



The Bar Council

2022/23 Budget and Practising Certificate Fees (PCF) Proposal November 2021 - Consultation

INTRODUCTION

1. As the Approved Regulator (AR) under the Legal Services Act 2007 (LSA07)¹, the General Council of the Bar (GCB) is obliged to consult the profession about the planned budget for the coming financial year, and the implications for changes to the PCF, before submitting the PCF proposal to the Legal Services Board (LSB) for approval. The budget covers the business plans of both the representative body (the Bar Council (BC)) and the regulatory body (the Bar Standards Board (BSB)).

2. The LSB is obliged by the LSA07 (Section 30) to make 'Internal Governance Rules' (IGR)² setting out requirements to be met by approved regulators for the purpose of ensuring that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions. IGR Rule 9 (regulatory resources) states that *'Each approved regulator must provide such resources as are reasonably required for its regulatory functions to be efficiently and effectively discharged.'* Rule 10 (Budget) states that: *'The regulatory body [the BSB] shall independently ...formulate its own budget in accordance with its priorities and strategy.'* **The Bar Council cannot accept or reject the BSB's budget but can seek further information** under IGR Rule 3 where it has reasonable grounds to do so, to assure itself that the required resources and budget required are 'reasonable'. The inclusion of reasonable *'requires that the resources can be objectively justified as necessary and proportionate'*.³ In *'seeking to influence the regulatory body the role of the AR is strictly limited to when it is acting in its representative capacity'*.

3. The other set of rules that the GCB, as the AR, has to follow, are the Practising Fee Rules made by the LSB under Section 51 of the LSA07⁴ and the accompanying guidance.⁵

4. The Practising Fee Rules oblige the GCB, as AR, following consultation with the profession, to set out in detail in a PCF submission to the LSB, the planned

¹ <https://www.legislation.gov.uk/ukpga/2007/29/section/51>

² <https://legalservicesboard.org.uk/wp-content/uploads/2019/07/IGR-2019.pdf>

³ <https://legalservicesboard.org.uk/wp-content/uploads/2019/07/IGR-Guidance-July-2019.pdf>

⁴ <http://legalservicesboard.org.uk/our-work/lsb-rules-and-guidance/attachment/pcf-final-rules-2021-accessible>

⁵ <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/Final-PCF-Guidance-2021.pdf>

programme of ‘permitted purpose’ activity to which the practising fees will be applied. This submission needs to address the criteria of Transparency, Accountability and Proportionality. *‘Proportionality. The practising fee should be adequate to effectively discharge the approved regulator’s regulatory functions in an efficient and cost-effective manner.’* The AR must give detailed income and expenditure forecasts for three years, from and including the year for which the fee is to be levied, *‘where the approved regulator expects a material change in expenditure or income’*. The BC therefore needs to provide sufficient information, not only about its own programme of work but, but that of the BSB too.

5. The proposed budgets for 2022/23 include a very substantial increase in expenditure and therefore the burden on the profession, largely due to the BSB’s budget. It is an exceptional change. As the AR, the GCB is obliged to put these proposals to you. In our submission to the LSB we will ask the LSB to examine the BSB’s budget and plan in more detail than we are permitted to do.

6. As the representative body the Bar Council recognises that the BSB is not meeting its own performance targets. However, there is limited evidence at Annexes 1 and 3 that the pressures they are currently facing will persist and, in the absence of such evidence, the Bar Council is not in a position to conclude that such a rapid and exceptional increase in staff numbers and recurrent costs is necessary and proportionate, given that it will require a significant increase in PCF. In order to allow the BC to discharge its obligation to assure itself, on behalf of the profession, that an increase in resources is reasonable the Bar Council would have expected there to be a fully costed business case with consideration of other options and of work that could be stopped or delayed, to increase capacity.⁶

7. You are urged to consider this consultation and respond as indicated under ‘Next Steps’ below.

PCF USAGE

8. Total PCF income is split between the BC and the BSB, taking into account the joint liability of the closed Defined Benefit Pension Scheme and the levies from the LSB and Legal Ombudsman (see the detail at para. 32). The split is variable but is predicted to be 29.5% Bar Council / 70.5% BSB in 2022/23.

9. There has been no increase in the PCF for the majority of barristers (Bands 1-6) since 2017, although we did raise additional income in 2019 by introducing 2 new income bands at the top end of earnings (bands 7 and 8). Last year we froze the PCF and cut costs⁷ in anticipation of a drop in income from PCF this year due to the impact of the pandemic. PCF bands and fees since 2015 are shown below.

⁶ For instance, there is no mention of the additional IT and licence requirements, consideration of the burden of additional recruitment on shared HR admin or the impact on BSB and shared office space.

⁷ <https://www.barcouncil.org.uk/uploads/assets/bdca0b55-2dcc-44db-aabc6e68cfcb047c/Annual-Report-2021-FINAL.pdf> see Treasurer’s Report

Band	Income Band	2015/ 16 Fees	2016/ 17 Fees	2017/ 18 Fees	2018/ 19 Fees	2019/ 20 Fees	2020/ 21 Fees	2021/22 Fees
1	£0 - £30,000	£109	£110	£123	£123	£100	£100	£100
2	£30,001 - £60,000	£218	£220	£246	£246	£246	£246	£246
3	£60,001- £90,000	£436	£441	£494	£494	£494	£494	£494
4	£90,001 - £150,000	£794	£803	£899	£899	£899	£899	£899
5	£150,001 - £240,000	£1,205	£1,219	£1,365	£1,365	£1,365	£1,365	£1,365
6	£240,001 - £500,000	£1,633	£1,652	£1,850	£1,850	£1,850	£1,850	£1,850
7	£500,001 - £1,000,000					£2,500	£2,500	£2,500
8	£1,000,001 and above					£3,000	£3,000	£3,000

10. For the next financial year there are a number of cost pressures, some caused by delaying capital investment from last year, but others are due to the rise in National Insurance charges; the extremely tight employment market, which is leading to retention and recruitment challenges, and therefore costs; and the need to increase cyber security as a result of multiple attacks. Additionally, inflation in the general economy will inevitably lead to increased costs.

11. However, the greatest driver of increased expenditure for the coming year is the BSB's budget and, in particular, the uplift in staff numbers, planned to address the pressures the BSB faces. The BSB has already boosted staff numbers over the last year and plans a further increase of 14.4 in 2022/23 and 5 in 2023/24. Overall, this leads to an increase in full time employees of some 30 posts over 3 years (an increase of 40%).⁸ The BSB sought to justify this increase in [Annex 1](#) and [Annex 3](#). [Annex 2](#) is the Bar Council's request (as the representative body rather than the AR) for more

⁸ Figures are based on budgeted full time equivalent posts including vacancies. The figures in 2022-23 include 7.2 posts which relate to one-year fixed term contracts. These posts will only be maintained, and contracts renewed, if the need for the post continues. The BSB currently assumes that some contracts will not be renewed after 2022-23 and the 5 further posts which the BSB think they may need after April 2023 are also subject to review.

information under the 'protocol for regulatory independence', in accordance with the IGRs.⁹

PCF INCOME FORECAST AND PROPOSAL FOR 2022/23

12. Current projections show PCF income for 2022/2023 would be £16.1m based on the current fees, up from £15.3m this year. The increase is mainly due to new barristers joining the profession and barristers moving up through the income bands (demographic changes). The projected PCF income will be insufficient to cover the projected increase in recurrent expenditure of 12%.

13. **If the proposed increase in costs were to be covered in one year this would translate into an increase in the PCF for 2022/23 of 9%.** If this increase were to be approved by the LSB, we would seek to mitigate the effect on the Bar by using the GCB reserves to limit the overall increase in PCF to 4.5% for the coming year. This will mean the GCB would have a balanced budget. However, the BSB would still run a deficit budget for a number of years with the difference being supplemented over the years by reserves until it achieves a balanced budget. The proposed 4.5% increase in PCF means the expected PCF gross income for 2022 /23 will rise to £16.84m. The overall 4.5% will be achieved through a combination of a 3% increase for most and the splitting of the higher earning bands.

