



Bar Council response to the Bar Standards Board's (BSB) call for evidence on its 5-year strategy

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the BSB's call for evidence on its 5 year strategy.¹

2. The Bar Council is the voice of the barrister profession in England and Wales. Our nearly 18,000 members – self-employed and employed barristers – make up a united Bar that aims to be strong, inclusive, independent and influential. As well as championing the rule of law and access to justice, we lead, represent and support the Bar in the public interest through:

- Providing advice, guidance, services, training and events for our members to support career development and help maintain the highest standards of ethics and conduct
- Inspiring and supporting the next generation of barristers from all backgrounds
- Working to enhance diversity and inclusion at the Bar
- Encouraging a positive culture where wellbeing is prioritised and people can thrive in their careers
- Drawing on our members' expertise to influence policy and legislation that relates to the justice system and the rule of law
- Sharing barristers' vital contributions to society with the public, media and policymakers
- Developing career and business opportunities for barristers at home and abroad through promoting the Bar of England and Wales
- Engaging with national Bars and international Bar associations to facilitate the exchange of knowledge and the development of legal links and legal business overseas

¹ <https://www.barstandardsboard.org.uk/static/b4c1e062-3596-4602-b186f4d1c0cb600a/Strategy-call-for-evidence-document-final.pdf>

To ensure joined-up support, we work within the wider ecosystem of the Bar alongside the Inns, circuits and specialist Bar associations, as well as with the Institute of Barristers' Clerks and the Legal Practice Management Association.

3. As the General Council of the Bar, we are the approved regulator for all practising barristers in England and Wales. We delegate our statutory regulatory functions to the operationally independent Bar Standards Board (BSB) as required by the Legal Services Act 2007.

Summary

4. We welcome the opportunity to provide input into the BSB's thinking. We are one of the BSB's key stakeholders, representing the profession which it regulates. We summarise our views below and in more detail in response to each question.

5. We agree with the proposed revised statements of vision, purpose and ambition; but think the BSB's programme of work should not be beholden to the LSB's strategy for the whole sector for the period 2021-2031 (published in 2021). Instead, its 5-year strategy should be independently determined by the BSB, taking account of the current context.

6. The Bar Council is deeply committed to supporting barristers to understand and uphold their ethical obligations. We welcome the BSB's scrutiny of the effectiveness of education in ethics for barristers and will respond to the anticipated BSB consultation on ethics once published. We have received substantial feedback barristers and committees that the presentation of the rules in the Handbook is over-complicated and difficult to use, particularly when under time pressure, which barristers often are, and we would welcome a review of its format, presentation, ordering and navigability. We will shortly be undertaking some research on barristers' understanding of their ethical obligations. We will look at issues such as the type of issues they encounter, how they seek ethics support, and what professional development activities they undertake in order to understand professional ethics.

7. We recognise that remote working has created some real and continuing challenges for junior practitioners at the Bar while others have welcomed the increased flexibility it brings to their lives. We have developed some guidance for barristers to help them address these challenges. We query whether there is scope to expand the role of the "qualified person" to include ethics mentoring for those within their first three years of practice.

8. We acknowledge bullying, harassment and discrimination as a significant issue. We are hopeful that the independent review of bullying, harassment and sexual harassment at the Bar, led by Baroness Harman KC, will provide an evidence base for further interventions in this area. We outline our commitment to improving equality, diversity and inclusion (EDI) at the Bar and call for careful use of language in this area.

9. We highlight some other contextual factors that create challenges for barristers, including the gender pay gap, diversity challenges, continuing involvement of litigants in person in presenting their cases, affecting particularly family and employment proceedings, cases of work-induced trauma, the court backlog, scheduling and listing practices and the insufficiency of funding and the gender pay gap.

10. We note the encouraging conclusions of the BSB's reviews of chambers' compliance with the transparency rules. We have however some concerns about the BSB's interest in reducing the period in which barristers are expected to provide a quote, and we summarise some of our earlier concerns about the concept of online reviews of barristers by their clients.

11. We call on the BSB to give more attention to the regulation of unregistered barristers who have never acquired the right to practise. There is unfairness here in that practising barristers bear the cost of the regulation of unregistered barristers.

12. In our 2021 response² to the BSB's previous consultation exercise on its strategic plan we noted the difficulties it had experienced in meeting some key performance indicators (KPIs), for example, in the important areas of investigations and authorisations. Some issues remain here, despite a recalibration of some of the metrics to what the BSB considered to be more realistic (and longer) targets in its balanced scorecard system. We emphasise the importance of the BSB focussing its resources on those key regulatory activities.

13. The BSB has said that it plans to expand its programme of activities³. We think that it must first meet the targets set by the revised balanced scorecards and implement the other Fieldfisher Report recommendations which relate to its core regulatory function of investigations.

14. Our other concern about an expanded programme of work is the impact it will have on its budget. We have serious concerns about successive increases to the BSB's budget for

² <https://www.barcouncil.org.uk/static/3c089cec-83ca-41bc-b9c698da835f5bda/Bar-Council-response-to-BSB-consultation-Our-proposed-strategy-for-the-next-three-years-2022-23-to-2025-26.pdf>

³ <https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-strategic-approach-into-the-2030s.html#:~:text=These%20initiatives%20have%20culminated%20in,focus%20for%20the%20next%20year.>

mainly recurring costs. This underscores the need for the BSB to prioritise delivering its key regulatory activities, over new projects less critical to the discharge of its regulatory functions.

15. Although there is generally a good level of transparency from the BSB on measurement of its performance, we would like more regular and detailed updates on its progress in implementing the recommendations of the Fieldfisher report.

