



REGULATING BARRISTERS

## Meeting of the Bar Standards Board

Thursday 28 January 2021, 5.00 pm

via MS Teams

### Agenda - Part 1 – Public

				Page
1.	<b>Welcome / announcements</b> (5.00 pm)		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of Part 1 (public) minutes</b>			
	• 26 November 2020	Annex A	Chair	<b>3-8</b>
5.	a) <b>Matters arising:</b>			
	• <b>Proposed Amendments to the BSB Standing Orders</b>	BSB 001 (21)	Rebecca Forbes	<b>9-10</b>
	• <b>Action list</b>	Annex B	Chair	<b>11</b>
	b) <b>Forward agenda</b>	Annex C	Chair	<b>13</b>
6.	<b>Annual Diversity at the Bar Report</b> (5.05 pm)	BSB 002 (21)	Amit Popat	<b>15-50</b>
7.	<b>Anonymisation of case papers represented to Independent Decision-Making Panels</b> (5.20 pm)	BSB 003 (21)	Sara Jagger	<b>51-58</b>
8.	<b>Director General's Strategic Update-Public Session</b> (5.35 pm)	BSB 004 (21)	Mark Neale	<b>59</b>
9.	<b>Chair's Report on Visits and External Meetings (*)</b>	BSB 005 (21)	Chair	<b>61</b>
10.	<b>Any other business</b> (5.40 pm)		Chair	
11.	<b>Date of next meeting</b> Thursday 18 March 2021			
12.	<b>Private Session</b>			

**John Picken, Governance Officer**  
21 January 2021

*\*Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](#) before the meeting.*

**BSB 280121**



<p style="text-align: center;">BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

**Part 1 - Public**  
**Minutes of the Bar Standards Board meeting**  
**Thursday 26 November 2020 (5.00 pm)**  
**via MS Teams**

- Present:** Baroness Tessa Blackstone (Chair)  
 Alison Alden OBE  
 Lara Fielden  
 Steve Haines  
 Leslie Thomas QC  
 Andrew Mitchell QC  
 Elizabeth Prochaska  
 Irena Sabic  
 Nicola Sawford  
 Adam Solomon QC  
 Kathryn Stone OBE  
 Stephen Thornton CBE
- By invitation:** Amanda Pinto QC (Chair, Bar Council) – item 1 only  
 Derek Sweeting QC (Vice Chair, Bar Council)  
 Grant Warnsby (Treasurer, Bar Council)  
 Malcolm Cree CBE (Chief Executive, Bar Council)  
 Cindy Butts (Vice Chair, Independent Decision Making Body)  
 Aidan Christie QC (former Chair, Independent Decision Making Body)  
 Iain Christie (Chair, Independent Decision Making Body)
- Observers:** Holly Perry (Director, Enabling Services, LSB)  
 Margie McCrone (Regulatory Policy Manager)
- BSB & RG Executive in attendance:** Rebecca Forbes (Head of Governance & Corporate Services)  
 Oliver Hanmer (Director of Regulatory Operations)  
 Teresa Haskins (Head of People, BSB)  
 Sara Jagger (Director of Legal and Enforcement)  
 Andrew Lamberti (Communications Manager)  
 Ewen Macleod (Director of Strategy and Policy)  
 Mark Neale CB (Director General)  
 John Picken (Governance Officer)  
 Amit Popat (Head of Equality and Access to Justice)  
 Wilf White (Director of Communications and Public Engagement)
- Press:** Catherine Baksi, freelance  
 Neil Rose, Legal Futures  
 Jemma Slingo, Law Society Gazette

**Item 1 – Welcome / Announcements**

1. The Chair welcomed those present to the meeting, particularly guests and observers. She referred to the resignation from the Board of Naomi Ellenbogen QC following her appointment as a High Court Judge on 2 November 2020. She thanked Naomi for her unstinting efforts on behalf of the BSB over many years, which the Board fully endorsed.

## Part 1 - Public

2. She also noted that Amanda Pinto QC and Grant Warnsby will stand down from their respective roles as Chair and Treasurer of the Bar Council at the end of this year and will be replaced by Derek Sweeting QC and Lorinda Long. She thanked them for their help and co-operation during their time in office.

3. Amanda Pinto QC welcomed the improvement in working relations between the Bar Council and BSB and thanked the Board for fostering this collaborative approach.

4. **Item 2 – Apologies**

- James Wakefield (Director, COIC)

**Item 3 – Members’ interests and hospitality**

5. None.

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

6. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 24 September 2020.

**Item 5a – Matters arising**

7. None.

**Item 5b – Forward Agenda (Annex B)**

8. Members **noted** the forward agenda list.

**Item 6 – Proposed changes to the BSB Constitution and Standing Orders**  
BSB 042 (20)

9. Rebecca Forbes summarised the changes recommended to the BSB’s Constitution and Standing Orders. In respect of the Constitution she stated that:
- the purpose of the amendment is to enable a Vice Chair to be appointed by the Board from its serving members based on a recommendation from the Chair. The Bar Council was consulted on this with no objections received;
  - one respondent asked that the lay majority of one be restored as soon as practicably possible (the lay majority would be two if the Board appoints one of its barrister members as Vice Chair, and would remain the case until a lay member stands down from office). This is addressed in the proposed amendment to paragraph 3 (4).
10. In respect of Standing Orders (SO), she advised that:
- some proposals are in response to the Board’s previous decision to take back ownership of performance monitoring;
  - other amendments either reflect changes brought about by the new Internal Governance Rules (IGR) or seek more transparency eg the Terms of Reference and appointments process for the Centralised Examinations Board (CEB).
11. Lara Fielden referred to SO 23 concerning mandatory training on equality and diversity. She noted that she and some other Board Members received interim training because their appointment coincided with a change in supplier. She therefore suggested the full training be offered to any who had not yet received this. **RF to note**
12. In response to a question about the Terms of Reference of the CEB Rebecca Forbes explained these are set at a high level and just make clear the delegated authority. This approach was agreed in advance with the Chair of the CEB and also reflects the style used for the Terms of Reference of the Independent Decision Making Body.
13. **AGREED**  
to approve the proposed amendments to the BSB Constitution at Annex A of the report and to its Standing Orders at Annex B. **RF**

**Item 7 – Regulatory Decisions Annual Report 2019 / 20**

BSB 043 (20)

14. Oliver Hanmer stated that:
- this is the first report of its type ie one that covers the full remit of the BSB's regulatory decision making functions;
  - subject to any comments, the report will be published on the BSB's website.
15. Members welcomed the scope of the report, which will also provide a useful reference point for the future. In response to a question about communication plans and messaging the Executive confirmed that a press release has been drafted. This gives headline statistical data and summarises the key regulatory decisions during the year which have positively impacted the profession.
16. The Chair suggested that, in future, draft press releases accompany the paper so that the Board is aware of the messaging involved.
17. **AGREED**
- a) to note the contents of the report and approve this for publication.
  - b) to request that, in future, draft press releases be included in papers for the Board.

**WW to  
note****Item 8 – Independent Decision-Making Body (IDB) Annual Report 2019 / 20**

BSB 044 (20)

18. Adam Solomon QC congratulated Aidan Christie QC for achieving such a smooth transition to the new structure. He also referred to the current practice of anonymising documentation for IDB Panels for names and gender. He reiterated earlier comments from Aidan Christie QC on the resource intensive nature of this process and asked for views as to whether it should continue.
19. Sara Jagger commented that:
- anonymisation was first introduced for the PCC and only applied to the covering report that the Committee received. The IDB receives the whole file so many more documents now have to be anonymised;
  - the work is time consuming and is possibly disproportionate to the risk. In addition it is difficult to be completely accurate as it means redacting not just names but pronouns as well;
  - it is the only part of the decision making process where anonymisation is used (it does not apply to decisions taken either by BSB staff or the Tribunal Service);
20. SJ confirmed that the Task Completion Group responsible for implementing IDB did not originally recommend retaining anonymisation. It was a decision taken subsequently because we were able to engage a redaction service (though now more has to be done in-house due to changes in our IT infrastructure). In view of the above, the Board agreed a review of the practice would be appropriate.
21. Nicola Sawford highlighted the report finding (para 1.5) of no discernible decrease in the quality of the decision making of IDB panels compared to the PCC. She welcomed this news and congratulated all those concerned.
22. **AGREED**
- a) to note the contents of the report and approve this for publication.
  - b) to request a review of the current process of anonymising IDB documentation and for a report to be presented to the next Board meeting.

**SJ**

### Item 9 – BSB Planning, Resources & Performance Committee (PRP) mid-year Report

BSB 045 (20)

23. Steve Haines highlighted the following:
- major programmes remain on track;
  - the KPI targets have been missed. On one level this is disappointing but, perhaps, understandable given the impact of the health emergency and ensuing additional workload. It is situational rather than systemic;
  - it highlights the risk of a lean resource model which, in adverse conditions, is insufficiently flexible to manage significant increases in demand;
  - we should review our KPIs to ensure they are actually driving the right behaviour.
24. Mark Neale agreed with the comments on lean resourcing. He referred, in this respect, to the PRP Committee's approval for early recruitment of two posts in the Regulatory Operations Department which have been built into next year's budget. He also stated that an additional post to support the IDB is under consideration. Other planned actions to improve productivity concern the integration of case management software and developing better management information.
25. Nicola Sawford supported the suggestion of reviewing KPIs and offered to assist the Executive in this respect. **MN to note**
26. **AGREED**
- a) to note the performance dashboard and the assurances provided by the PRP Committee in the report.
  - b) to note the Committee's approval to accelerate the timetable for the recruitment of additional staff in the Regulatory Operations Directorate.
  - c) to request the Executive to review the fitness for purpose of existing performance KPIs. **MN / NS**

### Item 10 – Annual Report of the Governance Risk and Audit Committee (GRA)

BSB 046 (20)

27. Nicola Sawford outlined the main elements to the GRA Committee's Annual Report, in particular its early work on updating the Business Continuity Plan (BCP). This was fortunate timing given the later impact of Covid 19. She also thanked Peter Astrella and Rebecca Forbes for the improved quality of reports to the Committee.
28. **AGREED**  
to note the report.

### Item 11 – BSB Anti-Racist Statement

BSB 047 (20)

29. Amit Popat summarised action taken to date as part of the BSB's Equality and Diversity Strategy. The Race Equality Task Force and those involved in the reverse mentoring scheme suggested that the regulator needs to give further direction on race equality, hence the development of the Anti-Racist Statement.
30. The Statement sets out the BSB's expectations of chambers in this respect, though the actions identified are advisory and not mandatory. A thematic review in 2021/22 will assess progress.
31. Members welcomed the report and thanked Amit Popat for his work on this project. They made several suggestions ie:
- the potential to introduce a kitemark to distinguish those chambers which do commit to the four actions identified in the Statement;

## Part 1 - Public

- escalate results of the staff survey to the PRP Committee (now the SPR Committee);
- that Board Members access the same training provided for barristers on race equality (we should collaborate with the Bar Council in this respect);
- to dovetail our work in this area with that of Bar Council and specialist Bar Associations;
- to consider further reform of the Pupillage Gateway system.

32. Amit Popat agreed to investigate the first three of these suggestions. He gave an assurance that work in the other two areas is already in hand.

33. **AGREED**

- a) to approve for publication the anti-racist statement as set out in the report.
- b) to investigate the proposed additional actions as discussed in the meeting (cf. min 31).

AP

**Item 12 – How can the BSB improve its engagement with consumers?**

BSB 048 (20)

34. Wilf White confirmed the paper's recommendation to re-establish a Consumer Panel. He caveated this, however, noting that a previous attempt to do so was not successful, so the new body will need to avoid the pitfalls of the former.

35. Members commented as follows:

- we need to avoid duplicating the work of the LSB's Consumer Panel so should consult on our proposals. We also need to broaden our thinking about membership so we do not replicate the old Panel;
- there are alternative arrangements to consider which might also complement a panel ie:
  - a targeted register;
  - commissioning research (as referenced in the Director General's Strategic Update about the Code of Conduct review);
  - using a consumer impact / toolkit approach;
  - use virtual meetings to increase our scope for participation (and reduce travel expense costs).

36. In response Wilf White commented that:

- we plan to consult the LSB once we have the Board's "in principle" approval. That said, its Consumer Panel operates across the whole legal sector so is not just concerned with the barrister profession;
- we already have a consumer register and do take a targeted approach to consultations. However, this does not always generate engagement. Membership of a Panel might encourage a greater sense of obligation as well as discussion between stakeholders and so enrich our feedback;
- a Consumer Panel would be additional and complementary to our existing practice. We would revert to a targeted approach when this was appropriate.

37. Kathryn Stone offered to assist in identifying potential stakeholders for the Panel. The Chair thanked her for this offer. She also suggested that the Panel be subject to a review mechanism so that the Board can decide whether or not to retain it.

38. **AGREED**

- a) to endorse, in principle, the establishment of a BSB Consumer Panel along the lines expressed in the report, subject to further consideration.
- b) to request a further report on the membership and Terms of Reference of the Panel and to include a means of evaluating its effectiveness.

WW /  
KS  
WW

**Item 13 – Director General’s Strategic Update**

BSB 049 (20)

39. Nicola Sawford noted with concern both the fall in pupillage supply and the income disparities between barristers as referenced in the report. She asked for an update as and when more data is available.
40. Mark Neale gave an assurance that pupillage numbers are being closely monitored. They appear to be rising but should we still meet with a shortfall, the BSB will consult with stakeholders on further action to protect supply. Likewise the Executive is keeping under review any impacts on diversity caused by the health emergency.
41. **AGREED**  
to note the report.

**Item 14 – Schedule of Board meetings (2021 / 22)**

BSB 050 (20)

42. The Board **approved** the schedule of meetings for 2021 / 22.

**Item 15 – Chair’s report on visits and external meetings**

BSB 051 (20)

43. The Board **noted** the report.

**Item 16 – Any Other Business**

44. None.

**Item 17 – Date of next meeting**

45. Thursday 28 January 2021.

**Item 18 – Private Session**

46. The Board resolved to consider the following items in private session:
- (1) Approval of Away Day Notes and Part 2 (private) minutes – 24 September 2020.
  - (2) Matters arising and action points – Part 2.
  - (3) Corporate Risk Report.
  - (4) Director General’s Strategic Update (private session).
  - (5) Any other private business.
47. The meeting finished at 6.20 pm.



## Proposed Amendments to the BSB Standing Orders

### Recommendations:

1. That the Board **approve** the following amendments to its Standing Orders:
  - Insertion of the following into the definitions: “Practising barrister” means a barrister holding a current practising certificate issued in accordance with the Practising Certificate Rules of the Bar Standards Board Handbook;
  - Amendment of paragraph 10 c) so that it reads: Each Committee is to include both lay persons and **practising** barristers, and must be comprised of a majority of lay persons;
  - Amendment of the membership requirements for the Governance, Risk and Audit Committee (GRA) to require **two** members who must be Board members (as well as the Chair of the Committee).

