



Bar Council response to the Bar Standards Board's (BSB) "Our proposed strategy for the next three years" consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the BSB consultation paper entitled Our Proposed Strategy for the Next Three Years 2022-23 to 2025-26.¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Summary

- We think the strategic plan is lacking in detail and transparency about the BSB's plans for considerable staff recruitment and the cost of this.
- We are concerned about the regulator's failure to meet some of its KPIs over the course of the last year and think it needs to focus on achieving these. We consider it is important for the BSB to focus its efforts on this core regulatory activity instead

¹ BSB 2021, [Our proposed strategy for the next three years 2022-23 to 2025-26](#)

of embarking on new projects. This ought to be one of, or the main, headline items in the strategy.

- We are not convinced that the BSB is best placed to regulate technology.
- The BSB needs to be mindful of its role in setting and enforcing minimum standards for equality and diversity and the Bar Council's role in working with the profession to promote best practice.
- We broadly agree with the BSB's vision as well as the risks and opportunities identified by them in terms of the context the Bar operates in. We have noted some other risks we think are important for the BSB to consider.
- We do not understand the rationale for the BSB wishing to consider becoming a separate corporate body and do not agree with the principle, timing and budget implications of even exploring its feasibility let alone its implementation.
- We have identified some areas where we think we could usefully share our expertise or collaborate.

Overview

4. There is much that we agree with in the BSB's draft strategic plan.

5. We agree with the statement of vision on page 6 subject to one proviso. The BSB's draft says that, *"we want to see a market for barrister's services where barristers provide a range of good value legal services which are well understood by and accessible to consumers"*. If "accessible" means directly accessible to, then we disagree and this should be removed from the statement of vision. We are at heart a referral profession. This model of working ultimately reduces costs to consumers and promotes competition between different models of providing services. Some barristers choose to provide services direct to consumers but most do not.² We are concerned that this is point which is often overlooked by the LSB in its policy pronouncements, and we are particularly keen that the BSB as our front line regulator should not fall into the trap of thinking that direct accessibility for consumers is necessarily desirable.

² On 1 March 2021, 6,590 (38.4%) of practising barristers were Public Access registered. This aggregated data is derived from data collected by Bar Council and Bar Standards Board. However, BMIF data shows that less than half this number declared income earned through this type of instruction in 2020, at 2,961. The fee income derived from Public Access work by these 2,961 barristers in 2020 accounts for 12.6% of their overall income. In the same year Public Access work accounted for 2.2% of total earnings of all self-employed barristers.

6. A better formulation would be:

“We want to see a market for barrister’s services where barristers provide a range of good value legal services, and clients understand the nature of those services, and that they can access these services through solicitors, or, in some cases, directly”

7. We have some concern from a good governance perspective that the strategy is not tied to, nor even clearly correlated with the budget bid for 2022-23, upon which its success will ultimately rest. Whilst we appreciate that it is a strategic plan and is an overview, there have been occasions when the more detailed business plan has been published at the same time and that has allowed a better understanding of how the two interact. We hope to see a business plan published soon.

8. The Legal Services Act requires the BSB to regulate in a manner that is accountable, proportionate, consistent and targeted. The key focus of the strategic plan therefore ought to be on the core activities, that is to say on what the BSB itself rightly describes as core regulatory work. The BSB has been open about the difficulties it has faced over the last year in meeting many of its key performance indicators (KPIs). In its September Board meeting papers the BSB reported that 6 of 16 KPIs are still more than 10% below target. This is particularly concerning in the areas of authorisations and investigations. When barristers apply for a waiver from a certain regulatory requirement, for authorisation to carry out a certain activity or for a variation to their practicing certificate, they need to be confident of a swift outcome. Otherwise, they can be constrained in their ability to practice, limiting their ability to provide legal services to clients and a livelihood for themselves.

9. In the investigations division the target is that 80% of investigations reach a decision on disposal within 25 weeks but the September figures show this is only happening in 33% of cases. When there are allegations of misconduct, it is not fair to the Bar, to its clients or to the public for this process to be delayed. It risks damaging public confidence, barristers’ reputations and prolonging the stress experienced by the barristers being investigated, particularly where the misconduct allegations are without foundation, which the BSB notes is a frequent occurrence. It is critical that the BSB focusses its resources on addressing the causes of these service delays and is able to achieve and maintain its KPIs. Such an improvement would demonstrate that it is discharging its core regulatory functions effectively.

