BAR STANDARDS BOARD

REGULATING BARRISTERS

Guide to completing the Regulatory Return 2020

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1. About the Regulatory Return

We are issuing a Regulatory Return to a selection of around 350 chambers, BSB entities and sole practitioners. This is the second time that we have conducted this exercise – the last time being in 2015-16, which you may have been involved in (we called it a "Supervision Return" then).

In the Return, we have asked a range of questions including your views on the risks that the profession faces, information about the processes and controls you have in key areas of your practice, and some questions on specific topics that are currently a priority in our strategic plan, such as dealing with allegations of harassment.

We are very aware that the current health crisis has impacted the Bar in different ways. We are interested in understanding more about that. For example, whether new risks or opportunities have arisen from COVID-19, whether chambers, entities and sole practitioners have modified their governance or working practices or whether it has led to changes in how chambers, entities and barristers use technology in their work.

We have explained below why you have been selected and how we will use the information that you provide. We know that it will take valuable time to respond to this Return, but a number of participants last time told us that they found it useful in prompting them to review their policies and processes and think about where they could be improved, so we hope that you will find it a useful exercise too.

2. Why you have been selected

Our selection is based on an "impact assessment" of all chambers, BSB entities and sole practitioners. This assessment (which is different to a risk assessment) gives us an indication of where the most serious consequences would arise in the event that things go wrong. It shows us the extent of the impact that a risk would have, were it to materialise. For example, inadequate complaints handling processes would have more significant consequences at a chambers or entity with a large number of vulnerable lay clients.

Our impact assessment is drawn from information declared by barristers at Authorisation to Practise, and is based on the following criteria:

- Size. Larger practices will have inherently higher impact.
- Proportion of public access work and the number of barristers registered for public access work. Lay clients do not have the additional protection of another legal professional involved in their case and there are additional rules in the BSB Handbook for this area of practice.
- Chambers, entities and practices that have a larger practice in crime, immigration or family law. These areas of practice involve the most vulnerable consumers. Crime and family work generate the highest proportion of complaints to the Legal Ombudsman. Our work in immigration services, on the other hand, indicates that consumers are reluctant to complain.
- Number of barristers declaring that they do work in the Youth Courts. We consider this to be a high-risk area of work. Some of the most vulnerable people within the criminal justice system can be affected if they are not adequately represented. You can read more about this on our website.

- Number of barristers declaring that they do work under the Money Laundering Regulations. This is an area of focus by the Government and so the impact of non-compliance is high. Again, you can read more about this on our website.

In some cases, our selection is also based on our current assessment of risk, taking into consideration our recent regulatory engagement by the Supervision and Enforcement teams.

3. How we will use the information that you provide

This is an opportunity for you to explain how effectively potential risks are being managed, how you ensure compliance with the BSB Handbook and how you ensure high standards in services that you deliver. We will use the information that you provide as follows.

We will carry out a risk assessment of the chambers, entity or sole practice based on your responses. This will reflect whether you have been able to demonstrate effective management of risk and compliance with the BSB Handbook. Our Supervision assessment categories are as follows:

High Risk There is a significant probability that issues identified may have a fundamental impact on the chambers'/entity's/sole practitioner's ability to meet the Core Duties and Outcomes set out in the Handbook. We are not satisfied that the practice is managed competently and in such a way as to achieve compliance with legal and regulatory obligations. Immediate action should be taken to mitigate the risks identified. The chambers/entity/practice will be subject to further monitoring by the Supervision Team as specified. Medium Risk A number of important issues were identified and the chambers/entity/practice should address these promptly in order to meet the Core Duties and Outcomes set out in the Handbook. The chambers/entity/practice should report progress to the Supervision Team as specified. In other areas, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations. Low risk In the areas covered in the Return, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations. Some issues where controls could be strengthened may have been identified and these should be followed up by the chambers/entity/practice. No further monitoring by Supervision is planned based on the outcome of this review unless other information comes to our attention.

If we do identify anything specific within a practice which gives us cause for concern, then we will always seek to work collaboratively to make sure that controls are strengthened. Usually, this means that we will agree specific actions and a timeframe for implementation. You can read more about our approach to Supervision on our website.

Some of the questions are on specific topics that are currently a priority in our strategic plan. Your responses will help us gather information that will contribute to our evaluation of recent policy changes or to development of our regulatory policy.

Other questions will help us to stay up to date on changes in the profession, which will influence our assessment of risk in the market. You can read more about our approach to risk-based regulation on our website.

Last time we conducted this exercise, we found that it provided a very rich source of information that enabled us to direct our regulatory attention to where it was most needed and to shape our regulatory policies.

4. How to answer the questions

Chambers and larger entities might want to review the questionnaire as a starting point and allocate questions to relevant people. For example, you might want to allocate certain questions to your senior clerk or practice manager to work on, and other questions to your Equality and Diversity Officer or others with particular responsibilities in your practice. You can find a Word version of the Return below:

- For chambers.
- For entities.
- For sole practitioners.

Please ensure that you look at the correct questionnaire because they have been tailored according to the type of practice. If you are a sole practitioner, but employ a clerk or an assistant, you should select the sole practitioner Return.

You can use this Word document internally. However, this is just for your internal use. Please send us your responses, when they are ready, using the form on the MyBar portal. You can cut and paste the questions from the Word document into MyBar if you want to plan your responses first.

We have provided some guidance for each question, explaining why we are asking the question and explaining the type of information that we want you to include in your response.

Very brief answers will not provide us with enough information to carry out an assessment of your chambers, entity or practice. When we reviewed the Supervision Returns in 2015-16, we found that those most likely to be assessed as high risk were those who provided the most limited answers. Follow-up Supervision visits were required to gather more information. You can read more about Supervision visits on our website. We appreciate the time that it takes to provide comprehensive responses, but if you are able to do so, illustrating it with examples, we are less likely to need to conduct a follow-up visit. There is a limit of 15,000 characters to the length of your response. This roughly equates to 2-3,000 words, which is more than enough for you to provide a full response and we do not expect you to use the full amount available. In particular, we do not want you to simply cut and paste large sections of your policies – we want to know how you are implementing those policies in practice. It is helpful, therefore, to provide examples to illustrate your responses.

You do not need to provide any other documents, but we may ask you for further information when we review your Return.

If you need clarification or help with any of the questions, please email supervision@barstandardsboard.org.uk and a member of the Supervision team will be pleased to help you.

5. How to submit your completed Return

You must complete the Return using the form on MyBar. This enables us to assess and collate the responses efficiently. The Word version has been provided solely for your own use, in case you want to use it to assist you when preparing your responses. Detailed instructions for using MyBar are provided in Annex 1. You do not have to complete it all in one go. You can save it and return to it later.

6. Deadline for submitting your Return

The deadline for submitting your completed Return to us on MyBar is **4 January 2021**. We appreciate that the health emergency (COVID-19) has affected the Bar in a range of ways and for many this has been a very difficult time. Indeed, your responses to some of the questions will help us to understand this better. If this deadline is going to be difficult for you to meet because of the impact of COVID-19 (or indeed for any other reason), please contact us by emailing supervision@barstandardsboard.org.uk so that we can discuss it with you.

7. Confidentiality of information that you provide to us

When exercising our regulatory functions, we may be in control of various types of private or sensitive information, including commercially sensitive information about chambers, entities and their bank accounts; personal or sensitive information about individual barristers or their clients; and documents which would be covered by legal professional privilege. The BSB is under a range of legal duties to keep confidential the information in its control or possession that is of a private nature. These duties restrict our powers to share data with third parties. However, in exceptional circumstances where it is in the public interest, information may be shared with other regulators or agencies. To find out more about how we handle personal data, please see our privacy statement.