### Introduction

2. In November 2020, the Board agreed a number of amendments to its Standing Orders. The Board has the authority under paragraph 14 of its Constitution to make Standing Orders to regulate its own procedure and to establish, and regulate the procedure of, such committees, panels, decision-making panels and other bodies as it considers necessary or appropriate. The Board does not have any constitutional obligation to consult the Bar Council prior to amending its Standing Orders (as it does prior to amending its Constitution).
3. Subsequent to the Board meeting in November, the Bar Council made representations (in accordance with the *Protocol for ensuring regulatory independence and the provision of assurance*). The Bar Council was concerned that barrister members of the BSB committees were no longer required to be practising barristers. The Bar Council do not consider it desirable that unregistered barristers, who perhaps have not practised at all, or not for a long time, could be appointed to a committee of the BSB. It is the Bar Council’s view that professional ‘currency’ is vital if the contribution of barrister members on the BSB’s committees is to be effective.
4. The Bar Council also submitted that removal of the generic requirement for a third of a committee’s members to be barristers means that a committee could effectively function with appointment of one barrister only. The Bar Council suggested a minimum of two barristers on the main committees.

### Our response to the Bar Council and proposed amendments to the Standing Orders

5. We had deleted the definition of practising barrister, as that term no longer appeared within the Standing Orders. The requirement for appointment of practising barristers is specific to Board membership and enshrined in the Constitution. The generic requirement that barrister members of all BSB committees must be *practising* barristers was removed in January 2017. However, membership and quorum requirements for the Education and Training Committee and Professional Conduct Committee continued to require practising barristers as long as those Committees were extant. As those committees have now been disestablished, the only remaining reference in Standing Orders was the definition itself.
6. As we now have only three small committees remaining (including the newly established Remuneration Panel), and usually draw barrister members from the Board itself, we propose to reinstate the generic requirement that barrister members of BSB Committees must be *practising* barristers to satisfy the concerns of the Bar Council. We therefore propose that BSB Standing Orders be amended, firstly by including the definition of practising barrister as it appears in the Standing Orders for joint

Committees of the GCB and the BSB, and secondly by explicitly reinstating the generic requirement in paragraph 10 c).

10 c. Each Committee is to include both lay persons and **practising** barristers, and must be comprised of a majority of lay persons.

7. Our two main committees (excluding the Remuneration Panel) now have membership of five or six members, and both require a quorum of three. The requirement that a third of the membership must be barristers has been in place since we had a larger number of committees with much larger membership and was necessary and meaningful then but less so now. We are not minded to reinstate the generic requirement that a third of the membership must be (practising) barristers for these two small committees.
8. However, we agree with the Bar Council that it is desirable to have at least two barristers on these main committees and commit to instituting that as a matter of practice. As the Chair of the Board has appointed a second practising barrister from the Board to GRA, we propose amendment of the membership requirements for that Committee to require two members who must be Board members instead of only one (as well as the Chair of the Committee).

Rebecca Forbes  
Head of Governance and Corporate Services

Mark Neale  
Director General

## BSB – List of Part 1 Actions

28 January 2021

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
22b (26/11/20) – IDB Annual Report	review of the current process of anonymising IDB documentation	Sara Jagger	by 21 January 2021	19/01/21	<b>Completed</b> – paper included in January agenda pack
26c (26/11/20) – PRP mid-year report	review the fitness for purpose of existing performance KPIs	Mark Neale	before 11 March 2021	19/01/21	<b>Ongoing</b> - We are developing a consistent reporting format for our core regulatory work in time for the March Board when we shall report on performance up to and including the 3 <sup>rd</sup> quarter of 2020/21. Alongside the existing KPIs, this will provide insights into productivity – the volume of work completed in the quarter – and the flows of work in and out.
33b (26/11/20) – BSB Anti-Racist Statement	investigate proposed additional actions in respect of the Race Statement ie <ul style="list-style-type: none"> <li>• potential for a kitemark</li> <li>• staff survey response to SPR Committee</li> <li>• Board Members to access barrister training on E&amp;D</li> </ul>	Amit Popat	before 11 March 2021	20/01/21	<b>Ongoing</b> – Meetings are planned with the BC race equality working group to explore how our work on race equality can complement each other, including the potential for kitemarks and access to training. The race equality staff survey is complete with an action plan in place, this will be present to SPR accordingly.
38a&b (26/11/20) – consumer engagement	develop the idea of a BSB Consumer Panel including membership and Terms of Reference	Wilf White / Kathryn Stone	by 21 January 2021	19/01/21	<b>Ongoing</b> – Useful meetings held with SRA and LSCP, the second of which was also attended by Kathryn Stone. A paper will be submitted for the Board's consideration in March.



## Forward Agenda

### **Thursday 18 March 2021 (*preceded by Board to Board meeting with OLC*)**

- BSB Business Plan & Budget 2021/22
- Consolidated Risk Report
- Creation of a Consumer Panel
- Fees – professional ethics assessment
- Independent Review – August examinations
- Questions relating to the health emergency arising from the Regulatory Return
- Review of BCAT
- Code Review
- Update on the review of the equality rules
- Director General's Strategic Update (incl Q3 performance report and update on lawtech)

### **Thursday 27 May 2021**

- End of year financial report (2020-21) & SP&R Committee Annual Report
- Corporate Risk Report (summary)
- Regulatory Return
- Director General's Strategic Update (incl Q4 / year end performance report)

### **Thursday 15 July 2021 (Board Away Day)**

- Board development
- Strategic Plan 2023-2025 & emerging Risk Outlook themes

### **Thursday 23 September 2021**

- Budget 2022-23
- Consolidated Risk Report
- IDB Annual Report
- Regulatory Decision Annual Report 2020/21
- Director General's Strategic Update (incl Q1 performance report)

### **Tuesday 19 October 2021 (Board to Board meeting with LSB)**

### **Thursday 25 November 2021**

- Mid-year financial report (2021-22)
- GRA Annual Report
- Corporate Risk Report (summary)
- Director General's Strategic Update (incl Q2 performance report)

### **Thursday 27 January 2022**

- Director General's Strategic Update

### **Thursday 31 March 2022**

- BSB Business Plan 2022/23
- Strategic Plan 2023-2025 & Risk Outlook 2022
- Consolidated Risk Report
- Director General's Strategic Update (incl Q3 performance report)



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	28 January 2021
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<b>Title:</b>	Annual Diversity at the Bar Report
<b>Author:</b>	Amit Popat
<b>Post:</b>	Head of Equality and Access to Justice

<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input checked="" type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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### Recommendation

1.	The Board is asked to <b>note</b> the attached report.
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### Executive Summary

2.	The annual report on diversity data is an important component of the BSB's statutory and regulatory responsibilities. Reliable data is essential to inform our work to promote an independent, strong, diverse and effective legal profession and meet our legal obligations.
3.	Disclosure rates continue to improve, which improves the robustness of our evidence base. However, there remain areas where the level of disclosure to the BSB is below what we would like. We continue to seek to improve this, particularly for disability, gender identity, religion and belief, and sexual orientation.
4.	The number of pupils has decreased substantially from December 2019; from 475 to just 354. This has driven a small reduction in number of those at the Bar overall.
5.	<p>We know from our data that:</p> <ul style="list-style-type: none"> <li>Compared with the general population, women, barristers from minority ethnic backgrounds, and those who did not attend fee-paying schools remain under-represented since we commenced reporting in 2015;</li> <li>There appears to be an under-representation of disabled practitioners;</li> <li>The proportion of female and/or minority ethnic background pupils continues to be generally representative of the proportion in the working age population in the UK, however this is not the case for the Bar as a whole, particularly at QC level.</li> <li>The proportion of those at the Bar aged 55+ has increased from 14.8 per cent to 20.8 per cent since December 2015.</li> </ul>

### Risk

6.	The BSB Risk Outlook identifies the core risk theme 'working cultures and professional environment inhibit an independent, strong, diverse and effective profession' and our Strategic Plan accordingly prioritises encouraging an independent, strong, diverse and effective legal profession. Robust evidence is key to achieving that objective.
7.	<p>There are two key compliance issues relevant to the publication of the Diversity Data Report:</p> <ul style="list-style-type: none"> <li>the Equality Act 2010 Specific Duties Regulations; and</li> <li>LSB statutory guidance about publication of aggregated diversity data.</li> </ul>

### Resources (Finance, IT, HR)

8.	None arising directly from this publication.
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### Equality & Diversity

9.	The data in the report will inform our impact assessment of all plans and policies.
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## Annual Diversity at the Bar Report

### Background

1. The BSB has statutory and regulatory duties to publish annual reports on the diversity of the profession. These form an important part of our evidence base for encouraging an independent, strong, diverse and effective legal profession. It is therefore important that the Board notes progress and trends. The completion rates for diversity monitoring have historically been low in some areas. This has improved year-on-year, albeit slowly.
2. For this year's report, the BSB Research Team extracted anonymised diversity data from the CRM database on 1 December 2020. The Diversity Data Report is attached at Annex 1 for information only - a brief summary is presented here.

### Diversity Data Report 2019

#### Summary of data

3. Completion rates have increased in the majority of monitoring categories since December 2019, with year on year increases of three or more percentage points for 'gender identity'; 'disability'; 'religion or belief'; 'sexual orientation'; 'type of school attended'; 'first generation to attend university'; 'caring responsibilities for children'; 'caring responsibilities for others'. In these eight monitoring categories, the proportion providing a response has increased by more than 20 percentage points since the first Diversity at the Bar Report in 2015.
4. In those areas with low response rates, the conclusions that can be drawn are less reliable. Gender identity, which has been collected since 2018, has the lowest level of disclosure (39.1%) followed by sexual orientation (50.3%), religion and belief (52.0%), socio economic background<sup>1</sup> and caring responsibilities<sup>2</sup> (approx.52-56%) and disability (56.9%).
5. The reliability of the data depends upon whether those that have responded are a representative sample of the entire practicing Bar. There is no set figure for the point at which the disclosure rates of diversity monitoring data become reliable, but with a population size of approximately 16,000 a response rate of around 50% would be considered useful as an evidence base for starting to develop policy. Despite the low response rates for some questions, the data can still be used to help inform actions in those areas where we know through other research and evidence that inequality exists.
6. The key findings are:
  - a. There has been a small reduction (25) in the number of practitioners at the Bar compared to December 2019. This has been driven by a drop in the number of pupils from 475 to 354 year on year. This is likely to be caused by the effects the COVID-19 pandemic.
  - b. Notwithstanding some encouraging trends, particularly at the point of entry to the profession, there continues to be an under-representation (compared with the working age population) at the Bar of women, people from minority ethnic backgrounds, and people who did not attend fee-paying schools.

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<sup>1</sup> Includes type of school attended and whether the first generation of a family to attend university

<sup>2</sup> Includes caring for children or others

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- c. It is highly likely that there is an under-representation of disabled people at the Bar, given that the response rate to this question is now almost 60 per cent. This is important for the BSB to note because the duty to make reasonable adjustments for disabled people is anticipatory for public bodies, i.e. we have a positive duty to consider in advance what disabled people might reasonably need. The proportion of pupils with a declared disability has decreased by around 4.5pp compared to December 2019, when excluding those that have not provided information.
- d. The proportions of pupils that are female and/or from a minority ethnic background is generally representative of the proportions in the working age population in the UK, however this is not the case for the Bar as a whole (in the case of female barristers), and particularly at QC level (for both female barristers and minority ethnic background barristers). This will be influenced by the demographics of those that entered the profession in previous years but also suggests that the barriers experienced by women and minority ethnic background practitioners may relate more to retention than recruitment.
- e. The proportion of those aged over 55 at the Bar has increased by around six percentage points since the first Diversity at the Bar Report in 2015. There were around 1,000 more practitioners in this group in December 2020 compared to December 2015.
- f. Available data suggest that a lower proportion of the Bar is a primary carer for a dependent child than that seen in the UK working age population. A recent trend of increases in the proportion of barristers with such responsibilities seems to be slowing.
- g. There is an over-representation among practitioners of people who primarily attended fee-paying schools. Although only 56.4% of practitioners responded to this question, this would be the case even if all of the barristers who did not respond to this question had attended state schools.

**Next steps and action to improve data quality**

- 7. The findings of this Diversity Data Report provide an evidence base which will be used to inform a range of BSB workstreams, in particular the setting and monitoring of organisational equality objectives, the BSB Equality Strategy and the Risk Outlook. The report is also used to assess and monitor the impact of BSB policies through Equality Impact Assessments.
- 8. We have recently reviewed the questions that we ask as part of the Authorisation to Practise process and have sought to make the questions more inclusive, in line with good diversity practice, following consultation with key diversity stakeholders. We hope that this may encourage further increases in response rates in future years.

**Publication and promotion of diversity data**

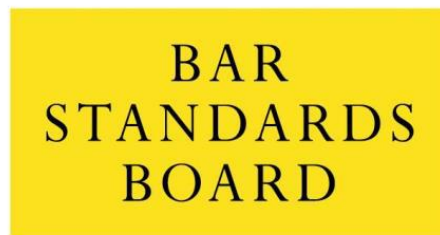
- 9. The report will be published on our website and publicised through the usual channels.

**Regulatory objectives**

- 10. The collection and publication of diversity data for the Bar relates directly to the BSB's regulatory objective of "encouraging an independent, strong, diverse and effective legal profession".

**Annexes**

Annex 1: Report on Diversity at the Bar, December 2020



REGULATING BARRISTERS

## **Diversity at the Bar 2020**

**A summary of the latest available diversity data for the Bar**

**Published January 2021**

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# 1. Executive Summary

This report presents a summary of the latest available diversity data for the Bar (covering pupils, practising Queen's Counsel - QC - and practising non-QC barristers). The report assists the Bar Standards Board (BSB) in meeting its statutory duties under the Equality Act 2010 and sets out an evidence base from which relevant and targeted policy can be developed.

## Overall number of those at the Bar

- The overall number of practitioners at the Bar as of 1 December 2020 stood at 17,432, of this number 354 were pupils, 1,870 were QCs, and 15,208 were non-QC barristers.
- This year has seen a large reduction in the number of those currently undertaking pupillage. The number of those in the practising or non-practising stage of pupillage as of December 2020 was 354, which is substantially lower than the average number of pupils each December from 2015-2019, which was 472.
- The number of non-QC and QC barristers has increased by a small amount year on year (an increase of 60 non-QCs and 36 QCs. The increase in the number of non-QCs (an increase of 60 non-QCs) is much lower than the average year on year increase seen from 2015-2019, which was 215. This may suggest that there has been a greater number of non-QCs leaving the Bar this year, and/or that those that undertook pupillage in 2020 have not entered practice in the same numbers.

## Response Rates

- Response rates continue to increase across all categories except for gender, with a yearly increase in response rate of three or more percentage points (pp) for the characteristics reported on (except for gender, ethnicity and age, which already have a high response rate).<sup>1</sup> As per previous years, the response rate is highest for gender at 99.7 per cent and lowest for gender identity at 39.1 per cent.

## Gender

- The proportion of women at the Bar has increased 0.1pp since December 2019. As of December 2020, women constituted 38.2 per cent of the Bar compared to an estimate of 50.2 per cent of the UK working age population.
- The proportion of female QCs has increased year on year, from 16.2 per cent to 16.8 per cent. There is still a large disparity between the proportion of the Bar who are female and the proportion of QCs who are female (38.2% vs 16.8%). The difference between the two has narrowed slightly in 2020.

