

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.



REGULATING BARRISTERS

Meeting of the Bar Standards Board

Thursday 14 July 2022, 5.00 pm (Hybrid meeting - in person and online)

**Rooms 1.4-1.7, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ and via MS Teams**

Agenda - Part 1 – Public

			Page
1.	Welcome / announcements (5.00 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of minutes from the last meeting (25 May 2022)	Annex A Chair	3-8
5.	a) Matters arising and Action List	Annex B Chair	9-10
	b) Forward agenda	Annex C Chair	11
6.	Addressing KPI performance in Investigations and Enforcement (5.05 pm)	BSB 035 (22) Sara Jagger / Paul Pretty	13-20
7.	Strategic Planning and Resources Committee (SPR) Annual Report 2020/21 (5.30 pm)	BSB 036 (22) Steve Haines	21-23
8.	BSB review of governance documents – Constitution and Appointments Policy (5.35 pm)	BSB 037 (22) Rebecca Forbes	25-53
9.	Conduct in non-professional life (5.45 pm)	BSB 038 (22) Rhys Bevan	55-96
10.	The BSB's Public Engagement Enabling Strategy (6.10 pm)	BSB 039 (22) Wilf White	97-104
11.	Director General's Report – public session (6.25 pm)	BSB 040 (22) Mark Neale	105
12.	Chair's Report on Visits & External Meetings (*)	BSB 041 (22) Chair	107
13.	Any other business (6.30 pm)	Chair	

**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 140722

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.

14. **Date of next meeting**
- Thursday 22 September 2022

15. **Private Session**

John Picken
Governance Officer
7 July 2022

**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.*

<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****Wednesday 25 May 2022 (5.00 pm)****Progress 2, etc venues, 50-52, Chancery Lane, London WC2A 1HL**

- Present:** Baroness Tessa Blackstone (Chair)
 Alison Allden OBE
 Emir Feisal JP
 Steve Haines
 Andrew Mitchell QC (items 6 – 12)
 Irena Sabic – via MS Teams
 Adam Solomon QC
 Kathryn Stone OBE
 Stephen Thornton CBE
- By invitation:** Malcolm Cree (Chief Executive, Bar Council) – via Teams
 Nick Vineall QC (NV) (Vice Chair, Bar Council)
 James Wakefield (JW) (Director, COIC)
- BSB Executive in attendance:** Shadae Cazeau (Head of Equality and Access to Justice) – via MS Teams
 Rebecca Forbes (Head of Governance & Corporate Services) – via MS Teams
 Oliver Hanmer (Director of Regulatory Operations) – via MS Teams
 Teresa Haskins (Director of People, BSB) – via MS Teams
 Ewen Macleod (Director of Strategy & Policy)
 Mark Neale (Director General)
 John Picken (Governance Officer)
 Wilf White (Director of Communications & Public Engagement)
 Christopher Young (Policy Manager) – via MS Teams
- Press:** Dan Bindman, Legal Futures – via Teams

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting.

Item 2 – Apologies

- Elizabeth Prochaska
- Leslie Thomas QC
- Mark Fenhalls QC (Chair, Bar Council)
- Lorinda Long (LL) (Treasurer, Bar Council)
- Sara Jagger, Director of Legal and Enforcement

Item 3 – Members' interests and hospitality

3. None.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on 31 March 2022.

Item 5a – Matters arising & Action List

5. There were no matters arising. The Board **noted** progress on the action list.

Item 5b – Forward agenda

6. The Board **noted** the forward agenda.

Item 6 – Enabling the strategy

BSB 027 (22)

7. The Board considered a paper that set out two enabling strategies (Equality and Research) and a policy statement on wellbeing. The enabling strategies are designed to support the Board's previously agreed strategic plan. In both cases, the BSB will seek appropriate collaboration with other stakeholders.
8. a) Equality Enabling Strategy 2023-25
 - (i) Members and guests commented as follows:
 - each objective has several supporting actions. In some cases these are clear and measurable, but others are less distinct making it more difficult to assess if they have been achieved. Either a reduced number of actions or a stronger overall focus on measurability would be useful;
 - the term “meaningful change” is open-ended and might be better replaced using a more specific term;
 - the strategy involves setting *mandatory* requirements of the profession to promote equality, diversity and inclusion. The action plan should therefore identify how this will be policed by the regulator;
 - action 1 (equality objective 3) could include the employed Bar as there may be areas of good practice we can identify from other employers;
 - the reference to social mobility (equality objective 3) is helpful. The Bar Council is already heavily engaged in this area but would welcome a collaborative approach;
 - we might amend the last word of action 1 (equality objective 4) to read “workforce and governance” to ensure that diversity at a leadership level is also covered.
 - (ii) In answer to other questions raised, the Executive stated that:
 - the focus on race for equality objective 2 reflects its priority status identified from previous research work;
 - the employed Bar tends to be more diverse than chambers and employers are likely to have more structured HR functions (and in the case of regulated entities may already be addressing equality at a strategic level). This explains our focus on chambers and why we require them to appoint an Equality and Diversity Officer to champion this issue;
 - developing statements of our expectations around diversity gives a benchmark for chambers against which we can monitor progress though the regulatory return and other supervision activity;
 - equality objective 4 principally refers to our own decision making in the BSB rather than data about representation. **Note: notwithstanding this Teresa Haskins confirmed that she had responded to a request from Emir Feisal about equality data for BSB operational staff and associated bodies;**
 - our capacity to deliver the equality objectives will be enhanced by:
 - advice from our advisory pool of experts (APEX) who specialise in diversity;
 - contributions from our existing Equality Task Force bodies that cover race, disability and religion / belief;
 - additional budgeted staff resource in the Supervision Team.

Part 1 - Public

- b) Draft Policy Statement on wellbeing and wellbeing scenarios
- (i) Ewen Macleod invited comments on the draft wellbeing policy statement. This arose from representations from the Criminal Bar Association (CBA) about pressures placed on barristers to accept unreasonably high workloads. The CBA also supplied “wellbeing scenarios” reproduced at Annex C of the report, though these are not endorsed by the Executive.
 - (iii) In answer to other questions raised, Ewen Macleod stated that:
 - the reference to child care in the statement derives from issues raised with us and our concerns about work life balance in the profession;
 - the statement would not change the ethical expectations of barristers: we would not, for example, tolerate unethical conduct because someone was ill or busy, but we could apply the statement when assessing whether a barrister had acted reasonably (for example in an allegation of failure to comply with a request).
 - (ii) Members commented as follows:
 - we should benchmark the draft statement against those used in other bodies eg the Judiciary;
 - the value of wellbeing as a principle is accepted, but we should be cautious of how this statement might then interface with regulated professional practice. Appropriate guidance would be required;
 - the inference of the statement is that those in senior positions should not use their authority to create a working culture that customarily includes extended hours. That would imply an environment where staff are directly employed. But work in chambers is target driven and undertaken by a range of self-employed barristers who should be able to make personal decisions about their own availability;
 - the scenarios provided by the CBA are not convincing, either because they give insufficient weight to the interests of the client / court or that they understate junior barristers’ ability to make their own decisions. Moreover a high volume of work could be generated from overtrading by a barrister, for which that individual needs to take responsibility.
 - (iii) Mark Neale stated that the policy statement is a set of principles, rather than obligations, which justifies why the BSB considers the wellbeing of barristers is relevant to meeting its regulatory objectives and will guide the BSB in exercising its responsibilities.
- c) Research Enabling Strategy 2023-25
- (i) Members commented as follows:
 - what the annex describes are principally good evidence-based management actions rather than research projects;
 - It may be more accurate to describe it as a “research *and evaluation strategy*” since evidence-based decision-making relies on the accurate interpretation of relevant data;
 - the statement of intent in paragraph 8 is quite broad, leading to a risk of mission creep. Our focus must remain on the barrister profession. Research on the range of choice of barristers available to the clients of solicitors (paragraph 20) could be addressed by the SRA, for example;
 - we should emphasise our desire not to duplicate the work of other regulators. We could distinguish between primary areas of research for the Bar which we could either conduct ourselves or in collaboration with a stakeholder and secondary areas where we might rely on interpreting the research findings of other organisations eg LSB Consumer Panel.

- (ii) In answer to questions raised, the Executive stated that:
- paragraph 14 (strategic aim 2) refers to earlier research about barristers who work in either immigration, youth courts or coroners' courts. Practitioners in these areas need to meet a specific set of competencies and make appropriate declarations on compliance;
 - some projects might lend themselves to joint ventures with other regulators and identifying the key issues involved will be to our benefit. For the example quoted in paragraph 20 (cf. min 8c(i)), in order to understand the consumer's experience we need to appreciate the factors that drive the referral decisions of solicitors and the participation, if any, of clients in this process.

9. **AGREED**

- a) to approve the enabling strategies for equality and for research subject to consideration of the above comments.
- b) to revisit the policy statement on wellbeing taking into account the points made at the meeting.

**EM to
note
EM**

Item 7 – Amendments to the Minimum Terms of Cover for Professional Indemnity Insurance

BSB 028 (22)

10. The Board considered proposed amendments to the Minimum Terms of Cover (MTCs) for professional indemnity insurance (PII). These clarify the expected level of cover provided by insurers to barristers' clients in the event of losses from a cyber attack. They also permit insurers to exclude liability in order to comply with sanctions regimes.
11. Adam Solomon QC noted that BMIF provide PII cover of up to £2.5m for all barristers. He asked if there were any regulatory implications of the amendment for insurance arrangements above this figure.
12. Andrew Mitchell QC confirmed this was not the case. The MTCs only apply to the £2.5m threshold and for figures above this, barristers are obliged under existing regulatory arrangements to have adequate cover in place (though the terms of that cover are not specified as such).

13. **AGREED**

- to adopt the proposed amendments to the MTCs as drafted in Annex A of the report and to seek approval of these from the Legal Services Board.

CY

Item 8 – Director General's Strategic Update – public session

BSB 029 (22)

14. Mark Neale referred to the Q4 performance report. He highlighted the following:
- service levels in delivering core regulatory operations improved in Q4, although we struggled to meet the service levels for taking forward Investigations and Enforcement. This reflected an increase in the number of referrals, with 30% more investigations opened this year compared to 2020/21. This relates to an earlier corresponding increase in assessments which have since been processed. However 10% more investigations have been completed compared to last year;
 - the cyber attack in April 2022 severely impacted operational services and inevitably will detrimentally affect future performance figures;
 - we are prioritising the reduction of backlogs both by recruiting temporary staff and focusing existing resources on this area at the expense of longer-term project work;
 - we are also reviewing service levels with the aim of focusing more closely on productivity.

Part 1 - Public

15. In response to questions raised, he stated that:
 - it is not clear how long it will take to recover from the cyber attack and the Board will continue to receive quarterly progress reports;
 - the Investigations and Enforcement Department has had problems finding appropriately qualified and experienced staff, so slowing the recruitment process;
 - we can achieve long term efficiency savings by investing further in the stability of our IT, particularly in the case management system.
16. Nick Vineall QC commented as follows:
 - only 16% of investigation decisions occurred within 25 weeks, against a target of 80%. This has a detrimental effect on those barristers under investigation, which the BSB should acknowledge given its focus on wellbeing (cf. mins 8c (i) – (iii));
 - the graph showing workload volumes for referrals identifies a rise in January 2021 which continues thereafter, meaning this problem has been foreseeable for a year;
 - a recovery plan with appropriate milestones would therefore be helpful.
17. Mark Neale agreed with the latter point. In respect of the former two, he stated that:
 - the Department was reinforced with extra staff, but also suffered from high turnover which to some extent negated that investment;
 - it is often the case that barristers themselves extend timelines by challenging the investigative process.
18. Members also commented as follows:
 - the cyber attack has been extremely disruptive. We need to learn lessons from this so that we can avoid losing operational capacity on this scale again;
 - a recovery plan would be welcome but also needs to make clear any knock-on effect for our business plan;
 - the presentation of the data might be improved if any “red flag” items were highlighted early in the report so the Board can give this proper attention.
19. James Wakefield noted the rise in investigations. He asked to be kept sighted of numbers coming through as this will ultimately impact on the frequency of Bar Tribunals. Mark Neale agreed to this request.
20. **AGREED**
 - a) to note the report.
 - b) to request that the Director General prepares a recovery plan on performance in the light of the cyber attack and longer standing issues around missed targets. **MN**
 - c) to ensure the Director of COIC is kept informed about the number of cases under investigation and thereby assist in planning for future disciplinary tribunals. **SJ**
 - d) to request that the presentation of performance data is reviewed with a clearer emphasis on any “red flag” items. **SJ / AW**

Item 10 – Chair’s report on visits and external meetings

BSB 030 (22)

21. The Board **noted** the report.

Item 11 – Any Other Business

22. None.

Item 12 – Date of next meeting

23.
 - Thursday 14 July 2022

Item 13 – Private Session

24. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 31 March 2022
 - (2) Ratification of decisions made from papers circulated out of cycle: Annual Pay Review for BSB People 2022
 - (3) Matters arising and action points – Part 2.
 - (4) Regulatory Performance
 - (5) The role of chambers in promoting standards, equality and access.
 - (6) Appraisal of Chair and Board Members
 - (7) Director General's Strategic Update – Private Session.
 - (8) Any other private business.
25. The meeting finished at 6.10 pm.

BSB – List of Part 1 Actions
14 July 2022
(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
9b (25/05/22) – Wellbeing Statement	revisit the policy statement on wellbeing taking into account the points made at the May 2022 meeting	Ewen Macleod	before 15 Sept 2022	07/07/22	To be completed A revised copy will be presented to the Board meeting on 22 September 2022
9b (25/05/22) – minimum terms of cover - professional indemnity insurance	adopt the proposed amendments to the MTCs as drafted in Annex A of the report and to seek approval of these from the Legal Services Board	Chris Young	before 7 July 2022	05/07/22	We anticipate submitting application to the LSB by 8/07/22. Note: Top up cover insurers have not matched the changes that Bar Mutual has made to its terms to explicitly include cyber incidents. They believe that PI policies are not intended to provide cover for cyber risks and, as a result, specific exclusions were added.
20b (25/05/22) – performance report	request that the Director General prepares a recovery plan on performance in the light of the cyber attack and longer standing issues around missed targets	Mark Neale	before 7 July 2022	07/07/22	See BSB Paper 035 (22)
20c (25/05/22) – performance report	ensure the Director of COIC is kept informed about the number of cases under investigation and thereby assist in planning for future disciplinary tribunals	Sara Jagger	immediate	06/07/22	Information will be provided to BTAS at the next liaison meeting on 6 July and thereafter
20d (25/05/22) – performance report	that the presentation of performance data is reviewed with a clearer emphasis on any “red flag” items	Sara Jagger / Alex Williams	before 15 September 2022	06/07/22	The next performance report – covering the first quarter of 2022/23 – will be presented to the Board on 22 September

BSB – List of Part 1 Actions

14 July 2022

(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
15 (31/03/22) – BCAT	to seek permission from the LSB to withdraw the Bar Course Aptitude Test as a prerequisite for enrolment on the Bar training course on the grounds that: <ul style="list-style-type: none"> the BCAT is no longer a proportionate regulatory requirement; more stringent course admission processes have superseded the need for the BCAT; the risks that BCAT was originally introduced to mitigate are no longer manifesting. 	Chris Young	immediate	05/07/22	Following meeting with LSB, we anticipate approval of application by 8/07/22
				12/04/22	Draft application submitted to the LSB for comment. Following feedback from the LSB, we anticipate submitting the application on 6 June 2022. Following meeting with LSB, we anticipate approval of application by 8/07/22

Forward Agenda

Thursday 22 September 2022

- BSB Statement on wellbeing
- BSB Annual Report
- Governance: Governance Manual and revised Scheme of Delegations
- Governance: policies on Declaration of Interests and Gifts and Hospitality
- Director General's Strategic Update- (including Q1 performance report)
- Budget proposal – 2022 / 23 financial year
- Review of gifts and hospitality / declarations of interest policy
- Consolidated Risk Report
- Pay and reward policy
- Contract for tribunal services

Tuesday 11 October 2022 (Board Away Day)

- Regulatory Risk Index
- BSB expectations of chambers
- Outcome of Board evaluation survey

Thursday 1 December 2022

- IDB Annual Report
- Regulatory Decisions Annual Report 2021/22
- Mid-year financial report (2022-23)
- GRA Annual Report
- First Annual Report – Bar Training
- Director General's Strategic Update- (including Q2 performance report & BSB six monthly self-assessment against LSB's regulatory performance framework)
- Corporate Risk Report (summary)

Thursday 26 January 2023

- Annual Diversity Data Report
- The Bar Standards Board Equality and Diversity Strategy 2023 to 2025
- Director General's Strategic Update
- Corporate Risk Report – summary

Thursday 30 March 2023

- BSB Business Plan 2023/24
- Director General's Strategic Update- (including Q3 performance report)
- Consolidated Risk Report
- Scoping paper: Part 5 Review of Handbook

Meeting:	BSB Board	Date:	14 July 2022
Title:	Addressing KPI performance in Investigations and Enforcement		
Author:	Paul Pretty		
Post:	Head of Investigations and Enforcement		

Paper for:	Decision: <input type="checkbox"/>	Discussion <input checked="" type="checkbox"/>	Noting <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Paper relates to the Regulatory Objective (s) highlighted in bold below	
(a)	protecting and promoting the public interest
(b)	supporting the constitutional principle of the rule of law
(c)	improving access to justice
(d)	protecting and promoting the interests of consumers
(e)	promoting competition in the provision of services
(f)	encouraging an independent, strong, diverse and effective legal profession
(g)	increasing public understanding of citizens' legal rights and duties
(h)	promoting and maintaining adherence to the professional principles

Purpose

1. The Board at its meeting in May considered the Quarter 4 Regulatory Performance Report. It was understandably concerned about the ongoing poor performance in relation to the investigations KPIs and asked the executive to present an action plan for addressing this. This paper explains the current reasons for the poor performance and sets out the steps that have been, or will be, taken to improve performance.

Recommendation

2. The Board considers and approves the proposals for improving performance against the investigation KPIs including approving the immediate recruitment of a Senior Case Officer which was previously scheduled for October 2022.

Background

3. The BSB has two KPIs measuring performance in relation to investigations of potential breaches of the Handbook. The first (KPI1) relates to the time taken to accept a case referred for investigation by the Contact and Assessment Team (10 working days) and the second (KPI2), to the time taken to complete an investigation following acceptance (125 working days). In both cases the target is 80% of cases completed within the relevant time periods.
4. Over the period, the team has seen the total number of cases being closed increase, indicating that the overall work has continued and there has not been a slowing down in the amount of work done. However, performance against these KPIs was below the target for at least two years before the pandemic and has continued to reduce over the last two years. The reasons for this have been regularly examined by the Board and the predecessor to the Strategic, Planning and Resources Committee. A small increase of staff of one Senior Case Officer was agreed prior to the pandemic to try to address the situation but unfortunately we were unable to recruit to the post until appointing a suitable candidate in December 2021, with the staff member starting in April 2022.

5. With the pandemic, and more recently the cyber-attack, performance has reduced even further and is now at an all-time low (standing at the end of Quarter 4 2022 at 10.9% and 15.9% respectively).
6. At its core, the reason for this is the lack of resilience in the team to deal with staff turnover, the increase in complexity of the work and address fluctuations in the volume of cases. The Board recognised that resilience was a fundamental issue when it agreed last year to a significant increase in staff: one additional administrative assistant, one paralegal and one Senior Case Officer. It was agreed that the recruitment of these posts would be staggered over 2021/22 and 2022/23. It was envisaged this increase in staff would lead to significant improvements in performance, but this has yet to be seen.

The Issues

7. The reasons for the continued poor performance still centre mainly on resilience/capacity and fall under four main headings:
 - a. Staffing and recruitment;
 - b. Increase in volume of cases
 - c. The Case Management System
 - d. The cyber-attack

Staffing and Recruitment

8. While the increase in staff referred to at paragraph 5 above was agreed last year, the staff are not yet in place. Further, there have been ongoing difficulties in recruiting to posts in the team. Alongside this, there has been a relatively high turnover in staff over the last year. The combination of these factors means that, in effect, there has not been any increase in the team capacity over the last year and at times the team has been below its original capacity. This has coincided with a 40% increase in the investigation caseload (see paragraphs 16 -18 below).
9. **Additional posts and turnover issues:** the team was able to recruit to the additional paralegal post in late 2021 but this increase in capacity was shortly counteracted by one Case Officer resigning in early 2022. An additional Senior Case Officer (agreed in 2020) commenced work in April 2022, while the replacement for the Case Officer only started on 25 June. In relation to the additional administrative post, a similar situation arose whereby recruitment to the post was counteracted by a resignation. We are still trying to recruit to the additional administrative role after previous failed attempts. The additional Senior Case Officer post is not due to be recruited until October 2022 and, as the Board will see, we are proposing that this recruitment be brought forward.
10. In relation to turnover in the existing staff complement, two Officer members are going, or have gone very recently, on maternity leave and a Casework Manager, after nine years, is moving on. We have recruited a staff member to cover one of the periods of maternity leave but still have to recruit to the other two posts. Thus, we will be carrying vacancies for several months.
11. In summary, at the time of writing, we have recruited to only one of the additional posts agreed last year and have had, and will have, vacancies in the original staff complement. However, four new staff have joined the team recently and we envisage the full increased staff complement will be in place by the end of Quarter 2.