10. We consider that the BSB should focus on improving effectiveness in its core activities before turning attention to any new projects it may be considering. This will reduce the regulatory burden, the cost of which can be ultimately carried by clients via increases to barristers’ practising certificate fees.

11. Under the heading “Enabling the benefits and mitigating the risks of innovation and technology” the second bullet point is,

“being ready to regulate the use of technology where necessary to protect the public interest while ensuring we do not create barriers to innovation, particularly that which allows greater access to legal services.”

12. We have observed that the use by barristers, their clients and the courts of technology has accelerated during the pandemic and that is raising interesting questions about advocacy techniques, vulnerable clients and digital exclusion. We think it is principally for the judiciary and the profession to adapt and that the regulator needs to follow rather than lead here. It may be that our concerns are addressed by the words, “*where necessary ...*”, but we wish to avoid the BSB spending money researching and opining on new technology when that is an issue that many more directly involved people are already working on.

13. In meeting the regulatory objectives, the Bar and others are sometimes best placed to take the lead rather than the BSB and we are pleased that it is acknowledged at various points in the paper that in some instances other parties should lead certain projects, along with a desire to collaborate. This is particularly pertinent in the important area of promoting diversity and inclusion. The BSB can usefully set the (minimum) standards for individuals and chambers but it is the Bar Council and other stakeholders such as the Inns of Court, Specialist Bar Associations and Circuits that are best placed to work with the profession to support them in complying with those rules as well as promoting best practice.

Question 1- With reference to our regulatory objectives do you agree that these are the main risks and opportunities facing barristers and the market for barristers’ services: is there anything you would add or omit?

14. We think it is crucial for the BSB to have a full understanding of the issues facing the profession and the context it is operating in, in order to carry out effective regulation. We are familiar with the majority of the threats and opportunities identified by the BSB in its strategy and think they are relevant in the context of the regulatory objectives.

15. Whilst the Bar has shown itself to be successful in navigating many of the challenges created by the pandemic, we agree that there remain many risks in this area, some of which may not yet have emerged or be fully realised. Many barristers have adapted well to remote working, including online hearings but there have been reports of challenges. These were most likely to be with technical problems with video platforms for court, with 78% of barristers who had experienced problems noting this

as an issue.³ It should be noted that there has yet to be an evaluation of remote hearings in the criminal courts.

16. There are also challenges for the training of pupils and support for junior barristers with fewer opportunities for direct contact with colleagues and the supportive environment created by working in physical proximity to them. This is evidenced by 73% of barristers that took part in the recent Bar Council Barristers' Working Lives survey reporting that working relationships with colleagues was the area most affected negatively.⁴ In a recent Bar Council survey of pupils, when asked about the biggest challenges they faced 82% mentioned a lack of networking opportunities and 51% cited a lack of contact with their pupil supervisor.⁵ We share the BSB's concern, mentioned under the "A Bar for the future" heading, about a reduction in the number of pupillages available. However, it is reassuring to note that the most recent evidence from the Bar Council's Pupillage Gateway report suggests that the numbers are recovering.⁶

17. The pandemic has had a negative impact on many barristers' earning ability and the results of the Working Lives survey makes clear that the negative impacts have been felt differently across the profession and are dependent on practice area and other characteristics.⁷ Barristers specialising in crime and sole practitioners reported being most likely to experience financial hardship along with those with Asian, Mixed or Black heritage.⁸

18. We are glad to see the BSB acknowledge pressure on public funding as a risk. We share this concern. One effect of a lack of funding is a steady rise in recent years of the number of people unable to afford to pay for legal representation, and who are compelled to represent themselves, so-called Litigants in Person (LiPs). LiPs are most commonly found in the civil and family courts. Many are vulnerable individuals who are making their way through an opaque justice system seeking justice. Whilst technology can in some ways assist LiPs, particularly those from vulnerable groups who have mobility issues and for whom remote justice represents an easier way of participating in court proceedings, the idea that they must contend with new technology on top of an unfamiliar justice process must be taken into consideration.