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<sup>1</sup> It is against the law to discriminate against someone because of a protected characteristic as defined by the 2010 Equality Act: at the time of publishing the protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

- As of December 2020 the proportion of female and male pupils was equal.

## Ethnicity

- The percentage of barristers from minority ethnic backgrounds<sup>2</sup> at the Bar has increased 0.5pp since December 2018 to 14.1 per cent. That compares to an estimate of 13.3 per cent of the working age population in England and Wales as of July-September 2020.
- The percentage of barristers from minority ethnic backgrounds increased year on year by 0.5pp for non-QCs (to 14.6%); 0.7pp for QCs (to 8.8%); and by 3.7pp for pupils (to 22.9%).
- There is still a disparity between the overall percentage of barristers from minority ethnic backgrounds across the profession (14.1%), and the percentage of QCs (8.8%) from minority ethnic backgrounds. This may reflect the historically lower percentage of such barristers entering the profession but may also suggest barriers to progression for practitioners from minority ethnic backgrounds.
- There are some notable differences when further disaggregating by ethnic group. There was a year on year increase in the overall proportion of Asian/Asian British barristers of 0.3pp; Black/Black British barristers of 0.05pp; of Mixed/Multiple ethnic group barristers of 0.2pp; and a decrease year on year in the overall proportion of White barristers of 0.5pp.
- There is a slightly greater proportion of Asian/Asian British practitioners at the Bar compared to the proportion of Asian/Asian British individuals in the UK working age population (7.5% vs 5.6%), and the same can be said for those from Mixed/Multiple ethnic backgrounds (3.3% vs 1.5%). By contrast, there is a slightly smaller proportion of those from Black/Black British backgrounds (3.2% vs 3.4%), and a greater relative underrepresentation for those from other ethnic groups (1.2% vs 2.8%).
- There is also a greater disparity in the proportion of all non-QCs from Black/Black British backgrounds compared to the proportion of all QCs from the same background, with the disparity being particularly high for those of Black/Black British – African ethnic backgrounds.

## Disability

- There was a 4.5pp decrease in the proportion of pupils with a declared disability compared to December 2019.
- There still appears to be an underrepresentation of disabled practitioners at the Bar. Although there is a relatively low response rate of 56.9 per cent, 6.3 per cent of those who provided information on disability status disclosed a disability. This is substantially lower than the percentage of disabled people in the employed working age UK population estimated at 11.3 per cent.

## Age

<sup>2</sup> “Minority ethnic backgrounds” includes those from Asian/Asian British; Black/Black/British; Mixed/Multiple ethnic; and those of Other minority ethnic backgrounds. Previous ‘Diversity at the Bar’ reports used the acronym ‘BAME’.

- Those aged between 25 and 54 make up around 78.6 per cent of the Bar. This is a decrease compared to December 2019 of around 1.7 percentage points (80.3% vs 78.6%), with relatively more of the Bar in the 55-64 and 65+ age range in 2020 (20.8% of the Bar are aged 55+). This carries on a general trend seen in the age profile of the Bar and compares to figures for the proportion of the Bar aged 55+ of 16.1 per cent five years ago in 2016, and 14.8 per cent in the first Diversity at the Bar Report in 2015.

## Religion and Belief

- Including those that have not provided information, the largest group at the Bar is Christians (23.4%) followed by those with no religion (17.8%), although for pupils this trend is reversed.

## Sexual Orientation

- Sexual orientation is the monitoring category with the second lowest response rate, with 50.3 per cent providing some information.
- Excluding those that have not provided information, 14.5 per cent of pupils, 7.2 per cent of non-QC barristers, and 5.4 per cent of QCs provided their sexual orientation as one of Bisexual, Gay man, Gay woman/Lesbian, or Other.

## Socio-economic background

- Despite a relatively low response rate (56.4%) to this question, the data suggest that a disproportionately high number of barristers attended a UK independent school between the ages of 11-18. Including non-respondents 18.1 per cent of the Bar had attended an independent school, compared to approximately 7 per cent of school children in England at any age, and 10.1 per cent of UK domiciled young full-time first degree entrants in the UK in 2018/19. Of those providing information on school attended, just over one in three attended an independent school in the UK.
- When excluding non-responses and those who prefer not to say, as of December 2020: 0.6 per cent of the Bar had not attended university; 52.2 per cent were not of the first generation to attend university; and 47.2 per cent were of the first generation to attend university.

## Caring responsibilities

- When excluding non-responses, 27.0 per cent (just over one in four) of the Bar have primary caring responsibilities for one or more children. Overall, the proportion of the Bar with primary caring responsibilities for one or more children has increased by around 4.9pp since 2015, 5.6pp since 2016 and 0.7pp since 2019. It is not clear whether this is a general trend, or the increase in response rate for this question is being driven disproportionately by those with caring responsibilities.
- A comparison with the working age population in England may suggest that a far lower proportion of those at the Bar are the primary carer for a child. Figures produced by the UK Office of National Statistics suggest that around 36 per cent

of economically active males, and 39 per cent of economically active females are a primary carer for one or more children. It is worth noting that as response rates are relatively low for this question, such inferences may not be reliable.

- Regarding providing care for another, not including dependent children, of those that provided a Yes/No response, around 13 per cent of respondents provided care for another person for 1 or more hours per week. This is in line with the estimated proportion of those in work in the UK who are carers.



## 2. Introduction

The BSB is committed to providing clear and transparent statistical diversity data for every stage of a barrister's career. This diversity data report is published annually, in line with the Specific Duties Regulations of the Equality Act 2010 and the statutory guidance of the Legal Services Board. It is a summary of the diversity data on practising barristers available to the BSB, as at 1 December 2020.

This report provides an overview of diversity at the Bar,<sup>3</sup> and establishes evidence for both policy development and assessing the effectiveness of current BSB initiatives aimed at increasing equality and diversity at the Bar. All data are presented anonymously.

Unless stated otherwise, all analysis in this report is broken down by seniority. Table 1 (below) shows the simple breakdown of practising members of the profession.

**Table 1: Total number of people at the Bar (numbers)**

Seniority	Numbers	Year on year difference (compared to December 2019) <sup>4</sup>
<b>Pupil</b>	354	-121
<b>Non-Queen's Counsel (Non-QC)<sup>5</sup></b>	15208	+60
<b>Queen's Counsel (QC)</b>	1870	+36
<b>Total</b>	17432	-25

This has been the first year since the Diversity at the Bar Reports commenced that has seen a year on year decrease in the total number at the Bar. This is driven by a reduction in the number of pupils, which is likely to be largely due to the disruption caused to the Bar this year by the COVID-19 pandemic. There are 121 fewer pupils compared to December 2019, and 119 fewer pupils, than the average number of pupils each December from 2015-2019, which was 473.<sup>6</sup> The number of QCs and non-QCs has increased by a small amount. There were also a greater number of pupils undertaking extended pupillages this year. As of 1 December 2020, there were 39 pupils undertaking pupillages that commenced more than one year ago. The equivalent average figure from 2015-2019 was around eight such pupils. Pupils undertaking extended pupillages are not included in this report in order to avoid double counting pupils from one Diversity at the Bar Report to the next.

<sup>3</sup> Usage of the term 'the Bar' in this report refers only to practising barristers and pupils (including non-practising first six pupils) as of 1 December 2020.

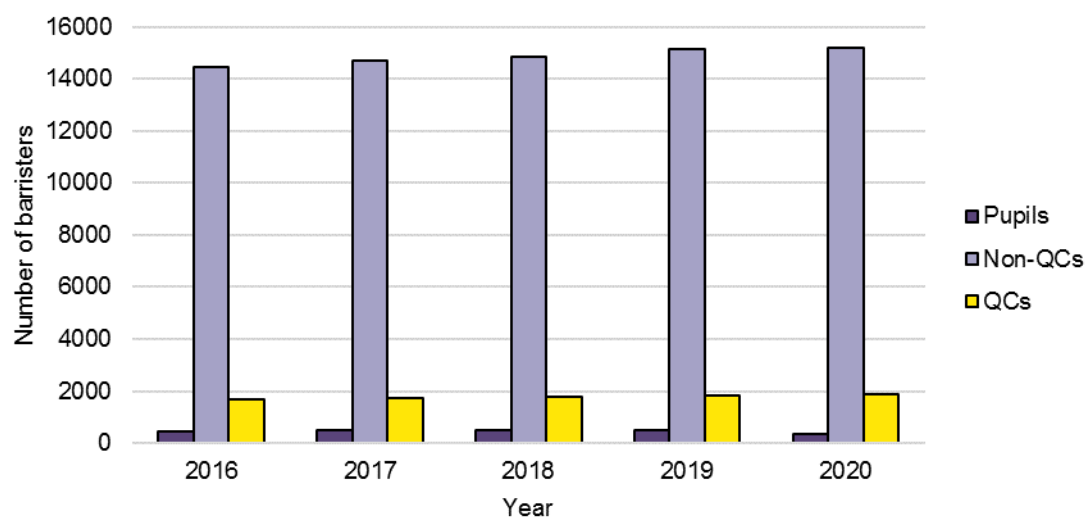
<sup>4</sup> Pupillage numbers for previous years have been revised upwards in this report, resulting in a change in the total at the Bar for 2019 compared to that published in the 2019 Diversity at the Bar Report. For more information see footnote 9.

<sup>5</sup> Usage of the term "non-QC" in this report refers to practising junior barristers; a barrister who has not taken silk

<sup>6</sup> These figures are calculated when not including those undertaking extended pupillages.

The increase in the number of non-QCs (an increase of 60 non-QCs) is much lower than the increase seen in the same group from December 2018 to December 2019 when there was an increase of 312 barristers in this group. The average year on year increase from 2015-2019 for the number of barristers in the non-QC group was 215. This may suggest that there has been a greater number of non-QCs leaving the Bar this year, and/or those that undertook pupillage in 2020 have not entered practice in the same numbers as that seen in previous years: Such trends are also likely to be due to the impact of the COVID-19 pandemic on the Bar.

Chart 1: Number of pupils, Non-QC barristers and QC barristers at the Bar:  
December 2016-December 2020



There are three sections to the diversity analysis of the profession: protected characteristics<sup>7</sup>, socio-economic background, and caring responsibilities for dependent children and others.

### 3. Methodology

The data for practitioners<sup>8</sup> in this report are from the BSB's records.

#### BSB Records

The Bar Council Records Department receives data on the profession via the online "Authorisation to Practise" system, MyBar, which was introduced in 2018 and superseded the previous system, Barrister Connect. MyBar enables barristers to renew

<sup>7</sup> It is against the law to discriminate against someone because of a protected characteristic as defined by the 2010 Equality Act: at the time of publishing the protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

<sup>8</sup> Usage of the term "practitioners" in this report refers to pupils, junior barristers, and QCs practising at the Bar as of 1 December 2020.

their practising certificates online and input or update their diversity monitoring data at any time.

The rate of completion varies for individual monitoring strands, as each question is voluntary and all can be left blank if desired.

Diversity data on pupils are collected through the Pupillage Registration Form (PRF), which must be completed before an individual commences pupillage. The data from this form are stored in the BSB's data warehouse.

The diversity monitoring information used in this report was extracted from our database on 1 December 2020 and represents a snapshot of the profession on this date.<sup>9</sup>

In general, percentages have been rounded to one decimal place, so in some cases the values may not total 100 per cent.

### 3.1. Response Rates

The response rate once again increased across all collected data in 2020, except for a very small decrease for gender. The year on year increases from 2019 were around 3-4 percentage points for the majority of the monitoring categories. It is encouraging that response rates have increased year on year consistently for the majority of categories for every Diversity at the Bar report published.

A response rate of 50 per cent or more was seen for the first time for questions on religion or belief, sexual orientation, and whether a barrister was of the first generation in their immediate family to attend university. The only category where response rates are less than 40 per cent of the Bar is gender identity, which the BSB only began collecting in 2018.

Although the trend in response rates is positive, less than 60 per cent of the Bar has responded to eight of the 11 questions monitored in this report.

These monitoring questions are:

- Caring responsibilities for Children
- Caring responsibilities for others
- Disability
- First generation to attend university
- Gender identity
- Religion or belief

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<sup>9</sup> Pupillage numbers for previous years have been revised upwards in this report. This is because it was decided that using registered pupillages from a different table in our Data Warehouse would provide a more accurate picture of the number of pupils at a point in time than using the barrister status record that feeds in from MyBar. This also means that figures for previous years have been recalculated as a result of using pupillage numbers from the same table for previous years

- Sexual orientation
- Type of school attended from 11-18

Each question on both MyBar and the PRF contains a 'prefer not to say' option, allowing individuals the option of giving a response without disclosing any information. 'Prefer not to say' is counted as a response in the rates listed below in Table 2.

**Table 2: Response Rates in 2019 and 2020 (as a percentage of total barristers) and change in response rates over time**

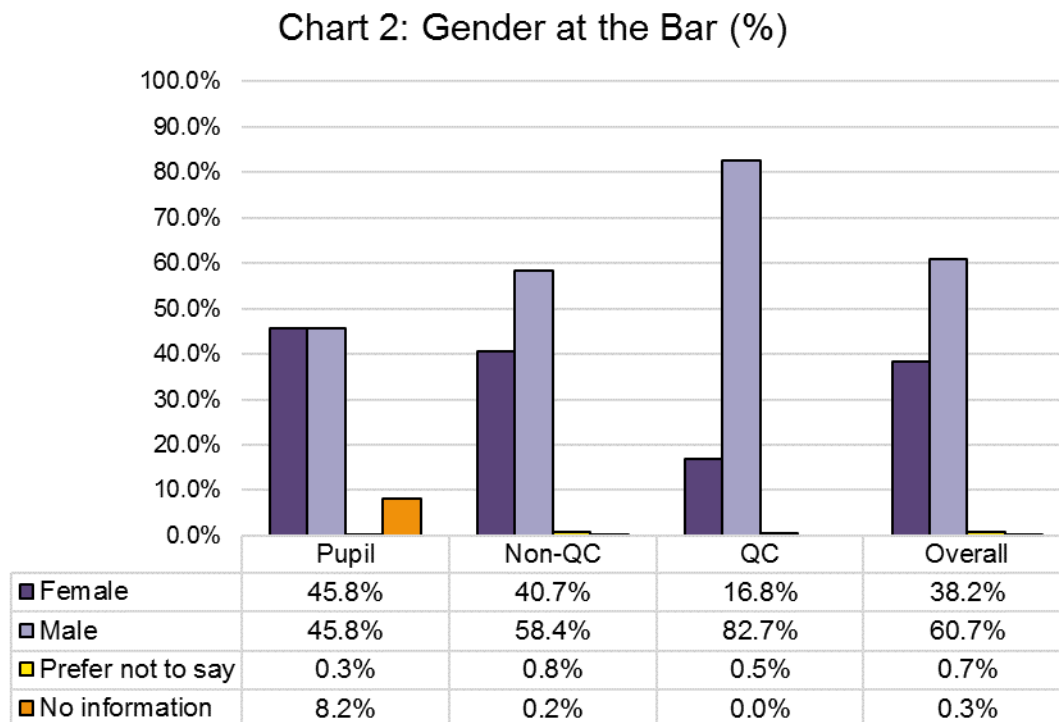
Category	2019 (%)	2020 (%)	2020-2019 pp. diff.	2020-2015 pp. diff.
Gender	99.90	99.69	-0.2	-0.3
Gender Identity	35.2	39.1	3.9	39.1
Ethnicity	94.0	94.2	0.3	2.8
Disability	53.8	56.9	3.1	25.9
Age	86.3	87.1	0.8	0.8
Religion or Belief	48.7	52.0	3.3	24.2
Sexual orientation	47.5	50.3	2.8	22.8
Type of school attended from 11-18	53.2	56.4	3.2	29.3
First generation to attend university	49.2	52.2	3.0	25.4
Caring responsibilities for Children	51.9	55.3	3.4	27.8
Caring responsibilities for others	50.2	53.4	3.2	27.0

## 4. Protected Characteristics

### 4.1. Gender and Gender Identity

#### Gender

Chart 2 shows the percentage of practitioners at the Bar by gender and level of seniority.