Questions

Question 1- What are your views on our draft statements of vision, purpose and ambition?

16. It is not clear to us what the purpose or purposes of the proposed statements of vision, purpose and ambition might be. If these are intended merely as general “mission statements” of the BSB, they appear both anodyne and unexceptional. If they have some further purpose or intent, we would be glad to learn what that purpose or intent might be.

17. Subject to that qualification, we do broadly agree with the proposed revised statements. The focus on ethics follows on the previous strategy’s vision⁴ of ensuring barristers’ duties to the court are upheld. We agree that professional ethics is a key component of practice as a barrister and that this is a good time to consider whether the current education and training arrangements produce the desired outcomes against the background of a Code of Conduct and associated diffuse guidance that is generally thought to be hard to navigate (see paragraph 21 below). As part of that, we suggest the BSB should first review whether the reforms that introduced an ethics exam during pupillage have had a desirable effect.

Question 2- Can you offer insights and evidence related to the current environment in which the BSB and the barrister profession operate that will help inform our strategic thinking?

18. Although we agree with many of the nine outcomes identified by the Legal Services Board (LSB) in its “Reshaping Legal Services” strategy, we don’t agree that the BSB’s strategy should be dictated by it. As we said at the time the LSB produced its 10-year strategy for the sector, we don’t consider this to perfectly reflect the LSB’s role. We

⁴ <https://www.barstandardsboard.org.uk/static/5cc0746d-611e-4df1-a313c08be0072b1b/ef701fb0-7631-4729-a498267635059f0b/v6-BSB-Strategy-2022-25-1.pdf>

particularly objected to the suggested outcome of “reforming the justice system and redrawing the regulatory landscape”, which is clearly something that should only be undertaken by Parliament, after the most careful consideration and consultation, and only where there is evidence that it is necessary to do so.

19. We recognise many of the contextual factors the BSB has identified. However, we do not agree with the characterisation of chambers as “often [being] informal in their governance and lack[ing] clear accountabilities”. This doesn’t accurately represent the present situation. Chambers will typically have a number of policies and procedures in place to ensure regulatory and legislative compliance. The few exceptions to this pattern are outliers, reducing each year as the ongoing professionalisation of chambers continues. That trend is due, at least in part, to the BSB’s ongoing work, including its recent publication of regulatory expectations of chambers.⁵ This resource complements the Bar Council’s compendium of policies and procedures for chambers.⁶

Professional ethics

20. We recently set out our views on barristers’ professional ethics when responding to the LSB’s business plan consultation.⁷ There, we said;

“We do not consider that direct or specific regulation is the most suitable tool for addressing all of the ethical concerns that have arisen in recent years. For example we consider that strategic litigation against public participation (SLAPPs) and Non-Disclosure Agreements (NDAs) are best addressed by Parliament through legislation. Of course, compliance with such legislation would thereafter form part of barristers’ ongoing professional duties, hence the reference to ‘direct or specific regulation’. However, those duties are already well provided for in the current regulatory structure.

On the issue of public confidence in lawyers’ professional ethics, we are aware that some recent high-profile cases where lawyers’ compliance with their ethical codes have been called into question has the potential to damage public confidence. However, we have not seen evidence that public confidence has in fact been damaged.

⁵ <https://www.barstandardsboard.org.uk/for-chambers/resources-for-chambers.html>

⁶ <https://www.barcouncil.org.uk/bar-council-services/for-chambers-and-aetos/policies-and-procedures-for-chambers.html>

⁷ <https://www.barcouncil.org.uk/static/cef4d7fd-52ee-43a1-ac2209d9481de411/Bar-Council-response-to-LSB-Business-plan-and-budget-consultation-2025-26-final.pdf>

The Post Office Inquiry is still ongoing and the regulators will play their role in investigating and prosecuting any misconduct that comes to light as part of this process. This will also present an opportunity for learning, that should be capitalised on.

The Bar Council sees ethics as central to barristers' work and professional identity. We do a lot of work to support barristers to understand and comply with their ethical obligations. This includes the production and maintenance of an ethics guidance resource, the running of an enquiries service and delivery of training and education, such as by way of articles, guidance and regular seminars on ethics. Our impression, gained through the levels of engagement of barristers with our guidance and education resources and the enquiries services, is that the vast majority of barristers seek to uphold the highest ethical standards. That said, we acknowledge that there will be some who unintentionally, or exceptionally otherwise, fall below the standards required of them. Where this happens, the regulator will investigate and if necessary, initiate disciplinary proceedings.

More generally, the Bar Council always welcomes the ongoing development of the education of the Bar, including in particular pre-qualification and early years post-qualification training. The Bar Council looks forward to working closely with the BSB and other education stakeholders in continuing to emphasise not only the rules and regulations, but also the appropriate cultural approach to professional conduct."

21. We would add that we think barristers' core ethical duties are, broadly speaking, clear and well understood by the Bar. However, the presentation of the rules, guidance and outcomes in the BSB Handbook is confusing. Many barristers report finding it difficult to locate the relevant rules within the lengthy Handbook, particularly where the relevant rules are located in different parts of it. This anecdotal feedback is supported by the Fieldfisher report in 2024 which said, "the level of detail that addresses both Core Duties and Conduct Rules as they apply to barristers is challenging to read and understand."⁸ It was also reported that the BSB staff find the rules difficult to navigate and apply and that this has an impact on the work of the Independent Decision Making Body and Disciplinary Tribunal.⁹ The Handbook needs to be redesigned so that the regulator, practitioners (and members of the public) can readily identify the core duties and accompanying guidance. We also recommend that the BSB consider reintroducing an App that barristers could access via their smartphone, for immediate access when ethical issues arise.

