



# **Consultation on the regulation of barristers in chambers**

**October 2023**

## **THE REGULATION OF BARRISTERS IN CHAMBERS: NEXT STEPS**

### **About this Consultation**

This paper invites views on how the Bar Standards Board (BSB) should take forward our initiative to clarify regulatory expectations of chambers. It reflects a series of roundtables with chambers themselves and with representatives of the Bar Council, the Legal Practice Management Association and the Institute of Barristers' Clerks in late 2022 and the first half of 2023. The Bar Standards Board welcomes written responses to this paper by 28 February 2024 and has made arrangements to repeat its roundtables beginning in the Autumn of 2023.

### **Executive summary**

2. The great majority of barristers work from chambers. In October 2023 there were 341 in England and Wales<sup>1</sup>. These chambers typically broker barristers' services to other legal professionals and in some cases direct to consumers, recruit and train pupil barristers, nurture professional discussion and provide a range of other marketing and support to their members. As such, chambers play an important role in setting cultural and behavioural standards for the profession. Accordingly, chambers are of significant interest to the Bar Standards Board in discharging its functions as a public interest regulator. The more robust chambers are in performing their role, the more effectively the profession will serve the wider public interest and the less need there will be for regulatory intervention.

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<sup>1</sup> Chambers with two or more practising barristers, as at 1 September 2023

3. Many chambers are already effective in overseeing standards, equality and access, in combatting economic crime and in providing high quality technical support to their members. But that effectiveness varies and many chambers, particularly small and medium chambers, need help. A consistent message of our roundtables was that chambers would welcome greater clarity about regulatory expectations, access to good quality guidance on how to meet those expectations and examples of good practice.

4. Accordingly, the Bar Standards Board is now consulting on how best to support chambers. In particular, we invite views on the following proposals:

- i. the Bar Standards Board should draw together on our website in one place all the practice management requirements we impose on self-employed barristers that, in practice, are fulfilled through chambers (paragraphs 13-19);
- ii. these requirements should cover: chambers' oversight of standards; pupillage (where relevant): equality; bullying and harassment; well-being; access for consumers; information security and economic crime (including sanctions/anti-money laundering); as well as any associated governance requirements (paragraph 16);
- iii. these regulatory requirements should be complemented by relevant guidance on fulfilling our regulatory expectations, and examples of good practice, including from other professional organisations (paragraph 18);
- iv. the Bar Standards Board should frame our regulatory requirements primarily in terms of the outcomes we want to see – giving chambers discretion about how to fulfil them – but indicating where we would also expect chambers to undertake audits or to have policies in place (paragraphs 20-24);
- v. we should support efforts by the Bar Council, the Specialist Bar Associations, the Inns and Circuits, the LPMA , the Institute of Barristers' Clerks and other

professional organisations to promote the sharing of good practice between chambers and extend our own outreach to chambers (paragraphs 25-29);

vi. the Bar Standards Board should develop a strategy for supervising and supporting chambers' compliance with our requirements as part of our business planning for 2024-25 and of our next multi-year strategy, but should not, however, seek to revive *Barmark* or any other form of benchmarking scheme (paragraphs 30-37).

vii. the Bar Standards Board should clarify our definition of what constitutes a chambers and our governance expectations of chambers (paragraphs 38-41);

5. The Bar Standards Board welcomes views on these proposals and will be seeking to engage the profession on all of them in roundtables this Autumn.

### **Why do chambers matter?**

6. The Bar Standards Board regulates all practising barristers, including employed barristers and sole practitioners. We value our engagement with barristers in both these latter categories. The great majority of barristers, however, operate from chambers. Of the just under 17 400 practising barristers on 1 August 2023, just over 79% - or 13 800 – were self-employed. 13 630 are recorded as working from the 341 chambers of two barristers or more (although this will include some double-counting because a small number of barristers are based at more than one chambers). These chambers vary in size, as the table below demonstrates, but most are small: just under half have 25 barristers or fewer and around two-thirds have 50 barristers or fewer.

Chambers size	Number of chambers	Percentage of total
2-25	156	46%
26-50	74	22%
51-75	52	15%
76-100	28	8%
101-125	19	6%
126-150	2	1%
151-175	5	1%
176-200	0	0%
Over 200	5	1%
Total	341	100%

7. Chambers perform a range of functions on behalf of their tenants and are a key interface with consumers. Most act as intermediaries with other legal professionals and some also deal directly with consumers, facilitating access to barristers' services through their clerks. Many, though not all, train pupil barristers. Larger chambers play a role in the provision and marketing and other support to their tenants and employ professional administrators to provide those services. Some chambers have formed limited companies for the provision of these services; but the majority remain unincorporated associations with no separate legal identity. All provide a focus for professional discussion and socialisation, although, following the health emergency, many chambers operate increasingly remotely and some, now, entirely so.