14. In order to deliver a 4.5% increase in forecast PCF income, we are proposing that there be no change to Band 1 and that the increase be limited to 3% for bands 2 to 5.

15. Bands 6, 7 and 8 will be split to remove the large steps between the bands. The lower half of each of these bands will have a 3% increase and for the higher end of each of those bands the increase will be limited to a maximum of 9%.

16. The proposed PCF bands and fees for 2022/23 are:

Income band	Range	Current PCF	Proposed PCF
Band 1	£0 - £30,000	100	100
Band 2	£30,001 - £60,000	246	253
Band 3	£60,001 - £90,000	494	509
Band 4	£90,001 - £150,000	899	926
Band 5	£150,001 - £240,000	1,365	1,406
Band 6/1	£240,001 - £350,000	1,850	1,906
Band 6/2	£350,001 - £500,000	1,850	2,017
Band 7/1	£500,001 - £750,000	2,500	2,575
Band 7/2	£750,001 - £1,000,000	2,500	2,725
Band 8/1	£1,000,001 - £1,500,000	3,000	3,090
Band 8/2	£1,500,001 and over	3,000	3,270

⁹ <https://legalservicesboard.org.uk/wp-content/uploads/2019/07/IGR-2019.pdf>

17. The PCF increase in the table below relates to a 5.25% demographic increase (more barristers and a tendency to move up in the earnings bands) combined with the 4.5% fee increase.

General Council of The Bar Budget 2022-2023 - DRAFT P&L Version	Bar Council 2022-23	BSB 2022-23	Draft 2022-2023 Total	Budget 2021-2022 Total	Variance to Budget	Budget Variance (%)
	£000's	£000's	£000's	£000's	£000's	
Income						
PCF Income	4,951	11,896	16,847	15,318	1,529	10%
Non PCF Income	2,703	2,099	4,802	4,354	448	10%
Total Income	7,654	13,996	21,650	19,672	1,978	10%
Staff-Related Expenditure						
Staff Costs	3,028	6,060	9,088	7,750	(1,338)	-17%
RGP Recharge - Staff Related Costs	595	1,424	2,019	1,827	(192)	-10%
Total Staff-Related Expenditure	3,623	7,484	11,107	9,577	(1,530)	-16%
Non-Staff Costs						
Non Staff Costs	1,529	2,173	3,703	3,435	(268)	-8%
Non - Staff Costs - RGP Recharge	1,364	3,264	4,628	4,113	(515)	-13%
Total Non-Staff Costs	2,893	5,438	8,331	7,548	(783)	-10%
Total Operating Costs	6,516	12,922	19,438	17,125	(2,313)	-14%
Non-Operating Expenditure						
DB Pension Fee	383	917	1,300	1,300	0	0%
LSB/OLC Costs	263	629	892	844	(48)	-6%
Total Non-Operating Expenditure	646	1,546	2,192	2,144	(48)	-2%
Total Costs	7,162	14,468	21,630	19,269	(2,361)	-12%
Total Surplus/(Deficit) after Adjustments	492	(472)	20	403	(383)	

18. If the GCB did not increase PCF and just used the reserves to cover the increase in recurrent costs this would inevitably lead to a much greater increase in PCF in future years. The proposal put forward is the best way to mitigate the increase by using reserves, without substantially weakening the overall financial position.

19. The GCB is able to use its reserves in this way due to work it undertook in 2021/22 to cut costs and obtain a CBILS loan.¹⁰ Without these actions the GCB would have no other option than to pass on the full amount of the cost increases in one year (9%) rather than the current proposal.

EXPENDITURE

20. The proposed increase in expenditure for the GCB is £2.36m (a 12% increase on this year's budget):

¹⁰ <https://www.barcouncil.org.uk/uploads/assets/bdca0b55-2dcc-44db-aabc6e68cfcb047c/Annual-Report-2021-FINAL.pdf> see Treasurer's Report

Proportion of cost increase

	£	%
BSB	1,244,866	53%
Bar Council	361,672	15%
Resources Group	706,902	30%
LSB/OLC	47,835	2%
	<u>2,361,275</u>	100%

21. The main drivers for the proposed increase in costs are explained below:

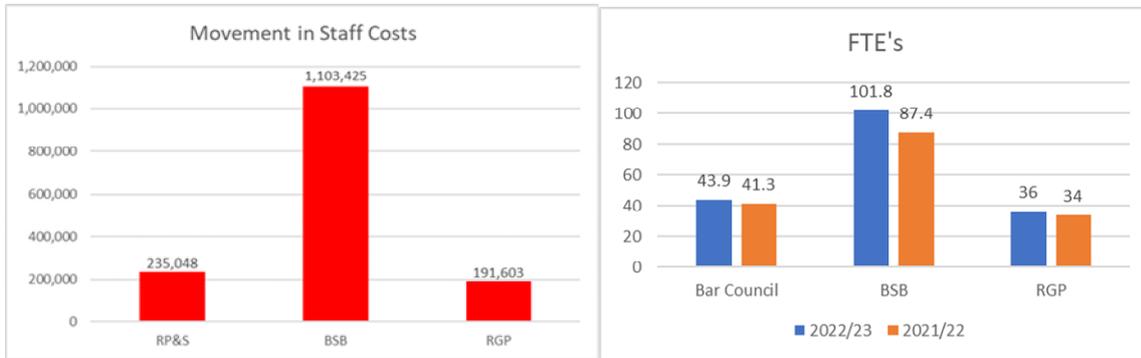
General Council of the Bar

Expenditure	21/22	22/23	Change	% Change	
	£000's	£000's	£000's		
Staff Costs					
Bar Council	2,793	3,028	235	8%	↑
Resources Group	1,827	2,019	192	10%	↑
BSB	4,957	6,060	1,103	22%	↑
	<u>9,577</u>	<u>11,107</u>	<u>1,530</u>	<u>16%</u>	
Non Staff Costs					
Bar Council	1,403	1,529	127	9%	↑
Resources Group	4,113	4,628	515	13%	↑
BSB	2,032	2,173	141	7%	↑
	<u>7,548</u>	<u>8,331</u>	<u>783</u>	<u>10%</u>	
Non Operating Expenditure					
DB Pension Fee	1,300	1,300	0	0%	↔
LSB/OLC Costs	844	892	48	6%	↑
	<u>2,144</u>	<u>2,192</u>	<u>48</u>	<u>2%</u>	
	<u>19,268</u>	<u>21,630</u>	<u>2,361</u>	<u>12%</u>	↑