⁸ [FieldFisher BSB enforcement review report](#) 2024: 54

⁹ Ibid: 55

22. One of the main roles of the Bar Council's Ethics Committee is to support barristers in their understanding of the BSB Handbook. The Committee often leads popular ethics plenaries at the Bar Council's annual conference and delivers at least two webinars each year (sometimes more, for example if one is requested by a Specialist Bar Association). One of its annual webinars is always aimed at the young Bar, recognising that they may need additional support and reassurance as they begin practise. The benefit of these ethics webinars is increased by making the recording of the webinar available online, ensuring accessibility to a wide audience. Our ethics webinar for the young Bar in 2024 has had 474 views in the year since it was made available online (in addition to the number participating at the time).¹⁰ The more recent webinar on ethics at the Civil and Family Bar, posted two weeks ago, has already had 154 views.¹¹ In addition, the Ethics Committee maintains the Bar Council's extensive library of guidance notes, available online at the Bar Council's Ethics Hub website¹². It is also responsible for overseeing the Bar Council's ethical enquiries service for barristers. Approximately ten members of staff operate the telephone and email enquiries service, answering around 5000 queries per year. The Ethics Committee is on hand to assist with the most complex enquiries. The Bar Working Lives survey of 2021 found that this was the most widely used of all Bar Council services by barristers.

23. The BSB states in its call for evidence document that "Recent events such as the Post Office inquiry have highlighted the need to ensure that all legal professionals' understanding of ethical expectations and/or compliance with competence standards is always robust".¹³ We agree in principle that there will be an opportunity for learning from the inquiry but would require further detail on which specific areas of ethical understanding the BSB has identified as needing to be addressed and improved in light of these events, before commenting further.

24. The BSB asserts that barristers can let their "zeal to advance a client's interests to embrace tactics which are ethically questionable". We are not aware of specific instances where this has happened. The BSB needs to cite specific evidence of such unethical conduct by barristers (rather than making generalised statements which could apply to legal professionals as a whole) before proposing any targeted change. The Legal Services Act 2007 requires the BSB to regulate in a manner that is accountable, proportionate, consistent and targeted.

¹⁰ Accurate as at 4th March 2025, [Young Bar ethics webinar video](#)

¹¹ Accurate as at 19th March 2025, [Ethics at the civil and family Bar webinar](#)

¹² <https://www.barcouncilethics.co.uk/>

¹³ <https://www.barstandardsboard.org.uk/static/b4c1e062-3596-4602-b186f4d1c0cb600a/Strategy-call-for-evidence-document-final.pdf>, p6

Remote working

25. The BSB identifies an issue of how junior practitioners in chambers are to be sufficiently supported to meet ethical standards, given a trend towards more remote working. This accords with Bar Council research into the views of barristers under seven years call concerning the benefits and challenges of increased remote working. That research found that challenges included feelings of isolation and not being supported, as well as lost opportunities to build relationships.¹⁴ However, on the flip side, barristers appreciated the increased flexibility and reduction in time spent commuting. Barristers Working Lives 2023, our biennial survey of the profession answered by 3,535 barristers, confirmed that most barristers continue to work remotely for a significant proportion of their working week. It also found that 44% of barristers wanted more remote working and 43% of barristers wanted more flexible working for work-life balance reasons.

26. It needs to be acknowledged that some practice areas such as crime have always required a lot of travel and time away from chambers. Also, most chambers and organisations that employ barristers are aware of the challenges posed by increased home working and have put policies and strategies in place to ensure their members have the support they need. For example, chambers have created buddy schemes, equipped chambers with remote conferencing facilities and high-quality communal spaces, hosted regular chambers get togethers and appointed mental health and wellbeing leads.¹⁵

27. The BSB requirement for chambers to have a pupillage training programme requires that supervision arrangements for the pupil are specified in it. This regulation will help ensure that pupils have sufficient support. The Bar Council has also produced practical guidance¹⁶ for barristers working remotely. We suggest that there is an opportunity for the role of the “qualified person” that is required to be available to self-employed barristers in their first three years of practise to be more precisely articulated. For example, the qualified person could be required to provide ethics support.

Bullying, discrimination and harassment

28. We agree with the BSB that chambers must be well run and that there must be systems in place to prevent bullying, harassment and discrimination, and to address effectively concerns where they are raised. We know that bullying, harassment, and

¹⁴ <https://www.barcouncil.org.uk/support-for-barristers/wellbeing-personal-career-support/tips-for-barristers-working-remotely.html#:~:text=Keep%20records%20of%20your%20working,to%20be%20a%20regular%20attende>

¹⁵ *ibid*

¹⁶ *ibid*

discrimination is a serious and apparently growing problem at the Bar. In our most recent survey, 44% of respondents said they had experienced or observed this behaviour while working either in person or online. This is an increase from 38% in 2021 and 31% in 2017.¹⁷

29. For this reason, the Bar Council last year published a suite of policies and procedures that chambers should have in place to ensure regulatory and legislative compliance and effective management.¹⁸ The Bar Council also provides extensive training on bullying, harassment and discrimination to barristers and chambers, and runs an equality and diversity helpline, a chambers management enquiries service and its ethical enquiries service. It also runs Talk to Spot,¹⁹ the online tool for reporting inappropriate and abusive behaviour.

30. Its work is informed by extensive research on the issues. The Bar Council has commissioned the independent review of bullying, harassment and sexual harassment at the Bar, led by Baroness Harman KC. This is well underway and due to report in June. It has also been gathering evidence to consider the impact of bullying and harassment and the efficacy of current reporting mechanisms, as well as identifying the reasons for these behaviours and potential solutions.