³ <https://www.barcouncil.org.uk/uploads/assets/9a8ceb20-ba5e-44f8-9b3f765be564ea15/e3cd5fe0-6fe2-405e-8f5a9996ebbd7c01/Barristers-Working-Lives-report-2021.pdf>

⁴ <https://www.barcouncil.org.uk/uploads/assets/9a8ceb20-ba5e-44f8-9b3f765be564ea15/e3cd5fe0-6fe2-405e-8f5a9996ebbd7c01/Barristers-Working-Lives-report-2021.pdf> 2021: 4

⁵ [Bar Council's Covid 19 Survey of pupils March 2021](https://www.barcouncil.org.uk/uploads/assets/9a8ceb20-ba5e-44f8-9b3f765be564ea15/e3cd5fe0-6fe2-405e-8f5a9996ebbd7c01/Barristers-Working-Lives-report-2021.pdf)

⁶ <https://www.barcouncil.org.uk/uploads/assets/016ace0e-f689-411a-a98ef22a3679ffcc/Pupillage-Gateway-report-2021.pdf>

⁷ <https://www.barcouncil.org.uk/uploads/assets/9a8ceb20-ba5e-44f8-9b3f765be564ea15/e3cd5fe0-6fe2-405e-8f5a9996ebbd7c01/Barristers-Working-Lives-report-2021.pdf>

⁸ *Ibid*, 2021: 4

The issue of digital exclusion is significant and widespread; a recent report from the University of Cambridge on the 'digital divide' noted that 22% of the UK's population lacked basic digital skills before the Covid-19 outbreak began.⁹ The Bar Council is deeply concerned about access to justice issues created by this lack of legal representation. This also risks court delays, adding to a significant backlog of cases, as well as miscarriages of justice caused by poor quality of self-representation and. The Bar Council is currently planning to initiate research with the Judiciary that intends to identify the greatest challenges resulting from the lack of representation with a view to considering what the Bar can do to support them.

19. We agree with the identification of a fairer and more inclusive Bar as a key opportunity. There is a long way to travel before the Bar becomes a fair and inclusive workplace. The Bar Council's recent Race Report systematically reviewed the available data on race at the Bar and found,

"Data in the report categorically and definitively evidences, in quantitative and qualitative terms, that barristers from all ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar."¹⁰

20. We have published long-range data on women's income at the Bar and have found that women earn less than men in nearly all practice areas, and that this is not changing even as the numbers of women increase. In fact, the opposite is true. As we concluded in our October report on BMIF data, "Men's income is increasing faster than women's income in most practice areas and the gap between men's and women's earnings is widening".¹¹

21. In terms of Public Legal Education, there is a role for the regulator in enforcing the standards it has set with regards chambers' entities' and sole practitioners' provision of information to clients and potential clients. However, in terms of citizens' understanding their legal rights and duties, we caution that it is unrealistic for the Bar's regulator or the profession to address this issue alone. As a structural issue, it must be addressed primarily by government policy and intervention.

22. The BSB says that it is concerned that clients are not routinely offered a choice of barrister when referred to one by their solicitor. In most cases, the solicitor will be better placed than the lay client to choose between barristers, and in most cases clients are happy to be advised on the choice, or to leave the choice to their solicitor. The

⁹ <https://www.cam.ac.uk/stories/digitaldivide>

¹⁰ <https://www.barcouncil.org.uk/uploads/assets/d821c952-ec38-41b2-a41ebeeaa362b28e5/Race-at-the-Bar-Report-2021.pdf>

¹¹ <https://www.barcouncil.org.uk/uploads/assets/a6b29a4b-417a-4b29-80ae13bdf5301f8f/816ed250-46db-499c-8114044a739ac76c/earnings-data-report-2021.pdf>

BSB's recent survey on clients' experiences and expectations of working with barristers demonstrated, many clients are glad to have the recommendation made to them by a professional familiar with the barrister and their knowledge and skills and do not expect to be actively involved in this decision. As the report said, in relation to the lay clients' experiences, "nor did they feel able or equipped to make that choice"¹² and, "the majority of clients did not always realise that they had a choice of barristers, or were reluctant to make a decision on this, preferring to stay with their solicitors' recommendation."¹³ If clients are largely content with their solicitors' recommendation, we do not understand what the concern is. Equally, if there is no evidence of harm then regulatory intervention is not justified.

Other risks

23. The Bar Council thinks the BSB should also be aware of the following risks.

24. Though not currently on the horizon, for a few years now, there has existed a real risk of Extended Operating Hours or similar being imposed on barristers. As we have said previously, this would disproportionately impact those with caring responsibilities. It should come as no surprise that only a minority of barristers (9%) supported this initiative at the time the Working Lives survey was carried out.