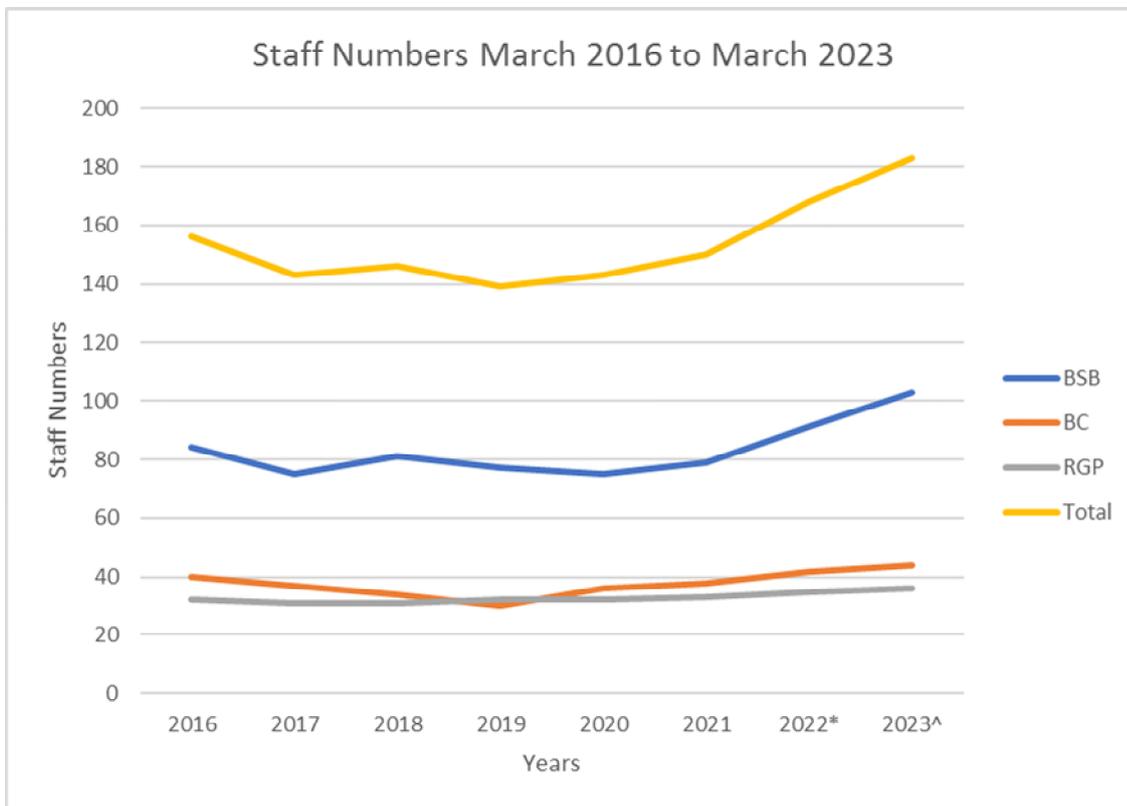
STAFF COSTS 2022/23

22. Staff costs will increase by £1.53m. This is a 16% increase on the previous year's budget. The primary driver for the change is the increase in BSB Full Time Equivalent (FTE)¹¹.

¹¹ Budgeted staff numbers rather than headcount. There are usually some vacancies.



23. As can be seen from the graph below there is a steady increase in headcount, predominantly driven by regulatory operations. This will inevitably lead to higher recurrent costs.



Bar Council (representative body)

24. BC staff costs will increase by 235k (an 8% increase). This includes an increase of 3.5% that has been built into salary budgets to cover salary inflation, recruitment and other staff costs (£72k). There will be an additional 2.6 FTE's (£111k), although this includes filling an existing vacancy and the reallocation of the HR Manager to the Executive budget from the Resources Group budget as a result of the BSB setting up their own HR function. It also accounts for the announced increase in employers' National Insurance (£36k).

Resources Group (shared services)

25. Staff costs will increase by £191k (10%). This includes an increase of 3.5% that has been built into salary budgets to cover wage inflation, recruitment and other staff costs, and the increase in National Insurance. The remainder is to cover an additional 2 FTE posts due to increased workload.

Bar Standards Board (regulatory body)

26. Staff costs will increase by £1,103k (22%). This includes a 3.5% increase that has been built into salary budgets to cover wage inflation, recruitment and other staff costs. In addition, the number of roles within BSB will increase by 14.4 FTE from last year's budget due to organisational restructuring and capacity building in line with the BSB's strategy. If all the proposed increases went ahead, the overall staff cost increase over the next two financial years would be 28% as there are an additional 5 roles (FTEs) proposed for recruitment in 23/24 by the BSB as of 31 March each year.

2016	2017	2018	2019	2020	2021	2022	2023*	2024	2025+
82.5	72.6	78.2	80.6	75.1	76.1	87.4	101.8	106.8	106.8

*Figures are based on budgeted full time equivalent posts including vacancies. The figure of 101.8 posts in 2022-23 includes 7.2 posts which relate to fixed term contracts. These posts will only be maintained, and contracts renewed if the need for the post continues. The BSB currently assume that some contracts will not be renewed after 2022-23 and the 5 further posts which the BSB think they may need after April 2023 are also subject to review.

+ Estimate based on assumption that there will be no significant changes in volumes of core regulatory work or policy agenda demands

27. The BSB has prepared a paper explaining the need for additional resources ([Annex 1](#)).

NON-STAFF COSTS 2022/2023

Bar Council (representative body)

28. Non-staff costs are expected to increase by £126k (9%). The Services portfolio is expected to increase expenditure by £153k due to an increase in training and events (more than offset by increased income). Representation and Policy costs will reduce by £27k.

Resources Group (shared services)

29. Non-staff costs have increased by £515k (13%) from the 2021/22 budget:

- a. £216k net increase in corporate overheads (£271k increase in finance overheads offset by savings in HR of £54k). The increase in corporate costs is largely due to the commencement of interest payments on the CBILS loan and the additional tax that would have to be paid on the investment fund.

b. £34k additional IS costs to reflect inflationary increases and additional licensing costs to support the increase in FTEs.

c. £37k increase in facilities costs to reflect a 3% inflationary increase on property costs.

d. £227k additional depreciation costs to reflect capital programmes in 2021/22.

Bar Standards Board (regulatory body)

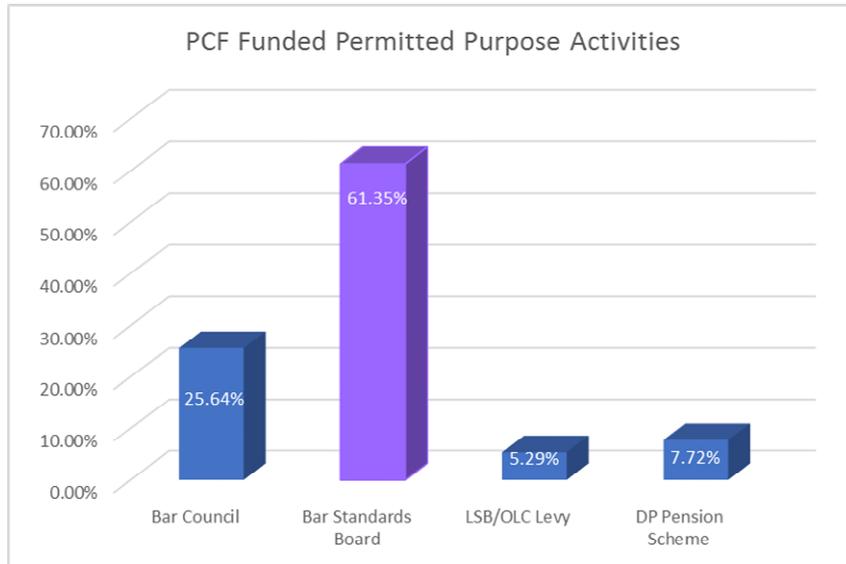
30. Non-staff costs will increase by £141k (7%), on last year's budget, to take account of long-term strategic initiatives agreed in previous years.

SPLIT OF PCF INCOME

31. The GCB organisational overheads and those of the LSB/OLC levy and the DB Pension scheme are split between the BC and BSB, based on the relative size of each (see below).

	£000's	PCF Funded Permitted Purpose Activities	PCF Funded LSB/OLC Levy	Legacy DB Pension Scheme	Total PCF
2021/22 Forecast	Bar Council	3,875	263	383	4,521
		25.26%	1.71%	2.50%	29.47%
	Bar Standards Board	9,275	629	917	10,821
		60.45%	4.10%	5.98%	70.53%
	Total	13,150	892	1,300	15,342
2022/23 Proposed	Bar Council	4,319	263	383	4,965
		25.64%	1.56%	2.27%	29.47%
	Bar Standards Board	10,336	629	917	11,882
		61.35%	3.73%	5.44%	70.53%
	Total	14,655	892	1,300	16,847

32. The graph below also shows the allocation of PCF to Permitted Purposes activities.



33. The GCB continues to review its cost base. It has identified a number of options for reducing its costs, although these have not all been incorporated in the budget at this stage. The budget will be reviewed after the PCF collection next year to assess what actions are needed to keep its finances aligned with its five-year forecasts.

