

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

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Dear Chris

**Internal Governance Rules (IGR) – Dual self certification**

Thank you for your letter of 15 July 2010. I also note the subsequent correspondence between our two Chairmen and the discussion with Crispin Passmore and Chris Handford on Friday 20 July 2010. We were very grateful to them for making time available at short notice so that I could be part of the discussion before going on leave.

I am now in a position to provide much of the information that was requested in the Initial Assessment Summary. The issues of lay majorities on the Board and on Committees, however, are not yet finalised. They will be discussed at our Board meeting on 16 September, enabling a response to be provided to you by the extended deadline of 20 September given in David Edmonds' letter to Ruth Deech on 16 August.

Turning to the rest of the information you have asked for, please find details below.

**1. Principle 1, Governance, IGR, C – selection and appointment of Chair**

Thank you for pointing this out. Amendment of the Constitution is likely to be needed. We are conferring with the Bar Council regarding this and will be able to supply further detail on how compliance will be achieved by 20 September 2010.

**2. Principle 2, Appointments, IGR, A – selection of board members on merit**

The intention was to select on merit and indeed the Nolan principles require it. The Appointments Panel is required to act in accordance with the Nolan principles however the need for appointment to be made on merit should perhaps be more explicit as you say. The Standing Orders, now in preparation, will make this clear.

### **3. Principle 2, Appointments, IGR, C – appraisal and disciplinary process**

Appraisals of Board members are carried out by the Chairman of the BSB every year. The BSB Chairman and Vice Chairman meet each member of the Board to discuss the year that has passed, particular achievements and areas where work may be needed in the coming year. An assessment of attendance is made to ensure that the member is attending as required (as per A21(5) of the BSB Constitution). Any questions of unfitness or misconduct would also be raised in this context. For members who are eligible for reappointment, the appraisal also involves an assessment of whether the member wishes to be considered for reappointment and whether they are performing at a level that would justify reappointment. Appraisals are written up and agreed between the BSB Chairman and the member. Reappointment recommendations are then made to the Appointments Panel involving an assessment of whether the person has performed to the standard expected of the office held and whether it is in the interests of the BSB to renew the appointment. The Appointments Panel can agree or refuse a recommendation.

### **4. Principle 2, Appointments, IGR, C – appraisal and disciplinary process**

The BSB may resolve that a person should cease to be a member in the circumstances outlined in A21 (5) and (6) of the BSB Constitution. It was not envisaged that this required LSB approval as the IGRs are aimed at undue influence from persons with representative functions rather than a proper resolution by the regulatory arm itself.

The dismissal by the AAR referred to in A21(7) may only be exercised in accordance with 10b of the Bar Council's Standing Orders. That is to say, the AAR can only dismiss a person with the concurrence of the Legal Services Board. It is a formal process with the BSB in the driving seat. This is further reinforced by the provision in the Bar Council Constitution which prevents the Bar Council from passing a Directive Resolution to do anything inconsistent with its obligations in relation to the principle of regulatory independence as defined in rule 1 of the Internal Governance Rules 2009. This was part of the changes made to the Bar Council Constitution in order to comply with the Internal Governance Rules.

### **5. Principle 3, Strategy and Resources**

Central Services provides support that is integral to the successful fulfilment of BSB objectives. As such, the Director of Central Services attends BSB meetings and is accountable to the Board for the performance of the Central Services departments in support of BSB activity. This is no different to the Director of the BSB. The Director of Central Services is also specifically tasked by the BSB to lead projects of a cross cutting nature, such as the Authorisation to Practise project.

In broader terms, respective Central Services department Heads are invited to BSB staff meetings and are periodically tasked directly by the Director of the BSB. The latter also has a role in the recruitment, appraisal and reward of all Central Services department heads.

These arrangements reflect the B+ model of regulation permitted by the LSA 2007 and are largely matters of practical convenience. They do not permit of improper Bar Council influence over BSB decisions.

## **Service Level Agreements**

There have been draft SLAs in place between Central Services and the BSB for several years. We are actively taking the opportunity provided by the IGR process to review and finalise them. It is envisaged that they will shortly be completed to mutual satisfaction and will be forwarded to the LSB in due course.

At a day to day level, while the SLAs define the scope of mutual expectations, the Directors of the BSB and Central Services work very closely together on all issues where they and their staff have shared responsibilities.

## **Regulatory Services provided by Central Services Staff**

In practice, there is limited 'regulatory activity' undertaken by Central Services staff, but always at the behest and under the direction of the BSB. There are three areas where Central Services staff undertake activities that may be considered regulatory in nature: Records, Research and Equality and Diversity.

The Records Office collects necessary information about members of the Bar for the Approved Regulator encompassing both regulatory and representative functions. These details are available to the BSB as and when needed for its activities. The Records Office fulfils the AR function to collect the PCF and thereafter the department issues PCs strictly in accordance with an authorisation process defined by the Code of Conduct. It reports those who default to the BSB exactly as per BSB defined procedures. The BSB has unimpeded visibility of all Records Office and determines the regulations under which it undertakes regulatory activity.

