



REGULATING BARRISTERS

## Meeting of the Bar Standards Board

Thursday 31 March 2022, 5.00 pm (Hybrid meeting - in person and online)

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

### Agenda - Part 1 – Public

			<b>Page</b>
1. <b>Welcome / announcements</b> (5.00 pm)		Chair	
2. <b>Apologies</b>		Chair	
3. <b>Members' interests and hospitality</b>		Chair	
4. <b>Approval of minutes from the last meeting</b> <b>(27 January 2022)</b>	Annex A	Chair	<b>3-7</b>
5. a) <b>Matters arising</b> <i>(note – there are no outstanding Part 1 actions, so no action list is included)</i>		Chair	
b) <b>Forward agenda</b>	Annex B	Chair	<b>9</b>
6. <b>The BSB's Strategy and PLE Strategy and the</b> <b>Business Plan and Budget for 2022-23</b> (5.05 pm)	BSB 016 (22)	Mark Neale	<b>11-13</b>
a) <b>Strategy for the next three years</b> <b>(2022-23 to 2024-25)</b>	Annex 1		<b>15-22</b>
b) <b>Public Legal Education (PLE) Strategy</b>	Annex 2		<b>23-25</b>
c) <b>Business Plan and Budget for 2022-23</b>	Annex 3		<b>27-44</b>
7. <b>Review of BCAT</b> (5.25 pm)	BSB 017 (22)	Chris Young / Ewen Macleod	<b>45-57</b>
8. <b>Board Nomination Committee - Terms of</b> <b>Reference</b> (5.40 pm)	BSB 018 (22)	Mark Neale	<b>59-61</b>
9. <b>Director General's Strategic Update- Public</b> <b>Session</b> (5.45 pm)	BSB 019 (22)	Mark Neale	<b>63-97</b>
10. <b>Chair's Report on Visits &amp; External Meetings (*)</b>	BSB 020 (22)	Chair	<b>99</b>
11. <b>Any other business</b> (6.00 pm)		Chair	
12. <b>Date of next meeting</b> <ul style="list-style-type: none"><li>Wednesday 25 May 2022</li></ul>			
13. <b>Private Session</b>			

**John Picken, Governance Officer**  
24 March 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>BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

**Part 1 - Public****Minutes of the Bar Standards Board meeting****Thursday 27 January 2022 (4.30 pm)****via MS Teams**

- Present:** Baroness Tessa Blackstone (Chair)  
Alison Alden OBE  
Emir Feisal  
Steve Haines  
Andrew Mitchell QC  
Elizabeth Prochaska  
Irena Sabic  
Leslie Thomas QC
- By invitation:** Iain Christie (Chair, BSB Independent Decision Making Body – IDB)  
Malcolm Cree CBE (Chief Executive, Bar Council)  
Mark Fenhalls QC (Chair, Bar Council)  
Lorinda Long (LL) (Treasurer, Bar Council)  
Nick Vineall QC (NV) (Vice Chair, Bar Council)
- BSB Executive in attendance:** David Adams (Corporate Services Manager)  
Shadae Cazeau (Head of Equality & Access to Justice)  
Rebecca Forbes (Head of Governance & Corporate Services)  
Teresa Haskins (Head of People, BSB)  
Andrew Lamberti (Communication Manager)  
Ewen Macleod (Director of Strategy & Policy)  
Mark Neale (Director General)  
John Picken (Governance Officer)  
Wilf White (Director of Communications & Public Engagement)  
Julia Witting (Head of Supervision)
- Press:** Neil Rose, Legal Futures

**Item 1 – Welcome / Announcements**

1. The Chair welcomed attendees, in particular the following individuals to their first Board meeting:
  - Emir Feisal, a new lay Board Member who will also represent the BSB on the BTAS Strategic Advisory Board;
  - Mark Fenhalls QC, the new Chair of the Bar Council;
  - Nick Vineall QC, the new Vice Chair of the Bar Council;
  - Shadae Cazeau, the recently appointed Head of Equality and Access to Justice.
2. She also welcomed Iain Christie, Chair of the Independent Decision Making Body (IDB) who had been invited to speak to item 9 of the agenda (IDB Annual Report);
3. She noted with regret that two longstanding staff members, Andrew Lamberti (Communications Manager) and Peter Astrella (Regulatory Risk Manager), are leaving the BSB to take up new roles elsewhere. She thanked both for their sustained and valuable contribution to the BSB over the years and wished them well for the future.

## Part 1 - Public

**Post meeting note:** the Chair had intended to announce in public session her decision to stand down from the BSB but omitted to do so. She later confirmed this intention in the private session of the meeting and will leave her role in summer 2022.

4. **Item 2 – Apologies**

- Kathryn Stone OBE
- Stephen Thornton CBE
- Oliver Hanmer (Director of Regulatory Operations)

**Note:** Adam Solomon QC was absent from Part 1 of the meeting but was able to attend for Part 2.

**Item 3 – Members’ interests and hospitality**

5. None.

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

6. The Board approved the Part 1 (public) minutes of the meeting held on 23 September 2021.

**Item 5a – Matters arising & action list**

7. The Board **noted** the action list.

**Item 5b – Forward agenda**

8. The Board **noted** the forward agenda list but asked that the number of items for the March Board meeting be reconsidered. Some items, which had originally been scheduled for earlier dates, have since been deferred until March. In consequence, the size of that agenda is now too large.

**MN /  
JP to  
note**

**Item 6 – Regulatory Decision Annual Report 2020/21**

BSB 002 (22)

9. Sara Jagger highlighted the following:

- the report reflects a period when the pandemic detrimentally affected work patterns. The impact of this is reflected in the key performance indicator (KPI) results and underlines the need to build better organisational resilience in the BSB as described in our strategy document;
- the Contact Assessment Team (CAT) saw a significant rise in the number of reports (an overall increase of 54%);
- an increasing number of reports relate to content added by barristers to social media platforms;
- our forthcoming review of regulatory decision-making processes and procedures will seek to identify further efficiency gains.

10. In response to questions raised, the following points were made:

- the report was published in November 2021 and was well covered by the legal press at that time with a particular focus on the increase in the volume of reports. The explanation for the rise might reflect our earlier efforts to make the process of reporting easier and more accessible through our website;
- in some instances, a large number of reports concerned the same issue about which there had been wide publicity eg the Government’s proposed Internal Markets Bill. Though they had a common theme, these reports often varied as to the issues they raised. It meant a collective response could apply to just some, of the reports but not all. Those remaining needed to be individually assessed;
- reports arising from social media tend to relate to matters outside of the legal professional life of barristers.

11. Andrew Mitchell QC asked about current performance standards compared to those mentioned in the report and future prospects for meeting KPIs. In response, the Executive stated that:
- in respect of the CAT, performance against KPIs has improved following steady increases in productivity. We hope to meet targets on timeliness by the end of this year;
  - in the short term, KPI targets for the investigations and enforcement team will continue not to be met. This is due to the long lead-in time required for new staff to be recruited, inducted and fully trained. We are only likely to see improvements from Quarter 2 of 2022/23 onwards;
  - KPIs will be reported to the Board on a quarterly basis with the next set of figures due in March 2022.

12. **AGREED**  
to note the report.

#### **Item 7 – Regulatory Return**

BSB 003 (22)

13. Julia Witting highlighted the following:
- the report summarises the outcome of the full regulatory return exercise (previously the Board had only seen data about the impact of the pandemic on the profession);
  - this engagement with the profession has been helpful in:
    - providing an evidence base for our continuing role as a risk based regulator;
    - identifying trends, market level risks as well as examples of good practice within chambers.

14. **AGREED**  
to note the report.

#### **Item 8 – Annual Diversity Data Report**

BSB 004 (22)

15. Shadae Cazeau highlighted the following arising from the annual diversity data report:
- the rise in the number of pupillages since the last report (from 354 to 511). This suggests an encouraging bounce back from the effects of the pandemic;
  - the overall increase in disclosure rates, though some categories still remain below statistically valid levels;
  - our intention to discuss with other regulators the best options of further improving disclosure rates. This might involve reviewing the questions asked and possibly looking for alternative approaches.
16. In response to a question about contextualising the data over time, the Executive stated that:
- this series of diversity data reports commenced in 2015 so direct year to year comparisons can only occur within this period;
  - we did publish a report on [trends in retention and demographics at the Bar: 1990-2020](#) which has a longer term view but just focuses on age, ethnicity, and gender;
  - we cannot easily trace the career paths for individuals within cohorts over time but can look at broader categorised data for general trends.
17. Leslie Thomas QC referred to data on successful QC applications. He suggested some additional research work around ethnicity may be useful ie:
- the length of time it takes for a barrister to become a silk;
  - the number of attempts before a successful application is achieved;
  - any perceived barriers which might deter those with protected characteristics from making applications in the first place.

18. Members welcomed this suggestion but also acknowledged the risk of unintentionally identifying individuals from a detailed analysis of a small pool of data. Notwithstanding this there would be merit in developing a pathway for this information with QCA providing appropriate safeguards are in place.
19. A number of comments were made on the general theme of increasing diversity at the Bar with examples given of existing initiatives to achieve this ie:
- mentoring schemes eg those run by the Judicial Appointments Commission;
  - targeted education outreach projects eg those run by the Kalisher Trust and the Inns of Court;
  - the BSB's reverse mentoring scheme.
20. Mark Fenhalls QC was invited to contribute, given the Bar Council's role in promoting diversity. He emphasised his desire to see chambers aspire to standards beyond those imposed by the regulator in terms of equality rules. He underlined the Bar Council's commitment to achieving greater diversity at the Bar and welcomed input from any stakeholder wishing to assist in this goal. Mark Neale agreed the need for a collaborative approach as BSB moved to clarify expectations of chambers and employers in their oversight of diversity and standards.
21. In response to a question about identifying and tackling barriers to inclusion, the following comments were made:
- the BSB has already contributed to some qualitative research on barriers to training for the Bar;
  - the authorisation process for pupillage specifically asks potential Authorised Education and Training Organisations (AETOs) about how it will address the principle of accessibility and gives examples of good practice.
22. **AGREED**  
to note the report.

**Item 9 – Independent Decision Making Body (IDB) Annual Report 2020-21**  
BSB 005 (22)

23. Iain Christie commented as follows:
- this is the IDB's second annual report but the first to cover a full 12-month period;
  - the pandemic meant that all Panel meetings and training events were conducted online but this did not prove problematic;
  - the period in question saw a rise in the number of cases both for enforcement and authorisation. There was a relatively low rate of challenge against IDB decisions (and even lower rate in terms of successful challenges);
  - a new Vice Chair was appointed during the period concerned following the departure of Cindy Butts, though the new postholder (Rohan Sivanandan) took up the role after March 2021 so does not co-author this report.
24. The Chair welcomed the report and thanked Iain and the IDB for their hard work in managing an increasing caseload. In response to a question raised about the *Eve* judgment, Iain Christie confirmed that the lessons learned report will be presented to the BSB's Governance, Risk and Audit Committee in February 2022.
25. **AGREED**  
to note the report.

**Item 10 – Governance, Risk & Audit (GRA) Committee Annual Report 2020-21**

BSB 006 (22)

26. Mark Neale highlighted the salient points of the GRA Committee's Annual Report ie
- its work on risk management, particularly the deep dive analyses it undertook on a number of subject areas;
  - its scrutiny of the lessons learned arising from the Huxley-Binns report on BSB online examinations;
  - its regular review of corporate risks selected from the risk register.

27. **AGREED**

to note the report.

**Item 11 – Director General's Strategic Update – public session**

BSB 007 (22)

28. Mark Neale outlined his report and supplemented this with an update on new guidance on sanctions. This comes into effect from January 2022 and follows a joint review with the Bar Tribunal and Adjudication Service (BTAS). The effect has been to strengthen sanctions, particularly in respect of harassment and sexual misconduct.
29. In respect of professional indemnity insurance cover for cyber related losses, Ewen Macleod explained that the proposals for change did not constitute a substantial shift in policy but a consultation process with stakeholders will still proceed.

30. **AGREED**

to note the report.

**Item 12 – Chair's report on visits and external meetings**

BSB 008 (22)

31. The Board **noted** the report.

**Item 13 – Any Other Business**

32. None.

**Item 14 – Dates of next meetings**

33. • Tuesday 22 February 2022 (Board to Board meeting with LSB)  
• Thursday 31 March 2022 (ordinary Board meeting)

**Item 15 – Private Session**

34. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 23 September 2021 & 20 October 2021.
  - (2) Matters arising and action points – Part 2.
  - (3) Corporate Risk Report.
  - (4) Regulatory Performance (including update on *well-led* action plan).
  - (5) Future strategy and budget for 2022-23.
  - (6) Director General's Strategic Update – Private Session.
  - (7) Any other private business.
35. The meeting finished at 5.30 pm.



## Forward Agenda

### Wednesday 25 May 2022

- Year-end report of the Strategic Planning & Resource Committee (SPR)
- Governance: a) policies on interests and gifts and hospitality and b) changes to Standing Orders
- Conduct in non-professional life project
- Review of EU Law as a foundation subject in the academic component of training
- PII consultation
- Director General's Strategic Update- (including Q4 / end of year performance report & BSB six monthly self-assessment against LSB's regulatory performance framework)
- Corporate Risk Report – summary
- Review of the consumer engagement strategy

### Thursday 14 July 2022 (Board Away Day)

### Thursday 22 September 2022

- Director General's Strategic Update- (including Q1 performance report)
- Budget proposal – 2022 / 23 financial year
- Consolidated Risk Report
- Pay and reward policy

### 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



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 March 2022
<b>Title:</b>	The BSB's Strategy and PLE Strategy and the Business Plan and Budget for 2022-23		
<b>Author:</b>	Ewen MacLeod and Wilf White		
<b>Post:</b>	Directors of Policy & Strategy and of Communications & Public Engagement		

<b>Paper for:</b>	<b>Decision:</b> x	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>	
(a)	<b>protecting and promoting the public interest</b>
(b)	<b>supporting the constitutional principle of the rule of law</b>
(c)	<b>improving access to justice</b>
(d)	<b>protecting and promoting the interests of consumers</b>
(e)	<b>promoting competition in the provision of services</b>
(f)	<b>encouraging an independent, strong, diverse and effective legal profession</b>
(g)	<b>increasing public understanding of citizens' legal rights and duties</b>
(h)	<b>promoting and maintaining adherence to the professional principles</b>
<input type="checkbox"/>	Paper does not principally relate to Regulatory Objectives

### Purpose

- To seek the approval of the Board for:
  - the BSB's Strategy for 2022-25;
  - the Business Plan for 2022-23;
  - the Public Legal Education Enabling Strategy; and
  - the budget for 2022-23

### Recommendation

- We recommend that you approve these documents for publication – final designed versions will be circulated before the Board meeting separately – and give your final approval to the budget for 2022-23. The documents reflect comments received from the SPR Committee which reviewed them and approved the revised budget at its meeting on 17 March.

### Background

- The documents attached to this paper should be self-explanatory so we will keep this cover note very brief. We have also sought to keep the documents themselves as brief as possible in the hope that this will make them more accessible and more widely read. They reflect widespread discussion with both Board members and within the executive team as well, of course, as responding to the consultation undertaken last Autumn.

#### *The BSB Strategy document*

- This document sets out our high level strategic priorities and proposes five key strategic aims for the BSB:
  - 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.
5. The paper also sets out our proposed strategy in the context of the LSB’s priorities and of our statutory regulatory objectives and then goes on to list our key priorities under each strategic aim.

#### *The PLE Enabling Strategy*

6. In addition to our overall corporate strategy we are planning to prepare what we are calling “enabling strategies” for some of our key activities and we are attaching the proposed enabling strategy for Public Legal Education as a first example. Further enabling strategies are being prepared to cover our work in the areas of:
- Equality
  - Research and
  - Supervision
7. The draft strategy emphasises our wish to work in partnership with other regulators and with front line providers of help to those in legal need so that we can agree a common approach towards defining who is most in legal need and how best to help them. It also makes clear that we intend to offer help both directly through our own website and in collaboration with others and to evaluate our work with measurable outputs wherever possible.

#### *The Business Plan*

8. The Business Plan is of course based around the five key strategic aims in the Strategy and sets out our priorities for the coming year in terms of:
- our continuing regulatory operations;
  - projects which have already begun but which we will continue in the coming year; and
  - new projects which we have yet to begin.
9. The Plan shows how these activities fit with our five strategic aims and with our statutory regulatory objectives and also explains our budget for the year, where our income is forecast to come from and how we intend to spend it.
10. The key messages which we hope the Plan conveys are that:
- our top priority is to meet our KPIs for our core regulatory operations and to review those operations to make them more efficient where we can;
  - our other work has been carefully prioritised so that we can focus on doing fewer things better;
  - we want to enhance our effectiveness and independence as an organisation; but
  - we also want to work in partnership with others where we can.

#### *The Budget*

11. As you know, the Legal Services Board approved the Bar Council’s PCF application on 23 February and our draft budget for 2022-23 has already been the subject of scrutiny by SPR and the Board. But we are submitting this final version of the Budget so that the Board can see how we propose to allocate our resources in pursuit of the priorities in our Business Plan.

12. The overall budget has decreased by £10,000 since the Board last reviewed it, totaling £13.8m<sup>1</sup> with the changes recommended between versions by the Senior Management Team (SMT). This represents a very small decrease, in percentage terms. Overall income has increased by £20,000, again a small percentage of the total.
13. The changes can be summarised as follows:
- Additional funds of £10,000 for Board training following the Board’s recent consideration of its training needs, in part as a response to one of the recommendations in the report by *Independent Audit* that the Board “should seek out training which is genuinely value-adding and relevant, and ideally it should be specifically designed for your needs”. This will include high quality and comprehensive equality and diversity training for all Board members in the first instance.
  - A reduction of £20,000 for the Code of Conduct Review Programme, with the costs for development of an app exhibiting an online version of the Code scheduled to be spent in the 2023-24 financial year instead. The costs remain the same, but will now be reflected later than expected when the previous version of the budget was drafted.
  - An increase of £20,000 in regulatory income, coming solely from the change of arrangements for the issuing of Certificates of Good Standing. The summary of this change was shared at the SPR meeting on 3 February 2022, in which the Committee recommended the Board approve them.
14. The phasing of budgets is set to be complete and the final budgets passed to the budget holders after final approval by the Board.

### **Resource implications / Impacts on other teams / departments or projects**

15. The resource implications of the Business Plan are set out in the attached budget but also in the plan itself which shows how we intend to apply our budget for the year. The resources implications of our strategy beyond 2022-23 will be considered through our annual budget setting process but further significant increases in our budget are not currently anticipated.
16. The Business Plan will of course have a significant impact upon the work of our teams and departments and extra people are being recruited for those areas where an increase in resources will be required.

### **Equality and Diversity**

17. The Strategy and the Business Plan both discuss how we propose to make the pursuit of Equality and Diversity one of our key strategic aims and we will prepare a separate Equality Enabling Strategy.

### **Risk implications**

18. The Strategy is based on an analysis of the risks to our regulatory objectives through our regular risk reporting and a horizon scanning exercise. The BSB’s corporate risk register seeks to reflect the risks involved in taking forward our Business Plan and Strategy. The most obvious risk is of course a shortfall in resources, either in terms of people or income.

### **Annexes**

- Annex 1 - Strategy for the next three years (2022-23 to 2024-25)  
 Annex 2 - Public Legal Education (PLE) Enabling Strategy  
 Annex 3 - Business Plan and Budget for 2022-23

<sup>1</sup> The budget figures in the spreadsheet for our total PCF income and expenditure are consistent with those quoted in the Business Plan but the Plan figures exclude our share of the GCB’s contribution to the Defined Benefit Pension Scheme which will amount to £916,890 and which is not really a BSB cost.



**BSB Strategy 2022-25****1. Foreword by Chair**

- 1.1 Since we launched our last strategy in 2019, much has changed for everyone.
- 1.2 For the BSB, in addition to the move to remote working, the pandemic has been characterised by rising volumes and complexity of core regulatory work and new strategic challenges. We have struggled to deliver the expected service levels across our core regulatory operations and we are committed to rectifying this as the top priority in this strategic plan.
- 1.3 The pandemic, and its aftermath, continues to have an impact on the courts, the efficiency of the whole justice system, and access to justice: exacerbating issues that were already present, including reduced public funding and the associated access to justice issues. We also know that it has had a negative impact on the wellbeing of many barristers: this is bad for clients, and also bad for the sustainability and diversity of the profession.
- 1.4 However, the pandemic has also been a catalyst for new ways of working and increased use of technology: we need to harness the benefits of this where possible and look for innovative solutions to address access to justice needs. We also need to ensure that the Bar is equipped to adapt to such technological changes and meets the expectations of future clients.
- 1.5 Whilst the profession becomes increasingly diverse (albeit not uniformly at all levels of seniority or areas of practice) it is also ageing. We need to ensure sustainability and work with others to promote a culture of inclusion, for the benefit of practitioners and clients alike. We also need to help consumers from any background to navigate the complex legal system more easily.
- 1.6 The events of the last two years have meant we had to prioritise rigorously, and resources have been stretched. In preparing this strategy, we have therefore reviewed our capacity and capability as an organisation and identified areas where we need to strengthen. My Board remains committed to delivering value for money from this new investment, and to delivering an efficient service.
- 1.7 As a result, our key strategic aims are:
  - **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
- 1.8 As I prepare to leave the BSB after four and a half years as its Chair, I am pleased that I leave the organisation with its independence strengthened and with a clear set of priorities

for the next three years. I have very much enjoyed working with colleagues inside and outside the BSB to promote the public interest and I wish my successor all the very best in delivering this Strategic Plan.