Diversity challenges

31. The Bar Council has been working on analysing career outcomes by both sex and race for some years now. In 2021 our Race at the Bar report found, “In quantitative and qualitative terms, that barristers from ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar.”²⁰ Whilst diversity is slowly increasing at the Bar, the Bar Council’s “Race at the Bar, three years on” report²¹ in 2024 found, “the progress for Black barristers in the last three years has been limited. We have not made significant advances with respect to the success rates of applicants in pupillage, nor in silk and judicial appointments. Disproportionate experience of bullying and harassment remains for Black and minority ethnic barristers. And, whilst pupil to tenancy conversion rates are similar for different ethnic groups, the transition appears to be easier for White pupils who are more

¹⁷ [Bullying harassment and discrimination at the Bar December 2023.pdf](#)

¹⁸ <https://www.barcouncil.org.uk/bar-council-services/for-chambers-and-aetos/policies-and-procedures-for-chambers.html>

¹⁹ <https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/talk-to-spot.html>

²⁰ <https://www.barcouncil.org.uk/static/d821c952-ec38-41b2-a41ebaea362b28e5/Race-at-the-Bar-Report-2021.pdf>

²¹ <https://www.barcouncil.org.uk/static/f1da4b31-7adb-475b-900b6a0f20cf1530/378c2794-0694-4deb-99e32e8130cb092d/Race-at-the-Bar-three-years-on.pdf>

likely to be offered tenancy immediately and where they train, than their Black peers.” The report authors call on chambers and Bar organisations to consider the cultures of racism and structural inequality that persist.

The pay gap

32. Bar Council analysis of gross fee income data has found that the earnings gap between men and women at the self-employed Bar opens up in the first few years of practice (0 to 3 years post qualification experience, PQE) and is not explained by caring responsibilities, choice of practice area, or amount of legally aided work undertaken by barristers.²² Earlier Bar Council research²³ showed that this pay gap is present in every call band and every area of practice where men’s median gross earnings are higher than women’s. The pay gap is a concern because it determines who can build a sustainable practice and therefore has implications for retention and progression of women at the Bar.

Other contextual factors

33. There are some other wider justice sector factors that create certain challenges for barristers. These include the continuing involvement of litigants in person (LiPs) in presenting their cases, affecting particularly family and employment proceedings, cases of work-induced trauma, the court backlog, scheduling and listing practices and the insufficiency of funding. They are explained in more detail below.

Litigants in person

34. As is well-known, there has been a growing number of litigants in person involved in the civil and family justice system in recent years, since legal aid funding was greatly reduced in 2012. For example, of respondents in domestic violence cases, in 2011, 23% were represented. In 2023, that number had reduced to 13%.²⁴ In private law family cases with at least one hearing the proportion of parties with legal representation stood at 59% in July to September 2012, compared with 30% in July to September 2024.²⁵

35. Most litigants in person don’t actively *choose* to conduct their own legal proceedings – in fact, one of the main reasons cited for appearing without legal representation is an

²² <https://www.barcouncil.org.uk/resource/new-practitioner-earnings-differentials-at-the-self-employed-bar-april-2024-pdf.html>

²³ <https://www.barcouncil.org.uk/static/ab5ab80b-39c6-4918-9a5d031492ce5f3e/0d3183a8-23e9-49b9-af1bb516eb02f583/Barrister-earnings-by-sex-and-practice-area-November-2023.pdf>

²⁴ [Family Court Statistics Quarterly: July to September 2024 - GOV.UK](#) Table 11

²⁵ [Family Court Statistics Quarterly: July to September 2024 - GOV.UK](#)

inability to afford a lawyer. Of all LiPs, only around a quarter actively choose not to instruct a solicitor.²⁶

36. A Ministry of Justice 2019 report presented an initial exploration of the legal practitioner view of the impact of unrepresented defendants on the crown court.²⁷ It established that practitioners felt that unrepresented defendants slowed down a court case, were a barrier towards achieving early guilty pleas, and had a potentially detrimental effect on the cross-examination of witnesses. For LiPs, the experience of advocacy in the courts can be overwhelming – one participant in an academic research project described it as, ‘like The X Factor’.²⁸ For barristers working opposite litigants in person there can be challenges such as being asked to support them in a way that conflicts with their duties to their own clients; and encountering abusive behaviour and unfounded complaints often based on a fundamental misunderstanding of the duties of a barrister.

Work induced trauma

37. There is growing recognition that practice impacts on a barrister’s wellbeing. This is because of vicarious trauma, relentless pressure, high expectations, financial uncertainty and pressures, competitiveness, and fear of showing weakness, all of which can easily lead to chronic fatigue, burnout, and illness. The Bar Council has been exploring how to offer additional support to practitioners via coaching or supervision. The benefit of reflective supervision is worth exploring at the Bar. A reflective approach provides a space to analyse and evaluate professional experiences and debrief after enduring difficult or challenging encounters or projects. A pilot programme will begin this year, to evaluate reflective practice as an effective intervention for work induced trauma.

The court backlog

38. The backlog of cases in the Crown Court currently stands at at least 73,105 open cases, the highest on record.²⁹ The backlog is up 10% in the last year alone (66,426 in Q3 2023 to 73, 105 in Q3 2024). It’s also up 92% on the pre-pandemic baseline (38,016 in Q4 2019).