8. When you can expect to hear from us and what happens next

We will be reviewing the Returns as they are submitted and you can expect to hear from us by the second quarter of 2021, depending on when you submit your response. We will contact you to tell you whether your chambers, entity or practice has been assessed as high, medium or low risk, and agree with you any follow up actions that may be required. We will call the contact you have given us and follow up in writing.

If you have any questions, please email supervision@barstandardsboard.org.uk

Annex 1: Completing the Return on MyBar

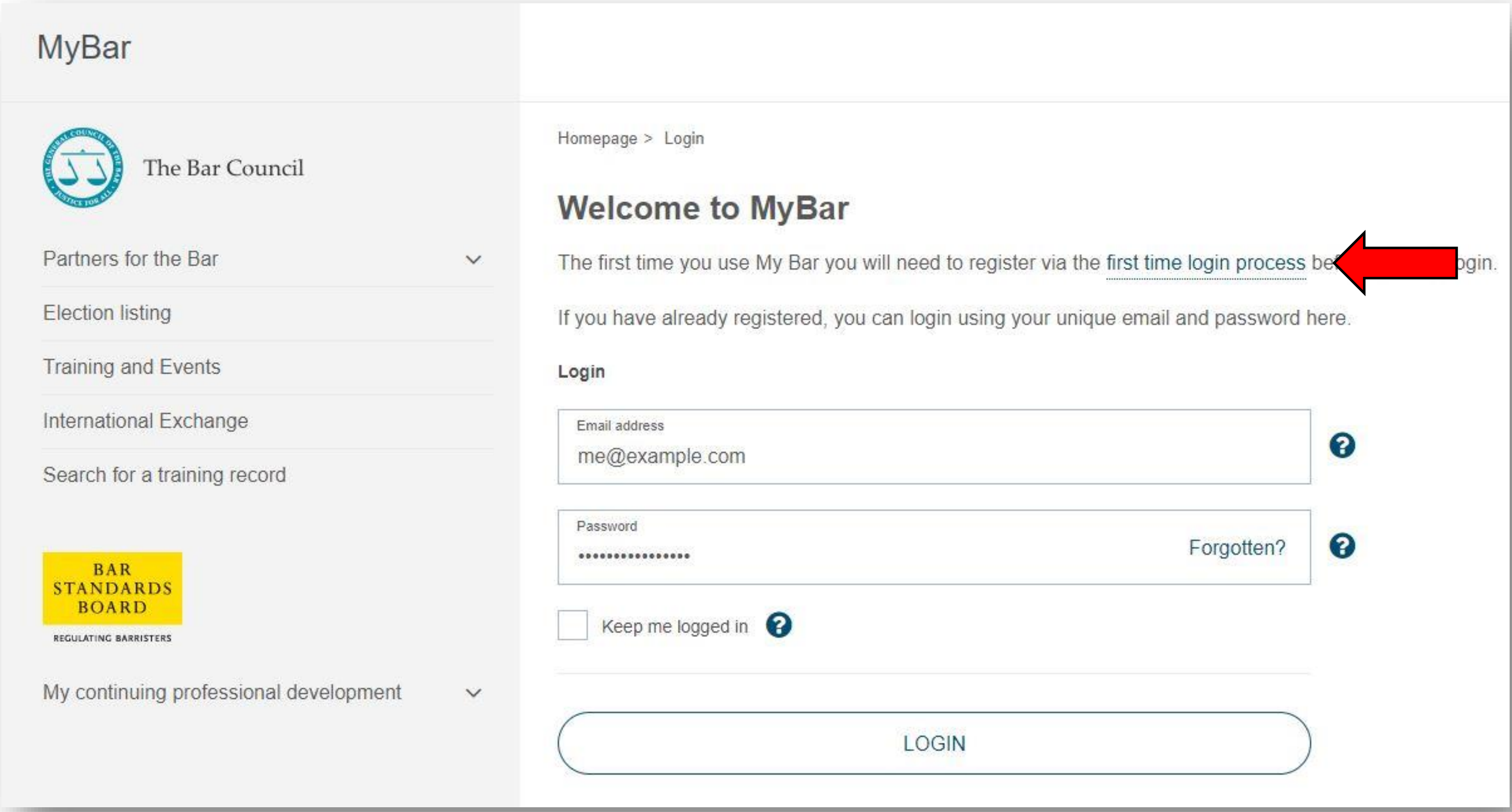
This is a step by step guide on how to complete the Regulatory Return on the MyBar platform. If you have any problems or questions with any of the steps, please email supervision@barstandardsboard.org.uk and a member of the team will help you.

Please remember to press "Save" at the end of each section to ensure that your responses are saved.

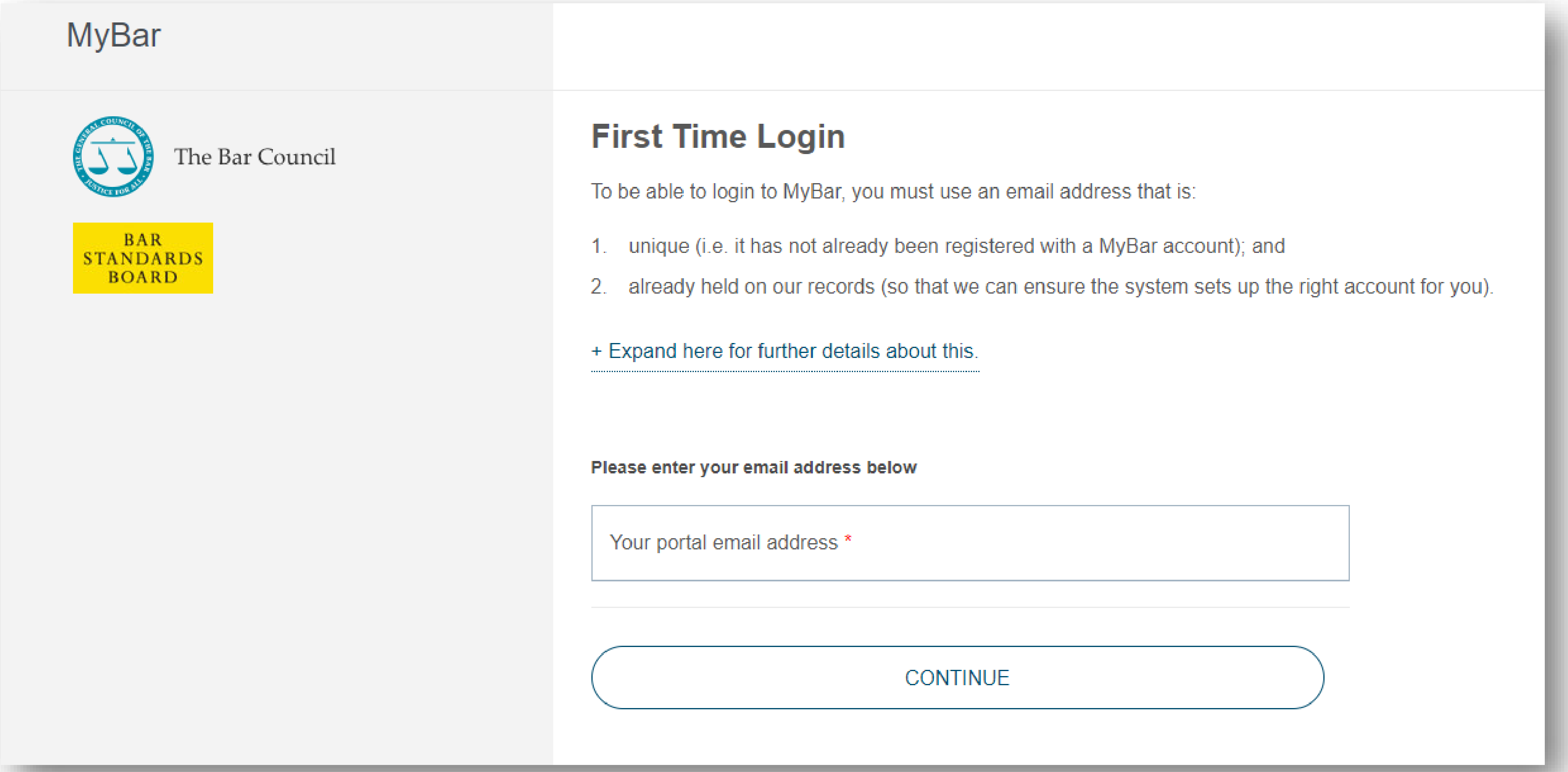
1. **Click on the link provided in the email you have received, which will take you through to the following screen.**

   Then click on the "first time login process". It is important that you use the email that is assigned to the account.

