

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public
Minutes of the Bar Standards Board meeting
Thursday 5 October 2023 (5.00 pm)

Hybrid Meeting, Rooms 1.4-1.7, BSB Offices & MS Teams

- Present:** Kathryn Stone OBE (Chair)
Alison Allden OBE (via Teams)
Jeff Chapman KC
Steve Haines
Simon Lewis
Andrew Mitchell KC
Irena Sabic KC
Professor Leslie Thomas KC
Stephen Thornton CBE
- By invitation:** Malcolm Cree CBE (Chief Executive, Bar Council) (via Teams)
Tim Grey (Chair, Independent Decision Making Body)
Lorinda Long (Treasurer, Bar Council) (via Teams)
Sam Townend KC (Vice Chair, Bar Council)
Nick Vineall KC (Chair, Bar Council)
James Wakefield KC (Hon) (Director, COIC)
- Press:** Neil Rose, Legal Futures
- In attendance:**
BSB Executive Ahmet Arikan (Senior Policy Officer)
Rhys Bevan (Head of Legal Support) (items 9-14)
Charlie Cormack (Regulatory Panel Manager)
Christopher Fitzsimons (Communications Manager)
Rebecca Forbes (Head of Governance & Corporate Services)
Edoardo Furlani (Reports and Data Analysis Officer)
Teresa Haskins (Director of People, BSB) (via Teams)
Saima Hirji (Acting Director of Regulatory Operations) (via Teams)
Sara Jagger (Director of Legal and Enforcement)
Imogen Kirby (Senior Reports and Data Analysis Officer)
Ewen Macleod (Director of Strategy & Policy)
Rupika Madhura (Director of Standards)
Mark Neale (Director General)
John Picken (Governance Officer)
Wilf White (Director of Communications & Public Engagement)
Alex Williams (Head of Operational Support)
- Resource Group:** Richard Cullen (Director of Finance)

Item 1 – Welcome / Announcements**Action**

1. Kathryn Stone welcomed those present in particular those attending their first Board meeting ie:
 - Ahmet Arikan
 - Charlie Cormack
 - Edoardo Furlani
 - Tim Grey

2. Item 2 – Apologies

- Gisela Abbam
- Emir Feisal

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 27 July 2023.

Item 5a – Matters arising & Action List

5. There were no matters arising. The Board **noted** the update to the action list.

Item 5b – Forward agenda

6. The Board **noted** the forward agenda list. The Chair referred to the seminar on the BSB Access Programme which had immediately preceded the meeting. She thanked those involved in delivering that presentation and asked for a report on the outcome of the project to be included on the list.

**JP to
note**

Item 6 – Performance Report: Quarter 1

BSB 040 (23)

7. Mark Neale highlighted the following:

- the good progress on the delivery of our enforcement work (a fall in both the age profile and number of cases);
- higher workloads within the Authorisations Team arising from a significant increase in demand from overseas lawyers seeking Call to the Bar;
- fees for handling these applications have not been reviewed since 2015. We have therefore suggested inflationary increases and propose to review them again so that we continue to recover our administrative costs (*note: the Board agreed to this suggestion*).

8. He added that:

- we have already strengthened the Authorisations Team as an interim measure;
- the ongoing review of Authorisations may identify structural measures we can consider for the longer term.

9. In response to questions raised, the Executive stated that:

- it is our long-standing policy to only recover the administrative costs of authorisation applications. We neither want applicants to subsidise the costs of regulation nor for the profession to do vice versa;
- the applications vary in complexity but the increase in volume means they are taking progressively more of the Authorisations Team’s time;
- we are uncertain as to the reasons for this the rise. It may simply reflect the desire of overseas lawyers to have the distinction of being Called to the Bar. Some further analysis of the caseload may identify particular themes.

10. Two barrister members noted that the increase derives mainly from the Indian sub-continent. They commented that:

- there is a long standing and mutually beneficial relationship between the Indian Bar and that for England and Wales. The former is an enormously successful contributor to our jurisdiction and having dual qualified barristers builds bridges and enhances Anglo-Indian relations;
- it is relatively straightforward to be Called to the Bar and is available even if the person concerned does not intend to practice in England and Wales. This relates to the ongoing discussion of when Call to the Bar should occur.