25. Another contextual risk to access to justice is the huge backlog in court cases and the lack of barristers available to tackle it. The case backlog in the Crown Court currently stands at over 60,000 cases, up by over 45% from the pre-pandemic baseline which, in itself, represented a rise of 23% from the previous year. In the 2021 Spending Review,¹⁴ the government appeared to accept that the backlog, and associated longer waiting times, will remain between 17 and 27% higher than pre-pandemic levels until at least the end of 2024. The National Audit Office in October 2021¹⁵ expressed concern, identifying that the availability of judges and legal professionals had not been scoped by the MoJ in its modelling.

26. In our work to inform our submission to the Independent Review of Criminal Legal Aid, the Bar Council identified that there are 11% fewer specialist criminal juniors and 22% fewer specialist criminal QCs than in 2015/16. The Bar Council's response to the Criminal Legal Aid Review Call for Evidence details that Barristers have responded to poor rates of remuneration under legal aid fee schemes (AGFS)

¹² <https://www.barstandardsboard.org.uk/uploads/assets/185135f6-4057-4173-8c48ae85cc67b10d/IRN-Research-Barristers-Client-Research-Report.pdf>, 2021: 4

¹³ <https://www.barstandardsboard.org.uk/uploads/assets/185135f6-4057-4173-8c48ae85cc67b10d/IRN-Research-Barristers-Client-Research-Report.pdf>, 2021:33

¹⁴ <https://www.gov.uk/government/publications/autumn-budget-and-spending-review-2021-documents>

¹⁵ <https://www.nao.org.uk/report/reducing-the-backlog-in-criminal-courts/>

and poor working conditions by seeking to diversify their practices away from crime.¹⁶ This presents a risk to the profession's ability to service the backlog. Working conditions and workload also present sustainability challenges to criminal law work.

27. Other major justice concerns cited by barristers within the last year were scheduling and listing issues (67%) which can lead to inefficiencies, clashing cases and delays.¹⁷

28. The BSB document refers in a number of places to the fact that potential clients do not have sufficient legal knowledge, for example (page 6): "*individuals and businesses with legal problems usually have a poor understanding of their legal rights and duties...*". We question whether the BSB and other legal sector regulatory bodies' focussing on this issue is misplaced as information asymmetry is in the nature of what we do. We exist precisely to assist people in situations where they do not necessarily comprehend the legal process or arguments. It is also hard to see how any attempt to deal with the issue in general terms could be sufficiently comprehensive or reliable.

Question 2- Do you agree with this vision for the BSB and the Bar: is there anything you would add or omit?

29. Subject to the points on accessibility which we made above, we agree with the BSB's vision as articulated. We share this vision and think all the points are relevant and worthy of inclusion.

30. However, we do think there is a problem in how BSB articulate their vision with respect to their role which is primarily to provide effective regulation of barristers, chambers and entities. To illustrate this point, we focus on the area of equality and diversity. The BSB promotes diversity through: 1. Having clear rules with regard to discrimination; 2. Clearly communicating these rules; and 3. Enforcing those rules. The BSB's only other role is potentially working with other stakeholders (like ourselves as the representative function) to understand whether those rules are fit for purpose or need to be changed in any way. However, the BSB statements on diversity in the strategy occasionally go wider than this and suggest a risk of over-reach.

31. In the vision, when the BSB says they will, "*deliver diversity*". We think it would be better to say that will exercise their regulatory powers through effective regulation

¹⁶ <https://www.barcouncil.org.uk/uploads/assets/7bb32f9d-ffce-4ce0-aa50239091e2713f/CLAR-Bar-Council-submission-final.pdf>

¹⁷ <https://www.barcouncil.org.uk/uploads/assets/f9c5bf66-98f1-429d-ad7b94046e1f5213/f343f7f3-cf5f-44d9-8dda60d82a97e517/Bar-Survey-Summary-Findings-December-2020.pdf>

and enforcement (and possibly stakeholder engagement) in order to promote diversity.

Question 3 – Do you agree that these should be the BSB’s priorities: is there anything you would add or omit? And how would you rank these priorities?

32. We agree with the order in which the BSB has placed its priorities. The priorities should however be expressed in terms of clients, not consumers.

Providing consumers with confidence in using the services of barristers

33. The Bar Council welcomes the BSB’s stated aims to define and enforce standards of professional conduct and setting and overseeing the training requirements of barristers, which correspond with the BSB’s regulatory functions. We value the transparent manner in which the BSB acknowledges recent challenges in meeting its KPIs and share their concerns about them.