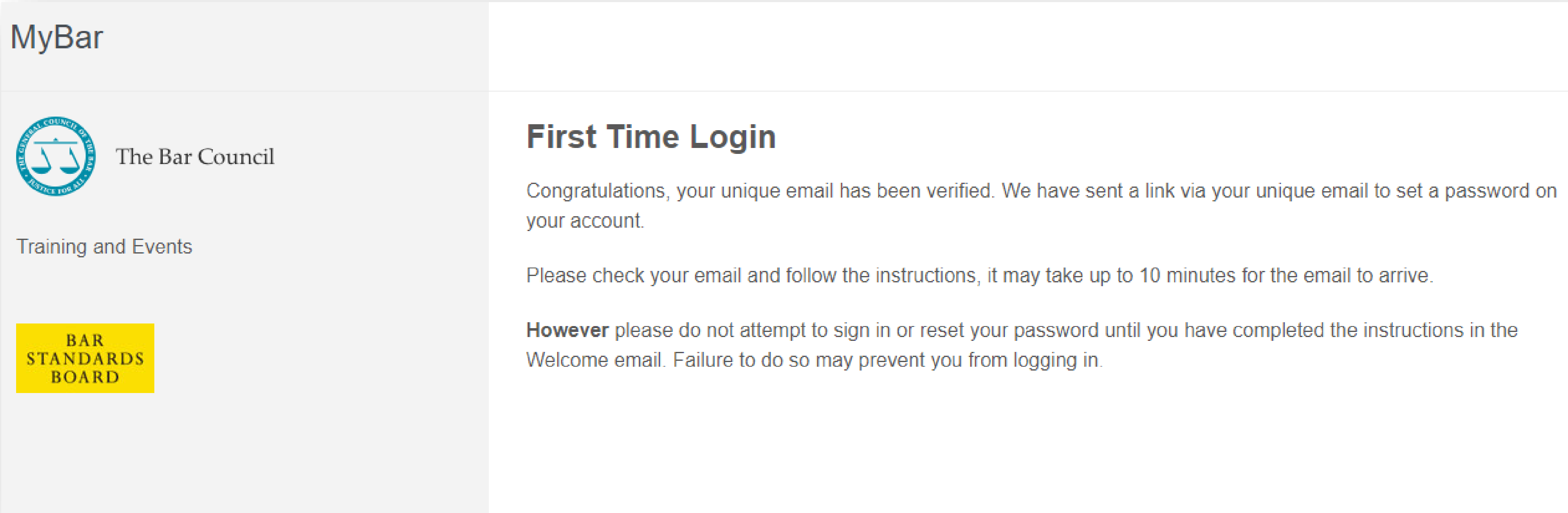
   If you have been told to provide us with an email, you will need to do this first before you can log on. Email supervision@barstandardsboard.org.uk **You will be unable to proceed until you have done this.**



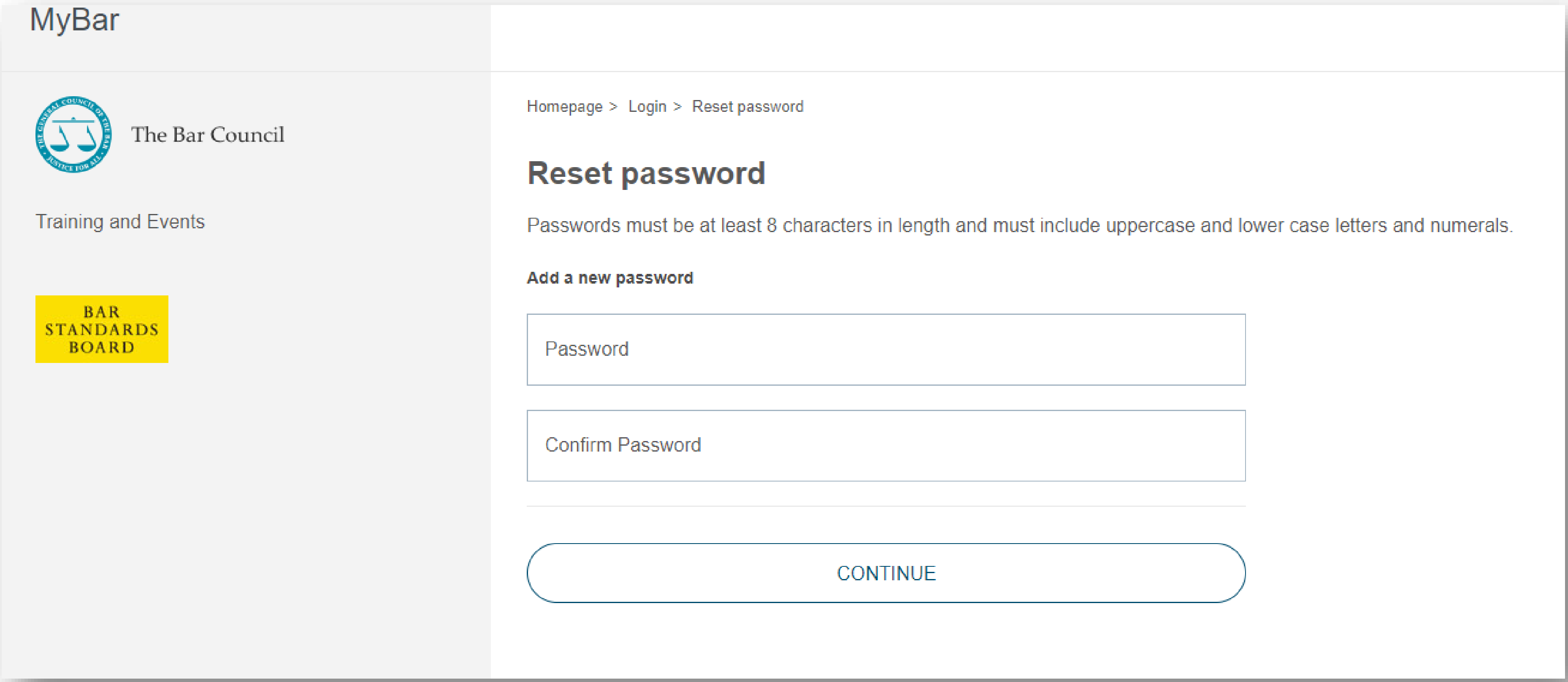
2. **Once you have clicked this link you will be taken to the following screen. Enter the email address you have been instructed to use and click "continue".**