NON-PCF INCOME (REGULATORY AND NON-REGULATORY)

Changes in Non-PCF income:

General Council of the Bar

Non PCF Income	21/22	22/23	Change	% Change
	£000's	£000's	£000's	
Bar Council	2,424	2,469	45	2%
Resources Group	152	793	641	422%
Bar Standards Board	1,778	1,540	(238)	-13%
	<u>4,354</u>	<u>4,802</u>	<u>448</u>	<u>10%</u>

34. The Bar Representation Fee income is forecast to reduce by £110k. This reduction is attributed to the Certificate of Good Standing no longer being a benefit provided through BRF (they will be provided by the BSB in future). This is based on the prudent assumption that some barristers who obtained a Certificate of Good Standing in 2021/22 through their BRF will no longer subscribe to the BRF in 2022/23.

35. The net combined Representation, Policy and Services (RPS) income is forecast to increase by £155k. Services income is expected to increase by £198k due to an increase in business partners and training and events. Representation and Policy income is expected to decrease by £42k.

36. BSB regulatory income is expected to decrease by £238k due to a forecast reduction in income from Bar training as fees are updated.

37. Investment income generated by the investment fund using reserves and the CBILS loan is forecast to generate £641k.

NEXT STEPS

38. We welcome views from the profession on the planned budget for 2022/23 and the proposal to increase PCF and invite you to consider the questions below. Please send your responses to: treasurer@barcouncil.org.uk

39. The consultation will close on 14th January 2022 at 17:00.

Consultation Questions

1. Do you agree with the GCB's proposal to increase the 2022/23 PCF as detailed in this paper? If not please explain why.
2. Do you think the PCF for 2022/23 represents value for money?
3. Do you have any other comments regarding PCF or the General Council of the Bar budget for 2022/23?

Annexes

1. Updated version of a paper submitted by the BSB to the Joint Finance Committee on 27/10/2021
2. BC Request for information from the BSB – budget 2022/23
3. BSB Response to request for information

Malcolm Cree CBE
Chief Executive

Annex 1

STRENGTHENING THE BAR STANDARDS BOARD

In order to maintain an independent and effective regulator for the Bar, the BSB needs to be able to:

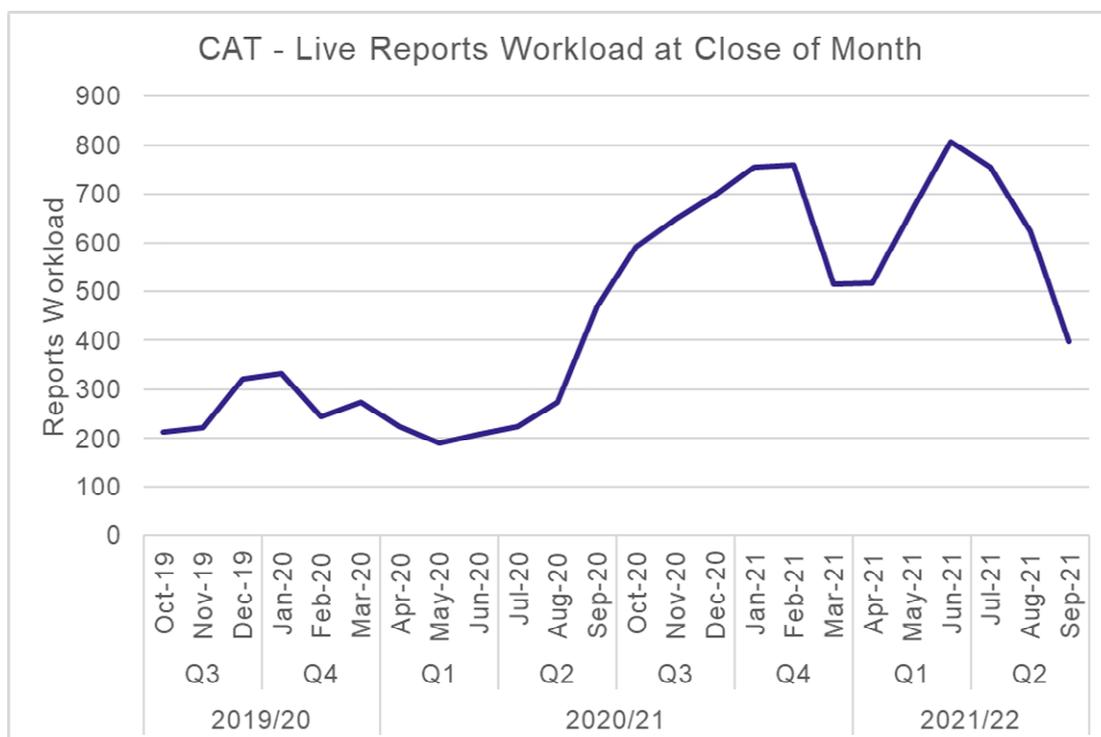
- a. deal with reports about barristers' conduct swiftly and effectively;
 - b. deal similarly with requests for waivers and authorisations;
 - c. develop in the public interest our own policies which advance the regulatory objectives, while recognising the Bar's distinctiveness; and
 - d. ensure that we are fully involved in all policy discussions about the legal services market.
2. We can no longer guarantee to do all those things well and we believe that we are under-powered for the regulatory responsibilities we have. We must improve our performance in our regulatory operations and participate fully in debates about the future regulation of the legal services market in order to be seen as a sustainable and independent regulator.
3. After examining our current capacity and carefully considering our strategy for the next three years, which we have now put out for public consultation, the Board of the BSB has concluded that to meet these aims we must increase our budget and our capability. We have not done so lightly. We are conscious that the pandemic continues to affect many at the Bar and we have, therefore, sought to phase the increases needed – and to use fixed term contracts where we can – in order to reduce the impact. We have also committed to building on the productivity gains already achieved. Some of the additional posts will contribute to further productivity or efficiency gains. But we do believe that an increase in our overall budget of around £1.7 million (or 14.4%) is needed in 2022-23. Around £730,000 of that increase is for new people.
4. This is the budget we need to meet the four aims above. Our staff are working very hard - and currently to the detriment of work/life balance and well-being - but the public and the profession deserve a regulator which is more capable than we are now. For some years we have not been meeting our existing service levels for turning round reports, waivers or authorisations. If there is no further rise in cases and no-one falls ill, no-one goes on leave and no-one leaves the BSB from those teams in the next six months, we hope to be able to get back on track, but those are heroic assumptions and we would prefer to do better than those service levels anyway. And although the quality of

decision-making has been maintained and will always be prioritised, that too may come under pressure if the volumes of work continue to rise. We are also struggling to ensure that the public interest in a strong and independent Bar is considered in wider debates about the future regulation of legal services.

the volumes and complexity of core regulatory work have been rising, particularly in the last year.....

