes to bring forward the appointment of a Senior Case Officer, originally scheduled for October 2022;
 - staff turnover impacts on productivity because managers then spend time training and supervising new recruits. However, we are still investigating the option of a secondment from Capsticks outsourcing some aspects of casework to 11KBW.
8. Nick Vineall QC commented as follows:
- the paper is not the recovery plan which was requested at the previous meeting;
 - it is critical that the Code of Conduct is enforced fairly, efficiently and promptly;
 - the BSB needs to identify SMART goals within a defined time frame that explains how the backlog will be managed. The plan should incorporate appropriate milestones so that the Board can properly oversee progress;
 - we need to be able to say when the BSB expects to achieve its KPIs. Extending the investigative process only adds to pressure on the barristers concerned and can be detrimental to their mental health.
9. Mark Fenhalls QC endorsed this view and called for the BSB management to self-reflect and fully focus its efforts on this issue. He therefore asked that a plan along the lines outlined above, be prepared in time for the next Board meeting.
10. Adam Solomon QC stated that:
- investigation and enforcement are core functions of the BSB. The changes proposed in the paper are modest and, though these can be supported, they may be insufficient to resolve the problem;
 - the paper cites a 40% increase over the last year in the number of investigations referred to the team. It is not clear, though, whether these are all different cases (or several reports on the same topic) and all of similar complexity;
 - the suggestion that we cease the redaction of names may make us more liable to claims of bias.
11. The Board commented as follows:
- it may be appropriate to consider more radical alternatives. Solutions considered by the Legal Ombudsman service when it faced similar circumstances included:
 - using a call off list for case managers / investigators;
 - using a call off list of investigators from other regulators;
 - re-evaluating triage procedures;
 - there may be systemic issues in play, but our approach gives the impression of a lack of urgency. We should consider short-term interventions to accelerate current investigations and review processes, capabilities and KPIs in the medium term. Such a review might usefully have an independent input.
 - we need to reconsider the capability issues involved. If we outsource work, we need to be clear on performance targets as part of any contractual arrangements;

- it is concerning that significant improvements are not predicted until early 2023/24. Though we cannot divert all resources to this issue, we need to accelerate investigations sooner.
12. In response, the executive stated that:
- there is no lack of urgency here but there is a lack of capacity;
 - our process does weed out unmeritorious reports early: only a small proportion of reports are investigated;
 - the 40% increase does include investigations of straightforward matters such as practising without a certificate. This is why we are revising our process to ensure such cases are handled earlier on at the assessment stage;
 - we already have call off lists and are using these;
 - we shall be able to introduce greater efficiency once planned projects identified in the report (para 45) have been completed. However, this is a longer-term solution;
 - we are considering outsourcing but, even if this were to occur, it will not have an immediate turnaround effect. Anyone new will need time and the supervision of others to come to terms with the BSB's computer systems and internal procedures. Any investment of this nature is likely to take 6-8 months before there is any meaningful impact;
 - redaction takes up time and resources. The IT software used is not fully reliable – names can still appear in images or in headers / footers. Just one occurrence of a missed redaction invalidates the whole exercise;
 - though timeliness is an issue, we should acknowledge that productivity and the quality of decision making remains high. Had more staff been in place (as was envisaged earlier in the year), then we would be in a much stronger position.
13. Kathryn Stone offered to assist with formulating a revised plan for the September Board. Members welcomed this initiative.
14. The Chair acknowledged the need for a further plan of action by September 2022. She also suggested that more consideration be given to removing the need to redact if there continues to be no software solution that is fully reliable.
15. **AGREED**
- a) to accept the proposals for improving performance against investigation KPIs including approving the immediate recruitment of a Senior Case officer and further consideration on removal of redaction requirements. **SJ to note**
 - b) to include Kathryn Stone and other interested Board members in further discussions on how to seek short, medium and longer term improvements. **MN to note**
 - c) to prepare a further plan in time for the next meeting of the Board taking into account the above comments. **MN / SJ**

Item 7 – Strategic Planning and Resources Committee (SPR) Annual Report 2020/21

BSB 036 (22)

16. Steve Haines introduced the Annual Report from the SPR Committee and highlighted future work which will focus on HR related issues ie the employee value proposition (EVP) and how this might be extended to attract and retain BSB staff.
17. **AGREED**
to note the report.

Item 8 – BSB review of governance documents: Constitution and Appointments Policy

BSB 037 (22)