12. The question inevitably arises as to whether this full staff complement is sufficient to deal with the recent significant increase in the volume of investigations. For the time being we believe it has to be for the reasons set out below. but it may be that further staff will be required in due course.
13. **Recruitment issues** – there have been difficulties over recent years in recruiting to all roles within the team. Some recruitment rounds have been unsuccessful or the appointees have been suitably skilled, but inexperienced, and therefore require a considerable level of resource intensive training and support once in post. The principal reason, at Officer level, for these recruitment issues is the salaries on offer for roles that require legal training/qualification and span both investigation and disciplinary work.
14. Feedback from agency recruiters regarding the Officer roles confirms that the salary levels are the main barrier to sourcing good candidates and this is supported by a recent pay benchmarking exercise carried out for the BSB. Most of our newer recruits have come to the BSB from other areas of the legal profession and do not have a background in regulation. While these staff are suitably skilled to perform the roles, they require intensive training and therefore it takes time for them to become fully effective in their role.
15. In the medium term these recruitment issues may be addressed by the pay structure review currently being carried out.

Increase in volume of cases

16. As the Board is aware, there has been an increase of 40% over the last year in the number of investigations referred to the team. The statistics show that productivity has remained at the same level as in previous years despite vacancies and the challenges of the pandemic. However, inevitably the increase in the volume of cases has led to a significant slowdown in the timeliness of investigations being progressed.
17. The main impact of the increase in referrals has been an ongoing backlog in investigation referrals awaiting acceptance. The team has not had sufficient capacity, until recently, to allocate cases to Officers. We have prioritised cases according to risk, but this does mean that the lower risk cases are subject to long delays before being accepted.
18. Without the full benefit of the additional staff agreed last year it has not been possible to absorb the increased caseload. If the recent increase becomes the norm and represents a new annual baseline going forward, then we will need to consider increasing the team complement further. However, it should be noted that the additional staff agreed last year was intended to assist with weathering staff turnover and fluctuations in the volume of work, albeit not to the extent seen. Our view is that it is too early to take any decisions on further permanent staff and we should consider this only after we have had a chance to assess the impact of the current increase in staff including the additional Senior Case Officer.

The Cyber-Attack

19. The recent cyber-attack has had, and will continue to have, a significant short-term impact on the work of the team. Staff were only able to carry out limited work on cases for a period of over a month and therefore this will add to the time taken to complete investigations.

20. A backlog of work, particularly in relation to more administrative tasks, such as updating case files and creating bundles for IDB and disciplinary cases, has built up. Two temporary staff have been taken on to assist with addressing this backlog. They started on 5 July for an initial period of two months, but this will be extended if the work is not complete in that time.
21. The Contact and Assessment Team (CAT) has a backlog of new cases awaiting assessment as a result of the cyber-attack. However, it has prioritised reports that appear to require a referral for investigation. Early indications are that the level of referrals, once the backlog is cleared, may be down on the level seen before the attack. It is too early to tell if this could be the beginning of a reversal in the unprecedented increase in referrals last year. If it is, it could ease some of the pressures in relation to investigations.

The Case Management System

22. Feedback from staff via a formal survey and informal comments, indicates that the new Case Management System (CMS) introduced in September 2019 has had a negative impact on the efficiency of day-to-day work. This has manifested in three ways. The first is the operation of the system itself, where carrying out some tasks, including getting a case up to date as well as reviewing documents, is cumbersome and time-consuming. The second is that there are still regular ongoing, but discrete, problems that arise relating to reliability and/or functionality. When these occur it takes, sometimes significant, team resource, working with the technical staff, to resolve the issues. Thirdly, feedback indicates that the system is not intuitive, and this means that it takes longer, and requires greater support, for new staff to become familiar with how to use the system.
23. There is nothing obvious that can be done in the short/medium term to address these issues. However, as the Board knows, the BSB has jointly commissioned with the Bar Council, an independent review of the CRM and CSM which is due to report later in the year.

How do we plan to improve performance?

Capacity/resilience - short term

24. While the Quarter 4 Performance Report did not cover the period of the cyber-attack, it will inevitably have an impact on future performance for several quarters. Before the attack the team was carrying vacancies and the benefit of the agreed additional staff had not materialised. However, some of the vacancies/additional posts have now been filled – two very recently. **To create extra capacity, we are proposing that the recruitment of the additional Senior Case Officer, as previously agreed, is carried out now rather than waiting until October 2022. As indicated above we have also taken on two temporary members to assist with the recovery from the cyber-attack.**
25. **Referral backlog (KPI1)** -the recent increase in staff capacity, and the steps taken to recover from the cyber-attack, has allowed us in the last few weeks to allocate many of the cases in the backlog of investigation referrals. At the end of Quarter 4 there were 63 cases awaiting acceptance. At the time of writing, 50 of these have since been allocated. The formal acceptance of these will not show in the Quarter 1 statistics (April to June) given how recently they were allocated. Quarter 2 performance is also likely to be low given that most of the cases accepted will have already missed the 10-day target.

26. One of the factors in the increase in referrals to investigation last year was the high number of cases that were referred for breach of the practising requirements (mainly failure to renew practising certificates on time). While most of these referrals represented a risk because of the length of time the failure to renew went on, reasonable justifications were provided for the failures and the outcome in most cases was the imposition of an administrative warning by staff. **We are therefore planning to take a different approach this year that will allow such cases to be dealt with at the preliminary assessment stage, thereby avoiding the need for time-consuming formal investigations.** The mechanics of this still need to be agreed with the Director of Regulatory Operations and the Head of CAT.
27. Taking into account the above we anticipate that there will be gradual improvements in KPI1 performance in the second half of this reporting year. It would be rash to predict that the 80% target will be met by the year end but it is likely that we will be near to it. **We therefore do not consider, at this time, there is a need to take any specific action in relation to KPI1 other than reducing the potential for future referrals for breaches of practising requirements.** However, we will monitor the position closely and alert the Board if any unpredicted issues arise that may impact on the recovery.
28. **Completion of investigations (KPI2)** - the position is somewhat different in relation KPI2 - completion of investigations. We now have capacity to allocate cases and additional capacity will come on stream if we recruit a further Senior Case Officer in the near future. However, the level of new staff in the team requiring induction and training will be high. Taking into account recently recruited staff and staff to be recruited in the next quarter, just over 40% of the team (6 staff) will be recent recruits. The resource required from existing staff to support their induction, particularly managers, is considerable and is a drain on their capacity to progress their own caseload.
29. We therefore predict, while the number of investigation cases closed in the next few quarters will increase, the time taken to close them will remain longer than the KPI target for at least the next two quarters. While there may be some improvement in the performance against KPI2 over the rest of the year, we do not predict that it will improve significantly. All things being equal, significant improvements are only likely to be seen in early 2023/24, once the team complement stabilises and staff are fully trained. As indicated above whether the 80% target can be met if volume of work remains at the increased level, will need to be assessed once the full team complement is in place and fully trained.
30. We have considered whether, in the short-term, we can create additional capacity by looking at options such as outsourcing some investigations to our retained solicitors, taking on seconded staff from other organisations/solicitors/chambers or instructing barristers on a pro bono basis to assist with investigations. We do not consider that any of these options will improve performance in the short term. Indeed, our view is that they may well reduce performance further.
31. As indicated above, regardless of where we source assistance in the short-term, those providing the assistance will require a level of training and support, thus reducing the capacity of existing staff to progress cases. Internal resource would also need to be devoted to ensuring that CMS is kept up to date. The level of liaison, monitoring and administration involved is likely to counteract much of the short-term benefit that could be achieved.

32. While we have outsourced a handful of cases in recent years for investigation to external solicitors, doing this on larger scale would be expensive and would still require liaison and oversight by internal staff. There is no guarantee it would improve performance in the short-term.
33. Our view is that we are now at maximum capacity to support new staff/external resource and taking on further resource could have a detrimental impact. We consider it would be more effective if we concentrate our resources on training the recent and pending recruits. This is likely to produce improvements more swiftly than sourcing external support.

Capacity/resilience - medium/longer term

34. There are other possible longer-term actions that could be beneficial in freeing up, or creating, increased capacity as well as efficiencies. These are outlined below
35. **Redaction of documents presented to IDB panels:** as the Board will be aware, cases presented to panels of the Independent Decision-Making Body (IDB) are redacted to anonymise the name of the barrister. This is done to reduce the risk of unconscious bias in decision making. We previously also redacted documents to avoid identification of the sex of the barrister, but this ceased in January 2021 following Board approval based on evidence that gender anonymisation had not made any material difference to the outcome of decisions. At that time, it was agreed that we would revisit whether anonymisation of names should continue.
36. The continued redaction of names adds considerable time to preparing cases for presentation to IDB panels. Whilst the software used picks up the majority of incidents of the relevant name appearing it is not fool proof and checking of bundles for missed reactions is time-consuming. Even then, references in the bundle to the name of the barrister can remain. **The plan is to consider whether redaction of names is an effective, and practical, means to address unconscious bias and consider whether we should cease the practice thus freeing up capacity to progress investigations more swiftly.**
37. **Remit of the Officer roles in the team:** as alluded to above, one structural issue in the roles of the Officers is that they span both the investigation and disciplinary functions. For many years this proved to be a good approach. It has avoided duplication of work in transferring cases between staff as well as allowed for continuity in case handling. However, the model may no longer be efficient in terms of case progression.
38. Investigations and preparation of cases for disciplinary hearing, have both become more complex over the years. Disciplinary cases are subject to strict deadlines and therefore take precedence over investigation cases. Thus, when an Officer has a disciplinary hearing pending, it can lead to delays in progressing investigations.
39. Further the skills sets required to carry out investigations and handle disciplinary cases, while overlapping, are not necessarily the same. Seeking people with both skill sets to fill Officer roles may be contributing to the difficulties in recruiting staff. Many candidates have strong experience in one part of the process but not the other. **Therefore consideration is being given to separating the functions and creating roles that perform one or other of the functions but not necessarily both.**
40. This needs careful thought particularly in relation to unintended consequences. It is not a short-term solution to current performance and would require a significant restructuring of the team with all the upheaval that would involve (impacting again on performance in the short-term). Nevertheless, the concept has the potential to create efficiencies in the handling of investigations and will be explored.

41. **Salary levels;** the current pay review for roles across the BSB is due to be completed in the near future. One outcome of this may be an increase in the current salary for Officer roles in the team to bring them in line with other regulators. If this does occur, it will assist with recruitment and contribute to maintaining capacity and resilience in the team.

Review of the KPIs

42. A subsidiary but important issue is whether the KPIs we currently have in place are appropriate and provide an accurate reflection of performance. The current KPIs focus mostly on timeliness of completing stages of the process regardless of the volume of cases or the level of throughput being achieved. Timeliness is rightly an important performance factor we should be measuring and is of central importance in determining the level of service we are providing to the public and the profession. However, without other measures, there is a danger that we will consider our performance lacking when, in the circumstances prevailing at the time, our performance is good. An example of this is the current quality indicators that show our decision-making is robust despite the system slowing down. While we do not have any formal KPIs covering productivity i.e. the throughput of cases, the statistics show that productivity is being maintained and indeed has improved slightly.
43. A review of the KPIs, following a report by our auditors, will form part of the current review of the Regulatory Operations changes introduced in 2019.

Summary of actions

44. As indicated above the actions we intend to take to address the low performance are as follows:

Short term

- a. Employ temporary staff to assist with addressing the fallout out of the cyber attack
- b. Bring forward the recruitment of an additional Senior Case Officer from October and recruit to the post immediately
- c. Recruit and fill all vacant and additional posts during Quarter 2 and 3 of 2022/23
- d. Induct and train new staff to ensure by the end of Quarter 3 at the latest (and in most cases significantly before) they are all functioning effectively with limited need for day-to-day support
- e. Reduce the potential for future referrals to investigation in relation to practising certificate breaches by agreeing a more proportionate mechanism for these to be addressed at an earlier stage by staff within CAT.

Medium/longer term

- f. Consider salary levels for staff within the team as part of the organisation wide review of the pay structure thus creating the potential to recruit more experienced staff requiring less training and support
- g. Review the efficacy of, and thereby the need to continue, redacting names to from documents presented to IDB panels
- h. Review the remit of the Officer roles in the team and consider creating separate roles to cover investigation and disciplinary work
- i. Consider whether the CMS is fit for purpose as part of the organisation wide independent review that has recently been commissioned.

45. There are further steps to improve efficiency that might emerge from planned projects, such as the Regulatory Operations Review and the review of Part 5 of the Handbook (the enforcement regulations). However, these projects are not scheduled to produce recommendations until 2023 or 2024.

Conclusions

46. As this paper indicates, there is no magic bullet that can be deployed to create immediate improvements in performance against the KPI. There are limits within a small team on the extent to which extra resources in the short-term, from whatever source, can be absorbed and trained to produce improvements in performance.
47. It is unfortunate that the benefit of the increased staffing in the team has not yet been fully achieved, However, the team is on the cusp of these steps coming to fruition.
48. The short-term actions proposed in this paper are therefore modest in the face of the recent low performance against the KPIs but take into account recent and pending actions. We are confident these actions will impact positively over the two quarters absent any disruptors such as another cyber-attack.
49. We will continue to monitor the overall position closely and report to the Board on the progress and impact of the actions outlined in this report.

Sara Jagger
Director of Legal and Enforcement

Paul Pretty
Head of Investigations and Enforcement

Strategic Planning and Resources Committee (SPR) Annual Report 2020/21

Recommendation to SPR

1. The Board is invited to note the Annual Report of the Strategic Planning and Resources Committee (SPR). Standing Orders require that the Board's committees must report to it at least annually.

Introduction

2. SPR is a standing committee of the Board with responsibility for work relating to development of our strategic direction and plans. It scrutinises strategic and business plans and associated budgets before the Board's approval is sought. It also considers whether financial and operational resources are properly and effectively allocated and efficiently managed across the organisation.
3. The Committee meets regularly throughout the year and has met seven times since the last report.
4. The Committee currently has a membership of five – all of whom are members of the Board, with a majority of lay members. The members are: Steven Haines (Chair), Alison Alden OBE, Kathryn Stone OBE (lay members); Irena Sabic, and Professor Leslie Thomas QC (barrister members). During the reporting year, one Board member, Stephen Thornton CBE, concluded his membership of this Committee (on taking up the post of Chair of the Governance, Risk and Audit Committee) and was replaced by Kathryn Stone OBE. We are grateful to them for their contributions to the Committee over the past year.

Executive Summary

5. This report summarises the key aspects of the Committee's work over the past year. The report also provides the Board and public with assurance that the scrutiny of business and strategic plans (when applicable) prepared by the BSB are robust, appropriate, and financially sound.

Strategic Plan for 2022 – 25, and Business Plan and budget for 2022 - 23

6. Over the course of multiple meetings, the Committee reviewed and had oversight of development of the 2022 – 25 Strategic Plan, and then also the business plan and budget for the first year of that strategic plan.
7. The Committee undertook horizon scanning exercises, prior to formulating recommendations for the Board on the emerging strategic priorities for the next three-year period. The Committee considered and agreed the key, high-level messages for the draft consultation on the new strategic plan prior to approval by the Board, and recommended changes to structure and content of the consultation document to form the basis of more effective engagement than previous strategy consultations.
8. The Committee then considered the responses to the consultation on the proposed strategy and the executive's analysis of those responses. It proposed amendments to the strategy document to be submitted to the Board in response to views raised by stakeholders who had responded to the consultation. The Committee recommended approval of the overall BSB strategy, Public Legal Education strategy and business plan documents to the Board (which were duly approved by the Board).

9. The Committee scrutinised the budget proposals linked to the three-year strategic review, including the rise in staff costs to increase the BSB's capacity to undertake its core regulatory work in line with its published standards for timeliness and without any detriment to quality. Following an iterative process of refinement, the Committee recommended the budget to the Board for approval.

Oversight of financial performance

10. The Committee scrutinised quarterly financial accounts and reforecasts. This included oversight of the cash and reserves (including the CBILS loan) to ensure that the BSB had sufficient liquidity to meet its obligations, and scrutiny of the year-end accounts for the 2020 – 21 financial year. The Committee challenged the executive on its forecasts of both Practising Certificate Fee and regulatory income whilst noting that planning in the first year of the pandemic had been for worst-case scenarios which it considered justifiable in the circumstances and in common with many other organisations. To ensure that the BSB achieves its aim of cost recovery only from regulatory fees, the Committee endorsed the executive's proposal to review the per capita fees (per student) charged to Authorised Education and Training Organisations providing Bar training.
11. The Committee subsequently considered proposals to reduce the per capita fees (per student) charged to Authorised Education and Training Organisations providing Bar training and recommended those proposals to the Board. The calculations designed to achieve cost recovery only in 2018 (and not also a surplus) had underestimated student numbers to the extent that the BSB had been generating income above its expectations and forecasts. While the Committee will assess the fees annually (when we consider the actual income against forecasts), we do not expect to make changes more than every three years. The Committee recommended these proposals for reduced fees to the Board, which approved the new fees for implementation from September 2022.
12. As the BSB was to take over the issuing of Certificates of Good Standing from the beginning of the 2022 – 23 business year, consistent with the Legal Services Board's Internal Governance Rules which require regulatory activities to be conducted independently by the BSB, the Committee also scrutinised proposals from the executive for a fee for that function. Previously, these certificates were issued by the Bar Council and barristers could receive unlimited certificates as one benefit of payment of the Bar Representation Fee. The Committee recommended the proposed fees to the Board, which approved the new fees for implementation from the beginning of this business year.

Other Business

13. The Committee reviewed the draft BSB Annual Report (for the financial year 2020 - 21) and made recommendation for the Board's subsequent approval of it.
14. The Committee considered a report from the Director of People on the results of the BSB People Survey 2021 – 22 in the context of its remit for resources including human resources. Given the Committee's role in scrutiny of strategic and business plans (and the resources necessary to deliver those), it particularly noted the results relevant to the BSB's strength and sustainability from a people perspective and what areas needed to improve to achieve better organisational wellbeing. The Committee received the routine Human Resources report from the Director of People on a six monthly basis, incorporating details on aspects such as staff recruitment, turnover, and sickness.
15. Due to the Covid-19 pandemic, meetings of the SPR Committee over the past year have been held remotely (using Microsoft Teams) or in a hybrid format (with some members attending in the BSB's offices and some attending remotely). The SPR will continue holding meetings remotely as routine but may meet in person depending on the business on the agenda.

Forward View

16. As well as the routine business defined by its terms of reference, over the coming year the Committee will receive a progress report on the recruitment of the additional posts agreed in this year's budget, given that this increased resourcing is integral to achievement of the business plan.
17. The next SPR Annual Report will be presented to the Board in May 2023.

Lead responsibility

Steven Haines, Chair, Strategic Planning & Resources Committee
Rebecca Forbes, Head of Governance and Corporate Services

Meeting:	Bar Standards Board	Date:	14 July 2022
Title:	BSB review of governance documents – Constitution and Appointments Policy		
Author:	Rebecca Forbes		
Post:	Head of Governance and Corporate Services		

Paper for:	Decision: <input checked="" type="checkbox"/>	Discussion: <input type="checkbox"/>	Noting: <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Paper relates to the Regulatory Objective (s) highlighted in bold below

- (a) **protecting and promoting the public interest**
- (b) supporting the constitutional principle of the rule of law
- (c) improving access to justice
- (d) protecting and promoting the interests of consumers
- (e) promoting competition in the provision of services
- (f) encouraging an independent, strong, diverse and effective legal profession
- (g) increasing public understanding of citizens' legal rights and duties
- (h) promoting and maintaining adherence to the professional principles

☐ Paper does not principally relate to Regulatory Objectives

Purpose of Report

1. To progress work towards the commitment made by the Board in its well-led action plan to review and revise its governance documentation to achieve greater clarity and transparency.

