



## **General Council of the Bar and Bar Standards Board**

### **Protocol for ensuring regulatory independence and the provision of assurance**

#### **Introduction**

1. This protocol is designed to ensure the compliance of the General Council of the Bar (GCB) and Bar Standards Board (BSB) with the Legal Services Board's (LSB) Internal Governance Rules 2019 (IGRs), and in particular IGR3, in relation to ensuring regulatory independence and the provision of information and assurance between the GCB and the BSB.
2. The IGRs provide that each approved regulator has an overarching duty to ensure that the exercise of its regulatory functions is not prejudiced by any representative functions it may have. The GCB must have arrangements in place to:
  - a. separate its regulatory functions from its representative functions; and
  - b. maintain the independence of its regulatory functions.
3. The IGRs also provide that each regulatory body shall provide sufficient information to the approved regulator as is reasonably required for the approved regulator to be assured of the regulatory body's compliance with section 28 of the Legal Services Act 2007 (LSA). The GCB:
  - a. may only require further information from the BSB if it has reasonable grounds to do so;
  - b. must not require the BSB to provide information which may reasonably be considered likely to undermine the BSB's independence or effectiveness; and
  - c. must not use the information it receives for the representation, protection or promotion of the interests of those it represents unless and until it receives that information for that purpose or that information is made publicly available.
4. This protocol has been agreed and adopted by the GCB and BSB and will be periodically reviewed in accordance with IGR1(3).
5. The Chief Executive of the GCB and the Director General of the BSB shall be responsible for ensuring the effective implementation and operation of this protocol and maintaining the necessary documentary evidence.
6. The Chief Executive of the GCB and the Director General of the BSB shall report to the LSB, in accordance with IGR13(2), any issue in relation to compliance with the IGRs which cannot be or has not been remedied within a reasonable period, whether this information is requested or not.

## **Principles**

7. In accordance with the statutory guidance on the IGRs, this protocol will be published in compliance with the better regulation principle of transparency and to support the principle of consistency.
8. This protocol applies across the whole of the GCB and the BSB, including the Resources Group (RG) shared services function, and is based on the principles that:
  - a. The GCB must not be involved in, or prejudice, the discharge of regulatory functions;
  - b. The GCB is entitled to make representations to the BSB in accordance with this protocol, and vice versa;
  - c. As the approved regulator, the GCB is entitled to be provided with assurance by the BSB that the BSB is fulfilling any undertakings made to the LSB;
  - d. The BSB will provide sufficient information to the GCB as is reasonably required for the GCB to be assured of BSB's compliance with section 28 of the LSA;
  - e. Where the BSB considers that required expertise lies within the GCB, it is entitled to seek expert advice from the GCB. The BSB will consider this advice and form its own independent judgement as to its use; and
  - f. The GCB must promptly inform the BSB if the GCB makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions by the BSB.

## **General working arrangements**

9. The following working arrangements apply in general.
10. No person exercising a representative function shall attend non-public sessions of the BSB Board or its committees, panels, decision-making panels or other bodies other than in exceptional circumstances. Any such attendance should be by specific invitation relating to a relevant piece of business and should be documented and made public.
11. No person exercising a regulatory function shall attend meetings of the GCB's Bar Council or GCB committee meetings other than by specific invitation relating to a relevant piece of business. Any such attendance should be documented and made public.
12. No member of the GCB's Bar Council and/or its committees may simultaneously be a member of the BSB Board and/or its committees, panels, decision-making panels or other bodies).
13. Where the GCB wishes to make a representation to the BSB in relation to a regulatory function, this should be set out in writing and copied to the GCB Head of Governance, making clear that this is representative input and that it is being made in accordance with the protocol. Once the representation has been received and considered by the BSB, the BSB Head of Governance and Corporate Services should confirm that they are content that this has been done in accordance with the IGRs and this protocol.
14. The GCB Head of Governance will log all such requests made in accordance with the protocol, noting who the request is from, who the request has been sent to, and the nature of the request made. The GCB Head of Governance will liaise with the BSB Head of Governance and Corporate Services and update the log regularly to reflect

progress. Any response to such representations will be entirely at the discretion of the BSB and the BSB will reach any decision independently.

15. Where the BSB wishes to make a representation to the GCB, this should be set out in writing and copied to the BSB Head of Governance and Corporate Services, making clear that this is being made in accordance with the protocol. Once the representation has been received and considered by the GCB, the GCB Head of Governance should confirm that they are content that this has been done in accordance with this protocol. (Note that this is separate to the process to be followed in the event that the BSB considers it appropriate to seek expert advice from the GCB, which is set out below).
16. The BSB Head of Governance and Corporate Services will log all such requests made in accordance with the protocol, noting who the request is from, who the request has been sent to, and the nature of the request made. The BSB Head of Governance and Corporate Services will liaise with the GCB Head of Governance and update the log regularly to reflect progress.
17. It is the responsibility of the Director General of the BSB to provide the Chief Executive of the GCB with assurance that the BSB is fulfilling any undertakings made to the LSB.