- The overall percentage of women at the Bar increased by 0.2pp from December 2019 to December 2020 to 38.2 per cent: This compares to an estimate of 50.2 per cent of the UK working age (16-64) population being female as of Q3 2020.<sup>10</sup> The increase in the proportion of women at the Bar is 0.5pp lower than the increase seen from December 2018 to December 2019.
- The overall proportion of women at the Bar has increased every year since the first publication of the Diversity at the Bar Report in 2015. In absolute terms, the number of female barristers at the Bar has increased by 784 since 2015. The number of male barristers has increased by 131 over the same period. The discrepancy is likely to be due largely to greater numbers of male barristers retiring: As of 1 December 2020 just over 75 per cent of those aged 55+ at the Bar were male.
- When excluding non-responses, the proportion of female pupils has fallen since 2019 by around 4 percentage points, but as it is an exceptional year regarding pupillage numbers, this may be an anomaly. When not including non-responses, the

<sup>10</sup> Calculated from the 'Labour Force Survey: Population aged 16-64: Female: Thousands: SA', and 'Labour Force Survey: Population aged 16-64: UK: Male: Thousands: SA' datasets published by the Office for National Statistics on ons.gov.uk

proportion of female and male pupils as of December 2020 was the same, at 50.0 per cent. This is the first year since 2015 where the percentage of female pupils has not been greater than that of male pupils.

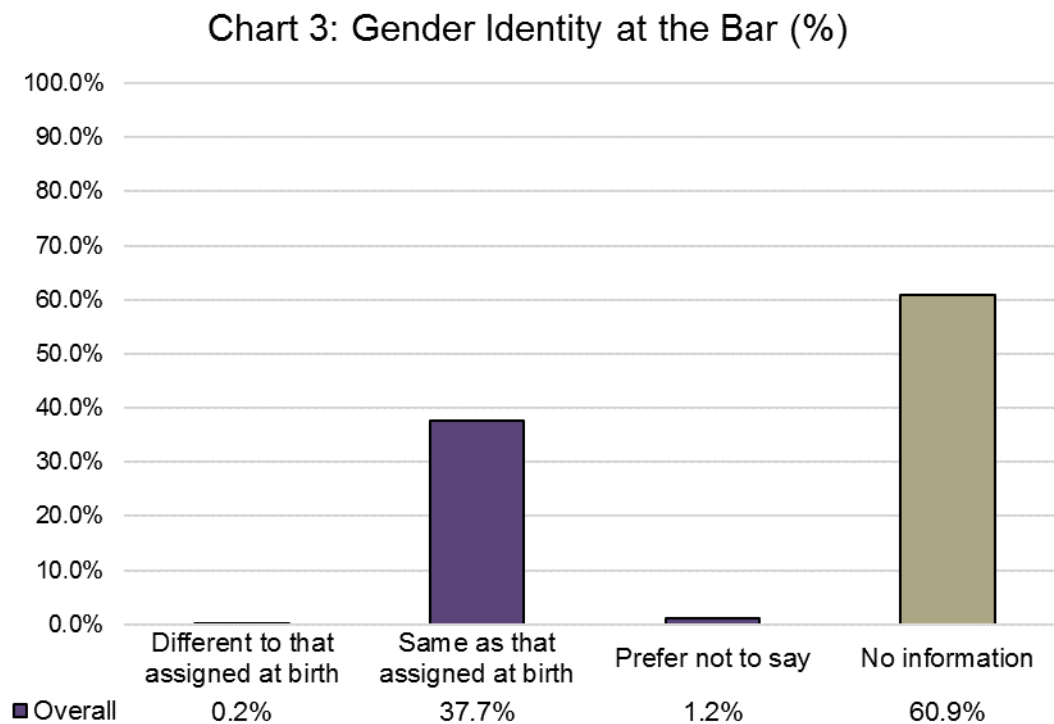
- The proportion of non-QCs who are female has increased year on year. As of December 2020, 40.7 per cent of non-QCs were female, compared to 40.2 per cent in December 2019, representing a 0.5 percentage point increase. The number of female non-QC barristers increased by 93 compared to December 2019, whereas the number of male non-QC barristers fell by 58.
- The proportion of QCs who are female increased from 16.2 per cent in 2019 to 16.8 per cent in 2020, a 0.6pp increase. This is a larger percentage point increase than that seen from 2018 to 2019 (15.8% to 16.2%; a difference of 0.4pp). The number of female QCs increased by 17 from 2019 to 2020 compared to an increase of 20 from 2018 to 2019, and so the greater percentage point increase seen from 2019 to 2020 was largely due to relatively fewer males gaining QC status year on year.
- It is still noteworthy that the overall proportion of female QCs is low (16.8%) in comparison to the percentage of female barristers at the Bar (38.2%). However, the difference between the two has slightly narrowed by 0.4pp in comparison to the difference seen in 2019. Since December 2015 there has been a net addition of 131 male QCs compared to 103 female QCs. Of those for whom we have data, 44 per cent of the net addition of QCs since 2015 have been female, compared to 56 per cent who have been male. If such trends continue, the proportion of female QCs would continue to grow closer to the proportion of female non-QCs.
- The proportion of women at the Bar has increased by 1.7 percentage points overall over the past five years (since the 2016 Diversity at the Bar Report). The increase overall has been 2pp for female non-QC barristers, and 3.2pp for female QC barristers.

**Table 3: Gender at the Bar (numbers)**

	Pupils	Non-QC	QC	Total
<b>Female</b>	162	6184	315	6661
<b>Male</b>	162	8880	1546	10588
<b>Prefer not to say</b>	1	119	9	129
<b>No information</b>	29	25		54
<b>Total</b>	354	15208	1870	17432

## **Gender Identity**

Chart 3 shows the percentage of practitioners at the Bar by response to the following question on MyBar: “Is your gender identity the same as that which you were assigned at birth?”.



- 60.9 per cent of practitioners had not provided a response on gender identity on MyBar.
- When including non-respondents, around 0.2 per cent of practitioners had a different gender identity to the one they were assigned at birth.

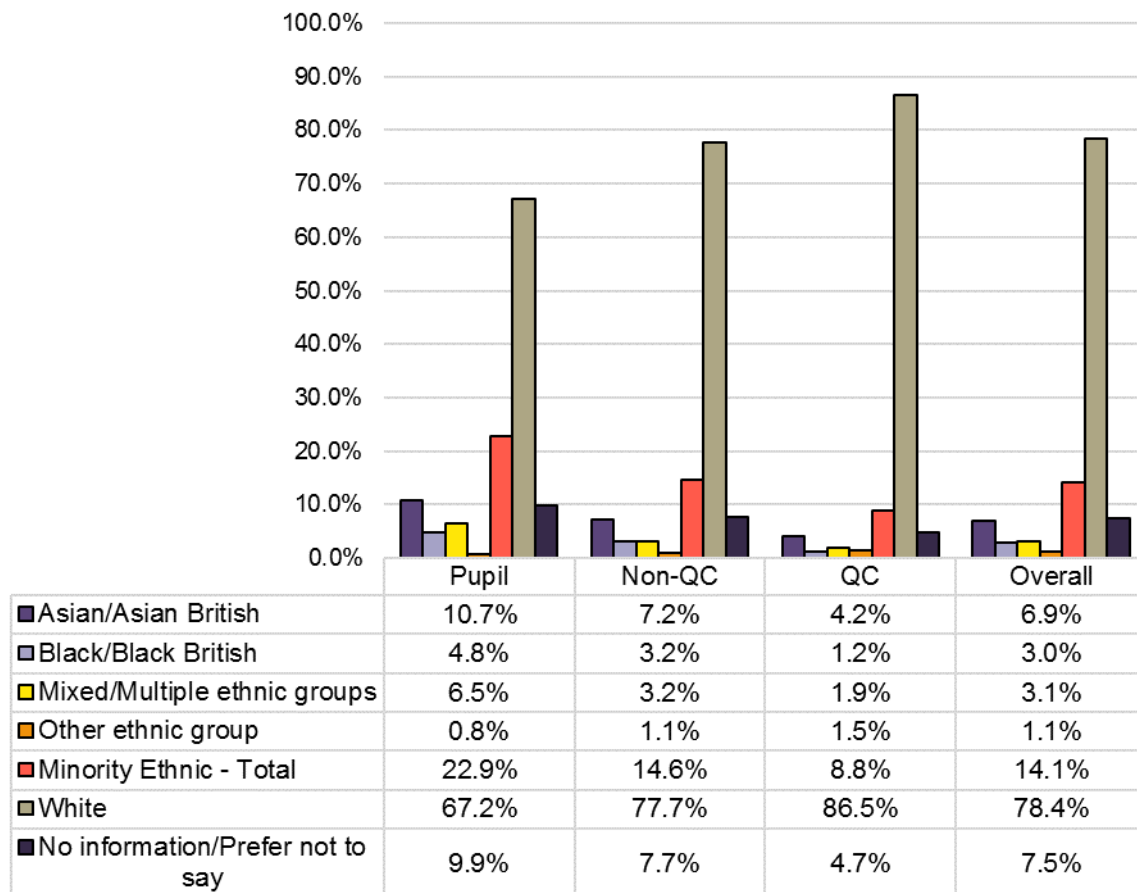
**Table 4: Gender identity at the Bar (numbers)**

Gender Identity same as that assigned at birth	Pupils	Non-QC	QC	Overall
No	-	29	7	36
Yes	21	5798	748	6567
Prefer not to say	1	192	17	210
No information	332	9189	1098	10619
Total	354	15208	1870	17432

## 4.2. Ethnicity

Chart 4 shows the percentage of practitioners at the Bar by ethnic background and level of seniority.

Chart 4: Ethnicity at the Bar (%)



- Including non-responses, the overall percentage of barristers from minority ethnic backgrounds at the Bar as of 1 December 2020 was 14.1 per cent. This figure has increased by 0.5pp compared to December 2019, and 1.1pp compared to December 2018. This is slightly above the average yearly percentage point increase of 0.4pp since the first Diversity at the Bar Report in 2015.
- The percentage of QCs from minority ethnic backgrounds has increased by 0.7pp from December 2019 to 8.8 per cent (which equates to an increase of 1.0pp compared to December 2018, and 2.6pp compared to the first Diversity at the Bar Report in December 2015).
- Since December 2015 there has been a net addition of 63 QCs from minority ethnic backgrounds compared to 146 White QCs. Of those for whom we have data, 30 per cent of the net addition of QCs since 2015 has been from a minority ethnic background: This is higher than the proportion of practitioners from minority ethnic backgrounds and may partly be explained by greater numbers of White QCs having retired since 2015, as the proportion of White QCs shows a general increase alongside age. Excluding non-responses; around 92.4% of QCs aged



55+ are white, compared to 88.0% of non-QCs in the same age range, a difference of 4.4pp between the two. In comparison there is less of a difference between the proportion of White QCs and non-QCs aged 45-54 (89.1% compared to 88.0% respectively), and aged 35-44 (83.3% compared to 83.1% respectively).

- There is still a far lower proportion of QCs who are from minority ethnic backgrounds than the proportion of non-QC barristers who are from such backgrounds, although the ratio between the two has narrowed slightly over time. When excluding non-responses, in December 2015 the proportion of non-QC practitioners from a minority ethnic background was 2.1 times higher than the equivalent proportion of QCs; in December 2020 the ratio between the two was 1.71.
- The percentage of non-QC barristers from a minority ethnic background has increased by 0.5pp (to 14.6%).
- The proportion of pupils from a minority ethnic background showed an increase of 3.7pp compared to December 2019 (to 22.9 per cent) when including non-responses. This is the highest proportion of pupils from minority ethnic backgrounds, and the largest year on year increase in this statistic, seen since the first Diversity at the Bar Report in 2015.
- When excluding those that have not provided information or have preferred not to disclose information, around 15.3 per cent of the Bar is from a minority ethnic background. This compares to around 13.3 per cent of the 16-64 working age population in England and Wales as of Q3 2020.<sup>11</sup>
- When looking at more disaggregated data by ethnic group, and when excluding those that have not provided information on ethnicity, some notable statistics emerge:

#### **Asian/Asian British:**

- Around 7.5 per cent of the Bar, 11.9 per cent of pupils, 7.8 per cent of non-QCs, and 4.4 per cent of QCs are from an Asian/Asian British background. This compares to around 5.6 per cent of the UK working age population.
- The proportion of Asian/Asian British barristers at the Bar has increased by around 1.1pp since 2015 and by 0.3pp compared to December 2019.
- Of the 7.8% of non-QCs and 4.4% of QCs from Asian/Asian British backgrounds;
  - 0.68% of non-QCs and 0.22% of QCs are from an Asian/Asian British - Bangladeshi background;
  - 0.54% of non-QCs and 0.28% of QCs are from an Asian/Asian British - Chinese background;
  - 3.34% of non-QCs and 2.41% of QCs are from an Asian/Asian British - Indian background;
  - 2.07% of non-QCs and 1.01% of QCs are from an Asian/Asian British - Pakistani background; and
  - 1.18% of non-QCs and 0.45% of QCs are from Other Asian backgrounds.

<sup>11</sup> Calculated from adding together figures on the economically active and inactive 16-64 population by ethnicity from the Labour Force Survey: A09: Labour Market Status by ethnic group.

**Black/Black British:**

- Around 3.2 per cent of the Bar, 5.3 per cent of pupils, 3.4 per cent of non-QCs, and 1.3 per cent of QCs are from a Black/Black British background. This compares to around 3.4 per cent of the UK working age population.
- The proportion of Black/Black British barristers at the Bar has increased by around 0.3pp since 2015 and by 0.05pp compared to December 2019.
- Of the 3.43% of non-QCs and 1.29% of QCs from a Black/Black British background;
  - 1.84% of non-QCs and 0.45% of QCs are from Black/Black British - African backgrounds;
  - 1.32% of all non-QCs and 0.62% of all QCs are from a Black/Black British - Caribbean background; and
  - 0.27% of all non-QCs and 0.22% of all QCs are from any other Black background.