8. It follows that chambers are vital intermediaries, and potential allies for the Bar Standards Board, in achieving regulatory objectives. The Bar Standards Board is a long way from the front-line – roughly 100 regulators compared to 17 500 barristers. Our powers are designed to deal with serious breaches of the *Code of Conduct*, but less well well-adapted to guiding standards, equality, access and other regulatory priorities day-to-day. By contrast, chambers are on the spot. Through their governance arrangements and the services they provide, chambers gain regular insights into standards of work; they directly influence equality and inclusion within the profession through their recruitment decisions and through the allocation of work; they facilitate access to barristers' services; they often (though not always) set chambers-wide standards to ensure compliance with anti-money-laundering and sanctions requirements.

### **Regulation and chambers**

9. Under the Legal Services Act 2007, the Bar Standards Board exercises the regulatory functions previously exercised by, and delegated to it, by the Bar Council. In exercising its regulatory functions, the Bar Standards Board must have regard to the regulatory objectives<sup>2</sup> set out in section 1 of the Act. These objectives go to the public interest and embrace not only the independence, strength and diversity of the profession, but also the interests of consumers and the promotion of competition and access to justice. For its part, the Bar Council retains its representative functions on

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2007/29/contents>

behalf of the profession and, in that capacity, also publishes much useful guidance to barristers and to chambers. The respective interests of the Bar Standards Board, as regulator, and of the Bar Council, as representative body, will often overlap, although we seek to avoid unnecessary duplication of activity where we share a common analysis and objectives.

10. The Bar Standards Board, in exercising its regulatory functions - defined by s 27(1) of the Legal Services Act 2007 as any functions which it has “under or in relation to its regulatory arrangements, or in connection with the making or alteration of those arrangements” – has elected to make rules which deal with how chambers, as associations of barristers, should operate. This reflects the important role which chambers play. These rules are generally expressed as practice management obligations on individual barristers which those barristers can only meet through their participation in chambers. Our Equality, Public Access and Transparency rules are good examples.

11. In addition, the Bar Standards Board sets standards to which chambers which want to be authorised to train pupils must adhere. And we also publish our view of good practice in various respects: in complying with anti-money laundering legislation, for example<sup>3</sup>.

12. These rules and guidance are, however, nowhere consolidated. Nor is there a single, coherent statement of the expectations which the Bar Standards Board has of chambers in performing their important oversight and governance roles. Our recent chambers initiative was, therefore, aimed at exploring how we could best support chambers to be more effective and consistent in that oversight role. That was partly about how we, the Bar Standards Board, could best state and collate our regulatory requirements. And partly it was about how we could make easily accessible to chambers useful guidance and good practice from a range of sources in support of those requirements.

13. In taking forward the initiative, the Bar Standards Board has been very conscious of the diversity of chambers in terms of size and resources and of the

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<sup>3</sup> <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/anti-money-laundering-counter-terrorist-financing/aml-guidance.html>

voluntary nature of the governance roles performed within chambers by barristers. Our aim is not, therefore, to add to regulatory burdens, but to clarify regulation so that it is easier to comply with and, by doing so, to promote greater consistency and higher standards in the way chambers operate.

### **A one-stop shop.....**

#### *What we heard*

14. The near unanimous view of those who attended our roundtables favoured making it easier for chambers to understand and to comply with our regulatory requirements. Many participants referred to this as a *one-stop shop*. Chambers are busy and, in the case of many small and medium chambers, have limited resources. They need help.

#### *What we propose*

15. We agree with the spirit of this, but think that we can respond best – and fulfil our own regulatory objectives – through a two-stop model of parallel sites:

- a website run by the Bar Standards Board setting out our regulatory requirements and any associated guidance; and
- parallel websites already in existence and run by professional organisations, including the Bar Council, supporting good practice and further guidance: the latter may build on much existing high quality guidance including the Bar Council's *Ethics and Practice Hub*.

This two-stop shop will ensure that accountabilities are clear and consistent with the Internal Governance Rules. In particular, the Bar Standards Board cannot explicitly or implicitly endorse guidance produced by professional bodies.

16. The Bar Standards Board site would cover the practice management rules which barristers can only realistically fulfil through participation in chambers and which are essential to the achievement of broader regulatory objectives. We would also expect to include related, settled guidance from the Bar Standards Board. The areas covered would be:

- **Standards:** the role we expect chambers to play in brokering feedback to barristers on their performance and in supporting barristers' professional

development, including Continuing Professional Development. This is currently the focus of our programme of work on Assuring Competence.