11. The following points were also raised:
- we should review fees on an annual basis;
 - we should prioritise applications from those who do intend to practise at the Bar in England and Wales;
 - the Bar Council may be better placed to advise on factors driving the increase in transfer applications, particularly those who are active in the Indian market. There may be commercial reasons about which we are unaware.
12. Sam Townend KC confirmed that the Bar Council would be very willing to work with the BSB on this issue. He noted that over recent years some very well-known and established figures from the Indian Bar have joined chambers so may have led the way for others to follow. James Wakefield KC (Hon) also cited evidence that the transfer route now seems to be commercially promoted, whereas that had not occurred before. Moreover, the Inns are aware that the practising Bar is supporting an increasingly larger non-practising Bar.
13. Irena Sabic KC asked for further information to explain the rise in the number of cases referred back to the Contact and Assessment Team prior to investigation. In response the Executive stated that:
- this occurred because of:
 - a lack of evidence from an Investigation and Enforcement perspective that there had been a breach of the Code; and
 - the need for other enquiries to be made before taking the case forward;
 - the root cause was insufficient communication between the two teams. This has been recognised and steps taken to improve matters.
14. Simon Lewis referred to the Business Plan Summary (Annex B) and asked for more nuanced and proactive indicators than the RAG ratings currently used ie advice about risk, timelines and deliverability of outcomes. The Chair agreed with this sentiment.
15. Mark Neale explained that we are now using RAG ratings to indicate whether or not we are making purposeful progress against goals. However, he agreed to consider this point further. Steve Haines commented that the business plan is based on perceived deliverables. Adding stretch to targets might simply generate more amber / red ratings and give a misleading impression of progress.
16. **AGREED**
- a) to note the report.
 - b) to increase regulatory fees under the BSB's control so that these fully recover current administrative costs. **RF to note**
 - c) that the Executive considers:
 - (i) annually reviewing authorisation fees; **MN / SH to note**
 - (ii) prioritising applications from transferring lawyers who intend to practice at the Bar in England and Wales; **SH to note**
 - (iii) working with the Bar Council to determine the cause for the rise in applications from transferring lawyers. **MN to note**
 - d) that the Executive reviews the use of RAG ratings for business plan progress reports with a view to providing more nuanced information for the Board. **MN / RF**

Item 7 – Regulatory Decisions Annual Report 2022/23

BSB 041 (23)

17. The Board received the Regulatory Decisions Annual Report 2022/23 and, along with Saima Hirji, thanked Alex Williams and the Operational Support Team for its production. Simon Lewis noted the number of reports about bullying and harassment nearly doubled compared to 2021/22. This prompted a wider discussion, and the salient points were:

- recent Tribunal cases for sexual misconduct brought by the BSB attracted significant attention and underlined the message that this behaviour will not be tolerated at the Bar;
 - this may mean people have greater trust and confidence in our systems and are therefore more prepared to report bullying and harassment. We should make this clear in any press statement accompanying publication of the report;
 - these cases place considerable demands on the individual making the report and a key factor is that person's ongoing resolve to see the process through to the end.
18. In respect of the latter point, Nick Vineall KC emphasised the need for such cases to be prioritised and dealt with in as timely a manner as possible.
19. In response to other questions raised, the Executive clarified the following:
- the term "other" refers to any cases received that are not a report on alleged misconduct or any enquiry;
 - the terms "cases" and "reports" are sometimes used interchangeably, and next year's report will need to address this to avoid confusion;
 - the "themes" referenced in paragraph 75 relate to the categorisation of reports received by Supervision from the Contact and Assessment Team. "Thematic Reviews" are those opened by the BSB to research particular areas of regulation;
 - the reports received about barristers' use of social media generally related to inappropriate use of language.
20. The Chair agreed with comments from other Board Members about the challenges in responding to reports on the use of social media, given the counter arguments of freedom of expression. She acknowledged the need to monitor and manage this issue carefully but also track to see what difference our new guidance has made. That was published in September 2023 so next year's report will be able to compare the six months prior to its introduction with the six months post-publication.
21. **AGREED**
- to approve the Regulatory Decision Annual Report 2022/23 for publication and to request that any covering press release clarifies the likely reasons for the rise in reports about bullying and harassment (cf. min 17).