Recommendations

2. The Board is invited to consider and **approve** the amended Constitution of the Bar Standards Board at Annex A and the Appointments Policy at Annex C.
3. The Board is invited to **note** that should it approve the Appointments Policy as drafted, and thereby agrees the change to process so that it is for the Board itself to approve the appointment of new Board Members, we will be seeking a written resolution to confirm appointment of the new Chair in late July or early August.
4. The Board is invited to **confirm** that: on the recommendation of the Nomination Committee, the Appointments Panel for the recruitment of barrister Board members should consist of: the incoming Chair ex officio, Andrew Mitchell QC (Vice Chair and barrister Board member), Alison Allden (lay Board member), and a lay independent person.

Background

5. The Board will recall the criticisms made of our governance documentation by the Legal Services Board in its report following its review of the BSB's performance under the well-led standard. Specifically the LSB stated that our governance documentation was "fragmented and accessibility could be improved in some areas" and set out what it considered to be the benefits of a comprehensive Governance Manual.

6. There is also the recommendation of *Independent Audit* following its evaluation of Board performance last summer: “Now that you have implemented the IGR, adjusted the roles of the committees and introduced the Remuneration Panel, it would be a good time to stand back and review the various governance documents with a view to simplifying and harmonising them where you can. You could accompany this exercise with a mapping of responsibilities between the various BSB governance bodies (and those shared with the GCB) to clarify how your overall governance framework operates in practice. The output of these two exercises could result in a refreshed governance manual.”
7. Partly in response to these two recommendations, one of the commitments the Board made in its well-led action plan is that: “BSB’s internal delegations, including the matters reserved to the Board and its Committees, will be reviewed and associated governance documents refreshed to meet the requirements of the UK Corporate Governance Code.”
8. We considered that an independent, external review of our governance documentation would be most beneficial. We identified four appropriate corporate governance consultancies and invited tenders for this discrete piece of work. All four companies submitted bids and we (the Director General and Head of Governance and Corporate Services) selected *Indigo Governance*, as their submission clearly demonstrated their understanding of the scope of work and set out an approach and a fee structure that we considered offered the best value for money.
9. We agreed a two stage process with *Indigo Governance* – firstly, a review of relevant documents and provision of a report detailing their findings and recommendations, and secondly, additional support to implement those recommendations. For clarity, we are only revising the documentation which sets out our governance arrangements. We are not also reconsidering those underlying governance arrangements, although we have taken the opportunity to propose some changes to process and we have explicitly identified all of those within this paper.
10. *Indigo Governance* reported that their “overall recommendation would be to implement and maintain a Board Governance Manual with appropriate appendices, ensuring updates can be easily implemented. Such a manual should be written in accordance with and to support the provisions of your Constitution. It should be noted that a significant amount of the content within the existing documentation remains relevant, well written and of use to the intended reader and therefore we are not proposing a full re-write.”
11. Broadly, we agreed with the high level and more detailed recommendations of *Indigo Governance*. In a conversation following submission of their report and before they started work on implementation, we clarified the meaning of “independent” in our context, that it refers to independence from the representative functions of the General Council of the Bar. We have clarified that our lay and barrister members are deemed equally independent in that context (and so, for example, there is no impediment to a barrister member sitting on the Remuneration Panel).
12. The new suite of documents will include the Constitution as the pre-eminent governance document, and the Governance Manual with appendices including the Appointments Policy and Terms of Reference for the BSB’s Committees and other Decision-making Bodies. The Governance Manual repeats some parts of the Constitution (so that it can be read as a stand alone document) and otherwise contains rules that were within our previous Standing Orders – in effect, the Governance Manual will replace the Standing Orders but is more comprehensive.

13. The UK Corporate Governance Code is applicable to companies with a premium listing, regardless of where they are incorporated. The Financial Reporting Council states: *Under the Financial Conduct Authority (FCA) Listing Rules, listed companies are expected to align their business with the Principles of the Code but may choose whether or not to comply with its Provisions.* Given that the BSB is not incorporated and does not even have a standard listing, we are not required to comply with the provisions of the UK Corporate Governance Code. However, whilst some Principles and/or provisions of the Code are clearly not applicable in our context, we consider that it represents best practice and that we should endeavour to comply where that is appropriate. *Indigo Consultants* reported on those Principles and provisions of the Code which they deemed relevant in our context and made recommendations on how we could more explicitly meet those Principles and provisions.
14. *Indigo Governance* produced first drafts of a restructured Constitution and Governance Manual including the Appointments Policy and Terms of Reference, which we have then refined to be fit for our context. The Constitution remains as the separate and overarching governance document, albeit with the Schedules removed (and the detail on Board appointments incorporated into the Appointments Policy).
15. In its initial report, *Indigo Governance* recommended that we should consider formation of a Nomination Committee (to assist with achieving provision 17 of Principle J of the UK Corporate Governance Code). In advance of receiving the report, we had already received in principle approval to the establishment of a Nomination Committee from the Board at its meeting on 27 January. This was in part a response to the announcement of the Chair of the Board of her intention to stand down in the summer and a desire that the Board have greater oversight of the process of recruitment of her successor than that allowed by participation of two members on the selection panel.
16. We had intended to submit the entire suite of revised documents to the Board in July. However, partly due to resource constraints (including the effects of time lost due to the cyber attack and a vacant post in the Governance and Corporate Services team), we are now submitting the Constitution and Appointments Policy only. We will submit the Governance Manual, with all appendices (including Terms of Reference for the BSB's Committees and other Decision-making Bodies and the Scheme of Delegations) to the meeting in September. The list of matters reserved to the Board will be within the main body of the Governance Manual.
17. We are taking the opportunity of scheduled Committee meetings to consult the Board's Committees and other bodies with delegated decision-making powers on the reformatting of their Terms of Reference. For some, the changes are substantially to structure and format, moving the existing substantive responsibilities into the standardised template. For others, notably the Governance, Risk and Audit Committee, the consultants have proposed additions to the Committee's stated responsibilities that we believe the Committee itself should consider and confirm what it will recommend to the Board.

Constitution

18. We have not used track changes where content has been re-ordered only or where we have changed references to "member" to "Board Member" or made similarly inconsequential amendments.

Part 1 – Public

19. We have restructured the Constitution in accordance with the recommendations of *Indigo Governance*. We have removed the previous Schedules to the Constitution. The content of Schedule A (Appointments to the BSB) is now contained within the body of the Constitution or within the separate Appointments Policy which also details the processes for appointments to BSB Committees and other Decision-making Bodies (the Independent Decision-making Body and the Centralised Examinations Board).
20. The definitions that were contained within B1 and B2 of Schedule B are now within the list of “Defined Terms” at the beginning of the revised Constitution (immediately following the Preamble), with the exception of the definition of an “ordinary member of the BSB”. That term appeared only once within the previous Schedule A and has been replaced by making the corresponding clause in the Appointments Policy (paragraph 7.6 (b)) more specific – that a person may not serve more than twelve years in total as a Board member and the Chair or twelve years in total as a Board member and the Vice Chair. We have not used track changes for this list of “Defined Terms”, most being taken from our existing Standing Orders and not previously defined within the Constitution.
21. The list of regulatory functions at B3 of Schedule B is now listed at paragraph 7 of the revised Constitution. B4 of Schedule B listed the Seven Principles of Public Life and those are now the first appendix to the BSB’s proposed Governance Manual.
22. The list of defined terms within the revised Constitution includes that the Bar Council means the Council of the General Council of the Bar of England and Wales (ie the representative body). We have therefore changed some of the references that were to the “Bar Council” to the “General Council of the Bar”, where those references are to the legal entity and/or the Approved Regulator.
23. Paragraphs 2 - 3 in the previous Constitution on membership of the BSB have been moved to paragraphs 12 – 13 of the revised Constitution. We propose removing the provision that the number of lay Board Members can be greater than one more than the number of barrister Board Members “when the Board is reducing the number of members and then only until the next lay member stands down”. This was required whilst we had a lay majority of two and were waiting for a lay member to come to the end of their term to restore the lay majority of one. The Board has already reduced its size to its Constitutional minimum, so this is no longer required.
24. We propose amending paragraph 7 (9) to be broader as we take enforcement action other than disciplinary action and the Bar Tribunal and Adjudication Service (BTAS) also covers other types of hearings.
25. Paragraph 16 which sets out why a person might cease to be a Board Member has been inserted here from Schedule A to the previous Constitution, so that provisions on membership sit together.
26. New paragraphs 18 – 20 on delegation in the revised Constitution are adapted from the model articles of association for private companies limited by guarantee (the model that would most likely be appropriate for the BSB if it were to be incorporated). Similarly, the subsequent new paragraphs which have been inserted have been adapted from those same model articles (decision-making by Board Members, calling a Board meeting, participation in Board meetings, quorum for Board meetings, chairing Board meetings, voting at Board meetings, Chair’s casting vote and adoption of Board written resolutions). Paragraphs 31 and 32 (on quorum) are substantially unchanged from the existing Constitution.

27. We have inserted paragraph 36 (taken from our existing Standing Orders) to ensure there is clarity on whether Board Members can vote by proxy or in absentia.
28. The BSB Constitution states that it may be “amended or revoked by resolution of the Bar Standards Board only after consulting the Bar Council”. We consulted the Bar Council at its meeting on Saturday 18 June. Only one substantive question was raised, about the rationale for our changes to paragraph 7 (9) to be broader as we take enforcement action other than disciplinary action and as BTAS also covers other types of hearings. We clarified that the expression “disciplinary action” does not in practice cover all types of enforcement action: for example, administrative sanctions are enforcement action, but are not disciplinary action. The insertion of “other regulatory hearings” refers to fitness to practise hearings and also appeals, and those are not disciplinary hearings.

Appointments Policy

29. The Appointments Policy generally reiterates the procedures that were set out in Schedule A to the existing Constitution (for Board members) or in Standing Orders (for members of Committees, the IDB and the CEB). Where any changes to processes for appointment of any members are proposed, we have detailed those.
30. The Appointments Policy proposes that Appointments Panels for the selection of Board members will now make recommendations to the Board for appointment (rather than the Panel itself having the power to make appointments as was the previous process). We consider this to be proper and appropriate, that the Board itself should confirm the appointment of its members.
31. The Appointments Policy now sets out that the lay independent person who is Chair of the Appointments Panel for the selection of the Chair is appointed by the Board itself rather than the BSB. A similar change has been made for the lay independent person who is a member of the Appointments Panel for the selection of other Board Members. This is consistent with the terms of reference for the Nomination Committee, which state that Committee will make recommendations to the Board on appointment of members to Appointment Panels for Board Member recruitment.
32. We have also proposed amending the power to appoint two Board Members to Appointments Panels for recruitment of other Board Members, so that it is for the Board rather than for the Chair of the BSB. Again, that achieves consistency with the terms of reference for the Nomination Committee.
33. Should the Board approve the Appointments Policy as drafted, then in accordance with the change in process outlined in the preceding paragraphs, it is asked to approve the appointment of the two Board members recommended by the Nomination Committee for the imminent recruitment of barrister Board members. That recruitment is to replace Adam Solomon QC (whose final term concludes this year) and Elizabeth Prochaska (who stood down with effect from 30 June after relinquishing her practising certificate). The Nomination Committee has recommended Andrew Mitchell QC and Alison Allden as members of the Appointments Panel. We will seek suggestions for the lay independent member following the meeting of the Nomination Committee on 5 July and will seek the Board’s approval of that appointment in September.
34. We have amended the power to make reappointments of Board Members, so that it is now explicitly to the Board to confirm reappointments on the recommendation of the Chair.

Resource implications / Impacts on other teams / departments or projects

35. We incurred unbudgeted expenditure by the appointment of external consultants to undertake this work but the cost was relatively modest and has resulted in a suite of governance documents which are fit for purpose for the medium term and easily adaptable should the BSB incorporate in the future (perhaps as a private company limited by guarantee). There are no resource implications for other teams in the BSB.

Equality and Diversity

36. Whilst the review of governance documentation does not give rise to any equality considerations (because we are not reviewing the underlying governance arrangements), we are conducting an Equality Impact Assessment on our non-executive recruitment practices. This is to support the Nomination Committee in its remit of ensuring inclusivity and equality through our recruitment to the Board and senior management and also to further our ambition to enhance the diversity profile of the BSB itself.

Risk implications

37. The risks of not completing this review have already been identified by the Legal Services Board in its review of the BSB's performance under the well-led standard and by the report of *Independent Audit* last summer. Achieving greater clarity and transparency in our articulation of our governance arrangements mitigates any risk of failure to comply with those arrangements, and importantly mitigates against the risk of undue influence from the representative body.

Communications and Stakeholder Engagement

38. We have circulated the proposed Constitution and Appointments Policy to members of the Governance, Risk and Audit Committee for their comments. That Committee doesn't meet before this scheduled meeting of the Board, but we have asked for any comments to be received in time to be conveyed to the Board.
39. Should the Board approve the Constitution and Appointments Policy, we will then publish these on our website immediately following the Board meeting.

Annexes

40. Annex A – The proposed revised Constitution of the Bar Standards Board
 Annex B – Constitution of the Bar Standards Board dated 26 November 2020 (including the Schedules that have been deleted from the revised Constitution)
 Annex C – BSB Appointments Policy

Constitution of the Bar Standards Board

14 July 2022

PREAMBLE

- A. The General Council of the Bar (~~Bar Council~~GCB) is an approved regulator for the purposes of the Legal Services Act 2007.
- B. The ~~Bar Council~~GCB has established the Bar Standards Board (“the BSB”) to exercise the regulatory functions of the ~~Bar Council~~GCB.
- C. The ~~Bar Council~~GCB 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~~GCB 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~~GCB 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

Defined Terms

1. In this Constitution the following terms have the meanings set out below:

“barrister Board Member” means a person who is both a practising barrister and a Board Member;

“The Bar Council” means the Council of the General Council of the Bar of England and Wales;

“The Bar Standards Board” and “BSB” means the Board, any committees established by the Board, and any individual or group exercising the delegated powers of the Board;

“Board” means the Board of the BSB;

“Board Member” means a member of the Board, and includes any person occupying the position of Board Member, by whatever name called;

“Chair” means the Chair of the Board;

“General Council of the Bar” and “GCB” means the General Council of the Bar of England and Wales and refers to the legal entity in entirety;

“lay person” is defined in Schedule 1, paragraph 2(4) of the Legal Services Act 2007;

“lay Board Member” means a person who is both a lay person and a Board Member;

“overarching duty” is defined in rule 1 of the Internal Governance Rules 2019;

“regulatory functions” is defined in section 27(1) of the Legal Services Act 2007;

“representative committees of the Bar Council” means the committees established pursuant to Part Two of the Standing Orders for Committees of the Bar Council of England and Wales;

“representative functions” is defined in section 27(2) of the Legal Services Act 2007;

“Secretary” means the secretary to the BSB with the duties performed by the Head of Governance and Corporate Services, or their nominee; and

“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).

The BSB

2. The BSB is the body established to discharge the regulatory functions of the General Council of the Bar. It has no separate legal personality.
3. The BSB is responsible for performing all regulatory functions of the ~~Bar Council~~GCB as defined in section 27(1) of the Legal Services Act 2007. These regulatory functions have been delegated to the BSB in entirety
4. The BSB is responsible for determining any question whether a matter involves the exercise of a regulatory function.
5. 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.
6. The BSB has no representative functions as defined in section 27(2) of the Legal Services Act 2007.
7. 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 (work-based learning component of training); 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); and
- (9) to make arrangements, either directly or through another body, for the conduct of disciplinary and other regulatory hearings and to take enforcement action, including disciplinary action, in respect of those persons who are subject to regulatory arrangements.

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~~GCB as an approved regulator for the purposes of the Legal Services Act 2007, including

the ~~Bar Council~~GCB'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 17(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~~GCB 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~~GCB as is reasonably required for the ~~Bar Council~~GCB to be assured of the BSB's compliance with Section 28 of the Legal Services Act 2007; and
- (10) publish an annual report on its work.

12. The BSB must act in accordance with the Seven Principles of Public Life 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 the Constitution.

Membership of the Board

13. The ~~BSB~~ Board shall consist of between eleven and fifteen Board 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~~ BSB's appointment policy as adopted and amended from time to time (the "Appointments Policy").
14. The Board Members shall consist of:
 - (1) no fewer than five, and no more than seven, practising barristers who are not members of the Bar Council; and
 - (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.
15. The number of lay Board Members shall generally (other than when there is a casual vacancy, ~~or when the Board is reducing the number of members and then only until the next lay member stands down~~) be one more than the number of barrister Board Members.
16. A person shall cease to be a Board 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 Board resolves that they should cease to be a Board Member; or
 - (6) the Board resolves that they are unfit to remain a Board Member (whether by reason of misconduct or otherwise).

Powers and Responsibilities of the Board

17. The Board is responsible for the oversight of the BSB's functions, as set out in paragraph 7. 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:~~

- (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 17(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.

18. If the Board so specifies, any such delegation may authorise further delegation of the Board's powers by any person to whom they are delegated.
19. The Board may revoke any delegation in whole or part or alter its terms and conditions.
20. Committees to which the Board delegates any of their powers must follow procedures which are based as far as they are applicable on those provisions of the Constitution which govern the taking of decisions by Board Members.

Decision-making by Board Members

21. Board Members will take decisions collectively.
22. The general rule about decision-making by Board Members is that any decision of the Board Members may be taken:
 - (1) at a Board meeting; or
 - (2) in the form of a Board written resolution.

Calling a Board meeting

23. Any Board Member may call a Board meeting. The secretary must call a Board meeting if a Board Member so requests.

24. A Board meeting is called by giving notice of the meeting to the Board Members.
25. Notice of any Board meeting must indicate:
 - (1) its proposed date and time;
 - (2) where it is to take place; and
 - (3) if it is anticipated that Board Members participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
26. Notice of a Board meeting must be given to each Member but need not be in writing.
27. Notice of a Board meeting need not be given to Board Members who waive their entitlement to notice of that meeting.

Participation in Board meetings

28. Board Members participate in a Board meeting, or part of a Board meeting, when the meeting has been called and takes place in accordance with the Constitution, and they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.
29. In determining whether Board Members are participating in a Board meeting, it is irrelevant where any Board Member is located or how they communicate with each other.

Quorum for Board meetings

30. At a Board meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.
31. The quorum of any Board meeting shall be five Board Members, of whom at least three must be lay persons and at least two must be practising barristers.
32. The validity of any act of the BSB is not affected:
 - (1) by a vacancy in the office of Chair or amongst the other Board Members; or
 - (2) by a defect in the appointment or any disqualification of a person as Chair, or another Board Member of the BSB.

Chairing Board meetings

33. The BSB shall appoint a Chair, in accordance with the Appointments Policy, who shall be a lay person.
34. If the Chair is not participating in a meeting at the time at which it was to start, the participating Board Members must appoint one of themselves to chair it.

Voting at Board meetings: general rules

- 35. A decision is taken at a Board meeting by a majority of the votes of the participating Board Members. Each Board Member participating in a Board meeting has one vote.
- 36. Board Members unable to attend a Board meeting may submit comments on a matter in advance of the meeting to be shared during discussion, A vote does not count in absentia. A vote will be counted from a Board Member attending remotely.
- 37. If a Board Member has an interest in an actual or proposed transaction or arrangement with the BSB that Board Member may not vote on any proposal relating to it.

Chair's casting vote at a Board meeting

- 38. If the numbers of votes for and against a proposal are equal, the Chair or other Board Member chairing the meeting has a casting vote.

Adoption of Board written resolutions

- 39. A proposed Board written resolution is adopted when two thirds of the Board Members who would have been entitled to vote on the resolution at a Board meeting have signed one or more copies of it or approved it by email, provided that those Board Members would have formed a quorum at such a meeting.
- 40. Once a Board written resolution has been adopted, it must be formally ratified at the next Board meeting and appear in the minutes of that meeting.
- 41. Once a Board written resolution has been adopted, it must be treated as if it had been a decision taken at a Board meeting in accordance with the Constitution.

Amendments to the Constitution

- 42. This Constitution may be amended or revoked by resolution of the BSB Board only after consulting the Bar Council.

Constitution of the Bar Standards Board
26 November 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 generally (other than when there is a casual vacancy, or when the Board is reducing the number of members and then only until the next lay member stands down) 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.
- A6. For the appointment of the Vice Chair, the Board may, on the recommendation of the Chair, appoint a serving member of the Board rather than convening a Panel under A3.

