



REGULATING BARRISTERS

**Meeting of the Bar Standards Board  
Thursday 31 October 2019, 5.00 pm**

**Wolfson Room, Royal College of Radiologists 63 Lincoln's Inn Fields,  
Holborn, London WC2A 3JW**

**Agenda - Part 1 – Public**

				<b>Page</b>
1.	<b>Welcome / announcements (5.00 pm)</b>		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of Part 1 (public) minutes</b>			
	• 26 September 2019	Annex A	Chair	<b>3-5</b>
5.	a) <b>Matters arising and action points</b>	Annex B	Chair	<b>7</b>
	b) <b>Forward agenda</b>	Annex C	Chair	<b>9</b>
6.	<b>Proposed Amendments to the BSB Constitution (5.05 pm)</b>	BSB 038 (19)	Vanessa Davies	<b>11-30</b>
7.	<b>GRA Annual Report 2019 (5.20 pm)</b>	BSB 039 (19)	Nicola Sawford	<b>31-35</b>
8.	<b>PRP Committee Mid-Year Report (5.35 pm)</b>	BSB 040 (19)	Andrew Mitchell QC	<b>37-43</b>
9.	<b>Approval of Inns Conduct Committee Practice and Procedure Rules (5.45 pm)</b>	BSB 041 (19)	Chris Young	<b>45-68</b>
10.	<b>Chair's Report on Visits and External Meetings from October 2019 (*)</b>	BSB 042 (19)	Chair	<b>69</b>
11.	<b>Any other business (5.55 pm)</b>			
12.	<b>Dates of next meetings</b>			
	• Thursday 28 November 2019, etc venues, Hatton Garden (Joint Board to Board meeting with LSB and Board Away Day)			
	• Thursday 30 January 2020, BSB offices, (Board Meeting)			
13.	<b>Private Session</b>			

**John Picken, Governance Officer**  
24 October 2019

*\*Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](#) before the meeting.*



<p style="text-align: center;">BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

**Part 1 - Public****Minutes of the Bar Standards Board meeting**

Thursday 26 September 2019, Room 1.1, First Floor

289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Baroness Tessa Blackstone (Chair)  
Naomi Ellenbogen QC (Vice Chair)  
Alison Alden OBE  
Aidan Christie QC  
Steven Haines  
Zoe McLeod  
Andrew Mitchell QC  
Elizabeth Prochaska (items 6 - 10)  
Irena Sabic  
Nicola Sawford – by phone (part of meeting)  
Adam Solomon QC  
Kathryn Stone OBE  
Leslie Thomas QC  
Stephen Thornton CBE
- By invitation:** Malcolm Cree CBE (Chief Executive, Bar Council)  
Amanda Pinto QC (Vice Chair, Bar Council)  
James Wakefield (Director, COIC)
- BSB Executive in attendance:** Jake Armes (Policy and Projects Officer)  
Vanessa Davies (Director General)  
Sara Jagger (Director of Professional Conduct)  
Andrew Lamberti (Communications Manager)  
Ewen Macleod (Director of Strategy and Policy)  
Robert Pasescu (Corporate Risk & Assurance Officer)  
John Picken (Governance Officer)  
Irfaan Shaikh (Business and Performance Officer)  
Wilf White (Director of Communications and Public Engagement)
- Resource Group:** Richard Cullen (Director of Finance)
- Press:** Jemma Slingo (Law Society Gazette)

**Item 1 – Welcome**

1. The Chair welcomed Members and guests. She noted that this would be the last Board meeting for Aidan Christie QC as he will stand down from the Board on 15 October 2019 when he becomes Chair of the BSB's Independent Decision Making Body (IDB). She thanked him for his exemplary service both on the Board and the Professional Conduct Committee.
2. She also noted that Mark Hatcher will leave the Bar Council on 31 October 2019. She thanked him for his previous support and wished him well for the future.

3. **Item 2 – Apologies**

- Lara Fielden
- Richard Atkins QC (Chair, Bar Council)
- Grant Warnsby (Treasurer, Bar Council)
- Mark Hatcher (Special Adviser to the Chair of the Bar Council)
- Rebecca Forbes (Head of Governance & Corporate Services)
- Oliver Hanmer (Director of Regulatory Assurance)

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

4. None

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

5. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 18 July 2019.

**Item 5a – Matters arising and action points (Annex B)**

6. The Board noted the updates to the action list.

**Item 5b – Forward Agenda (Annex C)**

7. Members noted the forward agenda list.

**Item 6 – Regulatory Operations**8. a) **Regulatory Operations progress update**

BSB 030 (19)

- (i) Sara Jagger summarised progress to date on the Regulatory Operations programme and gratefully acknowledged the commitment of staff in preparing for this new way of working. There are some residual risks concerning the new case management system but the project remains on track for launch on 15 October 2019.

(ii) **AGREED**

to note the report.

b) **Amendment to Standing Orders**

BSB 031 (19)

- (i) Sara Jagger explained the decision of the Legal Services Board regarding our rule change application for the Enforcement Decision Regulations. This was approved subject to the incorporation of rules on composition and procedures of Independent Decision Panels (currently located in Part 6A of the Standing Orders). An amendment to the Standing Orders is therefore required to avoid duplication.

(ii) **AGREED**

to delete Part 6A (Proceedings of Independent Decision -Making Panels) from the BSB Standing Orders October 2019.

RF

c) **Amendment to Scheme of Delegations to give effect to the Regulatory Operations Programme**

BSB 032 (19)

*Note: the Board received a tabled paper in respect of this item. This made some corrections to the version of the Scheme of Delegations originally circulated with agenda papers. It also included an additional delegation for rE4 of the Enforcement Decision Regulations about referrals to the Legal Ombudsman.*

## Part 1 - Public

- (i) Sara Jagger advised that amendments to the Scheme of Delegations are required to appropriately govern the regulatory changes coming into force on 15 October 2019. Powers currently delegated by the Professional Conduct Committee (PCC) will similarly be delegated by the Commissioner once the PCC is disestablished.
- (ii) There is a separate issue around authorisation of delegations. Previously a signature from the Chair (or the person sub-delegating the power) has been required to put delegations into effect. It would be simpler, however, if we relied on an appropriate entry in the minutes to achieve this.
- (iii) **AGREED**  
to approve the new Scheme of Delegations, incorporating the corrections and additional delegation set out in the tabled paper, and that in future the minutes of Board meetings be viewed as the source of authorisation, rather than signed approval statements.

RF

**Item 7 - Chair's report on visits and external meetings from September 2019**

BSB 033 (19)

9. The Board **noted** the report.

**Item 8 – Any Other Business**

10. None.

**Item 10 – Date of next meeting**

11. Thursday 31 October, Royal College of Radiologists, 63 Lincoln's Inn Fields, Holborn, London WC2A 3JW.

**Item 11 – Private Session**

12. The following motion, proposed by the Chair and duly seconded, was agreed.  
That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 18 July 2019;
  - (2) Matters arising and action points – Part 2;
  - (3) Budget Bid – 2020/21 financial year;
  - (4) Consolidated Risk Report;
  - (5) Internal Governance Rules (IGRs);
  - (6) CMA / Legal Choices
  - (7) Director General's Quarterly Strategic Update – September 2019
  - (8) Any other private business;
    - update on recruitment of Director General.
13. The meeting finished at 5.25 pm.



## BSB – List of Part 1 Actions

31 October 2019

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
8b (ii) (26/09/19)	delete Part 6A (Proceedings of Independent Decision -Making Panels) from the BSB Standing Orders October 2019	Rebecca Forbes	before 12 October 2019	14/10/19	<b>Completed</b> – revised Standing Orders published on 15 October (date of effect)
8c (iii) (26/09/19)	publish the new Scheme of Delegations, incorporating the corrections and additional delegation set out in the paper tabled at the September meeting	Rebecca Forbes	before 12 October 2019	14/10/19	<b>Completed</b> – revisions set out in Addendum to Board paper made and revised Scheme of Delegations published on 15 October (date of effect)





### Forward Agendas

#### **Thursday 28 Nov 19 (BOARD AWAY DAY – inc. Joint Meeting with the LSB 1.00 pm – 2.30 pm)**

- Handbook Review – emerging findings
- Risk appetite – access to justice / diversity in the profession

#### **Thursday 30 Jan 20**

- 2018/19 Enforcement Report (summary)
- Annual Diversity Data Report
- CPD evaluation report
- Handbook review proposals
- Mandating the timetable for pupillage recruitment
- Strategic update from the Director General
- Corporate Risk Report (summary)
- Amendments to governance documents for compliance with changed IGRs
- IGRs – LSB progress update
- The qualified person and three year rule review

#### **Thursday 26 Mar 20**

- Business Plan 2020/21
- Strategic update from the Director General
- Consolidated Risk Report
- Agree scope of Handbook review
- IGRs – waiver applications

#### **Thursday 21 May 20**

- PRP Year end performance report
- IGRs – certificate of compliance

#### **Tuesday 7 July (Joint meeting with the OLC 11.30 am – 1.00 pm)**

#### **Thursday 16 July 20 (BOARD AWAY DAY)**

#### **Thursday 24 September 20 (*inc. Joint Meeting with the LSB 3.30 pm – 5.00 pm, pending confirmation with LSB*)**

- Budget 2021/22
- Corporate Risk Report (summary)

#### **Thursday 26 November 20**

- PRP mid year performance report
- GRA Annual Report
- Consolidated Risk Report

#### **Thursday 28 January 21**

- Corporate Risk Report (summary)

#### **Thursday 25 March 21**

- Consolidated Risk Report



## Part 1 – Public

<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 October 2019
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<b>Title:</b>	Proposed Amendments to the BSB Constitution
<b>Author:</b>	Rebecca Forbes
<b>Post:</b>	Head of Governance and Corporate Services

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion:</b> <input checked="" type="checkbox"/>	<b>Noting:</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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**Recommendation**

1. In advance of the Bar Standards Board having the authority to make and amend its own Constitution, the Board is asked to **approve in principle** the proposed amendments to the BSB Constitution at Annex A.

**Executive Summary**

2. The LSB's publication of new Internal Governance Rules (IGRs) effective from July 2019 require the regulatory body to have control over its own Constitution. The meeting of the Bar Council on 2 November 2019 will consider a recommendation that the Bar Council Constitution be amended to grant the BSB the authority to make its own Constitution. This is necessary for compliance with the new IGRs.
3. As agreed by the Board in private session at its last meeting, we have consulted with the Bar Council (through its General Management Committee) on our proposed amendments to the BSB Constitution. No changes are proposed to our original amendments as a result of that consultation.
4. The Board is now asked to approve these amendments to the BSB Constitution. This will be approval in principle pending the decision of the Bar Council meeting on 2 November 2019 following which the BSB will have the authority to make its own Constitution.
5. The attached substantive Board paper summarises at a high level what we have proposed and our rationale, whilst Annex A sets out the exact detail of the proposals. The paper repeats some of the rationale considered by the Board in private session in September, for the record in public session.

**Risk**

6. The constitutional amendments have been proposed primarily to reflect the IGRs 2019, which the BSB and the Bar Council are required to comply with under the LSA 2007. If the Board does not approve the proposed amendments, this may risk non-compliance with the IGRs.

**Resources (Finance, IT, HR)**

7. It is not anticipated that the proposed amendments to the BSB Constitution will have any significant impact on Finance, IT and HR. There will be some positive impacts on our governance processes, through the streamlining of panels and processes for the appointment of Board members.

**Equality & Diversity**

8. It is not anticipated that the proposed amendments to the BSB Constitution will have any impact on any group with protected characteristics under the Equality Act 2010.