**Mixed/Multiple ethnic groups:**

- Around 3.3 per cent of the Bar, 7.2 per cent of pupils, 3.4 per cent of non-QCs, and 2.0 per cent of QCs are from a Mixed/Multiple ethnic background. This compares to around 1.5 per cent of the UK working age population.
- The proportion of Mixed/Multiple ethnic group barristers at the Bar has increased by around 0.9pp since 2015 and by 0.2pp compared to December 2019.
- Of the 3.43% of non-QCs and 2.02% of QCs from Mixed/Multiple ethnic group backgrounds;
  - 0.97% of non-QCs and 0.73% of QCs are from White and Asian mixed backgrounds;
  - 0.37% of non-QCs and 0.06% of QCs are from White and Black/Black British - African mixed backgrounds;
  - 0.41% of non-QCs and 0.28% of QCs are from White and Black/Black British - Caribbean mixed backgrounds;
  - 0.19% of non-QCs and 0.22% of QCs are from White and Chinese mixed backgrounds; and
  - 1.49% of non-QCs and 0.73% of QCs are from any Other Mixed/Multiple Ethnic Group background.

**Other ethnic backgrounds:**

- Around 1.2 per cent of the Bar, 0.9 per cent of pupils, 1.2 per cent of non-QCs, and 1.6 per cent of QCs indicated that they were from another ethnic background. This compares to around 2.8 per cent of the UK working age population.
- The proportion of barristers in this group has not changed since 2015.
- 1.15% of non-QCs compared to 1.57% of QCs are in this group.

**White**

- Around 84.7 per cent of the Bar, 74.6 per cent of pupils, 84.2 per cent of non-QCs, and 90.7 per cent of QCs are from a White background. This compares to around 86.7 per cent of the UK working age population.

- The proportion of barristers from a White background has decreased by around 2.3pp since 2015 and by 0.5pp compared to December 2019.
- Of the 84.19% of non-QCs and 90.74% of QCs are from White ethnic groups overall;
  - 76.56% of non-QCs and 84.90% of QCs are from White British backgrounds;
  - 2.59% of non-QCs and 2.13% of QCs are from White Irish backgrounds; and
  - 5.02% of non-QCs and 3.70% of QCs are from any Other White background.

**Table 5: Ethnicity at the Bar (numbers)**

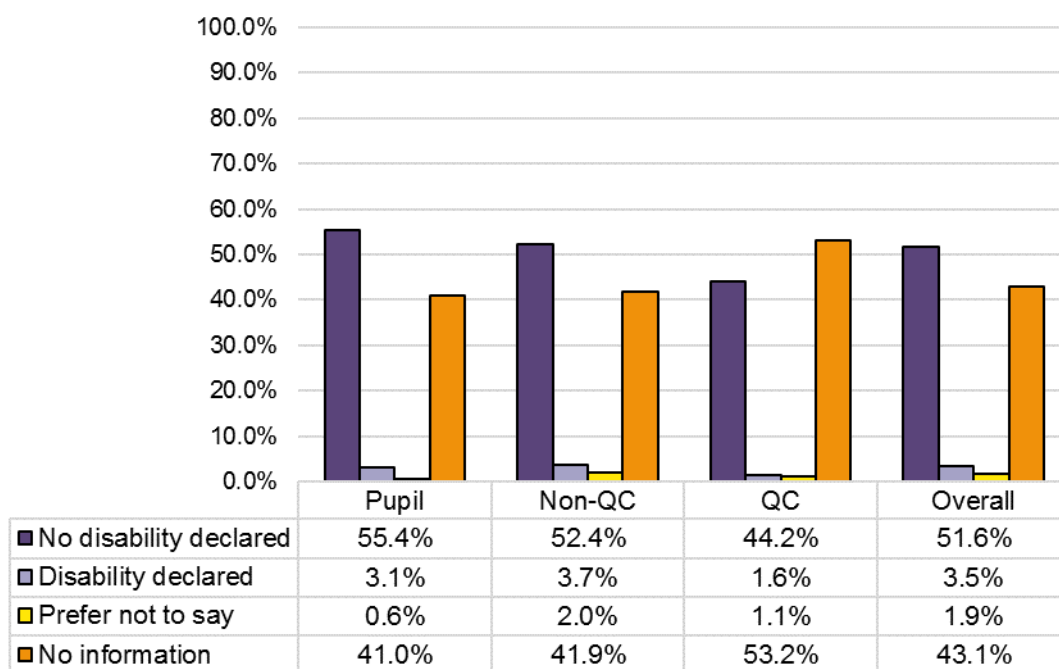
	<b>Pupils</b>	<b>Non-QC</b>	<b>QC</b>	<b>Total</b>
<b>Asian/Asian British</b>	<b>38</b>	<b>1095</b>	<b>78</b>	<b>1211</b>
Asian/Asian British - Bangladeshi	1	95	4	100
Asian/Asian British - Chinese	4	76	5	85
Asian/Asian British - Indian	16	468	43	527
Asian/Asian British - Pakistani	14	290	18	322
Any other Asian background	3	166	8	177
<b>Black/Black British</b>	<b>17</b>	<b>481</b>	<b>23</b>	<b>521</b>
Black/Black British - African	9	258	8	275
Black/Black British - Caribbean	8	185	11	204
Any other Black background	-	38	4	42
<b>Mixed/Multiple ethnic groups</b>	<b>23</b>	<b>481</b>	<b>36</b>	<b>540</b>
White and Asian	10	136	13	159
White and Black African	1	52	1	54
White and Black Caribbean	4	57	5	66
White and Chinese	1	27	4	32
Any other mixed/multiple background	7	209	13	229
<b>White</b>	<b>238</b>	<b>11812</b>	<b>1617</b>	<b>13667</b>
White - English/Welsh/Scottish/Northern Irish/British	214	10742	1513	12469
White - Gypsy or Irish Traveller	1	3	-	4
White - Irish	6	363	38	407
Any other White background	17	704	66	787
<b>Other ethnic group</b>	<b>3</b>	<b>162</b>	<b>28</b>	<b>193</b>

	Pupils	Non-QC	QC	Total
Arab	-	19	-	19
Any other ethnic group	3	143	28	174
<b>Prefer not to say</b>	<b>4</b>	<b>259</b>	<b>29</b>	<b>292</b>
<b>No information</b>	<b>31</b>	<b>918</b>	<b>59</b>	<b>1008</b>
<b>Total</b>	<b>354</b>	<b>15208</b>	<b>1870</b>	<b>17432</b>

### 4.3. Disability

Chart 5 shows the percentage of practitioners at the Bar by declared disability status and level of seniority.

Chart 5: Disability declared at the Bar (%)



- Including those that have not provided information on disability, 3.5 per cent of the Bar; 3.1 per cent of pupils; 3.7 per cent of non-QC barristers; and 1.6 per cent of QCs had declared a disability as of December 2020. The overall year on year percentage point increase for those declaring a disability is 0.3pp (3.2% to 3.5%). The increase may be linked to an increase in response rates.
- When excluding those that had not provided information, 6.3 per cent of the Bar; 6.6 per cent of non-QC barristers; 5.3 per cent of pupils; and 3.4 per cent of QCs had declared a disability as of December 2020. These proportion of pupils declaring a disability was 4.5pp lower than that seen in December 2019; whereas the respective figure for non-QCs showed a year on year increase of 0.4pp), and there was no change for QCs. In comparison to these figures, it is

estimated that around 11.3 per cent of the employed working age population (those aged 16-64) has a declared disability as of July-September 2020<sup>12</sup>, and so the proportion seen for the Bar overall appears to be substantially lower.

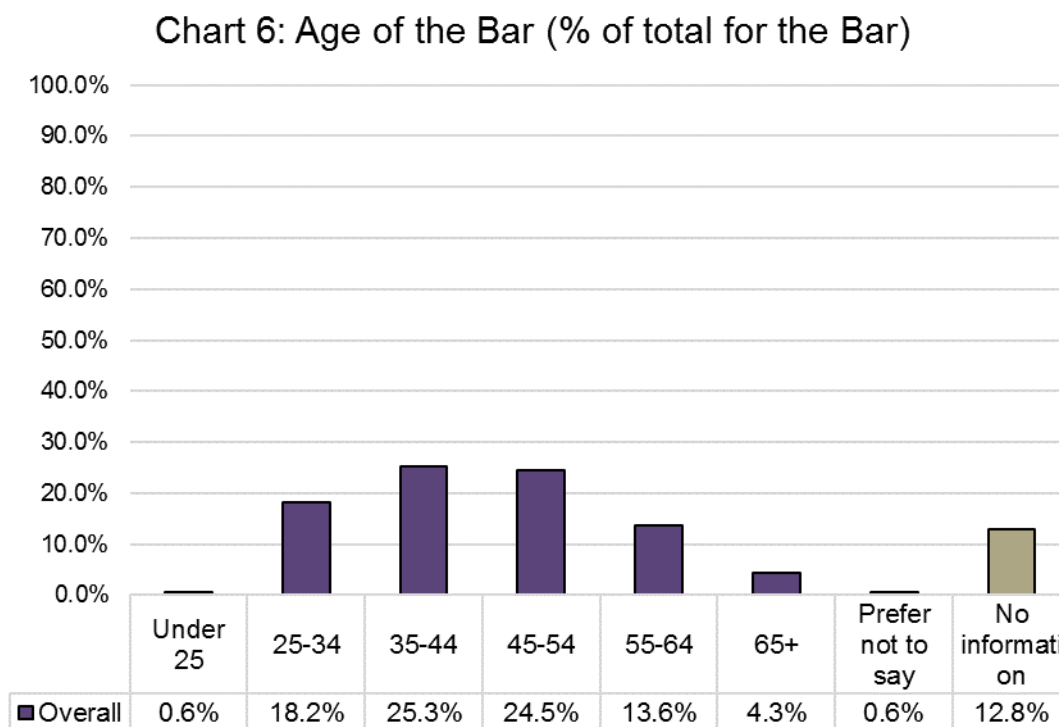
- The figures also suggest that the percentage of those with a declared disability may decrease as level of seniority increases. However, the overall disclosure rate is low at 57.0 per cent, meaning these statistics may not be reliable.

**Table 6: Disability at the Bar (numbers)**

	Pupils	Non-QC	QC	Total
<b>No disability declared</b>	196	7967	826	8989
<b>Disability declared</b>	11	564	29	604
<b>Prefer not to say</b>	2	305	21	328
<b>No information</b>	145	6372	994	7511
<b>Total</b>	354	15208	1870	17432

#### 4.4. Age

Chart 6 shows the percentage of practitioners at the Bar by age band.



Of those that have provided information on age:

- Those aged between 25 and 54 make up around 78.6 per cent of the Bar. This is a decrease compared to December 2019 of around 1.7 percentage points

<sup>12</sup> Calculated for Jul-Sep 2020 from Office for National Statistics datasets: A08: Labour market status of disabled people using Equality Act Levels (People).

(80.3% vs 78.6%), with relatively more of the Bar in the 55-64 and 65+ age range in 2020.

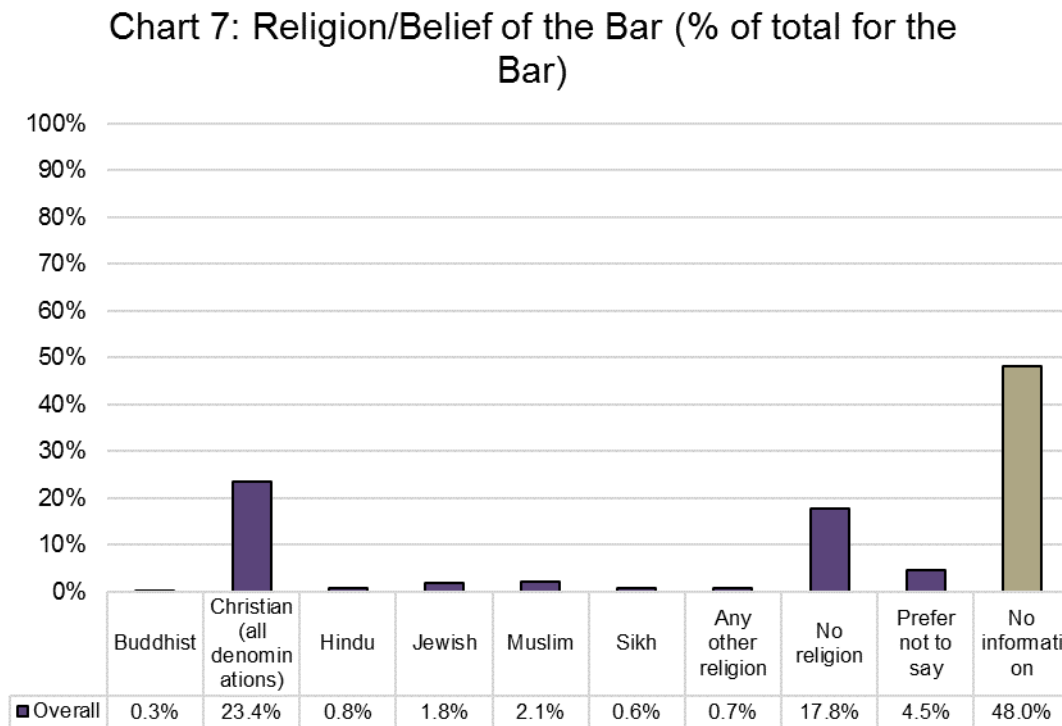
- 20.6 per cent of those who have provided information on age are aged 55+. This carries on a general trend in the age profile of the Bar and compares to figures of 16.8 per cent in 2018; 16.1 per cent five years ago in 2016; and 14.8 per cent in the first Diversity at the Bar Report in 2015. Around 3,100 of those that had declared their age were in this group in December 2020, compared to around 2,100 in December 2015 (the proportion of those not providing information on age has remained relatively stable over the same period).
- The two largest cohorts are those aged from 35-44 and those aged from 44-54. Around 29 per cent of barristers are in the 35-44 age range, and around 28 per cent are in the 45-54 age range.
- There is a slight decrease in the proportion of those at the Bar aged under 25: Around 0.8 per cent are in this cohort, compared to 1.1 per cent in 2019. This is largely due to the reduction in the number of pupils.

**Table 7: Age at the Bar (numbers)**

	Pupils	Non-QC	QC	Total
<b>Under 25</b>	55	58	-	113
<b>25-34</b>	231	2946	-	3177
<b>35-44</b>	30	4290	90	4410
<b>45-54</b>	5	3591	682	4278
<b>55-64</b>	2	1957	407	2366
<b>65+</b>	-	566	176	742
<b>Prefer not to say</b>	-	95	12	107
<b>No information</b>	31	1705	503	2239
<b>Total</b>	354	15208	1870	17432

## 4.5. Religion and Belief

Chart 7 shows the religion of practitioners at the Bar.



- Around 48.0 per cent of the Bar have not provided information on religion or belief through MyBar. The response rate for this question is up by around 3.3 percentage points year on year.
- Including those that have not provided information, the largest group at the Bar is Christians (23.4%) followed by those with no religion (17.8%), although for pupils this trend is reversed.