Proceedings of the Panel

- A7. The quorum for a meeting of a Panel shall be three members.
- A8. The Chair of the BSB may not take part in any discussion or decision of a Panel relating to any appointment to that office.

A9. 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.

A10. 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

A11. Subject to paragraphs A16 and A17 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.

A12. 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

A13. The competencies required of BSB members shall be those as agreed from time to time by the BSB.

A14. 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

A15. All appointments made by a Panel or by the Board under A6 shall be for a fixed period of up to four years.

A16. 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.

A17. 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.

A18. 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.

A19. 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.

A20. 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.

Appendix [x]: Appointments Policy**1. Purpose**

- 1.1 This policy is designed to ensure orderly succession for the appointment of members of the Board, its Committees and Decision-Making Bodies and sets out a transparent and fair selection and appointment process, which promotes diversity and protects the independence of the BSB.

2. Board composition and succession

- 2.1 The BSB is committed to the principle that its Board should broadly reflect the diversity of society. The Nomination Committee, on behalf of the Board, shall regularly review the structure, size, diversity and composition (including the skills, knowledge, experience and diversity) of the Board and make recommendations to the Board with regard to any changes necessary to effectively fulfil its duties.
- 2.2 Due regard will be given to the desirability of ensuring Members (between them) have experience in or knowledge of an appropriate range of relevant fields and any particular requirements identified by the BSB.
- 2.3 The Board and Nomination Committee should ensure plans are in place for orderly succession to Board, Director General and other senior executive positions, taking into account the challenges and opportunities facing the BSB, and the skills and expertise needed on the Board in the future.

3. Criteria and eligibility

- 3.1 Before any Board appointment is made, an evaluation of the current balance of skills, knowledge, experience and diversity should be undertaken by the Nomination Committee, in accordance with its terms of reference.
- 3.2 The competencies required of Board Members shall be those as agreed by the Nomination Committee. Any equality and diversity policy in force should be complied with.
- 3.3 A member of the Bar Council or any of its representative committees may not hold office as a Board Member or as a member of any of the BSB's Committees, the IDB, or the CEB.
- 3.4 A person who has been responsible for a representative function shall not thereby be ineligible for appointment as a Board Member or as a member of any of the BSB's Committees, the IDB, or the CEB, but in considering whether to appoint any such person, 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.
- 3.5 A person cannot be both a Board Member and a member of the IDB. A person cannot be both a Board Member and a member of the CEB.

4. Board appointment process

- 4.1 The Board shall convene an Appointments Panel (a "Panel"), which shall be responsible for selecting and recommending Board Members to the Board for appointment, as required for each recruitment.

- 4.2 For the appointment of the Chair, a Panel shall consist of:
- a member of the judiciary nominated by the Lord Chief Justice;
 - two Board Members nominated by the Board, one of whom must be a practising barrister and one of whom must be a lay person; and
 - a lay person who is 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 panel member shall be the Chair of the Panel (the “Panel Chair”) and shall be appointed by the BSB Board.
- 4.3 For the appointment of Board Members other than the Chair, a Panel shall consist of:
- the Chair, ex officio, who shall be the Panel Chair;
 - two Board Members nominated by the ~~Chair of the BSB Board~~; and
 - a lay person who is 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 panel member shall be appointed by the BSB Board.
- 4.4 A Panel must be convened with equal numbers of lay members and barrister members, or with a majority of lay members. The nominee of the Lord Chief Justice will not be considered to be either a lay member or a barrister member for a Panel convened to appoint the Chair.
- 4.5 The Chair of the BSB may nominate an alternate to take their place for any Panel convened which they are unable to attend.
- 4.6 For the appointment of the Vice Chair, the Board may, on the recommendation of the Chair, appoint a serving Board Member without convening a Panel.
- 5. Committee members appointment process**
- 5.1 The BSB appoints and reappoints all Chairs, Vice Chairs and members of its Committees, IDB and CEB on merit.
- 5.2 Appointments of Board Members to the posts of BSB Committee Chairs and members of BSB Committees are made by the Chair of the BSB in consultation with the Vice Chair of the BSB and the Director General, with the exception of the appointments of members of the Nomination Committee which are made by the Board.
- 5.3 Appointments of new members of BSB Committees (who are not Board Members) are made by the Chair of the BSB on the recommendation of a selection panel, convened as required for each recruitment.
- 5.4 The BSB may convene a panel, which will be responsible for selecting and recommending any new Committee member who is not currently a Board Member.
- 5.5 The composition of the selection panel shall be:
- an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
 - at least one and a maximum of two Board Members (of whom one should be the Chair of

the Committee); and

- c. a member of senior staff of the BSB, as delegated by the Director General.

6. IDB and CEB appointment process

6.1 Appointments of new members and chairs of the IDB and CEB are made by the Chair of the BSB on the recommendation of a selection panel, convened as required for each appointment.

6.2 The composition of the selection panel shall be as prescribed below, depending on the position the panel has been convened for:

(i) Panel composition for recruitment of the IDB Chair:

- a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
- b. at least one and a maximum of two Board Members; and
- c. a member of senior staff of the BSB, as delegated by the Director General.

(ii) Panel composition for recruitment of the IDB Vice Chair or member of the IDB:

- a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
- b. The IDB Chair or, in the absence of the IDB Chair an IDB Vice Chair; and
- c. a member of senior staff of the BSB, as delegated by the Director General.

(iii) Panel composition for recruitment of the CEB Chair:

- a. an independent person with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office;
- b. at least one and a maximum of two Board Members. If the Board does not include a Board Member with expertise in higher education and/or assessment, then a person with such expertise shall be appointed in place of one of the Board Members; and
- c. a member of senior staff of the BSB, as delegated by the Director General.

(iv) Panel composition for recruitment of the CEB members:

- a. the CEB Chair or, in the absence of the CEB Chair one of the Chief Examiners;
- b. one of the Chief Examiners (who would usually be in the subject area being recruited to when recruiting assistant chief examiners); and
- c. a member of senior staff of the BSB, as delegated by the Director General.

7. Reappointment Criteria

7.1 The criteria to consider for reappointments is as follows:

- a. the person has performed to the standard to be expected of the office held, and
- b. it is in the interests of the BSB to renew the appointment, (together the “Reappointment Criteria”).

Board Members Term of office

- 7.2 All appointments made to the Board shall be for a fixed period of up to four years.
- 7.3 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 person has met the Reappointment Criteria, and that person remains eligible to be a Board Member. The Chair may not take part in any discussion or decision of the Board relating to the reappointment.
- 7.4 The Board may renew the appointments of other members of the Board for a further fixed period of up to four years on the recommendation of the Chair, who will have consulted the Vice Chair and Director General considering the Reappointment Criteria.
- 7.5 With the exception of the Chair and Vice Chair, casual vacancies may be filled by the Board but any appointment so made will last only for the remainder of the current term of office of the Board Member who they have replaced, or such reasonable time as is necessary for a Panel to be convened and recommend an appointment in accordance with the provisions of this policy, whichever is the shorter.
- 7.6 A person may not serve more than:
- eight years as a Board Member only; and
 - twelve years in total as a Board Member and the Chair or twelve years in total as a Board Member and the Vice Chair.

Non-Board Committee members and members of the IDB

- 7.7 All appointments of Committee members who are not Board Members and members of the IDB shall be for a fixed period of up to three years. Appointments may be renewed for a further fixed period of up to three years without holding a competition, if the Chair of the Committee concerned or the Chair of the IDB is satisfied that the Reappointment Criteria has been met.
- 7.8 In exceptional circumstances, the BSB may resolve to offer an extension of an individual person's or group of persons' appointment beyond the maximum six-year period of appointment permitted above. Any resolution to make a limited offer of extension must:
- allow for an extension of no more than 18 months in duration;
 - be made by offer in writing, and
 - be made for a specific reason that is articulated in the offer of extension.
- 7.9 The Chair of the BSB may appoint temporary members of the IDB for the purpose of taking decisions in a specific case. The power to appoint temporary members can only be exercised where there are insufficient IDB members to form an impartial IDP due to the number of members of the IDB who:
- have a conflict: and/or
 - could be perceived to have a real possibility of bias.
- 7.10 Any appointments made by the Chair under the above paragraph must be in writing and specify the decision(s) which the temporary IDB members are appointed to decide. The appointments will cease once the decision(s) have been taken, and any consequential matters arising have been concluded.

Members of the CEB

- 7.11 All appointments made by the Chair shall be for a fixed period of up to two years. Appointments may be renewed for further fixed periods of up to two years without holding a competition, if the Chair of the CEB is satisfied that the Reappointment Criteria has been met and it will allow the BSB to continue to discharge its regulatory functions.

8. Cessation of membership

- 8.1 A person shall cease to be a member of the Board, a BSB Committee or other Decision-making Body if:
- a. the period for which they were appointed expires (and their appointment is not renewed);
 - b. they resign their membership by notice in writing;
 - c. they were appointed as a lay person and cease to be a lay person;
 - d. they were appointed as a practising barrister and subsequently cease to be a practising barrister or become a member of the Bar Council or one of its representative committees;
 - e. they fail to attend meetings with sufficient frequency and regularity to be able to discharge their duties and the Committee or Board resolves that they should cease to be a member;
 - f. the Board resolves to disestablish or substantively restructure a Committee or Body of which a person is a member so as to be inconsistent with continued office by that person, upon three months' notice; or
 - g. the Board resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise).

9. Appraisal process

- 9.1 All Board Members, Committee members and members of the IDB and CEB are subject to a minimum of a review of performance within eighteen months of appointment and a review of performance preceding any decision on their reappointment at the end of their term of office. Board Member appraisals are to be carried out by the Chair of the BSB. Appraisals of Committee members who are not Board Members are to be carried out by the Committee Chair. IDB and CEB member appraisals are to be carried out by their respective Chairs and/or Vice Chair for the IDB.

Meeting:	BSB Board	Date:	14 July 2022
Title:	Conduct in non-professional life		
Author:	Rhys Bevan		
Post:	Head of Legal Support		

Paper for:	Decision: <input checked="" type="checkbox"/>	Discussion <input type="checkbox"/>	Noting <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Paper relates to the Regulatory Objective (s) highlighted in bold below				
(a)	protecting and promoting the public interest			
(b)	supporting the constitutional principle of the rule of law			
(c)	improving access to justice			
(d)	protecting and promoting the interests of consumers			
(e)	promoting competition in the provision of services			
(f)	encouraging an independent, strong, diverse and effective legal profession			
(g)	increasing public understanding of citizens' legal rights and duties			
(h)	promoting and maintaining adherence to the professional principles			

Purpose

1. The purpose of this paper is to ask the Board to approve the publication of a public consultation on our proposed approach to the regulation of non-professional conduct.

Recommendation

2. The Board authorises the executive to commence a three-month public consultation on our proposed approach to regulating non-professional conduct.

Background

3. The Conduct in Non-Professional Life Project is seeking to clarify where we think the boundaries lie in the regulation of conduct that occurs in a barrister's private/personal life (which we refer to as "non-professional life" or "non-professional conduct").
4. The project was established because our existing (non-mandatory) guidance may not always reflect the circumstances in which the BSB will have a regulatory interest¹ in conduct that occurs outside of professional practice or the circumstances where it is accepted in case law that it might be legitimate for regulators to intervene in relation to non-professional conduct.
5. This is an important matter that balances barristers' human rights against the public interest in preserving public confidence in the profession and individual barristers. Getting the balance right is a necessary step in meeting the regulatory objectives, including: protecting and promoting the public interest and the interest of consumers, improving access to justice, encouraging an independent, strong, diverse and effective legal profession and promoting and maintaining adherence to the professional principles. This is because barristers' conduct in their private or personal lives can impact on the public's confidence in them as barristers or the wider profession.

¹ By "regulatory interest" we mean the circumstances in which we may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is apt for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.

6. The Board is invited to review and approve for publication a number of draft documents which have been developed as part of this project. They are:

a. A draft consultation paper

The draft consultation paper sets out the rationale behind the changes we are proposing to make and summarises the new draft guidance documents which have been produced to explain our proposed approach to the regulation of non-professional conduct and conduct on social media. It includes the questions we are proposing to ask the profession and wider public. The draft consultation paper is attached at Annex A.

b. Draft guidance on the regulation of non-professional conduct

This is a new guidance document that we have prepared that sets out our proposed approach to regulating non-professional conduct (along with supporting case studies). The draft guidance is attached at Annex B and will be included in the public consultation. Once approved, the guidance will be published on our website alongside other Code guidance (including the social media guidance – see below).

The guidance contains a number of questions that we have developed that will be used by BSB staff in regulatory decision-making roles when considering whether, in principle, we have a regulatory interest in non-professional conduct that is reported to us. It is hoped that the guidance, and the questions we have developed, will also give the profession and wider public a clearer sense of the circumstances in which we are likely to have a regulatory interest in non-professional conduct.

c. Proposed amendments to non-mandatory guidance in the BSB Handbook

To give effect to the proposed approach to determining whether the BSB has an in-principle regulatory interest in non-professional conduct, we are recommending a number of drafting changes to the non-mandatory guidance in the BSB Handbook. These suggestions are marked in track changes at **Annex C**.

d. A redrafted social media guidance

We are recommending a significant redraft of the [current Social Media Guidance](#), following concerns that the current guidance may not strike the right balance between regulatory intervention in relation to social media use and freedom of expression (as protected by Article 10 of the Human Rights Act 1998). The redrafted version is attached at **Annex D**.

The amended Social Media Guidance:

- i. gives greater recognition to a barrister's right to freedom of expression whilst clarifying that the BSB can, in appropriate circumstances, nevertheless interfere with this right when balancing it against the rights of others, including the impact of conduct on confidence in the profession;
- ii. identifies what the BSB will consider when determining whether conduct on social media might amount to a potential breach of the BSB Handbook; and
- iii. provides a non-exhaustive list of the types of conduct that we may regard as a potential breach (along with supporting case studies).

e. Interim social media guidance

To address concerns that have been raised about the current version of the Social Media Guidance (e.g. by the Stakeholder Reference Group², which was consulted as part of the project, and recent decisions from BTAS), we plan to publish an amended version of the Social Media Guidance on an interim basis pending the conclusion of the proposed consultation and this project. The proposed interim Social Media Guidance is attached at **Annex E**.

7. We recognise that we are inviting the Board to consider and approve a large suite of documents that form part of this proposed consultation. We considered carefully whether it was necessary to bring all these documents to the Board and took the view that it was, given that we anticipate a significant public interest in the subject of this consultation. The extent to which regulators can legitimately intervene in matters that arise in a professional's private or personal life is increasingly the focus of fierce debate and has led to a number of high-profile cases in recent years, most notably the judgment of the Divisional Court in Ryan Beckwith v Solicitors Regulation Authority [2020] EWHC 3231 (Admin).
8. To ensure we test our proposals robustly, it is recommended that we carry out a public consultation and include with it our draft guidance on regulating non-professional conduct, the amended Social Media Guidance, and the amendments to the BSB Handbook guidance for comment.
9. A stakeholder reference group (consisting of external experts and BSB Board members) was consulted throughout the drafting process and assisted with the development of these documents, both to ensure they strike a proportionate balance between our regulatory interest and a barrister's human rights, and provide clarity for stakeholders about our approach.
10. **The Board is asked to approve:**
 - a. **A three-month public consultation on our proposed approach to the regulation of non-professional conduct as reflected in the draft documents enclosed; and**
 - b. **The immediate publication of the interim Social Media Guidance (Annex E) pending the outcome of the public consultation and the conclusion of this project.**

Resource implications / Impacts on other teams / departments or projects

11. There are limited resource implications for the remainder of this project and any resource implications are in line with the current budget and business plan.

² The Stakeholder Reference Group had X members: two barrister Board members, a senior solicitor specialising in regulator law, two barristers

Equality and Diversity

12. An equality impact assessment of the current approach to regulating non-professional conduct has been undertaken and the outcomes are summarised in the draft consultation paper. We are of the view that the equality impact of the Project's output is likely to be the same as that of the current approach, as no substantive changes are being made, and therefore a full forward-facing EIA of our proposed changes is unnecessary. This is because:
 - a. the BSB Handbook will continue to apply to barristers in the way it currently does and any changes to the non-mandatory guidance are by way of clarification rather than a substantive alteration of our approach;
 - b. the amended Social Media Guidance aims to strike an appropriate balance with barristers' Article 10 rights and brings the guidance in line with existing standards as set out in the BSB Handbook guidance; and
 - c. the new guidance on the regulation of non-professional conduct clarifies and codifies the existing approach.
13. We also attach by way of background reading a copy of the Equality Impact Assessment which has been undertaken for this project. At the time of writing, the EIA is to be tested with the Religion and Belief Taskforce on 11 July 2022 and the Race Equality Taskforce on 20 July 2022. We will analyse their feedback as part of the consultation responses.

Risk implications

14. If we do not publish the consultation and make amendments to our regulatory approach, there is a risk that the BSB's regulation does not keep up to date with regulatory good practice. Further, the matters engaged are important matters of public interest and it is right to gather the views of stakeholders before adopting a position.
15. Additionally, the lack of clear guidance on when the BSB has an in-principle regulatory interest in non-professional conduct could lead to enforcement action being taken where it is not appropriate, or action being taken which is subsequently dismissed by the Disciplinary Tribunal due to a lack of clarity about when regulatory intervention is appropriate. This could negatively affect the BSB's reputation and the trust and confidence which the public places in the profession.

Regulatory objectives

16. Our regulation of non-professional conduct particularly impacts on the following regulatory objectives (as defined in the Legal Services Act 2007):
 - a. **Protecting and promoting the public interest:** We believe it is in the public interest to ensure that barristers' conduct, whenever it occurs, does not diminish public trust and confidence in individual barristers or the profession as a whole. Our work on this project ensures our regulation remains fit for purpose in protecting the public. It is also in the public interest more generally that regulators balance the rights of different parties when weighing whether to take regulatory action.

- b. **Improving access to justice:** Barristers are central to the effective operation of the legal system. Misconduct by barristers in their non-professional life can negatively impact the public's willingness to engage with the profession and thereby affect access to justice. It may also call into questions a barrister's suitability to act in certain cases.
- c. **Protecting and promoting the interest of consumers:** Having a clear approach to the regulation of non-professional conduct should contribute to a greater understanding by the public and consumers of what behaviours can be expected of barristers (and what may be reported to the BSB if those expectations are not met.) Taking regulatory action in the right cases will promote public confidence and protect the interests of consumers by addressing conduct which is of regulatory concern and acting as a deterrent to others.
- d. **Encouraging an independent, strong, diverse and effective legal profession:** It is important that barristers' personal rights are taken into account in the exercise of regulatory functions. Taking regulatory action in relation to conduct in a barrister's non-professional life may lead to a stronger and more effective and independent profession by stopping behaviour that might affect confidence in barristers. If non-professional conduct were discriminatory, such action by the BSB may have a positive impact on diversity of the profession by assisting with ensuring that the Bar is a safe place for all people to work.
- e. **Promoting and maintaining adherence to the professional principles:** Our approach to the regulation of non-professional conduct will ensure adherence to the BSB Handbook, including the professional principle to act with independence and integrity, by clarifying the types of conduct which we consider are unacceptable when a barrister is not providing legal services and taking regulatory action when appropriate.

Communications and Stakeholder Engagement

- 17. A communications and engagement plan has been drafted for the consultation to ensure we seek views from a diverse range of stakeholders. This includes ongoing awareness via the regulatory update and social media, an interview with the Director General in the national media, a seminar and direct engagement with relevant stakeholders.

Annexes

Annex A – Draft consultation

Annex B - Guidance on our approach to regulating non-professional conduct

Annex C – Changes to the guidance provisions in the Handbook

Annex D – Redrafted Social Media Guidance

Annex E – Minor amendments to the current Social Media Guidance

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Consultation on the regulation of non-professional conduct

July 2022

About the BSB

1. The Bar Standards Board (“**BSB**”) is the regulator of barristers and other specialised legal services businesses in England and Wales. The BSB is responsible for:
 - Setting the education and training requirements for becoming a barrister;
 - Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
 - Setting standards of conduct for barristers;
 - Authorising organisations that focus on advocacy, litigation, and specialist legal advice;
 - Monitoring the service provided by barristers and the organisations we authorise to assure quality;
 - Handling reports against barristers and the organisations we authorise and taking disciplinary or other action where appropriate.
2. The BSB Handbook serves as the key regulatory tool through which we can ensure the effective administration of justice. It sets standards for those we regulate. In doing so, we seek to promote the regulatory objectives set out in s1 Legal Services Act 2007, which are:
 - Protecting and promoting the public interest;
 - Supporting the constitutional principle of the rule of law;
 - Improving access to justice;
 - Protecting and promoting the interests of consumers;
 - Promoting competition in the provision of services;
 - Encouraging an independent, strong, diverse and effective legal profession;
 - Increasing public understanding of citizens' legal rights and duties; and
 - Promoting and maintaining adherence to the *professional principles*.
3. The *professional principles* are that:
 - a. Authorised persons should act with independence and integrity;
 - b. Authorised persons should maintain proper standards of work;
 - c. Authorised persons should act in the best interests of their clients;
 - d. Persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and
 - e. The affairs of clients should be kept confidential.
4. The BSB is required to be a risk-based, transparent and proportionate regulator, targeting our work at the areas of most need in relation to our regulatory objectives.