## Proposed Amendments to the BSB Constitution

### Introduction

1. Paragraph 1(f) of the Constitution of the General Council of the Bar (the Bar Council) currently states that it is “to create a board, to be known as the Bar Standards Board, to discharge its regulatory functions. The Bar Standards Board shall be constituted in accordance with such constitution as the Bar Council shall from time to time determine”. To date it has therefore been for the Bar Council to make and amend the BSB Constitution.
2. The LSB has published new Internal Governance Rules (IGRs) effective from July 2019. Rule 4 of the IGRs 2019 (regulatory autonomy) states that “the regulatory body must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles. In particular, the regulatory body must determine its own *governance* [emphasis added], structure, priorities and strategy”. The statutory guidance on the IGRs clarifies that “determining its own governance and structure essentially requires that the regulatory body has control over its own constitution”.
3. At its meeting on 2 November, the Bar Council will therefore consider a recommendation that the Bar Council Constitution be amended to grant the BSB the authority to make its own Constitution.
4. The Board had given the Director General a mandate to consult the Bar Council on the proposed amendments to the BSB Constitution (set out in Annex A). We have undertaken that consultation and understand the Bar Council are satisfied that the Board’s proposals both comply with the IGRs and accord with the changes it intends making to its own constitutional arrangements. The Bar Council has not raised any issues about our proposed amendments nor put forward any requests for revision.
5. The Board is now asked to agree the amendments to the BSB Constitution, pending the Bar Council meeting on 2 November 2019 and following which the BSB will have the authority to make its own Constitution. The new BSB Constitution will then take effect immediately, ie with effect from 2 November 2019.
6. The constitutional amendments at Annex A have been proposed primarily to comply with and reflect the IGRs 2019, but also to:
  - Enshrine existing custom and practice;
  - Provide additional clarification and simplify language where necessary;
  - Remove constitutional requirements where they are provided for elsewhere; and
  - Ensure that constitutional requirements are proportionate to need.

### Key proposed amendments to the BSB Constitution

7. Full details of the proposed amendments to the BSB Constitution can be found in Annex A. The key proposed amendments are as follows (using the revised numbering of Annex A):
8. References to the principle of regulatory independence (as defined in Rule 1 of the IGRs 2009) have either been removed, or replaced with a reference to the new overarching duty (Rule 1 of the IGRs 2019). This is because the defined principle of regulatory independence i.e. *that representative functions must not exert, or be permitted to exert, undue influence or control over regulatory functions* has been removed from the IGRs 2019, and replaced with the new overarching duty to ensure that the exercise of regulatory functions is not *prejudiced* by representative functions.

9. Paragraph E of the preamble has been amended to reflect that by the authority delegated under the Bar Council Constitution, the BSB now makes its own Constitution.
10. A number of amendments are purely to reflect verbatim the wording of the new IGRs, and we have not repeated the rationale for those changes throughout the body of this paper.
11. Paragraph 15(4) has been added to create a power for the BSB “to appoint a Director General or other principal administrative officer and such other administrative officers for such periods and on such terms as it thinks fit”. This ensures regulatory autonomy in the appointment of the Director General. Paragraph 15(5) also now includes a power for the BSB to delegate any of its functions to “a Director General or other principal administrative officer” and, in turn, enable sub-delegation by the Director General.
12. Paragraph 19 has been deleted: this enshrined in the Constitution the right for the Chair and CEO of the Bar Council and a nominee of COIC to attend and speak at any public meeting of the Board. We do not consider it necessary that this be enshrined constitutionally – by virtue of being in public session, we would not usually ask any person to leave. It is our intention that this be retained in the Board’s Standing Orders. It remains at the Chair’s discretion to allow any person in attendance to speak.
13. Paragraph 20 – “this Constitution may be amended or revoked by the Bar Council only after consulting the BSB” – has been replaced with the following text: “this Constitution may be amended or revoked by resolution of the Bar Standards Board only after consulting the Bar Council”. This reflects the principle that as the BSB is the body established to discharge the regulatory functions of the Bar Council, the BSB should only change its Constitution after consulting the Bar Council.

#### *Schedule A*

14. We have amended references to “the Panel” to “a Panel” as Panels are now convened as needed for each recruitment and the composition differs for the appointments of the Chair and other Board members. This contrasts with the previous arrangements (changed when the Bar Council agreed to amend the BSB Constitution last November) whereby a Standing Panel was constituted and that same Panel considered appointments of the Chair and other Board members.
15. Paragraph A2(2) has been removed to reflect that the Chair of the Bar Council will no longer be a member of the Panel for the appointment of the BSB Chair. This is in accordance with Rule 8 of the IGRs 2019 (the regulatory board: appointments and terminations). A similar amendment has been made to the composition of the panel for the appointment of other Board members.
16. Paragraph A2(3) has been amended so that for the appointment of the BSB Chair, the Board shall nominate two members of the BSB Board to be members of the Panel, one of whom must be a practising barrister and one of whom must be a lay person. Nomination by the Board as a whole is so that the Chair does not nominate the Board members who sit on the Panel to consider their own reappointment. It is also now necessary for the BSB Board to (1) nominate two members instead of one to replace the Chair of the Bar Council (who will no longer be a member of the Panel), and (2) nominate a practising barrister as the other three members of the Panel will all be lay persons (or deemed to be neither lay nor barrister in the case of the nominee of the Lord Chief Justice).

17. Paragraph A3(3) has been similarly amended save that it is the BSB Chair who shall nominate two members of the BSB Board to be members of a Panel, and there is no requirement that one of these must be a practising barrister and one must be a lay member. The Chair of the BSB and the lay independent member ensure that a Panel will have at least equal numbers of lay and barrister members even if the Chair appoints two barrister members.
18. Paragraph A3(5) stated that one of the members identified in paragraphs A3(2), A3(3) or A3(4) shall be Chair of the Panel for the appointment of other BSB Board members. This has been removed as paragraph A3(2) now states that the BSB Chair shall be the Chair of a Panel.
19. Paragraphs A5 and A6 set out that the nominee of the Lord Chief Justice and the lay members were appointed and reappointed for three-year terms. These provisions have been deleted, as we no longer constitute a Standing Appointments Panel, rather convene a panel as needed for each recruitment.
20. Paragraph A20 stated that “with the exception of the Chair of the BSB, casual vacancies may be filled by the BSB...”. This has been amended to include the Vice Chair in addition to the Chair, in light of the enhanced responsibilities and remuneration compared to other Board members.
21. Paragraph A22(5) stated that “a person shall cease to be a BSB member if they fail to attend four or more meetings in any one year and the BSB resolves that they should cease to be a member”. This has been amended to “if they fail to attend meetings with sufficient frequency and regularity to be able to discharge their duties”, to be more outcomes-focused and proportionate given the reduced number of Board meetings. However, a person would still only cease to be a BSB Board member under this provision should the BSB resolve as such. We propose to amend terms of appointment to clarify that in usual circumstances, absence from three meetings in a twelve-month period will prompt notification to the Chair.
22. Paragraph A22(6) stated that “a person shall cease to be a BSB member if the BSB resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise), and obtains the concurrence of the Legal Services Board to the dismissal”. The reference to obtaining the concurrence of the LSB has been removed, (i) as this is not required under the IGRs 2019 or otherwise, and (ii) to reflect the principle set out in IGR 8 (the regulatory board: appointments and terminations) that the BSB Board should be responsible for dismissals.

#### *Schedule B*

23. Paragraph B3 set out “the regulatory functions of the Bar Council”, but this was a limited list which did not (i) refer to section 21 of the LSA 2007 (which defines ‘regulatory arrangements’), or (ii) correspond with the list of the Bar Council’s regulatory functions in paragraphs 1(d) and (e) of its current Constitution. Paragraph B3 has therefore been amended to refer to “the regulatory functions of the BSB”, refer to section 21 of the LSA 2007 and correspond with the list of the Bar Council’s regulatory functions in paragraphs 1(d) and (e) of its current Constitution. We understand that the amendments to the Bar Council Constitution being considered on 2 November include removal of this list. The proposed amendments to the Bar Council Constitution suggest that it instead state, “Functions and powers of the Bar Standards Board are set out fully in its constitution”. However, we recommend retention of this list in the BSB Constitution on the basis that it is desirable for the profession and the public to have greater clarity on the activities which constitute the BSB’s regulatory functions.

**Annexes**

Annex A - proposed amendments to the BSB Constitution

Joseph Bailey  
Senior Policy Officer

Rebecca Forbes  
Head of Governance and Corporate Services

Dr Vanessa Davies  
Director General



**Constitution of the Bar Standards Board**  
***as amended 32 November 2018/2019***

**PREAMBLE**

- A. The General Council of the Bar (Bar Council) is an approved regulator for the purposes of the Legal Services Act 2007.
- B. The Bar Council has established the Bar Standards Board ("the BSB") to exercise the regulatory functions of the Bar Council.
- C. The Bar Council has delegated the discharge of its regulatory functions to the BSB in compliance with Section 28 of the Legal Services Act 2007. This is in accordance with the overarching duty set out in Rule 1 of the Internal Governance Rules 2019, under which tThe Bar Council is required~~wishes~~ to have in place arrangements which ~~observe and respect the principle of regulatory independence (as defined in rule 1 of the Internal Governance Rules 2009), i.e. the principle that structures or persons with representative functions must not exert, or be permitted to exert, undue influence or control over the performance of regulatory functions, or any person(s) discharging those functions.~~ensure that the exercise of its regulatory functions is not prejudiced by its representative functions. In particular, the Bar Council must have arrangements in place to separate its regulatory functions from its representative functions and to maintain the independence of its regulatory functions as effectively as is reasonably practicable and consistent with Section 28 of the Legal Services Act 2007.
- C.D. ~~The Bar Council must at all times act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle.~~
- D.E. Accordingly, and by the authority delegated under paragraph 1(f) of the ~~Constitution of the Bar Council~~ Constitution, the ~~Bar Council~~ BSB makes the following Constitution ~~for the BSB.~~

## CONSTITUTION

### The BSB

1. The BSB is the ~~regulatory arm of the Bar Council~~body established to discharge the regulatory functions of the General Council of the Bar. It has no separate legal personality.

### Membership of the BSB

2. The BSB shall consist of between eleven and fifteen members (including a Chair and a Vice Chair) who shall be appointed and hold office in accordance with the provisions of Schedule A to this Constitution.
3. The members of the BSB shall consist of:
  - (1) no fewer than five, and no more than seven, practising barristers who are not members of the Bar Council.
  - (2) no fewer than six, and no more than eight, lay persons.
  - (3) a Chair who shall be one of the members in (2) above.
  - (4) and the number of lay members of the Board shall at all times (other than when there is a casual vacancy) be one more than the number of barrister members.

### Functions of the BSB

4. The BSB is responsible for performing all regulatory functions of the Bar Council as defined in section 27(1) of the Legal Services Act 2007. These regulatory functions have been delegated to the BSB in entirety.
5. The BSB is responsible for determining any question whether a matter involves the exercise of a regulatory function.
- 5-6. The BSB must independently determine the most appropriate and effective way of discharging its functions in a way which is compatible with the regulatory objectives and having regard to the better regulation principles.
- 6-7. The BSB has no representative functions as defined in section 27(2) of the Legal Services Act 2007.

**Duties of the BSB**

~~7.8.~~ The BSB must act in a way which is compatible with the ~~obligations imposed on the Bar Council or its delegate by the~~ Legal Services Act 2007 or ~~by~~ with any other law relating to the exercise ~~by the Bar Council or its delegate~~ of its regulatory functions.

~~8.9.~~ The BSB must, so far as is reasonably practicable, act in a way:

- (1) which is compatible with the regulatory objectives defined in section 1 of the Legal Services Act 2007; and
- (2) which the BSB considers most appropriate for the purpose of meeting those objectives.

~~9.10.~~ ~~The BSB must at all times act in a way which is compatible with the principle of regulatory independence and which it considers most appropriate for the purpose of meeting that principle.~~

~~10.11.~~ The BSB must have regard to:

- (1) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
- (2) any other principle appearing to it to represent best regulatory practice;
- (3) any guidance issued by the Legal Services Board in accordance with~~under~~ rule ~~44-15~~ 14-15 of the Internal Governance Rules ~~2009~~ 2019; and
- (4) the responsibilities and legitimate interests of the Bar Council as an approved regulator for the purposes of the Legal Services Act 2007, including the Bar Council's responsibility to be assured of the BSB's compliance with section 28 of the Legal Services Act 2007 or as otherwise required by law. ~~responsibility for oversight and monitoring of the BSB (in a manner consistent with the provisions of and made under the Legal Services Act 2007).~~

~~11.12.~~ The BSB must:

- (1) Supervise and monitor the work and conduct of any committee or other body or person referred to in paragraph [~~14~~15](3) below.

