

Constitution of the Bar Standards Board

14 July 2022

PREAMBLE

- A. The General Council of the Bar (GCB) is an approved regulator for the purposes of the Legal Services Act 2007.
- B. The GCB has established the Bar Standards Board (“the BSB”) to exercise the regulatory functions of the GCB.
- C. The 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 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 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 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 GCB as an approved regulator for the purposes of the Legal Services Act 2007, including the 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 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 GCB as is reasonably required for the 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 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 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) 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:
 - (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 its 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 reasonable 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 Board only after consulting the Bar Council.