

**Constitution of the Bar Standards Board**  
**21 May 2020**

**PREAMBLE**

- A. The General Council of the Bar (Bar Council) is an approved regulator for the purposes of the Legal Services Act 2007.
- B. The Bar Council has established the Bar Standards Board (“the BSB”) to exercise the regulatory functions of the Bar Council.
- C. The Bar Council has delegated the discharge of its regulatory functions to the BSB in compliance with Section 28 of the Legal Services Act 2007. This is in accordance with the overarching duty set out in Rule 1 of the Internal Governance Rules 2019, under which the Bar Council is required to have in place arrangements which ensure that the exercise of its regulatory functions is not prejudiced by its representative functions. In particular, the Bar Council must have arrangements in place to separate its regulatory functions from its representative functions and to maintain the independence of its regulatory functions as effectively as is reasonably practicable and consistent with Section 28 of the Legal Services Act 2007.
- D. Accordingly, and by the authority delegated under paragraph 1(f) of the Bar Council Constitution, the BSB makes the following Constitution.

**CONSTITUTION**

**The BSB**

- 1. The BSB is the body established to discharge the regulatory functions of the General Council of the Bar. It has no separate legal personality.

**Membership of the BSB**

- 2. The BSB shall consist of between eleven and fifteen members (including a Chair and a Vice Chair) who shall be appointed and hold office in accordance with the provisions of Schedule A to this Constitution.
- 3. The members of the BSB shall consist of:
  - (1) no fewer than five, and no more than seven, practising barristers who are not members of the Bar Council;
  - (2) no fewer than six, and no more than eight, lay persons;
  - (3) a Chair who shall be one of the members in (2) above;
  - (4) and the number of lay members of the Board shall at all times (other than when there is a casual vacancy) be one more than the number of barrister members.

## **Functions of the BSB**

4. The BSB is responsible for performing all regulatory functions of the Bar Council as defined in section 27(1) of the Legal Services Act 2007. These regulatory functions have been delegated to the BSB in entirety.
5. The BSB is responsible for determining any question whether a matter involves the exercise of a regulatory function.
6. The BSB must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles.
7. The BSB has no representative functions as defined in section 27(2) of the Legal Services Act 2007.

## **Duties of the BSB**

8. The BSB must act in a way which is compatible with the Legal Services Act 2007 or with any other law relating to the exercise of its regulatory functions.
9. The BSB must, so far as is reasonably practicable, act in a way:
  - (1) which is compatible with the regulatory objectives defined in section 1 of the Legal Services Act 2007; and
  - (2) which the BSB considers most appropriate for the purpose of meeting those objectives.
10. The BSB must have regard to:
  - (1) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
  - (2) any other principle appearing to it to represent best regulatory practice;
  - (3) any guidance issued by the Legal Services Board in accordance with rule 15 of the Internal Governance Rules 2019; and
  - (4) the responsibilities and legitimate interests of the Bar Council as an approved regulator for the purposes of the Legal Services Act 2007, including the Bar Council's responsibility to be assured of the BSB's compliance with section 28 of the Legal Services Act 2007 or as otherwise required by law.

11. The BSB must:

- (1) Supervise and monitor the work and conduct of any committee or other body or person referred to in paragraph 14(3) below;
- (2) Monitor and ensure the just operation of disciplinary tribunals and any other panels assigned to determine (whether at first instance or on appeal) any issues as to the conduct of individual barristers;
- (3) Monitor and ensure the just operation of fitness to practise panels assigned to determine (whether at first instance or on appeal) any issues as to the medical fitness of individual barristers;
- (4) Ensure that equality of opportunity and diversity issues are taken into account in respect of regulatory functions in accordance with the Equality Act 2010 and other relevant legislation;
- (5) Liaise as it considers necessary or appropriate with the Bar Council and its committees, the Council of the Inns of Court, the judiciary, and such other bodies or persons as it may consider necessary or appropriate;
- (6) Prepare and keep under review a plan for the development and effective discharge of its regulatory functions;
- (7) Only agree to share a service with the Bar Council if it agrees that (i) it will not undermine, and could not reasonably be seen to undermine, the separation of regulatory and representative functions, (ii) it is effective and appropriate for the BSB to discharge its regulatory functions, and (iii) it is necessary to be efficient and reasonably cost-effective;
- (8) Comply with the relevant procedures and requirements of the Standing Orders for joint Committees of the Bar Council of England and Wales and the Bar Standards Board;
- (9) Provide sufficient information to the Bar Council as is reasonably required for the Bar Council to be assured of the BSB's compliance with Section 28 of the Legal Services Act 2007;
- (10) Publish an annual report on its work.

12. The BSB must act in accordance with the Seven Principles of Public Life (set out in Schedule B to this Constitution) at all times and, in particular, when appointing, or making arrangements for the appointment of, the members of any committee or other body or person established under paragraph 14(3) below.