34. We are particularly concerned that the KPI for decisions on disposal within 25 weeks dipped to 33% in Q1 in 2021-2022, when the target is 80%.¹⁸ Failure to meet this target leaves barristers waiting months for complaints to be dealt with, potentially causing considerable distress and impacting on their professional lives.

35. The failure to meet the KPI for decisions on disposal is not a one off. The BSB has not been able to meet its 80% target in any of the quarters in 2020-2021, dipping to as low as 29% in both Q3 and Q4.¹⁹

36. The achievement of KPIs set for the BSB’s Authorisations, Exemptions and Waivers applications also remains low. In Q1 in 2021-2022 just 17.1% of applications were determined within six weeks of receipt of the application against a target of 75%. Just 52.3% of applications were determined within twelve weeks, against a target of 98%. Based on the previous four quarters, the percentages of KPIs met have either gone down or remained roughly the same. The KPIs were not met a single time in the previous four quarters, suggesting a more systemic issue.²⁰

37. While it is encouraging that the BSB has cleared its backlog in the Authorisations team, we urge the BSB to examine what factors caused the backlog and if there are systemic issues which need to be addressed. We are eager to hear

¹⁸ BSB Board meeting papers 23 September 2021

<https://www.barstandardsboard.org.uk/uploads/assets/149bc989-ccf4-4875-bfbc20500d4bc3f4/BSB-agenda-Part-1-211923.pdf>

¹⁹ Ibid

²⁰ Ibid

what the BSB plans to do to ensure the backlog does not grow again. The number of applications older than three months will rise if the KPIs are not consistently met.

38. Indeed, we consider a clear focus on delivering this core regulatory function ought to be one, if not the main, headline item in the three year strategy.

Maintaining and improving access to justice

39. We agree with this priority.

Enabling the benefits and mitigating the risks of innovation and technology

40. In its foreword, the BSB identifies that, *“the profession must now adapt to the growing use of technology in the delivery of its services to consumers and in its own working practices”*.

41. On page 4, it notes, *‘Technology and innovation have an important role in helping to deliver our regulatory objectives, especially around improving access to justice, and helping to deliver transparency for consumers to navigate legal services.’* However, the take up of new technology depends on individual barristers and chambers and cannot improve access to justice for the digitally excluded. Meanwhile funding pressures continue to increase the number of people who are forced to represent themselves’.

42. On pages 7 and 8, the report says it will, *“[build] a better understanding of how solicitors choose barristers on behalf of their clients, enabling the benefits and mitigating the risks of innovation and technology”*. It will *“[ensure] that barristers are trained to use technology effectively and, in particular, understand its implications for vulnerable clients and participants in the administration of justice”* and be *“ready to regulate the use of technology where necessary to protect the public interest while ensuring we do not create barriers to innovation, particularly that which allows greater access to legal services”*.

43. Whilst the Bar Council agrees that the profession must adapt to new technology and acknowledges the role of barristers and chambers in making this happen, we feel much has already been done by the Bar to embrace new technology, particularly around remote hearings. Also, although we commend the spirit of these endeavours, the BSB must consider whether matters such as regulation of technology is within its remit, and particularly what ‘regulation’ means in this context. The Bar Council recognises the need for regulation when it comes to proposals for the use of Artificial Intelligence and judicial analytics, which could potentially lead to rule of law issues such as so-called ‘robot judges’ and unaccountable judgements. But the BSB’s role is to regulate the Bar. Wider issues like this are for the government, not for the BSB.

44. The Bar Council recently responded to the Justice Select Committee's Inquiry into open justice – court reporting in the digital age. In that response, we said:

“In terms of ensuring greater transparency and accessibility for claimants, respondents (and defendants) and the legal profession, the Bar Council has expressed qualified support for remote hearings, when deployed correctly. In May 2021, the Bar Council was part of a Four Bars statement²¹ proposing that remote hearings be carefully considered before further rollout, because of the potential drawbacks including those relating to open justice.

In our Spending Review submission of September 2021²², the Bar Council asked that HMCTS improve the quality and availability of its data to aid open justice and transparency. We said:

“[The Bar Council welcomes] the June 2021 announcement that the National Archives will host a repository of judgements in an effort to make open justice a reality and allow monitoring of access to justice.²³ We also welcome HMCTS' attempts to engage with Dr Natalie Byrom's recommendations on the use of data.²⁴ We feel these and other projects and programmes designed to improve data collection and transparency should be adequately resourced by central government.”