## 2. Our Vision

### 2.1 The BSB's vision is as follows:

*We will ensure that the BSB regulates the Bar in the public interest by promoting high standards, equality and access to justice.*

### 2.2 In meeting this vision, we want to see a market for barristers' services where:

- barristers provide a range of good value legal services which are well understood by the public who can access those services either through their solicitors or directly;
- diverse customers are served equally by a diverse Bar which does not tolerate any form of discrimination, bullying or harassment;
- the quality of legal advice and of customer service is consistently high; and barristers' duties to the Court, to their clients and to the rule of law are upheld.

### 2.3 To achieve this vision we need to work in collaboration with others (indeed, some of the work we outline in this strategy might be led by others.) It was clear from a number of responses to the consultation that stakeholders feel we should avoid duplicating work (for example, on diversity) that is being undertaken by the profession, and that we should focus on where regulatory intervention is necessary. We completely agree, and will only seek to act where it is clear that we shall add value by doing so.

## 3. Our context: the wider legal sector

### 3.1 In common with the other legal services regulators, we have an oversight regulator, the Legal Services Board (LSB). We perform our role independently, but we share common statutory objectives and we perform our role with regard to rules and guidance set by the LSB.

### 3.2 In developing this strategy, we have had regard to the three strategic themes set by the Legal Services Board for the sector, and the challenges that it identifies:

- **Fairer outcomes:**
  - Lowering unmet legal need across large parts of society
  - Achieving fairer outcomes for people experiencing greater disadvantage
  - Dismantling barriers to a diverse and inclusive profession at all levels
- **Stronger confidence:**
  - Ensuring high quality legal services and strong professional ethics
  - Closing gaps in consumer protection
  - Reforming the justice system and redrawing the regulatory landscape
- **Better services:**
  - Empowering consumers to obtain high quality and affordable services
  - Fostering innovation that designs services around consumer needs
  - Supporting responsible use of technology that commands public trust

#### 4. Our context: the regulatory objectives

4.1 At the heart of everything we do as an organisation are the Regulatory Objectives in the Legal Services Act 2007. They 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.

4.2 The professional principles are that:

- authorised persons should act with independence and integrity;
- authorised persons should maintain proper standards of work;
- authorised persons should act in the best interests of their clients;
- 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
- that the affairs of clients should be kept confidential.

4.3 In addition to the Regulatory Objectives in the Legal Services Act 2007, the BSB is subject to a number of other statutory duties which must be taken into account when we prioritise our strategic aims.

4.4 The Legal Services Act also requires us to regulate in a way that is transparent, accountable, proportionate, consistent and targeted.

4.5 The BSB (as the independent body through which the General Council of the Bar carries out its regulatory functions) is a public body for the purposes of the Equality Act 2010 and is bound by, and committed to, meeting the requirements of the general, and specific, public sector equality duties. We will expand on how we will respond to these duties in a separate Enabling Strategy for Equality.

#### 5. Risks and opportunities

5.1 We base our regulatory activities on risk, taking an evidence-based approach to determining the priority risks, and allocating our resources where we think they will be most effective in addressing those priority risks.

5.2 To achieve this, we are constantly monitoring the market for barristers' services. We seek to identify all the potential risks that could prevent the Regulatory Objectives from being met and focus our attention on those risks that we think pose the biggest threats to the public interest.

- 5.3 Our Regulatory Risk Framework describes how we approach the delivery of our Regulatory Objectives. We have then categorised those things which can go wrong in the delivery of these services in our Regulatory Risk Index.
- 5.4 Our strategy is driven by a clear vision of the role of regulation in improving outcomes for consumers, in supporting the administration of justice and in strengthening the profession itself. In developing our new strategy we have therefore considered the risks and opportunities in the market for barristers' services that affect our ability to meet our regulatory objectives. We have summarised below the risk analysis that supports each of our strategic objectives.

### **Efficiency**

*There is a risk that public and professional confidence in core regulatory operations is damaged if the BSB fails to deal with work in a timely way or fails to maintain the quality of its decisions.*

- 5.5 Our top priority is to fulfil our core regulatory responsibilities efficiently and effectively. Much has changed for the BSB over the course of the health emergency: volumes of core regulatory work have risen sharply, complexity has risen and new strategic challenges have emerged. We are currently missing our timeliness service levels in turning around requests for authorisations, in handling reports of alleged professional misconduct and in taking forward investigations. Those seeking authorisations or those making, or being the subjects of, reports deserve a faster service.
- 5.6 As we have developed this strategy, we have undertaken a root and branch review of the resources needed to regulate the Bar efficiently and effectively in the public interest, maintaining high standards, promoting equality and furthering the interests of consumers. It represents a step change for the BSB and we expect to see a commensurate improvement in our performance.

### **Standards**

*There is a need for barristers to be supported in maintaining and developing a range of skills, knowledge and competences to meet consumers' needs.*

- 5.7 Most barristers are self-employed. This places the burden on individual barristers to identify whether they require support or training, for example to adapt their advocacy to remote hearings and to support vulnerable witnesses and clients. The employed Bar, by contrast, operates in a very different environment, sometimes with different challenges and ethical dilemmas.
- 5.8 We believe that chambers and employers have an important role to play in supporting barristers to meet the challenges of what is a very decentralised profession. There is a need to clarify our expectations of both chambers and employers in overseeing standards (and equality – see below.) We believe that there is good practice in both parts of the Bar that can be shared to improve standards across the profession.
- 5.9 Chambers and employers have an important role to play in:
- delivering feedback to individual barristers from judges, solicitors and consumers on their professional competence;
  - supporting pupils and junior barristers; and
  - supporting barristers in maintaining and developing a range of skills, knowledge and competences.

**Equality**

*There is a continuing need to improve the culture at the Bar, tackling discriminatory practice in all its forms and ensuring a supportive environment for all barristers and pupils.*

- 5.10 There is a significant amount of evidence telling us that bullying, discrimination and harassment have been experienced by many at the Bar. Barristers who are female, from a racialised minority, LGBT+ or who have a disability are particularly likely to encounter such behaviour. Discrimination can arise in many forms, and may be the unintentional consequence of unexamined practices. It can particularly occur during the recruitment and training of pupils and in the allocation of work.
- 5.11 Culture and working practices can perpetuate these issues and we are committed to working with the profession to play our role in challenging those aspects of culture at the Bar that are discriminatory and exclusive. In particular, chambers and employers have a significant role to play in helping us to deliver our vision of a Bar that is diverse, accessible, independent, knowledgeable, skilled and inclusive.
- 5.12 Equality, diversity and inclusion issues differ across the Bar. The self-employed Bar has particular challenges associated with the decentralised nature of practice and the ability of chambers to address these issues. Meanwhile, the employed Bar is more diverse and operates in a different context. Indeed, the employed Bar may offer helpful lessons to chambers in how to be more inclusive.
- 5.13 As with access to justice, the continuing impact of the pandemic may affect equality, diversity and inclusion in the profession. Extended court hours can affect those with caring responsibilities; the backlog in court cases and the lack of barristers available to tackle it are affecting working conditions and wellbeing, especially in criminal work.

**Access**

*There is a continuing need to support improvement in consumer education in navigating legal services.*

- 5.14 Although there is now greater price transparency, individuals and businesses with legal problems usually have a poor understanding of their legal rights and duties and of the full range of services offered by barristers, particularly the scope to access barristers' services directly and the potential to unbundle services. Consumers may also be daunted by the prospect of contacting chambers.
- 5.15 Where individuals and businesses are referred to barristers by solicitors or other legal professionals, our evidence is that they are often offered no choice.

*There are continuing pressures on public funding and a need for innovative solutions to meet consumer demand.*

- 5.16 The impact of reductions in public funding continues to be felt, with a consequent impact on the ability of large numbers of clients to afford legal advice. Increasingly, people are forced to represent themselves or are unable to seek a legal remedy at all.
- 5.17 Technology and innovation have an important role in helping to deliver for consumers, especially in improving access to justice, and in helping to deliver transparency for consumers to navigate legal services. But the take up of new technology depends on

individual barristers, chambers and employers, and cannot improve access to justice for the digitally excluded.

- 5.18 And we know that there is unequal access to justice across the country – not only do some people live in ‘advice deserts’ or otherwise struggle to access legal services, but we know that clients from racialised minority are likely to be less satisfied with the quality of any legal services that they purchase. This could be exacerbated in the aftermath of the pandemic, with backlogs in court cases, scheduling and listing issues likely to lead to inefficiencies, clashing cases and delays.
- 5.19 In addition, the legal profession faces political challenges. Lawyers have an important role to play in protecting citizens’ rights and the rule of law and must continue to do so fearlessly despite the risk of criticism from government or other sources.

*There is a need to ensure the sustainability and resilience of the Bar to meet consumer demand.*

- 5.20 Research shows that the Bar is ageing, which could create real challenges in terms of future barrister provision and an exacerbation of access to justice concerns for consumers. The problems are likely to be most acute within the publicly funded Bar where the number of pupillages available may also come under pressure. They could also unevenly affect women and those from minority ethnic backgrounds, which could in turn affect our aim of achieving a more diverse Bar. We also know that there are concerns about wellbeing in certain parts of the Bar, which could have consequences for (for example) the future supply, and diversity, of criminal barristers in particular. The challenge is not simply to train more barristers, but to understand what will be needed by consumers in future years and how that maps to the pipeline of new practitioners. The BSB needs to be agile in responding to changes in consumer expectations and facilitating innovations that are in the public interest.
- 5.21 We must also work with the employed Bar and others to explore how we can remove barriers to establishing more innovative forms of pupillage and ensuring equal access to professional development opportunities.

*There is an ongoing impact of the pandemic, including its accelerating effect on court reform and the increase in remote hearings and remote working.*

- 5.22 Evidence from the Regulatory Return shows that chambers have set themselves up to deal with remote working, while some chambers have responded well to clients’ concerns and have supported hybrid hearings by bringing clients without digital access into chambers. However, concerns remain that some clients find the online experience leaves them feeling removed or isolated from the process.

### **Independence**

*There is a risk that the BSB’s own capacity and culture does not support its effectiveness as an independent regulator.*

- 5.23 We must undertake a full review of the current governance arrangements, under which we share certain services with the Bar Council, after two years of operation. Incorporating the BSB as a separate legal entity might bring benefits in terms of transparency, accountability and operational freedom that should be explored.

## 6. Our strategic priorities 2022-25

6.1 A number of activities from our previous strategic plan will continue into the next period. These include, for example, our work on assuring competence, equality, diversity and inclusion, greater transparency for consumers, and updating the Handbook. These continue to be compatible with the priorities that are identified in this paper.

6.2 For the next three years, our strategic aims are:

- **Efficiency** – delivering our core regulatory operations quickly, economically and to a high standard. Key areas of activity include:
  - Increasing capacity to support our people in developing the skills and capabilities they need both to deliver current and future organisational goals as well as develop their own careers
  - Reviewing our operations to ensure we are efficiently and effectively meeting service levels
  - Reviewing the effectiveness of our enforcement regime
  - Reviewing the regulatory status of unregistered barristers
- **Standards** – ensuring that barristers provide a high quality and responsive service throughout their careers. Key areas of activity include:
  - Regulating the training of barristers and ensuring continuing high standards
  - Completing our programme of assuring competence, to satisfy ourselves and others that we have appropriate systems in place to ensure that standards are maintained throughout a barrister’s career
  - Taking supervision or enforcement action where necessary to promote standards
  - Continuing the review of the BSB Code of Conduct, to ensure it remains fit for purpose
  - Strengthening our ability to reach out and to engage with chambers, employers the profession and the public so that we can identify and promote good practice in the way the profession operates to provide effective services, to sustain high professional standards, to develop barristers and to ensure diversity
  - improving and deepen the intelligence we have and our research evidence bearing on professional competence, standards of service and the operation of the market for barristers’ services
- **Equality** – promoting diversity and inclusion at the Bar and at the BSB and the profession’s ability to serve diverse consumers. Key areas of activity include:
  - setting out clearly our expectations of the profession and holding it to account
  - continuing to promote equality, diversity and inclusion at the Bar with the support of our Race Equality, Disability and Religion & Belief Taskforces
  - working with chambers and employers to promote good practice, including by completing the review of our Equality Rules, reporting on the regulatory return and implementing changes and undertaking research into pupillage recruitment, to understand how better to promote diversity and inclusion
  - monitoring differential attainment in Bar training and progression at the Bar, and whether certain groups are over-represented in our disciplinary processes: developing [targets and] action plans to eliminate any disparities

Part 1 – Public

- leading by example, demonstrating that the Bar Standards Board is itself diverse and inclusive and committed to understanding the equality impacts of its policies, services and interventions
- **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). Key areas of activity include:
  - providing information to the public about barristers in partnership with consumer organisations, the profession and other legal regulators
  - continuing to develop and implement our strategy for public legal education in partnership with other regulators and organisations working directly with those in legal need, in order to improve our understanding of how best to identify those in legal need, the nature of that need and how best to help them
  - ensuring compliance with, and evaluating, our transparency rules: considering what additional regulatory action will be needed on transparency in the light of that evaluation
  - enhance our understanding of consumers’ needs and experience in using barristers’ services
  - undertaking research better to understand how solicitors choose clients on behalf of their clients and reviewing whether regulation is needed to ensure greater transparency or choice
  - examining the role of new technology in promoting access to justice
- **Independence** – strengthening the BSB’s independence, capability self-confidence and credibility. Key areas of activity include:
  - Keeping our independence under regular review and considering whether our independence would be further enhanced by legal separation from the Bar Council by incorporating a separate corporate entity (albeit wholly owned by the Bar Council)
  - Regularly reviewing our governance and completing our ‘Well Led Action Plan’, ensuring we comply with the performance standards set by the Legal Services Board
  - Improving our engagement with stakeholders
  - reviewing the reward and recognition framework, and our learning and development strategy for our people: promoting our values of fairness and respect, independence and integrity, excellence and efficiency
  - promoting diversity and inclusion at the BSB

## Public Legal Education (PLE) Enabling Strategy

### Aims

1. Our key aim is to meet our statutory objective under the Legal Services Act of “increasing public understanding of citizens' legal rights and duties”. We also need to reflect the CMA’s recommendations relating to PLE which seek to ensure that consumers have access to
  - a. a comprehensive whole of market overview of different types of provider including those not regulated by frontline regulators;
  - b. information and practical guides on comparing and choosing a legal services provider; and
  - c. guidance on what information consumers and small businesses should reasonably expect from legal service providers.
2. Our work in PLE also promotes the BSB’s strategic aim of “**Access** – promoting consumer understanding of legal services and choice and good value in using those services”
3. Our PLE strategy covers both “just in case” and “just in time” advice. Legal advice is an intermittent purchase, so most consumers have no interest in the legal market most of the time. It therefore makes sense to focus much of our work when communicating directly with consumers on when they have a need (“just in time”) rather than on a precautionary basis (“just in case”). But “just in case” advice also has an important role to play – training intermediaries, for example, so that they are ready to help those whom they advise when problems arise.
4. We work on the principle that consumers in legal need vary widely in both their confidence in dealing with legal professionals, in their legal knowledge and in the vulnerabilities they may experience and we seek to give priority to consumers who lack confidence and/or knowledge and who are in vulnerable circumstances.
5. We also recognise that some of the most vulnerable consumers may not trust official sources of information, such as legal regulators – asylum seekers, for example, may be from countries where the legal system has become corrupted and where lawyers may be seen as agents of the state – so we recognise that these consumers may often be more likely to trust third sector organisations and community leaders as sources of legal knowledge.
6. Our strategy seeks to coordinate our work with our fellow regulators, the Bar, the government and organisations seeking to support those in legal need (“our PLE partners”) and to :
  - a. develop a common market segmentation approach - drawing on the LSB’s Legal Needs Survey and other research - so that key stakeholders can agree who is most in legal need and how best to support them, thereby avoiding duplication of effort and conflicting initiatives wherever possible. While this common approach is being developed and as a contribution to its development, we are funding research by Law for Life into the legal needs of people in the area of employment law;
  - b. consult our PLE partners on the research we undertake and the content we produce in order to improve our own research and communications in the light of their insight and expertise (eg we seek to share our research and much of the “For the Public” material on our website was written in partnership with Law for Life)

**Part 1 – Public**

- c. promote the transparency of services provided by barristers so that the public are better educated as to what services they can offer, their likely cost, how barristers are regulated and what to do if they need to make a complaint
  - d. support research and materials produced by our PLE partners themselves (eg we have recently funded materials for litigants in person from Law for Life and research into barriers to complaints for clients of immigration services conducted by Refugee Action)
  - e. give financial support and advice to organisations seeking to help those in legal need and to raise awareness of their work with the profession and the public (eg we are a Guardian of Support through Court, which helps those who have to represent themselves in court, and one of our Directors sits on their Business Board)
  - f. engage with government and other public bodies to improve signposting to PLE resources on government websites
  - g. and continue to work with Legal Choices where appropriate – for example in making our regulatory data available through their Help Me Trust My Lawyer project – promoting the website from our own websites and on published materials and encouraging legal service providers to make consumers aware of the site.
7. We intend to deliver these aims via a dual strategy of:
- a. providing content through our own website and through other media, such as the Press, and sharing that content wherever possible
  - b. partnerships with those who have the most expertise in reaching those with poor legal knowledge and whose websites are already well used
8. The strategy does not focus solely on online or written resources. Since the most vulnerable often may not have internet access and may have poor language abilities or mental health for example we will also seek to provide PLE support through video and other media and to consider the needs of those who do not understand English.

**Activities:**

9. Our usual PLE activities include:
- a. discussing and developing our strategy and research with our PLE partners so that we can improve the public's understanding as to their legal rights and duties, how they can obtain legal advice and how legal service providers, and particularly the Bar, are regulated
  - b. maintaining and enhancing our website especially the For the Public section with advice from our PLE partners
  - c. seeking to promote our PLE messages through the Press and social media
  - d. working with Legal Choices where appropriate
  - e. producing materials which are in different formats including video and printed materials and considering the case for providing some materials in other languages
  - f. funding, where appropriate, and promoting PLE materials produced by our PLE partners

**Outcomes**

10. The key outcome we will seek to achieve will be an increase in legal knowledge amongst those in legal need and we will carefully monitor and evaluate:
  - a. visitors to, and the use of, our website
  - b. the satisfaction of website users
  - c. the reach and impact of our other communications and
  - d. the reach and impact of projects which we fund
  
11. Specific targets for reach will be set or agreed where appropriate.



BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

# Business Plan

## 2022-2023

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales, in the public interest.

If you would like a version of this document in an alternative format, please contact the Equality and Access to Justice Team by telephone on 020 7611 1444 or: [equality@barstandardsboard.org.uk](mailto:equality@barstandardsboard.org.uk)



## Introduction

The Bar Standards Board's (BSB's) Business Plan for 2022-23 marks the first year of our new three year

strategy.

Last autumn we consulted the public and the profession about our strategy for delivering our statutory regulatory objectives, as set out in the Legal Services Act 2007. These objectives, which we share with the other legal services regulators, emphasise the role played by the Bar both in supporting the rule of law and in ensuring access for consumers to high quality, good value and understandable legal services.

In the light of the consultation, we have sought to capture the BSB's public interest responsibility as a professional regulator in a clear vision for BSB. Our vision is that

*We will ensure that the BSB regulates the Bar in the public interest by promoting high standards, equality and access to justice.*

We want to see a market for barristers' services where:

- barristers provide a range of good value legal services which are well understood by the public, who can access those services either through their solicitors or directly;
- diverse customers are served equally by a diverse Bar which does not tolerate any form of discrimination, bullying or harassment;

- the quality of legal advice and of customer service is consistently high; and
- barristers' duties to the Court, to their clients and to the rule of law are upheld.

To deliver on this vision, the BSB must be rigorously independent and must perform its own regulatory functions efficiently and to a high standard. This involves:

- overseeing the education and training requirements for becoming a barrister;
- monitoring the standards of conduct of barristers and their compliance with the rules in our Handbook;
- taking supervisory or enforcement action when it is needed; and
- ensuring that everyone we authorise to practise is competent to do so.

That work occupies the majority of our people and accounts for most of our spending. It is also the focus of the new investment which we plan for this year.

The BSB must also, however, identify emerging risks to the ability of the Bar to serve the wider public interest and consider where regulatory interventions, alongside our partners, can help to mitigate those risks. We must be alert to new opportunities, particularly the opportunities presented by technology to improve public access to legal services, and ensure that regulation facilitates, and does not impede, the realisation of those opportunities.

As our recent consultation has underlined, the Bar has rarely faced in its long history such a combination of risks, but also of new opportunities.

Part 1 – Public

- The health emergency has accelerated court reform and increased remote hearings and working, often to the benefit of both barristers and their clients, but it has also attenuated the support which chambers and employers are able to give to pupils and to junior barristers and created new training needs.
- Pressures on public funding are creating risks for access to legal services, particularly at the Criminal Bar, but new technology is offering the chance to deliver services more flexibly and in new ways.
- There is a continuing imperative to improve the culture at the Bar, tackling discriminatory practice in all its forms and ensuring a supportive environment for all barristers and pupils, while remote working offers the opportunity for a better work/life balance and improved well-being.
- Barrister numbers continue to rise – there are now over 17,000 practising barristers - but the profession is ageing and there is continuing pressure on pupillage numbers, particularly at the publicly funded Bar, creating risks both to the future supply of services and to the diversity of the Bar.
- Many consumers, particularly consumers in vulnerable circumstances, struggle to navigate legal services, but there are enhanced opportunities for online signposting and comparison and for unbundling legal services themselves.
- **Efficiency** – delivering our core regulatory operations quickly, economically and to a high standard (including reviewing the regulation of unregistered barristers)
- **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) and
- **Independence** – strengthening the BSB’s independence, capability, self-confidence and credibility.

Against this background, we have agreed five strategic aims which will enable BSB both to improve our own operational effectiveness, and to ensure that regulation responds to these risks and opportunities.