²⁶ Garton Grimwood, Gabriel, [Litigants in person: the rise of the self-represented litigant in civil and family cases](#), House of Commons Library, 2016

²⁷ Ministry of Justice (2019) “Unrepresented Defendants: Perceived effects on the Crown Court in England and Wales – practitioners’ perspectives”
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810051/unrepresented-defendants.pdf

²⁸ Mant (2018), ‘Litigants in Person and the Family Court: The Accessibility of Private Family Justice After LASPO’

²⁹ Ministry of Justice (12 December 2024) “Criminal court statistics quarterly, England and Wales, July-September 2024” [Criminal court statistics quarterly: July to September 2024 - GOV.UK](#)

There were some small decreases during 2021 and 2022, but the backlog has since increased steadily since the beginning of 2023.

39. We have concerns that some cases are waiting to be heard for a very long time, which has a negative impact on all involved. There are, for example, 3,291 adult rape cases in the backlog – up 460% from 588 cases in Q3 2019. 23% per cent of outstanding cases in the Crown Court have been open for a year or more. Cases coming into the Crown Court now are being listed for trial in 2028. This is completely unsustainable and represents a grave threat to the rule of law in this country. We would refer the BSB to the submissions made by the Bar Council and the Criminal Bar Association to the Review currently being carried out by Sir Brian Leveson.

40. We are additionally concerned about the availability of criminal legal aid barristers to tackle the backlog. The Criminal Bar Association (CBA) recently surveyed its members and found that one in three criminal barristers were actively seeking to leave the Bar, while a further one in three were actively considering moving their practice into another discipline, away from crime.³⁰

41. Our own data analysis shows that criminal barristers earn less than colleagues in other practice areas, have lower wellbeing, and work the longest hours.³¹

Scheduling and listing issues

42. In our regular surveys of the profession, challenges with scheduling and listing are consistently one of the most frequently cited problems with the courts. In our most recent survey, 48% of barristers who had attended court in the past three months said that scheduling/listing not considering their own availability had been a problem for them.³² This was second only to the backlog of cases, which was mentioned by 51% of respondents.

43. The outcome of poor scheduling and listing can mean that, due to diary clashes, a barrister may have to hand on to another barrister a case for which they have prepared. This will mean that the original barrister will not get paid for the preparation work they have done, and the replacement barrister will have to duplicate that work at short notice. Sometimes it is not possible to find a replacement barrister at short notice, and the case is then delayed. This is an inefficient and stressful way of operating, which has negative knock-on effects on victims, witnesses, defendants and others concerned in the court process.

³⁰ [The Criminal Bar Association](#)

³¹ [Title](#)

³² [Title](#) See pp 37-40

Reduction in real terms of publicly funded family work

44. Publicly funded family law barristers' fees have stagnated in recent years. In our response³³ to the Review of Civil Legal Aid call for evidence we said,

"The National Audit Office's report "Government's management of legal aid" (09 February 2024) rightly stated that the:

"MoJ has not increased fees for civil cases since 1996, and it reduced fees by 10% between October 2011 and February 2012. In real terms, fees are now approximately half what they were 28 years ago. (NAO report, page 48, paragraph 3)"

45. This illustrates the financial pressure that family practitioners whose practice involves a significant portion of publicly funded work may be under. It is important to understand that this group is disproportionately comprised of women. The Bar Council's data³⁴ shows that whilst women represent 40.1% of all practising barristers, they are overrepresented at the Family Bar, where they constitute 62% of all the practising barristers identifying family as their main area of practice.

Question 3- What do you think of these early emerging priorities for regulating in the public interest? Is there anything that has been missed, or should be prioritised less?

An effective, competitive market for barristers' services where consumers are empowered to engage effectively with barristers:

46. We recognise the merit of the BSB researching the experiences of barristers' clients, to ensure that the regulation is promoting a market that consumers are confident to use. Any interventions that this research prompts must be well thought through and fully consulted on, before implementation. However, it also needs to be recognised that access to justice is shaped by a number of factors, many of which are outside the control and appropriate role of the BSB.

³³ <https://www.barcouncil.org.uk/static/a01e3450-d06a-464a-9bc2eb05e20303cb/Bar-Council-response-on-the-review-of-civil-legal-aid.pdf> paragraphs 17 and 31

³⁴ Bar Council CRM Membership data. Correct as of 01 January 2025

47. There has already been a focus on increasing transparency of price; and the assessment by the BSB³⁵ of chambers' compliance with the rules in 2022 showed a good level of engagement with them. A piece of research³⁶ undertaken by the BSB later in 2022 showed that there had been an increase in the number of consumers obtaining information about barristers' fees and services before choosing a barrister. There was also a simultaneous drop in complaints relating to costs and clarity of costs. This indicates that the transparency rules had a positive effect on consumers' ability to make an informed choice about legal representation. As the BSB noted in its report³⁷ to the LSB on its compliance with the statement of policy³⁸ on empowering consumers, "research published by the Legal Services Consumer Panel (LSCP) indicates that the majority of consumers (65.29%) find it 'easy', or 'very easy', to find price information about barristers, and to compare prices between barrister providers (75.50%)."

48. We note that the BSB is considering further action on price transparency and is actively considering whether to reduce the expectation that barristers should give quotes for work within 14 days, to a shorter period. We would have real concerns that barristers on holiday or leave, or busy with another case, may struggle to meet a shorter quoting period and that it may compound existing work pressures.