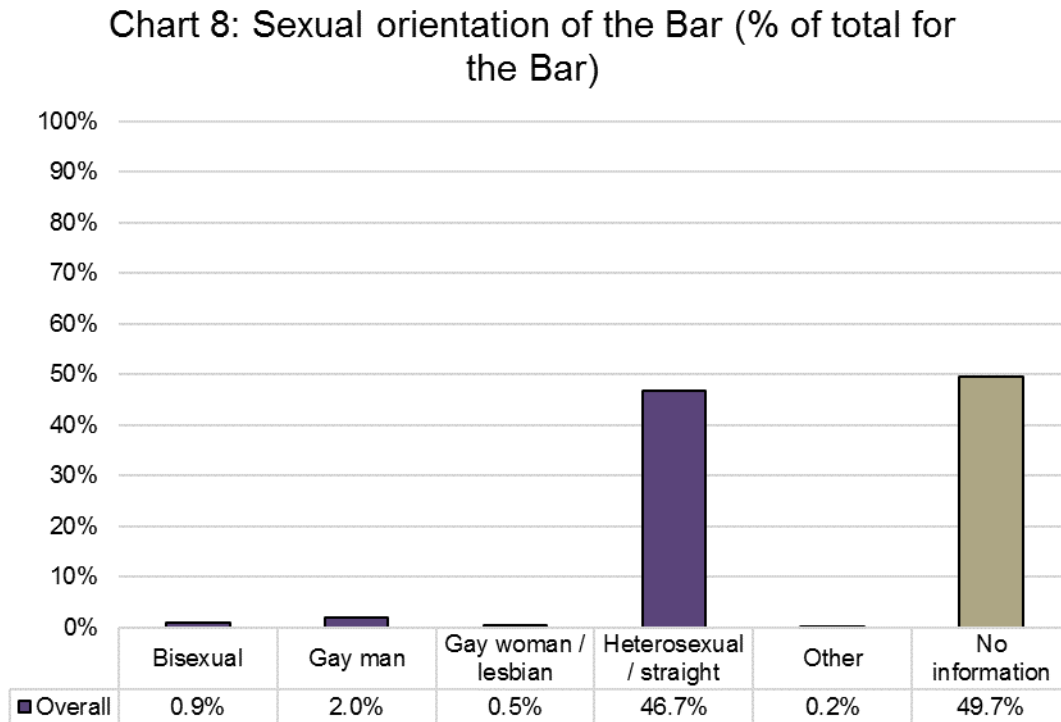
**Table 8: Religion and Belief at the Bar (numbers)**

	Pupils	Non-QC	QC	Total
<b>Buddhist</b>	1	44	2	47
<b>Christian (all denominations)</b>	64	3640	375	4079
<b>Hindu</b>	4	129	9	142
<b>Jewish</b>	-	250	72	322
<b>Muslim</b>	12	338	11	361
<b>Sikh</b>	4	93	10	107
<b>Any other religion</b>	2	112	5	119
<b>No religion</b>	91	2750	258	3099
<b>Prefer not to say</b>	15	700	71	786

<b>No information</b>	161	7152	1057	8370
<b>Total</b>	354	15208	1870	17432

## 4.6. Sexual Orientation

Chart 8 shows the sexual orientation of practitioners at the Bar.



- The response rate for sexual orientation has increased by almost 3 percentage points in comparison to December 2019. It is the monitoring category with the second lowest response rate, with 50.3 per cent providing some information.
- Excluding those that have not provided information, 14.5 per cent of pupils, 7.2 per cent of non-QCs, and 5.4 per cent of QCs provided their sexual orientation as one of Bisexual; Gay man; Gay woman/Lesbian; or Other. This compares to an estimate of 3 per cent of the UK population aged 16 and over identifying as one of Bisexual, Gay man, Gay woman/Lesbian or another sexual orientation as of 2018 when excluding non-responses.<sup>13</sup>

<sup>13</sup> Calculated from Table 1 in UK Office for National Statistics Bulletin: Sexual orientation, UK: 2018. The calculation involved excluding non-responses from the table and recalculating the percentages.



**Table 9: Sexual Orientation of the Bar (numbers)**

	<b>Pupils</b>	<b>Non-QC</b>	<b>QC</b>	<b>Total</b>
<b>Bisexual</b>	10	149	6	165
<b>Gay man</b>	14	304	22	340
<b>Gay woman / lesbian</b>	2	76	10	88
<b>Heterosexual / straight</b>	153	7242	748	8143
<b>Other</b>	-	33	5	38
<b>No information</b>	175	7404	1079	8658
<b>Total</b>	354	15208	1870	17432

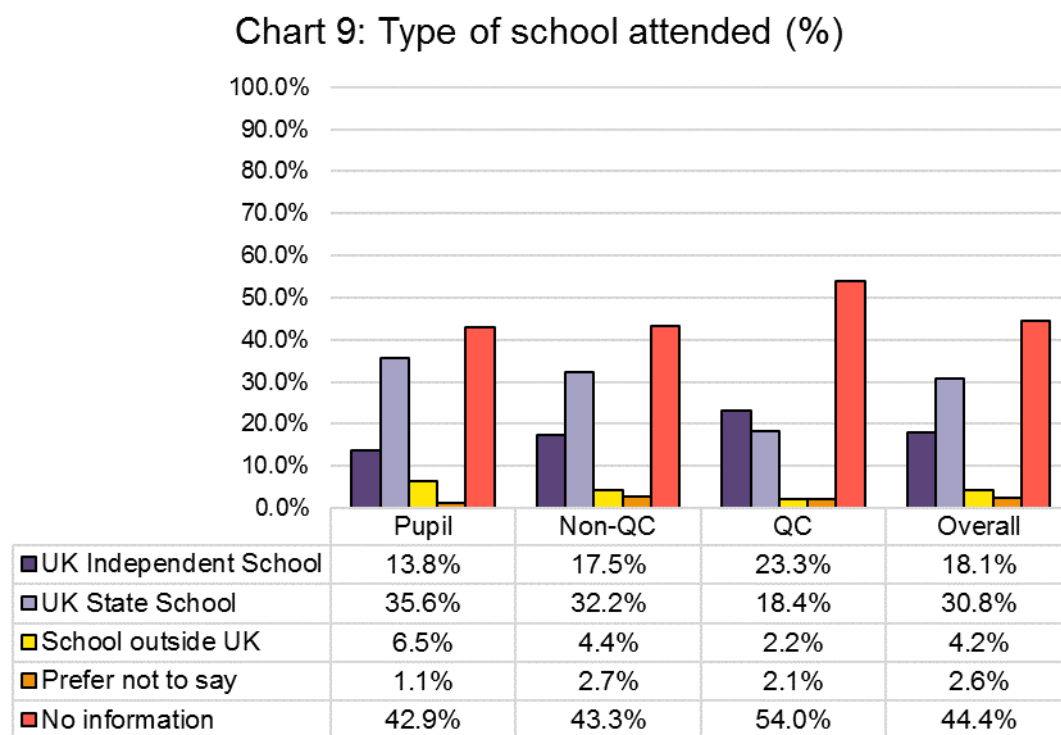
## 5. Socio-Economic Background

Socio-economic background is not a protected characteristic under the Equality Act 2010. However, a representative socio-economic profile may be one indicator of a more meritocratic profession.

Unfortunately, accurately measuring socio-economic background can be challenging, and there is no universal proxy for gathering such data. The BSB uses two socio-economic questions which are included on the MyBar monitoring questionnaire and on the PRF. These questions use educational background of the barrister, and of their parents, as a proxy for determining a barrister's social class. There is a strong correlation between a person's social background and a parent's level of educational attainment – particularly when choosing the type of school to attend, type of university, and career choice.<sup>14</sup>

### 5.1. Type of School Attended

Chart 9 shows a summary of the type of school mainly attended between the ages of 11-18 for practitioners at the Bar.



- Although there is still a high percentage of non-responses (43.6%), the data suggest that a disproportionately high number of barristers attended a UK independent school. The figures show that even if all of the barristers who chose not to respond had gone to state schools, the proportion of barristers who went

<sup>14</sup> Bukodi, E. and Goldthorpe, J.H., 2012. Decomposing 'social origins': The effects of parents' class, status, and education on the educational attainment of their children. *European Sociological Review*, 29(5), pp.1024-1039.

to independent schools would be higher than in the wider population: 18.1 per cent of the Bar (including non-respondents) attended an independent school between 11-18, compared to approximately 7 per cent of school children in England at any age,<sup>15</sup> and 10.1 per cent of UK domiciled young full-time first degree entrants in the UK in 2018/19 attending a non-state school prior to university.<sup>16</sup>

- Of those that provided information on school attended, 34.1 per cent attended an independent school in the UK (this represents a small decrease of 0.2pp compared to December 2019). This is in line with those that enrolled on the Bar Professional Training Course (BPTC) from 2013-2018: Across the 2013/14-2018/19 academic years, there was an average of 32 per cent of UK domiciled students on the BPTC having attended an independent school.<sup>17</sup> This suggests that the high percentage of those at the Bar who attended an independent school in the UK is generally due to the influence of factors prior to vocational study to become a barrister.
- It is worth noting that of those that provided information on school attended, the proportion of UK-schooled barristers who attended an independent school has been gradually trending downwards since 2015 from 39.7 per cent in December 2015 to 37.0 per cent in December 2020.
- The overall response rate for this information has increased 3.3pp year on year (to 55.6%).

**Table 10: Type of School Attended from 11-18 by the Bar (numbers)**

	Pupils	Non-QC	QC	Total
<b>UK Independent School</b>	49	2666	435	3150
<b>UK State School</b>	126	4894	344	5364
<b>School outside UK</b>	23	662	41	726
<b>Prefer not to say</b>	4	407	40	451
<b>No information</b>	152	6579	1010	7741
<b>Total</b>	354	15208	1870	17432

<sup>15</sup> Independent Schools Council: Research. <https://www.isc.co.uk/research/> (accessed 14 December 2020). We acknowledge that this comparison is not a direct one; we are lacking data on type of school mainly attended between the ages of 11-18 for England and Wales only.

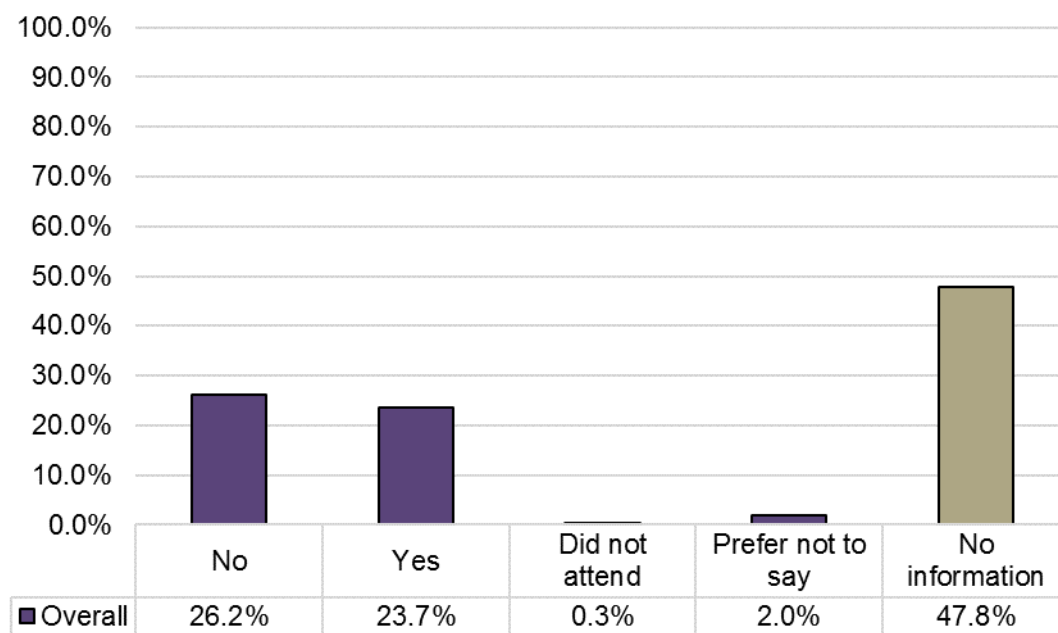
<sup>16</sup> Higher Education Statistics Authority: Widening participation summary: UK Performance Indicators 2018/19. <https://www.hesa.ac.uk/data-and-analysis/performance-indicators/widening-participation-summary> (accessed 14 December 2020)

<sup>17</sup> Data calculated from monitoring question for the Bar Course Aptitude Test on school attendance between 11-18 and data provided to the BSB by BPTC providers.

## 5.2. First Generation to Attend University

Chart 10 shows whether members of the profession were the first generation to attend university or not. On the MyBar monitoring questionnaire, the question asked is: “If you went to university (to study a BA, BSc course or higher), were you part of the first generation of your family to do so?”

Chart 10: First generation to attend university (% of total for the Bar)



- There has been an increase in the response rate to this question of around 3.0pp this year (to 52.2%).
- When excluding non-responses and those who prefer not to say, as of December 2020: 0.6 per cent of the Bar had not attended university; 52.2 per cent were not of the first generation to attend university; and 47.2 per cent were of the first generation to attend university.

**Table 11: First Generation to Attend University at the Bar (numbers)**

	Pupils	Non-QC	QC	Total
<b>No</b>	38	4106	426	4570
<b>Yes</b>	19	3709	397	4125
<b>Did not attend</b>	-	43	10	53
<b>Prefer not to say</b>	4	311	29	344
<b>No information</b>	293	7039	1008	8340
<b>Total</b>	354	15208	1870	17432

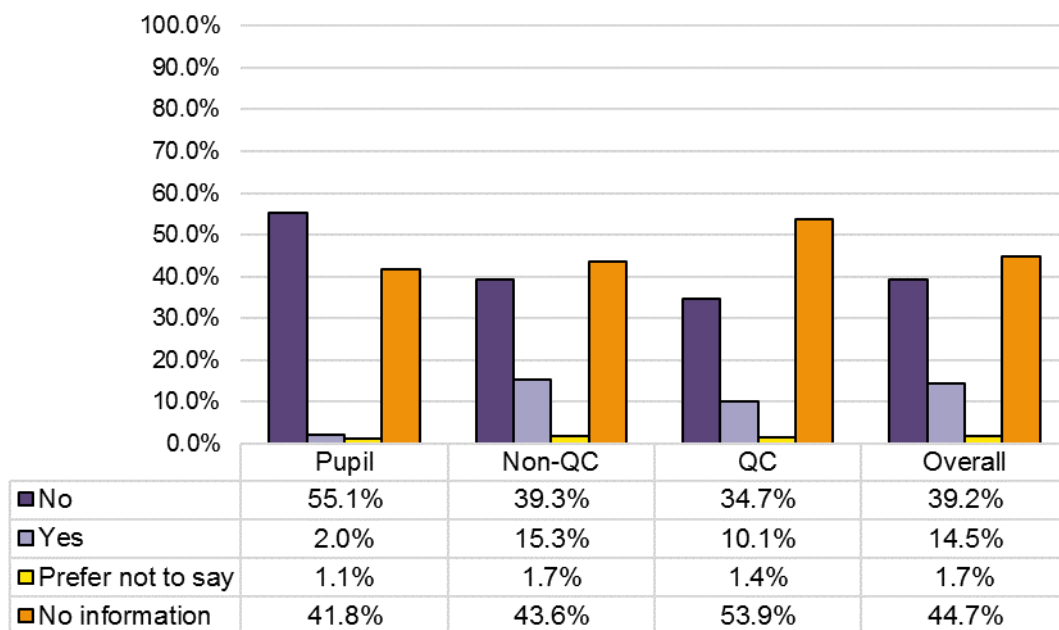
## 6. Caring Responsibilities

The caring responsibilities categories used in this report are aimed at ascertaining whether an individual has child or adult dependants.