You can read more about these aims in our [2022-25 Strategic Plan](#) which explains why we have them and the outcomes which we hope to achieve.

[Our website](#) and the Strategic Plan also explain how our regulatory priorities are set by conducting a risk-based analysis of the market for barristers’ services.

This Business Plan sets out how we will take forward these five strategic aims in 2022/23, the first year of the strategy. The Plan sets out both our core regulatory activities which we do on a day-to-day basis and our policy and other project work. Through these projects we seek to improve the way in which we regulate and to review, evaluate and, where necessary, change our rules.

Many of our activities contribute to more than one strategic aim. For example, a major programme of work in the year ahead will aim to clarify our expectations of the role which chambers and employers should play in overseeing standards, in promoting equality and in facilitating access for consumers.

Our budget for 2022-23 is £8,174k. In addition, we contribute £4,688k to the

common services (such as IT and Finance) which we share with the Bar Council.

Our business plan covers only the year ahead but, as our strategy makes clear, we have a number of other projects which we have also decided to take forward in future years. These include reviews of the regulation of unregistered barristers, of the supply of barristers in different areas of practice, and of the referral process between solicitors and barristers.

You will be able to see how we performed against this Business Plan in our 2023 Annual Report.

## Strategic Aim 1 – Efficiency – delivering our core regulatory operations quickly, economically and to a high standard

While the reports from our Independent Reviewer show that the quality of our decision making remains high, and the productivity of our people has increased in spite of the impact of the pandemic, we are determined to improve the timeliness of our decision-making. We intend to ensure that an increase in people and investment in this area will enable us to meet all our key performance indicators, which are set out in detail at the end of this document.

We shall continue, day-to-day, to:

1. assess reports of potential professional misconduct and risks to our regulatory objectives, taking enforcement or other action where necessary; and
2. deal with requests for authorisation, exemptions and waivers.

We shall also continue with reviews of::

3. the appropriate scope of regulation of barristers' non-professional life in consultation with our stakeholders;
4. the rules governing how barristers market their services and receive instructions;
5. our Code of Conduct, starting with the Core Duties; and

6. the current rules bearing on professional indemnity insurance to clarify the expected level of cover provided by insurers to barristers' clients (or other third parties) in the event of a cyber-related incident.

We will also begin some new projects to review:

7. our regulatory operations and key performance indicators, both to evaluate the changes we introduced in 2019 and to look at whether there are any further changes which would help us to increase our efficiency and to improve the transparency of our performance;
8. our decision-taking for authorisations in order to apply the lessons of recent cases and to update our policies in the light of those lessons;
9. our customer relationship management system, including our case management system; and
10. the Enforcement Regulations set out in Part 5 of our Handbook.

The table below shows how this work will help us to meet our regulatory objectives:

The Regulatory Objectives								
Our planned work in 2022-23	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	Promoting and maintaining adherence to the professional principles
1. Assessing reports of potential professional misconduct and risks to our regulatory objectives, taking enforcement or other action where necessary	●	●	●	●		●	●	●
2. Dealing with requests for authorisation, exemptions and waivers	●	●	●	●	●	●		●
3. Consulting on our work to consider the appropriate scope of regulation of barristers' non-professional life	●		●	●		●		●
4. Code of Conduct: Reviewing our association rules to reflect the way that barristers market their services and receive instructions	●	●	●	●	●	●		●
5. Code of Conduct: reviewing the Core Duties	●	●	●	●	●	●	●	●
6. Clarifying the rules around cyber security and professional indemnity insurance.	●			●	●	●		
7. Reviewing the effectiveness of the changes we introduced in 2019 to modernise our regulatory decision making	●	●	●	●	●	●		●
8. Reviewing the efficiency and effectiveness of the decision-making framework for authorisations	●	●	●	●	●	●		●
9. Reviewing our customer relationship management system including our case management system	●			●		●		
10. Scoping the review of our Enforcement Regulations	●			●	●	●		

## Strategic Aim 2 – Standards – ensuring that barristers provide a high quality and responsive service throughout their careers

The core work that we will conduct through the year will focus on:

1. supervising the universities which offer vocational training and the chambers and employers which provide pupillage to ensure standards and to promote equality;
2. designing, setting and marking the centralised assessments in civil and criminal litigation and professional ethics;
3. assuring, maintaining and enhancing standards across the profession by assessing the adherence to the standards set out in the BSB Handbook of both the individuals we regulate and the chambers and entities in which they practise. This includes a risk-based approach to supervision, the authorisation of new entities and the regulation of Continuing Professional Development and taking regulatory action where necessary; and
4. continuing to meet our obligations under the Money Laundering Regulations to conduct risk based supervision of relevant barristers and to liaise with relevant stakeholders, including other regulators, the Office for Professional Body Supervision (our oversight regulator), HM Treasury and law enforcement agencies.
5. evaluating the reforms we have already made;
6. specifying how negotiation and advocacy are assessed during pupillage; and
7. concluding our review of the Bar Course Aptitude Test.

We will also begin some new projects as part of our wider programme of **Assuring Competence** to ensure that barristers maintain high standards of legal knowledge and customer service throughout their careers:

8. examining how we can encourage individual barristers to gather and reflect on feedback from a range of sources when planning their continuing professional development;
9. evaluating our joint work with the Solicitors Regulation Authority and CILEx regulation in which we set common standards for those practising in the Coroners' Courts;
10. continuing our work in relation to the regulation of barristers in their early years of practice and their continuing professional development; and
11. reviewing what wider regulatory or supervisory action may be needed in the light of responses to the 2020 Regulatory Return.

As part of our work to clarify our regulatory expectations of chambers and to promote best practice:

5. evaluating the reforms we have already made;
12. we will work with the profession to promote best practice in Chambers' oversight of standards

The table below shows how this work will help us to meet our regulatory objectives:

**The Regulatory Objectives**

Our planned work in 2022-23	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	Promoting and maintaining adherence to the professional principles
1. Regulating the training of barristers	●	●	●	●	●	●		●
2. Designing setting and marking centralised exams	●	●	●	●	●	●		●
3. Assuring standards through supervision, authorising new entities and taking regulatory action where necessary	●	●	●	●	●	●		●
4. Continuing to meet our obligations under the Money Laundering Regulations	●			●		●		●
5. Continuing the evaluation of the reforms to Bar training	●	●	●	●	●	●	●	●
6. Specifying how negotiation and advocacy are assessed during pupillage	●	●		●	●	●		●
7. Concluding the review of BCAT	●		●	●	●	●		
8. Encouraging barristers to reflect on feedback when planning CPD	●	●	●	●	●	●		●
9. Evaluating our work to improve standards in the Coroners' Courts	●	●	●	●		●		●
10. Review of early years of practice.	●	●	●	●	●	●		●
11. Taking action where needed in the light of responses to the Regulatory Return	●	●	●	●	●	●		●
12. Promoting Chambers best practice in maintaining standards	●	●	●	●	●	●		●

## Strategic Aim 3 – Equality – Promoting diversity and inclusion at the Bar and the BSB and the profession’s ability to serve diverse customers

The core work that we will conduct through the year will focus on:

1. continuing to promote equality, diversity and inclusion at the Bar with the support of our Race Equality, Disability and Religion & Belief Taskforces;
2. ensuring that chambers are implementing the actions we set out in our Anti-Racism Statement in November 2020;
3. completing research into differential attainment during vocational training at the Bar; and
4. continuing our Reverse Mentoring scheme under which Bar students and pupil barristers from minority ethnic backgrounds mentor senior barristers from White backgrounds

Our policy work, in partnership with stakeholders, will focus on continuing to:

5. improve our regulatory approach in tackling bullying, discrimination and harassment at the Bar;
6. promote good practice in the equality and diversity policies and practices of vocational training providers;

7. explore the possibility of apprenticeships as a training pathway for the Bar and produce additional guidance to support pupillage in employed practice; and
8. publish good practice case studies about the inclusion of people with different types of disability at the Bar.

As part of our work to clarify our **regulatory expectations of chambers and employers** and to promote best practice we will also:

9. review the Equality Rules to ensure that they remain fit for purpose and clearly set out minimum standards for chambers’ and employers’ oversight of diversity, including appropriate governance;
10. work with the profession to encourage best practice in chambers with regard to promoting equality, diversity and inclusion and eliminating bullying, discrimination and harassment in the light of evidence from the Regulatory Return; and
11. consider how chambers and employers can be incentivised to adopt best practice.

The table below shows how this work will help us to meet our regulatory objectives:

The Regulatory Objectives								
Our planned work in 2022-23	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	Promoting and maintaining adherence to the professional principles
1. Promoting equality, diversity and inclusion at the Bar with the support of our Taskforces	●		●	●	●	●		●
2. Ensuring that chambers are implementing the actions set out in our Anti-Racism Statement	●		●	●	●	●		●
3. Researching differential attainment	●		●	●	●	●		●
4. Continuing our Reverse Mentoring scheme	●		●	●	●	●		●
5. Tackling bullying, discrimination and harassment	●		●	●	●	●		●
6. Promoting good practice in equality and diversity practice among vocational training providers	●		●	●	●	●		●
7. Exploring apprenticeships as a training pathway for the Bar and support for employed pupillage	●		●	●	●	●		●
8. Good practice disability case studies	●		●	●	●	●		
9. Reviewing the Equality Rules	●		●	●	●	●		●
10. Promoting best practice in chambers	●		●	●	●	●		●

## Strategic Aim 4 – Access – Promoting consumer understanding of legal services and choice and good value for those who use those services

Our core work throughout the year will focus on **improving consumer choice and increasing their understanding** of the legal services market by:

1. providing information to the public about barristers in partnership with consumer organisations, the profession and other legal regulators;
2. continuing to develop and implement our strategy for wider public legal education in partnership with other regulators and organisations in order to improve our understanding of how best to identify those in legal need, the nature of that need and how best to help them;
3. completing our evaluation of, and continuing to ensure compliance with, our transparency rules which are designed to help consumers understand the price and service they will receive, what redress is available and the regulatory status of their barrister; and
4. examining the role of new technology in the legal services market, in collaboration with others and taking part in joint activities with other regulators, tech companies and other stakeholders as appropriate.

Our project work will focus on new projects to:

5. collaborate with other regulators and consumers to understand the possible benefits to the public of unbundling legal services (enabling consumers to contract for parts of a legal service, whilst managing the rest of the matter themselves) through a pilot aimed at the Bar;
6. work with other regulators and consumers (launching a pilot for the Bar this year) to understand the possible benefits of digital comparison tools (such as online sites which seek to rate the services provided by legal advisers); and
7. work with other regulators and consumers to develop a Regulatory Information Service which will provide a single portal for finding out regulatory information about all regulated legal service providers.

The table below shows how this work will help us to meet our regulatory objectives:

The Regulatory Objectives								
Our planned work in 2022-23	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	Promoting and maintaining adherence to the professional principles
1. Providing information to the public about barristers	●	●	●	●	●	●	●	●
2. Developing and delivering our public legal education strategy	●	●	●	●	●	●	●	●
3. Ensuring compliance with, and evaluating, our transparency rules	●		●	●	●	●	●	●
4. Examining the role of new technology in the legal services market and taking part in the work of LawtechUK;	●		●	●	●	●	●	
5. Unbundling legal services	●		●	●	●	●	●	
6. Digital Comparison Tools	●		●	●	●	●	●	
7. Regulatory Information Service	●		●	●	●	●	●	●

## Strategic Aim 5 – Independence – Strengthening the BSB's independence, capability, self-confidence and credibility

Our aim here is to ensure that the BSB has the culture, values and associated policies appropriate for an independent regulator. With that in mind, our core work throughout the year will focus on:

1. our annual review of our implementation of the Internal Governance Rules, which govern the relationship between regulators and professional bodies, with the aim of enhancing regulatory independence within the current legislative framework;
2. continuing to pursue the governance reforms in our Well Led Action Plan; and
3. promoting engagement and collaboration with consumer organisations, the profession and other regulators.

Our project work will focus on continuing to:

4. review the reward and recognition framework for our people;
5. examine measures to promote wellbeing;
6. develop and deliver our Learning and Development strategy;
7. promote diversity and inclusion at the BSB; and
8. ensure that the BSB's values (of fairness and respect, independence and integrity, excellence and efficiency) guide all our activities.

We will also begin a new project:

9. to review the case for incorporating the BSB as a separate entity in order to streamline governance, enhance our operational freedom and reinforce our credibility and identity.

The table below shows how this work will help us to meet our regulatory objectives:

The Regulatory Objectives								
Our planned work in 2022-23	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	Promoting and maintaining adherence to the professional principles
1. Annual IGR Review	●	●		●		●		
2. Well Led Action Plan	●	●	●	●	●	●	●	●
3. Promoting engagement and collaboration	●	●	●	●	●	●	●	●
4. Reviewing reward and recognition	●	●	●	●	●	●	●	
5. Promoting wellbeing	●	●	●	●	●	●	●	
6. Learning and Development	●	●	●	●	●	●	●	
7. Promoting diversity and inclusion	●	●	●	●	●	●	●	●
8. Putting our values into action	●	●	●	●	●	●	●	●
9. Reviewing the case for incorporation	●	●		●		●		●

# Our 2022-23 budget

Our budget year runs from 1 April 2022 to 31 March 2023 and we expect our total running costs - including our share of the costs of services which we share with the Bar Council – to be £12,862k.

## Setting our budget

We independently set our own budget with regard to the forecasts for both PCF and other income streams. We always seek to ensure that our expenditure delivers value for money and we carefully prioritise our work as part of our business planning.

## The Practising Certificate Fee (PCF)

Most of our funding comes from Practising Certificate Fees (PCF) and General Council of the Bar reserves. These income streams are not within our direct control but are forecast using the latest available market data

The PCF is collected by the General Council of the Bar (GCB). The GCB's income from the PCF is divided as follows:

- 61.4% for the BSB (£10,344k)
- 25.6% for the Bar Council for some of its functions (as permitted under s51 of the Legal Services Act) (£4,305k) and
- 13.0% is paid to fund GCB pensions (£1,300k) and to the Legal Ombudsman and the Legal Services Board (£892k) to fund their services.<sup>1</sup>

The PCF income which we receive for regulation accounts for 85.0% of our total funding. Following consultation with the profession the PCF for 2022-23 has received approval from the Legal Services Board.

## Other sources of income

Our income streams other than the PCF come from charges we make for the specific services we provide to individuals and organisations, and we use historical and market data to forecast what we expect to receive. These income streams include, for example, the fees from Bar training providers, and the Bar Transfer Test (BTT),

which is taken by qualified lawyers from other jurisdictions, qualified UK solicitors and others who wish to qualify to practise at the Bar of England and Wales as a condition for being granted exemptions from our standard training requirements.

Budget controlled directly by the BSB (£k)			
Department	Staff costs	Non-staff costs	Total
Regulatory Operations	2,305	1,102	3,407
Legal and Enforcement	1,271	378	1,649
Strategy and Policy	1,003	216	1,219
Communications and Public Engagement	282	86	368
Governance and Corporate Services	741	230	972
People (HR)	220	63	283
Project Management	189	87	276
<b>Totals</b>	<b>6,012</b>	<b>2,162</b>	<b>8,174</b>
BSB contribution to shared services			4,688
<b>Total Expenditure<sup>2</sup></b>			<b>12,862</b>

Income (£k)	
<b>Total PCF income</b>	<b>10,344</b>
Entity Regulation and ABS	80
Authorisations - Waivers and Accreditation	279
Examinations	40
Bar Training fees	1,350
Training provider authorisations	8
Prosecution costs	40
Public access	1
<b>Total non-PCF income</b>	<b>1,798</b>
Share of estimated GCB investment income	559
<b>Total BSB Income</b>	<b>12,701</b>

<sup>1</sup> This share of the PCF income is split proportionately between the BSB and Bar Council; the BSB income and expenditure for these items is not included in the tables above.

<sup>2</sup> Capital expenditure is not included in this figure. The BSB's direct capital expenditure in 2022-23 will be £224k and our portion of shared capital projects will be £487k

# The BSB's key service standards

Our key service standards for our regulatory operations are set in the form of Key Performance Indicators (KPIs) and they are as follows:

**Contact and Assessment** – this team handles incoming reports of potential professional misconduct, requests for authorisations, waivers and exemptions and other general enquiries

## *General Enquiries*

- General enquiries addressed within 5 days (Target 80%)
- General enquiries referred within 3 days (Target 80%)
- Initial Assessment concluded or referred within 8 weeks (Target 80%)

## *Quality Indicator*

- Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)

**Investigations and Enforcement** – this team investigates reports of potential professional misconduct which our Contact and Assessment Team believe warrant further investigation and take enforcement action as appropriate

## *Referral of cases*

- Accepted or referred back within 2 weeks (Target 80%)

## *Investigation*

- Decision on disposal within 25 weeks (Target 80%)

## *Quality Indicator*

- Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)
- Successful appeals against administrative sanctions (Target 0%)
- Successful appeals against disciplinary tribunal decisions attributable to BSB error or discrimination (Target 0%)

**Authorisation, exemptions and waivers** – authorising specialised legal services businesses and Bar training providers and granting exemptions and waivers from our rules where appropriate

- Applications determined within six weeks of receipt of the complete application (Target 75%)
- Applications determined within eight weeks of receipt of the complete application (Target 80%)
- Applications determined within twelve weeks of receipt of the complete application (Target 98%)

#### *Entity (including ABS) Authorisation*

- Authorisation decisions made within six months of receipt of the application and associated fee (Target 90%)
- Authorisation decisions made within nine months of receipt of the application and associated fee (Target 100%)

**Supervision** - supervising barristers, chambers, BSB entities and other organisations that train pupils and monitoring their compliance with our rules.

- Cases assigned within 3 working days of the team receiving the referral from CAT (Target 80%)
- Cases for which a regulatory response was agreed within 20 working days of the case being assigned (Target 80%)
- Visit report letters issued within 5 working days of a visit to an organisation (Target 80%)

## Further reading

To obtain a fuller picture of who we are, what we do, and the context in which this Business Plan was produced, please visit the following pages on our website:

- This Business Plan is designed to be read in conjunction with our [2022-25 Strategic Plan](#) which you can read on our website.
- More information about our work around [equality and diversity](#) can be found there.
- Our [organisational values](#) describe the way in which we conduct all our work including the activities described in this Plan.

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<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 March 2022	
<b>Title:</b>	Review of the Bar Course Aptitude Test (BCAT)			
<b>Authors:</b>	Christopher Young, Policy Manager Poornima Karunacadacharan, Senior Policy Officer			
<b>Paper for:</b>	<b>Decision: X</b>	<b>Discussion X</b>	<b>Noting</b> <input type="checkbox"/>	Other: <input type="checkbox"/>

<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>
<p><b>(a) protecting and promoting the public interest</b></p> <p>(b) supporting the constitutional principle of the rule of law</p> <p>(c) improving access to justice</p> <p>(d) protecting and promoting the interests of consumers</p> <p>(e) promoting competition in the provision of services</p> <p><b>(f) encouraging an independent, strong, diverse and effective legal profession</b></p> <p>(g) increasing public understanding of citizens' legal rights and duties</p> <p>(h) promoting and maintaining adherence to the professional principles</p> <p><input type="checkbox"/> Paper does not principally relate to Regulatory Objectives</p>

### Purpose of Report

- Following our consultation with stakeholders on the future of the Bar Course Aptitude Test (BCAT), we invite the Board to discuss and consider this report's recommendation.

### Recommendations

- Following our review of the BCAT's effectiveness, consultation last year and further engagement with stakeholders, our recommendation is to withdraw the BCAT as a prerequisite for enrolment on a Bar training course because:
  - The BCAT is not acting as a filter for aptitude for the vocational component of Bar training. As this was its primary function, the BCAT is no longer a proportionate regulatory requirement.
  - The evolution of admissions processes used by providers of Bar training in recent years (eg more widespread use of interviews and practical exercises at the point of selection) had already led to a shift towards a more selective approach. With the introduction of the new Bar Qualification Rules in 2019, and the new Authorisation Framework, which supports them, course providers are now required to have clear and robust admissions policies giving due regard to the principles of Future Bar Training which include high standards. These changes have been much more effective than the BCAT at "filtering" out students without the aptitude to succeed on a Bar training course.
  - The risks that BCAT was introduced to mitigate in 2013 are no longer manifesting.

## Background

3. The BCAT was introduced in 2013 and is a prerequisite for all students who have completed the academic component of Bar training – an undergraduate law degree, or a non-law degree and Graduate Diploma in Law (GDL) – and intend to study on the vocational component of training (referred to as a Bar training course in this paper) and is available for students to sit year-round. It is a computerised 55-minute test which consists of 60 multiple choice questions. It is based on a Watson-Glaser psychometric test, designed to assess critical thinking and understanding of arguments – identifying different perspectives and the ability to distinguish facts from opinions and assumptions. It does not test legal knowledge or English language proficiency. The BCAT is delivered by Pearson VUE and costs £150 in the UK and £170 for students sitting the test abroad.
4. The regulatory objectives most relevant to this discussion are “protecting and promoting the public interest” and “encouraging an independent, strong, diverse and effective legal profession”. Therefore, our training requirements, must promote sustaining high standards and entry to the profession for people from all backgrounds.
5. When the BCAT was introduced, the number of students failing the vocational component of Bar training was high; too many students who had little prospect of successfully completing a Bar training course were being enrolled. This was also said by some to be having a detrimental impact on the learning experience of their peers and the ability of lecturers to teach the course. The BCAT was introduced to mitigate these risks by “filtering” for aptitude and preventing such students from enrolling on a Bar training course.
6. We evaluated the effectiveness of BCAT in 2015<sup>1</sup> and 2020. The key findings from the 2020 BCAT evaluation<sup>2</sup> are:
  - the BCAT has not proved effective at filtering out students likely to fail the BPTC, with an overall failure rate on the test of 1% of candidates once retakes are taken into account;
  - the test does not seem to be reliable or consistent - year of test significantly predicts score even when prior attainment is controlled for (with candidates from later years scoring significantly higher on the test and analysis suggests test-retest reliability<sup>3</sup> is low); and
  - BCAT scores continue to be a reliable predictor of BPTC attainment, although less so than was observed during the initial evaluation in 2015.
7. In the light of these findings, and the reforms to Bar training, a review was carried out to determine whether the BCAT remains a necessary and proportionate regulatory intervention for the future. The Board (in March 2021) discussed our review and agreed to carry out a consultation with stakeholders on the future of the BCAT.