We continue to stand by this assessment. This greater openness and transparency with regard to data would, theoretically, allow not just the media but the general public more access to information from the courts on cases. The Bar Council notes that, although HMCTS accepted the principles of Dr Byrom's recommendations for greater capture, publication and analysis of court data, there are still serious issues surrounding its availability and no progress against these proposals seems to have been made.”

45. The Bar Council also noted HMCTS' ongoing Publications & Information project (and has engaged in focus groups surrounding this project), which aims to support the delivery of its commitment to open justice and to modernise and improve public access to HMCTS information by publishing or displaying

²¹ <https://www.barcouncil.org.uk/resource/four-bars-statement-on-the-administration-of-justice-post-pandemic.html>

²² <https://www.barcouncil.org.uk/resource/bar-council-spending-review-submission-2021.html>

²³ <https://www.gov.uk/government/news/boost-for-open-justice-as-court-judgments-get-new-home>

²⁴ <https://www.gov.uk/government/news/hmcts-response-and-progress-update-on-dr-natalie-byrom-report>

court/tribunal information (such as court and tribunal lists), according to the relevant policy requirements and business rules. We said then, and continue to believe, that it is paramount that these objectives are put into practice.

Remote Juries

46. The Bar Council has said much about the rollout of remote hearings and particularly remote juries. Here, the Bar Council acknowledges the benefit of remote technology but has said, together with the Law Society, that remote juries would not be beneficial for the criminal justice system or the rule of law. In its briefing for MPs on Part 12, Clause 168 of the *Police, Crime, Sentencing and Courts Bill*,²⁵ the Bar Council said:

“The crucial concern for both the Bar Council and Law Society is access to justice. The impact of the proposed Clause 168 on access to justice is unclear and unproven, with very limited evidence of the effects a remote jury may bring. How jurors interpret body language and facial expressions can be key in a trial and it is simply not known what impact hearing a trial remotely would have in this area. This step should not be put into law without careful review and assessment. We also strongly echo the comments made by the Lord Chief Justice that remote juries would make the jury spectators rather than participants in a trial.²⁶”

For the reasons given above, The Bar Council and the Law Society oppose the use of remote juries. Further research and evaluation is required, and assurances around access to justice should be given before the use of remote juries is considered further. It would be far better for the Government to provide more appropriate facilities to enable criminal trials to take place in one properly equipped room.”

Promoting best practice in chambers’ oversight of standards and diversity

47. The Bar Council agrees that the BSB’s role is most appropriately focussed on upholding and increasing diversity through effective regulation.

²⁵ <https://www.barcouncil.org.uk/uploads/assets/91e75e09-336b-4f00-ba16baf568b78457/Bar-Council-Briefing-PCSC-Remote-Juries.pdf>

²⁶ BBC Radio 4, Law in Action (16 June 2020) “Reinventing the Law”
<https://www.bbc.co.uk/programmes/m000k2m4>

Question 4 – Do you agree that these are the key areas where the BSB needs to develop as an organisation?

48. Due to the fact it falls within the core function of the BSB, we strongly support its stated aim to ‘discharge efficiently, effectively and inclusively our own core functions of handling reports about barristers, supervising barristers and their chambers, setting and administering standards of qualification; and taking forward investigations and disciplinary cases’.

49. We are supportive of the BSB’s stated aim to bring to bear high order research and analytical skills, where such research and analysis assists the BSB in discharging its regulatory functions. It is also important that policy decisions are based on evidence.

50. We fully understand the BSB will not be able to carry out its regulatory functions without trained and experienced members of staff. However, we are concerned that, despite an increased number of staff in Regulatory Operations and Legal and Enforcement in the 2020-2021 period compared to 2019-2020,²⁷ the BSB was not able to meet its KPIs. As stated above, before recruiting new staff, we would expect the BSB to carefully evaluate the reasons backlogs can build up and to manage existing staff resources in foreseeable peak times (such as during the peak time for pupils to complete pupillage, the BSB Authorisations team have a lot more work to do during that period as they issue full qualification certificates).