49. In terms of transparency of quality, we have previously expressed concerns about barristers being compelled to invite clients to leave online reviews, an idea being explored by the BSB in its Digital Comparison Tools pilot which later morphed into a market study. Our concerns in this area relate to:

- a) The likely disproportionate impact on those with protected characteristics under the Equality Act 2010 – life experience shows that issues of race and gender influence significantly the way in which people are targeted for negative comment/social media activity on the internet.
- b) Concerns about confidentiality, which is likely to inhibit proper responses to reviews in which a lay client raises criticisms or makes negative comments about a barrister.
- c) The possibility of false or defamatory reviews being posted.
- d) The possibility of 'scraping' (meaning the process whereby the content of reviews are automatically searched and repeated on other websites), the result of which would

³⁵ <https://www.barstandardsboard.org.uk/static/c9898093-bbc6-45d5-b3af882dae99e05d/20220727-External-Transparency-RR-and-spot-check-report.pdf>

³⁶ <https://www.barstandardsboard.org.uk/static/49d31ba9-a956-4694-9039e7388dc2e153/Transparency-Rules-Evaluation-Impact-on-Consumers.pdf>

³⁷ <https://www.barstandardsboard.org.uk/static/a496ea8a-53b5-44a3-ab40d447e78e1a70/Report-to-the-LSB-regarding-the-BSBs-compliance-with-its-empowering-consumers-obligations.pdf>

³⁸ <https://legalservicesboard.org.uk/wp-content/uploads/2022/04/Statement-of-policy-on-empowering-consumers.pdf>

be that, even where the original host of a false or defamatory review is persuaded to take it down, that review will continue to appear on other sites over which the BSB or the barristers concerned have no control.

- e) The fact that the provision of legal services such as advice and advocacy are highly complex and subject to strict ethical and other rules – matters of which individual lay clients may not be aware or may not respect; particularly where they have received advice or outcomes with which they disagree.
- f) The fact that the [Competition and Markets Authority Digital comparison tools market study](#) has concluded that DCTs should only be viewed as appropriate in commoditised areas, which the services provided by the Bar are not. Barristers provide what is quintessentially a service tailored to the individual circumstances of each case.
- g) For commercial barristers that practise internationally, their clients are usually sophisticated corporates who will rely on solicitor referrals. They would not use online reviews to inform their choice of counsel. Also, barristers' international competitors would not be subject to the same requirements, creating the risk of a competitive disadvantage for barristers.

50. We are pleased to see that the BSB does not plan to take forward the publication of success rates, for the reason that success rates do not reflect a barrister's knowledge or skill, and their publication could create an incentive in barristers to take on only cases that appear "easily winnable", contrary to the important principles inherent in the cab rank rule and the related duty not to discriminate (rC29 and rC28 in the BSB Handbook).

51. It also must be remembered that the vast majority of instructions to self-employed barristers come via a professional intermediary, typically a solicitor, who can assist the client with their choice of barrister. Both instructing solicitors and also barristers, whether acting on a referral or direct access basis, will ordinarily be able to support vulnerable clients. Barristers working in the criminal justice system and in the family courts have considerable experience with such clients and will be adept at putting them at ease and explaining things in a way that is clear and helpful.

A profession where everyone has equal opportunities and success is not limited by background

52. The Bar Council is deeply committed to supporting and improving EDI at the Bar. We want to create a profession 'representative of all and for all'. Activity involves identifying and seeking to address barriers and assumptions that inhibit the progression of

those with a protected characteristic³⁹ and also those from an under-represented background. Our work in this area is informed by research. We collaborate with committees and working groups and with networks such as the equality and diversity officer (EDO) network. We work hand in hand with the profession, supporting chambers to deliver culture change.

53. Our priorities this year are to support implementation of the Race Report 2024 recommendations and to deliver the 10KBI programme.⁴⁰ We also plan to work to encourage chambers to conduct their own access audits and to make progressive plans to improve access, especially for those who are mobility impaired. This work will include mapping access across the Bar.

54. We responded⁴¹ to the BSB's proposed equality rules changes at the end of last year, setting out our concerns that the proposed changes lacked the clarity required for robust, effective and enforceable regulation. We are not convinced that we need a new framework, including a new core duty for EDI. The professions' strong response to the consultation highlighted that language matters in this area. Many terms are contested. There must be clarity about what is meant and the legal basis for proposals. Otherwise, there is a risk that proposals are misinterpreted.

55. For the same reason, and also given the current political climate, it would be helpful to specify what the BSB means when it talks of "background", whether referring to socio-economic status or protected characteristic, or employing the term more generically. Unqualified by additional information, reference to "background" is simply too vague.

A competent and ethical profession

56. On the question of how training and ongoing development requirements can be improved, it is useful to first set out the structure of barristers' initial and ongoing training requirements in professional ethics.

57. As the BSB will know, there is typically no ethics component to law degrees or law conversion programmes. Ethics education begins on the Bar course and is continued during pupillage. Before a Bar course graduate can be called to the Bar, they need to complete 10

³⁹ Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual Orientation (Equality Act 2010)

⁴⁰ <https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/race/10000-black-interns.html>

⁴¹ <https://www.barcouncil.org.uk/static/6bd9c3b2-7f74-469a-95368aaf612db9c1/Bar-Council-proposed-response-to-BSB-equality-rules-consultation-November-2024.pdf>

qualifying sessions arranged by their Inn of Court. One of those qualifying sessions needs to have the theme of 'Ethics, Standards and Values'.

58. There are two ethics exams. One takes place on the Bar Course and is set by the provider. The second takes place during pupillage and is set and administered by the BSB. The pupillage-based ethics component was added by the BSB in 2020.⁴²

59. Following completion of pupillage there is a mandatory ethics component to the CPD programme in the first three years of practice.

60. On the established practitioner programme, i.e. for barristers who are beyond the first three years of practice, further ethics education is not mandatory. However, the BSB recommends it as an area of focus.

61. The Bar Course providers, the Inns of Court and chambers all play a formal role in ethics education. The SBAs and the Bar Council also offer ethics training to practitioners.