Part 1 - Public

- (2) Monitor and ensure the just operation of disciplinary tribunals and any other panels assigned to determine (whether at first instance or on appeal) any issues as to the conduct of individual barristers.
- (3) Monitor and ensure the just operation of fitness to practise panels assigned to determine (whether at first instance or on appeal) any issues as to the medical fitness of individual barristers.
- (4) Ensure that equality of opportunity and diversity issues are taken into account in respect of regulatory functions in accordance with the Equality Act 2010 and other relevant legislation.
- (5) Liaise as it considers necessary or appropriate with the Bar Council and its committees, the Council of the Inns of Court, the judiciary, and such other bodies or persons as it may consider necessary or appropriate.
- (6) Prepare and keep under review a plan for the development and effective discharge of ~~the its~~ regulatory functions ~~of the Bar Council~~.
- ~~(7) In connection with all matters concerning the financial and other resources provided to the BSB by the Bar Council:~~
- ~~(8)(7) co-operate with the Bar Council; and~~ Only agree to share a service with the Bar Council if it agrees that (i) it will not undermine, and could not reasonably be seen to undermine, the separation of regulatory and representative functions, (ii) it is effective and appropriate for the BSB to discharge its regulatory functions, and (iii) it is necessary to be efficient and reasonably cost-effective.
- ~~(9)(8)~~ Comply with the relevant procedures and requirements of the Standing Orders for joint Committees of the Bar Council of England and Wales and the Bar Standards Board.
- ~~(10)(9) In connection with the oversight and monitoring of the BSB by the Bar Council~~ Provide sufficient information to the Bar Council as is reasonably required for the Bar Council to be assured of the BSB's compliance with Section 28 of the Legal Services Act 2007.:
  - ~~(a) co-operate with the Bar Council; and~~
  - ~~(b) provide to the Bar Council all information and documents which it may reasonably request.~~

~~(11)~~(10) Prepare-Publish an annual report ~~to the Bar Council~~ on its work ~~for publication~~.

~~12~~13. The BSB must act in accordance with the Seven Principles of Public Life (set out in Schedule B to this Constitution) at all times and, in particular, when appointing, or making arrangements for the appointment of, the members of any committee or other body or person established under paragraph ~~15~~4(3) below.

### **Powers of the BSB**

~~13~~14. The BSB shall have power to do all things calculated to facilitate, or incidental or conducive to, the performance of its functions or duties. This includes, but is not limited to, power to do the things set out in paragraphs ~~15~~4 and ~~16~~5 below.

~~14~~15. The BSB shall have power:

- (1) To regulate its own procedure and make its Constitution.
- (2) To make such rules and/or arrangements as it considers necessary or appropriate.
- (3) To establish, and regulate the procedure of, such committees, panels (including advisory panels, whether representing consumer interests or otherwise), decision-making panels, and other bodies as it considers necessary or appropriate to enable it to discharge any of its functions or duties.

(4) To appoint a Director General or other principal administrative officer and such other administrative officers for such periods and on such terms as it thinks fit.

~~(4)~~(5) If, and on such terms as, it considers necessary or appropriate to enable it to discharge any of its functions, to delegate any of its functions to (or make or approve any arrangements for the delegation of those functions by):

(a) any committee, panel or other body established under paragraph ~~15~~4(3) above; or

~~(a)~~(b) a Director General or other principal administrative officer; or

~~(b)~~(c) any other person or body.

~~(5)~~(6) To invite any person to attend any meeting of the BSB in an advisory or consultative capacity.

~~15.16. The BSB (and any of its members or any other person involved in the exercise of the Bar Council's regulatory functions):~~

- ~~(1) may make representations to, be consulted by and enter into communications with any person(s) appearing to it to be relevant to its functions; and~~
- ~~(2) may notify the Legal Services Board where it considers that its independence or effectiveness is being prejudiced.~~

### **Proceedings of the BSB**

17. The quorum of any meeting of the BSB shall be five members, of whom at least three must be lay persons and at least two must be practising barristers.

18. The validity of any act of the BSB is not affected:

- (1) by a vacancy in the office of Chair or amongst the other members; or
- (2) by a defect in the appointment or any disqualification of a person as Chair, or another member, of the BSB.

~~19. Unless the BSB resolves that any meeting should be held in private:~~

- ~~(1) the Chair and CEO of the Bar Council (or alternates with prior notice) and/or any person or persons nominated by the Chair of the Bar Council (subject to prior notice); and~~
  - ~~(2) a person nominated by the President of the Council of the Inns of Court~~
- ~~shall be entitled to attend and speak (but not vote) at any meeting of the BSB.~~

### **Definitions**

~~20.19.~~ In this Constitution and in the Schedules hereto, the terms listed in Schedule B shall have the meaning there set out.

### **Amendments to the Constitution**

~~21.20.~~ This Constitution may be amended or revoked by resolution of the Bar Standards Board ~~Bar Council~~ only after consulting the ~~BSB~~ Bar Council.

## Schedule A to the Constitution of the Bar Standards Board

## Appointments to the BSB

- A1. The BSB shall convene an Appointments Panel ("~~the~~ Panel"), which shall be responsible for appointing members of the BSB, as required for each recruitment.
- A2. ~~For the appointment of the Chair, the~~ Panel shall consist of:
- (1) A member of the judiciary nominated by the Lord Chief Justice.
  - (2) ~~The Chair of the Bar Council, ex officio.~~
  - (3) ~~A~~Two Board members s nominated by ~~the Chair of the BSB, in consultation with the Board,~~ one of whom must be a practising barrister and one of whom must be a lay person.
  - (4) A member who is a lay person independent of the Bar Council and the BSB, with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office. This member shall be the Chair of the Panel and shall be appointed by the BSB ~~in consultation with the Bar Council.~~
- A3. For the appointment of Board members other than the Chair, ~~the~~ Panel shall consist of:
- (1) ~~The Chair of the Bar Council, ex officio.~~
  - (2) The Chair of the BSB, *ex officio*, who shall be the Chair of the Panel.
  - (3) ~~Two~~A Board members s nominated by the Chair of the BSB.
  - (4) A member who is a lay person independent of the Bar Council and the BSB, with knowledge of the Governance Code on Public Appointments, or similar skills and experience in best practice in recruitment to public office. This member shall be appointed by the BSB ~~in consultation with the Bar Council.~~
  - (5) ~~One of the members identified in A3 (2), (3) or (4) shall be the Chair of the Panel.~~
- A4. ~~The~~A Panel must be convened with equal numbers of lay members and barrister members, or with a majority of lay members. For the purposes of ~~the~~ Panel convened

## Part 1 - Public

at A2, the nominee of the Lord Chief Justice will not be considered to be either a lay member or a barrister member.

- A5. ~~The nominee of the Lord Chief Justice and the lay members appointed under A2 (4) and A3 (4) will be appointed for a period not exceeding three years. If such period expires during an appointments round, the person will remain a member of the Panel until the end of that round.~~
- A6. ~~Appointments of the nominee of the Lord Chief Justice and the lay members appointed under A2 (4) and A3 (4) may be renewed once, for a further fixed period not exceeding three years.~~
- A7. The ~~Chair of the Bar Council and the~~ Chair of the BSB may nominate an ~~alternates~~ to take their place, ~~and the Lord Chief Justice may nominate an alternate who is entitled to take the place of their nominated member,~~ for any Appointments Panel convened which ~~the member is~~ they are unable to attend.

### Proceedings of the Panel

- A8. The quorum for a meeting of ~~thea~~ Panel shall be three members.
- A9. The Chair of the BSB may not take part in any discussion or decision of ~~thea~~ Panel relating to any appointment to that office.
- A10. Matters requiring a vote by ~~thea~~ Panel shall be decided by a simple majority of votes cast by the members present. In the case of a tie, the Chair of the Panel shall have a second, deciding vote.
- A11. In carrying out their functions, members of ~~thea~~ Panel:
- ~~(1) are under a duty to protect and promote the principle of regulatory independence; and~~
- ~~(2)~~(1) must act:
- (a) in the best interests of the proper exercise of the ~~Bar Council~~ BSB's regulatory functions; and
  - (b) in accordance with the Seven Principles of Public Life (set out in Schedule B to this Constitution) and should take account of best practice for public appointments, including in particular the Governance Code on Public Appointments.



### Procedure for Appointments

- A12. Subject to paragraphs A18 and A19 below, all appointments by ~~the~~a Panel shall be made by way of open competition, and appropriate arrangements shall be made, including advertisements in relevant publications, to ensure that suitably qualified persons have the opportunity to put their names forward to consideration for appointment.
- A13. In appointing members of the BSB, ~~the~~a Panel shall have regard to the desirability of ~~securing that~~ the BSB including members who (between them) have experience in or knowledge of an appropriate range of relevant fields and any particular requirements identified by the BSB.
- A14. ~~The BSB must report to the Bar Council the name of any person whom it has appointed at the first meeting of the Bar Council after the appointment has been made.~~

### Criteria for Appointment

- A15. The competencies required of BSB members shall be those as agreed from time to time by the BSB ~~in consultation with the Bar Council~~.
- A16. A member of the Bar Council or any of its representative committees may not hold office as a member of the BSB. A person who has been responsible for a representative function shall not thereby be ineligible for appointment as a member of the BSB, but, in considering whether to appoint any such person to the BSB, ~~the~~a Panel shall take account of their responsibility for a representative function, when that responsibility ended and any implications for the observance of the ~~principle of regulatory independence~~overarching duty and prohibition on dual roles as set out in the Internal Governance Rules 2019.

### Length of Appointments

- A17. All appointments made by ~~the~~a Panel shall be for a fixed period of up to four years.
- A18. ~~The~~A Panel as constituted in A2 may renew the appointment of the Chair for a further fixed period of up to four years without holding a competition, if the Panel is satisfied that:
- (1) the person has performed to the standard to be expected of the office held, and
  - (2) it is in the interests of the BSB to renew the appointment.

- A19. The appointments of other members of the Board may be renewed by ~~the~~ Panel as constituted in A3 on the recommendation of the Chair of the BSB, who will have consulted the Vice Chair and Director General as to whether conditions A18 (1) and (2) are met in respect of the Board member. Appointments may be renewed for a further fixed period of up to four years.
- A20. With the exception of the Chair and Vice Chair of the BSB, casual vacancies may be filled by the BSB but any appointment so made will last only for the remainder of the current term of office of the member who they have replaced, or such reasonable time as is necessary for an Appointments Panel to be convened and make an appointment in accordance with the provisions of this Schedule, whichever is the shorter.
- A21. A person may not serve more than:
- (1) eight years as an ordinary member of the BSB, and
  - (2) twelve years in total as a member of the BSB.
- A22. A person shall cease to be a BSB member if:
1. the period for which they were appointed expires (and their appointment is not renewed);
  2. they resign their membership by notice in writing;
  3. they were appointed as a lay person and cease to be a lay person;
  4. they were appointed as a practising barrister and cease to be a practising barrister or become a member of the Bar Council or one of its representative committees;
  5. they fail to attend ~~four or more meetings in any one year~~ meetings with sufficient frequency and regularity to be able to discharge their duties and the BSB resolves that they should cease to be a member; or
  6. the BSB resolves that they are unfit to remain a member (whether by reason of misconduct or otherwise), ~~and obtains the concurrence of the Legal Services Board to the dismissal.~~

**Schedule B to the Constitution of the Bar Standards Board**

B1. In this Constitution and in the Schedules to this Constitution, the following terms have the meanings set out below:

	the BSB	the Bar Standards Board
	the Seven Principles of Public Life	the principles set out in paragraph B4 below
	ordinary member of the BSB	a member who is not the Chair nor the Vice Chair
	the Panel	the Appointments Panel established under Schedule A to this Constitution
	the representative committees of the Bar Council	the committees established pursuant to Part Two of the Standing Orders for Committees of the Bar Council of England and Wales