About this consultation

5. The purpose of this consultation is to clarify where we think the boundaries lie in the regulation of conduct that occurs in a barrister's private/personal life (which we refer to as "non-professional life" or "non-professional conduct")¹.
6. We recognise that our existing (non-mandatory) guidance may not always reflect the circumstances in which the BSB will have a regulatory interest² in conduct that occurs outside professional practice or the circumstances where it is accepted in case law that it might be legitimate for regulators to intervene in relation to conduct in non-professional life. This is an important matter, which balances barristers' human rights against the public interest in preserving public confidence in the profession and individual barristers.
7. To provide clarity about when we may have a regulatory interest in non-professional conduct, we have drafted a new guidance document on our proposed approach to the regulation of non-professional conduct and we have developed a number of proposed changes to some of our non-mandatory guidance in the BSB Handbook and our Social Media Guidance.
8. Set out below is: our understanding of the current legal position in relation to the regulation of non-professional conduct; the details of our proposed changes; and a number of questions on which we welcome stakeholder views.
9. This consultation is open for comment from [DATE] until [DATE]. Following the closure of the consultation, we will collate and analyse the responses before we seek our Board's approval on the final drafts of the guidance documents and any drafting changes to the BSB Handbook.

Context: the legal position

10. Barristers are central to the effective operation of the legal system, and it is important that our regulation serves to maintain public trust and confidence in them as individual practitioners and the wider profession. While barristers cannot be held to unreasonably high standards and are not to be viewed as "paragons of virtue"³, barristers are nevertheless held to a higher standard of conduct than ordinary members of the public. This is because of the important and highly respected role they play in ensuring access to, and the administration of, justice.
11. Members of the public must feel able to access an independent, strong, diverse, and effective profession. This means we have an important role in ensuring that any member of the profession, whether practising or unregistered, acts in a way that maintains public trust and confidence in the profession and in doing so that we protect and promote the public interest and the interests of consumers, as well as improving access to justice.

¹ We refer to "*non-professional conduct*" or "*non-professional life*" because we recognise that we have no interest in matters that arise in a barrister's private or personal life which have no bearing on them as barristers or the wider profession.

² By "regulatory interest" we mean the circumstances in which we, as a regulator of the profession, may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is apt for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.

³ *Wingate and Evans v SRA; SRA v Malins* [2018] EWCA Civ 366

12. Although our key role is the regulation of barristers' conduct in the course of their professional activities, the BSB Handbook also sets standards of conduct which apply to barristers **at all times**.
13. The courts have long recognised that conduct occurring outside an individual's professional practice may justify interference by their regulatory body, whether that is because the conduct affects the individual in a professional context or the wider standing of the profession⁴.
14. More recently, the principle was restated by the Divisional Court in Ryan Beckwith v Solicitors Regulation Authority [2020] EWHC 3231 (Admin), where the President of the Queen's Bench Division and Mr Justice Swift observed, in relation to the SRA Handbook, that:

*There can be no hard and fast rule either that regulation under the Handbook may never be directed to the regulated person's private life, or that any/every aspect of her private life is liable to scrutiny. But Principle 2 or Principle 6 may reach into private life only when conduct that is part of a person's private life realistically touches on her practise of the profession (Principle 2) or the standing of the profession (Principle 6). Any such conduct must be qualitatively relevant. It must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the Handbook.*⁵

15. We recognise that in cases involving conduct that occurs outside of practice in particular, the right balance needs to be struck between the public interest in preserving public confidence in individual barristers and the wider profession and a barrister's rights which are guaranteed under the Human Rights Act 1998 and the European Convention on Human Rights ("**ECHR**"). Our regulation of a barrister's non-professional conduct is likely to engage Article 8 (the right to private life) and, in some cases, Article 10 (the right to freedom of expression).
16. The BSB as a public authority must act compatibly with the rights that are protected under the ECHR and the Human Rights Act 1998. However, some of those rights (including Article 8 and Article 10) are qualified rights, which means that they may lawfully be interfered with where such interference can be justified and is proportionate. This requires a careful balancing exercise, for example between the rights of the individual barrister and the rights of others (such as the rights and reputation of other members of the profession or consumers of barristers' services). This is an exercise that must be conducted on a case-by-case basis according to the particular facts. However, we have recognised the importance of balancing those rights in our draft guidance on the regulation of non-professional conduct and our redrafted Social Media Guidance.
17. We note that the Government introduced a draft UK Bill of Rights before Parliament on 22 June 2022 which is intended to reform the UK's approach to human rights. We will maintain a watching brief as this develops over the next parliamentary year and will consider the extent to which a new Bill of Rights may affect the BSB's regulation of conduct which engages the rights which are protected under the ECHR.

⁴ See, for example, Marten v Royal College of Veterinary Surgeons Disciplinary Committee [1966] 1 QB 1; Meadow v General Medical Council [2006] EWCA Civ 1390; R (on the application of Remedy UK Ltd) v General Medical Council [2010] EWHC 1245 (Admin); R (on the application of Pitt v General Pharmaceutical Council [2017] EWHC 809 (Admin).

⁵ At paragraph [54].

Our current arrangements

What does the current Handbook guidance say?

18. Part 2 of the BSB Handbook contains the Code of Conduct which includes ten Core Duties which underpin our entire regulatory framework, as well as rules that supplement those Core Duties. Compliance with both the Core Duties and rules is mandatory, but the Core Duties and Rules are also supported by guidance which serves a number of purposes, including to assist in the interpretation and application of the Core Duties and Rules to which the guidance relates. Although many of the Core Duties and Conduct Rules in the BSB Handbook only apply when a barrister is practising⁶ or otherwise providing legal services, certain Core Duties and Conduct Rules apply to barristers **at all times**, such as Core Duty 5 and Rule C8.
19. The implication of this is that, for the most part, conduct that occurs in a barrister's non-professional life will be governed by the provisions that apply at all times⁷. Non-mandatory guidance on the application of these provisions is also included in the BSB Handbook at Guidance C16, Guidance C25, Guidance C26, Guidance C27 and Guidance C28. These have been set out below:

Handbook provisions	Wording of the BSB Handbook provisions relating to non-professional conduct
Core Duty 5	You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession
Rule C8	You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).
gC16	Rule C8 addresses how your conduct is perceived by the public. Conduct on your part which the public may reasonably perceive as undermining your honesty, integrity or independence is likely to diminish the trust and confidence which the public places in you or in the profession, in breach of CD5. Rule C9 is not exhaustive of the ways in which CD5 may be breached.
gC25	A breach of Rule rC9 may also constitute a breach of CD3 and/or CD5. Other conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to): .1 subject to Guidance C27 below, breaches of Rule rC8; .2 breaches of Rule rC10; .3 criminal conduct, other than minor criminal offences (see Guidance C27); .4 seriously offensive or discreditable conduct towards third parties; .5 dishonesty; .6 unlawful victimisation or harassment; or .7 abuse of your professional position
gC26	For the purposes of Guidance gC25.7 above, referring to your status as a barrister, for example on professional notepaper, in a context where it is irrelevant, such as in a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD3 and/or CD5

⁶ See the definition of “practice” at Part 6 of the BSB Handbook.

⁷ This will generally be Core Duty 5 and Rule C8 as the other provisions that apply at all times relate predominantly to a barrister's duty to co-operate with the BSB and other regulators and the duty to provide information or report certain matters to us.

Handbook provisions	Wording of the BSB Handbook provisions relating to non-professional conduct
gC27	Conduct which is not likely to be treated as a breach of Rules rC8 or rC9, or CD3 or CD5, includes (but is not limited to): .1 minor criminal offences; .2 your conduct in your private or personal life, unless this involves: .a abuse of your professional position; or .b committing a criminal offence, other than a minor criminal offence
gC28	For the purpose of Guidance C27 above, minor criminal offences include: .1 an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; or .2 an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; or .3 an offence whose main ingredient is the unlawful parking of a motor vehicle.

20. As can be seen from Guidance C25 and C27, the Code of Conduct takes a firm stance that any criminal conduct (other than a minor criminal offence⁸) is likely to be regarded as a breach of the BSB Handbook. We believe this remains appropriate for the reasons set out at paragraphs 28 to 31 below.
21. However, for other (non-criminal) conduct, the current emphasis at Guidance C27 is that the BSB is unlikely to treat conduct in a barrister's private or personal life as a breach of the BSB Handbook unless it involves an abuse of professional position. We consider this is too narrow and have summarised our proposed approach at paragraphs 31 to 35 and paragraphs 40 to 43 below.

What does the current Social Media Guidance say?

22. Alongside the BSB Handbook, the BSB has also published Social Media Guidance which is intended to help barristers to understand their duties under the BSB Handbook as they apply to the use of social media. It specifically references Core Duty 5 and Core Duty 3 (to act with honesty, and with integrity) and Core Duty 8 (not to discriminate unlawfully against any person) and applies to barristers both in their professional and personal capacity.

Why do we need to amend the current BSB Handbook and Social Media Guidance?

BSB Handbook

23. The current non-mandatory guidance in the BSB Handbook suggests that we are unlikely to treat conduct in a barrister's private or personal life as a breach of the BSB Handbook unless it involves an abuse of professional position (or involves criminal conduct that is more than a minor criminal offence). We consider the guidance is too narrow and does not reflect modern society and the broad types of conduct that can occur in a barrister's non-professional life that might realistically affect the individual

⁸ Minor criminal offence includes:

a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;

b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence;

c) an offence whose main ingredient is the unlawful parking of a motor vehicle

in a professional context or the wider standing of the profession, such as cases involving sexual harassment outside of the workplace or discrimination.

24. Further, although the current guidance is just that and is not a ‘hard-edged’ rule⁹, in practice we may take regulatory action in other areas of barristers’ private/personal lives, including cases involving social media, harassment, acts of discrimination outside a work context, and when barristers pursue vexatious litigation or fail to comply with court orders in their private life. We therefore want to make clearer for the benefit of the profession and the wider public the circumstances in which we are likely to have a regulatory interest in non-professional conduct.

Social Media Guidance

25. We consider that our current Social Media Guidance needs to be amended as it suggests the threshold for regulatory intervention is lower than we consider it ought to be and needs to achieve a more proportionate balance with a barrister’s freedom of expression (as protected by Article 10 of the European Convention of Human Rights and the Human Rights Act 1998).

Our proposals

26. It is our aim, as a transparent and risk-based regulator, to ensure that barristers and the public have a clear understanding of the standards expected of barristers and the circumstances in which we might have a regulatory interest in non-professional conduct.
27. The case law is clear that the closer non-professional conduct is to professional practice, the greater the justification for regulatory interference on the basis that the conduct might reflect on how the individual might behave in a professional context or have an impact on public trust and confidence in the profession.

Criminal conduct

28. We take the view that it is incompatible with the high standards expected of the profession for barristers to engage in criminal conduct¹⁰. This is because we consider it to be important that all barristers, both practising and unregistered, are (and are seen to be) rule-abiding citizens in order to maintain public trust and confidence in them and in the profession.
29. Barristers also have a duty promptly to self-report certain types of criminal conduct to us by virtue of Rule C65.1 and Rule C65.2 of the BSB Handbook. This obligation applies at all times to both practising and unregistered barristers. A failure promptly to self-report is, in itself, a breach of the BSB Handbook which could attract our regulatory interest.
30. We have a regulatory interest in barristers who engage in criminal conduct (again, for offences which are more than a “*minor criminal offence*”) regardless of whether the underlying conduct occurred in a professional or non-professional context.

⁹ *Diggins v Bar Standards Board* [2020] EWHC 467 (Admin) and *AB v Bar Standards Board* [2020] EWHC 3285 (Admin)

¹⁰ By “criminal conduct” we mean conduct that results in a criminal conviction or caution, unless it is for a “minor criminal offence” (see footnote 7), or where a barrister is charged with an indictable offence in England and Wales (or a criminal offence of comparable seriousness in any other jurisdiction).

31. There may be circumstances where barristers engage in conduct which could constitute a criminal offence but, for various reasons, they have not been charged or criminal conduct is not proved. We may nevertheless have a regulatory interest in such conduct, but it will be considered in line with the principles applicable to “other conduct” below.

Other conduct

32. In Ryan Beckwith v Solicitors Regulation Authority [2020] EWHC 3231 (Admin), the Divisional Court considered that for a regulator to intervene in a solicitor’s private or personal life, the underlying conduct must be qualitatively relevant to the practice of the profession or the standing of the profession and it must, in a way that is demonstrably relevant, engage one or other of the standards of behaviour which are set out in or necessarily implicit from the SRA Handbook.
33. In the recent BSB case of AB v Bar Standards Board [2020] EWHC 385 (Admin) Mr Justice Bourne observed (in reference to the current non-mandatory Guidance C25 and C27):
- “It seems to me that, applying the guidance, conduct in a person’s private or personal life is in general not likely to be treated as a breach of CD5 but nevertheless can be so treated for good reason. The reason could be that the conduct, though personal or private, clearly is or is analogous to conduct which contravenes other provisions of the Code.”*
34. In relation to other (non-criminal) conduct, we are likely to have a regulatory interest in conduct that is, or is analogous to, conduct that would contravene other relevant provisions of the BSB Handbook (or standards that are necessarily implicit from it) if it occurred during a barrister’s professional life. This is because such conduct is more likely to have a closer connection to the profession and have a bearing on the public’s trust and confidence in the barrister or the profession.
35. When deciding whether non-professional conduct might have an impact on the public’s trust and confidence in the barrister or the profession, we also consider that the closer the link between the context or environment in which the conduct occurred and that of the profession, the greater the likelihood that we will have a regulatory interest.

How will we determine whether the BSB has a regulatory interest?

36. A new guidance document has been drafted, which sets out our proposed approach to regulating non-professional conduct (attached at Annex [INSERT]).
37. It is intended that this guidance document will be used by staff in regulatory decision-making roles when considering whether, in principle, we have a regulatory interest in non-professional conduct that is reported to us.
38. In order to determine whether we have a regulatory interest in conduct which is reported to us we propose to ask two questions. These are:

Question 1

Has the barrister been:

- a. **Charged with an indictable offence in England and Wales;**
- b. **Charged with a criminal offence of comparable seriousness elsewhere; or**
- c. **Convicted of, or accepted a caution for, any criminal offence other than a *minor criminal offence*¹¹ (subject to the Rehabilitation of Offenders Act 1974 (as amended)).**

39. Question 1 is consistent with a barrister's current duty to self-report certain criminal matters, in line with Rule C65 of the BSB Handbook.
40. If the answer, with respect to any element of the conduct, to the above question is no, then we will go on to ask the second question.

Question 2

Is the conduct:

- a. **conduct which is, or is analogous to, conduct that could breach relevant standards of the BSB Handbook that apply to practising barristers; and**
- b. **sufficiently relevant or connected to the practice or standing of the profession such that it could realistically:**
 - (i) **affect public trust and confidence in the barrister or the profession; or**
 - (ii) **be reasonably seen by the public to undermine the barrister's honesty, integrity and independence****taking into account the context and environment in which it occurred?**

41. Question 2 is intended to capture the principles behind Core Duty 5 and Rule C8, whilst also reflecting the case law which requires there to be a sufficient "nexus" between non-professional conduct and the profession. It is intended that both limbs of this question must be answered in the affirmative for the BSB to have a regulatory interest in non-professional conduct.
42. By setting out more clearly our approach to the regulation of non-professional conduct, supported by case studies, we are hoping that in addition to assisting those in regulatory decision-making roles at the BSB, the guidance will be helpful to the profession and the public in understanding where we are likely to have an interest in non-professional conduct.
43. However, it is important to note that the guidance is aimed at understanding whether we have an in-principle regulatory interest in non-professional conduct. Having an in-principle regulatory interest in conduct does not mean that regulatory action will necessarily follow. As a risk-based and proportionate regulator, we focus our resources on cases that pose the most harm to the regulatory objectives, and reports of potential breaches of the BSB Handbook will remain subject to a risk assessment before a decision is made whether to take further action, and this will include an exercise to consider and balance any relevant human rights that are engaged.

¹¹ As defined in Part 6 of the BSB Handbook.

Question 1: Overall, have we struck the right balance between the public interest in preserving public confidence in the profession and individual barristers and a barrister's rights which are guaranteed under the Human Rights Act 1998 and the European Convention on Human Rights?

Question 2: Do you have any observations on the questions we are proposing to ask when considering whether we have a regulatory interest in non-professional conduct?

Question 3: Are the case studies included in our draft guidance helpful?

Question 4: Do you have any general comments or feedback on our draft guidance on the regulation of non-professional conduct?

Guidance in the BSB Handbook

44. To reflect our proposals above, the suggested re-drafting of the non-mandatory guidance in the BSB Handbook is set out below. The proposed changes to the current drafting are:

Guidance C25

- a. Guidance C25 – ‘breaches of rC9’ has been moved from the introductory paragraph to the list of conduct which is likely to be treated as a breach of Core Duty 3 or Core Duty 5. This does not change the meaning of the provision;
- b. Guidance C25.1 - ‘subject to Guidance C27’ has been removed;
- c. Guidance C25.3 - the language has been amended to reflect the reporting obligations at Rule C65;
- d. Guidance C25.4 – removed ‘or discreditable conduct towards third parties’ and replaced with ‘seriously offensive conduct towards others’;
- e. Guidance C25.6 – now includes a reference to discrimination.

Guidance C26

- a. This drafting has been updated to include a reference to Rule C8 to make it clear that abuse of professional position in a non-professional context could be a breach of the provision.

Guidance C27

- a. Has been redrafted to provide clarity about our approach to dealing with misconduct in a barrister's private life, linking back to the Core Duties and Rules that apply at all times.

Guidance C28

- a. The current wording of Guidance C28 mirrors the definition of a “minor criminal offence” which appears in Part 6 of the BSB Handbook. It has therefore been deleted to avoid repetition. This provision is also no longer necessary, given the changes proposed to Guidance C25 and Guidance C27 which remove any references to a “minor criminal offence”.

Question 5: Do you consider our proposed drafting changes to the non-mandatory guidance provisions in the BSB Handbook assist in clarifying our approach to the regulation of non-professional conduct?

Proposed new drafting

gC25

Conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

1. breaches of rC8;
2. breaches of rC9;
3. breaches of rC10;
4. criminal conduct which you are under a duty to report to the *Bar Standards Board* pursuant to rC65;
5. seriously offensive conduct towards others;
6. dishonesty;
7. unlawful *discrimination, victimisation or harassment*; or
8. abuse of your professional position.

gC26

For the purposes of gC25.8 above, referring to your status as a barrister in a context where it is irrelevant but may influence others may constitute abuse of your professional position and thus involve a breach of CD3, CD5 and/or rC8. An example of this might be using professional notepaper in a private dispute.

gC27

The application provisions at Section A of Part 2 of this *Handbook* (the Code of Conduct) set out which Core Duties and rules apply to you and when they apply. Certain Core Duties and rules (such as CD5 and rC8) apply to you at all times and may therefore also be relevant to conduct which occurs in your private or personal life.

To assist in considering whether conduct which occurs in your private or personal life is likely to be treated as a breach of CD5 and/or rC8, the BSB considers that the factors set out in the Guidance on the Regulation of Non-Professional Conduct are likely to be relevant.

gC28 (remove)

Question 6: Do you have any general comments or feedback on any of the proposed drafting changes to the non-mandatory guidance?