- **Pupillage:** the requirements we impose on chambers providing pupillage through the provisions of the Authorisation Framework, including in relation to fair recruitment.
- **Equality & inclusion:** the implementation of our Equality Rules<sup>4</sup>, which we are currently revising and on which we shall consult shortly.
- **Bullying and harassment:** the promotion of a culture in which bullying and harassment are not tolerated and which fosters the reporting of unacceptable behaviour in line with guidance<sup>5</sup> published by the Bar Standards Board in October 2022.
- **Well-being:** safeguarding the well-being of barristers and an inclusive working culture in line with the Bar Standards Board's October 2022 commitment to wellbeing<sup>6</sup>.
- **Access:** our transparency rules<sup>7</sup> governing the provision of information to consumers about the cost and nature of the services provided through chambers and any development of those rules we may make in the light of our market study of on-line comparison.
- **Sanctions and anti-money laundering:** our guidance on good practice – and the division of responsibility between barristers and chambers – in implementing legislation on sanctions and anti-money laundering.
- **Information security:** our expectations of chambers in managing the risks to cyber security.

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<sup>4</sup> The current Equality Rules can be found here:

<https://www.barstandardsboard.org.uk/uploads/assets/8020c32b-01e7-47ae-9b93675cbffd0fe8/d4187f73-840b-4a9f-9557c2db3e412e03/02020401-BSB-Equality-Rules-Extract-2019-website.pdf>

<sup>5</sup> <https://www.barstandardsboard.org.uk/uploads/assets/81339cf0-2422-4f74-8535b5e37d988793/7e20e7e9-c55a-4c7d-a3785ecd663d9708/Bullying-and-harassment-report.pdf>

<sup>6</sup> <https://www.barstandardsboard.org.uk/uploads/assets/2a1fb3c3-5b5e-47ae-9b260f7931146d10/78600755-390f-43f8-b366bcd96a56087a/BSB-commitment-to-wellbeing.pdf>

<sup>7</sup> <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/transparency-rules.html>



- **Governance:** any associated governance arrangements which barristers would need to ensure were in place to promote chambers' compliance.

17. Subject to this consultation, we would aim to get the Bar Standards Board website up and running during the course of 2024 and populate it over time with existing and revised rules. As rules are updated, we would aim for a consistent style and approach.

18. The Bar Standards Board website would be complemented by parallel professional sites including the Bar Council's *Ethics and Practice Hub*.

### ***Consultation question 1***

***19. Do you agree with our proposed approach of parallel websites to set out regulatory expectations and supporting guidance and good practice? Do you agree with the proposed coverage of the Bar Standards Board website? Do you have suggestions about how the proposed websites could be made as accessible and useful to chambers as possible?***

### **Outcomes, not processes...**

#### *What we heard*

20. At our roundtables, we asked participants about the best way of framing rules bearing on the operation of chambers. We heard differing views. Some chambers, particularly the larger and better resourced ones, recommended that the Bar Standards Board prescribe outcomes and leave it to chambers to determine how to deliver those outcomes. Smaller and medium chambers, probably in the majority, on the other hand represented that their primary requirement was for clarity and that this was best provided by stating what, exactly, they were required to do.

#### *What we propose*

21. The Bar Standards Board wants to ensure that chambers consciously focus on their role in maintaining standards, in promoting equality and access and in complying with sanctions and anti-money laundering legislation. This will only come about if chambers actively debate these issues and if senior members of chambers identify with, and actively champion, these objectives.

22. Accordingly, we favour expressing our regulatory expectations of chambers largely in terms of outcomes, rather than in terms of process. So, to take equality as an example, we might state that the BSB expects chambers to secure access for disabled barristers, pupils and clients, or to achieve a fair distribution of work among barristers of equivalent seniority and specialism. This would not preclude us from also making some rules about means as well as ends. We might stipulate that chambers must undertake an audit of access and have a five year plan to improve it. We might require chambers to share regularly with their members, and discuss, data on the distribution of work. But the focus would be on outcomes.

23. We recognise that this approach will not be welcome to all chambers. This, however, is where the parallel Bar Council and other professional websites can help by providing examples of good practice and supporting guidance. Even here, however, we would want, in discussion with the Bar Council, to avoid a state of affairs in which chambers could simply take template policies off the shelf with little or no active consideration or discussion.