B2. In this Constitution and in the Schedules to this Constitution, the following terms have the meanings given in the following provisions:

	lay person	Legal Services Act 2007, Schedule 1, paragraphs 2(4) and (5)
	<del>the principle of regulatory independence</del> <u>overarching duty</u>	<del>Internal Governance Rules 2009, rule 1</del> <u>Internal Governance Rules 2019, rule 1</u>
	regulatory functions	Legal Services Act 2007, section 27(1)
	representative functions	Legal Services Act 2007, section 27(2)

B3. For the avoidance of doubt, the regulatory functions of the ~~Bar Council~~ BSB include, without limitation, formulating and implementing policies for and to regulate (including by making, altering and giving effect to regulatory arrangements as defined in section 21 of the Legal Services Act 2007 in respect of) all aspects of:

- (1) education and training for the Bar, including, but without limitation, academic legal training as defined in the BSB Handbook; vocational training as defined in the BSB Handbook; education and training in pupillage; continuing education and training for barristers; and testing by assessment, examinations or otherwise of students, barristers and other qualified lawyers; making provision itself for, or arranging for others to make provision for, such education, training and testing;
- (2) qualification for Call to the Bar and for the grant of rights of audience and rights to conduct litigation and other rights exercisable by barristers;
- (3) the grant of rights of audience and rights to conduct litigation exercisable by barristers and other rights exercisable by barristers;
- (4) the authorisation of barristers to carry on reserved legal activities as defined in the Legal Services Act 2007;
- (5) the authorisation of bodies of persons (corporate or unincorporated) to carry on reserved legal activities as defined in the Legal Services Act 2007;
- (6) the conduct, practice and discipline of barristers, including the conduct of barristers exercising rights of audience, rights to conduct litigation and other rights exercisable by barristers;
- (7) the conduct, practice and discipline of other persons authorised by the Bar Council to carry on reserved legal activities as defined in the Legal Services Act 2007;
- (8) the conduct, practice and discipline of persons who are not authorised by the Bar Council to carry on reserved legal activities but who are managers or employees of persons who are so authorised (within the meaning of the Legal Services Act 2007);

- ~~(4)(9) To make arrangements, either directly or through another body, for the conduct of disciplinary hearings and to take disciplinary action according to the Bar Council's regulatory arrangements in respect of those persons who are subject to these rules regulatory arrangements.~~
- ~~(1) — Qualifications and conditions for entry including fitness for practice.~~
- ~~(2) — All aspects of training, including continuing professional development.~~
- ~~(3) — The setting of standards for those practising at the Bar.~~
- ~~(4) — The determination, amendment, monitoring and enforcement of rules of professional conduct, including disciplinary rules.~~
- ~~(5) — Investigation and prosecution of complaints against barristers and students except in so far as those matters are assigned by statute or under a resolution of the Bar Council to an external body.~~

~~B3.B4.~~ The “Seven Principles of Public Life” are those set out in the First Report of the Committee on Standards in Public Life (1995) and amended thereafter (2015). These are:

- (1) Selflessness  
Holders of public office should act solely in terms of the public interest.
- (2) Integrity  
Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- (3) Objectivity  
Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- (4) Accountability  
Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

**Part 1 - Public**

- (5) Openness  
Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- (6) Honesty  
Holders of public office should be truthful.
- (7) Leadership  
Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 October 2019
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<b>Title:</b>	Annual report of the Governance, Risk and Audit Committee (GRA)
<b>Author:</b>	Nicola Sawford / Robert Pasescu
<b>Post:</b>	Chair of GRA Committee / Corporate Risk and Assurance Officer

<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input checked="" type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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**Recommendation**

The Board is asked to note the contents of the annual update report.

**Executive Summary**

1. This report summarises the key aspects of the Committee's work over the past year. The report also provides the Board and public with assurance that the risk, governance and control processes within the organisation are robust and appropriate.
2. GRA publishes an annual report on its activities over the last year. The 2018/19 annual report is attached. GRA has continued to focus on processes to identify, evaluate and mitigate corporate and regulatory risks and the iterative development of an integrated approach to reporting of corporate and regulatory risks. It has challenged the executive on its evaluation of those risks which pose the greatest threat to our regulatory objectives or to delivery of our programme of regulatory reform.
3. We have completed the second year of our first three-year programme of internal audit. It continues to be invaluable in providing independent assurance of core BSB processes and in identifying areas for development and improvement.
4. In 2019/2020 GRA will continue to focus on regulatory and corporate risk and the evolution of the consolidated risk report. It will also focus on the risks arising from our programme of work to comply with the new Internal Governance Rules, and the evaluation of our programme of regulatory reform (both Future Bar Training and the Regulatory Operations Programme, which includes the establishment of the Independent Decision-making Body). The Committee will also work on the further articulation of our Assurance Framework.





## GRA Annual Report 2019

### Introduction

1. The Governance, Risk and Audit Committee (GRA) is a standing committee of the Board with oversight of: governance; risk management; risk strategies; key organisational controls; internal business processes; the Assurance Framework; and the work of the Internal Auditors.
2. The Committee meets regularly throughout the year and has met six times since the last report.
3. The Committee currently has six members - three Board members: Nicola Sawford (Chair), Naomi Ellenbogen QC (Vice-Chair), and Adam Solomon QC; and three independent members; Stephen Hickey, Tim Fry and Liz Butler.

**Executive summary: see cover paper.**

### Risk Management

4. Risk is a fundamental element of the BSB's approach to regulation. At a strategic level, understanding regulatory risks enables the Board to identify emerging risks within the legal services market and helps the BSB to support the profession to respond positively to mitigate the risks and to ensure that the public interest is protected, and the needs of consumers are met. At an operational level, the Committee uses risk to determine the allocation of resources and to identify challenges to the delivery of projects and programmes.
5. A core function of GRA is to provide the Board with assurance on the oversight of risk. This includes the identification, management and control of both regulatory and corporate risks. It does this through holding the executive to account for its risk management strategies and in challenging the evidence and rationale for regulatory risks that are identified. Over the last year, the Committee has focussed in particular on:
  - i. General Data Protection Regulations (GDPR) compliance – including reports on breaches; the Committee reviewed the inaugural report, and it will be produced every six months;
  - ii. Regulatory and Corporate risk, the consolidated risk report and a new Risk Index;
  - iii. Risks with potential to impact the delivery of the BSB's programme of regulatory reform, both training for the Bar and the modernisation of the BSB's approach to regulatory decision-making; and
  - iv. Deep dive discussions around risks in the market relating to lack of competence, workplace culture, lack of public awareness of legal rights and duties; the corporate risk relating to uncertainty about the BSB's directly controlled income; and exceptional reports on issues such as the BSB's decision to self-insure in respect of legal professional and regulatory work.
6. In the previous reporting year, the Board agreed to combine its oversight of corporate and regulatory risk, so it was alert to any dependencies and overlap, and had a coherent overall risk strategy. This has been achieved by the iterative development of the consolidated risk report. Throughout this year the regulatory and consolidated risk reports have been substantially amended by reducing the presentation format from 34 risks to eight top level regulatory risks. The 34 underlying risks are captured within the higher level risks. The new categorisation is:

- (1) Failure to provide a proper standard of service
  - (2) Unethical conduct
  - (3) Lack of professional competence
  - (4) Failure in the management of a practice
  - (5) Failure in training provision
  - (6) Profession fails to reflect the diversity of society
  - (7) Access to justice failures
  - (8) Commercial and other external pressures are detrimental to the consumer and / or the public interest
7. The [risk outlook](#)<sup>1</sup> that was produced earlier in the year analyses three risk themes which informed the Board's three-year strategy for 2019 - 2022. The risk outlook builds on the evidence and analysis undertaken since 2016 summarising emerging risk themes that could represent the biggest threat to the BSB's regulatory objectives and the priorities set out in the BSB's [2019-22 Strategic Plan](#)<sup>2</sup>.
8. The Committee has overseen the development of the new [Risk Index](#)<sup>3</sup> in line with the direction of the Board. The Risk Index sets out the risks that the BSB has identified in the market that could result in poor outcomes for the public and consumers. It's used to help structure the BSB's regulatory priorities and that then informs its strategy. The BSB publishes the Risk Index on its website so that those regulated, and everyone else with an interest, can better understand the rationale behind its activities.

### Assurance and Internal Audit

9. The BSB continues to follow the four lines of defence model of assurance<sup>4</sup> which ensures a holistic approach to risk management with controls at various levels of a process.
10. A three-year audit plan was approved in November 2017 and annual plans are agreed for each of those three years, with a plan for this business year agreed in April. In this reporting year, Crowe LLP (our internal auditor) completed a series of audits on:
- (a) Cybersecurity
  - (b) Records Management
  - (c) Examinations
  - (d) GDPR
  - (e) Effectiveness of the Board's two standing Committee's: GRA and the Planning, Resources, and Performance Committee (PRP)
11. The Committee's view is that internal audit has provided an important level of assurance to the organisation. Where audits have identified areas for improvement, management actions have been agreed.
12. The Committee monitors the progress and impact of agreed management actions at every meeting. Furthermore, there is an agreed schedule of independent reviews by the Internal Auditors to ensure that management actions have been completed.

### Governance

#### Advisory Pool of Experts

13. The Committee received a review of the BSB's engagement with the Advisory Pool of Experts (APEX) over the last year. APEX continues to be a useful, cost-effective source of

<sup>1</sup> 2019 Risk Outlook - [https://www.barstandardsboard.org.uk/media/1982209/bsb\\_risk\\_outlook\\_2019.pdf](https://www.barstandardsboard.org.uk/media/1982209/bsb_risk_outlook_2019.pdf)

<sup>2</sup> 2019-22 Strategic Plan - [https://www.barstandardsboard.org.uk/media/1982191/bsb\\_strategic\\_plan\\_2019-22.pdf](https://www.barstandardsboard.org.uk/media/1982191/bsb_strategic_plan_2019-22.pdf)

<sup>3</sup> Risk Index - <https://www.barstandardsboard.org.uk/uploads/assets/9d1e06e4-4620-4bd0-8b6ddf031cfb52d0/Risk-Index-2019.pdf>

<sup>4</sup> ICAEW - <https://www.icaew.com/technical/audit-and-assurance/assurance/what-is-assurance/assurance-glossary/four-lines-of-defence>

external expertise and there are suitable mechanisms in place for monitoring, oversight and reporting of APEX use.

### Other Business

14. The Committee has highlighted the need to update the business continuity plan (BCP). An organisation wide project is now underway with the involvement of all three parts of the organisation (BSB, Bar Council and Resources Group). The next review is planned for Q1 next year after the completion of the office refurbishment project. The current interim plan is based around BSB's embedded flexible working arrangements and offsite arrangements for systems such as Customer Relationship Management database, Finance and HR. The Committee continues to monitor this closely.
15. The Committee has had oversight of the Legal Services Board's (LSB) assessment of the BSB's performance against its regulatory performance framework. The BSB now has one outcome (out of 26) that it does not yet meet – the authorisation to practise process not yet being conducted wholly within the BSB's direct control. Work is underway to address this outstanding area of regulatory performance.
16. The Committee has reviewed causes for long running enforcement cases and failure to achieve key performance indicators on enforcement decisions. Causes include increasing complexity of cases as well as capacity and resourcing. The Committee continues to receive reports on any cases which attract judicial or tribunal criticism for assurance that lessons to be learnt are implemented.
17. The Committee reviewed the annual report on complaints about service provided by the BSB itself (as distinct from complaints about the regulated profession). The Committee noted that numbers received remain consistent with previous years, and that the issues of capacity and resources impacting long running cases and achievement of KPIs were also reflected in the proportion of complaints about delays in communication.
18. The Committee received an inaugural report on the BSB's compliance with its statutory obligations, and intends that this be reviewed annually.
19. The BSB has appointed an Independent Reviewer, Velia Soames. Her role is to provide assurance of the BSB's assessment of incoming information, enforcement and supervision systems and processes; carry out requests for review of individual decisions; and periodic system audits of random samples of cases to give assurance that processes and procedures are being properly followed. She will provide regular reports to the Committee.