**Powers of the BSB**

13. The BSB shall have power to do all things calculated to facilitate, or incidental or conducive to, the performance of its functions or duties. This includes, but is not limited to, power to do the things set out in paragraph 14 below.

14. The BSB shall have power:

- (1) To regulate its own procedure and make its Constitution.
- (2) To make such rules and/or arrangements as it considers necessary or appropriate.
- (3) To establish, and regulate the procedure of, such committees, panels (including advisory panels, whether representing consumer interests or otherwise), decision-making panels, and other bodies as it considers necessary or appropriate to enable it to discharge any of its functions or duties.
- (4) To appoint a Director General or other principal administrative officer and such other administrative officers for such periods and on such terms as it thinks fit.
- (5) If, and on such terms as, it considers necessary or appropriate to enable it to discharge any of its functions, to delegate any of its functions to (or make or approve any arrangements for the delegation of those functions by):
  - (a) any committee, panel or other body established under paragraph 14(3) above; or
  - (b) a Director General or other principal administrative officer; or
  - (c) any other person or body.
- (6) To invite any person to attend any meeting of the BSB in an advisory or consultative capacity.

#### **Proceedings of the BSB**

15. The quorum of any meeting of the BSB shall be five members, of whom at least three must be lay persons and at least two must be practising barristers.
16. The validity of any act of the BSB is not affected:
  - (1) by a vacancy in the office of Chair or amongst the other members; or
  - (2) by a defect in the appointment or any disqualification of a person as Chair, or another member, of the BSB.

#### **Definitions**

17. In this Constitution and in the Schedules hereto, the terms listed in Schedule B shall have the meaning there set out.

#### **Amendments to the Constitution**

18. This Constitution may be amended or revoked by resolution of the Bar Standards Board only after consulting the Bar Council.

## **Schedule A to the Constitution of the Bar Standards Board**

### **Appointments to the BSB**

- A1. The BSB shall convene an Appointments Panel (“a Panel”), which shall be responsible for appointing members of the BSB, as required for each recruitment.
- A2. For the appointment of the Chair, a Panel shall consist of:
- (1) A member of the judiciary nominated by the Lord Chief Justice;
  - (2) Two Board members nominated by the Board, one of whom must be a practising barrister and one of whom must be a lay person;
  - (3) A member who is a lay person independent of the Bar Council and the BSB, with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office. This member shall be the Chair of the Panel and shall be appointed by the BSB.
- A3. For the appointment of Board members other than the Chair, a Panel shall consist of:
- (1) The Chair of the BSB, *ex officio*, who shall be the Chair of the Panel;
  - (2) Two Board members nominated by the Chair of the BSB;
  - (3) A member who is a lay person independent of the Bar Council and the BSB, with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office. This member shall be appointed by the BSB.
- A4. A Panel must be convened with equal numbers of lay members and barrister members, or with a majority of lay members. For the purposes of a Panel convened at A2, the nominee of the Lord Chief Justice will not be considered to be either a lay member or a barrister member.
- A5. The Chair of the BSB may nominate an alternate to take their place for any Appointments Panel convened which they are unable to attend.

### **Proceedings of the Panel**

- A6. The quorum for a meeting of a Panel shall be three members.
- A7. The Chair of the BSB may not take part in any discussion or decision of a Panel relating to any appointment to that office.
- A8. Matters requiring a vote by a Panel shall be decided by a simple majority of votes cast by the members present. In the case of a tie, the Chair of the Panel shall have a second, deciding vote.

A9. In carrying out their functions, members of a Panel must act:

- (1) in the best interests of the proper exercise of the BSB's regulatory functions; and
- (2) in accordance with the Seven Principles of Public Life (set out in Schedule B to this Constitution) and should take account of best practice for public appointments, including in particular the Governance Code on Public Appointments.

### **Procedure for Appointments**

A10. Subject to paragraphs A15 and A16 below, all appointments by a Panel shall be made by way of open competition, and appropriate arrangements shall be made, including advertisements in relevant publications, to ensure that suitably qualified persons have the opportunity to put their names forward to consideration for appointment.

A11. In appointing members of the BSB, a Panel shall have regard to the desirability of the BSB including members who (between them) have experience in or knowledge of an appropriate range of relevant fields and any particular requirements identified by the BSB.

### **Criteria for Appointment**

A12. The competencies required of BSB members shall be those as agreed from time to time by the BSB.

A13. A member of the Bar Council or any of its representative committees may not hold office as a member of the BSB. A person who has been responsible for a representative function shall not thereby be ineligible for appointment as a member of the BSB, but, in considering whether to appoint any such person to the BSB, a Panel shall take account of their responsibility for a representative function, when that responsibility ended and any implications for the observance of the overarching duty and prohibition on dual roles as set out in the Internal Governance Rules 2019.