## Our consultation

8. The consultation on the future of the BCAT ran from 1 September to 31 October 2021. In parallel, we surveyed a sample of BCAT candidates from the last three years to gain the views of BCAT candidates: both those who went on to enrol on a Bar training course, and those who decided not to continue studying for a career at the Bar. This survey asked similar questions to the consultation but was targeted at former BCAT takers to better understand their views on the BCAT’s effectiveness.

<sup>1</sup> Following the [evaluation in 2015](#), the pass score was increased from 39 to 45 to increase its effectiveness.

<sup>2</sup> Our [2020 evaluation of the BCAT](#) was published in 2021.

<sup>3</sup> Test-retest reliability is a measure of the consistency of scores when individuals repeat a test one or more times. Low test-retest reliability indicates that there is considerable variation in test scores for individuals when they retake the test.

9. During the consultation period, we also undertook targeted engagement in the form of roundtable discussions.
10. There were 17 responses to the consultation<sup>4</sup>. There were 28 responses to the BCAT candidates survey. A summary of consultation responses is provided in the Annex to this paper, for information. Once the consultation was closed, we also had further meetings with Bar training providers, the Bar Council, and the Inns to discuss issues raised by them in their consultation responses. This paper also reports on our discussions and response to the stakeholders on the key points they raised.
11. The consultation presented our analysis of risk and evidence. It offered respondents three possible options for the future of the BCAT and invited them to provide any other option they considered to be feasible:

*Option 1: Retain the BCAT in its current form as a prerequisite for all students enrolling on a Bar training course;*

*Option 2: Retain the BCAT as a prerequisite for all students enrolling on a Bar training course but amend it so that it is a more effective filter; and*

*Option 3: Withdraw the BCAT as a prerequisite for students enrolling on a Bar training course.*

### Findings from the consultation

12. The responses did not provide a clear consensus on any of the options provided<sup>5</sup>.
  - Option 1:** 1 (out of 17) consultation respondents and 2 (out of 28) BCAT candidates survey respondents preferred this option.
  - Option 2:** 5 (out of 17) consultation respondents and 13 (out of 28) BCAT candidates survey respondents preferred this option. Respondents did not present any suggestions on how the BCAT might be altered or what other form of regulatory filter can be implemented.
  - Option 3:** 11 (out of 17) consultation respondents chose this option. The respondents included those who were members of staff at Bar training providers but responded in an individual capacity, and the Legal Services Consumer Panel. 9 (out of 28) BCAT candidates survey respondents preferred this option. One additional respondent to the student survey preferred either this option or Option 2.
13. It was, however, clear that most respondents do not believe that the BCAT in its current format is acting as a filter for aptitude. For example, the Legal Services Consumer Panel (LSCP) stated that it believes the BCAT to be an ineffective and unnecessary barrier, and that, following the reforms to Bar training, providers of Bar training are better placed to filter out students based on aptitude. This view was shared by almost all of the providers of Bar training. The providers also stated that the BCAT does not inform their offer of enrolment and it is merely a condition of enrolment. Many students do not sit the BCAT prior to receiving an offer of enrolment to save the expense of the BCAT; therefore, the BCAT is not informing candidate choice in those instances.

<sup>4</sup> This includes: the Bar Council, Lincoln's Inn, the Legal Services Consumer Panel (LSCP), BPP University, University of Law, Pearson VUE, an individual lecturer from City University (responding as an individual), City Law School (responding as an individual); individual students; individual barristers, and the BSB's independent psychometrician.

<sup>5</sup> Only 25 out of 28 respondents to the student survey responded to the question on preferred option.

### Issues considered in the consultation

14. The BCAT was introduced to mitigate the risks associated with people enrolling on the Bar training course without the required aptitude, noted a paragraph 5. To understand whether those risks persist, we considered, as part of our research evaluation and review of the BCAT:
  - a. External Examiner reports. They include no evidence of complaints similar to those reported in the years preceding the BCAT's introduction. Student satisfaction (as reported by students to the External Examiners) was also high; and
  - b. the admissions processes of providers of Bar Training course (in combination with other training reforms that have since been introduced). This confirmed that, in practice, the admissions processes are now filtering candidates rather than the BCAT.
15. In discussions with the Bar Council and the Inns, there was a suggestion that the variation seen in the recent centralised exam results meant that some providers cannot be relied upon to filter for aptitude. Our view, which we confirmed through discussions with the providers, is that each provider takes a considered, thorough and robust approach to admissions criteria and filtering for aptitude. Whilst there will be variation in their approaches, providers must all have due regard to the indicators of compliance in the Authorisation Framework (including accessibility and high standards) and this enables us to assure ourselves of consistency at the point of authorisation and in ongoing supervision of the providers. **Therefore, our conclusion is that the risks that existed when BCAT was introduced to mitigate them, no longer exist.**
16. However, the Bar Council and the Inns said that it was premature to withdraw the BCAT, given the reforms to Bar training are relatively new. They also cite recent student performance on the [centralised assessments \(Winter 2020 and Spring 2021\)](#) as evidence that too many students are enrolling on Bar training courses without the requisite aptitude. They believe, therefore, that the risks are beginning to re-emerge and that there is a continuing need for a centrally managed filter.
17. The views of Professor Mike Molan, the Chair of the Centralised Examination Board, and Dr John Foulkes, the BSB's independent psychometrician, were that the centralised assessments are one measure of performance. These results must be seen as only one reference point in the context of a student's performance or a particular cohort's overall performance on the course.
18. In line with the BSB's principles for Bar training, success is not measured by ability to pass the centralised assessment the first time. The BSB's assessment rules now allow an unlimited number of sittings within five years (though Bar training providers' own academic awards may have different rules); this approach allows students, over time, to demonstrate they have met the required level of competence. From the data we collected on former vocational training for the Bar, the Bar Professional Training Course (BPTC), once resits are considered, over 83% of all students went on to pass the course and were called to the Bar; there is no reason to think that this pattern will change with the new courses. The centralised assessment results given in the Chair's reports for the Winter 2020 and Spring 2021 sittings, therefore, are only a snapshot of two sittings for the first cohort and are not an indication of success on the course. It was also an exceptional year for students sitting exams in 2020 / 2021 due to the pandemic. There are many factors that may contribute to variability in performance of students across Bar training providers. This is something we are actively monitoring as more data from the new courses emerge. **We are satisfied that we now have sufficient oversight arrangements in place to identify and resolve issues that are identified between providers in relation to quality and consistency.**

19. The Bar Council and the Inns are also concerned about the high number of students enrolling on a Bar training course compared to the limited number of places for pupillage. There are, however, a number of factors that influence a person's ability to obtain a pupillage, which may or may not be linked to aptitude. We have also sought to be transparent about the likelihood of getting pupillage; it is important that students are able to make an informed decision. However, the value of the Bar training course is not linked entirely to success in getting pupillage – students graduate with a masters-level qualification and transferrable skills. Furthermore, the Legal Services Board's guidance on education and training sets out the outcomes for education and training arrangements, one of which is that regulators place no inappropriate direct or indirect restrictions on the numbers entering the profession. **We therefore do not believe that we should seek to place inappropriate limitations on the number of students enrolling on Bar training courses.**
20. Several stakeholders, including the Bar Council, the Inns and Pearson VUE believe that, given the strong correlation between the BCAT scores and the students' results on Bar training, the BCAT results could be used in a more effective way to inform student decisions on enrolment. As part of the consultation, we sought to explore this further by asking students whether their BCAT score influenced their decision to enroll on a Bar training course. Of the 36 respondents<sup>6</sup> who had sat the BCAT, only 2 respondents reported that this influenced their decision, both stated that their score gave them confidence. As noted above, we also heard from Bar Training providers that many candidates do not take the BCAT until after they have been offered a place on a course. Following the consultation, we consider the following to be central to this question:
- a. If we see the BCAT as a predictive tool, rather than as a filter for aptitude, it may provide help to some, but most may continue to see it as an unnecessary hurdle and additional expense. This may be difficult to justify based on the equality impacts.
  - b. If we seek to improve the BCAT's effectiveness by increasing the pass score again or by focusing on those who pass in the lowest percentile groups, there is a risk of greater equality impacts. This may risk efforts to encourage students from diverse backgrounds, many of whom have in the past shown aptitude and are now successful barristers.
21. The BCAT has previously been justified as a filter, based on the risk assessment at the time it was introduced. In the absence of a filtering function, **we do not consider the predictive value alone to be a sufficiently strong reason for retaining the BCAT.**
22. Whilst we do not want to conflate the issues of aptitude and English language proficiency (which the BCAT was not designed to test), some consultation responses (for example, the Inns) have raised this as an area of continued concern. We discussed this with providers. They believe this to be a historical issue and do not believe an aptitude test such as the BCAT could filter for English proficiency. Instead, the providers believe that the International English Language Testing System (IELTS) or similar English proficiency requirements of the Authorisation Framework filter out more students than the overall number of students filtered out by the BCAT.
23. We now have a student consultative group, through which we intend to monitor any concerns students have, including any issues relating to peers' language proficiency. Should this be an issue that returns, we are now better placed, through the Authorisation Framework, to work with providers and make recommendations for improvement. **We,**

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<sup>6</sup> This is a combination of student survey respondents (28) and consultation respondents who had sat the BCAT (8), which is a total of 36 respondents who had sat the BCAT.

**therefore, do not believe the BCAT should be retained to act as a proxy for a language proficiency filter, because that was never what it was designed to do.**

### **Equality Impacts**

24. One of our regulatory objectives is to promote an independent, strong, diverse, and effective legal profession. To this end, we must promote equality and diversity, whilst maintaining high standards within the profession.
25. We conducted an equality impact assessment (EIA) when the BCAT was introduced in 2013/14, again in 2016 when the pass score was raised and as part of this review.
26. Consultation responses continue to highlight adverse equality impacts from the BCAT. Students from minority ethnic backgrounds are less likely to pass the BCAT and students with certain disabilities may need adjustments. The cost of the BCAT may also be seen as a deterrent for groups from lower socio-economic backgrounds. We considered these issues previously when introducing the BCAT and when we raised the pass mark. Whilst calling for the BCAT to be amended to be more effective, respondents such as the Bar Council and Lincoln's Inn believed that if there are adverse impacts on race and ethnicity these should be investigated and addressed. The Bar Council and Lincoln's Inn have both argued that an aptitude test such as the BCAT is a 'context free' [free of bias] test and therefore promotes equality and diversity. They believe that the BCAT or a similar regulatory filter should be centrally administered to prevent placing too much reliance on providers' selective entry requirements. Our research shows that the BCAT is not context-free: increasing the pass threshold for the BCAT would increase the disproportionate impact on certain groups, and other approaches to amending the test are unlikely to have a significant impact on overall pass rates. It should be noted that training providers, in addition to meeting the requirements of our Authorisation Framework, are also under fair recruitment obligations that are placed on them by the Office for Students. If there is evidence of adverse impacts on student diversity as a result of admissions policies, we can work with course providers to mitigate any diverse impacts and ensure that admissions policies are aligned with expectations set out in the Authorisation Framework (of which 'accessibility' is a key strand.)
27. The recommendation to withdraw BCAT takes account of the equality impact assessment and the fact that disproportionate impacts on certain groups cannot be justified as a proportionate means of achieving a 'legitimate aim' if that aim no longer exists (i.e. the risks that were identified are no longer present). If we were minded to explore alternatives to withdrawing BCAT, further detailed equality analysis would be needed in relation to any proposed amendments to the BCAT or for any other alternatives that are proposed, in addition to a clear regulatory justification.

### **Communication**

28. Should the Board agree the recommendation, we anticipate submitting an application to the Legal Services Board in late April/early May. We will work with Pearson VUE and providers to draw up a timetable for the withdrawal of the BCAT. Once this timetable is confirmed we will communicate this with students through the providers.

### **Resource implications / Impacts on other teams / departments or projects**

29. The implications for next year's budget of removing BCAT have been considered and taken into account. Since the consultation has been published, we have been transparent about the future of the BCAT including by requesting providers to mention this on their websites. We, therefore, do not think there is a case for making any refunds to students who have already undertaken the test.

30. Student registration with the BSB occurs when they register to take the BCAT. Their registration with Pearson VUE enables a profile to be created for them in MyBar. Should the BCAT be withdrawn, the Bar Council's PMO will need to commission work to re-map the registration process. The PMO is aware of this project and the recommendation being made; resource has been allocated to ensure this takes place, should the Board agree the recommendation.

**Annex**

Annex 1 - summary of consultation responses (for information)



### Summary of Consultation and Engagement on future of the BCAT

1. A consultation on the future of the BCAT ran from 1 September to 31 October 2021. A consultation document was published calling for written responses to consultation questions (referred to as ‘general consultation’).
2. In parallel to the general consultation, we surveyed (referred to as the ‘student survey’) a sample of BCAT candidates from the last three years to gain the views of students who went on to enrol on a Bar training course, and those who decided not to continue studying for a career at the Bar. This survey asked similar questions to the consultation but was targeted at former BCAT takers to better understand their views on the BCAT’s effectiveness.
3. During the consultation period, we also undertook targeted engagement in the form of roundtable discussions, which included: the Bar Council’s Education and Training Committee and the Young Barristers’ Committee; Bar training providers; and Pearson VUE, our BCAT delivery partner. Following the consultation’s closure, we held further meetings with Bar training providers, the Bar Council, and the Inns in order to discuss concerns raised in the written consultation.
4. In total we received 17 responses to the general consultation. The respondents were the Bar Council, Lincoln’s Inn, the Legal Services Consumer Panel (LSCP), BPP University, University of Law, Pearson VUE, an individual lecturer from City University (responding as an individual), a Professor from City Law School (responding as an individual); individual students (five); individual barristers (four), and the BSB’s independent psychometrician. There were 28 respondents to the ‘student survey’.
5. The consultation presented our analysis of risk and evidence. It also offered respondents three possible options for the future of the BCAT:

Option 1: *Retain the BCAT in its current form as a prerequisite for all students enrolling on a Bar training course;*

Option 2: *Retain the BCAT as a prerequisite for all students enrolling on a Bar training course but amend it so that it is a more effective filter; and*

Option 3: *Withdraw the BCAT as a prerequisite for students enrolling on a Bar training course.*

#### Risk relating to aptitude

6. Most respondents to the general consultation (11/17), agreed with our analysis of risk and the appropriateness of the BCAT as a regulatory requirement. However, many of these were nuanced. Several of the respondents who said they agreed with us agreed with some but not all of our analysis. Four out of 17 respondents believe that there is insufficient data or evidence to warrant our conclusions or to remove the BCAT.
7. Two (individual barristers) out of 17 respondents to the general consultation, and seven out of 28 respondents to the student survey stated that it would be unfair to allow students who do not have the required aptitude to enrol on a Bar Course. However, all except one respondent who made this assertion were speaking on behalf of others and not themselves. The one respondent, speaking from personal experience, believes that doing well on the BCAT provides one with the confidence to enrol on a Bar training course.

8. Four (three barristers and one law student) out of 17 respondents to the general consultation, and two out of 28 respondents to the student survey commented on the impact of weaker students on peer learning. However, this is anecdotal and they have not described in what way it impacts peer learning.
9. Five (three barristers and two law students) out of 17 respondents to the general consultation believed that the risk to diversity should be a serious consideration in continuing the BCAT (please note this was different to responses to the separate question on equality impact).

*Bar Council*

10. The Bar Council, whilst agreeing with our analysis of student aptitude set out in the consultation paper, stated that the low performance by students and variation of performance (by education providers) over the recent sittings of the centralised assessments (criminal and civil litigation) mean that the problem the BCAT was developed to solve is now re-emerging. Therefore, they believe that this is not the right time to withdraw the BCAT. They also believe that the variation in pass marks between providers was an indication that a centralised regulatory filter was required. The Bar Council also suggested that the Inns could undertake this to bring the costs down to students.

*Lincoln's Inn*

11. Lincoln's Inn believed that the original rationale for introducing the BCAT remains. They too point to the centralised assessments in 2020 / 2021 as an indication that the risks that the BCAT was intended to address are re-emerging.

*Legal Services Consumer Panel*

12. The LSCP has stated that having carefully considered the evidence and analysis provided, it does not believe the risks that the BCAT was intended to address persist.

*Providers*

13. We held a further engagement event with providers to understand some of the issues that were raised by respondents in the general consultation. It was the view of providers that the risks that the BCAT was intended to address do not persist. They believe that they have effective mechanisms in place to filter for aptitude, which are balanced against equality and diversity impact, and the BSB's Authorisation Framework. In our engagement with providers, they could not think of any recent examples of having to withdraw an offer to a student who was unable to pass the BCAT.

**Effectiveness of the BCAT and the need for a regulatory filter**

14. Most respondents (all but two students) do not believe that the BCAT in its current format is an effective filter for aptitude for Bar training courses. However, there also appears to be a lack of clarity on the function of the BCAT, and some measure its effectiveness based on its ability to accurately predict chances of getting pupillage. In spite of agreeing that the BCAT in its current format is not effective, most respondents believe that there is a need for a centralised regulatory filter for aptitude to enrol on a Bar training course.

*Bar Council*

15. The Bar Council believes that it is too soon to withdraw the BCAT as we do not know the impact of the new Bar training programme.

*Providers*

16. Providers believed that their admissions processes were more effective at filtering out students than the BCAT. All providers, except one (University of Law), believe that the BCAT is an unnecessary barrier that we should remove. Whilst the University of Law agrees with other providers – that the BCAT plays no significant part in a student's enrolment decision – they stated that the BCAT should be made more difficult to pass, which would make it more valuable.

**Predictive value of the BCAT**

17. Five (out of 17) respondents to the general consultation believe that the BCAT helps or can help students make an informed decision on whether or not to enrol on a Bar training course. Only one of the four respondents was a student, who felt that doing well on the BCAT gave them the confidence to enrol on a Bar training course. The other respondents were the Bar Council, Pearson VUE, Lincoln's Inn, and University of Law.

*Bar Council*

18. The Bar Council believes that the correlation between the BCAT scores and success on the BPTC, and the correlation with classification on the BPTC and the likelihood of obtaining tenancy, means that BCAT scores can help to inform students' decisions about enrolling on a Bar training course, whether or not the evidence shows that they pay attention to it. Therefore, they believed that the BCAT is a potential tool that is being underutilised.

*Providers*

19. University of Law believes that the BCAT could be used differently with providers deciding whether to allow onto the course students with a lower passing score. Other respondents from providers who were responding individually rather than on behalf of their university, believed that students view the BCAT as simply an additional hurdle and it does not inform their decision to enrol on a Bar training course. In our further engagement with providers, they stated that many students wait for an offer from a course provider before they sit the BCAT. Providers stated that the BCAT is not an offer condition but rather an enrolment condition and therefore does not influence their decision.

*Student respondents (all of whom went on to enrol on a Bar training course)*

20. 25 (out of 28) student respondents felt that the BCAT does not help students to make an informed decision on whether to enrol on a Bar training course. The 3 respondents who stated that the BCAT score did have an influence on their decision to enrol on a Bar course did well on the BCAT, which gave them confidence to pursue the Bar Course. We have not had any responses from students who were deterred from enrolling on a Bar Course following a poor BCAT score.

**Equality Impact**

21. 15 (out of 17) respondents to the general consultation, and seven (out of 28) respondents to the student survey believe that the BCAT does have a disproportionate impact on those from disadvantaged groups or underrepresented backgrounds. The cost of the BCAT was cited as the biggest impact on those from disadvantaged or underrepresented groups, with many stating that this cost included, not just the fee for the BCAT, but also having to take time off from work to prepare for the BCAT and to

attend a test centre to sit the BCAT. Many respondents also referred to our evidence on adverse impact on race and ethnicity, stating that we should withdraw the BCAT as it serves no effective purpose. Three respondents (a law student, BPP University, and the Bar Council) suggested that the requirement to sit an MCQ test without offering an alternative form of assessment may amount to discrimination following *The Government Legal Service v Ms T Brookes: UKEAT/0302/16/RN*. In addition, three respondents to the general consultation (1 barrister, and two law students) stated that the BCAT could have an adverse impact on those who are neurodivergent.

*Neuro-divergent individual*

22. One student respondent who identified as neuro-divergent stated that multiple choice examinations impact negatively on those who are neuro-divergent. They stated that as a neuro-divergent individual themselves, they know this to be true as they have struggled both with the BCAT and the litigation assessments because of this.

*Bar Council*

23. The Bar Council believes that a standardised test such as the BCAT promotes diversity as it is a 'context free' [free of bias] test. However, one of the participants from the Education and Training Committee of the Bar Council stated in the roundtable discussion that the test can be 'context free' only to the extent that there are no hidden barriers, such as in relation to those who are neuro-divergent, for example.

*Lincoln's Inn*

24. Lincoln's Inn echoed the view of the Bar Council. They believed that a standardised test promotes diversity because it places proper weight on aptitude rather than attainment so far.

**Preferred Options**

**Option 1: Retain the BCAT in its current form as a prerequisite for all students enrolling on a Bar training course**

25. Of the 17 respondents, only one respondent (the Bar Council) chose this option, and they could not say whether they preferred option 1 or option 2 as they thought there was not sufficient data to enable them to make a choice. Out of 28 students responding to the student survey, two respondents preferred this option.