Social media

45. We are proposing a significant redraft to the [current version of the Social Media Guidance](#) following concerns that the current guidance does not strike the right balance between regulatory intervention in relation to social media use and freedom of expression (as protected by Article 10 of the Human Rights Act 1998). The guidance applies in relation to both professional and non-professional conduct, but recognises that it is not always easy to say whether the nature of a communication on social media is truly private.
46. If social media are used in a purely non-professional context, we also propose to consider the matters set out in our new draft '*Guidance on the Regulation of Non-Professional Conduct*' (referred to above) when considering whether we have a regulatory interest in the conduct.
47. The new draft guidance is attached at Annex **[INSERT]** and we welcome views.
48. In general terms, any conduct on social media which might be said to be inconsistent with the standards expected of barristers may amount to a breach of the BSB Handbook. For example, conduct on social media may demonstrate a lack of integrity, it may breach client confidentiality, or it may be conduct which is likely to diminish the trust and confidence which the public places in the barrister or in the wider profession.
49. The inherently public nature of the Internet means that anything which a barrister posts online could theoretically be at risk of being read by anyone and could be linked back to their status as a barrister, regardless of whether they identify themselves on social media as a barrister. This degree of exposure can have an impact on the extent to which public confidence in the barrister or the profession is likely to be diminished by a barrister's use of social media.
50. Given the potentially wide scope of conduct that might engage relevant provisions of the BSB Handbook, it is not possible to provide an exhaustive list of the types of conduct that might amount to a potential breach.
51. In redrafting the guidance, we have:
 - a. given greater recognition to a barrister's right to freedom of expression, and clarified that the BSB can, in appropriate circumstances, nevertheless interfere with this when balancing it against the rights of others, including confidence in the profession;
 - b. identified what the BSB will consider when determining whether conduct on social media might amount to a potential breach of the BSB Handbook; and
 - c. provided a non-exhaustive list of the types of conduct that we may regard as a potential breach (along with supporting case studies).

52. The previous version of the Social Media Guidance (October 2019) suggested that comments that were considered distasteful or “offensive” by others may be a breach of the BSB Handbook. We have given careful thought to the language used in the previous guidance and considered the appropriate threshold for regulatory interference in cases that involve conduct that might be said to be offensive. This is an issue that regularly arises in the context of reports about a barrister’s use of social media.
53. Guidance C25.4 of the BSB Handbook states that conduct which may amount to a breach of BSB Handbook includes conduct which is “seriously offensive”. This is consistent with the approach of many other regulators and we think it sets the bar at a threshold that is appropriate, bearing in mind the need to strike the right balance between an individual barrister’s rights and the rights of others, including the public interest in preserving public confidence in the profession and individual barristers. In amending the Social Media Guidance we have ensured it is consistent with the standards set out in the BSB Handbook.

Question 7: Do you have any feedback or comments on the new Social Media Guidance?

Question 8: Are the case studies in our draft Social Media Guidance helpful?

54. As the new Social Media Guidance will not be published until after the consultation has concluded and any necessary amendments are made, we have made a number of interim changes to the current Social Media Guidance, with immediate effect, to address the primary concerns with the current guidance. Our new, interim Social Media Guidance can be viewed on the BSB website here.

Equality impacts

55. We have conducted an Equality Impact Assessment (EIA) of the BSB’s current approach to regulating conduct in non-professional life. As part of this assessment, we have considered:
- a. existing research published by the BSB;
 - b. the demographics, by protected characteristic, of the registered and unregistered barrister populations; and
 - c. internal data for different stages of the BSB’s regulatory process – report, investigation, and referral for disciplinary action – for non-professional conduct by registered barristers for the period of 15 October 2019 and 1 January 2022.¹² Although we have a breakdown of the frequency with which unregistered barristers appear in these internal data, we are unable to use it to assess the equality impact of the BSB’s current approach to regulating non-professional conduct on unregistered barristers because there is a significant “no response” rate for unregistered barristers declaring their protected characteristics.

¹² When the BSB introduced its updated enforcement regime on 15 October 2019, one of the relevant changes (for the purpose of the EIA) was the introduction of a “Setting/Context” data field on the case management system, where BSB staff could explicitly record that a report being assessed concerned non-professional conduct. All cases opened before 1 January 2022 which have the “Setting/Context” marked as ‘Non-Professional’ have been included in this EIA data analysis.

56. Our EIA has suggested that, on the whole, there are limited equality impacts arising from our current approach to the regulation of non-professional conduct. However, the EIA reveals that registered barristers with the following protected characteristics appear to be disproportionately overrepresented in the internal data compared to the proportion of the registered barrister population they make up:
- at the **Investigations** stage, those who are aged 45-54 or are male; and
 - at the **Investigations referred for disciplinary action** stage, those who identify as having an “Other”¹³ religion/belief or are male.
57. It is important to recognise that the internal data pool is very small, so no reliable conclusions can be drawn. Further, there is no data-based evidence to explain why barristers in these groups may be overrepresented in the internal data. It is difficult for the BSB to identify or propose any measures to mitigate these potential negative impacts without any concrete evidence.
58. Although these observations suggest there could be a potential negative impact of the BSB’s current approach to the regulation of non-professional conduct on registered barristers in the abovementioned groups, it is not necessarily the approach itself (as it is applied equally to all barristers), but the barristers’ conduct and other external factors outside the BSB’s control that may impact the frequency at which these barristers appear in the internal data. The BSB’s enforcement process is entirely reactive to barristers’ conduct that is brought to our attention which may be a breach of the BSB Handbook. While there is a wider question about whether certain groups are overrepresented in our enforcement processes, that is a broader issue that we will consider and deal with separately.
59. The EIA can be read in full at Annex **[INSERT]** and we welcome views.

Question 9: Are there any other potential equality impacts that you think we should be aware of?

How to respond to this consultation

60. The deadline for this consultation is **[DATE]**. You do not need to wait until the deadline to respond to this consultation. Responses should be submitted to **[E-MAIL ADDRESS]**.
61. 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 let us know if there is anything else we can do to facilitate feedback other than via written responses.
62. Whatever response your form 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.

¹³ The other options that were available to barristers were: Buddhist, Christian, Hindu, Jewish, Muslim, Sikh, No religion, No Information or Prefer not to Say.

Our consultation questions

Question 1: Overall, have we struck the right balance between the public interest in preserving public confidence in the profession and individual barristers and a barrister's rights which are guaranteed under the Human Rights Act 1998 and the European Convention on Human Rights?

Question 2: Do you have any observations on the questions we are proposing to ask when considering whether we have a regulatory interest in non-professional conduct?

Question 3: Are the case studies included in our draft guidance helpful?

Question 4: Do you have any general comments or feedback on our draft guidance on the regulation of non-professional conduct?

Question 5: Do you consider our proposed drafting changes to the non-mandatory guidance provisions in the BSB Handbook assist in clarifying our approach to the regulation of non-professional conduct?

Question 6: Do you have any general comments or feedback on any of the proposed drafting changes to the non-mandatory guidance?

Question 7: Do you have any feedback or comments on the new Social Media Guidance?

Question 8: Are the case studies in our draft Social Media Guidance helpful?

Question 9: Are there any other potential equality impacts that you think we should be aware of?

Next steps

63. Once the consultation closes, we will collate and analyse the responses before we seek the final approval of our Board to our proposed guidance and drafting changes to the BSB Handbook.

Guidance on the regulation of non-professional conduct¹

Introduction

1. The Bar Standards Board (“BSB”) is the regulator of barristers and other specialised legal services businesses, and their employees and managers, in England and Wales. While this guidance applies to all individuals that we regulate, for ease we refer to “barristers” throughout this guidance.
2. The BSB Handbook serves as the key regulatory tool for setting standards for those we regulate. In doing so, we seek to promote the regulatory objectives set out in s1 Legal Services Act 2007. These include:
 - protecting and promoting the public interest;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - encouraging an independent, strong, diverse and effective legal profession; and
 - promoting and maintaining adherence to the professional principles (in particular, the requirement to act with integrity).²
3. Although our key role is the regulation of barristers’ conduct in the course of their professional activities, the BSB Handbook also sets standards of conduct which apply to barristers at all times (see below). This is because conduct by barristers outside their professional activities can impact on public confidence in them or the profession and can be contrary to the regulatory objectives.
4. This guidance is designed to clarify where we think the boundaries lie in the regulation of conduct that occurs in a barrister’s private/personal life and gives guidance on the circumstances in which we are likely, in principle, to have a regulatory interest in such conduct. By “regulatory interest” we mean the circumstances in which we, as a regulator of the profession, may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is apt for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.
5. Having an in principle regulatory interest in conduct does not mean that regulatory action will necessarily follow, and as a risk-based and proportionate regulator, we focus our resources on cases that pose the most harm to the regulatory objectives. In all cases, the BSB will be guided by the statutory regulatory objectives and relevant case law.

Human Rights Act 1988

6. We recognise that our regulation of the profession needs to strike the right balance between the public interest in preserving public confidence in the profession and individual barristers and a barrister’s rights which are guaranteed under the Human Rights Act 1998 and the European Convention on Human Rights.

¹ We refer to “*non-professional conduct*” or “*non-professional life*” because we recognise that we have no interest in matters that arise in a barrister’s private or personal life which have no bearing on them as barristers or the wider profession.

² The BSB has a duty under s28 Legal Services Act 2007 to act, so far as is reasonably practicable, in a way which is compatible with, and that is appropriate to meet, the regulatory objectives.

Part 1 – Public

7. Our regulation of non-professional conduct is likely to engage a barrister's rights under Article 8 of the European Convention on Human Rights (the right to respect for private life).
8. In some cases, Article 10 (the right to freedom of expression) may also be engaged where reported conduct involves the barrister exercising their right to express themselves, e.g. by expressing their views on social media (although Article 10 may be engaged in relation to conduct in professional life as well).
9. Article 8 and Article 10 are both qualified rights which means we may interfere with those rights in circumstances where a barrister's conduct is potentially in breach of the standards set out in the BSB Handbook, and our interference can be justified and is proportionate.
10. For example, Article 10 may protect a barrister's right to hold and express an opinion on social media, but the manner in which it is expressed could be a potential breach of the BSB Handbook and therefore we may have a regulatory interest in it.
11. In deciding whether we have a regulatory interest in a matter (and, if so, what, if any, action should be taken) we will undertake a careful balancing exercise on a case-by-case basis to determine whether any proposed interference with a barrister's rights can be justified, and any further action is proportionate.

General Principles

12. Barristers are central to the effective operation of the legal system, and it is important that our regulation serves to maintain public trust and confidence in them as individual practitioners, and in the profession as a whole.
13. While barristers cannot be held to unreasonably high standards and are not to be viewed as "paragons of virtue", barristers are nevertheless held to a higher standard of conduct than ordinary members of the public.
14. Members of the public must feel able to access an independent, strong, diverse, and effective profession. This means we have an important role in ensuring that any member of the profession, whether practising or unregistered, acts in a way that maintains public trust and confidence in the profession.
15. When a barrister's behaviour in their non-professional life is incompatible with the high standards the public expects of them, we may take regulatory action in the public interest. This approach has long been recognised by the courts³.
16. The closer non-professional conduct is to professional practice, the greater the justification for regulatory interference on the basis that the conduct might reflect on how the individual could behave in a professional context and/or have an impact on public trust and confidence in the profession.
17. We are unlikely to have a regulatory interest where we receive information about conduct in a barrister's private or personal life which has little or no impact on their professional practice, or on public trust and confidence in the profession.

³ See, for example, *R (on the application of Remedy UK Ltd) v General Medical Council* [2010] EWHC 1245 (Admin), *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin) and *Ryan Beckwith v Solicitors Regulation Authority* [2020] EWHC 3231 (Admin); *AB v Bar Standards Board* [2020] EWHC 3285 (Admin)

Our regulation of non-professional conduct

18. The Code of Conduct for barristers is contained in Part 2 of the BSB Handbook. The Code of Conduct sets out the standards expected of barristers and includes ten mandatory “Core Duties”, supplemented by a range of mandatory “rules” and non-mandatory guidance and outcomes. Most of the Core Duties and rules only apply when a barrister is “*practising*”⁴ or “otherwise providing *legal services*”⁵.
19. The term “*practising*” is broadly defined in the BSB Handbook. It includes all activities, including the business-related activities, of a practising barrister. This means that chambers-related events, for example, are likely to be treated as being part of a barrister’s professional life⁶, so their conduct during such events engages all the Core Duties and rules that apply to practising barristers.
20. If an unregistered barrister practises as a barrister in accordance with rS9 of Part 3 of the BSB Handbook (the Scope of Practice Rules) (i.e. if they supply, or offer to supply, legal services and hold themselves out as a barrister) then the duties and rules which apply to practising barristers also apply to them. Unregistered barristers should read our ‘[Unregistered Barristers Guidance](#)’ for more information.
21. This guidance on the regulation of non-professional conduct covers the circumstances in which a barrister is not practising (in the broad sense set out above) or otherwise providing legal services. This might include, for example, a barrister’s use of social media when it is unrelated to their work, or their conduct during personal litigation. Barristers should also read our ‘*Social Media Guidance*’ for more information about how we will consider conduct that has occurred on social media (both in a professional and non-professional context).
22. Of the Core Duties and mandatory rules that apply to barristers (including unregistered barristers) **at all times**, the following are most likely to be relevant to non-professional conduct:

Core Duty 5 (CD5)

You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.

Rule C8 (rC8)

You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).

23. We will therefore have a regulatory interest in conduct which occurs in a non-professional context which:
 - a. is likely to diminish the trust and confidence which the public places in the barrister or in the profession; and/or
 - b. could reasonably be seen by the public to undermine the barrister’s honesty, integrity, and independence.

⁴ The rules governing when a barrister (including an unregistered barrister) is deemed to be ‘practising’ as such can be found at rS9 and rS10 of the Scope of Practice Rules at Part 3 of the BSB Handbook.

⁵ See the “application” provisions at Section A of the Code of Conduct. The definition of ‘legal services’ is in Part 6 of the BSB Handbook.

⁶ See *Howd v Bar Standards Board* [2017] EWHC 210 (Admin)

Determining whether we have a regulatory interest

24. It is our aim, as a transparent and risk-based regulator, to ensure that barristers and the public have a clear understanding of the standards expected of barristers and the circumstances in which we might have a regulatory interest in non-professional conduct.
25. When considering whether, in principle, we have a regulatory interest in non-professional conduct which is reported to us, the first question we will ask is:

Question 1**Has the barrister been:**

- a. **Charged with an indictable offence in England and Wales;**
- b. **Charged with a criminal offence of comparable seriousness elsewhere; or**
- c. **Convicted of, or accepted a caution for, any criminal offence other than a minor criminal offence⁷ (subject to the Rehabilitation of Offenders Act 1974 (as amended)).**

Criminal conduct

26. A barrister could be the subject of criminal charges and ultimately a criminal conviction (or caution). Such charges, cautions or convictions are more likely to arise from their non-professional life (e.g. a conviction for drink driving or harassment in a domestic context), but they could be associated with their professional life (e.g. convictions for a failure to pay tax or VAT in relation to their practice).
27. It is not our role to determine whether a barrister has committed a criminal offence; this is the responsibility of the criminal justice system. However, we take the view that it is incompatible with the high standards expected of the profession for barristers to engage in criminal conduct. This is because we consider it to be important that all barristers, both practising and unregistered, are (and are seen to be) rule-abiding citizens in order to maintain public trust and confidence in them and in the profession.
28. Barristers have a duty to report promptly certain types of criminal conduct to us by virtue of rC65.1 and rC65.2 of the BSB Handbook. This obligation applies at all times to both practising and unregistered barristers. A failure to report promptly is, in itself, a breach of the BSB Handbook that could attract enforcement action.
29. Consistent with this duty to self-report, we have a regulatory interest in criminal conduct where a barrister has been:
 - a. **Charged with an indictable offence in England and Wales;**
 - b. **Charged with a criminal offence of comparable seriousness elsewhere; or**
 - c. **Convicted of, or accepted a caution for, any criminal offence other than a *minor criminal offence* (subject to the Rehabilitation of Offenders Act 1974 (as amended)).**

⁷ Minor criminal offence is defined at Part 6 of the BSB Handbook and includes:

a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;

b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence;

c) an offence whose main ingredient is the unlawful parking of a motor vehicle

Case Study 1

The BSB receives a report from a barrister who has been given a fixed-penalty notice for failing to wear a seatbelt while driving.

As this is a fixed-penalty offence under the Road Traffic Offenders Act 1988 and therefore a “*minor criminal offence*” (as defined in the BSB Handbook) it is unlikely that we would have a regulatory interest in this conduct.

30. However, the fact that we may have a regulatory interest in a charge for an indictable offence does not mean we will necessarily take regulatory action prior to a conviction. What action we do take will depend on all the circumstances of the case, including the nature of the alleged offence, the barrister’s area of practice, and the risk posed.

Case Study 2

The BSB receives a report that a barrister was charged with causing death by dangerous driving while on a family holiday in Scotland. The barrister did not promptly self-report this incident under rC65 of the BSB Handbook.

As the barrister has been charged with a criminal offence of comparable seriousness to an indictable offence in England and Wales, we will have a regulatory interest in this conduct.

We may also consider taking regulatory action for the barrister’s failure to self-report promptly under rC65 of the BSB Handbook.

As the barrister has only been charged and not yet convicted, it is likely that we would put any assessment of potential breaches on hold pending the conclusion of the underlying criminal proceedings, in particular as the outcome may be an acquittal. If the charge gave rise to particular concerns about the barrister’s risk to the public, we may consider in parallel pursuing an interim suspension.

However, in the event that the barrister is ultimately convicted of an indictable offence we would assess the conduct on the basis of a potential breach which would likely result in referral for enforcement action given the conviction for a serious criminal offence.

31. There may be circumstances where barristers engage in conduct which could constitute a criminal offence but, for various reasons, they have not been charged or criminal conduct is not proved. We may nevertheless have a regulatory interest in such conduct but it will be considered in line with the principles applicable to “other conduct” below.

Other conduct

32. If the conduct reported to us does not fall within the scope of the principles relating to criminal conduct above, then when considering whether we have a regulatory interest in relation to any other conduct we will ask:

Is the conduct:

- a) conduct which is, or is analogous to, conduct that could breach relevant standards of the BSB Handbook that apply to practising barristers; and
- b) sufficiently relevant or connected to the practice or standing of the profession such that it could realistically:
 - i. affect public trust and confidence in the barrister or the profession; or
 - ii. be reasonably seen by the public to undermine the barrister's honesty, integrity and independence

taking into account the context and environment in which it occurred?

33. Both limbs of this question must be answered in the affirmative for us to have a regulatory interest in the conduct. This is a question that requires careful assessment according to the particular facts and circumstances of each case. It is not possible to set a firm line between the types of conduct in which we will or will not have a regulatory interest.

Case Study 3

The BSB receives a report from a bank about a barrister's failure to make repayments on a personal loan.

We do not consider it is appropriate for a regulator to get involved in private financial matters when there are better routes available to try to resolve the dispute (e.g. court action) and there is little demonstrable relevance between the reported conduct and the practice or standing of the profession. Therefore, we are unlikely to have a regulatory interest in this conduct and it would be more appropriate for the parties to explore other avenues (such as private law action) to resolve their dispute.

However, if the bank later obtained a court order to enforce repayment of the outstanding debt, which the barrister failed to comply with, the barrister's conduct in failing to comply with the terms of a court order would be, or is analogous to, conduct which could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD1** and **CD3**, on the barrister's duty to the court or to act with honesty and integrity, as well as **CD5** and **Rule C8**).

A barrister's failure to comply with a court order could call into question their ability to comply with their overriding duty to the Court and to the administration of justice. A barrister's disregard of an order made by a court is likely to diminish public trust and confidence in them, and the wider profession, and would reasonably be seen by the public to undermine their honesty and integrity, such that we would have a regulatory interest in this conduct.

Part 1 – Public

34. The case law is clear that the closer non-professional conduct is to professional practice, the greater the justification for regulatory interference on the basis that the conduct might reflect on how the individual might behave in a professional context or have an impact on public trust and confidence in the profession.
35. Therefore, in relation to any other conduct that is reported to the BSB, we are more likely to have a regulatory interest in conduct that is, or is analogous to, conduct that would contravene other relevant provisions of the BSB Handbook (or standards that are necessarily implicit from it) if it occurred during a barrister's professional life. This is because such conduct is more likely to have a bearing on the public's trust and confidence in the barrister or the profession.
36. Guidance C25 in Part 2 of the BSB Handbook includes a non-exhaustive list of the types of conduct which is likely to be treated as a breach of CD3 and/or CD5. This list provides examples of the types of behaviour we may have a regulatory interest in even if it occurs in a non-professional context. This includes conduct which is seriously offensive towards others or conduct which is dishonest, discriminatory, victimising or harassing.
37. We might have a regulatory interest in conduct which is discriminatory, for example, because conduct which demonstrates how a barrister might perceive certain groups might alienate members of the public who identify themselves as members of that group. This may make them feel uncertain about engaging with the profession or trusting that the profession will act in their best interests.