18. Rebecca Forbes sought the Board's approval for proposed changes in the Board's constitution and appointments policy. This followed an external review of our governance documentation by consultants, *Indigo Governance*.
19. She referred Members to paragraph 3 of the paper ie that it will be for the Board itself to appoint the new Chair and that she would seek a written resolution to this effect in due course. The Board **noted** this. She also asked for guidance on the following:
 - feedback from the GRA Committee Chair, Stephen Thornton concerning the Appointments Policy ie:
 - the status of the nominee of the Lord Chief Justice (para 4.4);
 - the period of appointment for CEB members (para 7.11);
 - the maximum term of office for a Board Member who may have changed their status is from ordinary Member to Chair or Vice Chair (para 7.6). *Note: a previous decision by the Board means that the membership "clock" is currently re-set in these circumstances.*
 - the composition of the Appointments Panel for the recruitment of barrister members to the Board;
20. The Board agreed with the proposed amendments set out in the paper. On the specific points raised, Members agreed that:
 - paragraph 4.4 should remain as currently worded. It is designed to ensure parity between barrister and lay representation and, in these circumstances, the judicial representative should hold neither barrister nor lay status;
 - CEB members should serve terms of up to *three* years (not terms up to two years). The reason for the shorter term seems to have been historical and there is no reason why a longer term should not apply;
 - a maximum term of 12 years is increasingly common among Boards so the wording should remain providing the underlying principle is understood ie that the figure is a maximum length to allow for members who change their status to hold their new office for at least one term;
 - the Appointments Panel for barrister members should be comprised of the incoming Chair, Andrew Mitchell QC, Alison Alden and a lay independent member.
21. Members also agreed to an amendment suggested by the Chair and Adam Solomon QC in respect of paragraph 24 of the constitution ie that a Board meeting is called by giving *reasonable* notice of the meeting to the Board Members.
22. **AGREED**
 - a) to amend the constitution and appointments policy as described in the report but to also take into account comments made at the meeting (cf. mins 20 and 21). **RF**
 - b) to endorse the composition of the Appointments Panel for the recruitment of barrister Board Members as set out in the report (also cf. min 20). **RF to note**

Item 9 – Conduct in non-professional life

BSB 038 (22)

23. Rhys Bevan outlined the objectives of the BSB's Conduct in Non-Professional Life project. This has since resulted in a number of draft documents ie:
 - Annex A - a draft consultation paper;
 - Annex B - draft guidance in the regulation of non-professional conduct;
 - Annex C - proposed amendments to non-mandatory guidance in the BSB Handbook;
 - Annex D - a re-drafted social media guidance;
 - Annex E - interim social media guidance.

Part 1 - Public

24. He also explained that latter document was intended for immediate publication so as to address existing concerns that the original version set the regulatory threshold too low.
25. Members welcomed the paper and endorsed the proposal to consult on this issue and to publish the interim social media guidance at Annex E.
26. Adam Solomon QC commented on some of the examples provided in the paper ie:
- a) Annex B – Case Study 3
This should be softened. Non-compliance with a court order due to insolvency does not seem to be sufficient grounds to treat as a regulatory breach. We do not, for example, strike off barristers if they become bankrupt.
 - b) Annex D – Case Study 2
This identifies a “criminal” trial even though the circumstances might equally apply to a civil case. We should therefore avoid making any specification. In addition, we should delete the reference to the “other side” as it should only be the Judge who can give permission to talk to a witness who was giving evidence.
 - c) Annex D – Case Study 4
This example could be strengthened. It could, perhaps, underline the lack of conflict for a barrister who cites a political opinion but then acts on behalf of a party with an opposing view. We need to counter ill-informed reporting in the press that barristers might be subject to regulatory intervention just because they may have tweeted a political statement.
27. Irena Sabic highlighted the difficulties that barristers can face when they are defending clients in high profile cases. Her own chambers have received seriously threatening messages to the point where some barristers considered applying for anonymity as is afforded to their clients. There needs to be further discussion on guidance for barristers in terms of their duties to clients and any grounds for refusing to take cases.
28. In response to other questions raised, the executive commented that:
- When collating the responses we should be able to identify those from practising barristers and those from unregistered barristers
 - most disciplinary cases against unregistered barristers concern either criminal offences or holding out as a barrister whilst unregistered. There is no “quick fix” solution to the regulation of unregistered barristers and none that can be included in a short-term recovery plan to improve the timeliness of investigations;
 - were any potential criminal offences identified in considering a complaint against a barrister, we would not relay this to the police if that was against the wishes of the alleged victim concerned.
29. **AGREED**
- a) to authorise the executive to commence a three-month public consultation on a proposed approach to regulating non-professional conduct. **RB**
 - b) to authorise the immediate publication of the interim social media guidance (Annex E of the paper) pending the outcome of the public consultation and the conclusion of the BSB’s Conduct in Non-Professional Life project. **RB**
 - c) that the executive contact Irena Sabic to discuss further the points she raised (cf. min 27). **EM**

Item 10 – The BSB’s Public Engagement Enabling Strategy
BSB 039 (22)

30. Wilf White outlined the BSB’s enabling strategy to support its public engagement work. He explained that the proposed allocation of engagement themes to Board Members was for illustrative purposes though he would welcome Member involvement.

31. Alison Alden suggested there was scope for some cross-referencing in the strategy document ie:

- to “clients”, especially in terms of solicitors, as set out in the covering report;
- between our key messages “for the public” and the section on “public legal education”.

32. **AGREED**

to approve the public engagement enabling strategy subject to further amendment as identified above (cf. min 31).

WW

Item 11 – Director General’s Strategic Update – public session

BSB 040 (22)

33. The Board **noted** the report.

Item 12 – Chair’s report on visits and external meetings

BSB 041 (22)

34. The Board **noted** the report.

Item 13 – Any Other Business

35. Bar Training

In response to a question from Nick Vineall QC concerning Bar Training providers, Mark Neale confirmed that a report will be presented to the Board on 1 December 2022.

Item 14 – Date of next meeting

36. • Thursday 22 September 2022

Item 15 – Private Session

37. The Board resolved to consider the following items in private session:

- (1) Approval of Part 2 (private) minutes – 25 May 2022
- (2) Matters arising and action points – Part 2.
- (3) Corporate Risk Report – summary
- (4) Board complaint: lessons learned and revised policy on complaints about Board Members
- (5) Director General’s Strategic Update – Private Session.
- (6) Any other private business.

38. The meeting finished at 6.20 pm.