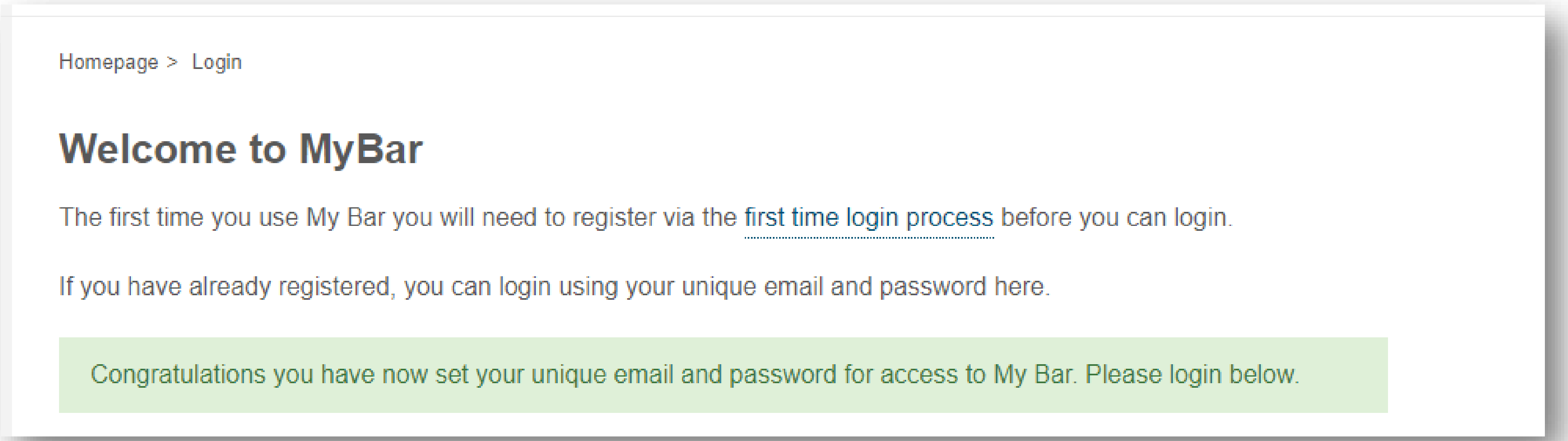
3. **If this email address is the correct one, the confirmation screen shown below will be displayed confirming that your details are on the system. An email has now been sent to the inbox of the email address.**



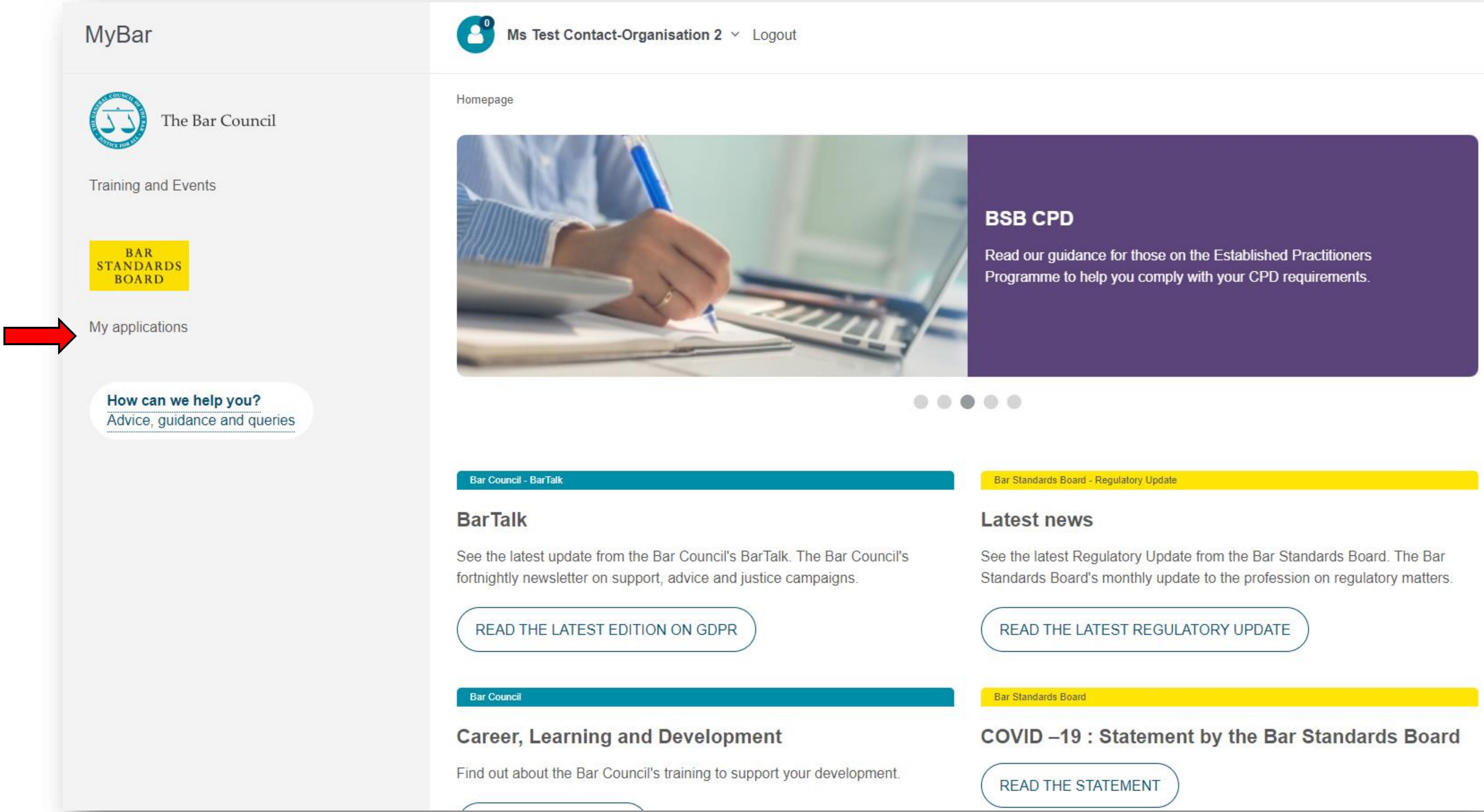
4. **In the email will be a link which will take you to the page shown below, where you can set up a password. It must be at least 8 letters/numbers and contain at least one capital letter.**



5. **You will then be presented with the screen confirmation shown below and will be able to login onto MyBar.org.uk using these details.**