Case Study 4

The BSB receives a report about a barrister who has posted a series of comments in a private Facebook group (consisting of at least 50 members) which were seriously offensive, disparaging, misogynistic, included references to physical and sexual violence, and all of which targeted female members of the public.

As the conduct occurred on social media, we would also have regard to our '*Social Media Guidance*'.

The barrister's conduct is, or is analogous to, conduct which could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD3**, **CD8**, **Rule C12** on the barrister's duty to act with integrity and to not discriminate unlawfully against any person, as well as **CD5** and **Rule C8**, supported by **gC25.5** and **gC25.7**).

The conduct is of a nature that means it would likely diminish trust and confidence in the barrister and in the wider profession, would be reasonably seen by the public to undermine the barrister's integrity, and is incompatible with the high standards expected of members of the profession.

As the conduct involves an expression of opinion, we would take the barrister's Article 10 rights into account before making a decision to take any further regulatory action.

Case Study 5

The BSB receives a report about a barrister who sexually assaulted another person (A) while at a nightclub after work hours. The conduct was witnessed by various people, including staff working at the nightclub, who eventually removed the barrister from the premises. A did not want to report the matter to the police, but did bring the conduct to the attention of the BSB.

Case Study 5 (cont'd)

The barrister's conduct in sexually assaulting A would likely be, or be analogous to, conduct which could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD3** on the barrister's duty to act with integrity, as well as **CD5** and **Rule C8**, supported by **gC25.5** and **gC25.7**).

This conduct could be capable of amounting to a criminal offence, which is incompatible with the high standards expected of the profession. This conduct is likely to be sufficiently relevant to the practise or standing of the profession because all barristers must be, and be seen to be, rule-abiding citizens in order to maintain public trust and confidence.

Notwithstanding the potential criminal nature of the conduct, the conduct is also inappropriate, seriously offensive, harassing, and shows a lack of integrity and respect for others. Non-consensual sexual conduct, such as in this case, would diminish public trust and confidence in a barrister and undermine the barrister's integrity. Further, if no regulatory interest was taken in this conduct by the BSB in this case, there would likely be a negative effect on the trust and confidence the public places in the profession, and in the BSB as a regulator, by allowing a barrister who has conducted themselves in such a manner to continue to practise at the Bar without some form of regulatory action. Therefore, we are likely to have a regulatory interest in this conduct.

38. When deciding whether non-professional conduct might have an impact on the public's trust and confidence in the barrister or the profession, the closer the link between the context or environment in which the conduct occurred and that of the profession, the greater the likelihood that we will have a regulatory interest in it.
39. This means, for example, that misbehaviour by a barrister involved in private litigation may well be of regulatory interest to us if, for example, a barrister engages in vexatious behaviour that wastes the court's time or fails to comply with court orders.
40. Whilst the ability to identify somebody as a barrister is not a necessary ingredient for us to have a regulatory interest in non-professional conduct, it is likely to strengthen the link between the conduct and the profession, and thus engage the relevant duties and rules in the BSB Handbook. This is because, by virtue of being identifiable as a barrister, there may be a greater risk of the conduct diminishing public trust and confidence in the barrister or in the profession. This is also likely to include situations in which a barrister uses their status as a barrister to obtain an advantage or to the detriment of others.

Case Study 6

The BSB receives a report about a barrister, who had been a party to family law proceedings in their personal capacity, deliberately giving untruthful evidence to obtain a divorce.

The barrister's conduct in misleading the court is analogous to conduct that could be a breach of the BSB Handbook if it occurred in the barrister's professional life (see, for example, **CD1**, **CD3**, **Rule C3**, **Rule C6**, **Rule C9** on the barrister's duty to the court, to act with honesty and integrity, and to not knowingly or recklessly mislead the court or anyone, as well as **CD5** and **Rule C8**).

The barrister's involvement in proceedings before the court, albeit in a personal capacity, means that the conduct is sufficiently related to or connected to the profession such that misconduct in those proceedings could realistically affect public trust and/or confidence in the barrister or the profession. This conduct could also realistically be seen by the public to undermine the barrister's honesty and integrity. If a member of the public witnessed or heard about this conduct, they are likely to be concerned that the barrister would not discharge their professional duties with complete trustworthiness. We would therefore have a regulatory interest in the conduct.

Case Study 7

The BSB receives a report that a barrister, who is also one of several directors of a company, has breached their duties of confidentiality as a company director while speaking before a large audience at a formal dinner. After introducing themselves as a practising barrister and the director of a successful company, the barrister disclosed confidential information about the company's operations and future business plans. The company's business has no link to the legal profession.

The barrister's failure to respect the duty of confidentiality (in their capacity as a company director) could be analogous to conduct which could be a breach of the BSB Handbook if it occurred whilst the barrister was practising (see, for example, **CD3**, **CD6**, **Rule C15** on the barrister's duty to act with integrity and to keep the affairs of each client confidential, as well as **CD5** and **Rule C8**).

A company director owes fiduciary duties to the company (and if applicable, its members and shareholders): such duties include confidentiality and acting in the best interests of the company. If a barrister (who was known to be both a company director and a practising barrister, as in this case) breached their duty of confidentiality as a company director by disclosing confidential and commercially sensitive information, this could call into question the barrister's ability to keep the affairs of their clients confidential. In this case, acknowledging the context (that the disclosure took place in a professional environment, before a large audience who knew the barrister was both a company director and a practising barrister), the barrister's breach of their duty of confidentiality is likely to diminish public trust and confidence in them as a barrister and undermine the barrister's integrity.

Consequently, we are likely to have a regulatory interest in this conduct.

Annex 1

Determining whether we have a regulatory interest

1. Has the barrister been:

- a. Charged with an indictable offence in England and Wales;**
- b. Charged with a criminal offence of comparable seriousness elsewhere; or**
- c. Convicted of, or accepted a caution for, any criminal offence other than a *minor criminal offence* (subject to the Rehabilitation of Offenders Act 1974 (as amended))?**

A “minor criminal offence” includes:

- a. An offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;**
- b. An offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence;**
- c. An offence whose main ingredient is the unlawful parking of a motor vehicle.**

2. Is the conduct:

- a. Conduct which is, or analogous to, conduct that could breach relevant standards of the BSB Handbook that apply to practising barristers; and**
- b. sufficiently relevant or connected to the practice or standing of the profession such that it could realistically:**
 - i. affect public trust and confidence in the barrister or the profession; or**
 - ii. be reasonably seen by the public to undermine the barrister’s honesty, integrity and independence**

taking into account the context and environment in which it occurred?

Set out below is the new proposed wording for the Handbook guidance. Track changes highlight the recommended amendments.

gC25

~~A breach of Rule rC9 may also constitute a breach of CD3 and/or CD5. Other conduct~~ which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

- ~~1. subject to Guidance C27 below,~~ breaches of rC8;
- ~~2. breaches of Rule rC10;~~
- ~~3. breaches of rC10;~~
- ~~4. criminal conduct, other than minor criminal offences (see Guidance C27) which you are under a duty to report to the Bar Standards Board pursuant to rC65;~~
- ~~5. seriously offensive or discreditable conduct~~ conduct towards ~~third parties~~ others;
- ~~6. dishonesty;~~
- ~~7. unlawful discrimination, victimisation or harassment; or~~
- ~~8. abuse of your professional position.~~

gC26

For the purposes of gC25.78 above, referring to your status as a barrister in a context where it is irrelevant but may influence others may constitute abuse of your professional position and thus involve a breach of CD3, CD5 and/or rC8. An example of this might be using professional notepaper in a private dispute. for example on professional notepaper, in a context where it is irrelevant, such as in a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD3 and/or CD5.

gC27

~~Conduct which is not likely to be treated as a breach of Rules rC8 or rC9, or CD3 or CD5, includes (but is not limited to):~~

- ~~1. minor criminal offences;~~
- ~~2. your conduct in your private or personal life, unless this involves:~~
- ~~a. abuse of your professional position; or~~
- ~~b. committing a criminal offence, other than a minor criminal offence~~

The application provisions at Section A of Part 2 of this Handbook (the Code of Conduct) set out which Core Duties and rules apply to you and when they apply. Certain Core Duties and rules (such as CD5 and rC8) apply to you at all times and may therefore also be relevant to conduct which occurs in your private or personal life.

To assist in considering whether conduct which occurs in your private or personal life is likely to be treated as a breach of CD5 and/or rC8, the BSB considers that the factors set out in the Guidance on the Regulation of Non-Professional Conduct are likely to be relevant.

gC28 (remove)

~~For the purpose of Guidance C27 above, minor criminal offences include:~~

- ~~1. an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; or~~
- ~~2. an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence; or~~
- ~~3. an offence whose main ingredient is the unlawful parking of a motor vehicle.~~

Social Media Guidance

1. The BSB recognises that you are likely to want to use social media for a variety of private and professional reasons. However, your obligations as a barrister mean that you must also act in a way that complies with the BSB Handbook.
2. Although your right to freedom of expression is protected under the Human Rights Act 1998 (Article 10 of the European Convention on Human Rights (“**ECHR**”)), Article 10 is a qualified right which must be balanced against other rights and values guaranteed by the ECHR (such as the rights and reputation of other members of the profession or consumers of barristers’ services).
3. The European Court of Human Rights has recognised that lawyers, by virtue of their profession, have a special status which justifies placing certain restrictions on their conduct:

“...that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. Such a position explains the usual restrictions on the conduct of members of the Bar... Regard being had to the key role of lawyers in this field, it is legitimate to expect them to contribute to the proper administration of justice, and thus to maintain public confidence therein.”¹
4. The BSB may consider taking regulatory action against you where your conduct is potentially in breach of the standards set out in the BSB Handbook and such action is proportionate and justifiable in all the circumstances. We will undertake a careful balancing exercise on a case-by-case basis to determine whether any proposed interference with your Article 10 rights is justified and proportionate.
5. The BSB has written this guidance to help you understand your duties under the BSB Handbook as they apply to your use of social media. This applies to you in both a professional and personal capacity.
6. Social media use includes posting material online, private messages to individuals, organisations or groups, sharing content, promoting your business as a barrister, or networking. This might be on social networking sites like Facebook, LinkedIn or Twitter, content communities such as YouTube, or Internet forums.
7. If you are the subject of a report concerning your use of social media, the BSB will consider the matter carefully and in line with the processes explained on the BSB’s website and will take this guidance into account, while also having regard to your Article 10 rights.
8. You (and, where appropriate, your clerks and other staff connected with barristers’ professional practices) can contact the Bar Council’s confidential Ethical Enquiries Service on 020 7611 1307 or Ethics@BarCouncil.org.uk to obtain assistance with identifying, interpreting and complying with professional obligations under the BSB Handbook.

What rules of the BSB Handbook are relevant to this Guidance?

9. If you use social media whilst acting in a professional capacity, your conduct could bring into question your compliance with certain Core Duties and rules in the BSB Handbook that apply to you when you are practising or otherwise providing legal services.² These include:

¹ *Nikula v Finland* (2004) 38 E.H.R.R. 45.

² Both the terms “practising” and “legal services” are defined in Part 6 of the BSB Handbook.

- **Core Duty 3:** You must act with honesty, and with integrity.
 - **Core Duty 5:** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
 - **Core Duty 6:** You must keep the affairs of each client confidential.
 - **Core Duty 8:** You must not discriminate unlawfully against any person.
10. The term “*practising*” is broadly defined in the BSB Handbook. It includes all activities, including the business-related activities, of a practising barrister.
11. Given the very public nature of social media, it is not always easy to say whether comments made on social media are made in one’s professional or non-professional capacity. However, if you do use social media outside your professional life and the nature of the communication is private, your conduct could still bring into question your compliance with certain Core Duties and rules in the BSB Handbook which apply to you **at all times**. Such rules include:
- **Core Duty 5:** You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
 - **Rule C8:** You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).

Case Study 1

The BSB receives a report that a barrister has sent seriously offensive private messages on LinkedIn to a person with whom the barrister had recently “connected” on the platform (but did not know offline).

As this conduct occurred on a professional social networking platform, which the barrister joined and used in a professional capacity (e.g. to advertise their services and network) we would regard this conduct as having occurred in a professional capacity (as we consider it is a business-related activity of a practising barrister). This means that the provisions of the BSB Handbook that apply when ‘*practising*’ or ‘otherwise providing *legal services*’ are relevant. The conduct involves seriously offensive communications for which the barrister is likely to be regarded as in breach of the duty to act with integrity (**CD3**) and to not behave in a way which is likely to diminish the trust and confidence the public places in them or the profession (**CD5**).

12. **Remember that CD5 and rC8 apply to you at all times, even if you are an unregistered barrister.** However, the rules that apply to practising barristers, such as CD3, CD6, and CD8, will also apply to unregistered barristers if they are practising in accordance with rS9 of Part 3 of the BSB Handbook (i.e. if they are supplying, or offering to supply, legal services and hold themselves out as a barrister). Unregistered barristers should read our ‘[Unregistered Barristers Guidance](#)’ for more information.

What type of conduct may be in breach of the BSB Handbook?

13. In general terms, any conduct on social media which might be said to be inconsistent with the standards expected of barristers may amount to a breach of the BSB Handbook. For example, your conduct on social media may demonstrate a lack of integrity, it may breach client confidentiality, or it may be conduct which is likely to diminish the trust and confidence which the public places in you or in the wider profession.
14. The inherently public nature of social media means that anything you post online could theoretically be at risk of being read by anyone and could be linked back to your status as a barrister, regardless of whether you identify yourself on social media as a barrister. This

degree of exposure can have an impact on the extent to which public confidence in you or the profession is likely to be diminished by your use of social media.

15. Given the potentially wide scope of conduct that might engage relevant provisions of the BSB Handbook, it is not possible to provide an exhaustive list of the types of conduct that might amount to a potential breach. You should therefore at all times consider whether your conduct risks contravening any of the Core Duties and rules which apply to you.

Case Study 2

The BSB receives a report that, during the course of a criminal trial, a barrister sent a group WhatsApp message to several people involved in the proceedings (including the instructing solicitors and the client) about the case. At the time the message was sent, the barrister's client was sworn in and was still involved in giving evidence as a witness.

Unless the representative for the opposing side or the court had given their permission, the barrister would likely have breached **CD3** and/or **Rule C9.5** when communicating with their client about the case while the client was giving evidence. This conduct could also be a potential breach of **CD5** and/or **Rule C8**.

16. The following is a non-exhaustive list of examples of types of conduct on social media that may amount to a breach of the BSB Handbook depending on the particular circumstances:
- Making comments that target a person or groups of people which are seriously offensive, discriminatory, harassing, threatening, or bullying. Comments of this nature may be a breach of **CD5** and/or **Rule C8**. This includes making comments which are of an indecent, obscene, or menacing character or which are gratuitously abusive. However, the use of foul language alone is unlikely to amount to a breach of the BSB Handbook.
 - Making comments that are critical of judges or the judiciary beyond what is “discreet, honest and dignified”³, that are insults, or that are so serious that they overstep the permissible expression of comments without a sound factual basis⁴, as this may be a breach of **CD1**, **CD3**, **CD5**, **rC3** and/or **rC8**.
 - Sending confidential communications to a client over social media where confidentiality cannot be guaranteed, as this could risk breaching your duty to keep the affairs of each client confidential (**CD6**).

Case Study 3

The BSB receives a report about a barrister who frequently tweets about their gender critical views using their personal Twitter account. A transgender woman (who openly states their transgender status in their Twitter profile) responded to one of the barrister's tweets, challenging their views. The barrister then sent several tweets directed at the transgender woman, in which the barrister deliberately misgendered and threatened them. In this case, the barrister's conduct in specifically targeting the transgender woman, threatening, and intentionally misgendering them are likely to be considered seriously offensive and discriminatory. This conduct could diminish public trust and confidence in the barrister and/or the profession (and thus be a breach of **CD5**) and/or could reasonably be seen by the public to undermine the barrister's integrity (and thus be a breach of **Rule C8**).

³ *Steur v Netherlands* (2004) 39 EHRR 33 at [38].

⁴ *Morice v France* (2016) 62 EHRR 1 at [139].

17. You should also be alive to the potential risk of revealing on social media that you are in a particular location at a particular time (perhaps via a “geotagged” status, update, or post), as this may inadvertently provide a link between you and a particular client. This could risk breaching your duty under **CD6**, which requires you to keep the affairs of your client confidential. You should check the settings of the social media you use, as well as any privacy policies.
18. There are certain types of conduct which we consider are likely to be a breach of **CD3**, **CD5**, **CD8** and/or **rc8**. This is conduct which is not afforded the protections guaranteed by Article 10 ECHR, by virtue of Article 17 ECHR (i.e. conduct which is aimed at the destruction of the rights and freedoms of others). Case law from the European Court of Human Rights has found that this includes: extreme or grave forms of hate speech, a threat of or incitement to violence, xenophobia, racial discrimination, Antisemitism,⁵ Islamophobia,⁶ and Holocaust denial.⁷
19. Expressing a view on something could also impact others and may amount to a breach of the BSB Handbook if it diminishes public trust and confidence in the barrister or in the profession as a whole (**CD5**). For example, conduct which might demonstrate how a barrister perceives certain groups (eg where a barrister expresses discriminatory views) might alienate members of the public who identify themselves as part of that group and make them feel uncertain about engaging a barrister or trusting that the profession will act in their best interests.

What will the BSB consider when assessing whether conduct on social media may be in breach of the BSB Handbook?

20. In considering a potential breach of the BSB Handbook relating to your conduct on social media, the BSB will take into account:
 - a. How a hypothetical, ordinary reasonable reader/listener/viewer would be likely to respond to your conduct on social media, having regard to the wider context in which it occurred. This will involve an objective assessment based on a “natural and ordinary meaning” of what you post. The social media platform which you used may also be relevant. Case law⁸ tells us that the hypothetical reader is neither naïve nor suspicious; is able to read between the lines and pick up an implication; is allowed a certain amount of loose thinking without being avid for scandal; and does not, and should not, select one bad meaning where other meanings are available. The views and/or reaction of any individual who reported the conduct to us, while potentially relevant, is unlikely to be determinative.
 - b. The content of your conduct (including the type of speech engaged, such as whether it is “mere gossip”⁹ or contributes to a debate in the public interest¹⁰), the manner in which it was expressed (including the language used), the mode of publication, and the broader context. While the right to hold and say something may be protected by

⁵ *Pavel Ivanov v Russia* (dec.) (2007) 35222/04.

⁶ *Norwood v the United Kingdom* (dec.) (2004) 23131/03; *Seurot v France* (dec.) (2004) 57383/00.

⁷ *Lehideux and Isorni v. France* (1998) at [47]; *M'Bala M'Bala v. France* (dec.) (2015) 25239/13; *Garaudy v. France* (dec.) (2003) 65831/01; *Witzsch v. Germany (no. 2)* (dec.) (2005) 7485/03.

⁸ See, for example, *Jeynes v News Magazines Ltd & Anor* [2008] EWCA Civ 130, *Koutsogiannis v The Random House Group* [2019] EWHC 48 (QB), and *Sivananthan v Vasikaran* [2022] EWHC 837 (QB).

⁹ *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin).

¹⁰ *Vajnai v Hungary* (2010) 50 E.H.R.R. 44.

Article 10, the manner in which it is expressed could be a potential breach of the BSB Handbook and therefore we may have a regulatory interest in it.

- c. The impact of your conduct. This may include the impact on individuals or organisations, and/or on public trust and confidence in you or the profession. The purpose behind your conduct may not always be relevant.

Case Study 4

The BSB receives a report that a barrister has posted a series of tweets on Twitter in which they were highly critical of various domestic political figures and the current government.

As the content of the barrister's expressions in this case are of a political nature, which sits at the top of the hierarchy of free speech values, the barrister's Article 10 rights are engaged. As the manner in which the barrister expressed those views was not in breach of the standards set out in, or necessarily implicit from, the BSB Handbook (e.g. it was not seriously offensive), the BSB is unlikely to have a regulatory interest in this conduct.

21. If you use social media whilst you are acting in a non-professional context, we will also consider the matters set out in the '*Guidance on the Regulation of Non-Professional Conduct*' when considering whether we have a regulatory interest¹¹ in your conduct. In particular, we may have a regulatory interest in your conduct where:
 - a. it involves criminal conduct which you have a duty to report promptly to the BSB in line with rule C65.1 and rule C65.2 of the BSB Handbook¹²;
 - b. it is, or is analogous to, conduct that might contravene relevant standards of the BSB Handbook that apply to practising barristers (including standards that are necessarily implicit from the Handbook); and
 - c. it is sufficiently relevant or connected to the practice or standing of the profession so as to engage the Core Duties and rules which apply to you at all times, taking into account the context and environment in which the conduct occurred.