**Option 2: Retain the BCAT as a prerequisite for all students enrolling on a Bar training course but amend it so that it is a more effective filter**

26. Five (out of 17) respondents chose this option. Respondents included Lincoln's Inn, Pearson VUE (the BCAT supplier), the University of Law, and the Bar Council (see above). Out of 28 students responding to the student survey, 13 preferred this option.

**Option 3: Withdraw the BCAT as a prerequisite for students enrolling on a Bar training course**

27. 11 (out of 17) respondents chose this option. The respondents included those who responded in an individual capacity from BPP and City University, and the Legal Services Consumer Panel. Nine (out of 28) respondents to the student survey preferred this option. One additional respondent to the student survey preferred either this option or Option 2. At our engagement event with providers there were 11 providers represented (15 individuals). All providers except one were in favour of this option.

**Amendments and alternative options***Pearson VUE*

28. Pearson VUE believed that the predictive value of the BCAT is not being utilised by course providers in informing their decisions. They said that there is already a standardised score that could be used to support this in addition to using the cut score. They also recommended a more conservative policy on resits or requiring a longer period before a student is allowed to resit the test. They say that the score patterns suggest that many who pass after multiple attempts only just manage to do so.
29. In order to improve the effectiveness of the test as a sifting tool, Pearson VUE proposes two options for reconfiguring the test:
- a. Rebalance the test so that there is a higher proportion of easier items at the expense of more difficult items. This will enhance the accuracy of low scores (where the cut score is) but will reduce the accuracy of higher scores (which are not currently used). If there is no interest in using the scores more extensively this would be a good option.
  - b. Add more easy items to the test and make the whole test longer. This will enhance the accuracy of easy scores without affecting the accuracy of higher scores. This would be a better option if providers wanted to use the higher scores in selection.

*Other respondents*

30. Besides increasing the pass score (advocated by the Bar Council and the Inns), the alternative options offered by other respondents involved addressing any risks at provider level. These included:
- more stringent but fair admissions policies by the providers, including interviews to assess the aptitude of candidates;
  - exercising greater control over some of the course providers, to expect them to provide a better experience for students;
  - better pastoral support;
  - different teaching structures; and
  - the option to terminate the course early (a factor that would require course providers to offer far less onerous payment / termination terms).
31. However, it was the view of one course provider that the BSB should not intervene any further in the admissions processes of providers (above and beyond the existing supervisory regime) as that would run the risk of reverting to the overly close management of providers, which they believed was an unfortunate feature of the Bar training regime prior to the implementation of the Future Bar Training project.



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 March 2022
<b>Title:</b>	Nomination Committee Terms of Reference		
<b>Author:</b>	Rebecca Forbes		
<b>Post:</b>	Head of Governance and Corporate Services		

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion:</b> <input type="checkbox"/>	<b>Noting:</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>	
<p>(a) <b>protecting and promoting the public interest</b></p> <p>(b) supporting the constitutional principle of the rule of law</p> <p>(c) improving access to justice</p> <p>(d) protecting and promoting the interests of consumers</p> <p>(e) promoting competition in the provision of services</p> <p>(f) encouraging an independent, strong, diverse and effective legal profession</p> <p>(g) increasing public understanding of citizens' legal rights and duties</p> <p>(h) promoting and maintaining adherence to the professional principles</p> <p><input type="checkbox"/> Paper does not principally relate to Regulatory Objectives</p>	

### Purpose of Report

- Following its in principle approval for the establishment of a Nomination Committee, and agreement by written resolution to the appointment of Board members to that Committee, we now seek ratification of the decision to appoint the membership and the Board's consideration and approval of the Terms of Reference for that Committee.

### Recommendations

- The Board is invited to ratify its written resolution (agreed by email) to appoint the membership of its Nomination Committee.
- The Board is invited to approve the Terms of Reference for its Nomination Committee, and to agree in particular the areas in which it delegates authority to the Committee (rather than seeks recommendations from the Committee).

### Background

- At the private session of the Board meeting in January 2022, following discussion on the process for recruitment and appointment of the next Chair of the BSB, the Board approved the establishment of an additional "Nomination Committee". This Committee is to be comprised of three lay and two barrister members and will oversee the appointments process for the Chair, Board members and members of the Senior Management Team.
- Following the Board's in principle approval for the establishment of the Committee, we sought the Board's agreement by email on 2 February 2022 to appointment of the membership. Whilst the Chair of the BSB would usually be appointed as the Chair of the Nomination Committee, that is not appropriate when the Committee's main focus in its first meetings will be the recruitment and appointment of the Chair of the BSB. The Board has therefore appointed Andrew Mitchell QC (Vice Chair) as the Chair of the Nomination Committee, Leslie Thomas QC as the second barrister member, and Emir Feisal, Steven Haines and Kathryn Stone OBE as the three lay members.

6. The inaugural meeting of the Committee convened on 7 March 2022. The Committee reviewed the proposed Terms of Reference, considered the document and process for the invitation to tender for an external agency to support us in our Board and senior executive recruitment, and considered the process for the imminent recruitment of the Chair.
7. The Terms of Reference were drafted using the template of the Chartered Governance Institute (formerly the Institute of Company Secretaries and Administrators, ICOSA). The version scrutinised by the Nomination Committee highlighted deviations from that template and any proposals that will effectively change our existing processes.

### Points for discussion

8. Paragraph 13 h) of the draft Terms of Reference proposes a change to our existing process, in that it would be for the Nomination Committee to make recommendations to the Chair of the BSB on membership of the Board's Committees. Currently the Chair of the BSB appoints Board members to Committees in consultation with the Vice Chair and Director General, and appoints non-Board members to Committees on the recommendation of selection panels convened for those recruitments.
9. Paragraph 13 i) of the draft Terms of Reference proposes a change to our existing process, in that it would be for the Nomination Committee to make recommendations to the Board on the reappointment of the Chair and to make recommendations to the Chair on the reappointment of other Board members. Currently, the Chair makes decisions on the reappointment of other Board members, after consultation with the Vice Chair and Director General as to whether the necessary conditions are met. In practice, it is expected that the full Board would discuss the reappointment of the Chair, rather than rely upon the recommendation of this Committee.
10. When discussing the draft Terms of Reference, the Nomination Committee asked that the list of duties be amended to give clarity on where it is making recommendations to the Board and where it is taking decisions under the delegated authority of the Board. We have endeavoured to give that clarity by amendment of paragraph 13 and ask that the Board specifically confirm its comfort or otherwise with the areas where we propose the Committee has delegated authority to take decisions. In essence, we propose that the Committee should take decisions on the appointment of external recruitment agencies to support our Board and senior management recruitment, have oversight of succession plans, and endorse role descriptions for appointments to the Board.
11. The Nomination Committee was content that its role is substantially to scrutinise proposals and then to make recommendations to the Board. However, it was concerned that where it makes a recommendation to the Board following a full discussion and debate about a matter, that does not then generally become subject to a second discussion and debate by the Board. Accordingly, it requests that the Board approve the Terms of Reference on the basis that where the Committee makes a recommendation to the Board, it is understood that recommendation follows robust scrutiny and consideration of the issues (to a degree which the Board schedule does not allow) and would usually be accepted unless there were compelling reasons for further debate.
12. The Committee's forward schedule has yet to be agreed. The executive will develop proposals based in part on known recruitment needs.

**Resource implications / Impacts on other teams / departments or projects**

13. Executive attendance at the Nomination Committee will routinely include the Director General, Director of People, Head of Equality & Access to Justice and Head of Governance & Corporate Services. The work that falls within its remit was already accounted for in our budgeting and resource planning for the coming period.

**Equality and Diversity**

14. One of the key purposes of the establishment of this Committee is to ensure inclusivity and equality in the BSB's approach to filling senior appointments.

**Annexes**

15. Annex 1 – draft Terms of Reference for the Nomination Committee



## **Nomination Committee Terms of Reference**

### **Purpose and role**

1. The Nominations Committee is established to advise the Board on fair, inclusive and transparent approaches to recruitment to the Board and senior executive roles and to oversee on behalf of the Board some aspects of the recruitment process. Specifically, the Committee will:
  - a) advise the Board on succession planning, including the range of experience on both the Board and the Senior Management Team (SMT);
  - b) ensure inclusivity and equality in the BSB's approach to filling senior appointments;
  - c) oversee, where relevant, the appointment of recruitment agencies in support of Board and SMT appointments;
  - d) advise on the composition of selection panels to undertake appointments.

### **Membership of the Nomination Committee**

2. The Committee shall comprise between four and seven Board members, and there must be a lay majority.
3. Appointments to the Committee are made by the Board on the recommendation of the Nomination Committee and shall usually be coterminous with membership of the Board.
4. The Board shall appoint the Chair of the Committee, who is usually the Chair of the Board. The Chair of the Board shall not chair the Committee or take part in any discussion or decision relating to succession planning or to any appointment to that office. In the absence of the Chair of the Committee, the remaining members present shall elect one of themselves to chair the meeting.
5. Only members of the Committee have the right to attend Committee meetings. However, other individuals such as the Director General, Director of People, Head of Equality and Access to Justice, and Head of Governance and Corporate Services may be invited to attend for all or part of any meeting, as and when appropriate.

### **Secretary**

6. The Head of Governance and Corporate Services, or their nominee, shall act as the secretary to the Committee and will ensure that the Committee receives information and papers in a timely manner to enable full and proper consideration to be given to issues.

### **Quorum**

7. The quorum for meetings of the Committee is three members.

### **Frequency of meetings**

8. The Committee shall meet at least twice a year and otherwise as required.

### Notice of meetings

9. Meetings of the Committee shall be called by the secretary of the Committee at the request of the Chair of the Committee or any of its members.
10. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend at least four working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees, as appropriate, at the same time.

### Minutes of meetings

11. The secretary shall minute the proceedings and decisions of all committee meetings, including recording the names of those present and in attendance.
12. Draft minutes of Committee meetings shall be circulated to all members of the Committee. Once approved, minutes should be circulated to all other members of the Board and the Director General unless, exceptionally, it would be inappropriate to do so.

### Duties

13. The Committee should carry out the duties below for the Bar Standards Board.

To make recommendations to the Board in the following:

- a) 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;
- b) Keep under review the leadership needs of the organisation, both executive and non-executive, with a view to ensuring the continued ability of the BSB to independently discharge its regulatory functions in the public interest;
- c) Review the results of the Board evaluation process that relate to the composition of the Board and succession planning;
- d) Recommend appointment of members to Appointments Panels for each recruitment as and when required;

To take decisions with the delegated authority of the Board in the following:

- e) Oversee the appointment of any external recruitment agency to support appointments to the Board and SMT, and with regard to an agencies approach to achieving inclusivity and equality;
- f) Ensure plans are in place for orderly succession to Board and senior management positions, taking into account the challenges and opportunities facing the BSB, and the skills and expertise needed on the Board in the future; and
- g) Before any appointment is made by an Appointments Panel, evaluate the balance of skills, knowledge, experience and diversity on the Board, and in the light of this evaluation, endorse a description of the role and capabilities required for a particular appointment and the time commitment expected.

At the invitation of the Chair, the Committee may also make recommendations concerning:

- h) Membership of the Governance, Risk and Audit Committee, the Strategic Planning and Resources Committee and the Remuneration Panel, in consultation with the Chairs of those Committees; and
- i) The reappointment of Board members for a second or further term, where the member has performed to the standard to be expected of the office held and it is in the interest of the BSB to renew the appointment.

### Reporting responsibilities

- 14. The Chair of the Committee shall report to the Board after each meeting on the nature and content of its discussion, recommendations and action to be taken.
- 15. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed, and adequate time should be made available for Board discussion when necessary.

### Other matters

- 16. The Committee shall:
  - a) Have access to sufficient resources in order to carry out its duties;
  - b) At least annually, review the Committee's Terms of Reference to ensure it is operating effectively and to recommend any changes it considers necessary to the Board for approval.
- 17. To facilitate the Committee's discharge of its responsibilities in relation to particular items of business, if necessary, procure specialist ad-hoc advice at the expense of the BSB, subject to that expense being agreed by the Board.



**Bar Standards Board – Director General’s Strategic Update – 31 March 2022****For publication****Performance**

1. The third quarter performance report is attached as annex A. It provides, as usual, both an overview of performance and a commentary on progress in meeting service levels for the handling of core regulatory operations.

*Core regulatory operations*

2. We continue to make progress in improving the timeliness of handling both reports on barristers and authorisation requests.
3. For the second successive quarter the Contact and Assessment Team has cleared more reports than it received, including reducing the backlog by over 200 cases. Dealing with overdue cases continues to act as a drag on the headline KPI (which measures the proportion of cases completed within six months), but the headline measure is now at around 50% (compared to 29% in Q2) and should improve further in Q4 provided the inflow of new cases outweighs the continuing clearance of the backlog. The apparent fall in productivity in Q3 compared to Q4 is explained by the number of cases with multiple reports cleared in Q2.
4. We are now very close to hitting the targets for turning round applications for authorisations. The team has now largely eliminated the backlogs of overdue applications and in Q3 the applications determined kept pace with new applications. The great majority of new applications were determined within six weeks of receipt.
5. Investigations continue to be moved forward (the number of investigations completed exceeded the number of new investigations opened for the second successive quarter), but there are challenges. As the Contact and Assessment Team has tackled its caseload, the result has been a substantial increase in cases referred for investigation – over 40% higher at the end of Q3 (December) than in the whole of the preceding year. This has resulted in a significant backlog of cases building up at the referral stage awaiting allocation. We are reinforcing the Investigations and Enforcement Team: a new officer joined the team in March, a second will take up post in April and recruitment of an additional administrative post is underway. However, the benefits of the additional staff will not be felt for some months to come and, with the substantial increase in workload, meeting the timeliness service standards is not imminent.
6. The Supervision Team has hit all its service levels despite a rising workload. The Team is now heavily engaged in ensuring compliance with sanctions requirements – of which more below.

*Business Plan programmes and projects*

7. All our key programmes and projects are moving forward. However, there have been some delays to workstreams – reflected in amber status marks. None gives me cause for concern.

**Absolute Barrister: intermediary companies**

8. Following the failure of *Absolute Barrister* in December 2021, the Senior Management Team has looked at the broader regulatory policy issues associated with intermediary companies and the scope of our regulatory control. The evidence from the Regulatory Return is that the business model operated by *Absolute Barrister* involving taking money up-front from clients in order to broker access to barristers is rare. Nevertheless, we intend to give further consideration to whether any form of intermediation of this kind offers benefits for consumers and, to the extent that it does, what steps we can take as regulator to mitigate the risk of firm failure to client money. This will be more straightforward where, as in the case of *Absolute Barrister*, the promoters of the intermediary are themselves barristers. Where an intermediary is not controlled by a barrister, our ability to intervene will depend on setting some constraints on barristers' own reliance on such intermediaries for referrals.

**Sanctions**

9. The Bar Standards Board has worked closely with the other legal services regulators and with HM Treasury and FCA on the effective implementation of sanctions. We have, in particular, taken steps to ensure that barristers are aware of the licensing requirements which apply where legal advice is provided to a sanctioned individual or business. There is a link to our guidance on the home page of our website. That guidance is updated regularly. We have also publicised the licensing arrangements in our March *Regulatory Update* for the profession and in meetings with the Bar Council. And we have written to those specialist Bar associations whose members are most likely to be engaged by these issues.
10. At the time of writing no barristers had applied for licenses to represent sanctioned individuals or businesses. We have, however, reached out to HM Treasury's Office for Financial Sanctions Implementation in order to ensure flows of information where barristers do seek such licenses or come to the attention of HM Treasury for potential infringements of the sanctions regime. Our own checks confirm that no barristers at the England & Wales Bar have business addresses in Russia itself.
11. Meanwhile, in the very exceptional circumstances of the current war in Ukraine, we have granted a general exemption from the requirement to be licensed under the Public Access Rules (Rules C120.1 and C121) to barristers wishing to provide pro bono immigration advice to Ukrainians. As of 15 March the advice-ukraine project had registered over 430 volunteer lawyers to date and given pro bono advice in response to more than 700 requests.

**Equality: Race at the Bar**

12. We have held this month two constructive workshops involving pupils and barristers to follow up last year's publication of the Bar Council's *Race at the Bar report* by Barbara Mills QC and Simon Regis. The focus of the workshops was on the regulatory response.
13. At the workshop I attended the core problem was identified as the lack of consistency between chambers in their oversight of diversity. Some chambers exemplified good practice in their approach to recruitment, to the allocation of work and in their commitment to inclusive policies. But this good practice was not widespread. Views differed about the role that regulation should play in promoting consistency, with some participants arguing that prescription by the regulator was essential to capturing the attention of barristers and others expressing misgiving that prescription, particularly of

training, could alienate, rather than recruit, support. However, I think the consensus view favoured some combination of sticks and carrots. Most participants felt that prescription by the regulator of core requirements was important and needed to be backed up by a proactive supervisory regime. But this was balanced by a desire for support in identifying good practice and for incentives, perhaps in the form of a kitemark, to search out and adopt good practice.

14. We shall be drawing on these workshops in our work to define good practice in chambers' oversight of equality and diversity, including to overhaul the current *Equality Rules*.

#### **Well-led action plan**

15. I attach – annex B - the latest update on our progress in implementing the action plan we agreed with the Board last Summer to enhance our governance and our engagement with consumers. As you will see, we have now completed many of the agreed actions and are on course to complete the remainder.

#### **Continuing competence**

16. The Board will be interested to see the BSB response – annex C - to the Legal Services Board consultation about a policy statement on continuing competence. The response reflects a helpful seminar last month with Board members. We have a major programme of work under way on this front and endorse the Legal Services Board's view that continuing competence should engage the legal regulators, but we also take believe that regulatory interventions must be proportionate, evidence-based and tailored to the risks experienced in the different professions.

#### **Annexes**

Annex A: Third quarter performance report

Annex B: Update on progress in implementing the well-led action plan

Annex C: BSB response to the LSB consultation re: policy statement about ongoing competence

#### **Mark Neale**

Director General

Bar Standards Board



Business Plan Summary					
Task	Assigned	Size	Priority	Status	Budget
<b>Strategic Aim 1 - Delivering risk-based, effective and targeted regulation</b>					
1. FBT - implementation of new exams	ROD	2	High		
2. Exams review	ROD	3	High		
3. FBT - BCAT review	S&P	2	Medium		
4. FBT - evaluation	ROD	1	Medium		
5. Modernising decision-making	LED/ROD	3	High		N/A
6. Well-Led action plan <sup>1</sup>	G&CS	3	High		
7. Non-professional activities	LED	2	High		
8. Sanctions guidance	LED	3	High		
9. BSB culture and learning & development	HR	1	High		N/A
10. BSB Strategic Plan 2022-2025	S&P	2	High		
11. Code Review	S&P	3	Medium	N/A	N/A
<b>Strategic Aim 2 - Encouraging an independent, strong, diverse and effective legal profession</b>					
12. Pupillage	ROD	TBC	TBC	N/A	N/A
13. Assuring standards at the Bar - CPD	ROD	3	High		
14. Assuring standards at the Bar - Coroners' Courts	ROD	3	High		
15. Assuring standards at the Bar - EYP	ROD	3	High		
16. Equality and Diversity Strategy - Anti-racism	S&P	2	High		
17. Bullying, Discrimination & Harassment at the Bar	S&P	2	High		
18. Regulatory Return	ROD	2	High		N/A
19. Equality and Diversity Strategy - Equality Rules	S&P	2	High		
<b>Strategic Aim 3 - Advancing access to justice in a changing market</b>					
20. Research publications	S&P	2	High		
21. CMA quality indicators - collaboration & pilot	S&P	1	High		N/A
22. CMA quality indicators - consumer feedback	S&P	2	High		N/A
23. CMA evaluation	S&P	2	High		

**Note/s**

<sup>1</sup> Referred to as 'LSB Governance review' in the published Business Plan.  
<sup>2</sup> Index is a calculation of the actual versus budget, multiplied by 100 - showing how far above or below budget the actuals are. For example, index 120 means 20% above budget and index 80 means 20% below budget.  
<sup>3</sup> Pending review by GRA Committee as part of Consolidated Risk Report.