### 6.1. Caring Responsibilities for Children

Chart 11 shows a summary of childcare responsibilities at the Bar. On the MyBar monitoring questionnaire, the question asked is: “Are you a primary carer for a child or children under 18?”

Chart 11: Primary caring responsibilities for children  
(%)



- The percentage of those providing a response to this question has increased 3.4pp year on year to 55.3 per cent.
- When excluding non-responses, 27.0 per cent (just over one in four) of the Bar; 3.5 per cent of pupils; 28.0 per cent of non-QCs; and 22.5 per cent of QCs have primary caring responsibilities for one or more children. Overall, the proportion of the Bar with primary caring responsibilities for one or more children has increased by around 4.9pp since 2015, 5.6pp since 2016 and 0.7pp since 2019. It is not clear whether this is a general trend, or the increase in response rate for this question is being driven disproportionately by those with caring responsibilities.
- A comparison with the working age population in England may suggest that a far lower proportion of those at the Bar are the primary carer for a child. Figures produced by the UK Office of National Statistics suggest that around 36 per cent of economically active males, and 39 per cent of economically active females are

a primary carer for one or more children.<sup>18</sup> This includes all ages from 16-64 grouped together, and so the proportion of those in the UK with primary care of a child is likely to be far higher for those aged 35-54, which constitutes the majority of the Bar. It is worth noting that as response rates are relatively low for this question, such inferences may not be reliable.

**Table 12: Caring Responsibilities for Children for those at the Bar (numbers)**

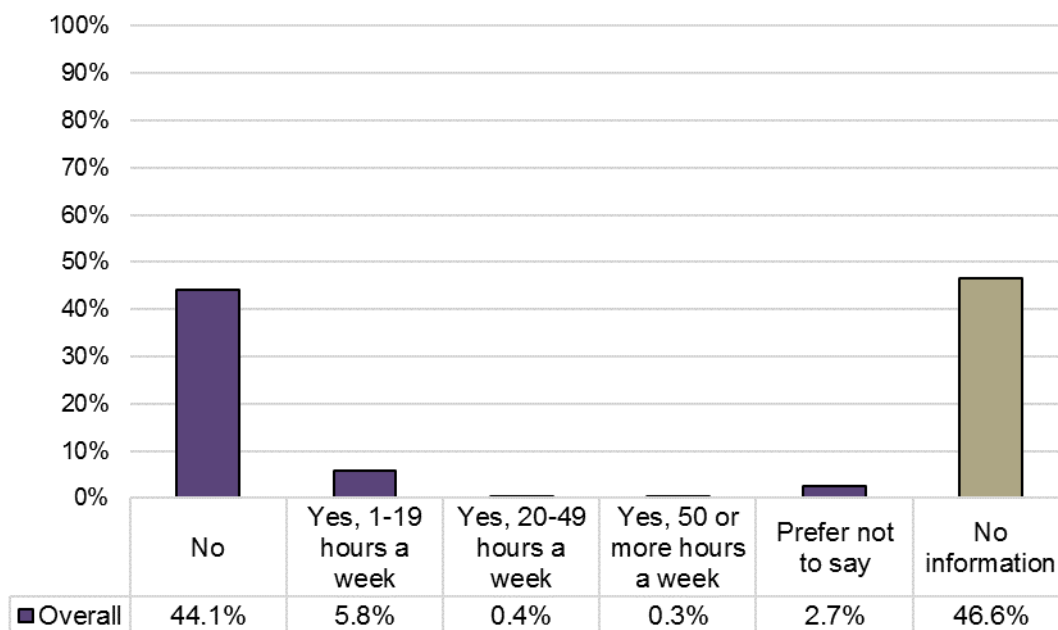
	<b>Pupils</b>	<b>Non-QC</b>	<b>QC</b>	<b>Total</b>
<b>Not a primary carer for one or more children</b>	195	5984	649	6828
<b>Is a primary carer for one or more children</b>	7	2328	188	2523
<b>Prefer not to say</b>	4	265	26	295
<b>No information</b>	148	6631	1007	7786
<b>Total</b>	354	15208	1870	17432

<sup>18</sup> Calculated from Table 3 in Families and the labour market, UK: main dataset using the Labour Force Survey and Annual Population Survey: main reference tables, 2019

## 6.2. Caring Responsibilities for Others

Chart 12 below shows practitioners at the Bar who have caring responsibilities for people other than children, as a percentage of the whole profession. On the MyBar monitoring questionnaire, the question asked is “Do you look after, or give any help or support to family members, friends, neighbours or others because of either long-term physical or mental ill-health/disability or problems related to old age (not as part of your paid employment)?”

Chart 12: Caring responsibilities for others (% of total for the Bar)



- The percentage of those providing a response to this question has increased 3.2pp year on year to 53.4 per cent.
- Including those that have not provided information for this question, 6.5 per cent of the Bar provides care for others for one hour a week or more.
- Of those that provided a Yes/No response, around 12.9 per cent of respondents provided care for another person for 1 or more hours per week as of December 2020. This is in line with the proportion of those in work in the UK who are carers according to figures published by Carers UK, which states that around one in seven (14.3% of) UK workers provide care for another, not including primary care of children.<sup>19</sup>
- Of those at the Bar that do provide care for others, around nine in ten provide care for between 1-19 hours a week.

<sup>19</sup> See Facts and Figures, Carers UK. Accessed online at: <https://www.carersuk.org/news-and-campaigns/press-releases/facts-and-figures>

- Of those that have provided a response, the proportion that provide care for another increases with level of seniority, going from 6.7 per cent of pupils, to 12.6 per cent of non-QCs, and 17.2 per cent of QCs.

**Table 13: Caring Responsibilities for Others for those at the Bar (numbers)**

	<b>Pupils</b>	<b>Non-QC</b>	<b>QC</b>	<b>Total</b>
<b>No</b>	182	6858	653	7693
<b>Yes, 1-19 hours a week</b>	12	870	124	1006
<b>Yes, 20-49 hours a week</b>	1	66	7	74
<b>Yes, 50 or more hours a week</b>	-	54	5	59
<b>Prefer not to say</b>	7	429	33	469
<b>No information</b>	152	6931	1048	8131
<b>Total</b>	354	15208	1870	17432



## 7. Conclusions

Compared with 2019, there has been a relatively large change compared to previous years in the overall number of pupils; the proportion of female pupils; the proportion of pupils from minority ethnic backgrounds; and the proportion of pupils with a declared disability.

For non-QC and QC barristers, there has been no substantial change in the reported profile of the Bar, which is to be expected when monitoring demographic changes in a profession annually. However, there has been a continuation of several trends seen since the first Diversity at the Bar Report in 2015; notably, a continuing increase in the proportion of female practitioners; the proportion of practitioners from a minority ethnic background; the proportion of practitioners at the Bar aged 55+; and the proportion of the Bar with primary caring responsibilities for one or more children.

Response rates continue to improve, with increases of around 3pp or more seen in eight of the 11 categories monitored in this report, which is a very positive development. As the disclosure rate increases, so does the quality of the BSB's evidence base. We will continue to encourage those at the Bar to provide us with information, particularly around characteristics that are under-reported.

Overall, both gender and ethnicity at the Bar continue to move towards better reflecting the demographics of the UK population, with a continued increase in the proportion of barristers (including at QC level) who are female or from a minority ethnic background. This year shows the greatest proportion of pupils from a minority ethnic background since we commenced reporting in 2015.

Amongst those from a minority ethnic background there are some notable differences. There is a slightly greater proportion of Asian/Asian British practitioners at the Bar compared to the UK working age population (7.5% vs 5.6%), and the same can be said for those from Mixed/Multiple ethnic backgrounds (3.3% vs 1.5%). By contrast, there is a slightly smaller proportion of those at the Bar from Black/Black British backgrounds compared to the UK working age population, (3.2% vs 3.4%), and a greater relative underrepresentation for those from Other ethnic groups (1.2% vs 2.8%).

There is also a greater disparity in the proportion of all non-QCs from Black/Black British backgrounds compared to the proportion of all QCs from the same background, with the disparity being particularly high for those of Black/Black British – African ethnic backgrounds.

There may be a lower proportion of disabled practitioners at the Bar in comparison to the UK working age population, and the proportion of those with a declared disability appears to differ by level of seniority, although the response rate (at 56.9%) is too low to draw reliable conclusions.

The response rates for questions on religion and belief, sexual orientation, socio-economic background and caring responsibilities are also too low to be able to draw reliable conclusions.

Based on the data we have, the proportion of the Bar who identify as one of Bisexual; Gay man; Gay woman/Lesbian; or Other appears to be higher than that seen in the UK population aged 16 and over. For religion, the largest group at the Bar is Christians followed by those with no religion, although for pupils this trend is reversed.

Regarding type of school attended, it appears that a disproportionately high percentage of the Bar primarily attended an independent secondary school, although the proportion does appear to be gradually trending downwards over time.

The percentage of those at the Bar who provide care for another (not including primary care of a child under the age of 18) appears to be around that seen for workers across the UK, while the percentage of those at the Bar who provide primary care for a child under the age of 18 appears to be lower than that seen in the economically active UK population, but also appears to be increasing over time.

<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	19 January 2021
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<b>Title:</b>	Anonymisation of case papers represented to Independent Decision-Making Panels
<b>Author:</b>	Sara Jagger
<b>Post:</b>	Director of Legal and Enforcement

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion:</b> <input checked="" type="checkbox"/>	<b>Noting:</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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### Recommendation

1. The Board is asked to **approve** a recommendation that the practice of anonymising the gender of the barrister in case papers presented to Independent Decision-making Body panels (IDPs) should cease. Instead resources should be focussed on the continuing provision of high quality, and regular, training for members of the Independent Decision-making Body (IDB) members, and all other decision makers, in anti-discriminatory practices and unconscious bias.

### Executive Summary

2. The practice of gender anonymisation of case files presented to IDPs in relation to barristers subject to potential enforcement action has proved to be difficult to implement effectively and is contributing to a slowdown in progression of cases. More importantly, it appears to have no discernible impact on potential gender bias in the enforcement decision-making process.
3. Gender anonymisation was introduced in 2016 in relation to cases presented to the Professional Conduct Committee (PCC) and was limited to anonymising of summary case reports. With the disbandment of the PCC and the introduction of the IDB, anonymisation now extends to full case files, which can run to many hundreds of pages. In practice effective gender anonymisation cannot be achieved in all cases and is currently ineffective in approximately 40% of cases. Further, the evidence of outcomes under the previous PCC decision-making system shows that gender anonymisation had no discernible impact on outcomes of decision.
4. In these circumstances, continuing the practice of gender anonymisation appears not to have any benefit in addressing risks but is impacting negatively on the efficiency of the enforcement decision-making process. Any potential issues of unconscious bias could be addressed by high quality, regular training.

### Risk

5. Gender anonymisation in relation to IDP case presentation is not effectively addressing any identified risks as it appears to have no impact on the outcomes of decisions. Instead it has created risks in relation to the efficiency of the enforcement decision-making regime by contributing to delays in the progression of cases.

**Resources (Finance, IT, HR)**

6. The recommendations to the Board in the attached paper do not require additional staff resource and indeed are designed to free up staff time to allow the enforcement system to operate more efficiently. If the recommendations are not accepted, additional staff resource is likely to be needed to ensure effective gender anonymisation in relevant cases.
7. Consideration may need to be given to whether increased funding should be allocated to training IDB members, and other decision makers, in anti-discriminatory practices and unconscious bias. Otherwise, there are no resource implications.

**Equality & Diversity**

8. The attached report and its recommendations have a direct bearing on sex discrimination and the potential for regulatory decisions to be influenced by knowledge of the sex of a barrister. However, the evidence indicates that implementation of the recommendations in the report are unlikely to have a negative impact. This is because there was no discernible change in the outcomes of enforcement decisions based on the absence of knowledge of the sex of the barrister during the three years that the PCC took decisions based on gender anonymised case reports.
9. A formal equality impact assessment form has not been completed in relation to proposals, but the equality impacts have been assessed and are rehearsed in the attached paper.

## Independent Decision-Making Body - Anonymisation of case files

### Introduction and recommendation

1. The Board is asked to consider this paper which sets out the background, evidence and supporting arguments for a recommendation that the BSB cease immediately the anonymisation of references to gender in case files presented to Independent Decision-Making Panels (IDPs) of the Independent Decision-Making Body (IDB).
2. The purpose of anonymisation of information is to reduce the risk of unconscious bias in outcomes as a result of inappropriate, stereotypical assumptions being made by decision-makers based on ethnicity, as perceived from names, and/or references to gender. Research indicates that such assumptions can have a direct bearing on decisions taken in a wide sphere of activities. Therefore, “blind” decision making, i.e. where the identity of the person subject to the decision is not known, has become more common, particularly in the field of recruitment. It is less common in other spheres and the BSB has been, as far as we are aware, innovative in using it when making some, but not all, decisions on regulatory action.
3. The concept of anonymisation was first introduced in the BSB’s decision making in 2014 in relation to summary case reports presented to the Professional Conduct Committee (PCC). At that stage anonymisation only related to the name of the barrister subject to regulatory action, but it was later extended, in 2016, to removing all references to the barrister’s gender as well as anonymising the name and gender of the complainant. Anonymisation of the barrister’s details has been retained under the new processes introduced in October 2019 but has ceased in relation to anonymisation of the identify of those raising concerns with the BSB. However, it now extends to anonymisation of all case papers presented to IDPs as opposed, under the old system, to anonymising only the summary case reports presented to the PCC.
4. Significant issues have arisen with both the practicalities and the efficacy of anonymisation since the change in approach was introduced in October 2019. As the Board is aware, the Chair of the IDB raised concerns about the efficacy of the anonymisation of case files in the first IDB Annual Report presented to the Board on 26 November 2020. He said:

*“While the concept of anonymising cases is laudable, in practice it is very difficult to achieve effectively. In a case of hundreds of pages, ensuring all reference to the barrister’s name and gender is redacted is challenging. If only one reference is missed, then the purpose of all other redactions is entirely lost, and unfortunately this is fairly common. This is no criticism of the executive. The level of resource that needs to put into redacting and checking documentation must be substantial but unfortunately the purpose of anonymisation is not achieved if just one redaction is missed.”*

He recommended that:

*“The Board may wish to consider reviewing the approach [to anonymisation] given the practical challenges of both ensuring anonymisation is effective and the resource implications of doing so.”*

5. The Board therefore requested a review of the current process of anonymising IDB documentation and for a report to be presented to this meeting. The outcome of the review, as set out below, is that there are good reasons to cease the practice of anonymisation in relation to gender and rely on alternative ways to address issues of potential unconscious bias in independent decision-making.