51. We know from the BSB’s budget plans that it intends to recruit a considerable number of staff in the 2022-23 budget year, leading to significantly higher and ongoing staff costs. We don’t think the BSB has adequately thought through the recurring cost to the profession of the increased wage bills as well as the costs of recruiting, training and supporting them. This will result in an above inflation increase to the budget and consequently, to the Practising Certificate Fee level borne by barristers. In the draft strategy the BSB says at footnote seven that,

“In the first quarter of 2021/22 reports on barristers were running at four times the level of the first quarter of the previous year”

52. Yet in the budget consultation, the BSB states that in the second quarter the number had reduced, to represent double the level. We think this undermines some of the rationale for the proposed budget increase. We do not support such costly plans, especially when we think that justification for them is lacking.

²⁷ BSB 2019-2020 Annual Report <https://www.barstandardsboard.org.uk/uploads/assets/3e1a2944-ea6f-4e5f-ac471892911f2872/BSB-Annual-Report-2019-2020.pdf> and BSB 2020-2021 Annual Report <https://www.barstandardsboard.org.uk/uploads/assets/82b55d8d-bf7c-4438-9de1371f0db9cf63/BSB-Annual-report-2020-2021.pdf>

53. We support the BSB's stated aim to manage its flows of work and improving efficiency, effectiveness and customer service. We note that in 2019, the BSB introduced a new team, the Contact and Assessment Team (CAT) to better manage flows of work and are interested to hear more from the BSB as to how CAT has improved efficiency within the organisation.

54. We endorse the BSB's efforts to be a diverse and inclusive organisation, and its efforts to understand the equality impacts of its policies, services and interventions.

55. We fully encourage the BSB's effective and speedy handling of complaints and support investment in this. The Bar Council agrees that the BSB should police minimum standards and ensure effective enforcement. We welcome the BSB carrying out Equality Impact Assessments (EIAs) where ethnic minorities are more likely to be the subject of a complaint and investigating situations in which women are more likely to bring a bullying, discrimination and harassment complaint.

56. The BSB acknowledged in its September Board papers that the Internal Governance Rules (IGRs) established in 2020 are working:

"We have considered whether the current arrangements for separation and regulatory independence are as effective as is reasonably practicable. We can confirm that during the first year of operation the current arrangements have not impaired the independence of BSB's decision-making."

57. We therefore do not understand the rationale for wishing to consider their status as a separate corporate body. We disagree with their inclusion of a sizable sum in the budget for a legal fee to examine how to separate in this way. Where they are failing to meet their core regulatory duties, spending any time looking at organisational change is an inappropriate use of time and resources. To separate in this way would be hugely costly and complex and we do not support it. It should be noted that it took the Law Society and SRA years to achieve the current set up.

Question 5- Are there any particular areas on which we might collaborate with you, or with others, to further the priorities set out above?

58. We value the BSB's general approach in which it regularly publicises its work, research and KPIs and consults on new initiatives. This allows us to input with our knowledge and experience where relevant. It is particularly important to share plans in areas where there is a risk of duplication such as equality and diversity or where BSB requires the profession takes action and needs Bar Council/others to support this

e.g. training on anti-racism. We find it useful to see the BSB's data and see that it has referenced some of our recent pieces of research in its strategy. This approach enables us to learn from one another's work and to base policy decisions and work on evidence. Both organisations regularly commission, conduct and publish their research so collaboration is already being achieved to a large extent.

59. We are keen to contribute to ongoing projects such as the early years review, the BSB Handbook review, ongoing competence as well as pilots being undertaken in some policy areas.

60. We welcome the BSB's stated intention to collaborate with respect to promotion of equality on the basis outlined in question two. Key to the success of this is greater clarity on roles and an understanding of which stakeholders are best placed to do which job. We think the BSB's role in the promotion of diversity is through the levers of regulation.

Question 6- Have you identified any risks or opportunities in relation to promoting equality, diversity and inclusion for the profession or the public?

61. There is an opportunity to monitor the risk that ethnic minorities are more likely to be the subject of a complaint. It is also important to ensure, in so far as this falls within the scope of regulation, that those with a reasonable chance of pursuing a career at the Bar pay reasonable costs for that training, so as to prevent those with the necessary skills and aptitude from being financially excluded from participating in training as barristers.

Bar Council

10 December 2021

For further information please contact

Sarah Richardson, Head of Policy, Regulatory Matters, Ethics and Law Reform

The General Council of the Bar of England and Wales

289-293 High Holborn, London WC1V 7HZ

0207 242 0082

SRichardson@barcouncil.org.uk