**Size** ↑ 3 Large piece of work  
 ↓ 1 Small piece of work

KPI Summary		C&A - General Enquiries		C&A - Initial Assessment
On target	8	General enquiries addressed (5 days) - 80%	General enquiries referred (3 days) - 80%	Concluded or referred (8 weeks) - 80%
<10% below target	3	80%	47%	49%
>10% below target	5			
I&E - Referral of Cases	I&E - Investigation	I&E - Quality Indicators		
Accepted or referred back (2 weeks) - 80%	Decision on disposal (25 weeks) - 80%	Original decision upheld by IR following review - 95%	Successful appeals against admin. Sanctions - 0%	Successful appeals of DT where BSB is responsible - 0%
27%	31%	67%	0%	0%
Authorisation - Authorisation, Exemptions & Waivers			Authorisation - Entity Authorisation	
Applications determined (6 weeks) - 75%	Applications determined (8 weeks) - 80%	Applications determined (12 weeks) - 98%	Authorisation decisions made (6 months) - 100%	Authorisation decisions made (9 months) - 100%
65%	83%	95%	100%	100%
Supervision - Allocations		Supervision - Reg. Response	Supervision - Visits	
Cases assigned after referral from CAT (2 days) - 80%		Regulatory response agreed (20 days) - 80%	Visit report letters issued (5 days) - 80%	
88%		97%	100%	

Financial Summary				
Category	Q3 YTD Actual	Q3 YTD Budget	Variance	Index <sup>2</sup>
Income	10,174	9,884	290	103
Expenditure	4,895	5,223	-328	94
Category	FY Forecast	FY Budget	Variance	Index <sup>2</sup>
Income	13,235	12,689	546	104
Expenditure	6,806	6,989	-183	97

Corporate Risk Summary (Action Priority)				
Period	High	Medium-High	Medium	Low
Q3 21/22 <sup>3</sup>	3	3	10	7
Q2 21/22	3	4	9	7

Directorates		% of occupied posts
CPE	Communications and Public Engagement	100%
G&CS	Governance & Corporate Services	100%
LED	Legal & Enforcement	91%
ROD	Regulatory Operations	95%
S&P	Strategy & Policy	79%



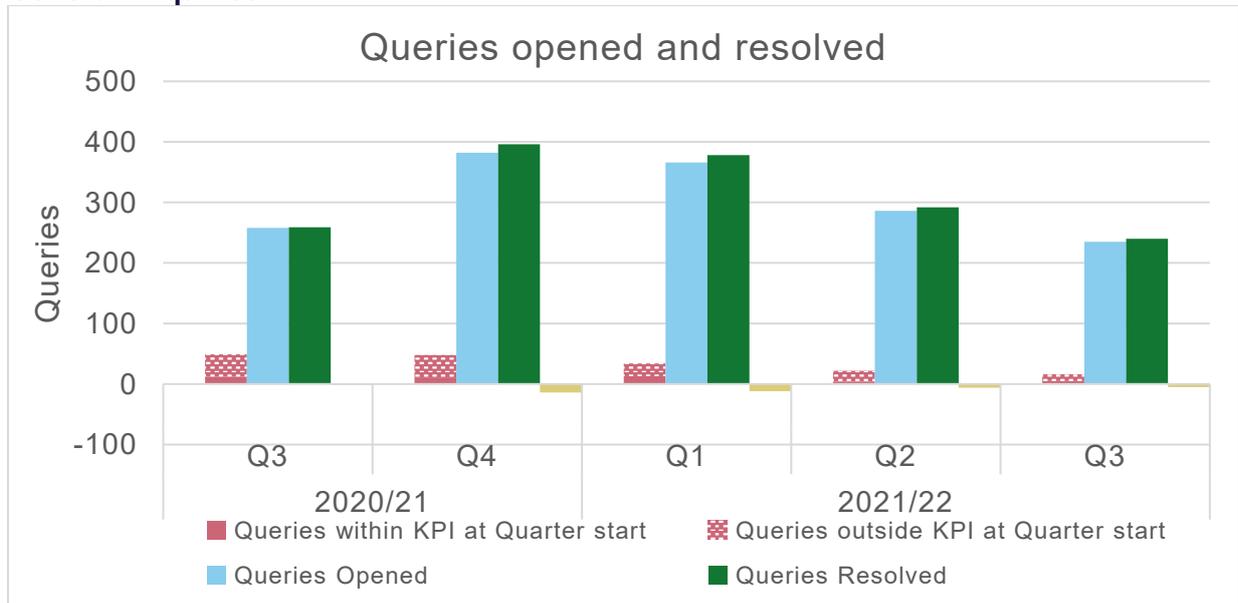
**2021-22 Quarter 3 Performance report – Regulatory Operations and Legal and Enforcement Departments**

**Contact & Assessment**

**Key points**

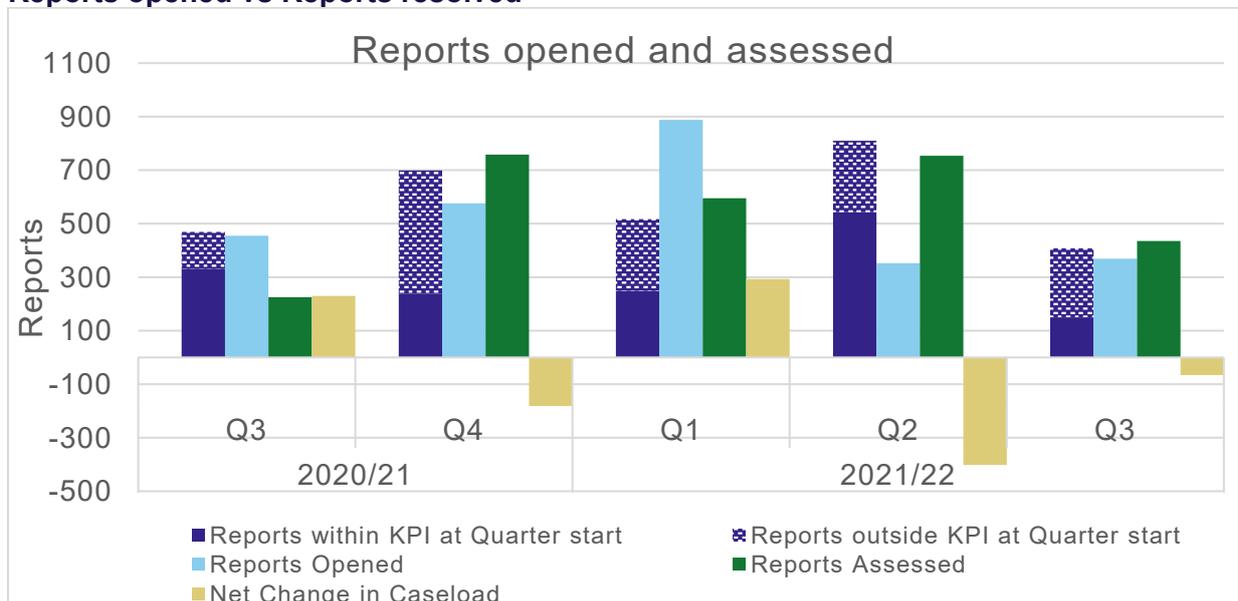
- The team continues to perform well against the target to address general enquiries, only narrowly missing KPI this quarter.
- Performance against the initial assessment KPI has improved by over 20 percentage points when compared to last quarter.
- Quality indicators demonstrate that decision-making continues to be robust.

**General Enquiries**



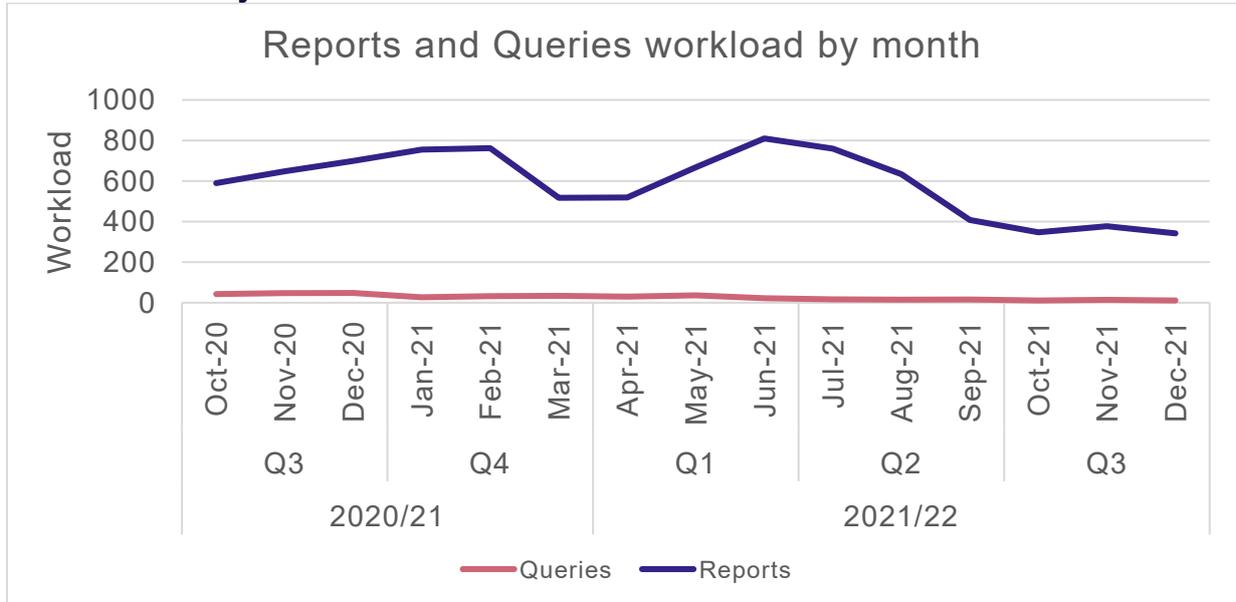
1. The numbers of queries resolved continues to exceed those opened at the same time as the numbers of queries both open and outside KPI at the start of the quarter has reduced.

**Reports opened vs Reports resolved**



- This chart shows that the team has also assessed more reports than were opened over the last two quarters, further reducing the overall caseload. CAT have already closed more reports this year than they did in the whole of 2020/21 (1784 by the end of quarter 3 as opposed to 1541 in all of last year, a 16% increase).

**Total caseload by month**



- Reports received have been broadly stable this quarter, in comparison to spikes seen in previous quarters. Despite the reduction in caseload from September 2021, this year is on track to exceed total number of reports for 2019 and 2020. After the first 3 quarters of 2021-22, the team has received 90% of the total reports received in the whole of 2020-21. This is mainly due to the peak in quarter 1 when we received 888 reports, which is 55% of the 2021-22 total received so far. Fewer reports have been received in both quarter 2 and quarter 3 than in the equivalent quarters last year.

**Commentary**

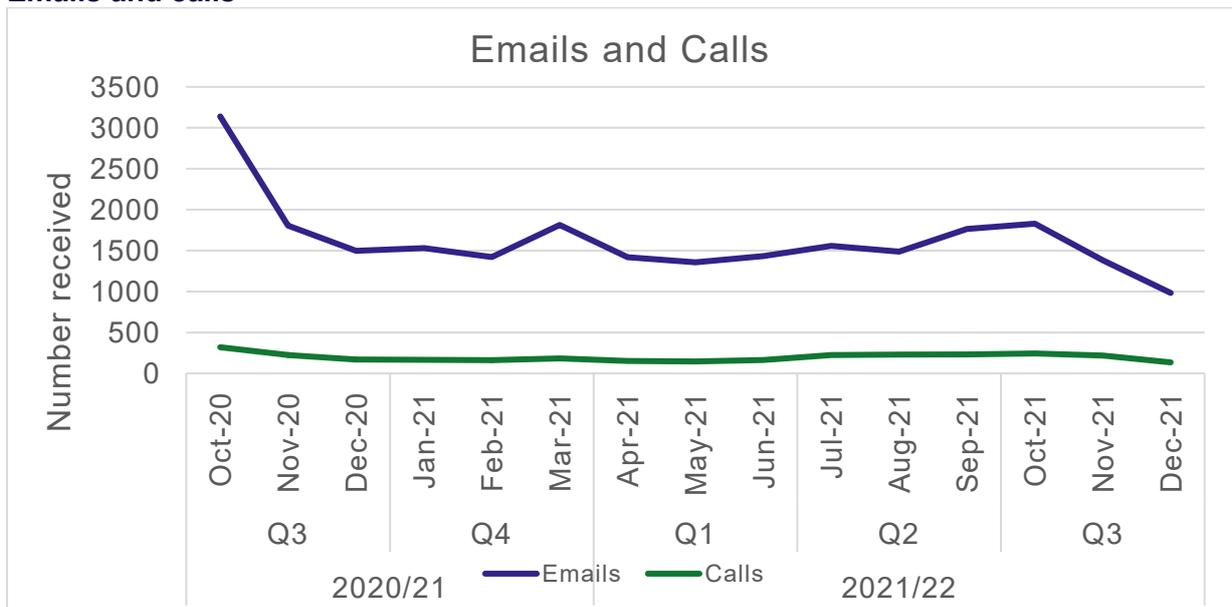
- Performance against the initial assessment KPI continues to be off-target because of the focus on completing overdue cases. The current backlog is around 120 cases. This is down from approximately 330 in Q1. Since more reports have been closed in 2021-22 than have been received, the output outlined at paragraph 2 reflects the clearing of the backlog which built up last year as well as the increased number of reports received this year.
- We expect to see performance against KPIs to continue to improve throughout Q4, with performance substantially closer to the 80% target for case closure. There remains a need to balance reducing the number of overdue cases with the assessment of new cases. As indicated above, the team continues to feel the impact of the enormous increase in cases in 2021/22, but is now much better placed to move into Q1 next year and to perform in line with KPIs.

**Authorisations**

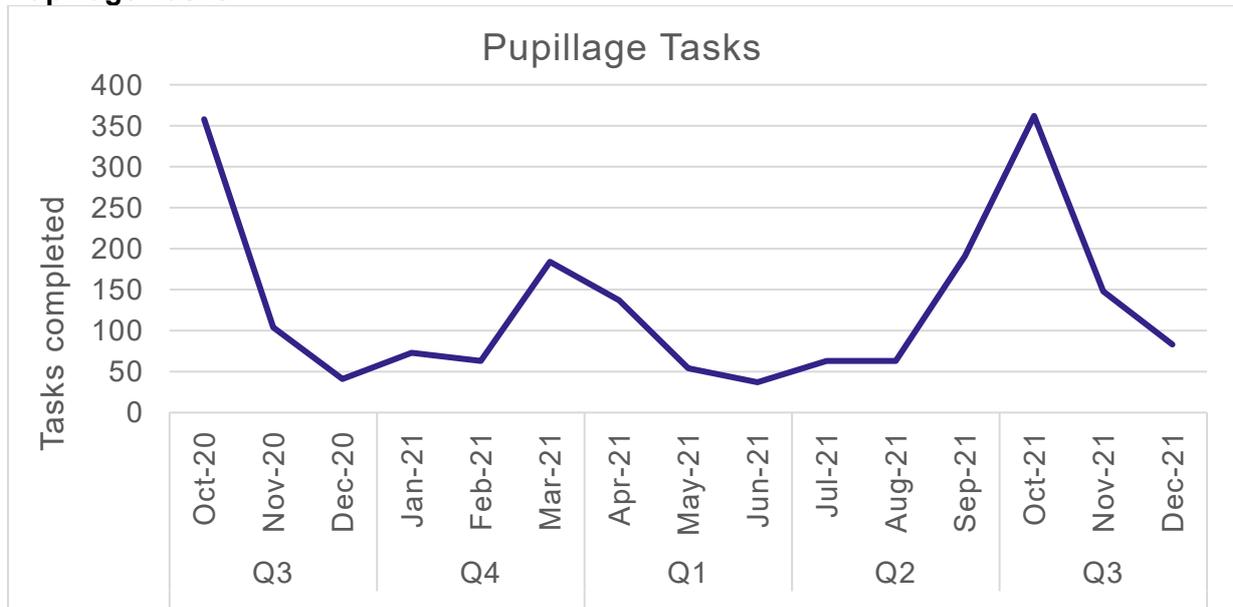
**Key points**

- The team has met or exceeded 3 out of its 5 KPIs and is on course to meet the remaining two by the end of the next quarter.
- Performance has increased steadily over the year (see Cases closed table) and the team is in a strong position with only 8% of applications overrunning.
- The majority of applications determined over the last two quarters have been within the 6-week timescale.

**Emails and calls**

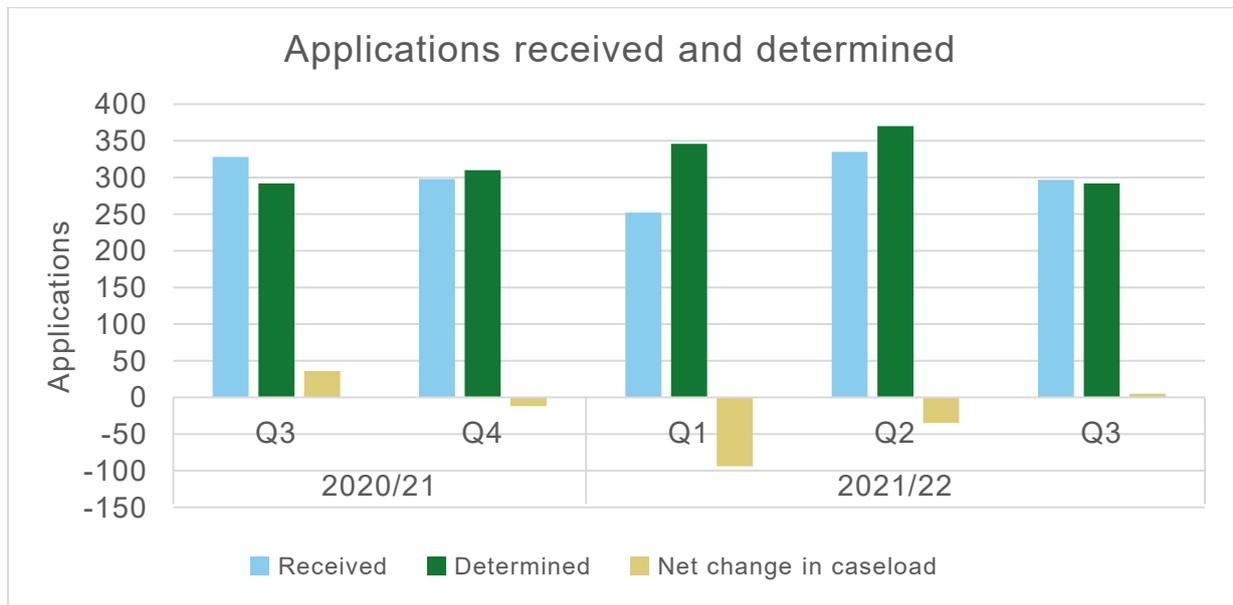


**Pupillage Tasks**



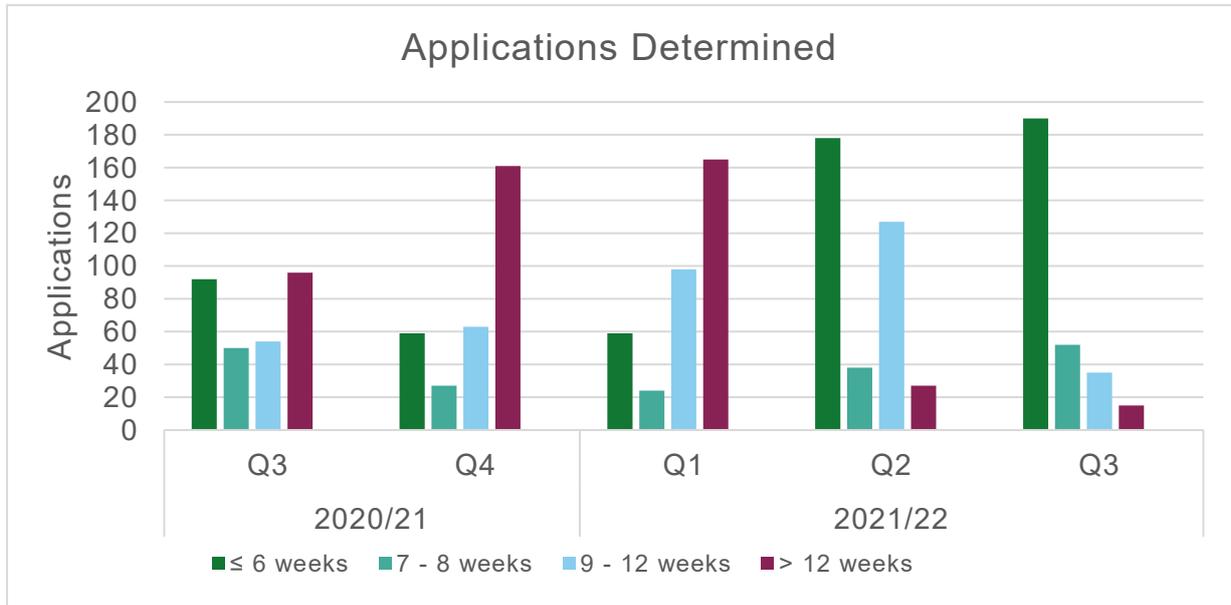
- The temporary resource which was approved had a positive impact in dealing with the peak in tasks, related to the submission of additional information, and responding to calls and emails at the start of the quarter. This has allowed the team to focus on progressing applications.

**Applications received and determined**



- Only slightly fewer applications were determined than received this quarter, maintaining the progress made over the last year.

## Applications determined



8. This chart demonstrates that the concerted efforts made to address the backlog of older cases in quarter 4 of 2020/21 and the first quarter of this year has had an impact, in the context of an overall increase in applications.
9. If progress continues as it has been since quarter 1, the team is on course to meet KPI on all three timeliness indicators by the end of quarter 4.
10. The graphs above show the steep improvements made over the course of this reporting year and the trajectory is positive.