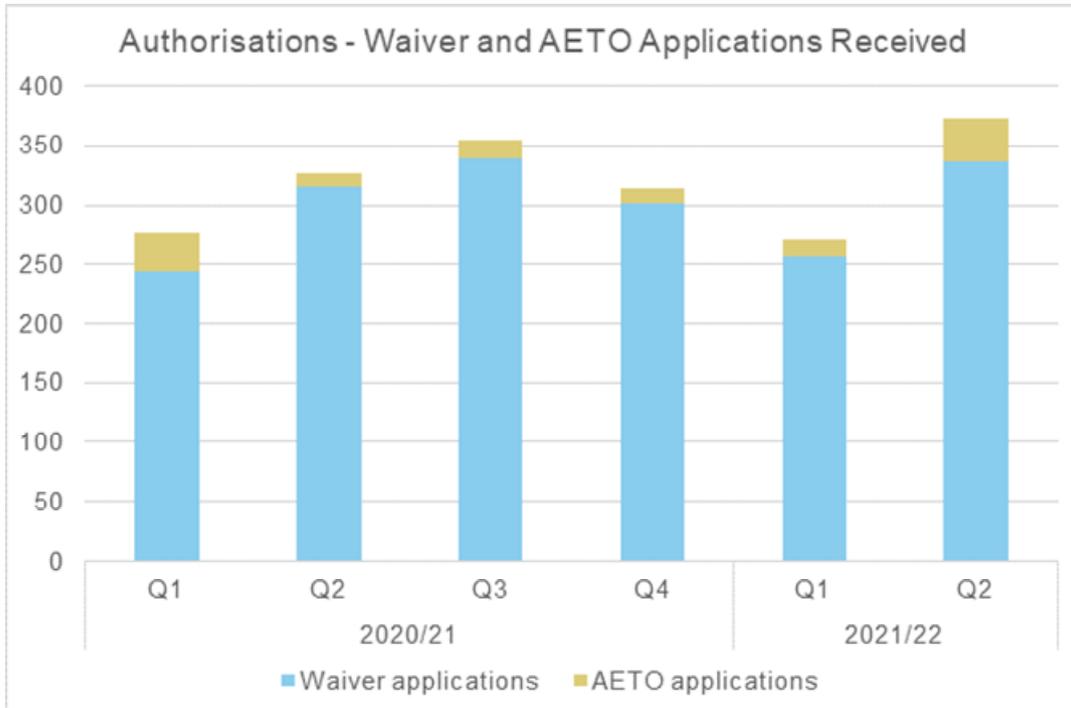
5. The volume of reports on barristers to BSB under assessment has been rising. In the first quarter of 2021/22 the number of reports under consideration by the team was four times higher than in the equivalent quarter of last year. We have been able to update the figures for Q2 2021 which show that in the last few months there has been a dip in the number of live reports. But live reports at the end of September 2021 were still roughly double the number in September 2020; it is too early to be certain of the long-term trend. We are not, therefore, proposing permanent reinforcement of the team which deals with reports, but the retention for a further year of two fixed term contract posts to give capacity for a wider efficiency review of Regulatory Operations. It is worth adding that in previous years we had the support of many barristers offering their services pro bono for assessing reports but we now pay the full costs of that function.

6. Our Independent Reviewer also reports that the complexity of reports has risen. This has also been felt amongst those dealing with day-to-day casework. The complexity includes more frequent procedural and legal challenge by both those making, and those who are the subjects of, reports. The time to address such challenges adds to the workloads of individual officers. Complexity is also inherent in the rising number of social media cases which often involve difficult judgements about the balance to be struck between public confidence in the profession and the rights of freedom of expression.



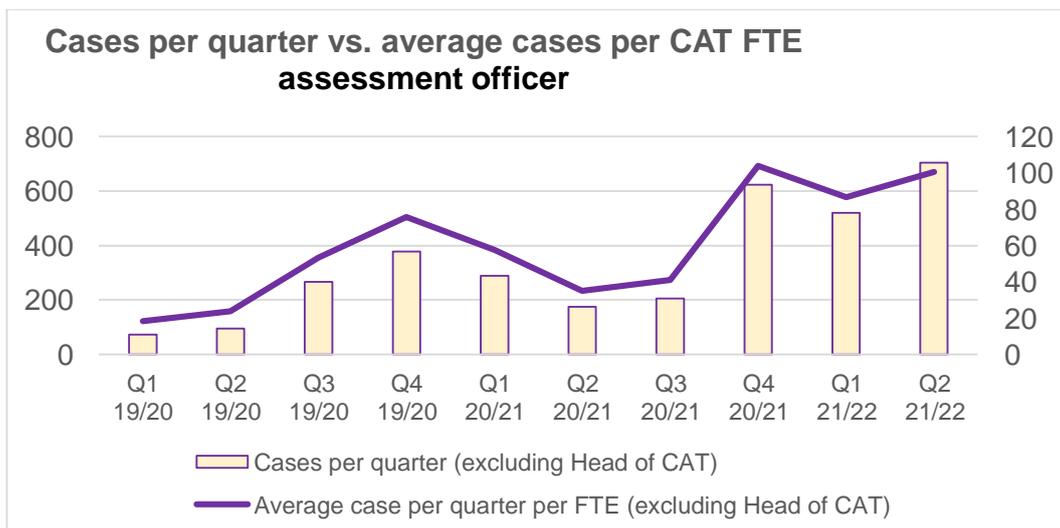
7. The volume of Cases referred for investigation has been less volatile, but the complexity of cases has affected workloads at both the assessment and investigations stage. This reflects a marked and growing propensity for barristers subject to investigation to challenge the process.

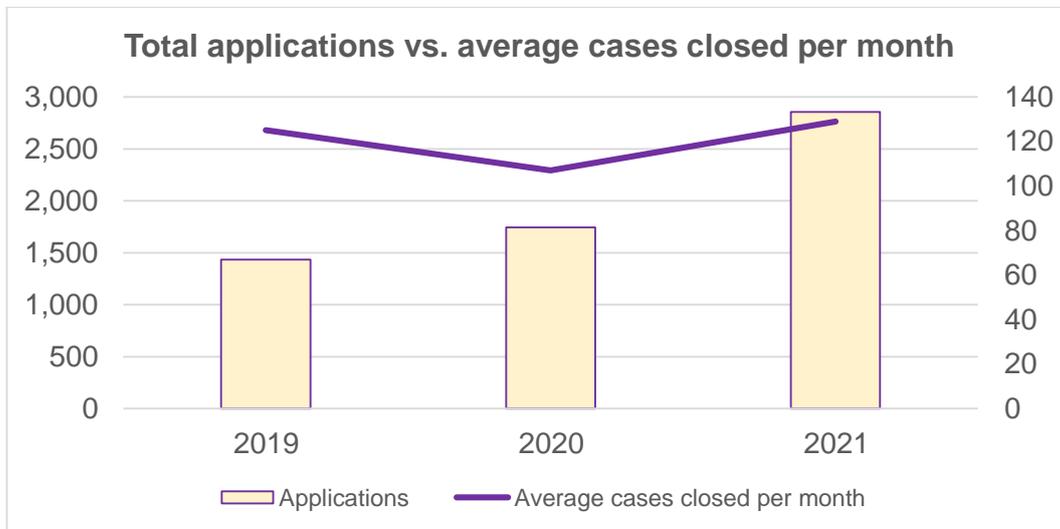
8. There was a similar, though less marked rise in the volume of applications for authorisations in 2020/21, though the volume fell back in the first quarter of 2021/22 only to rise again in the second quarter. The Authorisations Team is currently also dealing with the re-authorisation of pupillage providers. It is estimated that there may be as many as 399 PTOs that need to apply for authorisation as Authorised Education and Training Organisations. 176 applications have been submitted in total, with another 71 applications due to be received before 30 November 2021. 77 are yet to confirm that they wish to transition. We have also identified an additional 75 whose contact details are out of date. Some of these will no longer be operating but some will also come forward to seek authorisation.



The Bar Standards Board has responded by achieving marked improvements in productivity over the last year, with more to come.....

- In response to rising complexity and rising workloads, the Bar Standards Board has already taken action to re-organise teams, overhaul processes and invest in technology. As a result, we have seen improvements in the numbers of reports and authorisation applications handled by each team member:





10. We have also maintained the flow of investigations despite the rise in complexity described above.



11. These gains in productivity have been achieved with no loss of quality, as confirmed by the regular reports of our Independent Reviewer.

12. We are also taking steps to improve productivity in future. A Regulatory Operations review will get under way next year (for which purpose we are retaining two fixed term posts in the Regulatory Operations Division for a further year) to look at opportunities for:

- more effective communication with consumers, including in partnership with the Legal Ombudsman service, to clarify what issues should be referred to the Bar Standards Board and what matters are better dealt with elsewhere and also to explain better what may or may not amount to professional misconduct. We hope

that this will reduce the number of ill-founded reports but it may also have the effect of increasing the number of well-founded reports;

- more effective triaging of reports so that those without merit or which should be addressed elsewhere are resolved quickly;
- more focus on cases attracting multiple reports and of wider public interest so that these, in particular, are handled promptly within service levels.