#### **Working arrangements which apply in relation to the provision of information**

18. This protocol does not preclude meetings between the BSB and the GCB to enable the GCB to represent or promote the interests of barristers. Nor does it constrain the normal professional exchange of information between the GCB and BSB, but in both cases the independence and effectiveness of the BSB must be unaffected.
19. The BSB will provide sufficient information to the GCB as is reasonably required for the GCB to be assured of BSB's compliance with section 28 of the LSA. This requires the BSB, so far as is reasonably practicable, to act in a way which is compatible with the regulatory objectives and which the BSB considers most appropriate for the purpose of meeting those objectives, having regard to the better regulation principles.
20. This will include the GCB being provided with information about the BSB's governance arrangements, arrangements for financial management and control, and systems and processes for risk management and internal audit. There is also a separate agreement with regard to how assurance is managed in relation to employer duties.
21. The BSB will respond to reasonable requests and will volunteer information when it is of the view that it is reasonable that the GCB should be aware of this information to be assured of the compliance of the BSB.
22. At the executive level, this will be achieved by regular meetings and exchange of information between the Chief Executive of the GCB and the Director General of the BSB, supported as necessary by regular meetings and exchange of information between senior staff in the Representation, Policy & Services (RP&S) Directorate, RG and BSB. Where services are shared between the BSB and GCB, executives will meet to discuss matters of common interest.
23. In addition, the Chairs' Committee, comprising the Officers of the GCB, the Chief Executive of the GCB, the Chair and Vice Chair of the BSB and the Director General of the BSB, will meet at least twice a year for the purposes of keeping under review all aspects of the relationship between the GCB and BSB.
24. The BSB's Planning, Resources & Performance (PRP) Committee will provide regular reports to the joint Finance Committee, at each of its meetings (of which there are

normally six per year), in respect of arrangements for financial management and control. The BSB's Governance, Risk & Audit (GRA) Committee will also provide regular reports to the joint Audit Committee, at each of its four meetings per year, in respect of systems and processes for risk management and internal audit. GCB members are also present at those meetings and receive the reports.

25. Internal audits are normally the responsibility of the GCB and BSB and their respective panels/committees. The joint Audit Committee may receive assurances that the internal audit processes are effective and that actions raised are addressed. Where an internal audit covers shared services, it may be jointly commissioned by the GCB and BSB.
26. Exceptionally, where additional information is required, GCB's General Management Committee (GMC) may seek further assurances from the BSB Board that the BSB Board is acting in compliance with section 28. In any case, where the GCB has reasonable grounds to seek further assurance about the BSB's compliance with section 28, it may vary the normal assurance processes (resulting, for example, in more frequent meetings or greater/more frequent exchange of information). This will be taken into consideration during the periodic review of this Protocol.
27. The GCB may only require further information from the BSB if it has reasonable grounds to do so. It must not require the BSB to provide information which may reasonably be considered likely to undermine the BSB's independence or effectiveness, and it must not use the information it receives for the representation, protection or promotion of the interests of those it represents unless and until it receives that information for that purpose or that information is made publicly available.
28. The GCB will put safeguards in place in relation to who has access to the assurance information, their obligations on its use and how to prevent the dissemination of the information more widely within the GCB or outside of it. The safeguards will be overseen and monitored by the GCB Head of Governance. They include:
  - a. The GCB Head of Governance working in conjunction with the Head of Human Resources to ensure that all representative function and Resources Group staff receive full training on, and understand, the IGRs and, in particular, the processes around the provision of assurance;
  - b. All requests for advice or assurance from the GCB to the BSB being copied to, and logged by, the GCB Head of Governance (who will ensure that the BSB Head of Governance and Corporate Services has sight of this);
  - c. The GCB Head of Governance reminding all those who request advice or assurance that they must not use the information provided by the BSB for any other purpose than that which it was requested for; and
  - d. The GCB Head of Governance taking any other steps as appropriate to ensure that representative function and Resources Group staff understand their obligations and are adhering to the Protocol.