### Forward View

20. As well as the routine business defined by its terms of reference, over the coming year the Committee will continue work scrutinising the evolution of the Consolidated Risk Report and associated processes for monitoring risk. It is also anticipated that the Committee will focus on the risks arising from our programme of work to comply with the new Internal Governance Rules. As an initial step in evaluating the effectiveness of the BSB's recent reforms to regulatory decision making, we have commissioned an audit of the Contact and Assessment team with fieldwork in January, three months after it was established.
21. The next GRA Annual Report will be presented to the Board in November 2020.



## Part 1 – Public

<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 October 2019
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<b>Title:</b>	BSB Planning, Resources & Performance (PRP) Committee mid-year Report
<b>Author:</b>	Rebecca Forbes, Irfaan Shaikh
<b>Post:</b>	Head of Governance and Corporate Services, Business Performance and Finance Officer

<b>Paper for:</b>	<b>Decision:</b> <input type="checkbox"/>	<b>Discussion:</b> <input type="checkbox"/>	<b>Noting:</b> <input checked="" type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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## Recommendations

1.	<p>a) <b>Note</b> the performance dashboard reporting on the mid year progress against business plan activities provided in Annex 1. The majority of business activities continue to meet the published timetable;</p> <p>b) <b>Note the assurance</b> that the Committee have scrutinised the detailed BSB Q1 and Q2 Performance Reports.</p>
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## Executive Summary

2.	Under the new governance arrangements, the Planning, Resources and Performance (PRP) Committee reports twice a year to the Board on the performance of the BSB against its business plan commitments and its budget. This is the mid year report to the Board.
3.	Most business plan activities are on track with the published commitments or with revised time frames agreed by the Board, Programme Boards or the Senior Management Team. A substantial amount of resource was diverted in the first half of this business year to preparing for implementation of the Regulatory Operations Programme early in quarter 3 (which successfully launched on 15 October as planned). BSB staff continued to deliver our core regulatory functions and met key performance indicators throughout this period of more intense activity (including a departmental restructure which meant changes in role for many of those staff).
4.	The budget is on track. At the end of quarter 2, the BSB had received £333k in directly controlled income against a budget of £209k and expenditure amounted to £2,722k against a budget of £2,884k. This is a variance of £124k in income and £162k in expenditure. The variance is understood to be phasing of the budget rather than an indication that we should expect substantially more income or will incur less expenditure than budgeted at year end.

## Risks

5.	Managing the competing demands of the BSB and the Bar Council by the centralised services of IT, HR and Finances is a feature of the governance model within which we currently operate. Whilst controls are in place to mitigate the risks to the delivery of BSB projects and to ensure that they are given proper priority, it nevertheless remains an area that is the subject of close scrutiny by both the executive and PRP.
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**Mid-year report of the Planning, Resources and Performance Committee (PRP)**

1. The PRP has reviewed the mid-year performance of business plan activities as set out in the [2019 -20 Business Plan](https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-business-plan.html)<sup>1</sup>. (summarised in the dashboard at Annex 1).
2. This has been a period of sustained work towards implementation of major policy programmes. The changes to training for the Bar continue to be a major area of focus, and we are on track to delivering all the changes we have committed to. The Regulatory Operations Programme of work culminated on 15 October with a suite of achievements launched on that date – establishment of the Independent Decision-Making Body (IDB) and Contact and Assessment Team (CAT), a new case management system, a new BSB website, and a major departmental restructure and staff redeployment to new roles within that structure.
3. There are some activities within the published business plan where the scope of work and timeframes for delivery of key milestones has changed following decisions of the Board. The Scope of Practice activity (where we committed in the business plan to consulting on new rules in quarter 4) has been reconsidered, and the Board will now consider some of those issues within its review of the Handbook. Timeframes for the Handbook review will be agreed following the Board's Away Day in November, and the business plan for the next year will set those out. Similarly, we had a commitment to (potentially) issue a rule change consultation on changes to the Equality Rules in quarter 3, and the Board has instead agreed to limited and targeted engagement on principles that will inform those proposed changes as part of the Handbook review. These changes to the scope of activities are in keeping with the Board's intent to issue fewer consultations and fewer rule changes in this strategic period.
4. For some activities in the first half of this business year, we have not strictly met the published milestones, usually because of strategic decisions taken or factors outside of our control. For example, there are some activities where we completed the substantive work but delayed publication of documents to coincide with the launch of our new website on 15 October (such as the Risk Index and the updated Public Access and client care letter guidance). Similarly, we strictly missed the milestone in quarter 2 to submit our annual Money Laundering return, but only because the Treasury issued a due date that was later than we had predicted when the business plan was set. We completed that work in accordance with the due date set by the Treasury. In these circumstances, PRP satisfies itself whether there is any material impact on the overall project or programme deadlines or our strategic aims. Where there is not, it continues its routine scrutiny of achievement against milestones and within budget.
5. The scoping of the proposed work on our regulatory approach to bullying and harassment by the relevant Programme Board has revealed opportunity to undertake a more comprehensive review than we had originally envisioned. The original project had been to update guidance but we consider a more fundamental review of our approach in this area to be of greater value and a better use of resources. PRP has considered the revised milestones put forward and has agreed to hold the executive to account for delivery of those new milestones. We will work to finalising recommendations to encourage the reporting of bullying and harassment at the Bar by quarter 4.
6. The activity to submit a rule change application requiring single person entities to take out professional indemnity insurance with the BMIF was completed in quarter 1. However, we have now withdrawn the application and intend to resubmit it with further detail on any potential impacts on competition. This is therefore unlikely to be approved

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<sup>1</sup> <https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-business-plan.html>

before the end of this business year. However, as BMIF continue to voluntarily insure single person entities, this delay has minimal consequences.

### Resources

7. Staff turnover decreased from 26% in Q1 to 25% in Q2. Ten people left the BSB over the last six months. The effects on turnover due to the disestablishment of the Professional Conduct and Regulatory Assurance departments and establishment of the Legal & Enforcement and Regulatory Operations departments will be predominantly reflected in the figures for Q3, as those staff who elected to take voluntary redundancy concluded their contracts in mid October.

### Finance

8. The proposed budget for 2020/21 was agreed by the Board and will be considered by the Finance Committee in October.
9. At the end of quarter 2, the BSB had received £333k in directly controlled income against a budget of £209k and expenditure amounted to £2,722k against a budget of £2,884k. This is a variance of £124k in income and £162k in expenditure. The variance is due to phasing of the budget and not an indication that we should expect more income at the end of the year. The underspend for the year to date is due to phasing of the budget with those costs now expected to be incurred in later quarters. The executive are working to more accurately phase the budget for the next year, to reduce these apparent variances.

### BSB and Resources Group (RG)

10. The HR team of the Resources Group have been supporting the BSB in the departmental restructure and appointment of staff to new roles (disestablishment of the Professional Conduct and Regulatory Assurance departments and establishment of the Legal & Enforcement and Regulatory Operations departments). The office refurbishment was slightly delayed due to an issue outside of our control (with the fire alarm system) but continues broadly on track, with plans to release one of the current floors at the project's conclusion.

### Annexes

11. Annex 1 – Mid year performance Dashboard  
Annex 2 – Management Accounts summary

### Lead responsibility

Steven Haines, Chair of PRP Committee  
Irfaan Shaikh, Business Performance and Finance Officer



## Mid Year Dashboard (2019-20)

### Strategic Aim 1

Delivering risk-based, effective and targeted regulation

Task	Assigned to	Size	Priority	Status/ On Target	Budget	Ctrl	Ref
Review of the BSB Handbook	S&P	3	High	●	●	BSB	
Enforcement	PCD	1	Medium	●	●	BSB	
Regulatory return to gather information	RAD	2	Medium	●	●	BSB	
Money Laundering/Terrorist Financing :	RAD	2	High	●	●	BSB	
Modernising decision making – establish	PCD	4	High	●	●	BSB	
Future Bar Training – development of n	RAD	2	High	●	●	BSB	
Future Bar Training – evaluation	S&P	2	High	●	●	BSB	
Regulatory Risk	S&P	2	High	●	●	BSB	

### Strategic Aim 2

Encouraging an independent, strong, diverse and effective legal profession

Task	Assigned to	Size	Priority	Status/ On Target	Budget	Ctrl	Ref
Renewal of BSB Equality Rules	S&P	2	Medium	●	●	BSB	
Regulatory approach to allegations of b	S&P	3	High	●	●	BSB	
Future Bar Training – Pupillage reform	RAD	2	High	●	●	BSB	
Future Bar Training – Pupillage recruitm	RAD	2	High	●	●	BSB	
Race equality	S&P	1	Medium	Complete		BSB	
Scope of practice	S&P	2	Medium			BSB	
Research publications	S&P	2	Medium	●	●	BSB	
Immigration	S&P	1	Medium	●	●	BSB	
Professional Indemnity Insurance	S&P	1	Medium	●	●	BSB	

### Strategic Aim 3

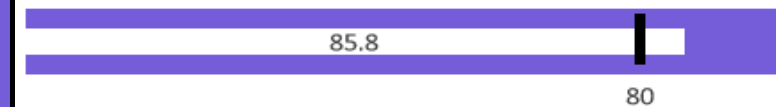
Advancing access to justice in a changing market

Task	Assigned to	Size	Priority	Status/ On Target	Budget	Ctrl	Ref
Assuring standards at the Bar	RAD	1	High	●	●	BSB	
CPD evaluation	RAD	2	Medium	●	●	BSB	
BSB website	CPE	4	Medium	●	●	BSB	
CMA evaluation	S&P	2	High	●	●	BSB	

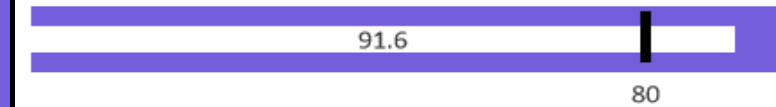
2019 - 20 Q2 YTD Actuals v Budget			
	(k)	(k)	(k)
	Actual	Budget	Var
Income	333	209	124
Expenditure	2,722	2,884	162

### Professional Conduct Indicators

KPI - % of complaints concluded or referred to disciplinary action within service standards



OPI - % of complaints concluded or referred to investigation within 8 weeks



OPI - % external complaints concluded or referred to disciplinary action within 8 months following investigation

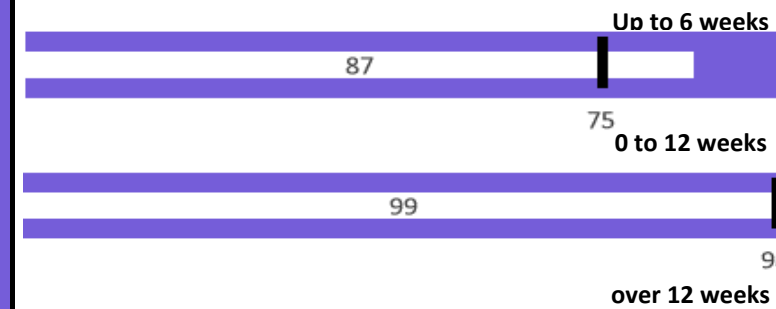


OPI - % of internal complaints concluded or referred to disciplinary action within 5 months following investigation



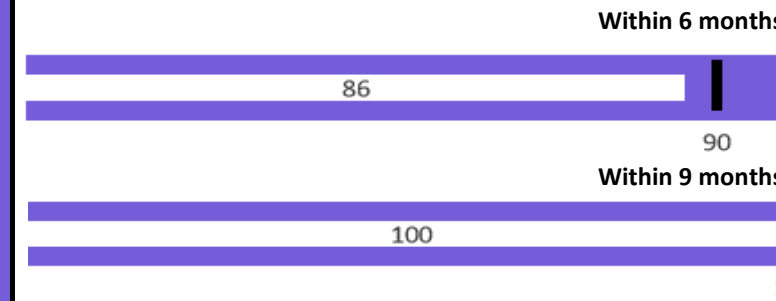
### Authorisations

Time taken to determine applications from receipt of the complete application:



### Entity Authorisation Decisions

The % of authorisation decisions made within service standards



### Key

Size  
 ↑ 4 Large piece of work  
 ↓ 1 Small piece of work

### Weighting





General Council of The Bar  
Bar Standards Board  
BSB Summary  
Sep-19

	Month Actual	Month Budget	Variance F/(A)	Y-T-D Actual	Y-T-D Budget	Variance F/(A)	Annual Budget	Remaining Budget
<b>Income</b>								
Practising Certificate Fees	758,461	739,681	18,780	4,550,766	4,438,087	112,679	8,876,174	(4,325,408)
Other Regulatory Income	28,331	41,433	(13,102)	332,747	208,598	124,149	1,059,200	(726,453)
<b>Total Income</b>	786,792	781,114	5,678	4,883,513	4,646,685	236,828	9,935,374	(5,051,861)
<b>Operating Expenditure</b>								
Staff Costs - Salary Related	329,404	359,751	30,346	2,090,923	2,144,130	53,207	4,302,635	2,211,712
Staff Costs - Temp Staff/Recruitment	7,567	6,026	(1,541)	55,566	24,151	(31,415)	42,052	(13,514)
Staff Costs - Non- Salary Related	1,844	7,502	5,658	15,628	31,495	15,867	58,545	42,917
Non - Staff Costs	97,455	98,789	1,334	559,756	684,274	124,517	1,210,422	650,666
<b>Total Operating Expenditure</b>	436,269	472,068	35,798	2,721,874	2,884,050	162,176	5,613,654	2,891,781
<b>Net Surplus / (Loss) before Adjustments</b>	350,523	309,046	41,476	2,161,640	1,762,635	399,005	4,321,720	(2,160,080)
<b>Total Costs</b>	0	0	0	0	0	0	0	0
<b>Net Surplus / (Loss)</b>	350,523	309,046	41,476	2,161,640	1,762,635	399,005	4,321,720	(2,160,080)



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	31 October 2019
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<b>Title:</b>	Approval of Inns Conduct Committee Practice and Procedure Rules
<b>Author:</b>	Chris Young
<b>Post:</b>	Policy Manager

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion</b> <input type="checkbox"/>	<b>Noting</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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## Recommendation

1. As part of the process for implementing the Memorandum of Understanding (MoU) with the Inns of Court, the Board is asked to **approve** new rules for the Inns Conduct Committee (ICC) to use when determining whether a person is fit and proper to be a barrister. The Board is also asked to **delegate** to the Director General any subsequent minor amendments to these rules which implement policy decisions previously agreed by the Board (e.g. procedures for dealing with DBS reports as part of the fit and proper person checks).

## Executive Summary

2. As part of the Future Bar Training (FBT) programme, the BSB agreed a MoU with the Council of the Inns of Court (COIC) and the four Inns of Court in March this year. In accordance with Rule Q6 of the BSB Handbook, the MoU sets out the new *Guidelines* for the Inns and ICC to use when determining if a person is a fit and proper person to become a barrister. Under the MoU, the BSB must approve the ICC's rules.
3. If approved, we aim to bring the Guidelines and the ICC Rules into force on 1 January 2020. In the meantime, the old version of the ICC rules will continue in force.

## Risk

4. The new ICC Rules are required in order to operationalise the MoU and Guidelines, in accordance with the BSB Handbook. This mitigates the risk that unsuitable people might be called to the Bar and therefore protects the public interest.

## Resources (Finance, IT, HR)

5. It is not anticipated that the proposed ICC Rules will have any significant impact on BSB resources as they relate to the Inns' and ICC functions.

## Equality & Diversity

6. It is not anticipated that the proposed ICC rules will have any negative impact on any protected characteristics under the Equality Act 2010.
7. A full Equality Impact Assessment has been previously carried out on the policy changes. The ICC rules implement these changes.



## Approval of Inns Conduct Committee Practice and Procedure Rules 2020

### Status – For decision

#### Introduction

1. The Board is asked to **approve** the Practice and Procedure Rules of the Inns Conduct Committee (“ICC Rules”). The Board is also asked to **delegate** to the Director General any subsequent minor amendments to these rules which implement policy decisions previously agreed by the Board (e.g. procedures for dealing with DBS reports as part of the fit and proper person checks).
2. In accordance with Rule Q6 of the BSB Handbook, the MoU between COIC, the Inns and the BSB provides guidelines (approved by the BSB) for the Inns and ICC to use when determining if a person is fit and proper to become a barrister (“the Guidelines”).
3. In order to implement the Guidelines, the BSB must approve new rules for the ICC. These new ICC Rules are attached at Annex 1. The key changes are summarised in this paper, the previous rules are available on request.
4. These new ICC Rules will apply to all prospective barristers, from the point of application to join an Inn until Call to the Bar, after which disciplinary matters become the BSB’s responsibility. In addition to new applicants, they also apply to individuals who have been disbarred who seek readmission to an Inn.

#### Notable amendments from the current ICC Practice Rules

5. The executive has reviewed previous drafts of the ICC rules and is content that these rules meet the requirements set out in the MoU and Guidelines. The new rules are very similar to those being replaced, but the following summarises where there are substantive changes.

#### Reporting requirements

6. In accordance with the MoU, the ICC will now report annually both to COIC and to the BSB. This amendment is captured at paragraph 13 in the new ICC Rules.

#### Authority to delegate powers

7. The ICC Rules provide (at paragraph 14) that the ICC may delegate decision making to a panel, which may consist of members of the ICC and/or members of the Bar Tribunals and Adjudication Service panel. This reflects a provision that previously existed in the old BSB Handbook rules.

#### ICC hearings held in private

8. The ICC has recommended adopting a presumption that the majority of ICC hearings take place in private (paragraphs 30 and 31.) Although the previous version of the rules stated that hearings were to be held in public, current practice is that hearings are not advertised in advance, nor their outcomes published, so in practice hearings were never really public. COIC has pointed to current practice in the medical profession, where fit and proper person hearings are held in private.
9. The proposed new ICC Rules state that for applicants to join an Inn and students applying for Call, such hearings shall be held in private unless the person affected requests a public

hearing. Cases of re-admission would be public by default, with discretion to hear them in private where necessary.

10. The executive supports this approach on the grounds that these hearings deal with potentially very sensitive issues and there is no strong public interest case for such matters to be dealt with in public before a person has entered the profession. However, in cases of re-admission, there is a clear public protection and public interest dimension and it is only right that such hearings should normally be held in public.

#### **Standard of proof**

11. The current ICC Rules are silent on the standard of proof used in ICC hearings although in practice the ICC has been using the civil standard (balance of probabilities) for some time. The new ICC Rules (paras 39 and 40) make it clear that applicant/student hearings will continue to use the civil standard. This brings the new ICC Rules in line with those of the Disciplinary Tribunal Regulations.

#### **Next steps**

12. If approved, COIC will bring the ICC Rules into force on 1 January 2020. This will allow the ICC enough time to ensure appropriate familiarisation and training with the new procedures before being introduced.

#### **Publicity**

13. If agreed, the BSB and COIC will issue a statement as to the commencement date for the new rules.

#### **Regulatory objectives**

14. The fit and proper person checks directly engage the regulatory objectives of protecting and promoting the public interest and protecting and promoting the interests of consumers. It is in the interests of consumers and the public that only persons who are fit and proper are called to the Bar.

**Lead responsibility**  
**Christopher Young**  
**Policy Manager**





# The Inns' Conduct Committee: Practice and Procedure Rules [2020]

[1 January 2020]

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### The Bar Tribunals & Adjudication Service

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Company Number: 8804708  
Charity Number: 1155640  
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**BSB 311019**

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## PART I - PURPOSE AND OBJECTIVE

1. These Rules, which shall be referred to as the ICC Practice and Procedure Rules 2020, provide the terms under which the Inns' Conduct Committee will operate in carrying out the function as set out in paragraph 3 (a) – (c) .
2. These Rules are drafted with reference to, and should be read in conjunction with, the *Guidelines for Determining if a Person is Fit and Proper to Become a Practising Barrister* (hereafter referred to as the Guidelines) set out by the Bar Standards Board, in accordance with rQ6.2 of the Bar Qualification Rules which are contained in the Bar Standards Board Handbook ("the Handbook"), in Part 4, Section B.
3. The function of the Inns' Conduct Committee is:
  - (a) To determine any question whether an Applicant for admission to an Inn is a fit and proper person to practise as a barrister;
  - (b) To determine whether, in the case of a Student Member (hereafter referred to as Student), that individual is a fit and proper person to practise as a barrister and, what sanction is appropriate to impose if that individual's conduct calls into question whether they are a fit and proper person;
  - (c) To hear and finally determine appeals from determinations by a Student's Inn of minor internal disciplinary matters against that Student

and shall, when doing so, have regard to the Guidelines as agreed between the Bar Standards Board and the four Inns of Court.

4. To be eligible for admission to an Inn or Call to the Bar, a person must be a fit and proper person to become a practising barrister.
5. The Inns' Conduct Committee recognises that it is the intention of the four Inns of Court that membership of the Inns should reflect the diversity of society. The Inns' Conduct Committee and all the Inns have a responsibility to apply the principles of this statement in their dealings with others both internally and externally. There is a commitment to the elimination of unlawful or unfair discrimination on the grounds of sex, race, gender reassignment, age, disability, sexual orientation, marital status, responsibility for dependants, religion or belief. The Inns Conduct Committee and the four Inns of Court operate in accordance with reasonable adjustments policies which ensure fair and equal access to services for all existing and potential members.

## **PART II – DEFINITIONS**

6. In these Rules, the following terms have the following meanings:

“Admission to an Inn”, “Admission Declaration”, “Bankruptcy Order”, “Criminal Offence”, “Call Declaration”, “Call” or “Call to the Bar”, “pending Criminal Proceedings”, “Directors Disqualification Order”, “Inn”, and “Council of the Inns of Court” (“COIC”), are as defined in Part 6 of the Handbook.

“Applicant” means any person seeking admission to an Inn of Court and shall include persons granted exemptions from training requirements under Part B2 of the Bar Qualification Rules and former members of an Inn seeking readmission.

“BTAS” means the Bar Tribunals and Adjudication Service.

“BTAS Panel” means the panel of persons appointed to serve on disciplinary tribunals under Part 5 of the Handbook.

“Chair of the Inns' Conduct Committee” shall mean the Chair appointed under Rule 7(a) or in the event of the post being vacant or the Chair being unable or unwilling to discharge the role through absence, illness or otherwise, either of the Vice-Chairs in accordance with Rule 15 below.

“Fit and proper person to become a practising barrister” means a person who is expected to be capable of upholding the Core Duties set out in the Handbook which underpin the behaviour expected of barristers.

“The Guidelines” means the Guidelines for determining if a person is Fit and Proper to become a barrister published by the BSB from time to time.

“Handbook” means the Bar Standards Board’s Handbook, as published and amended from time to time.

“Hearing Panel” is a panel that hears matters that are to be determined by the Inns’ Conduct Committee, made up of persons appointed in accordance with these Rules from the Inns’ Conduct Committee and/or from the BTAS Panel.

“Panel Chair” means the Chair of a Hearing Panel appointed under Rule 26.

“the President” shall mean the President of COIC.

“Screening Panel” is a panel of persons which considers whether referrals to the Inns’ Conduct Committee should be referred to a Hearing Panel for determination or returned to the referring Inn and is constituted in accordance with Rule 16 or the Chair of the Inns’ Conduct Committee when acting pursuant to Rule 17.

“Student” means a person who has been admitted to an Inn and remains a member of the Inn but has not been called to the Bar.

The “Tribunals Appointment Body” is a body appointed by COIC in order (amongst other duties) to (i) vet the applications of those people who wish to be members of the BTAS Panel and (ii) certify that those they select to the BTAS Panel are fit and properly qualified to conduct the business for which they have been selected.