### ***Consultation question 2***

***24. Do you agree that regulations bearing on chambers should largely be expressed in terms of outcomes, but with an indication of where we would expect to see policies or other measures in place to support delivery of those outcomes? Do you agree that chambers would be aided by parallel Bar Council and other professional websites providing guidance and examples of good practice in meeting those outcomes?***

### **Small and medium sized chambers**

#### *What we heard*

25. We recognise that there is nevertheless a wider question about the capacity of small and medium sized chambers with 50 barristers or fewer, lacking a critical mass of administrative support. A consistent message of the roundtables was that many such chambers struggle to assimilate, let alone to meet, all the regulatory requirements which come their way.

### *What we propose*

26. The Bar Standards Board is clear that our requirements do represent the minimum standards applying to all chambers. It would not be appropriate to graduate the obligations on chambers according to size. This is not least because women barristers and barristers from minoritised ethnic backgrounds tend to be over-represented in small and medium chambers – of which more in paragraphs 42-43 below. The answer lies instead in finding ways of supporting and boosting the capacity of small and medium chambers, especially those chambers lacking professional administrative support.

27. One answer may lie in voluntary consolidation between such chambers. The clarification of our requirements may itself serve as an incentive to some chambers to explore that option. While we would welcome such steps where supported by barristers in the chambers concerned, we do not judge that, as regulator, we should currently adopt an active policy of bringing about consolidation. Voluntary mergers are likely to be far more effective than shotgun marriages.

28. Moreover consolidation is not the only way of addressing lack of critical mass. There may be opportunities for smaller chambers to share some back office functions. It is also apparent from our roundtables that the Bar Council, the Circuits, the Legal Practice Management Association and the Institute of Barristers Clerks are open to collaboration and the provision of support for small chambers. Many larger chambers also expressed a willingness to share good practice in the shape, for example, of support in developing effective policies to promote equality and inclusion. We judge that networks of informal support of this kind offer a sensible approach.

### ***Consultation question 3***

***29. Do you agree that small and medium chambers are best supported through informal networks of support such as those outlined above? Do you have any suggestions about how these networks can be encouraged and promoted?***

## Compliance

### *What we heard*

30. There is then, finally, the question of how we promote compliance with the requirements we promulgate and whether this is best achieved through incentives, such as kitemarking schemes on the *Barmark* model, or through supervision and enforcement, or through some combination of these.

31. Though kitemarking schemes have their advocates, the majority view of the roundtables was that they are expensive to run, tend to favour the larger chambers with the administrative resources to dedicate to demonstrating compliance and promote a box-ticking culture, rather than a culture of continuous improvement.

32. By contrast, a consistent message of our equality task forces (on Race Equality, on Disability and on Faith and Belief) has been that we, as a regulator, need to dedicate more resources to compliance, to hold chambers to account and to take action on non-compliance. We also heard the same thing from Barbara Mills KC and from Simon Regis when the Bar Council launched its own report on race equality towards the end of 2021.

### *What we propose*

33. We agree that the revival of *Barmark* is not the answer. Such an approach has been tried and proved to be unsustainable.

34. Accordingly, we take the view that we shall need to work up a supervision strategy to support the requirements we place on chambers and to reflect this supervision effort in our business plan for 2024/25 and in our next multi-year strategy. This is not new ground. Our Supervision Team undertook an extensive review of chambers' compliance with our Transparency Rules in 2020 and 2021 and more recently completed a review of commercial chambers' compliance with sanctions legislation.

35. This is an opportunity to take a more rounded approach to chambers' supervision. We would expect such a rounded strategy would combine more extensive outreach to promote understanding of our requirements, targeted surveys to gather evidence of compliance and of risk and, where appropriate in response to

evidence of risk, compliance action to enforce the standards we set. As previously announced, we do not, however, intend to repeat the comprehensive Regulatory Return of 2020/21 which sought to gather evidence of risk and compliance across all key dimensions of chambers' activity.

36. Fundamental to such a strategy would be an approach to our engagement with chambers graduated in proportion to risk. We would want to work collaboratively with those chambers at the forefront of good practice and support them in sharing experience. We would aim to encourage chambers with some distance to travel to draw on the guidance and good practice available and to take advantage of informal support networks. We would take enforcement action only with those chambers which were persistently non-compliant. As part of a graduated approach, we may also consider whether, and if so how, our assessments of individual chambers might be made public and so inform the users of chambers' services. We are conscious, however, that this would significantly raise the stakes of our supervision work, might well diminish its capacity to promote useful change in chambers' approaches and certainly lead to greater contestability.