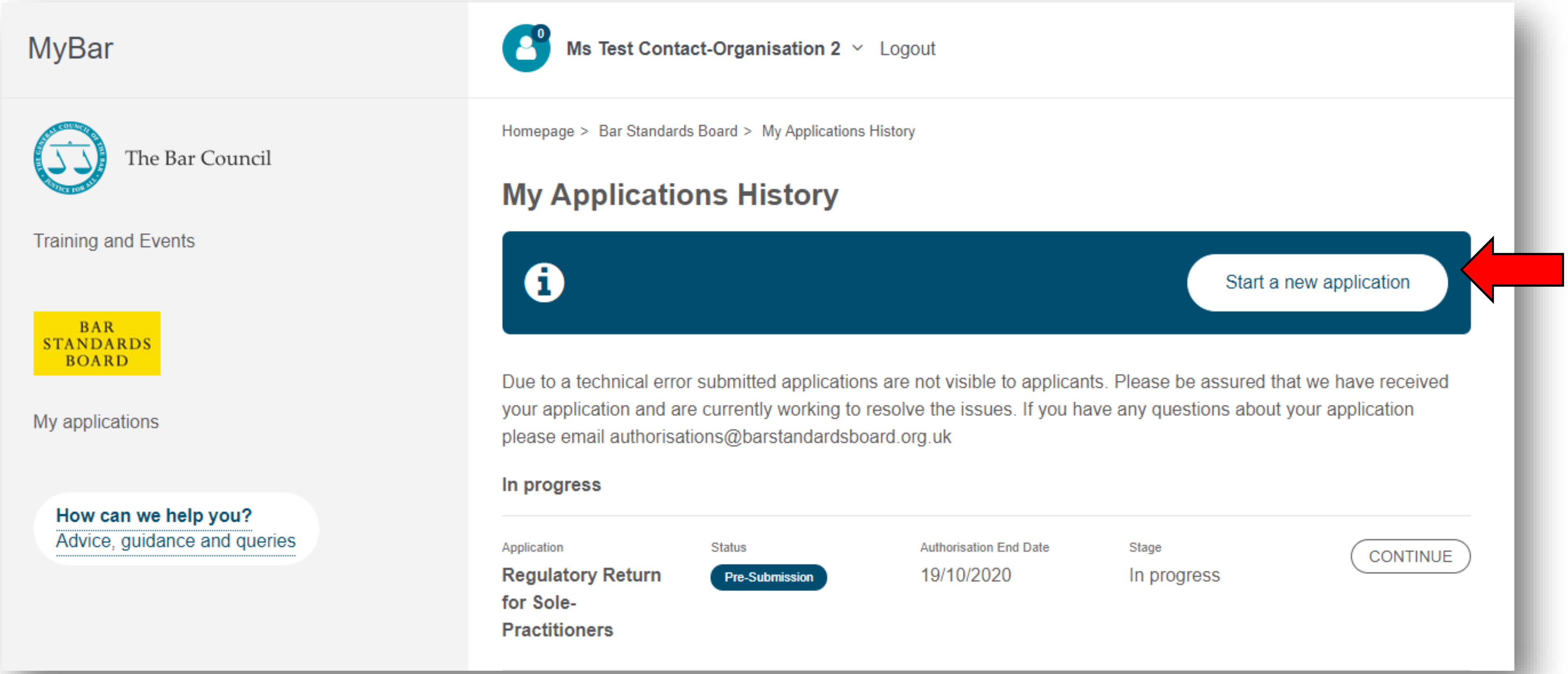


6. **Once logged in, you will see the Homepage. On the left-hand column, you will see a link to “My applications”. Please click on this.**



7. You will be taken to the screen shown below. Click on “Start a new application”.

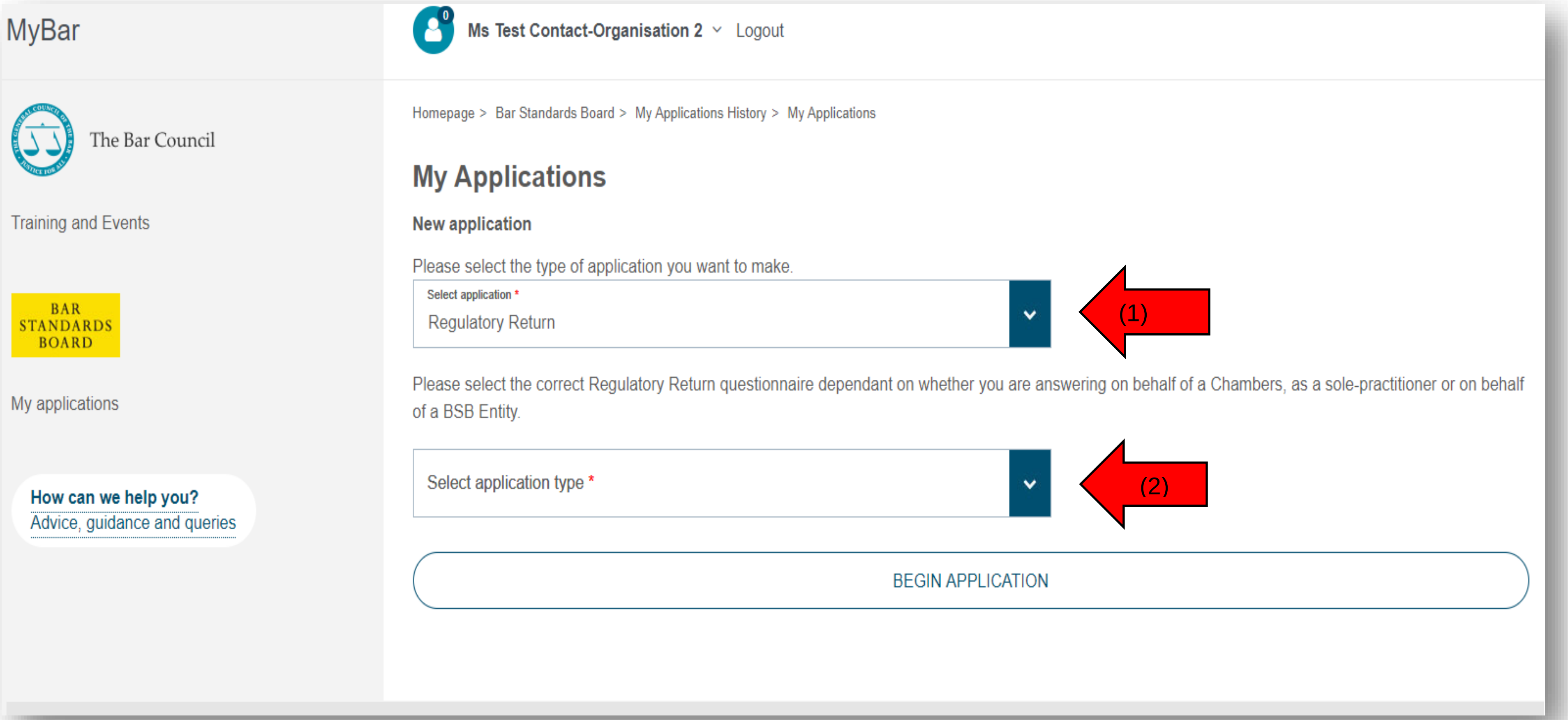
Here, you can also resume any applications you have started or come back to download a pdf of your answers.



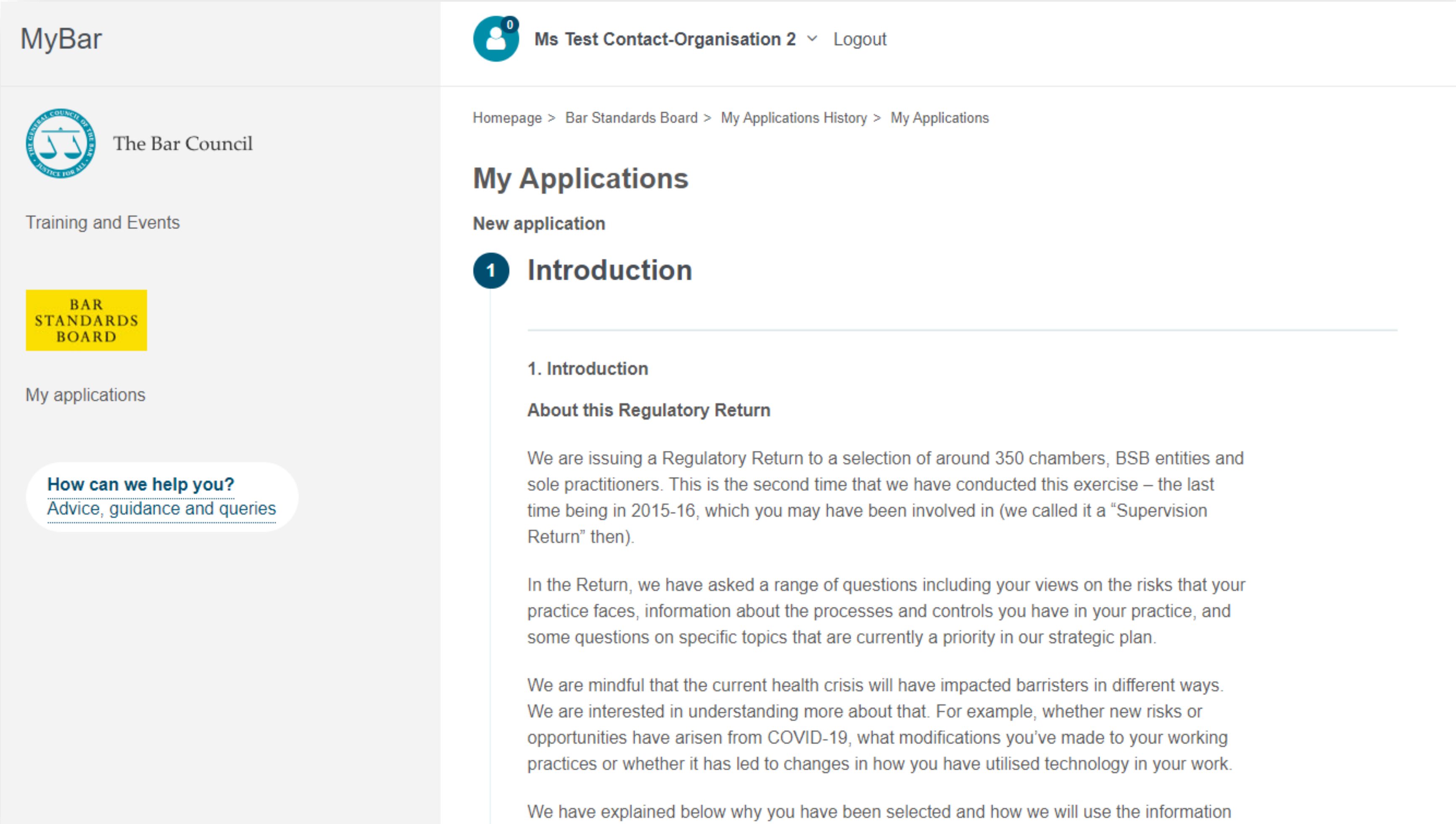
8. You will then be taken to the page shown below:

   (1) Select the first drop-down box and click on "Regulatory Return".

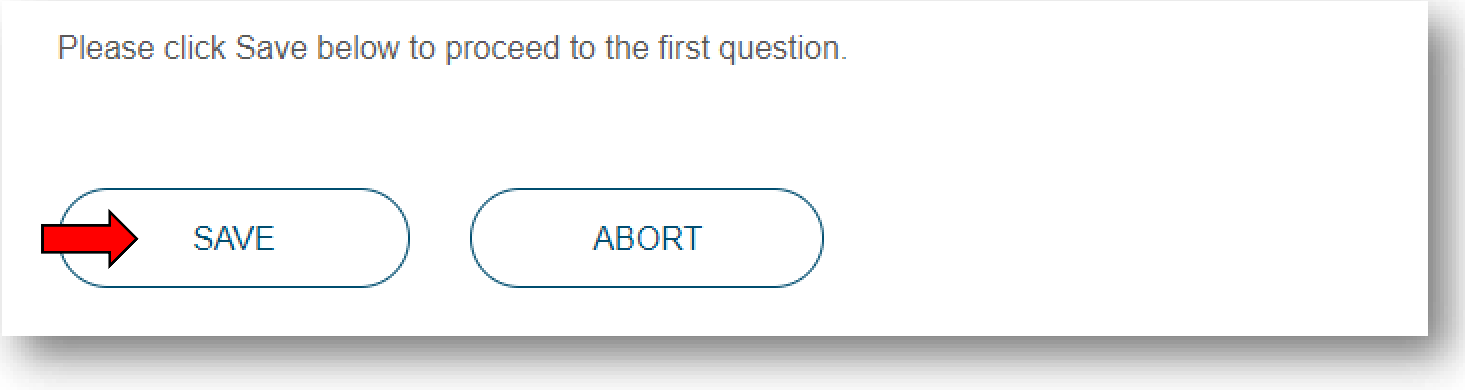
   (2) This will populate the application type and a second drop-down box will show. **<u>Please make sure that you select the correct questionnaire</u>**, depending on whether you are completing the Regulatory Return on behalf of a Chambers, a BSB Entity or a Sole Practitioner.



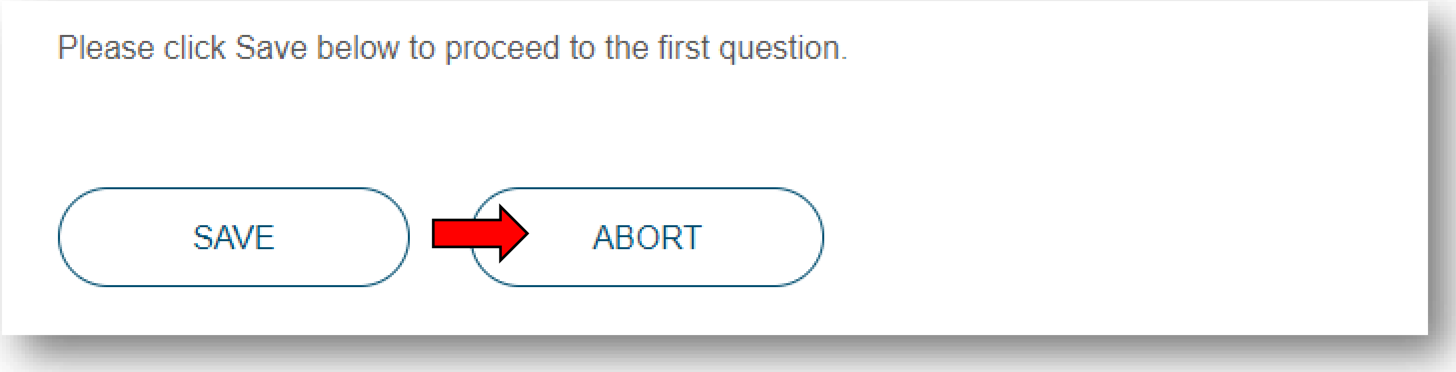
9. Once selected, you will see the Introduction screen and, below this, the sections of the questionnaire.



10. Please read through the introductory information thoroughly and click the "Save" button to proceed to the first question.



11. **If you click "Abort" at any stage your questionnaire will be deleted. Only do that if you have made an error and do not want to submit that version of your completed Return to the BSB.**



12. You can download a Word version of the questionnaire from the Introduction text under the heading "How to submit your completed Return", which you can use to plan your answers. This is just for your own use. Please proceed to the questionnaire on MyBar to submit your answers to us.

How to submit your completed Return

You must complete the Return using the form on MyBar. This enables us to assess and collate the responses efficiently. A Microsoft Word copy is available at this link h
provided solely for your own use, in case you want to use it to assist you when preparing your responses.

13. **Enter the text for each response into the box below each question. You can either enter the text directly or cut and paste it from a Word document that you may wish to use to prepare your answers.**

There is a limit of 15,000 characters, which is more than enough space to provide full answers. We do not expect you to use all the available space. Please do not use up this space to cut and paste lengthy sections from organisational policies. We want to know *how* you are applying your policies, not simply that you have a policy.

traditional sources of instructions are changing and whether our approach to regulation and supervision remains fit for the future.

In addition, we are aware that some barristers supervise individuals and businesses that are not otherwise regulated, in the areas of immigration services and claims management. Such work should be engaged on a public access basis and declared as an association.

We are aware that the associations rule is not well understood and consequently not consistently adhered to.

Guidance to assist with your response

Please list any association arrangements that you have and describe the financial and contractual arrangements that are in place.

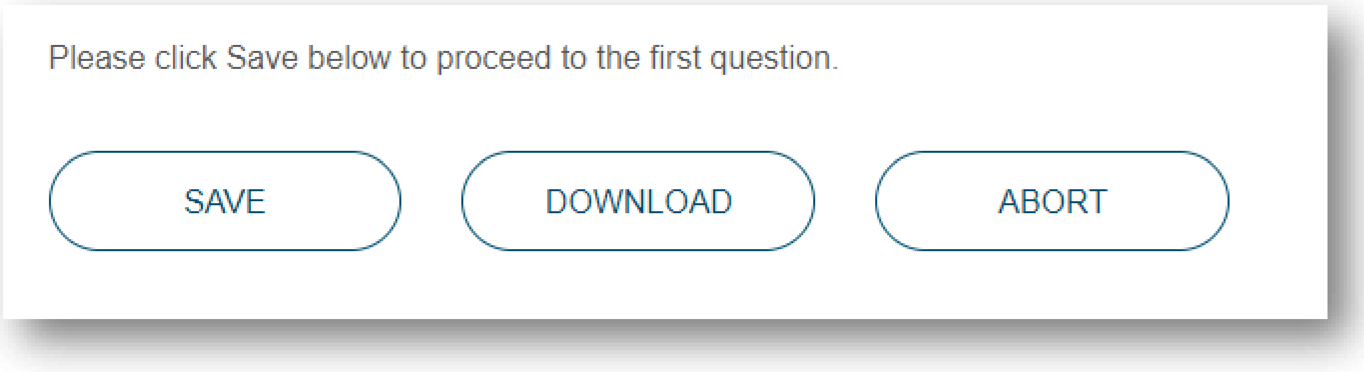
Submit your answer here *

14. You can save each section by pressing “Save” and come back at any time to continue working on the questionnaire, but you will have to complete something in each text box in a section before you can save a section.