6. However, at this stage, the executive is not proposing that anonymisation of the names of barristers should cease. The time available has not allowed for detailed consideration of the implications of this in terms of potential race bias in decision making. Further, the immediate practical difficulties are not as great as those in relation to gender anonymisation

### Current position

7. Anonymisation of case files is currently only applied in relation to cases considered by the IDB. The vast majority of those cases relate to enforcement cases and require IDPs to take decisions on whether allegations of breaches of the BSB Handbook should be subject to enforcement action including disciplinary proceedings in front of a Disciplinary Tribunal. The IDB also considers appeals against authorisation decisions.
8. While IDPs consider the most serious enforcement cases and all authorisation appeals, they by no means take all regulatory decisions in these areas. Staff also have authority to take a wide range of decisions. On average less than 50% of post-investigation enforcement decisions<sup>1</sup> are taken by IDPs, with the rest being taken by staff. Further, all BSB first instance authorisation decisions are taken by the Executive. This means anonymisation is only used in a minority of regulatory decisions although the decisions to which it applies, particularly in relation to enforcement decisions, are those that will have the greatest impact on barristers' careers.

### Background to anonymisation

9. As indicated above, anonymisation was first introduced in 2014 in relation to PCC decisions and the anonymisation of barrister's names. At that time, the decision-making process required only that a summary report of cases was considered by the PCC: therefore, anonymisation was limited to that summary report.
10. The decision to take this approach flowed from a number of years of in-house reports that indicated disparities in the outcomes of complaints and enforcement decisions taken in relation to barristers from minority ethnic groups. An external report, commissioned in 2012<sup>2</sup>, concluded that systemic issues with procedures were not at fault, but nevertheless recommended that the names of barristers should not be disclosed to the PCC. Therefore, the practice of anonymising barrister names in PCC case reports was introduced.
11. Subsequently the BSB's Research Team undertook a more detailed and sophisticated analysis of complaints diversity data from 2012-2014 (the 2014 Report). That report concluded that ethnicity was not a significant predictor of outcomes when other factors were controlled for. However, the 2014 Report also concluded that gender was a significant factor in predicting outcomes, with more male barristers being subject to complaints and being referred to disciplinary action than female barristers. This report led, in 2016<sup>3</sup>, to the anonymisation also of PCC reports in relation to the gender of barristers subject to complaints.

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<sup>1</sup> Post investigation decisions relate to cases that have been accepted for investigation following an initial assessment by the Contact and Assessment Team that there is sufficient evidence of a breach of the Handbook to warrant a recommendation for referral to formal investigation.

<sup>2</sup> <https://www.barstandardsboard.org.uk/resources/inclusive-employers-diversity-report---2013-pdf.htm>

<sup>3</sup> It is not clear from historic papers exactly when anonymisation of complainant details commenced but for the purpose of this report, it was not considered necessary to establish this.

12. Following the decision by the Board in 2018 to create the IDB and disband the PCC, consideration was given to whether the practice of anonymising cases should continue. The initial view of the Executive, and the Task Completion Group supporting the IDB development work, was that continuing the practice would not be practical or effective. This was because one of the central benefits of the IDB model of small decision-making panels was the ability to give panels access to the full case file of evidence on which to base their decisions, as opposed to only a summary report. Anonymisation under the new system would therefore involve redacting hundreds of pages of documents. The main concern was the difficulty in achieving effective gender anonymisation of many documents and the risk that could arise in understanding the content of gender anonymised documents.
13. However, the Board had concerns about ceasing anonymisation under the new system given the impact this could have on public confidence in the revised decision-making processes. The Executive therefore explored options for continuing the practice and established that, at a relatively reasonable cost, case files could be sent to an external company with AI facilities to carry out the relevant redactions. A few test files were sent to the company in question and the results appeared to be effective albeit that each of the test files sent ran to fewer than a hundred pages due to the company's page limit on test cases.
14. The decision was therefore taken to continue anonymisation of barristers' names and gender in relation to documentation presented to IDPs.

#### **Practical difficulties with continued anonymisation of full case files**

15. As indicated above, the test files used to establish that anonymisation could be effective for full case files ran to fewer than a hundred pages and therefore, by definition, related to relatively straightforward matters. In practice, case files presented to the IDP are rarely this small and most run to 300 or more pages and in some cases more than 1,000 pages with multiple people involved. This makes the task of anonymisation more time-consuming than originally envisaged and the number of days needed to prepare cases for the external redaction company, obtain the results and check them thereafter, was greater than anticipated.<sup>4</sup>
16. This alone might not be a reason to cease anonymisation although it does impact on the speed at which cases can be progressed. However, what was not taken into account, and was not known at the time the decision to continue anonymisation was taken, was the means by which files would be communicated to IDB members. The decision on this was taken over a year later, when the CaseLines evidence bundling software was chosen to meet these needs. This is a powerful tool, used widely by the courts and tribunals for sharing evidence bundles online, and has proved to be very effective in allowing large volumes of case documentation to be shared with IDPs.
17. Despite the power and theoretical efficacy of the CaseLines software, its effective use by the BSB has been undermined by the need for anonymisation of case documents. This paper is not the place to go into the minutiae of the practical problems the interplay between CaseLines and anonymisation has produced. However, in summary, using the external company for redactions has all but been abandoned as the work involved is too onerous<sup>5</sup>. Instead the more efficacious option is for BSB staff to make the redactions using the CaseLines functionality. Such work cannot be carried

<sup>4</sup> Originally a two day turn around with the external company was allowed plus a day for checking, but in reality, the time needed for completing the external process was more like a total of 5-8 working days and in some cases more.

<sup>5</sup> It involves creating one composite PDF document to send to the external company and on receipt of the redactions, breaking the file back down into its separate documents for transfer to CaseLines.

out solely by administrative staff as an understanding of the context of redactions in any given document is required. Therefore, redactions are carried out at the more expensive Officer level to avoid duplication of effort.

18. Further, the BSB is currently working to integrate CaseLines with the internal Case Management System. This will allow for seamless transfer of files into CaseLines bundles creating significant efficiency gains. It does, however, mean that the use of an external redaction company will no longer be an option if these efficiency benefits are not to be lost.
19. A track was kept of I&E Officer time spent on anonymising cases during the period November – December 2020. The results indicated the minimum time per case was approximately 2.5 hours and voluminous cases could take up to a day with the bulk of the work related to gender anonymisation.

### **Efficacy of anonymisation**

20. Bearing in mind that anonymisation is now, for practical reasons, an internal process carried out by staff without the use of sophisticated AI, the risk of error is high. While CaseLines has the facility to search, locate and redact any references, it needs to be told what terms to look for and can only look for one term at a time. Further, each redaction needs to be checked to ensure that the right redaction has been picked up.
21. This is fairly straightforward in relation to names and, as indicated above, it is not intended at this time to recommend cessation of anonymisation of names, although this might be recommended in the future (see paragraph 29). However, in relation to gender anonymisation, the process can be complex. We have identified, so far, up to 20 terms<sup>6</sup> needing to be redacted in relation to the gender of the barrister but not others involved in a case. Checking and rechecking a full case file to ensure that all the right redactions have been made and the documents still make sense can be time-consuming.
22. Experience has shown that effective redaction of gender terms is difficult to achieve. As the Chair of the IDB pointed out, if only one reference is missed, then the purpose of all the other gender redactions in a case is lost.
23. During November and December, the Investigations and Enforcement Team (I&E) monitored the enforcement cases presented to IDPs to identify cases where relevant redactions had been missed. This showed that 6 out of the 14 cases considered resulted in missed redactions (approximately 40%). In only one case was the barrister's name missed: in all the other cases it was one or more gender references that were not picked up.
24. This high incidence of inefficacy in the anonymisation process is concerning but should not, as the Chair of the IDB pointed out, be seen as criticism of staff. The level of detailed attention required to ensure a file is effectively anonymised, particularly for gender references, is significant but solely administrative in nature. Officers are under significant pressure dealing with substantive matters arising from investigations and disciplinary proceedings, including legal challenges, and ensuring cases are progressed in timely manner in line with the KPIs. Effective detailed checking and rechecking of hundreds of pages in a case file for missed gender redactions is just not realistic within our current staffing levels if the BSB is going to maintain timely progression of cases.

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<sup>6</sup> For example: Mr/Ms/Mr, he/she, him/her, herself/himself, female/male, mother/father and pregnant/pregnancy.



25. Further, the incidence of missed redactions inadvertently compounds rather than mitigates differences in treatment given that in some cases, unintentionally, the gender of the barrister will be known to the panel and in others not. This also creates, again inadvertently, an area of potential challenge to the decision-making process.
26. The option is, of course, open to the Board to agree an increase in the staff complement for the purpose of ensuring accuracy in anonymisation of files presented to IDPs. However, as the paragraphs below indicate, there is currently no clear evidence that gender anonymisation has had any significant impact on the outcomes of referral decisions.

### **Evidence of impact**

27. There has yet to be any analysis carried out of the decisions taken by IDPs since October 2019 as compared to the PCC and there was insufficient time, or resource, available to do this post the November Board meeting when this paper was requested.
28. However, research of complaint diversity outcomes for the period 2015 – October 2019, covering the old system, was already being undertaken by the BSB Research Team. The report has still to be finalised and the data was not compiled with a view to supporting any discussions regarding anonymisation. Nevertheless, the initial indications from the research is that the position in relation to disparities in outcomes in relation to gender under the old system did not change after gender anonymisation was introduced. In the period 2012-2014 female barristers were half as likely as male barristers to have complaints about them referred to disciplinary action. This proportion remained almost identical in the period 2015-19 with male barristers twice as likely as female barristers to be subject to referrals to disciplinary action. It would therefore appear that issues of unconscious bias as a result of knowing the gender of a barrister are not the underlying cause of the disparity in outcomes.
29. The position in relation to enforcement outcomes for barristers from minority ethnic groups during the period 2015-19 is less clear. Indeed, there is an indication that statistically relevant disparities became apparent during the period as contrasted to the outcomes of the 2014 Report, thus indicating that anonymisation of names has also not had an impact in this area. However, more work needs to be done to assess the position before the Executive could be confident in recommending that anonymisation of names should also cease. Further, the efficacy of, and practical difficulties in, anonymising names is quite different to that of gender anonymisation and has less impact on the overall efficiency of the enforcement system.

### **Research with other organisations**

30. As part of the review of anonymisation, the Executive carried out research into the practices of other regulators and the CPS. We looked at the websites of 11 other professional regulators and contacted six of them direct. The latter included the Solicitors Regulatory Authority. We also spoke to the CPS. The research produced no examples of other bodies employing anonymisation in any form at any stage of their decision-making processes. The SRA said that they had considered the issue in 2010 but concluded that the practicalities were such that effective anonymisation, at that time, was not feasible.

31. While not directly relevant to the specific recommendation in this report, it is interesting to note that David Lammy MP's report in 2017, "The Lammy Review", on the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the Criminal Justice System recommended that "***Where practical all identifying information should be redacted from case information passed to [the CPS] by the police, allowing the CPS to make race-blind decisions***" (emphasis added) – this recommendation has not yet been implemented.

## Conclusions

32. The concept of anonymisation of case files to allow for blind decisions is in theory one that could be beneficial in reducing the impacts of unconscious bias on decision making. The BSB is clearly leading in the regulatory field in this area having tried it in our processes for several years. However, the evidence shows that there are good reasons to cease anonymisation in relation to gender now that IDPs are considering full case files.
33. There is no evidence that gender anonymisation has had an impact on potential gender bias in decision making - previously identified gender disparities in outcomes remain despite anonymisation. Further, in practice, gender anonymisation is not effective in a significant minority of cases. The time spent on doing it is contributing to slowing down the BSB's enforcement decision-making process as well as creating differences in the information available to panels and opening an avenue for challenge.
34. Improving the accuracy of gender anonymisation would require either current staff to devote more time to detailed checking of files, thus exacerbating the slow in case progression, or it would require an increase in staff – neither would seem, in the circumstances, a good stewardship of our resources or in the public interest.
35. As a leanly resourced organisation, we need to ensure that our resources are deployed in a way that addresses risks effectively. Weighing all factors in the balance, the Executive is of the view that gender anonymisation in IDP cases cannot be said to addressing effectively an identified risk. Therefore, the recommendation is to cease the practice. Instead, we should concentrate our resources on ensuring that IDB members continue to receive effective and regular training in unconscious bias and anti-discriminatory practices.
36. The Executive will continue to consider the issue of anonymisation of names and the impact this has had, and could have, on decision-making in relation to those from minority ethnic backgrounds. A further paper will be presented to the Board in due course if the evidence indicates that anonymisation of names should also cease.
37. The Board is therefore asked to agree the following recommendations:
- 37.1 That the practice of anonymising case files for presentation to IDPs ceases in relation to gender;
  - 37.2 A further report on the anonymisation of IDP case files in relation to names is only presented to the Board if the Executive considers there is evidence to support a decision that this should also cease; and
  - 37.3 Sufficient and, if necessary, additional resources are made available within the 21/22 budget, and in future years, to ensure high quality training on a regular basis is provided not only to IDB members, but all decision makers, in anti-discriminatory practice and unconscious bias.

Sara Jagger, Director Legal and Enforcement  
19 January 2021

**Bar Standards Board – Director General’s Strategic Update – 28 January 2021**

**Public session**

1. This paper provides a high-level strategic update on external issues and trends that are of relevance to the BSB but that are not the subject of substantive separate papers for the Board.

**Code Review**

2. To refresh our understanding of consumer expectations of barristers, we have commissioned further research which will inform the strategic outcomes that the Code seeks to achieve. Our work on the approach that we are taking to the review and the supporting research has also been peer reviewed by a consumer affairs expert we have recruited to our Advisory Pool of Experts.
3. We have engaged with our Stakeholder Reference Group to test our thinking on the approach, structure, presentation and language for the redrafted Code, including a set of simplified outcomes that the Code is seeking to achieve. The proposals will be taken to the internal Programme Board and the Board Reference Group (made up of a subset of Board members) for further testing. Once the proposals have been agreed, we will commence with redrafting the existing rules in the Code, incorporating each group’s feedback into the redrafted text, before issuing a consultation on the full redrafted Code in due course. We will engage with stakeholders on the revised strategic outcomes that the Code is seeking to achieve later this year.

**Reverse mentoring scheme**

4. The BSB Race Equality Taskforce’s pilot reverse mentoring scheme – which pairs Bar students, pupil barristers and junior barristers from minority ethnic backgrounds as mentors, with senior barristers from White backgrounds as mentees - continues to grow and now has sixteen pairings.

**Mark Neale**  
**Director General**  
**January 2021**



**Chair's Report on Visits and External Meetings from 26 November – 28 January 2021**

**Status:**

1. **For noting**

**Executive Summary:**

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last Board meeting.

**List of Visits and Meetings:**

2 December 2020	Attended the ISAG meeting
9 December 2020	Met with LSB for interview around BSB Governance
14 December 2020	Attended the Inaugural speech of Derek Sweeting QC
21 January 2021	Attended Chairs' Committee meeting
26 January 2021	Attended Board briefing meeting