SH to
note

WW

Item 8 – Independent Decision Making Body Annual Report 2022/23
BSB 042 (23)

22. Tim Grey highlighted the following:
- the improvements in efficiency that have arisen from the accelerated investigations programme, particularly in respect of drafting decisions;
 - the forthcoming round of recruitment that will seek to address existing diversity issues, especially in respect of barrister members. This is not just in terms of protected characteristics but also for areas of practice at the Bar;
 - IDB Member training has improved ie:
 - we now onboard new recruits with more experienced Members;
 - we have introduced a rolling programme for Members to observe the conduct of Authorisation Panels and so gain knowledge and experience. This is because they meet much less frequently than Enforcement Panels.
23. Leslie Thomas KC asked about the desire to increase diversity within the IDB. In response, Tim Grey stated that:
- we can address underrepresentation of practice areas by specifically targeting Specialist Bar Associations (SBAs);
 - some protected characteristics (eg sex / gender) are properly represented but there is a lack of ethnic diversity among barrister IDB members. We should identify whether the issue is a lack of applications or conversion of these to appointments;

- the terms of office of IDB Members are staggered meaning there is a rolling programme of recruitment so there will be further opportunities in the year ahead.
24. Alex Williams added that:
- the “competencies” listed in the recruitment pack have not been revised since 2019 and will be re-worded to encourage a wider pool of applicants;
 - hitherto applications predominantly came from those with previous regulatory experience, whereas a broader range would be welcome.
25. Members said that it would be helpful:
- that the Board see the overall IDB recruitment plan for monitoring purposes;
 - to ensure the selection panels are appropriately diverse;
 - to analyse the ethnicity profiles of previous rounds of applicants / appointments.
26. In respect of the latter two points, Rebecca Forbes stated:
- selection panels are diverse and include an independent member as per the Governance Manual requirements;
 - though we encourage applicants to complete E&D monitoring forms, we cannot mandate them to do so;
 - applications received are analysed at three stages ie:
 - full application cohort;
 - shortlisted candidates;
 - appointments made;
 - we have data for all the years since the IDB was formed.
27. Nick Vineall KC noted the absence of a silk on the IDB. Diversity can also be considered from a seniority perspective. If this is addressed, it would enhance the credibility of the IDB among the profession. RF to note
28. **AGREED** WW
RF
RF
- a) to approve the IDB Annual Report 2022/23 for publication.
- b) to request an update on the plan for IDB recruitment at the next meeting.
- c) to note the comments about diversifying the IDB (cf. mins 25 and 27).
- Item 9 – Legal Services Board Action Plan – progress report**
BSB 043 (23)
29. Mark Neale commented as follows:
- the BSB Chair and Director General met their LSB counterparts earlier in the day. This was a helpful meeting in which the LSB made clear its satisfaction with the BSB’s progress on the action plan;
 - the “all green” RAG status of the annex to the report indicates that we are taking forward purposeful activity in all areas;
 - short-term challenges remain eg d to maintain momentum on the work on assuring competence following the departure of the Director of Regulatory Operations, but this will now be addressed by Rupika Madhura in her new role as Interim Director of Standards.
30. Simon Lewis welcomed the improvement in working relations with the LSB. He also reiterated his earlier point about the use of RAG ratings and the format for the report (cf. min 14). Stephen Thornton endorsed this view and suggested a commentary as a supplement. Mark Neale agreed to provide a covering report with the next iteration.
31. **AGREED** MN
- to note the action plan and request a covering report with the next iteration with reference to the above points (cf. min 30).

Item 10 – Director General’s Report – Public Session

BSB 044 (23)

32. The Board **noted** the report.

Item 11 – Chair’s Report on Visits and External Meetings

BSB 045 (23)

33. The Chair commented positively on events that gave her opportunities to engage with barristers, in particular the excellent advocacy course at Keble College, Oxford.
34. The Board **noted** the report.

Item 12 – Any Other Business

35. None.

Item 13 – Date of next meeting

36. Thursday 30 November 2023. This will be followed by a Board Dinner at Coopers Restaurant, Lincoln's Inn Fields, Holborn.

Item 14 – Private Session

37. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 27 July 2023.
 - (2) Matters arising and action points – Part 2.
 - (3) Budget Proposal – 2024 / 25 financial year
 - (4) Review of the Independent Reviewer process.
 - (5) Consolidated Risk Report.
 - (6) Director General's Strategic Update – Private Session.
 - (7) Board Evaluation
 - (8) Any other private business.
38. The meeting finished at 6.05 pm.