#### ***Consultation question 4***

***37. Do you agree that the Bar Standards Board should not seek to revive a kitemarking scheme for chambers, but should instead develop a graduated supervision strategy on the lines outlined above? Do you believe that, as part of this strategy, the Bar Standards Board should make public its assessment of individual chambers? Do you support ending comprehensive quinquennial Regulatory Returns in favour of targeted surveys of risk and compliance?***

## **Governance**

38. To underpin such a supervision strategy, we shall also need to re-visit our definition of what constitutes a chambers. The Bar Standards Board *Handbook* currently defines a chambers as follows:

*“chambers means a place at or from which one or more self-employed barristers or BSB entities carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) and BSB entities who for the time being carry on their practices at or from that place.”*

This definition puts undue emphasis on physical place. That is no longer appropriate to current working practices. A better, up-to-date approach might instead be to define a chambers as any collective of barristers who come together under an agreed constitution or service agreement to facilitate their practice.

39. The Bar Standards Board is also conscious that many roles performed by barristers, including that of Head of Chambers where it exists, are voluntary. We very much value the willingness of senior barristers to take on these roles and hope that the clarification of the regulatory requirements foreshadowed in this document and the support provided to fulfil them, will make these voluntary roles more rewarding, not more demanding.

40. We do, however, believe that chambers management committees should consider how best to share responsibilities among the barristers belonging to a set of chambers. This may be by establishing chambers committees to oversee standards, equality, access for consumers and economic crime. Or it may be by inviting an individual barrister to act as a champion within chambers for these dimensions of chambers' responsibilities. We do not judge that the Bar Standards Board should prescribe roles or internal governance arrangements, but that any collective of barristers meeting the definition above should have in place leadership and governance arrangements which demonstrably facilitate compliance with regulatory requirements, manage risk and promote good practice.

### ***Consultation question 5***

***41. Do you agree with the approach to re-defining chambers outlined in paragraph 38 above? Do you agree that the Bar Standards Board should not prescribe governance arrangements for chambers meeting this definition, but***

***expect chambers themselves to establish appropriate leadership and governance arrangements?***

**Equality impacts**

42. Alongside this consultation document, we are drawing up an equality impact assessment. As one of the central purposes of this initiative is to enhance the consistency and effectiveness of chambers' oversight of equality and inclusion – both in serving consumers' needs and in running the affairs of chambers themselves - we would expect this assessment to be supportive. We do, however, recognise that women barristers, barristers from minoritised backgrounds, disabled barristers and barristers displaying other protected characteristics are not represented in proportion to their numbers in all chambers, but that representation varies according to the size, the specialism and the geographical location of chambers. This is set out in the analysis at annex A.

43. In the light of this, we should welcome views on whether, and if so how, these proposals could or should be flexed to in the light of any potential equality impacts.

**Responding to the consultation**

42. We have arranged a further programme of roundtables in both London and the circuits and we hope that as many barristers as possible will join those sessions and express their views. We invite written responses by 31 March 2024. You do not need to wait until the deadline to respond to this consultation. Please use the form provided to submit your response to: [policy@BarStandardsBoard.org.uk](mailto:policy@BarStandardsBoard.org.uk).

43. If you have a disability and need to access this consultation in an alternative format, such as larger print or audio, please let us know. Please also let us know if there is anything else we can do to facilitate feedback other than via written responses.

44. Whatever form your response takes, we will normally want to make it public and attribute it to you, or your organisation, and publish a list of respondents. If you do not want to be named as a respondent to this consultation, please let us know in your response.

## **Our consultation questions**

1. Do you agree with our proposed approach of parallel websites to set out regulatory expectations and supporting guidance and good practice? Do you agree with the proposed coverage of the Bar Standards Board website? Do you have suggestions about how the proposed websites could be made as accessible and useful to chambers as possible?
2. Do you agree that regulations bearing on chambers should largely be expressed in terms of outcomes, but with an indication of where we would expect to see policies or other measures in place to support delivery of those outcomes? Do you agree that chambers would be aided by parallel Bar Council and other professional websites providing guidance and examples of good practice in meeting those outcomes?
3. Do you agree that small and medium chambers are best supported through informal networks of support such as those outlined above? Do you have any suggestions about how these networks can be encouraged and promoted?
4. Do you agree that the Bar Standards Board should not seek to revive a kitemarking scheme for chambers, but should instead develop a graduated supervision strategy on the lines outlined above? Do you believe that, as part of this strategy, the Bar Standards Board should make public its assessment of individual chambers? Do you support ending comprehensive quinquennial Regulatory Returns in favour of targeted surveys of risk and compliance?
5. Do you agree with the approach to re-defining chambers outlined in paragraph 38 above? Do you agree that the Bar Standards Board should not prescribe governance arrangements for chambers meeting this definition, but expect chambers themselves to establish appropriate leadership and governance arrangements?



Bar Standards Board

October 2023