## **PART III – MEMBERSHIP AND INTERNAL PROCEDURES OF THE INNS’ CONDUCT COMMITTEE**

### **Membership of the Inns’ Conduct Committee**

7. The Inns’ Conduct Committee shall have the following members:

- (a) a Chair, selected by the Tribunals Appointments Body and appointed by the President;
  - (b) Two Vice-Chairs (one barrister and one lay representative), selected by the Tribunals Appointments Body and appointed by the President;
  - (c) Four barrister members, one selected by each of the Inns from those appointed by the Tribunals Appointments Body to membership of the BTAS Panel; and
  - (d) Two lay members, selected by the Tribunals Appointment Body from amongst those appointed by the Tribunals Appointments Body to membership of the BTAS Panel.
8. No person shall
- (a) be a member of the Inns' Conduct Committee if they are a member of the Bar Council or of any of its committees or a member of the Bar Standards Board or of any of its committees;
  - (b) cease to be a member of the Inns' Conduct Committee simply by reason of ceasing (by the passage of time) to be a member of the BTAS Panel.
9. Each member of the Inns' Conduct Committee (other than the Chair and Vice Chairs) shall serve for a term of up to 4 years expiring in every case on 30 June in any year and shall thereafter be eligible for re-appointment for a further period of up to 4 years expiring in every case on 30 June in any year subject (at the date of the commencement of the further period) to their continuing appointment by the Tribunals Appointments Body to membership of the BTAS Panel.
10. The Chair and Vice-Chairs shall serve for up to 4 years from the date on which s/he takes office and shall thereafter be eligible for re-nomination for a further term of up to 4 years, without reference to any previous membership of the Inns' Conduct Committee. Membership of the BTAS Panel is not a requirement for a person to be appointed or re-appointed as Chair or Vice-Chair of the Inns' Conduct Committee.
11. The Bar Tribunal and Adjudication Service shall make arrangements for secretariat support to be provided to the Inns' Conduct Committee and any panels appointed for the purpose of these Rules.

## **Internal Operation of the Inns' Conduct Committee**

12. The Inns' Conduct Committee may meet as a full committee to consider matters of general policy or process. It may from time to time make, amend, rescind or suspend
  - (a) standing orders for the better management and discharge of its functions under these Rules
  - (b) any protocol or practice direction to regulate or facilitate the determination of any matters referred to it and/or the discharge of its functions under Parts IV – VIII of these Rulesprovided that nothing therein shall conflict with these Rules or the Guidelines, which shall prevail.
13. The Inns' Conduct Committee will report in writing annually to the BSB and COIC on its performance.
14. The Inns' Conduct Committee may delegate the discharge of its powers and functions in relation to:
  - (a) whether an Applicant or a Student is a fit and proper person to be a practising barrister to a Hearing Panel constituted of persons selected by the Chair of the Inns' Conduct Committee from amongst the members of the Inns' Conduct Committee and/or members of the BTAS Panel;
  - (b) appeals by a Student from a decision of an Inn under its internal disciplinary procedure to a Hearing Panel constituted of persons selected by the Chair of the Inns' Conduct Committee from amongst the members of the Inns' Conduct Committee and/or members of the BTAS Panel.

For the avoidance of doubt and notwithstanding any delegation, the Inns' Conduct Committee shall retain and be able to exercise full authority to discharge its role and functions under the ICC Practice and Procedure Rules [2020] and generally.

15. In the event of the post of Chair being vacant or the Chair being unable or unwilling to discharge the role (whether through absence, illness or otherwise), either of the Vice-Chairs may discharge the function of Chair with the consent of the other Vice-Chair.

## PART IV – CONDUCT HEARINGS

### Screening Panel Proceedings

16. The handling by the Inns' Conduct Committee of any case involving an Applicant/Student referred to it by an Inn shall be determined by a Screening Panel who will consider documentation from the Inn about the Applicant/Student. The Screening Panel shall comprise the Chair or Vice Chair of the Inns' Conduct Committee and one other committee member such that a Screening Panel shall consist of one barrister and one lay representative, with support provided by a member of the BTAS Administrative team or an individual appointed by BTAS to discharge the administrative function. The members of the Screening Panel will generally conduct their business by meeting in person but may, at the discretion of the Chair or Vice Chair of the Inns' Conduct Committee (as the case may be), do so by telephone or email.
17. In cases of urgency, the Chair of the Inns' Conduct Committee (with support provided by a member of the BTAS Administrative team or an individual appointed by BTAS to discharge the administrative function) may act alone and exercise all of the powers of a Screening Panel constituted under Rule 16 above save that if the Chair of the Inns' Conduct Committee is not satisfied that there is material under Rule 19 to justify referral to a Hearing Panel, the Chair of the Inns' Conduct Committee must refer the matter to a Screening Panel convened and constituted in accordance with Rule 16.
18. The Screening Panel may give such directions as it sees fit in connection with any matter and may, in particular, direct, at any stage, that the relevant Inn and/or Applicant/Student provide any information in relation to a case at the Screening Panel's request. This information should normally be provided in writing within 14 days. Should an Applicant/Student be unwilling or unable, without good cause, to provide this further information, the Screening Panel and any subsequent Hearing Panel may make any reasonable inferences.
19. If, having regard to the Guidelines and generally, the Screening Panel is satisfied, on consideration of all information provided to it in relation to either an Applicant or a Student that: –

(a) there is material that suggests that the Applicant/Student is not a fit and proper person to become a barrister or may not be a fit and proper person to become a barrister; or

(b) there is material that gives rise to any question as to whether the Applicant/Student is a fit and proper person to become a barrister that requires further consideration;

the Screening Panel shall refer the question of whether the Applicant/Student is a fit and proper person to a Hearing Panel for determination.

20. If, having regard to the Guidelines and generally, the Screening Panel is not satisfied, on consideration of all information provided to it in relation to either an Applicant or a Student that there is material which requires the matter to be referred to a Hearing Panel, the Screening Panel shall notify the referring Inn and, in the case of an Applicant, direct the Inn to admit that individual.
21. If not referring a matter to a Hearing Panel, the Screening Panel shall state (in summary form) the reasons for its decision not to refer to a Hearing Panel. These reasons will be provided by BTAS to the referring Inn.
22. Once the Screening Panel's decision has been communicated to the referring Inn, the Inn must confirm to the Inns' Conduct Committee, in writing, that the decision has been received and that any action required of it has been completed.
23. The Chair of the Inns' Conduct Committee may, following a referral to a Hearing Panel by a Screening Panel make any further directions in any matter or vary or discharge any directions made by the Screening Panel in any matter if it appears necessary or desirable so to do.
24. Proceedings before a Screening Panel shall be in private save that for the purposes of training and observation only, members of the Inns' Conduct Committee may attend a Screening Panel.



## **Appointment of a Panel to Hear a Case**

25. Any case involving an Applicant/Student referred by the Screening Panel for hearing shall be heard and determined by a Hearing Panel appointed by the Chair of the Inns' Conduct Committee.
26. The Panel shall comprise three members, only one of whom shall be a lay member. The Chair of the Inns' Conduct Committee will designate a Panel Chair from amongst those three members.

## **Notification of arrangements for a Hearing**

27. As soon as practicable after a referral to a Hearing Panel for hearing, a letter of notification that the matter is to be heard and determined by a Hearing Panel shall be sent or otherwise provided to the Applicant/Student by (a) the BTAS Administrator by registered post or recorded delivery, with a copy sent by email, to the Applicant/Student at the last known address notified to the Inn or (b) by such other method(s) as may be directed. The letter of notification shall:
  - (a) Identify the date, time and venue of the hearing (which shall be convened as soon as practicable);
  - (b) notify the Applicant/Student of any directions made by the Screening Panel or otherwise;
  - (c) Inform the Applicant/Student of his or her right to submit a written request (with reasons) for the hearing to be adjourned. Such request shall normally be made within seven days of receipt of the notification letter or the Applicant/Student will be deemed to have waived the right to ask for an adjournment;
  - (d) Contain details of the referral, setting out the grounds and reasons as to why the Inn has referred the matter in question;
  - (e) Inform the Applicant/Student whether the referring Inn will be represented;
  - (f) Inform the Applicant/Student of the membership of the Hearing Panel and of the Applicant/Student's right to give written notice (with reasons) objecting to one or more of the proposed members of the Hearing Panel. Such notice shall be given

within seven days of receipt of the notification letter or the Applicant/Student will be deemed to have waived the right to object;

- (g) Inform the Applicant/Student that s/he will within the period specified in the notification letter be supplied with copies of the documents that are to be provided to the Hearing Panel;
- (h) Inform the Applicant/Student that s/he may within such reasonable time as may be specified deliver a written answer, explanation or other representation to the Hearing Panel in advance of the hearing;
- (i) Inform the Applicant/Student of his or her entitlement to attend the Hearing and right to be heard by the Hearing Panel;
- (j) Inform the Applicant/Student of his or her right to appoint a representative or, in the case of Students only, to request the appointment of a representative;
- (k) Inform:
  - i. the Applicant/Student (unless the case involves an Applicant for Readmission) that the hearing will take place in private, unless they request in writing that all or part of the hearing should be in public under Rule 30(b);
  - ii. the Applicant for Readmission that the hearing will take place in public;unless, in either case, a direction is made by the Chair under Rule 31 that all or part of the hearing should be in private;
- (l) Require the Applicant/Student to inform the BTAS Administrator whether s/he intends to attend the hearing and to be represented at the hearing;
- (m) Inform the Applicant/Student of the Hearing Panel's right to proceed with the hearing in his or her absence and that, should they fail to attend without good cause, the Hearing Panel may make any reasonable inferences; and
- (n) Inform the Applicant/Student of his or her right to review the decision and the timescales for doing so.
- (o) Include a copy of these Rules and the Guidelines.

## **Objections to Panel Membership & Requests for Adjournments**

28. Where the Inns' Conduct Committee has received a written notification:
- (a) of objection to the membership of a Hearing Panel made under Rule 27(f), the Chair of the Inns' Conduct Committee shall take the relevant decision,
  - (b) of a request for a hearing to be adjourned made under Rule 27(c), the Chair of the Inns' Conduct Committee, or the Panel Chair shall take the relevant decision,
- and the reasons for such decision shall be recorded in writing and provided to the Applicant/Student and the referring Inn.

## **Conduct of the Hearing**

29. Without limiting the powers conferred elsewhere in these Rules, at any time after the Hearing Panel has been constituted, the Hearing Panel or the Panel Chair may direct that the relevant Inn and/or a Student or Applicant provide any information in relation to a case. This information should normally be provided in writing within 14 days, unless specified otherwise by the Panel Chair. Should a Student or Applicant be unwilling or unable, without good cause, to provide this further information, the Hearing Panel may make any reasonable inferences.
30. The hearing shall:
- (a) subject to paragraphs (b) and (c) of this Rule, be in private;
  - (b) be in public if the Applicant/Student so requests;
  - (c) if the matter concerns an Applicant for readmission to an Inn following a period of disbarment, the hearing shall be in public.
31. Notwithstanding Rules 30(b) and (c), the Panel Chair may decide that the public shall be excluded from the whole or any part of the hearing where it appears desirable to do so in the interests of justice or for any other special reason provided always the particular reason for the private hearing (in whole or in part) outweighs the interest in holding a public hearing.