And our budget proposal also includes provision to:

- increase our capacity by recruiting additional administrative support so that more experienced colleagues can give more time to demanding casework; and
- maintain and enhance the quality of our decision-making while cutting external legal costs by strengthening the internal Legal Support Team.

Despite the productivity gains, the consequences of these rises in the volume and complexity of workload are a slower service for barristers and consumers.....

13. Because workloads have risen faster than productivity, we have nevertheless struggled to turn round reports and requests for waivers, exemptions and authorisations in line with service levels. This is unfair to members of the public who make reports on barristers. It is also unfair to barristers who are the subject of reports or investigations or who are seeking waivers, exemptions and authorisations from the Bar Standards Board.

14. For example, we aim to complete 80% of our initial assessments of incoming reports within 8 weeks of receipt but we are currently managing to meet that target for only 55% of cases. If a case is referred for investigation we aim to reach a decision on disposal within 25 weeks again in 80% of cases and we are only managing to deliver 33%. Meanwhile, we aim to have decided 98% of applications for exemptions, authorisations and waivers within 12 weeks and we are only delivering 52%. Our people are working long hours, but we are acutely conscious that the public and the Bar deserve a better service.

..as well as increased pressures on BSB people and a less attractive career offer...

15. We have also seen growing pressure on the BSB's people who are working long hours to the detriment of work-life balance and to opportunities for personal development. This matters for their well-being. It also matters for our overall effectiveness because

the Bar Standards Board's salaries are not competitive with many other regulators. Accordingly, our ability to recruit high calibre people depends on our ability to offer an attractive career development proposition. There are clear signs that our ability to attract and retain good people is in jeopardy:

- sickness absence levels amongst our people have risen from an average of 3.9 days per year per staff member to 5.8 days;
- voluntary staff turnover rates continue to rise and are now at 17% for the last 12 months;
- although the BSB's 2021 People Survey showed that overall engagement in BSB was above the average for comparable organisations and a large majority find the BSB a good place to work, feedback from our most recent People Survey showed that workload and work life balance scored 8 percentage points lower than the benchmark for other comparable organisations, 24 percentage points lower than our score in 2018, and 26 percentage points lower than the Bar Council;
- well-being scores were also below benchmark in the People Survey, with excessive workload identified as the root cause of this.

16. And when staff do leave or are sick, we have no spare capacity to fill in after them. That means that in the last year some key projects, including our review of the *Code of Conduct*, were delayed, although we were anxious to progress them.

At the same time, the Bar Standards Board must manage and evaluate a demanding policy agenda.....

17. As our recently published consultation¹² on future strategy shows, the Bar faces major challenges in the aftermath of the health emergency which engage BSB's regulatory objectives. These include the continuing challenges of promoting diversity, sustaining high standards and improving access and transparency for consumers. We want to work with the profession to define more clearly what role chambers and employers should be playing in overseeing standards and diversity. There are also developing challenges of ensuring that the opportunities of technology are realised and the risks managed in the interest of consumers. We need to ensure the future supply of barristers to enable continuing access to justice. We need to meet our statutory objective of "increasing public understanding of the citizen's legal rights and duties" by seeking to

¹² <https://www.barstandardsboard.org.uk/resources/press-releases/bsb-seeks-views-on-its-strategy-for-2022-25.html>

address the needs of consumers with legal needs, particularly consumers in vulnerable circumstances. Many of these challenges cut across legal services and regulatory boundaries and are, rightly, being tackled by the legal services regulators in collaboration.

18. We also take part in sector wide work in response to the recent report by the Competition and Markets Authority's into the legal services market including work on transparency, legal education, legal technology etc. Across the legal sector and elsewhere, there is an expectation in Government and among key stakeholders that technology and innovation have a key role to play in improving access and quality for consumers. This includes an expectation that regulators will engage with potential innovators to understand what implications their proposals have for regulation and to help them to navigate the sector. We currently do this by collaborating with the other regulators and 'LawTechUK' in pilot projects that may have an impact across the sector. Another project where we engage in pilot work with other regulators is on the use by consumers of digital comparison tools to choose their legal advisers. If we are not at the table, these new initiatives will simply proceed and have an impact on the Bar regardless of the interests of the public, the Bar and its clients.

What then do we need?

19. As noted above we are doing all we can to increase productivity and we will continue to do so, but we have come to the conclusion that to meet the challenges and increases in workload which we have described and to preserve the viability of the BSB as an independent and respected regulator we must increase our staff. Specifically, we want to reinforce our permanent capacity for 2022/23 by recruiting:
 - o 5 people for our Legal and Enforcement Division
 - o 5 for our Regulatory Operations Division and
 - o 4 for our Strategy and Policy team

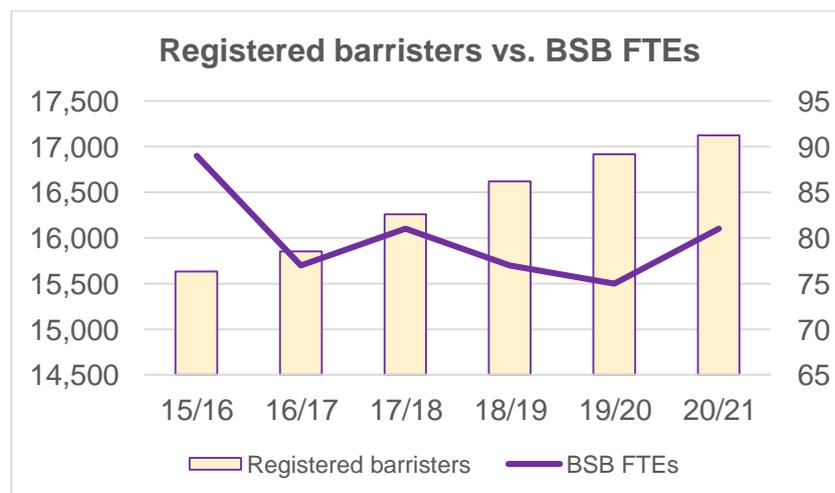
We have no reason to expect a significant fall in the volume of regulatory activity but were this to happen this would simply enable us to improve our performance against our KPIs until we could then allow our staff numbers to fall by not replacing staff when they leave.

We also think we may need to recruit up to 5 further staff in 2023-24 but this will of course be kept under review and has no impact on the budget for 2022-23.

20. Without this strengthening, the Bar Standards Board will struggle to deal with reports about barristers and requests for waivers, exemptions and authorisations swiftly and effectively. We will not be able to engage effectively with the wider strategic policy agenda and with the evaluation of its impact. Above all, we will find it difficult to ensure that collaborative initiatives between regulators properly reflect the public interest in ensuring that sector wide legal regulation recognises the distinctive attributes of the Bar.

We are sensitive to the demands these increases make on the profession, but regulatory capacity has shrunk relative to the size of the profession since the middle of the last decade....

21. Some regulatory functions – particularly the handling of disciplinary matters and of applications to waive aspects of our rules – are linked to the size of the profession. Since 2015/16, the number of barristers for every regulator has risen by 20%. One consequence of this is that the BSB core budget, even increased in line with our proposals, will still take a lower share of barristers’ aggregate incomes – at around one-fifth of 1% - than it did six years ago. By contrast, policy work is not especially sensitive to the size of the profession, but our benchmarking suggests that we are under-powered relative to other regulators.



22. The Board of the BSB has scrutinised this budget carefully in order to minimise its impact and supports the increase proposed.