## Commentary

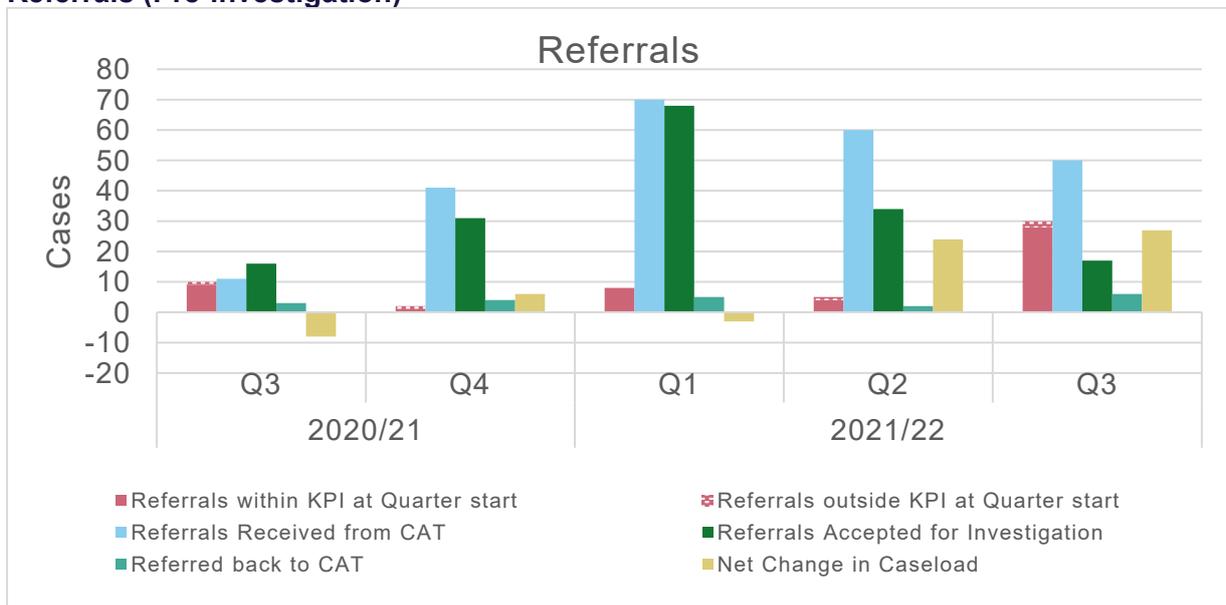
11. The team is well placed currently, with only a small number of applications over 8 weeks old.
12. The Team has authorised 107 applications from pupillage providers under the transitional arrangements to become AETOs. There are currently **121** applications which must be assessed with decisions issued by 31 March. In addition, there are **80** applications which are likely to be submitted (ready for assessment) between now and 15 February.
13. A further **66** who have not engaged with the process or responded to targeted communication. We have been contacting these by phone to try and establish whether they are continuing to offer pupillage or not.

**Investigations and Enforcement**

**Key points**

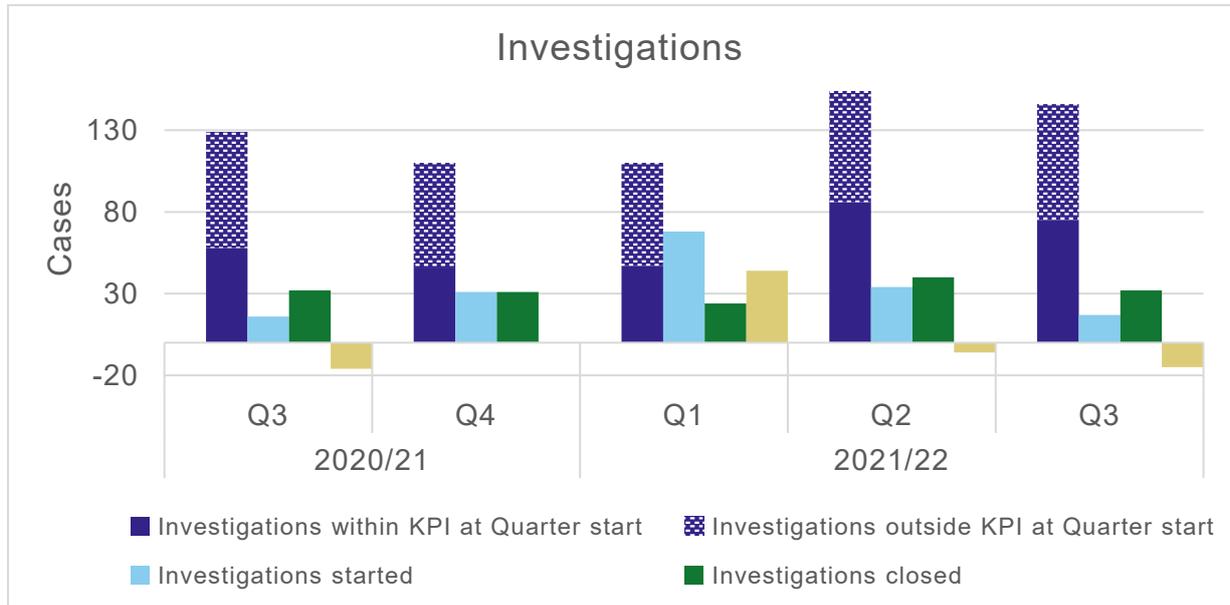
- The team is still maintaining throughput in terms of progressing investigations and disciplinary action.
- The KPIs are still not being met and performance against them was lower than in Q3. The significant increase in referrals from CAT has affected performance against the KPIs.
- The quality indicator in relation to independent reviews was not met this quarter. Three cases were considered by the Independent Reviewer and in one the original decision was partially not upheld.

**Referrals (Pre-investigation)**



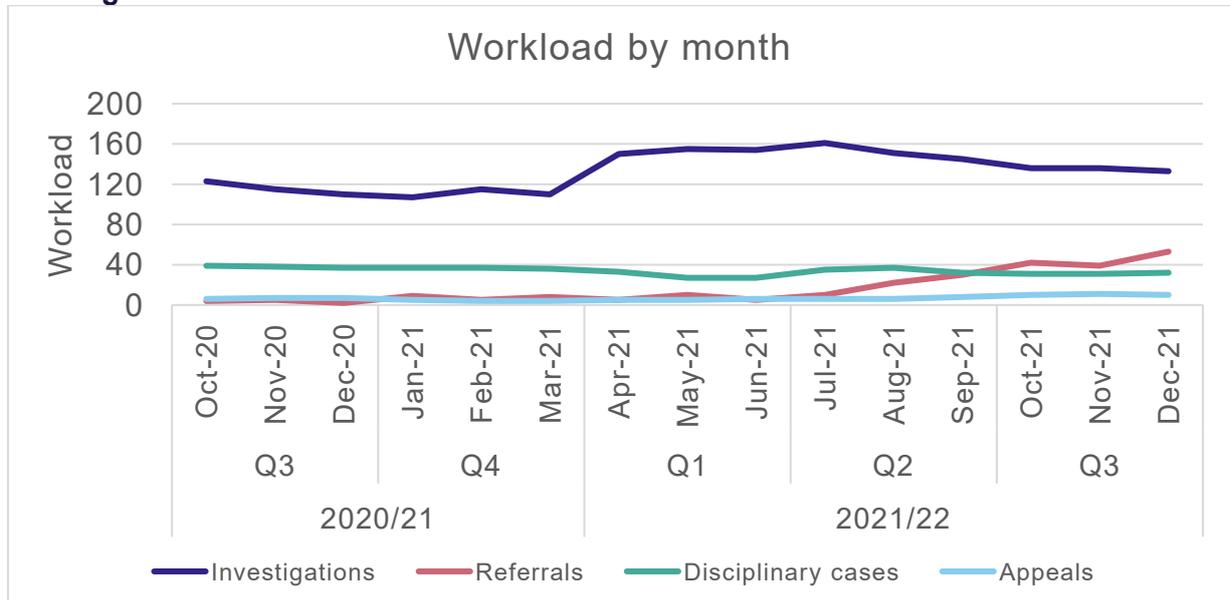
14. The number of cases referred to I&E so far this year (180) is 41% higher than the total number referred in 2020-21 (128). If this trend continues, we expect referrals to exceed 200 in 2021-22.

Investigation cases



15. In the last two quarters the team has maintained or increased the number of investigations closed, resulting in a small reduction in live investigations but this reduction has not provided sufficient capacity to cope with the increase in referrals.

Investigations and enforcement workload



16. The chart above shows that the overall workload at the end of Q3 (228 cases) was 46% higher than at the end of Q3 last year (156 cases), with the ongoing increase in referrals since Q1 making up a substantial proportion of this increase.

17. One aspect of the team’s work that is not currently reflected in the overall workload, is the time spent on issues arising from closed cases. Such issues can be time-consuming to deal with particularly when they relate to old cases sometimes dating back many years. We are looking at ways to monitor this work and include it in the performance data.

## Commentary

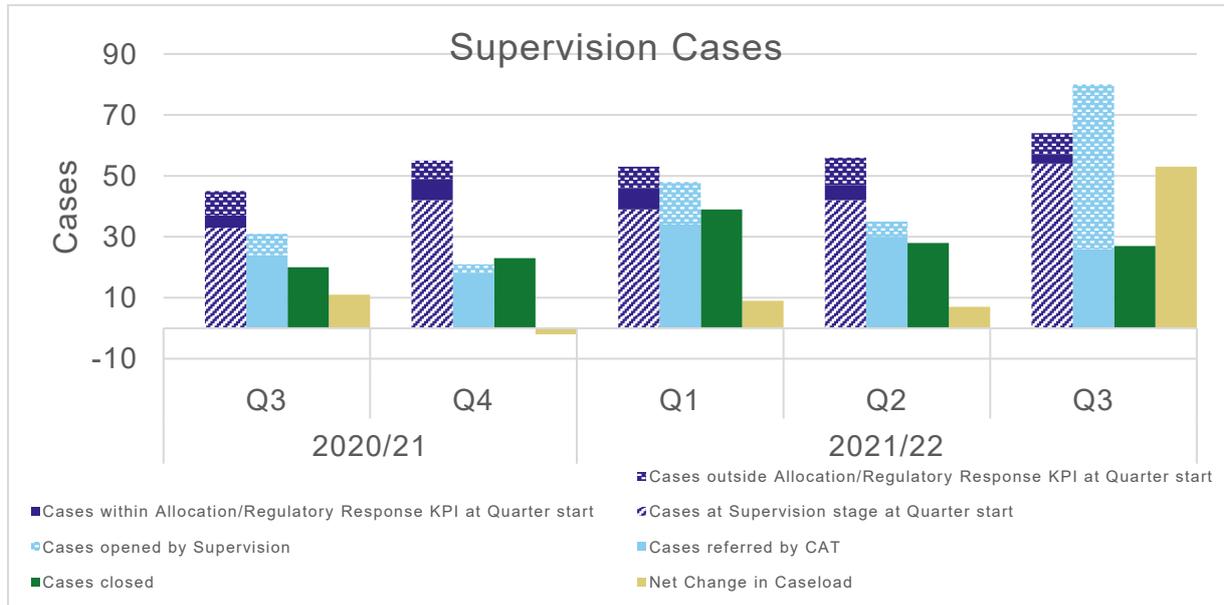
18. The team continues to progress cases and maintain throughput, but the pace of progression is still slower than the KPI targets. The reasons for this are twofold: the cumulative impact of the substantial increase in referrals over the last three quarters and the team still not being up to full staff complement.
19. The increase in referrals has led to a backlog in cases awaiting acceptance for allocation to a case officer and investigation. The significant dip in performance against the referral KPI (26.9%) as compared to Q1 (89.0%) and Q2 (61.1%) is because of a change in approach towards the end of Q2. In Q1 and Q2, cases were being accepted for investigation even though staff did not have capacity to progress them immediately. This distorted the figures and merely pushed the delay into the later stages of the investigation process. The approach now is to formally accept case for investigation only where there is capacity to allocate and progress those cases.
20. While there is a backlog in cases awaiting acceptance for investigation, allocations are being prioritised according to risk and seriousness as well as the vulnerability of witnesses. This means that cases are not necessarily allocated according to the order in which they are received.
21. The team is still not up to full staff complement. There had been ongoing difficulty in recruiting to an additional Senior Case Officer agreed by the Board last year (now achieved) and recruitment to the additional paralegal post agreed as part of recent budget cycle, has only just concluded. The additional staff will not commence work until the beginning of the next financial year. Therefore, performance against the KPI is likely to continue at current levels for at least the next two quarters, particularly if the increase in referrals continues.
22. In terms of the outcome of IR reviews, the IRs recommendation that the original decision in one case be changed related to only part of the outcome. The case was originally dismissed with advice. Further material was submitted by the barrister after the decision which led to the advice being withdrawn

## Supervision

### Key points

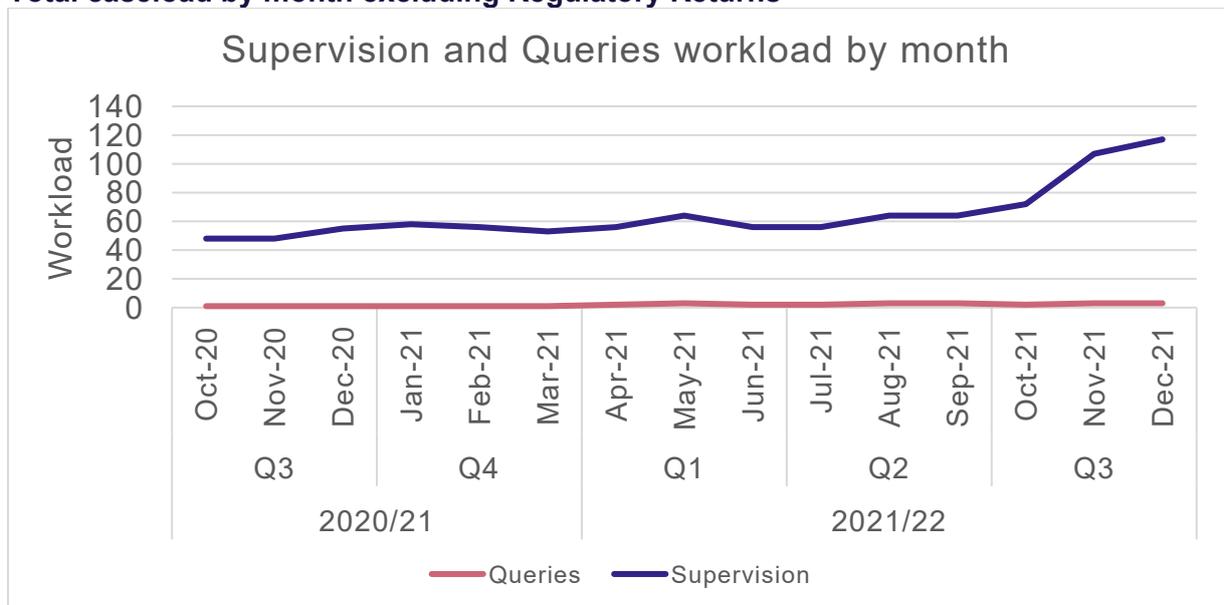
- The team has exceeded KPI targets for allocations, agreeing regulatory responses and visits this quarter.
- The number of cases created by Supervision has significantly increased due to the final phase of compliance testing of testing compliance with the transparency rules.
- The number of actions outstanding has significantly increased due to the assessment of the Regulatory Returns.

Supervision open case volumes excluding Regulatory Returns



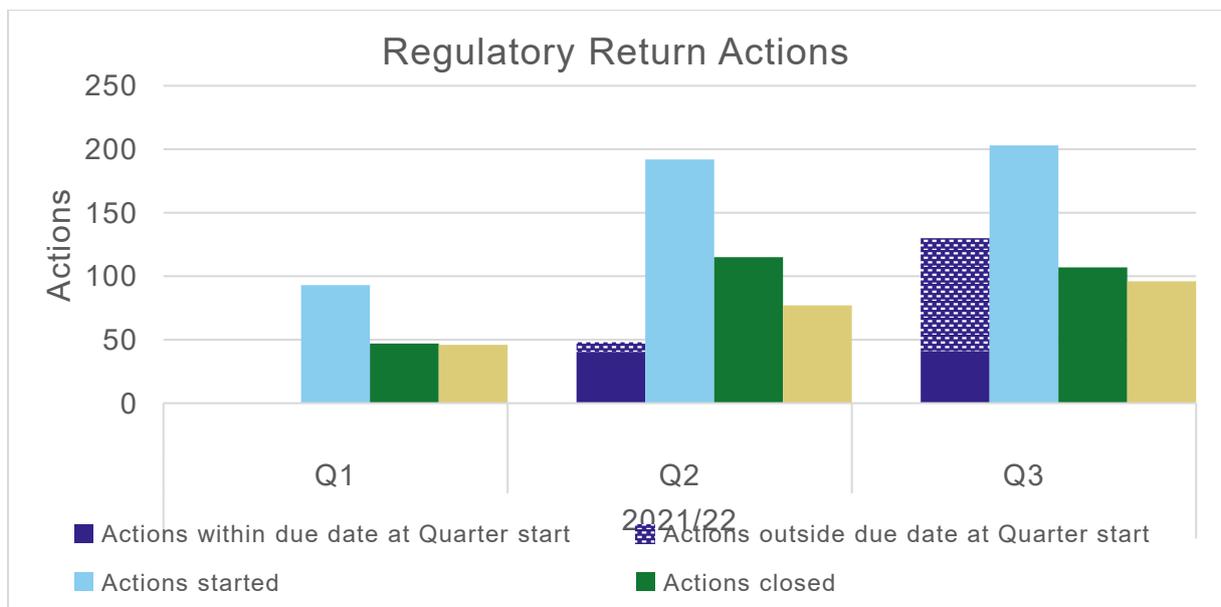
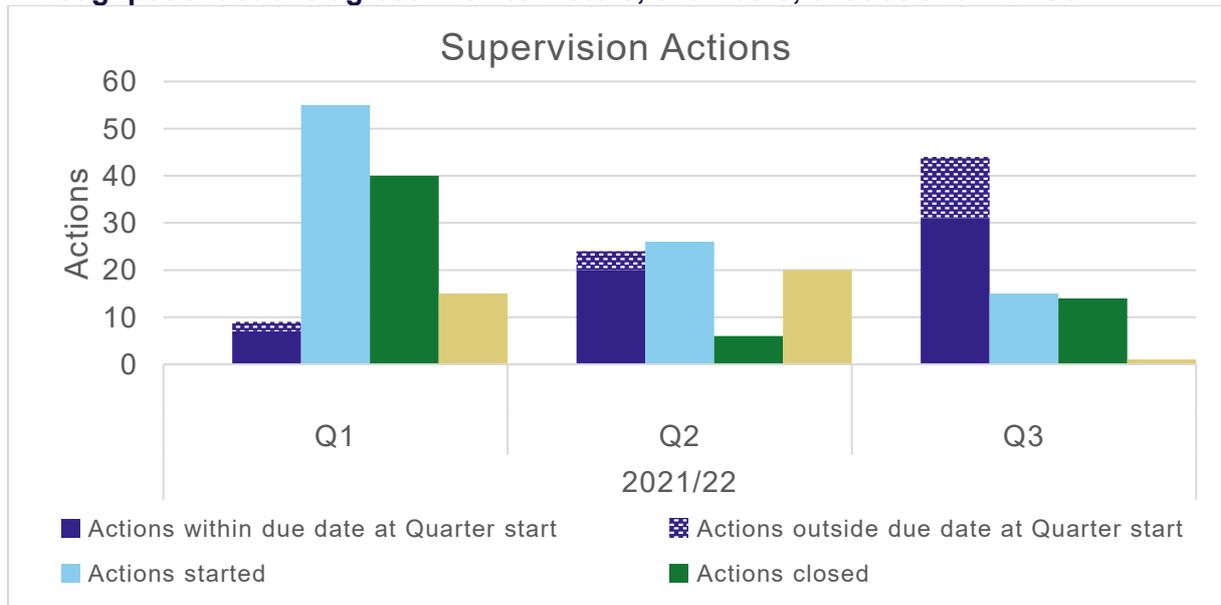
23. The number of cases referred by CAT was slightly lower than the last two quarters, but a large number of cases were opened by Supervision this quarter. 45 out of 54 of these relate to the final phase of our testing of compliance with the transparency rules (re-testing those assessed as non-compliant in 2020 that were not re-assessed as part of the Regulatory Returns or other casework). As the original work pre-dated the Supervision CMS module, we had to set up a batch of new cases to record them. This also causes the increase in the net change in caseload.

Total caseload by month excluding Regulatory Returns



24. While queries have remained broadly static, supervision activity and workload has almost doubled since the end of the last quarter due to the cases that were set up for the transparency spot checks. This also causes the increase in the “response agreed” figure in the table below

Throughput of actions agreed with barristers, chambers, entities and AETOs



**Commentary**

25. There has been a significant increase in actions set as a result of the assessment of the Regulatory Returns. 319 Returns have generated more than 500 actions.
26. The number of actions outside due date is high at the quarter close because the team has focused on completing the assessments rather than reviewing adequacy of actions taken actions set at levels 1 to 3.
27. Many chambers, entities and sole practitioners have reported that actions have been addressed, but the team has not yet reviewed them to check that they can be closed. As assessments are now complete, the team is focusing on reviewing and closing actions. It is important that sufficient Supervision resource continues to be allocated in Q4 to this work. This is difficult to monitor day-to-day because we are currently lacking dashboard functionality. This is under discussion.

## BAR STANDARDS BOARD

### ACTION PLAN - REFORMS FOR THE 2020s

#### Introduction

1. The Bar Standards Board has adopted this plan for reform, which brings together a range of changes which the Bar Standards Board and Senior Management Team have in hand or have planned, to take the Bar Standards Board forward into the 2020s and to demonstrate BSB's compliance with the *well-led* standard of the LSB *regulatory performance assessment framework*. The Plan, which now reflects the independent review of the Board's governance completed in July 2021, will be further developed and refined, under the Board's continuing oversight, in the light of:
  - the development of the Board's next three year strategy covering the years 2022/23 to 2024/25; and
  - the work underway to re-define the culture of BSB as an independent regulator and the associated review of policies for the recruitment, retention and development of BSB's people.
2. The prospectus captures the Board's reform agenda under a number of key headings:
  - consolidating BSB's independence as a regulator;
  - aligning strategy with risks to the regulatory objectives;
  - enhancing consumer engagement;
  - delivering high performance;
  - enhancing governance.
3. The Board will own and hold itself accountable for the delivery of the plan and receive reports on its implementation from the Director General and Senior Management Team at every meeting until completion.

<b>Title:</b>	Updates against delivering the Well-Led Action Plan			
<b>Authors:</b>	Mark Neale, Wilf White, Teresa Haskins, Ewen Macleod and Rebecca Forbes			
<b>Post:</b>	Director General, Director for Communications and Public Engagement, Director of People, Director of Strategy and Policy and Head of Governance and Corporate Services.			
<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion</b> <input checked="" type="checkbox"/>	<b>Noting</b> <input checked="" type="checkbox"/>	Other: <input type="checkbox"/> (enter text)

**Recommendation:**

The Board is invited to scrutinise the updates that have been provided and review the progress that has been made since the last board meeting.