### **Length of Appointments**

A14. All appointments made by a Panel shall be for a fixed period of up to four years.

A15. The Board may renew the appointment of the Chair for a further fixed period of up to four years without holding a competition, if the Board is satisfied that conditions (1) and (2) are met. The Chair of the BSB may not take part in any discussion or decision of the Board relating to reappointment, and the Vice Chair of the BSB shall normally chair the discussion:

- (1) the person has performed to the standard to be expected of the office held, and
- (2) it is in the interests of the BSB to renew the appointment.

A16. The appointments of other members of the Board may be renewed on the recommendation of the Chair of the BSB, who will have consulted the Vice Chair and Director General as to whether conditions A15 (1) and (2) are met in respect of the Board member. Appointments may be renewed for a further fixed period of up to four years.

A17. With the exception of the Chair and Vice Chair of the BSB, casual vacancies may be filled by the BSB but any appointment so made will last only for the remainder of the current term of office of the member who they have replaced, or such reasonable time as is necessary for an Appointments Panel to be convened and make an appointment in accordance with the provisions of this Schedule, whichever is the shorter.

A18. A person may not serve more than:

- (1) eight years as an ordinary member of the BSB, and
- (2) twelve years in total as a member of the BSB.

A19. A person shall cease to be a BSB member if:

- (1) the period for which they were appointed expires (and their appointment is not renewed);
- (2) they resign their membership by notice in writing;
- (3) they were appointed as a lay person and cease to be a lay person;
- (4) they were appointed as a practising barrister and cease to be a practising barrister or become a member of the Bar Council or one of its representative committees;
- (5) they fail to attend meetings with sufficient frequency and regularity to be able to discharge their duties and the BSB resolves that they should cease to be a member; or
- (6) the BSB resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise).

## Schedule B to the Constitution of the Bar Standards Board

B1. In this Constitution and in the Schedules to this Constitution, the following terms have the meanings set out below:

the BSB	the Bar Standards Board
the Seven Principles of Public Life	the principles set out in paragraph B4 below
ordinary member of the BSB	a member who is not the Chair nor the Vice Chair
the Panel	the Appointments Panel established under Schedule A to this Constitution
the representative committees of the Bar Council	the committees established pursuant to Part Two of the Standing Orders for Committees of the Bar Council of England and Wales

B2. In this Constitution and in the Schedules to this Constitution, the following terms have the meanings given in the following provisions:

lay person	Legal Services Act 2007, Schedule 1, paragraphs 2(4) and (5)
Overarching duty	Internal Governance Rules 2019, rule 1
regulatory functions	Legal Services Act 2007, section 27(1)
representative functions	Legal Services Act 2007, section 27(2)

B3. For the avoidance of doubt, the regulatory functions of the BSB include, without limitation, formulating and implementing policies for and to regulate (including by making, altering and giving effect to regulatory arrangements as defined in section 21 of the Legal Services Act 2007 in respect of) all aspects of:

- (1) education and training for the Bar, including, but without limitation, academic legal training as defined in the BSB Handbook; vocational training as defined in the BSB Handbook; education and training in pupillage; continuing education and training for barristers; and testing by assessment, examinations or otherwise of students, barristers and other qualified lawyers; making provision itself for, or arranging for others to make provision for, such education, training and testing;
- (2) qualification for Call to the Bar and for the grant of rights of audience and rights to conduct litigation and other rights exercisable by barristers;
- (3) the grant of rights of audience and rights to conduct litigation exercisable by barristers and other rights exercisable by barristers;
- (4) the authorisation of barristers to carry on reserved legal activities as defined in the Legal Services Act 2007;
- (5) the authorisation of bodies of persons (corporate or unincorporated) to carry on reserved legal activities as defined in the Legal Services Act 2007;

- (6) the conduct, practice and discipline of barristers, including the conduct of barristers exercising rights of audience, rights to conduct litigation and other rights exercisable by barristers;
- (7) the conduct, practice and discipline of other persons authorised to carry on reserved legal activities as defined in the Legal Services Act 2007;
- (8) the conduct, practice and discipline of persons who are not authorised to carry on reserved legal activities but who are managers or employees of persons who are so authorised (within the meaning of the Legal Services Act 2007);
- (9) To make arrangements, either directly or through another body, for the conduct of disciplinary hearings and to take disciplinary action in respect of those persons who are subject to regulatory arrangements.

B4. The “Seven Principles of Public Life” are those set out in the First Report of the Committee on Standards in Public Life (1995) and amended thereafter (2015). These are:

- (1) **Selflessness**  
Holders of public office should act solely in terms of the public interest.
- (2) **Integrity**  
Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- (3) **Objectivity**  
Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- (4) **Accountability**  
Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- (5) **Openness**  
Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- (6) **Honesty**  
Holders of public office should be truthful.
- (7) **Leadership**  
Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.