Annex 2

Mark Neale
Director General
Bar Standards Board

By email

4 November 2021

Dear Mark,

REQUEST FOR INFORMATION – BUDGET 2022/23

1. I write under the protocol for regulatory independence to request further information to allow the GCB, as the Approved Regulator, to assess the 'reasonableness' of the BSB budget for 2022/23 prior to consulting with the profession and submitting to the LSB for approval of the practising certificate fees (PCF) for the coming year.
2. The submission to the LSB must include financial information from the previous year; income and expenditure forecasts, including PCF income, for the 2022/23; and forecasts for the two years beyond that.
3. I note the information in the paper submitted to the joint Finance Committee (Case for Strengthening the BSB'). Given that the BSBs budget for 2022/23 sees a very significant increase in staffing levels and corresponding recurrent expenditure, I request the following additional information:
 - a. Your assessment of the reasons for the increased volume of reports on barristers to the BSB over the last year, in particular whether much of the increase relates to particular events or individuals, and whether you expect the volume of reports to remain high, given that they have halved in the 3 months to end of September 2021. I appreciate that, given this, you are not intending an immediate increase in staff dealing with reports.
 - b. The average volume of reports over the previous 2 years.
 - c. Please could you explain in greater detail why the complexity of cases has increased so rapidly and significantly and what the new complexity is?
 - d. I wish to understand how the BSB headcount (FTE) has changed over the last two years and what is planned in the next three years. Please provide data from 2019/20 until 2024/25 (end of year would seem a good data

point). This meets the need to submit a three-year forecast to the LSB, set against what has already been done. It seems to me that it goes from about 80 in 2019/20 to 107 in 2023/24, but what is the plan thereafter? Clearly until the recent separation of HR functions under the new IGRs, I would have been able to determine this myself.

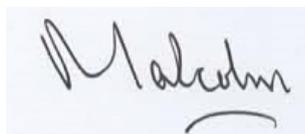
e. I request to know what the average salary for BSB staff has been from 2019/20 and what it is predicted to be until 2024/25. We have allowed 3.5% in the budget for next year for the GCB, but I suspect that there has already been out of cycle salary increases in the BSB that I do not know the details of.

f. With regard to the policy agenda, we cannot see any direct link between the consultation on your future strategy and the need for more people. How have you determined the numbers required?

g. Your note to the joint Finance Committee does not constitute a proper business case for such a major change to staffing levels, which seems to have started at least a year ago. Has such a full business case been presented to the BSB Board? If so, please could we see it? The paper seeks to justify a very significant increase in staff and cost, without a clear programme, programme plan, benefits realisation plan, risk assessment etc. What other efficiencies have been considered to offset this increase? What work could be stopped in order to fund the new priorities. This is not included in your note to the joint Finance Committee.

4. The Finance Committee recognised the disconnect between the regular annual budget setting timeframe, which does not change year on year, and the new BSB Strategy consultation. As budgets are generally driven by strategy, this is most irregular, as you acknowledged. The BSB strategy development, and therefore the financial implications for the GCB and PCF, should have been aligned. Please could you explain why this did not happen.

Kind regards,

A handwritten signature in blue ink that reads "Malcolm". The signature is written in a cursive style and is positioned above a light blue rectangular background.

Malcolm Cree CBE
Chief Executive, Bar Council

Annex 3

Malcolm Cree
Chief Executive
The Bar Council
289-293 High Holborn
London WC1V 7HZ

10 November 2021

Dear Malcolm

BAR STANDARDS BOARD BUDGET 2022/23

Thank you for your letter of 4 November seeking further information about the proposed BSB budget for 2022/23. I should like to assure the Bar Council of the reasonableness of the proposals and am, therefore, happy to provide additional explanations or analysis. If you would find it helpful to meet in the light of these, we should be glad to do so.

I shall mainly address the requests you make in the order in which you set them out in paragraph 3 of your letter. It may, however, be helpful to offer a few preliminary observations about the Board's approach which will, I hope, address your points at 3 f. and g. and in your concluding paragraph.

I should, first, emphasise that there is a close relationship between the strategy consultation launched by the Bar Standards Board last month and these budget proposals. My Board saw the strategy review as an opportunity also to undertake a root and branch review of the capabilities which the Bar Standards Board would need, in order to be effective in delivering its regulatory responsibilities. Accordingly, the consultation document includes a section on *Developing our capacity and capability*. This link to future strategy explains why the changes we are proposing are not simply incremental but reflect our best assessment of the demands which will be made on us over the next three years both by our core regulatory operations and by a challenging strategic agenda. The note we provided for the recent Finance Committee discussion also set the budget proposals in this wider strategic context.

Although the Bar Standards Board does not control consultations on its own budget, we have nevertheless sought, therefore, to make appropriate links between those consultations and our wider strategy.

That brings me to my second point – raised at the Finance Committee meeting – that we expect the phased strengthening of capability the Board has endorsed to serve for the three years of the forthcoming strategy assuming no marked further increase in core regulatory work or any major policy/regulatory issue not already foreseen by the strategy consultation. As you will appreciate, the volumes of core regulatory work are demand-driven and unpredictable. We have been guided in developing the budget by experience of the recent past – see below. I cannot, therefore, rule out future adjustments to the workforce – either upwards or downwards - if the future path of our regulatory operations is markedly different from what we have assumed. Either way, we are determined to build on the efficiency gains already achieved so that, whatever eventuates, we are able to turn

round to time more reports, applications and investigations per person with no loss of quality.

My last overarching point is simply that the budget proposals reflect intensive scrutiny by the Bar Standards Board itself and by its Strategic Planning and Resources Committee. You will understand that I cannot share with you Board or Committee papers, but I can assure that the case for the additional posts foreshadowed by the budget has been thoroughly tested – to the extent, as you know, of asking for a short delay in the convening of the joint Finance Committee.

Reasons for the increased volume of reports

The main reasons for the increase in reports to our Contact and Assessment (CAT) are:

- our signposting for when and how to make a report about a barrister is more effective and accessible and follows on from the establishment of CAT and the relaunch of our website in October 2019;
- an increase in the number of reports relating to conduct in barrister’s non-professional life and in particular barristers commenting on social media;
- an increase in cases giving rise to multiple reports.

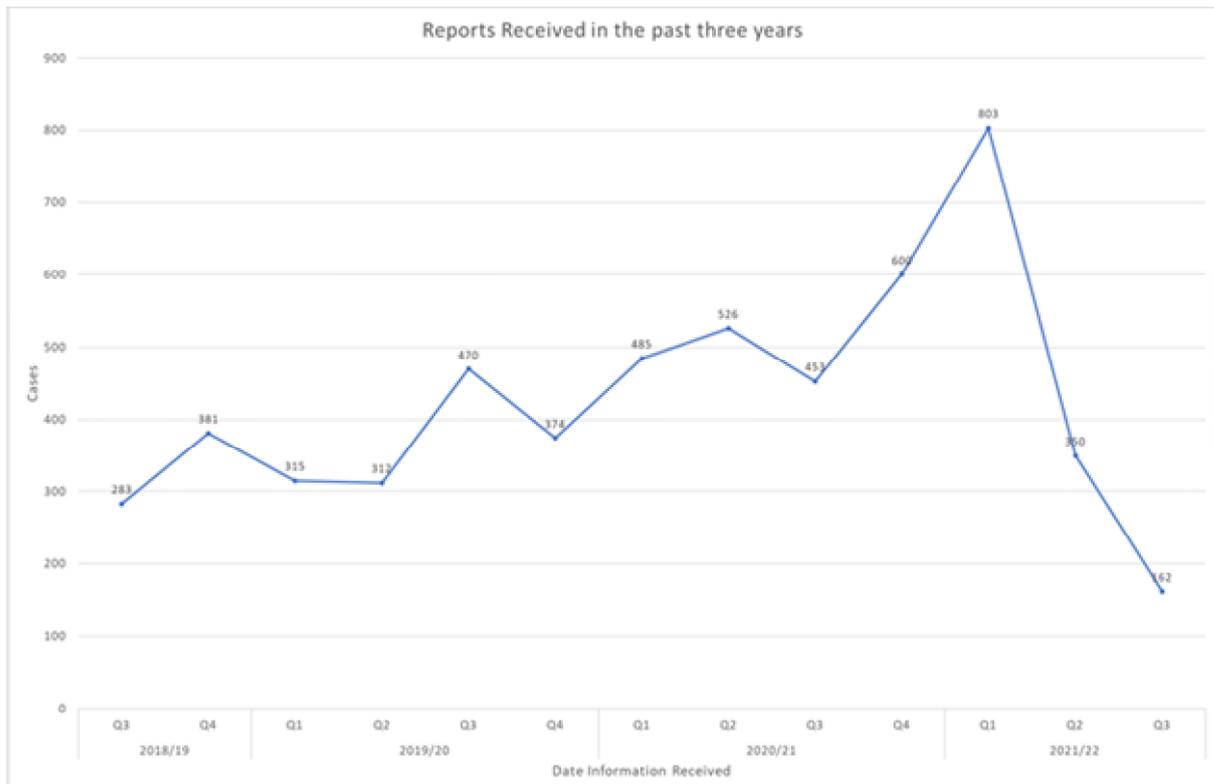
We expect volume of reports to remain high notwithstanding the reduction in the three months ending in September. Monthly deviations happen, but historical data suggests that the first half of the financial year sees marginally fewer reports than the second. Extrapolating year to date numbers suggests we will see an increase by the end of the current financial year. As for subsequent years, historic data shows an average yearly increase in volume of reports/complaints received of 8%. Given the exceptional increases, we conservatively consider there will be some balancing out and therefore have assumed a yearly increase of 4%.