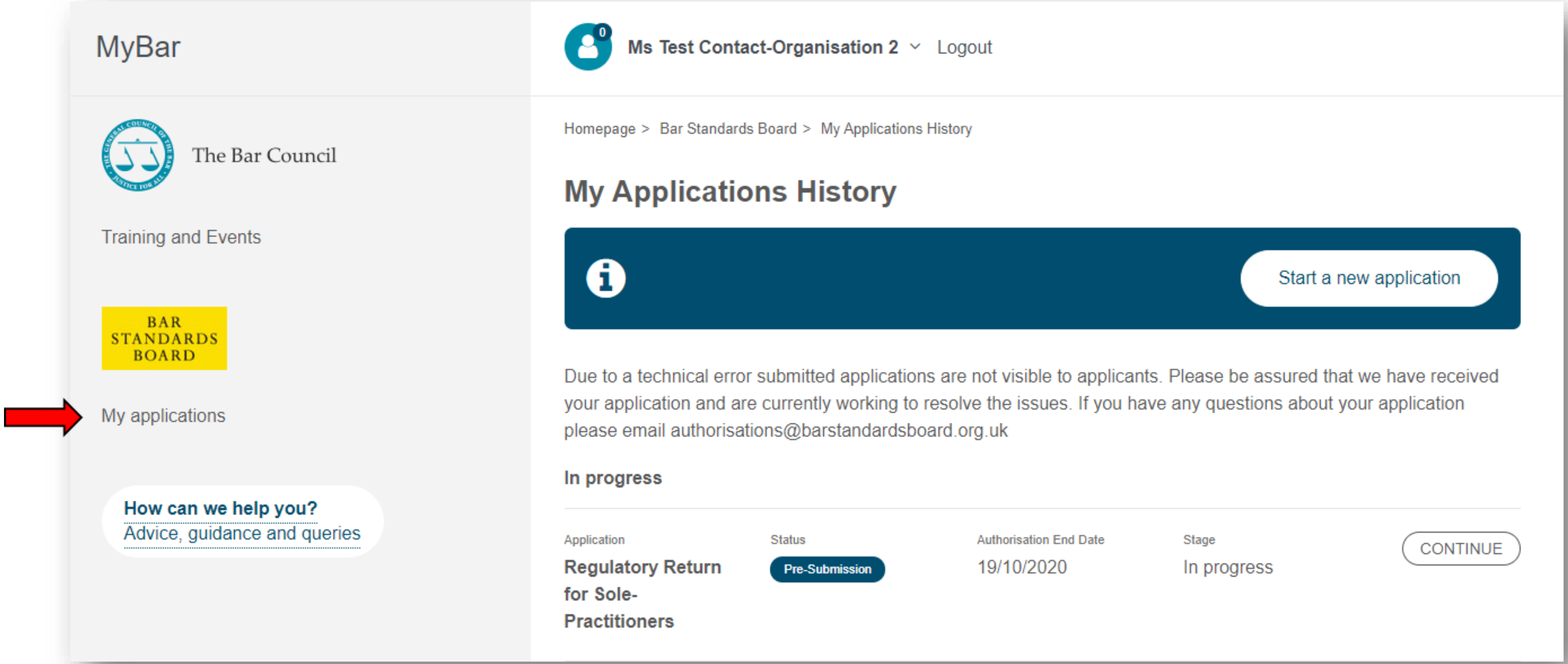
You can go back and edit your questions after saving them, but you will need to click “Save” again.

If you would like to download a pdf copy of all the answers you have saved so far, please click on the “Download” button at the end of each section. You can also do this at the end and after you have submitted the completed Return.

Remember – do not press “Abort” unless you want to delete the whole Return!

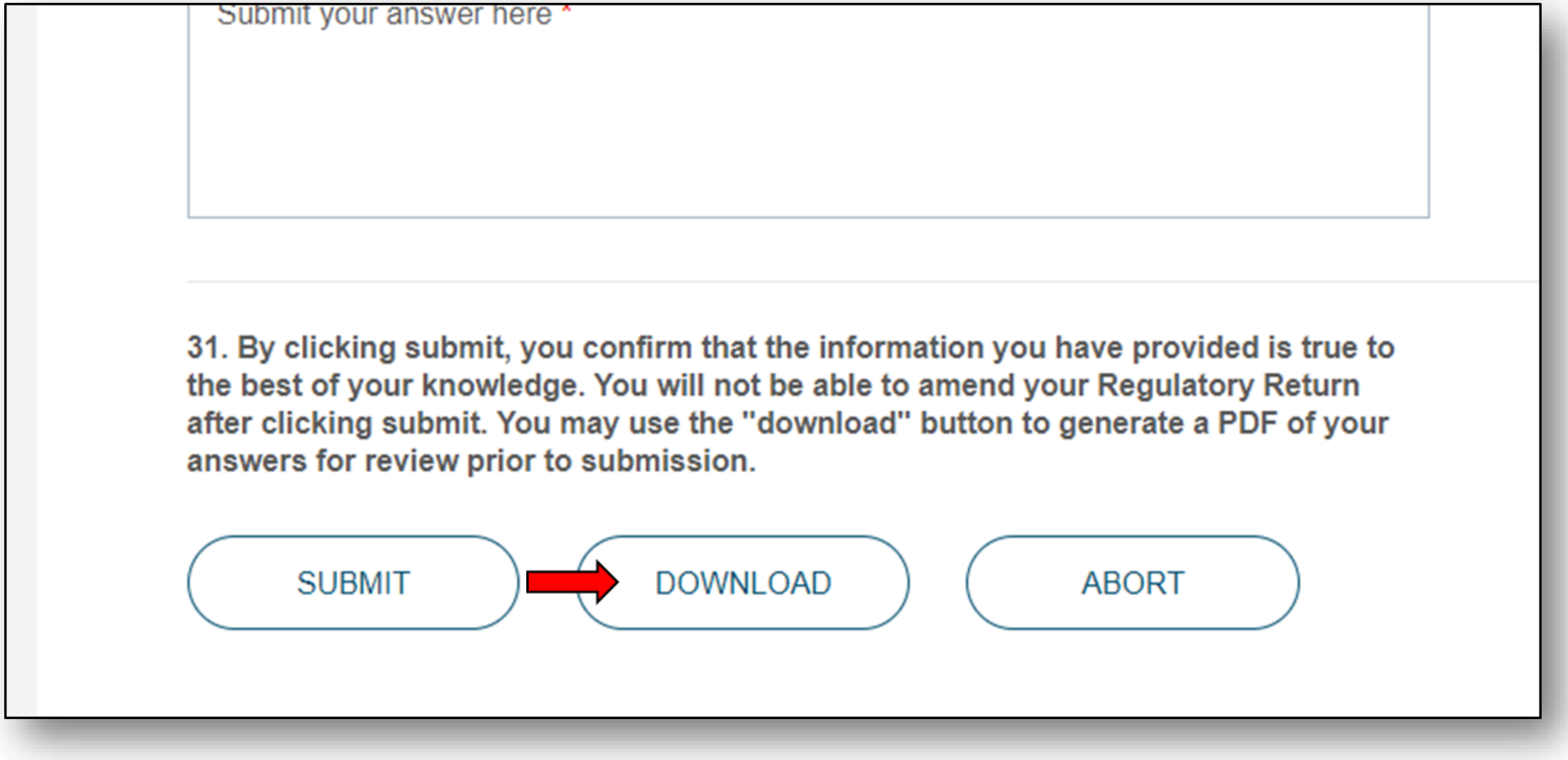


15. If you would like to resume your Return if it is partially complete, or go back and edit your responses, you can do so by looking under the "My Applications" header on the sidebar.