**Working arrangements which will apply when the BSB assesses that the GCB is the most appropriate source of external expert advice**

29. The following arrangements supplement the general working arrangements set out above and apply when, in exceptional circumstances, the BSB considers it appropriate to seek expert advice from the GCB. Before doing so, the BSB will take into account the risk of prejudice to its regulatory functions and consider whether it should develop in-house expertise or use other sources in the future. However, when the advice sought is highly specialised or urgent, it may be necessary for the BSB to approach the GCB or one of its members or staff. The provision of expert advice will not constitute

GCB involvement in the discharge of regulatory functions, as the BSB will consider this advice independently and reach its regulatory decision without further involvement of the person or Committee which provided the advice. However, the risk of prejudice to regulatory functions must be managed in accordance with this protocol and, where relevant, the protocol between the BSB and the GCB.

30. The Chief Executive of the GCB and the Director General of the BSB, working in conjunction with, and taking advice from, the GCB Head of Governance and BSB Head of Governance and Corporate Services respectively, are responsible for delivering awareness at all levels of the GCB and BSB of the appropriate governance and behavioural action needed in these circumstances. This includes ensuring that the respective staff have detailed understanding of the IGRs and this protocol and are clear about their specific responsibility for abiding by them.
31. The risk of prejudice to regulatory functions lies with those structures and persons with representative functions. For the GCB, this will normally mean the Officers, members of representational committees and associated working groups, and staff in the RP&S Directorate. It will not normally include those undertaking shared functions.
32. Where the BSB decides to seek advice or assistance in relation to a regulatory function, the Director General of the BSB (copying to the BSB Head of Governance and Corporate Services) should make a request in writing to the Chief Executive of the GCB, copied to the GCB Head of Governance. It should set out what is required, from whom, over what timescale.
33. All requests from the BSB to seek advice or assistance in relation to a regulatory function will be logged by the BSB Head of Governance and Corporate Services and GCB Head of Governance. The log will set out what is required, from whom, over what timescale and it should be updated regularly to reflect progress.
34. When those identified as contributing to advice and assistance are engaged on this work, they shall as far as reasonably practical set aside their representative role.
35. Once the advice or assistance has been provided:
  - a. the senior member of staff responsible in RP&S should confirm this in writing to the Chief Executive of the GCB and the Director General of the BSB, providing assurance that this has been done in accordance with the IGRs and this protocol; and
  - b. the Director General of the BSB should confirm that they are content with that assurance.
36. Where the advice or assistance is of an ongoing nature, interim reports may be required.
37. No person exercising a representative function should contribute to the drafting of papers to the BSB Board or its committees, panels, decision-making panels or other bodies on regulatory functions. They may however contribute to drafting supporting material for papers for these bodies, in which case the papers should make that contribution clear.
38. No person exercising a representative function should be invited to contribute to discussion in the BSB Board or its committees, panels, decision-making panels or other bodies in a matter on which advice or assistance has been sought or provided without a specific invitation from the Director General of the BSB and the agreement of the Chief Executive of the GCB. The reason for their attendance should be made clear

and minuted at the relevant meeting.

**Working arrangements which will apply when the GCB may reasonably be considered likely to undermine the discharge of regulatory functions by the BSB**

39. The GCB must promptly inform the BSB if the GCB makes or intends to make a decision, plan, communication or other arrangement which may reasonably be considered likely to undermine the discharge of regulatory functions by the BSB. This must be done by communication from the Chief Executive of the GCB (copying to the GCB Head of Governance) to the Director General of the BSB (copied to the BSB Head of Governance and Corporate Services).
40. The GCB must consider if any such action may undermine the efficacy of the BSB or require the BSB to act in a way not consistent with section 28 of the LSA. In the case of decisions which the GCB intends to make, the BSB should be informed before the decision or plan is finalised. Examples of where a communication from the GCB to the BSB would be required include:
  - a. a management decision by the GCB which would negatively affect the resources of the BSB, as it is reasonably likely that this would curtail the BSB's ability to act in a way which it considers most appropriate for the purpose of meeting the regulatory objectives, as required by section 28 of the LSA.
  - b. an arrangement or communication by the GCB which would or does negatively affect public confidence in the BSB as a whole, as this may undermine the BSB's ability to discharge its functions in a way which protects and promotes the public interest.
  - c. any communication from the GCB which purports to be acting as the approved regulator outside of its residual role, which may also undermine the BSB's ability to discharge its functions.
41. Communication from the GCB to the BSB where required will enable the BSB to:
  - a. take whatever preventative action is available in order to mitigate the impact of the decision, plan, communication or other arrangement so that it may continue to comply with section 28 of the LSA;
  - b. work with the GCB to see if there may be a more favourable alternative; or
  - c. if neither of the above are sufficient and the risk of the BSB's discharge of regulatory functions being undermined is significant, the BSB should be asked for advice.
42. Where a disagreement arises with regards to any aspect of this Protocol, the GCB and BSB should refer to the Dispute Resolution Process for the steps to follow in order to resolve the disagreement.