62. We think there are some areas of ethics training that would benefit from review by the BSB, to ascertain whether they are effective and whether there is scope for improvement. For example, the pupillage-based exam and the level of support pupils receive from chambers to help them prepare for it would benefit from a review, to assess the impact on barristers' ethics knowledge and understanding of the recently implemented changes. Similarly, there is an opportunity for the BSB to assure itself of the quality of Bar Course ethics training and exams set by the various providers.

63. We are interested in exploring the feasibility and potential benefits of an increased number of hours of ethics training for new practitioners, an element of mandatory ethics CPD for established practitioners, and "top-up" ethics training for those returning to practise after having been away from practice for more than five years.

64. The Bar Council is committed to supporting barristers to understand and comply with their ethical obligations as outlined at paragraphs 20 and 22, though training and provision of the ethical enquiries service. As part of this work, we will be undertaking research on barristers' ethics. We will ask barristers ethics focused questions in our biennial Barristers Working Lives Survey, due to launch later this month. Those questions will aim to examine barristers' understanding of their ethical obligations, how often they seek ethics support, where they seek such support and whether it is sufficient. It will also seek to learn about the frequency and sources of barristers' ongoing ethics-related professional

⁴² <https://www.counselmagazine.co.uk/articles/everything-you-need-to-know-about-the-bsb-ethics-exam>

development activities, and the types of issues that cause them ethical challenges. The evidence gathered from this research will enable the Bar Council to better understand the challenges and to inform the future ethics support and training that it offers to the Bar. We would welcome the opportunity to share our findings with the BSB.

65. Members of the employed Bar have observed to us that neither the BSB Handbook nor the BSB's Code Guidance address specifically the ethical challenges faced by employed barristers, in their employment. (The Bar Council has provided some limited guidance on its Ethics Hub⁴³.) They, and we, would welcome a greater focus on these challenges, both for barristers employed in solicitors' firms and for those acting as in-house counsel in other organisations. We believe that the SRA has recently undertaken research into the ethical responsibilities of solicitors acting in-house, and we would invite the BSB to liaise with the SRA, in order to give specific guidance about how the Core Duties and other Code requirements should be met, consistent with any SRA guidance (including the recently published note on "Legal professional privilege when working in-house"⁴⁴).

Emerging technologies

66. Core Duties 2, 8 and rC20 of the BSB Handbook already make it clear that barristers are personally responsible for the work they do. Further, barristers must maintain clients' confidentiality in accordance with the General Data Protection Regulation (GDPR) and Core Duty 6 and rC15.5 of the Handbook. This is regardless of what, if any, technologies they use to assist them.

67. That said, we recognise that AI creates some potential risks to the public and that there is a need properly to assess these risks and to consider appropriate legal and regulatory responses. Many new technologies developed for use in the legal sector will use AI to some extent. We also recognise that this is a rapidly developing area which will require close attention in the immediate and medium-term future.

68. To assist barristers in understanding the risks posed by generative AI such as ChatGPT, we produced guidance on relevant considerations when using AI.⁴⁵ That guidance highlights the limitations and challenges of AI and the importance of protecting client data, as well as the importance of checking and taking responsibility for any work that has been assisted by the use of AI.

⁴³ <https://www.barcouncilethics.co.uk/subject/employed-bar/>

⁴⁴ <https://www.sra.org.uk/solicitors/guidance/professional-privilege-in-house/>

⁴⁵ <https://www.barcouncilethics.co.uk/documents/considerations-when-using-chatgpt-and-generative-ai-software-based-on-large-language-models/>

Other regulatory issues

69. We would like to see the BSB devote attention to the regulation of unregistered barristers, i.e. those who have never acquired the right to practise. As the BSB is aware, there are more unregistered barristers who have never practised than practising barristers and unregistered barristers who have practised, combined. In 2024 there were 17,862 barristers with practising certificates, as against 38,826 who have never practised and 10,265 who had practised but who were currently without a practising certificate. This is problematic because unregistered barristers are subject to regulation by the BSB. Those who have never acquired the right to practise are represented in every type of BSB disciplinary proceedings, including the Bar Tribunal and Adjudication Service, where the most serious instances of misconduct are judged and sanctioned. Between 2019/20 and 2024/25⁴⁶, 19.5% of all cases referred to disciplinary tribunal concerned unregistered barristers who had never practised. The cost of this regulation is paid for by practising barristers, through their payment of the practising certificate fee. This raises a fairness issue for those who practise.

70. It is also confusing for unregistered barristers, who are not always clear about what they can and cannot do, and what they may call themselves in different contexts (owing to complex rules).

71. This issue is compounded each year as the number called to the Bar increases relative to those who are practising or who have practised. This trend can be seen in annex 1.

72. A first step would be for the BSB to assess the cost of regulating the sizable cohort of unregistered barristers who have never practised. They should consider options for alternative funding of their regulation, so it is not borne by the practising Bar. One option is to charge unregistered barristers an annual fee. They should also consider whether there is a way of reorganising Bar training and qualification, so that fewer fall into the category of unregistered barristers who have never had the right to practise. We think that deferral of call, to the point at which someone has completed pupillage, is one possible solution that the BSB could consider. We note that this issue has been considered in the past, and that there were divergent views on it. However, it is time to look again at the matter.

⁴⁶ Note that only the first 10 months of 2024/25 are included in these figures, because the data was extracted in early February. However it is thought that the numbers would change significantly if February and March 2025 were to be included.

Question 4- Do you have any feedback on our approach to regulation in general or of the barrister profession in Wales?

73. We agree with the assertion that the profession will share many of the same goals as the regulator, and that we should work together to ensure maximum impact where possible, while also respecting our respective roles. We consider that the BSB's role is to set minimum standards, while the Bar Council and the wider networks of the Bar (comprising the Inns of Court, the SBAs and the circuits) are best placed to work to support the profession in meeting those standards, and to promote best practice.