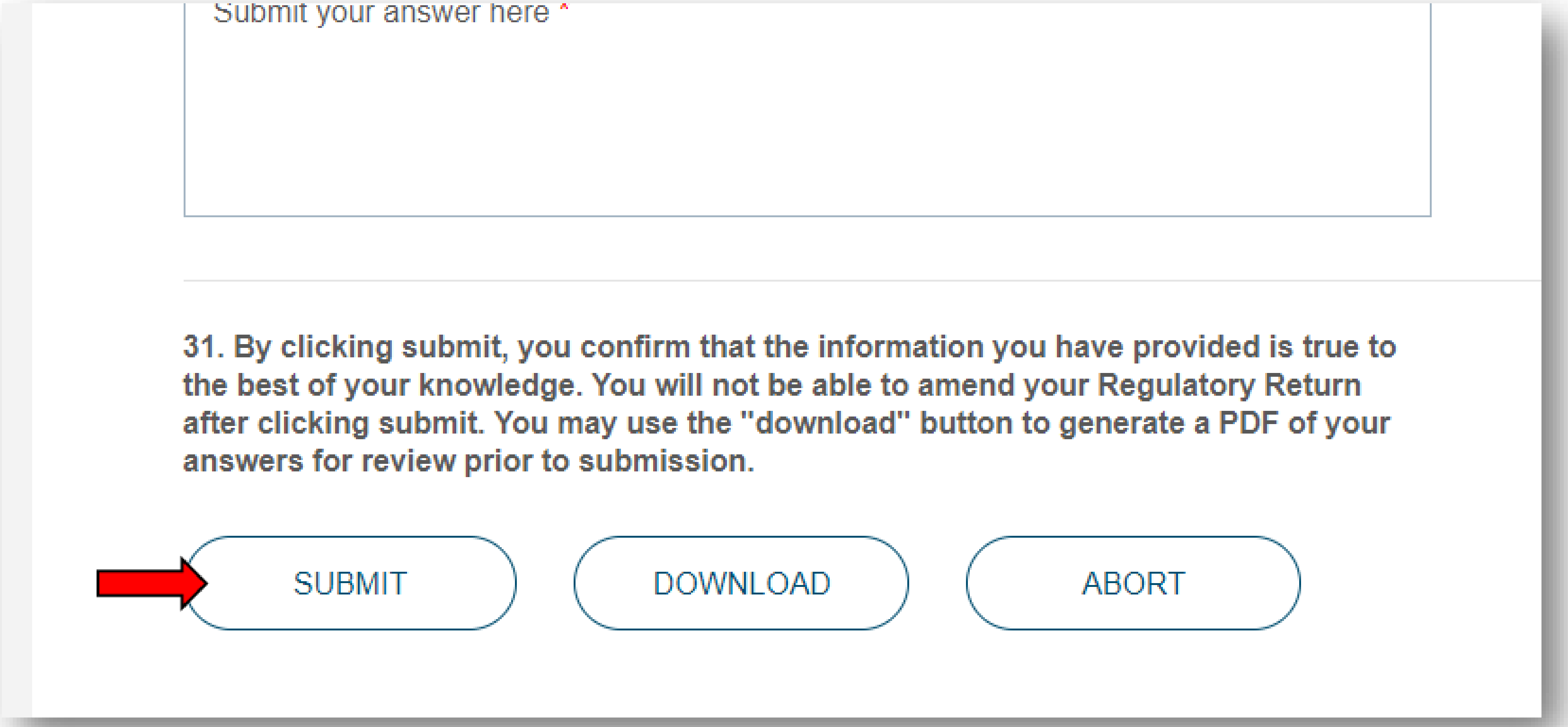
16. Once you have completed the questions, you will be given the opportunity to download the completed responses that you will be submitting. Click on the “Download” button to generate a pdf document.

    You can also do this later from the “My applications” screen.

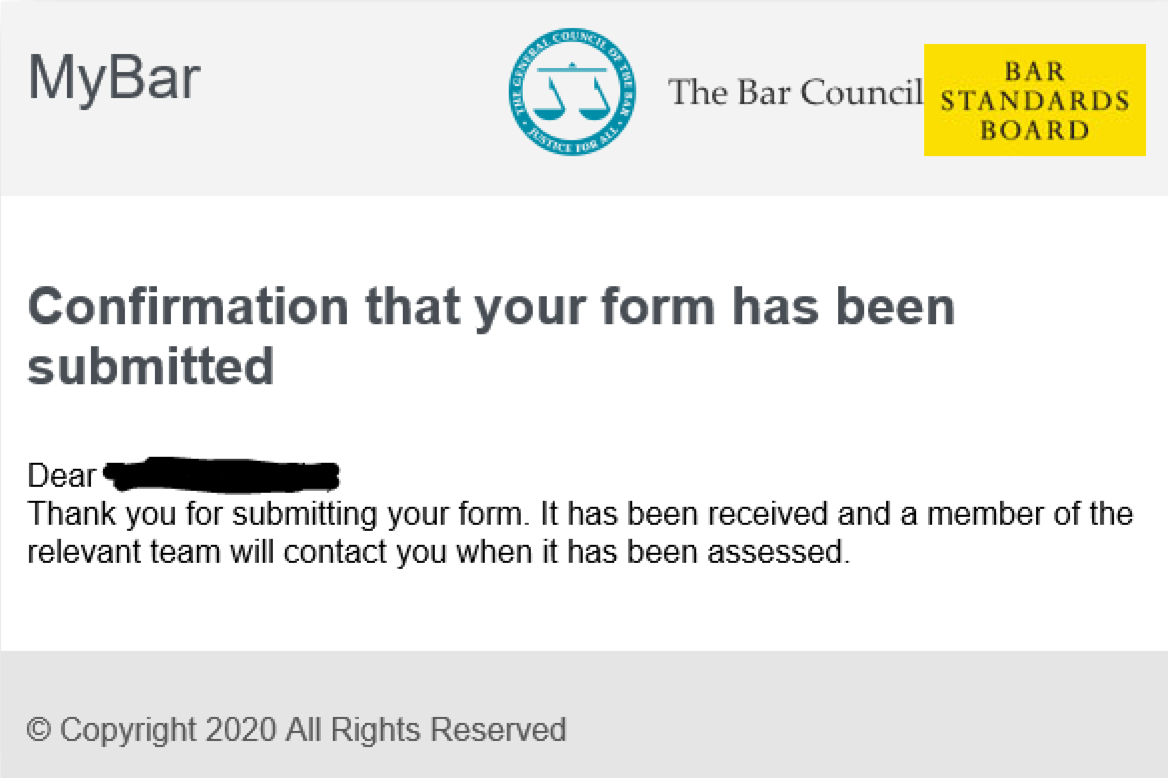


17. Once you are satisfied that your Return is complete, submit it to us by clicking “Submit”.

<u>You will not be able to edit your responses once you have submitted it.</u>



18. **You will be supplied with an email confirmation to confirm that you have submitted the Return successfully, as well as the following on-screen confirmation.**


MyBar

The Bar Council

BAR STANDARDS BOARD

Confirmation that your form has been submitted

Dear [redacted]
Thank you for submitting your form. It has been received and a member of the relevant team will contact you when it has been assessed.

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