Theme	Action	Lead responsibility	Achievements at time of last update	Achievements since last update	Target completion date
<b>Consolidating BSB's independence as a regulator (WL2, WL7)</b>	A People Survey will be undertaken in Spring 2021 – to be repeated annually - to inform a review of BSB's culture as an independent regulator.	Teresa Haskins	<ul style="list-style-type: none"> <li>Culture and Engagement action plan agreed; detailed project plans in preparation</li> <li>Draft framework of BSB values-based behaviours produced from staff input at Oct 21 Staff Conference; to be reviewed by the Anti Racism working group in January</li> </ul>	Draft framework of BSB values-based behaviours to be reviewed in March by the Anti Racism working group. It has been reviewed by Heads of Departments and the framework was presented at the Townhall meeting and discussed with all staff.	On-going: surveys to be run once every calendar year
	BSB's policies for the recruitment, retention and development of its people will be reviewed and re-cast to support the culture and behaviours agreed by the Board and Senior Management Team.	Teresa Haskins	<ul style="list-style-type: none"> <li>Draft Learning and Development Strategy and supporting Policy produced for further discussion and consultation</li> <li>Initial programme of learning events planned</li> <li>Review of pay and performance management underway</li> </ul>	Please see the previous update. Review of pay and performance management is progressing, SMT have had two facilitated discussions on the topic. Further discussions to follow.	March 2024

Theme	Action	Lead responsibility	Achievements at time of last update	Achievements since last update	Target completion date
	The current operation of the Internal Governance Rules will be reviewed in the first half of 2022/23 in the light of their operation in the preceding 18 months to assess whether they support BSB's independence of decision, operation and culture. The Review will consider the costs and benefits of incorporating the BSB as well as the effectiveness of the services which continue to be shared between BSB and the Bar Council.	Mark Neale	The consultation on BSB's strategy for the next three years, which closed on 10 December, foreshadowed the review of the operation of the IGRs and, specifically, a review of the case for incorporation. We are now considering responses to the consultation and will advise the Board on how to take forward the IGR and incorporation reviews in March	See the Director General's <i>Strategic Update</i> for an overview of our approach to the review of the IGRs and of incorporation	To be determined
<b>Aligning strategy with the regulatory objectives (WL3, WL5)</b>	As a contribution to the development of BSB's three year strategy for 2022/23 to 2024/25, the BSB regulatory Risk Index will be reviewed and refreshed to ensure that it aligns with the regulatory objectives and captures the key risks to those objectives and the evidence bearing on likelihood and impact of those risks.	Ewen Macleod	The regulatory risks in the index have been mapped against the Regulatory Objectives.	Before leaving, Peter Astrella produced a new version of the index, drawing on the review of risks and evidence that had informed the new strategy. This needs to be tested with the SMT and Risk Forum before being formally approved by the Board. That work will be completed in April with a view to getting Board approval in May.	April 22

Theme	Action	Lead responsibility	Achievements at time of last update	Achievements since last update	Target completion date
(LSB finding 1)	A new three year strategy covering the years 2022/23 to 2024/25 will be developed prioritising the effective delivery of BSB's core regulatory work and the most significant risks to the regulatory objectives as analysed in the revised Risk Index	The Board	The previous update is on track. The consultation has closed and we are considering the responses to the consultation.	The Board is being invited to sign off the strategy and Business Plan for 2022/23 at its 31 March meeting	End of March
<b>Enhancing consumer and stakeholder engagement (WL4, WL6)</b>	BSB will establish a pool of consumer facing organisations with whom we will engage ad hoc, setting up sub-groups of stakeholders who are the most relevant to the issue under consideration and BSB's Advisory Panel of Experts will be strengthened through the recruitment of a number of additional consumer experts	Wilf White	Meetings were held with the LSCP and other consumer groups who responded to our consultation and the new APEX member has now been appointed.	The last round of recruitment only resulted in one appointment, but we are exploring the possibility of co-opting a second expert.	This action has largely been completed but we hope to recruit a second APEX expert by April 2022
(LSB finding 2)	The Board will review the effectiveness and impact of its current strategy for promoting public legal education through partnerships with third sector bodies and how, having regard to the recommendations of the Competition & Markets Authority, BSB might contribute to a broader cross-sector strategy, including Legal Choices, as one element of the development of its next three year strategy 2022/23 to 2024/25. It will publish its revised strategy	Wilf White	We are developing our PLE strategy in discussion with other regulators in the MTCOG PLE Group. A revised strategy will be published alongside the BSB's overall strategy for the next three years.	The PLE strategy has been developed and will be brought to the March Board meeting for discussion/approval.	End March 2022

Theme	Action	Lead responsibility	Achievements at time of last update	Achievements since last update	Target completion date
(LSB finding 10)	BSB will develop engagement strategies for relationships with key stakeholders, including the LSB, and Board members will pair with stakeholders to provide a further channel of engagement.	Wilf White/Board	This has been slightly delayed but the strategies and parings will be agreed and in place by the end of March.	We need to extend the timelines due to lack of resources in the C&PE team.	End May 2022
<b>Delivering high performance (WL1,WL2)</b>	The Senior Management Team will review BSB's performance against the LSB Regulatory Performance Assessment Framework every six months and report to the Board on strengths and areas for development. The Board discussion will be fully recorded.	Mark Neale	The Senior Management Team will provide advice to the Board at its meeting on 27 January in the light of the LSB annual assessment of performance published on 23 December.	The BSB Board held a productive meeting with the LSB Board on 22 February which, we understand, significantly reassured the latter on the progress being made	Ongoing
	The Director General will report to the Board quarterly on the performance of the Bar Standards Board in delivering its annual business plan, including its performance in achieving the service standards set for its core regulatory work of considering reports, handling applications for authorisations and waivers and taking forward investigations of potential disciplinary matters	Mark Neale	The DG's <i>Strategic Update</i> for the Board meeting on 31 March will update on performance to the end of the third quarter on 2021/22. The Senior Management Team has also initiated a review of the KPIs for our core regulatory operations with a view to advising the Board on a more balanced scorecard of measures.	The latest report – on Q3 2021/22 – is contained in the DG's <i>Strategic Update</i> for the 31 March Board meeting	Ongoing

Theme	Action	Lead responsibility	Achievements at time of last update	Achievements since last update	Target completion date
(LSB finding 8)	The Board will formally discuss the LSB's assessment of BSB's performance against its Regulatory Performance Assessment Framework annually at its first meeting after BSB receives the assessment. The discussion will be fully recorded.	The Board	December 2021 assessment to be considered by the Board at its meeting in January 2022	The Board duly considered the LSB's December 2021 assessment at its meeting on 27 January 2022	Ongoing (usually annual)
<b>Enhancing governance (WL1, WL5, WL7)</b>	In the light of independent review of its governance, the Board will hold regular strategy discussions in addition to formal Board meetings, facilitated by the relevant member of the senior Management Team	The Board	Session arranged for November 2021 rescheduled to January 2022.	A further seminar on assuring competence was held on 7 March 2022	Ongoing
(LSB findings 3, 4, 6 & 9)	The Director General will ensure that the Board is provided with all the information and analysis needed to support effective decision-making, including, where relevant, a costed analysis of options and an analysis of risks. This will identify 'significant' decisions in terms of, for example, novelty, contentiousness, or repercussion, and set out appropriate governance arrangements. The 2020 recommendations of BSB's internal auditors bearing on Board decision-making in the light of the review of 2019 decisions on public legal education will be implemented.	Mark Neale	Issues identified all considered in revision of Board paper template for January 2022	Continuing	Ongoing

Theme	Action	Lead responsibility	Achievements at time of last update	Achievements since last update	Target completion date
(LSB finding 5)	These recommendations include provision for the Board, where minded to change strategic direction, to receive a follow-up paper analysing the key risks and stakeholder views. Discussions will take place with the Chair pre-Board meetings to confirm that papers are fit for purpose in all these respects.				
	BSB's internal policies will be reviewed over the course of 2021/22 to ensure that the policies comply with statutory objectives and better regulation principles, support BSB's independence as a regulator and are understood and implemented by BSB's people. Priority will be given to policies currently shared with the Bar Council.	Mark Neale	We are continuing to update policies: a draft policy on the handling of complaints about Board members is currently being taken forward and will be brought to the March Board meeting for discussion.	The policy on the handling of complaints against Board members is on the agenda for the Board's meeting on 31 March	To be determined
	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	Mark Neale	Governance consultancy (Indigo Governance) appointed following a competitive tender. Their recommendations will be submitted to the executive by the end of January with a view to putting proposals for revision of governance documents to the Board in March.	The consultants have produced an initial report, which the DG has endorsed, and are now reviewing and proposing revisions to existing governance documents to reflect their recommendations.	March 2022

Theme	Action	Lead Responsibility	Achievements at the time of last update	Target completion date
<b>Aligning strategy with the regulatory objectives (WL3, WL5)</b>	BSB's Board papers will set out clearly how the issue under consideration supports the regulatory objectives and how proposed actions mitigate risks to the regulatory objectives. Papers will cost the options proposed for mitigating risk, alongside other options available, and provide an analysis of stakeholders' views. Published policy statements will be transparent in explaining how BSB has addressed its public interest responsibility and better regulation principles and balanced the regulatory objectives. Board discussion will continue to be held in public where appropriate. There will be a full audit trail for Board decisions in Board minutes and extraordinary Board meetings will be on the public record.	Mark Neale and relevant directors	Template for Board papers revised again to ensure a full consideration of the regulatory objectives as well as setting out stakeholder engagement, equality impacts and a risk analysis of the recommended action.	<b>January 2022 - completed</b>
<b>Aligning strategy with the regulatory objectives (WL3, WL5)</b>  (LSB finding 1)	BSB's Business Plan & Budget 2021/22 and subsequent annual business plans will include an analysis showing how the priorities set by the Board support the regulatory objectives and mitigate risks to those objectives.	Mark Neale/Wilf White	Already implemented. We are now developing the Business Plan for 2022/23 in the light of the strategy consultation and will frame that Plan in the light of the regulatory objectives	<b>Completed</b>
<b>Enhancing consumer and stakeholder engagement (WL4, WL6)</b>  (LSB findings 2 & 7)	Board papers will in future set out, where relevant, the arrangements for engaging consumer representatives and record the views of consumer representatives and other relevant stakeholders where decisions are sought from the Board	Wilf White	Revised Board paper template requires articulation of arrangements for engaging consumer representatives and the views of consumer representatives and other relevant stakeholders	<b>Completed</b>

Theme	Action	Lead Responsibility	Achievements at the time of last update	Target completion date
<b>Enhancing consumer and stakeholder engagement (WL4, WL6)</b>	In assessing the performance of our communications and public engagement strategy, the Board and SMT will consider the diversity, as well as the number, of stakeholders responding to consultations.	Wilf White	This is already being done and respondents to our consultations are invited to fill in an equality monitoring form.	<b>Completed</b>
<b>Enhancing governance (WL1, WL5, WL7)</b>	An independent review of the Board's governance was commissioned in 2021 to inform the Board's annual self-evaluation. Independent reviews will be commissioned on a triennial cycle thereafter.	The Board	The review was undertaken by Independent Audit which presented its report to the July Board off-site. The Board's decisions in the light of the report's recommendations are now reflected in the action plan.	<b>Completed</b>





## **LSB consultation on policy statement on ongoing competence**

### **Response of the Bar Standards Board**

#### **Introduction**

The Bar Standards Board (BSB) welcomes the focus that the LSB is giving to the on-going competence of legal professionals. It is a core responsibility of any regulator to set and maintain the standards of its regulated community. The BSB has an active programme of work to achieve this aim; taking a risk and evidence-based approach to introduce targeted and proportionate interventions. It is important that each front-line regulator is given the flexibility under any oversight by the LSB to develop its own approach to assuring ongoing competence. The proposed LSB outcomes should facilitate greater consistency of approach across legal regulators. They should not though be used to advance across sector regulation unless there is compelling evidence that it is necessary.

#### **Consultation questions**

##### **Q1. Do you agree with the proposed outcomes?**

In broad terms, yes. The BSB believes that the proposed outcomes cover the right areas that a regulator should be considering when ensuring the ongoing competence of its regulated community. We believe though that the LSB will need to take a flexible approach to assessing regulatory performance against these outcomes by each regulator. A one size fits all approach would be inconsistent with the differing nature of risks that arise with each profession within the legal sector. It must, within the scope of the LSB outcomes, be for the relevant regulator to reach its own conclusions, based on evidence and risk, on what regulatory interventions are necessary and proportionate. The LSB should assess how effective each regulator has been in meeting that objective but should not prescribe how to meet these outcomes.

##### **Q2. Do you agree with our proposed expectation that regulators will demonstrate that evidence-based decisions have been taken about which measures are appropriate to implement for those they regulate?**

Yes. But regulators should not be required to explain why a particular regulatory measure is not necessary, but instead why the regulatory interventions they have introduced respond to the evidence they have gathered and the risk analysis they have carried out. For example, if a regulator decides to introduce an enhanced approach to CPD, it should be expected to be able to justify why this is an appropriate and proportionate response and how it is expected to address a particular risk to professional standards. It should not be expected to say why all the other measures the LSB cites in its policy statement that might achieve a similar aim as enhanced CPD have not been adopted. This is likely to lead to considerable additional time and resource at the expense of focussing on implementing the regulator's preferred approach.

Equally, regulators should be free not to intervene where another organisation is effective in maintaining standards or where the market is acting to filter out poor practice. Regulatory intervention should be driven by evidence collected from a range of sources. Absence of evidence should not, of itself, be a justification for regulation.

**Q3. Do you agree with the LSB proposal that each regulator sets the standards of competence in their own competence framework (or equivalent document(s))?**

Yes. The BSB has the Professional Statement for barristers which sets the minimum standards expected of barristers when they join the profession. This is complemented by specialist competency statements in areas of practice where there is evidence of a need for further regulatory intervention and additional clarity on our expectations of standards of practice. For example, we have published competency statements for barristers practising in the Youth Courts and in the Coroners Courts.

**Q4. If not, would you support the development of a set of shared core competencies for all authorised persons?**

The BSB is not in favour of core competences for all authorised persons. Whilst there is some common ground in the competences required across the legal sector, the nature of the roles of legal professionals differs to such an extent that the wording of any shared competences would need to be drafted so broadly that they would have limited practical value. We therefore support the requirement that each regulator should develop its own core competences. That said, regulators should look for opportunities to collaborate with each other where the competency expectations across different professions are likely to be similar. For example, the BSB worked with CILEX and the SRA on preparing joint competences for barristers, solicitors and legal executives undertaking work in Coroners Courts.

**Q5. Do you agree with the areas we have identified that regulators should consider (core skills, knowledge, attributes and behaviours; ethic, conduct and professionalism; specialist skills, knowledge, attributes and behaviours; and recognition that competence varies according to different circumstances)?**

Yes.

**Q6. Do you agree with the LSB proposal that regulators adopt approaches to routinely collect information to inform their assessment and understanding of levels of competence?**

Yes. Regulators need access to information from a range of sources on standards of practice both to evaluate the impact of any regulation introduced to address a deficiency in standards or to enable them to take informed decisions on where further regulation is needed.

**Q7. Do you agree with the types of information we have identified that regulators should consider (information from regulatory activities; supervisory activities; third party sources; feedback)?**

Yes.

**Q8. Are there other types of information or approaches we should consider?**

None at present

**Q9. Do you agree with the LSB proposal that regulators should be alert to particular risks (to users in vulnerable circumstances; when the consequences of competence issues would be severe; when the likelihood of harm to consumers from competence issues is high)?**

Yes. The BSB is already alert to risks that arise in areas of practice where the vulnerability of the consumer is likely to be greater. These are a factor in any risk assessment we might make when deciding what interventions, if any, we should make. It is important, when assessing vulnerability, that we engage with those who are vulnerable, to understand how that vulnerability manifests itself and to get a sense of what regulation would have the most positive impact. For example, when developing regulation to improve standards of practice in the Coroners Court, we spoke with bereaved families, to understand their experiences and to explore differing options for raising standards. The resulting competency framework and toolkit for practitioners were much improved by their involvement.

**Q10. Do you agree with the LSB proposal that regulators adopt interventions to ensure standards of competence are maintained in their profession(s)?**

Yes, but with the qualification that any intervention must be proportionate and in response to evidence and risk analysis. Regulators should not introduce regulation merely because it operates in a different sector.

Regulators should consider, in deciding what interventions are proportionate, what assurance is available from other sources. In the case of barristers, we can take assurance from a range of sources: from the competitive nature of the market for barristers' services in many specialisms; from the assurance mechanisms of bulk purchasers of barristers' services, like the CPS; from the internal performance management arrangements of employers of barristers. Regulators should not duplicate these sources of assurance but rather concentrate on promoting better assurance where it is currently lacking.

**Q11. Do you agree with the types of measures we have identified that regulators could consider (engagement with the profession; supporting reflective practice; mandatory training requirements; competence assessments; reaccreditation)?**

Yes, these are the types of measures that the BSB has considered, and will continue to consider, when there is evidence that further regulation is needed. We do not though think that the LSB should prescribe a list of measures that regulators should be considering. Which regulatory response is appropriate and proportionate is a matter for the front line regulators, and it is beyond the LSB's remit to seek to influence regulators by specifying measures they should take into account. That is not to say that the LSB shouldn't give examples of possible measures, when to do so is helpful. But regulators should not be held to account for why they have not implemented measures suggested by the LSB – but instead should explain why measures they have introduced are proportionate, evidence and risk based and will have the desired impact on standards of practice.

**Q12. Are there other types of measure we should consider?**

As above, it is not for the LSB to set the measures that regulators should be considering.

**Q13. Do you agree with the LSB proposal that regulators develop an approach for appropriate remedial action to address competence concerns?**

We think that there is merit in a non-disciplinary process for addressing competency concerns. Enforcement action is a blunt tool and is not designed to deal with any underlying concerns about standards of practice. The BSB is interested therefore in exploring the development of a process of remediation but would wish to do so in partnership with the profession and others. We do not at present have a settled view on what is the most effective approach to remediation. There could, for example, be a role for Chambers or employers in supporting barristers where there is a need for improvement, within a framework set by the BSB. That support could range from providing access to training, to mentoring, with regulatory intervention reserved for where the framework isn't being applied or a barrister is not responding to the support put in place by Chambers or their employer. Such an approach would be consistent with the emphasis the BSB's new strategy places on the role of Chambers in maintaining standards at the Bar.

Any process for remediation (whether operated through the profession or the regulator) needs to be agile and have access to expertise to make assessments in competence. The BSB is alive to models of remedial practice used in other sectors and is interested in understanding how these work in practice and how effective they are in dealing with concerns about competence.

**Q14. Do you agree that regulators should consider the seriousness of the competence issue and any aggravating or mitigating factors to determine if remedial action is appropriate?**

Yes, the regulators should have the flexibility to take their own decisions on what regulatory response is appropriate based on a range of factors including those the LSB outlines. It is not for the LSB to seek to define those factors nor the types of outcomes from any remediation. Examples of both are helpful but the LSB should avoid prescription in setting the outcomes for front line regulation.

**Q15. Are there other factors that regulators should consider when deciding whether remedial action is appropriate?**

There may be, but it will be for each regulator to reach its own conclusions on what factors to take into consideration when deciding on what regulatory response is necessary where there is evidence that someone falls below the standard expected of them.

**Q16. Do you agree that regulators should identify ways to prevent competence issues from recurring following remedial action?**

Yes, although it may not necessarily be the regulators who seek directly to prevent competence issues from recurring – for example, the BSB could place an expectation on Chambers or an employer to put in place a plan of action to support a barrister following any (formal or informal) remediation. The important point is that regulators need to be given flexibility to deal with underperformance and to have available to them a range of tools, some of which may be directly managed by the regulator and others which are left to other agencies (within, where necessary, a framework prescribed by the regulator).

**Q17. Do you agree with our proposed plan for implementation?**

Generally, yes. The LSB needs to be mindful however that this is a sensitive area of regulation with any new initiatives requiring careful consideration and extensive engagement. New regulation should not be rushed. The BSB has a programme of work reviewing its approach to assuring standards of practice which is planned to run until 2024. This reflects the complexity and scale of the review and the competing priorities that need to be managed. We could not therefore commit, at this stage, to having everything in place to meet the LSB policy expectations within 18 months. To do so, could put at risk the quality of the output of our assuring competence programme and other programmes of work that could need to be re-prioritised.

**Q18. Is there any reason why a regulator would not be able to meet the statement of policy expectations within 18 months? Please explain your reasons.**

As above.

**Q19. Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?**

No.

**Q20. Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?**

The LSB needs to take care in balancing its desire to see regulators progress in ensuring standards of practice and in placing overly prescriptive expectations that could act as an unhelpful distraction. The BSB urges the LSB to give each front-line regulators sufficient flexibility to meet the broad policy outcomes (with which the BSB generally agrees) and only to consider further prescription where there is evidence that a regulator is failing to meet those outcomes. As we have highlighted earlier, prescribing the measures that regulators should consider (and justifying why they have been ruled out) runs the risk of diverting resource away from focussing on its preferred approach

**Q21. Do you have any further comments?**

No

**Bar Standards Board  
21 March 2022**



**Chair’s Report on Visits and External Meetings from January - March 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:**

27 January	Attended the Gray’s Inn Treasurer’s Dinner
14 February	Attended a Lecture given by Dr Vanessa Davies followed by Treasurer’s Dinner – Inner Temple
22 February	BSB/LSB Board to Board meeting
15 March	Attended the Chair’s Committee
23 March	BSB/LSB 4-way meeting with Dr Helen Phillips and Matthew Hill
29 March	Attended Board Briefing