32. Subject to the Hearing Panel's approval and for the purposes of training and observation only, members of the Inns' Conduct Committee, BTAS Panel Members and TAB appointed persons may attend Hearing Panel hearings.
33. Should an Applicant/Student fail to attend, the hearing shall proceed in their absence.
34. A BTAS Administrator or an individual appointed by BTAS will be in attendance at the hearing, except for during deliberation unless the Hearing Panel request assistance in relation to the Inns' Conduct Committee policy or process.
35. Subject to Rule 45, proceedings at the hearing shall be at the discretion of the Panel Chair, but the Hearing Panel shall act in accordance with the principles of natural justice and have regard to the Guidelines. The Panel Chair may, before or at the hearing, give all directions as may reasonably be necessary for the fair and orderly disposal of the referral.
36. The Hearing Panel shall not be bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before any court.
37. The Hearing Panel shall treat:
  - (a) a criminal conviction of the Applicant/Student, which has not been set aside on appeal or otherwise, as sufficient evidence of the commission of the offence in question; and
  - (b) a finding of misconduct by a regulatory/professional/educational body exercising a regulatory, disciplinary or educational jurisdiction as sufficient evidence of the commission of the offence in question;but may give such weight to that offence or misconduct as it considers reasonable in all the circumstances.
38. The use of video conferencing facilities, where possible, can be granted by the Screening Panel, or the Chair of the Inns' Conduct Committee or Panel Chair should the Student or Applicant agree to the use of this equipment.
39. Where a Hearing Panel is to determine whether an Applicant is a fit and proper person to become a practising barrister:

- (a) It is for the Applicant to show, to the satisfaction of the Hearing Panel, that they are a fit and proper person to become a practising barrister; and
  - (b) The standard of proof required is that the Hearing Panel should be satisfied on a balance of probability (“more likely than not”).
- 40. Where a Hearing Panel is to determine whether a Student is a fit and proper person to become a practising barrister:
  - (a) It is for the Inn to show, to the satisfaction of the Panel, that the Student is not a fit and proper person to become a practising barrister; and
  - (b) The standard of proof required is that the Hearing Panel should be satisfied on a balance of probability (“more likely than not”).
- 41. The hearing before a Hearing Panel shall ordinarily be the subject of audio recording in order (if necessary) that a transcription may be prepared. However, in the event that audio recording is not possible, the Hearing Panel may, if the Panel Chair so directs, proceed provided that adequate provision is made for noting the matters raised and evidence adduced before the Hearing Panel.
- 42. Where a Student has requested representation under Rule 27(j) above, the Inns’ Conduct Committee shall require the referring Inn to provide the Student with an appropriate “Advocate” (formerly the Bar Pro Bono Unit) application form for representation and shall offer to transmit any completed form to Advocate on the Student’s behalf.
- 43. Evidence may be received by the Hearing Panel in accordance with Annex 2 to the Guidelines and by oral statement, written statement, or statutory declaration. The Hearing Panel will also give appropriate weight on consideration to character, academic or other references. Written statements (but not character, academic or other references) should conclude with a signature of the individual making the statement and a statement by the maker that he or she believes the contents of the statement to be true.
- 44. Members of the Hearing Panel shall have the right at each stage of the hearing to ask questions of the referring Inn’s representative (where applicable) and/or the Applicant/Student and/or (where applicable) his or her representative.
- 45. Subject to the discretion of the Panel Chair, the order of proceedings shall be as follows:

- (a) The Panel Chair introduces the Hearing Panel, explains the process and why the matter has been referred as well as referring to the Rules under which the matter is to be determined. The Panel Chair will identify the documents that the Hearing Panel members have been provided with.
  - (b) The Applicant/Student will be asked for any comments in relation to the reason for referral.
  - (c) The Hearing Panel will ask any relevant questions of the Applicant/Student.
  - (d) The Applicant/Student is then given the opportunity to raise any relevant matters not previously covered.
  - (e) Private deliberations take place.
  - (f) The Hearing Panel reconvene to ask further questions (if any), to announce their decision, to reserve their decision or to adjourn the matter to enable the production of further evidence/documents.
  - (g) Where appropriate, the Hearing Panel will explain the Applicant/Student's right to have the decision reviewed and the timelines for doing so.
46. The Panel Chair may adapt the order of proceedings. Any reasonable adaptation does not invalidate any decision.
47. Where the Inn is represented, once the Panel Chair has explained the process the Inn will be asked to present their case with any questions from the Hearing Panel following. The Applicant/Student will be asked to present their case and for any comments in relation to the Inn's case and the Hearing Panel will ask any relevant questions of the Applicant/Student. Both the Inn and the Applicant/Student, respectively, may make any closing remarks before the Hearing Panel deliberates.
48. In the event that on or immediately before the day of the hearing, and due to exceptional and unforeseen circumstances, the Hearing Panel is unable to convene in person, the Hearing Panel may, after consultation and once they are satisfied that there will be no injustice, proceed to conduct their business by phone/ email/ video conference facility.

## **Adjournments**

49. In any case where the Hearing Panel considers that further information is required for the fair disposal of the matter, or due to any request from the Applicant/Student, the Panel Chair may adjourn the hearing for such a period as is appropriate or necessary.
50. In exceptional circumstances where a further adjournment is deemed necessary, the Panel Chair may adjourn the hearing for such further period as is appropriate or necessary.

## **General**

51. The Chair of the Inns' Conduct Committee may exercise all or any of the powers and discretions given by these Rules to the Panel Chair except those falling to be exercised by the Panel Chair during the course of a hearing before a Hearing Panel.

## **Decision of the Panel**

52. In reaching its decision, the Hearing Panel will have regard to the Guidelines, all other applicable matters and to the circumstances of the case in general.
53. Within 14 days of the conclusion of the proceedings and on behalf of the Inns' Conduct Committee, the Hearing Panel will produce a written report setting out its findings, the reasons for those findings and its decision. A failure to provide the report within 14 days shall not (of itself) affect the validity of the decision. As soon as it is available, the written report will be sent to the Applicant/Student, the Inn which made the referral, the other Inns, the BSB and (where appropriate) the Student's vocational component (previously known as BPTC) provider. The written report of hearings held in private shall not otherwise be made public.
54. The written report of hearings held in public (under Rule 30) shall be made public, excepting any or all parts of the Hearing that the Panel Chair directed be held in private under Rule 31.
55. All written reports shall be retained by BTAS. The names of those Students who are expelled may be published on the Inn's website irrespective of whether the hearing was held in public or private.

56. Once an Inns' Conduct Committee decision has been communicated to the referring Inn, the Inn must confirm to the Inns' Conduct Committee, in writing, that the decision has been received and that any action required of them has been completed.
57. If members of the Hearing Panel are not in agreement as to the finding(s) or the appropriate sanction, the decision of the Panel shall be by a simple majority.
58. In accordance with paragraph 15 of the Guidelines, a person whose application for admission to an Inn has been rejected on the ground that that person is not a fit and proper person to become a practising barrister or who has been expelled from an Inn may not apply for admission to an Inn unless a period of at least five years (or such other period as the Bar Standards Board may determine in the particular case) has elapsed from the date of such rejection or expulsion.

## **Review of the decision of the Inns' Conduct Committee**

59. If, in accordance with Section B4 of the Bar Standards Board Handbook, the Inns' Conduct Committee decides that the Applicant/Student is not a fit and proper person to become a practising barrister and/or imposes any sanction, the Applicant/Student shall when sent the written notice of the Inns' Conduct Committee decision be informed in writing that a review of the decision under B4 of the Handbook may be requested, provided that a request is made in writing to the Bar Standards Board within one month of the date when notice of the Inns' Conduct Committee decision is given.

## **PART V - ADMISSION TO AN INN**

### **Referral by an Inn to the Inns' Conduct Committee**

60. To ensure consistency and transparency in decision making, an Inn of Court will refer to the Inns' Conduct Committee for determination the question of whether an Applicant is a fit and proper person to become a practising barrister and as such eligible for admission to an Inn if:
  - (a) The Applicant has been convicted of a Criminal Offence (or is the subject of pending Criminal Proceedings); or



- (b) The Applicant has been convicted of a disciplinary offence by a professional or regulatory body (or is the subject of pending proceedings for such an offence); or
  - (c) The Applicant has been bankrupt or the subject of a Directors Disqualification Order or has entered into an individual voluntary arrangement with creditors; or
  - (d) The Applicant has previously been refused admission to or expelled from an Inn; or
  - (e) There is any other circumstance which in the opinion of the Inn calls into question the Applicant's fitness to become a practising barrister.
61. In referring an Applicant for admission to the Inns' Conduct Committee, an Inn, at its discretion, may appoint a representative to present the Inn's case at any hearing.
62. The Inns' Conduct Committee will determine whether a referred Applicant is a fit and proper person to become a practising barrister and should be admitted to an Inn of this Court by reference to the Guidelines and these rules.

## **PART VI – CONDUCT OF STUDENT OF AN INN**

### **Referral by an Inn to the Inns' Conduct Committee**

63. To ensure consistency and transparency in decision making, an Inn of Court will refer any matters relating to the conduct of a Student of the Inn to the Inns' Conduct Committee for determination if there is material which may call into question whether the Student is a fit and proper person to become a practising barrister. If it is decided by an Inn that the Student's conduct is such that it does not call into question whether the Student is a fit and proper person to become a practising barrister, the Inn will deal with the matter under its internal disciplinary procedures.
64. A Student in relation to whom a conduct matter is being considered under Part V of these Rules by either the Inn to which the Student belongs or the Inns' Conduct Committee, will be held in membership of the Inn until the conclusion of the matter.
65. In referring a Student to the Inns' Conduct Committee, an Inn, at its discretion, may appoint a representative to present the Inn's case at any hearing.
66. The Inns' Conduct Committee will determine whether the Student is a fit and proper person to become a practising barrister by reference to the Guidelines and these Rules.

67. If the Inns' Conduct Committee finds it proved that the Student is not a fit and proper person to become a practising barrister, it may:
- (a) order that the Student's Call to the Bar be refused or postponed for a specified period;
  - (b) direct that the Student be expelled from the Inn (in which case the Inn must expel the Student);
- and, in addition, in may:
- (c) advise the Student as to future conduct; and/or
  - (d) reprimand the Student;
68. If the Inns' Conduct Committee finds that the Student is a fit and proper person to become a practising barrister, it may (having regard to its findings) nevertheless:
- (a) advise the Student as to future conduct; and/or
  - (b) reprimand the Student.

## **PART VII – REVIEW OF AN INN DECISION BY THE INNS' CONDUCT COMMITTEE**

### **Appeal Request by a Student for a Review of a decision under an Inn's internal disciplinary procedures**

69. The Inns' Conduct Committee will consider requests from Students for a review of a decision of an Inn under its internal disciplinary procedures. Such requests must be made in writing to the BTAS Administrator within one month of the date when the Inn gave notice of the decision.
70. An appeal to the Inns' Conduct Committee from a finding of an Inn shall be by way of review by a Hearing Panel, not a re-hearing.
71. A request from a Student for a review must be accompanied by:

- (a) a copy of the notice of the Inn decision and the reasons for it;
  - (b) copies of all documents submitted or received by the Student which were before the Inn; and
  - (c) the Student's reasons for dissatisfaction with the Inn's decision.
72. On receiving an appeal from a Student, the BTAS Administrator shall notify the Inn and invite it to comment on the Student's reasons for dissatisfaction. The Chair of the Inns' Conduct Committee may give, vary or revoke any directions in relation to the conduct of the appeal as the circumstances may require, having regard to the principles and procedures set out in these Rules.
73. A Hearing Panel may allow the appeal, affirm the decision of the Inn under its internal disciplinary procedures or substitute any decision which could have been made by the Inn. Rules 52 - 57 above apply (with such modifications as are necessary) to the decision of the Hearing Panel determining the appeal.

## **PART VIII – DELEGATION TO AN INN**

### **Delegation of categories of cases to the Inns for determination**

74. The Inns' Conduct Committee may, on the basis of experience, issue a Practice Direction identifying certain categories of admission/Student misconduct cases covered by the Guidelines which may be automatically retained by the Inns for determination.
75. When exercising its jurisdiction under Rule 74, the Inns' Conduct Committee shall have regard to the Guidelines, as updated by the BSB from time to time.

## **PART IX– COMMENCEMENT AND AMENDMENT OF THE INNS' CONDUCT COMMITTEE PRACTICE AND PROCEDURE RULES**

76. These Rules came into force on [1 January 2020], having been approved by COIC and the BSB, and shall apply only to cases referred to the Inns' Conduct Committee after [31 December 2019]. Cases referred prior to [1 January 2020] shall be conducted in

accordance with the Rules for the Inns' Conduct Committee (as amended with effect from 1 August 2017)].

77. Any amendment to any part of these Rules must be approved by (i) COIC and (ii) the Bar Standards Board.

**Chair's Report on Visits and External Meetings from October 2019**

**Status:**

1. **For noting**

**Executive Summary:**

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last Board meeting.

**List of Visits and Meetings:**

4 October 2019	Attended Chairs' Committee meeting
23 October 2019	Attended the Sir Thomas More Annual Lecture and Dinner – Great Hall, Lincoln's Inn
24 October 2019	Attended the Grand Day Dinner – Middle Temple
28 October 2019	Met with Anna Bradley, Chair and Paul Phillip CEO, Solicitors Regulation Authority (SRA)
30 October 2019	Attended Board briefing