74. In terms of regulatory approach, the BSB needs to build trust with the profession to obtain more efficient and effective outcomes. Regulation should, where possible, be by consent and we agree with the BSB's aim that enforcement should be used proportionately.

75. We would welcome a greater focus on delivering critical regulatory activities, such as undertaking and completing disciplinary investigations. Delays are damaging to both barristers and complainants. As we said in our response to the LSB's consultation on its 2025-26 draft business plan, "Timeliness in handling investigations is critical to maintaining confidence in the system. For complainants, timeliness of investigation promotes their participation as witnesses in the process and minimises their experience of stress. It is also important to the barrister being investigated, to minimise the stress to them caused by uncertainty and the threat to their livelihood."⁴⁷

76. Similarly, there is a powerful need to address the waiting times for authorisation applications. The regulatory update given in March stated that the waiting time for these applications to be completed was currently 16 weeks.⁴⁸ This is far beyond the 12-week target. The balanced scorecard assessment for authorisations included in the March board papers detailed the challenges facing this part of the organisation.⁴⁹ The BSB should continue to prioritise authorisations applications from barristers whose practise is dependent on the decision. Barristers should not be constrained in their ability to train or practise by BSB delays. We are encouraged to learn that the BSB has recently raised the fee for processing applications from overseas qualified lawyers. We trust this is at least at the level required to cover the cost of processing the application. We also understand that the BSB has restructured its authorisations team. We hope that these measures will bring processing times within the target soon.

⁴⁷ <https://www.barcouncil.org.uk/static/cef4d7fd-52ee-43a1-ac2209d9481de411/Bar-Council-response-to-LSB-Business-plan-and-budget-consultation-2025-26-final.pdf> page 7

⁴⁸ https://r1.ddlnk.net/t/cr/AQja5gwQz_qwARjq9bgvg0yv-jShx7xp4JtE3S3-5JO6TYbAouDMUJeP4Ye4oa0

⁴⁹ <https://www.barstandardsboard.org.uk/static/5ad7af84-df53-4dcb-9fa68ef8e29e8af2/Board-agenda-Part-1-240926.pdf>

77. As ever, we strongly encourage a renewed focus on the key regulatory activities of investigations and authorisations, to ensure that these critical activities are delivered within acceptable timeframes. This will also serve to keep regulatory costs down. The greater part of the BSB's budget is funded by the practising profession via the PCF. The PCF application to the LSB for the coming financial year proposed an 8.5% increase in the PCF, on top of a 9.5% increase last year. The application said that "the split of total PCF is variable but is expected to be 26% BC / 74% BSB in 2025/26. The split in 2024/25 was 28% BC / 72% BSB."⁵⁰ This is a continuation of a trend whereby there has been a steady increase of the BSB's share of the PCF funding in recent years and reflects a further significant increase to the BSB's budget.

78. We have previously expressed our concern at an overreliance on outcomes-based regulation. "Outcomes" are imprecise and create uncertainty as how, and to what level or standard, they must be achieved. Uncertainty generates compliance costs. Barristers are more likely to comply with clear, unambiguous, requirements that are precisely defined. Setting an outcome may sound attractive in theory but in practise they can be hard for time-pressed professionals to comply with, or to be certain they have been complied with.

79. The BSB must also take care not to propose measures that go beyond what is legally required, for example in relation to the 2024 proposed amendments to Core Duty 8. Requiring barristers to do more than is legally required can provoke a strong response from the profession and is liable to harm attitudes to existing and future EDI initiatives whose success depends on active participation of all barristers.

80. The Bar Council acknowledges the divergence of some parts of the Welsh legal system, encompassing tribunals, legislation and case law. The regulator will need to be alert to any changes this necessitates to barristers' training, practise and regulation.

Question 5- Do you have views on how we might more effectively monitor and report on performance?

81. We agree with the commitment to measuring impact. This will help the BSB and other stakeholders assess the BSB's performance and the effectiveness of its interventions, which will in turn inform future work.

82. We appreciate the degree of transparency the BSB has in measuring its own performance. There are a range of sources of information and published reports that allow

⁵⁰ <https://legalservicesboard.org.uk/wp-content/uploads/2025/02/PRACTI1.pdf>, p4

the BSB to reflect on its own practices and that also enable external scrutiny of their performance.

83. Although there have been some information given about the BSB's reorganisation following the Fieldfisher report,⁵¹ for example on its website⁵², we think more transparency in its progress in addressing the issues identified in that report would be helpful. We would expect regular updates on the implementation of the recommendations and the impact on efficiency of the enforcement system.

84. Whilst we have agreed with the principle of replacing the BSB's previous KPIs with the more holistic balanced scorecards system, we do not agree with the longer time targets adopted for its concluding the most important regulatory activities, namely authorisations and investigations. We do agree with the BSB's aim of meeting its new operational targets as soon as possible this year.

Question 6- Is there anything else you would like to add?

85. No.

Bar Council

09 April 2025

For further information please contact:

Sarah Richardson, Head of Policy: Ethics, Regulation and Law Reform

The General Council of the Bar of England and Wales

289-293 High Holborn, London WC1V 7HZ

Email: SRichardson@barcouncil.org.uk

⁵¹ <https://www.barstandardsboard.org.uk/static/6845a7e5-3188-4c21-821fbb75d841e33c/Final-Report-publication-format-April-2024-11559042415-2.pdf>

⁵² <https://www.barstandardsboard.org.uk/resources/the-bar-standards-board-re-organises-to-improve-its-efficiency-and-effectiveness.html>



Annex 1