¹¹ By "regulatory interest" we mean the circumstances in which we, as a regulator of the profession, may have a legitimate concern about conduct which has the potential to engage provisions of the BSB Handbook and which is apt for further consideration in accordance with our processes. This might include, for example, undertaking an initial risk assessment to inform whether a matter is suitable for onward referral for supervision activity or enforcement action.

¹² Namely, if you are charged with an indictable offence in England and Wales (or an offence of comparable seriousness elsewhere) or you are convicted, or accept a caution, for a criminal offence which is more than a minor criminal offence (as defined in Part 6 of the BSB Handbook).

Social Media Guidance

1. We recognise that you are likely to want to use social media for a variety of private and professional reasons. We have written this guidance to help you understand your duties under the BSB Handbook as they apply to your use of social media. This applies to you in both a professional and personal capacity, since the inherently public nature of the Internet means that anything you publish online may be read by anyone and could be linked back to your status as a barrister.
2. **Remember that you are bound by Core Duty 5 (not to behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession) and Rule C8 (not to do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4)) at all times.** Other Core Duties and rules that apply when you are '*practising*' or otherwise providing '*legal services*'¹ are also relevant to your use of social media in a professional capacity (for example, **Core Duty 3, Rule C9, Core Duty 6, and Core Duty 8**).
3. Unregistered barristers should also bear this guidance in mind when using social media; as members of the profession, they are expected to conduct themselves in an appropriate manner and are also subject to certain Core Duties and other rules.
4. Social media use includes posting material online, private messages to individuals, organisations or groups, sharing content, promoting your business as a barrister or networking. This might be on sites such as Twitter, content communities such as YouTube, social networking sites like Facebook or LinkedIn and Internet forums.
5. You should always take care to consider the content of what you are posting or sharing and the manner in which you express it. Making comments that are seriously offensive, discriminatory, harassing, threatening, or bullying are likely to **diminish public trust and/or confidence in you or the profession (CD5) or could be reasonably seen by the public to undermine your integrity (Rule C8)**. Making comments of an indecent, obscene, or menacing character or which are derogatory, gratuitously abusive or which may incite violence, may also be a breach of CD5 and/or Rule C8. However, foul language alone is unlikely to be a breach of the BSB Handbook.
6. You should also bear in mind your **duty to keep your client's affairs confidential (CD6)**. It is inadvisable to send confidential communications to your client over social media, but we recognise it may be appropriate in certain circumstances (eg it is necessary for your client's safety, or there is no other reliable means of contacting them). You should not do so unless your client has agreed, and you are satisfied that your client's confidentiality will not be at risk. If your client does wish to be contacted in this way, you will need to consider not only the security of the system that you are using (including any relevant settings to ensure that confidentiality is not at risk), but also its privacy policy. Some host sites allow the host to access otherwise private information, despite it not being posted to the client's public facing "wall" or "blog".

¹ 'Practising' and 'legal services' are both defined in Part 6 of the BSB Handbook.

Part 1 – Public

7. You may also want to consider less obvious risks; for example, by advertising the fact that you are in a particular location at a particular time (perhaps via a "geotagged" status update), you may risk inadvertently revealing that you act for a particular client.
8. This guidance will be taken into account by the BSB in any action it takes over concerns about social media use. If you are the subject of a report concerning your use of social media, we will investigate the matter carefully and in line with the process explained on our website.

DRAFT

Meeting:	Bar Standards Board	Date:	14 July 2022
Title:	The BSB's Public Engagement Enabling Strategy		
Author:	Wilf White		
Post:	Director of Communications & Public Engagement		

Paper for:	Decision: x	Discussion <input type="checkbox"/>	Noting <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Paper relates to the Regulatory Objective (s) highlighted in bold below

- (a) **protecting and promoting the public interest**
- (b) **supporting the constitutional principle of the rule of law**
- (c) **improving access to justice**
- (d) **protecting and promoting the interests of consumers**
- (e) **promoting competition in the provision of services**
- (f) **encouraging an independent, strong, diverse and effective legal profession**
- (g) **increasing public understanding of citizens' legal rights and duties**
- (h) **promoting and maintaining adherence to the professional principles**

☐ Paper does not principally relate to Regulatory Objectives

Purpose

1. To seek the approval of the Board for our proposed public engagement enabling strategy.

Recommendation

2. We recommend that you approve the attached strategy which forms the first of a number of stakeholder enabling strategies which we are developing.

Background

3. In March, the Board agreed the BSB's overall strategy for the next three years which has now been published. The document sets out our high level strategic priorities based around five key strategic aims:
 - **Efficiency** – delivering our core regulatory operations quickly, economically and to a high standard.
 - **Standards** – ensuring that barristers provide a high quality and responsive service throughout their careers.
 - **Equality** – promoting equality, diversity and inclusion at the Bar and at the BSB and the profession's ability to serve diverse consumers.
 - **Access** – promoting consumer understanding of legal services and choice and good value in using those services (covering both the supply of, and demand for, barristers' services).
 - **Independence** – strengthening the BSB's independence, capability self-confidence and credibility.
4. To deliver our strategy we must communicate and engage with our stakeholders so that they are aware of our work and can take part in the development and delivery of our policies. We cannot achieve any of our Regulatory Objectives without engaging the public and consumers – most obviously, establishing what is in “the public interest” and what are the “interests of consumers” requires us to talk to the public and to consumers but we also cannot promote competition if the public are not aware of the choices they have, for example. So, we intend to develop stakeholder strategies for each of our eight key groups of stakeholders:

Part 1 – Public

- The public and consumers
 - The Bar and other legal service providers
 - Regulatory bodies
 - Training providers
 - Equality and Diversity bodies
 - Government
 - Parliament
 - The Media
5. The attached draft strategy focuses on the first group of stakeholders “the public and consumers”. If the Board is content with this strategy, we propose to use it as a model for developing similar strategies for the other seven groups which, if the Board agrees, might then be agreed by SMT.
6. We also propose that Board members might be paired with groups of stakeholders and that they might then take a particular interest in our work with them. The following (with Barristers A and Barrister B being the new Board members we will be recruiting later in the year) would be one option but we should be very happy to amend this list if Board members have any different preferences:
- The public and consumers - Steve Haines & Leslie Thomas QC
 - The Bar and other legal service providers - Emir Feisal & Andrew Mitchell QC
 - Regulatory bodies - Stephen Thornton and Barrister A
 - Training providers - Alison Allden and Barrister B
 - Equality and Diversity bodies - Irena Sabic and Kathryn Stone
7. We suggest that we might then handle the final three stakeholder groups (Government, Parliament and the Media) somewhat differently since the lead here is more likely to be taken by the Chair or Vice Chair. Lay Board members would also of course continue to maintain their links with individual Inns.

Resource implications/Impacts on other teams/departments or projects

8. The strategy is designed to be delivered within existing budgets but, if we are successful in increasing public involvement in our policy making, this may involve a greater time commitment from BSB staff.

Equality and Diversity

9. This Stakeholder Strategy is designed to engage all sections of the public and a particular effort will be made to reach minority groups who may not be well served by the media. We shall therefore seek advice from our Race, Disability and Religion and Belief Taskforces and to build our relationships with media outlets, including social media, which focus on serving minority groups.

Public engagement

10. This paper is about our public engagement strategy. It has not itself been subject to public engagement but the strategy will of course develop over time as part of that engagement.

Risk implications

11. Unless we can encourage consumer organisations and the public to become more involved in our policy making there is a risk that we will fail to meet our statutory regulatory objectives, most obviously that of protecting and promoting the public interest and the interests of consumers.

Annex

12. Annex A: Draft Public Engagement Strategy for approval

PUBLIC ENGAGEMENT ENABLING STRATEGY

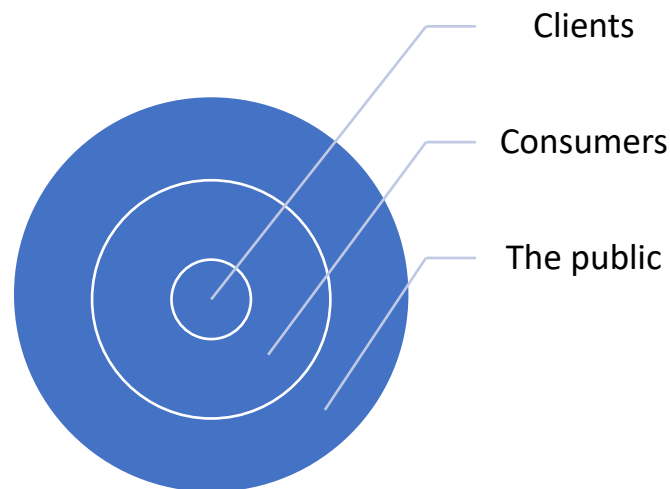
1. This strategy looks at how the BSB engages with the public and consumers in our policy making and regulation generally but should be read in conjunction with our Public Legal Education strategy which focuses on one particular aspect of our work but is also designed to communicate with the same audience.

What is our vision?

2. The BSB's Strategy for 2022-25 sets out a new vision for the BSB that "We will ensure that the BSB regulates the Bar in the public interest by promoting high standards, equality and access to justice". To be certain that we are truly acting in the public interest we must seek to maximise public engagement with our work.

Who are our target group?

3. Our target audiences can be seen like this:



4. The Legal Services Act 2007 gives us two separate regulatory objectives:
 "protecting and promoting the public interest"
 and
 "protecting and promoting the interest of consumers"
5. The Act therefore acknowledges that the public interest and the consumer interest are not synonymous. "The public" of course encompasses everyone, although the definition of a "consumer" under s207 of the Act is also very broad. s207 reads:
 "consumers" means ... persons—
 (a) who use, have used or are or may be contemplating using, services within subsection (2) [ie legal services provided by an authorised person],
 (b) who have rights or interests which are derived from, or are otherwise attributable to, the use of such services by other persons, or
 (c) who have rights or interests which may be adversely affected by the use of such services by persons acting on their behalf or in a fiduciary capacity in relation to them."

Part 1 – Public

6. Clearly all consumers are also members of the public and the public interest and the consumer interest will often overlap, but they are not always the same – for example, it is in the public interest that those guilty of committing crimes should be convicted, while the defendant may have a rather different view as a consumer. So, while the Act's definition of a consumer is very wide it's clear that our communications and public engagement (CPE) work must seek to reach both consumers and the wider public and to explain how we work in the interests of both.
7. Within the group of consumers there is also a narrower group consisting of "clients" by which we mean those who employ barristers to act for them and, given that the Bar remains a very largely referral based profession, this also has to encompass intermediaries, predominantly solicitors, too.

How do we reach these groups?***The public***

8. We seek to be as transparent as possible in our work and we shall therefore continue to seek to engage the public both:
 - directly via
 - our website,
 - our quarterly *Consumer News* bulletin,
 - social media channels, and
 - public meetings, including the public sessions of board meetings, and
 - indirectly via
 - the media and
 - through bodies representing the public and consumers
9. Public meetings have been very few in recent years because of the pandemic but the relaunch of our website in October 2019 gave us the opportunity to establish a specific area on the site labelled "For the Public" which has attracted 1,071,735 unique page views to date.
10. In terms of the media, most of the stories we produce tend to be covered only by the legal media and most of our Twitter and LinkedIn followers are probably also in the legal profession. But we will also seek to achieve coverage in the wider national media, and to ensure that coverage does not focus exclusively on professional misconduct cases, important though they are.

Consumers

11. Reaching **individual** consumers is very important but can be challenging. Those who encounter barristers usually do so at very stressful periods of their lives and often in relation to matters which are highly sensitive and confidential. They may therefore be reluctant to share their experiences and are unlikely to be repeat purchasers. It is important, however, that we do try to reach individuals where we can and to include both "clients" (including both individuals and intermediaries such as solicitors) and those who have experience of barristers in other ways. The consumer experience of witnesses in court, for example, is an important area which we need to do more to explore. And, as the Act makes clear, consumers may also be people who have rights or interests which are affected by the use of legal services by others, such as a campaign group in a planning case for example.
12. We also have three consumer experts on our Advisory Pool of Experts who can help to give our work a consumer perspective and to advise us as to how to connect with consumers and consumer groups.

Consumer Groups

13. We also need to ensure that we engage with consumer **groups** and those who work with consumers of legal services. The main groups with whom we regularly engage at present include:
 - The Legal Services Consumer Panel
 - Citizens Advice
 - Advocate
 - Law for Life
 - Refugee Action
 - Support through Court
14. These organisations and many others are members of the “BSB Consumer Pool”, but we must always be ready to find and engage with other groups when we are looking for particular areas of expertise (eg we had valuable input from the charity, Inquest, which provides expertise on state related deaths, when we were working to develop a new toolkit and guidance for those working in the coroners’ courts).
15. The vast majority of barristers also work on a referral basis so they are employed by intermediaries, usually solicitors, who also need to be seen as consumers of their services as well as their clients. We will therefore ensure that we continue to include solicitors and their representative bodies in our engagement processes.

What are the challenges?

16. Consumers are very diverse and they tend to be happy with the services they receive – the latest [LSCP tracker survey](#) – looking at all legal service providers including barristers - tells us that 83% of consumers were satisfied with the service they received. And not many people use barristers – the same survey found that while 62% of those using legal services used a solicitor (because the most common legal services consumed by the general public are conveyancing, will writing and setting up a power of attorney in which barristers generally have no involvement) only around 1% had used a barrister.
17. So, given that the resources of consumer organisations are always stretched, they very understandably focus on services which more consumers use and where consumer satisfaction is lower and they don’t see engaging with the BSB as a priority.

What are our key messages?

18. ***For the public***
 - As the regulator, one of our key objectives is protecting and promoting the public interest but we can’t do that unless we involve the public in our policy and decision making. So we want to hear from you.
 - The Bar is a regulated profession which is vital for the administration of justice and the rule of law upon which your rights and civil society depend. So, the regulation of the Bar matters to everyone even if they may never themselves use a barrister. Barristers have a vital role in the justice system and in upholding the rule of law, ensuring that those accused of crimes are fairly tried, that contracts are upheld, that human rights are protected, that victims of wrongdoing are compensated etc.

Part 1 – Public

- So, it's very important for everyone that barristers are properly regulated – like a consultant surgeon you may not need to use them often, but you certainly want them to be properly qualified and regulated if you do.
- The BSB is an independent body operating in the public interest which seeks to ensure that barristers are well trained, competent, and trustworthy and dedicated to giving their clients the best service they can.
- Reports of potential professional misconduct are easy to make and will be dealt with in confidence; and
- The BSB seeks to ensure that the Bar is an increasingly diverse profession, where entry and career progression are based on merit. We believe that a Bar that better reflects the society it serves will be better able meet clients' needs and expectations

19. **Public legal education for those who may become consumers**

- You may not know you have a legal problem but there are many ways you can get help to find out whether you do.
- There are several different types of legal advisers and those who are regulated are likely to offer you a better service while also giving you the opportunity to get help if something does go wrong.
- You may need a barrister if you need someone to represent you in court or if you need specialist advice.
- You can approach some barristers directly but, if you have a solicitor, they will help you to choose a barrister if you need one.
- If you have a service complaint about a barrister representing you, you should speak to them, or to your solicitor if you have one, and, if you are still not happy, you can report your problem to the Legal Ombudsman. If you think a barrister may have committed professional misconduct, talk to the BSB.

20. **For consumers**

Our key messages for consumers include those for the public (as set out above) but also that:

- As the regulator, we have a key objective to protect and promote the interests of consumers but we can't do that unless we involve consumers in our policy and decision making. So we want to hear from you.
- We don't just deal with reports alleging professional misconduct. We are also responsible for the training of barristers, setting standards of conduct, and ensuring that barristers meet our rules.
- If you think you're getting **poor service** from your barrister, you should speak to them, or to your solicitor if you have one, and, if you are still not happy, you can report your problem to the Legal Ombudsman. The BSB can't order compensation for individuals.
- But if you think a barrister may be guilty of **professional misconduct** talk to us.
- And we don't just want to hear negative reports. We want to encourage everyone to offer feedback to their barristers whether it's positive or negative – and we are interested in that feedback too.

- Our strategy for the next three years is based around five key strategic aims:
 - **Efficiency** – delivering core regulatory operations quickly, economically and to a high standard.
 - **Standards** – ensuring that barristers provide a high quality and responsive service throughout their careers.
 - **Equality** – promoting equality, diversity and inclusion at the Bar and at the BSB and the profession's ability to serve diverse consumers.
 - **Access** – promoting consumer understanding of legal services and choice and good value in using those services (covering both the supply of, and demand for, barristers' services).
 - **Independence** – strengthening the BSB's independence, capability self-confidence and credibility.
- Whether you are a solicitor, a consumer group or an individual we are very keen to get your feedback so that you can help us to achieve those aims

What more can we do to improve our engagement with the public and with consumers?

21. We cannot truly achieve our vision for the BSB without greater public and consumer engagement in our work so we must continue to make use of direct contact, the press and social media to do so.
22. We also intend:
 - a. To make more use of short video which was not easy to produce during the pandemic but which we know is a powerful medium both on our website and on social media. Examples could include an easy-to-understand summary of a particular area of our work, such as how we regulate the training of barristers, presented by a key member of that team. This would also provide an opportunity to portray a wider and more diverse range of BSB colleagues on our website and social media.
 - b. To continue to use infographics to diversify our communication efforts and move away from primarily text-based content.
 - c. To increase our efforts to reach minority groups who may not be well served by the mainstream media. We shall therefore seek advice from our Race, Disability and Religion and Belief Taskforces and to build our relationships with media outlets, including social media, which focus on serving minority groups.
 - d. To consider streaming or recording and making available public meetings online, as well as other relevant events and meetings we may organise. For example, any events featuring and showcasing work being done by barristers/chambers outside London could provide an opportunity to record and share content that may help us to engage with increasingly diverse consumers and the general public.
 - e. To continue our programme of research into consumers' needs and experiences of the Bar working in collaboration with other regulators, the Legal Services Consumer Panel and other consumer groups wherever possible. We will also consider making use of the LSB's recently established "Public Panel" which is a research tool giving access to a wide range of people from a variety of backgrounds across England and Wales including people from more vulnerable groups.
 - f. To take advice from our APEX advisers and consumer bodies as to how best we can reach individual consumers whose feedback we are keen to receive.

Evaluating our success

23. Every policy paper going to the Board has to include a section on public engagement and we shall be seeking to improve both the width and depth of that engagement. It is difficult to set purely numerical targets because the number of responses to a public consultation will of course depend on the subject matter as much as the efforts made to promote it – the forthcoming guidance on barristers’ conduct in their non-professional lives and their use of social media will inevitably get a much more engaged response than did our previous consultation about professional indemnity insurance, for example - but we will be seeking to measure both the number and variety of responses we receive. We will also seek feedback from those who engage with us.

Bar Standards Board – Director General’s Strategic Update – 14 July 2022

For publication

Performance

1. We do not yet have available the performance report for the first quarter of 2022/23 which will come to the Board in September. There is, however, a separate paper on the agenda setting out our plans to accelerate the conduct of investigations. This responds to the discussion at the Board meeting on 25 May.
2. As the Board will recall, we were largely hitting our timeliness targets for turning round other core regulatory work – reports and authorisations applications – by the end of the last financial year and had eliminated backlogs of overdue cases. The cyber attack, which began on 11 April and disabled our systems for six weeks, including access to the Case Management System, has, however, caused a further backlog. As I reported at the last meeting, we have deployed some temporary additional resource to tackle these cases. However, our best estimate is that it will take roughly five months – or not until the third quarter – to get back to where we were when the year began.
3. Meanwhile, we have also prioritised our core regulatory work. This means that colleagues in our operational teams will have less time to give to policy projects until the backlogs are cleared.

Cyber security

4. Following a competitive tendering exercise, the Bar Council CEO and I have commissioned Grant Thornton to undertake an independent review of cyber security. The review will consider how we can strengthen our defences against cyber attack, but also what we should do in order to increase our resilience if an attack succeeds. We need both to be a harder target, but also to ensure that we have the redundancy and capacity to bounce back quickly. We expect to receive the report by the end of July so that we can move ahead with implementation promptly this Autumn.

Mark Neale
Director General

Chair's Report on Visits and External Meetings from May - July 2022

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:

7 June 2022	Attended Chairs' Committee meeting
9 June 2022	Met with the new President of COIC accompanied by Mark Neale and Andrew Mitchell QC
29 June 2022	Attended Regulator Chairs' and CEOs meeting with LSB
5 July 2022	Attended the Middle Temple Garden Party