Average volumes of reports in recent past

The table and graph below provide a breakdown of the volume of cases since 2018/19.

Year Received	Quarter Received	Number of Reports	Yearly total
2018/19	Q1	244	1225
	Q2	317	
	Q3	283	
	Q4	381	
2019/20	Q1	315	1471
	Q2	312	
	Q3	470	
	Q4	374	
2020/21	Q1	485	2064
	Q2	526	
	Q3	453	
	Q4	600	
2021/22	Q1	803	1315

	Q2	350
	Q3	162



It is worth noting that, when the Contact and Assessment Team was established in October 2019, resources for the team were based on the number of cases in 2017/18 (889). You will also perhaps recall Andrew Mitchell's point at the Finance Committee that, under the arrangements in place before 2019, such cases were considered by panels of barristers who gave their time pro bono. Together with the rise in volumes and complexity, this marks an important difference between then and now.

Complexity of cases

The growing complexity of reports is, as a result of increases in:

- reports about non-professional activities by barristers, which often gives rise to complex jurisdictional issues about whether and how the BSB Handbook applies;
- cases with multiple reports which often give rise to a range of different ethical and conduct issues to work through (and often require advice from independent counsel);
- reports running alongside associated threats of legal action against the BSB – this adds complexity to the handling of both the case and the litigation;
- reports that cut across both conduct issues and matters that could give rise to intervention by our Supervision team – for example, bullying and harassment cases – these cases often give rise to complex and sensitive issues that require careful coordination and handling.

BSB headcount

You asked for an overview of the Bar Standards Board's actual and planned headcount over time. The information below shows that, by the next calendar year, we shall return to the levels of staffing in 2016 when significant parts of our current regulatory operations were discharged by panels of barristers acting pro bono and when the volumes and complexity of this work were much lower.

BSB Full Time Equivalents (FTEs) as at 31 March

2016	2017	2018	2019	2020	2021	2022	2023*	2024	2025+
82.5	72.6	78.2	80.6	75.1	76.1	87.4	101.8	106.8	106.8

*Figures are on the basis of budgeted full time equivalent posts including vacancies. The figure of 101.8 posts in 2022-23 includes 7.2 posts which relate to fixed term contracts. These posts will only be maintained, and contracts renewed, if the need for the post continues. We currently assume that some contracts will not be renewed after 2022-23 and the 5 further posts which we think we may need after April 2023 are also subject to review.

+ Estimate based on assumption that there will be no significant changes in volumes of core regulatory work or policy agenda demands

BSB salaries

You also asked for information about average salaries over time. The figures below certainly do not suggest any inflation of salaries, rather the contrary, and need to be seen alongside the independent evidence that Bar Standards Board salaries are well below median benchmarks for the regulatory sector.

BSB Average salary

31 March 2020*	31 March 2021*	31 March 2022**	2023+	2024+	2025+
£43,579	£42,885	£44,090	£45,633	£47,230	£48,883

* Actual

** Estimate based on October 2021 actual figure of £44,090 p.a.

+ Estimate based on 3.5% (as any impact of the planned review of the pay system is not yet known)

The policy agenda

The BSB's Policy and Research Team is very leanly resourced and lacking experienced policy professionals at manager level. We reduced its headcount by three ahead of the current strategic plan: the rationale for this was that the BSB was entering a period dominated by policy implementation rather than progressing several new policy projects (albeit the Board expressed its intention to review the Code of Conduct.) Our experience since then has been that there are a number of policy matters that require regular attention by the BSB, that we are unable to

avoid. To do so would call into question our capability and sustainability as a regulator and risk not having the Bar represented in cross-sector discussions about important policy matters.

We have considered the policy areas in which we need to be active and allocated resource accordingly. For example, we judge that each of the following work areas will need at least one Policy Manager devoted to them almost full time, with appropriate additional support. This is based on our analysis of the workload over the past year and our understanding of what will be required over the next year in particular:

- We wish to progress the review of the Code of Conduct. This work has had to be paused in the current year because more pressing policy work has left the team without capacity. Additional resource is needed if we are to restart this work alongside the additional work mentioned below. Staff taking this work forward will also be responsible for handling overall queries on the Handbook.
- There are a number of areas where the regulators are working jointly on transparency and access to justice in response to the Competition and Markets Authority's review of the legal services sector. This includes pilot work in relation to digital comparison tools, understanding how solicitors choose Barristers for clients, an unbundling pilot and creation of single digital register, where it is important that we undertake the work to ensure the Bar's perspective is represented.
- We continue to progress our work on assuring competence, which requires a significant amount of policy input. This is a priority for the LSB and is not something we can postpone. The person responsible for this policy work also covers professional indemnity insurance (where there are a number of issues relating to cyber attacks and entity cover) and international matters, where there is some political pressure to progress mutual recognition agreements and other matters relating to the post-Brexit policy agenda from the government.
- There is a continuing (and growing) agenda across regulation to understand and respond to innovation and technology: this is a high priority for the LSB and the other regulators. We are participating in piloting work with LawTech UK: this involves regular, detailed engagement with innovators in the sector and is time consuming. We have also had innovators approaching us directly and we need to understand if we need to provide support in the form of a framework, data sharing etc. We also need to undertake regular horizon scanning and to understand how the market is changing, in order to inform future policy and research work.

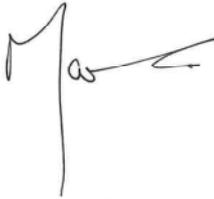
Our understanding of the time commitments is based on work undertaken (to the extent we have had capacity) in the current year. At present we are not delivering the Code of Conduct review at all, and have made no attempt to do so this year, because we had to prioritise the response to the CMA report. We are delivering some, but not all, of what is set out on assuring competence and on technology. In order to deliver the full range of activity set out above, our conservative proposal is that we need an additional Policy Manager and a senior policy officer to support the full range of work.

You will note that the strengthening proposed would not allow for any significant work in 2022/23 on a number of other major strategic issues, including the future supply of barristers, the future regulation of unregistered barristers and the timing of call to the Bar. We shall need to turn to these later in the three-year period covered by the strategy.

Conclusion

I hope this information helps put our budget proposals in context. As I say, we should be happy to discuss.

Kind regards

A handwritten signature in black ink, appearing to read 'Mark Neale', with a stylized flourish extending to the right.

Mark Neale
Director General