In a relatively small organisation, and with a relatively small membership compared to other membership organisations, having a single Records function is the most administratively sensible approach. It also means that the members of the Bar contribute or update information once rather than having to supply it several times. It lessens the risk of an update being missed or incorrect in a vital area. Members agree to the variety of uses to which their information may be put, thereby ensuring that it information is not used inappropriately. An SLA is being finalised to govern the collection of information by the Records Office for regulatory purposes.

A new Research Office has been established within Central Services. The arrangements for this activity are being finalised. The intention is that the Office will accept work from either the Bar Council or BSB. Disclosure to the other will not be required. The Office will also assist when the BSB (or Bar Council) engages external providers to carry out research. The BSB will devise its own research strategy to support its work. Again, an SLA is being finalised to ensure the BSB receives the service it requires from the Research Office.

The BSB's Equality and Diversity Advisors are part of a joint Bar Council/BSB Equality and Diversity Team under the Director of Central Services. However the BSB's Equality and Diversity Advisors' tasks are directed by me as Director of the BSB. The Director of Central Services ensures that the teams are resourced and supported properly. The reason for keeping all E&D team members together is that there is a wide variety of activities being undertaken across both the BSB and Bar Council. Having all people together enables work to be coordinated and streamlined where possible. It also ensures that knowledge and learning is pooled and utilised as effectively as possible. Many equality and diversity issues affecting the Bar are common to both regulatory and representative interests, although the responses necessarily vary. There are separate BSB and Bar Council Equality and Diversity Committees to support the work of each.

## **Finance Manual**

The Finance Manual has recently been reviewed by the Performance and Best Value Committee of the BSB. A number of additions and amendments have been suggested. When the revisions have been made, the appropriate extracts of the manual will be forwarded. On the budget, we have always been able to agree this with the Bar Council and have never yet had to invoke the dispute resolution arrangements in paragraphs 61-66 of Bar Council Standing Orders.

## **Alternative service providers**

In some areas (public affairs/media and professional services) the BSB has a budget allocation each year to enable it to seek independent advice should the need arise. In other areas, there is no specific budget allocation as this is more of a contingency issue. In those cases, the BSB would advise the Finance and Audit Committee that funds have been expended or need to be expended if independence or effectiveness were perceived to be compromised or justified. The BSB is the sole determiner of whether an issue is regulatory or not (as provided in the BSB Constitution).

The Treasurer, Chairman, Vice Chairman and Chief Executive of the Bar Council all have a specific duty placed upon them to promote and protect the application of the principle of regulatory independence (paragraph 11 of Bar Council's Standing Orders). All parties are aware that the BSB would ultimately be entitled to notify the LSB if its independence or effectiveness was being compromised in this way and that the LSB may be entitled to take further action as a result.

In practice, such alternative action would only be taken in extreme circumstances and based on the historic relationship between the AAR and the BSB it is difficult to envisage it happening. FAC and its predecessor the Finance Committee have always supported BSB special applications for additional funds to carry out regulatory functions. I should stress that both the Bar Council, as AAR and BSB take this seriously and work actively to avoid any use of the alternative mechanisms.

## **6. Principle 4, Oversight and monitoring by AAR**

The BSB provides a significant amount of information to the AAR. The Constitution specifically requires that the BSB provide an annual plan of the work it intends to undertake as well as an annual report detailing its performance. Both are key aspects of the BSB's accountability to the AAR.

To further facilitate accountability and transparency the BSB Chairman provides an oral update on the BSB's activities to the Bar Council at every Bar Council meeting.

The Finance and Audit Committee (FAC) has an oversight role in relation to both the representative and regulatory arms of the AAR. This is a key means by which the BSB is both able to justify its reasonable financial requirements and also can be held to account for its financial planning and management. As Director I provide a report on the BSB's management accounts to each FAC meeting.

The AAR obtains confidence in the financial management of the BSB by virtue of the existence and work of the BSB's Performance and Best Value Committee which reviews in depth BSB's financial and performance management. The Treasurer of the Bar Council (who is an officer of the AAR) receives the papers for that committee and has an open

invitation to attend. His input is welcomed and valued. Through this the BSB demonstrates it is effectively discharging its regulatory functions, as required by the BSB Constitution.

Attendance at BSB meetings by the AAR through its designated officers is a key means by which the BSB demonstrates that it is operating effectively and properly. This is a key part of the oversight and monitoring activity undertaken by the AAR. This is not an unfettered right of access by the AAR since the BSB reserves the right to exclude AAR representatives should it deem that necessary and this does occur. The system does not permit for an improper interference with the independence of the BSB. The BSB Chairman and Board members control of the decision making process at each meeting with the Chairman of the Bar Council in his or her capacity as the AAR only contributing when relevant.

As a final point, the very purpose behind the AAR function being allocated to a small group of elected and non-elected officers (Chair, Vice Chair, Treasurer and Chief Executive) is specifically to preclude even the possibility that the residual functions allocated to the AAR could be undermined by the Bar Councils representative functions.

Finally, the BSB Chairman participates actively in the Chairmen's Committee. This provides a forum for dealing with matters of mutual interest as well as cases of disagreement or issues requiring resolution at the highest level.

## **7. Principle 4, Attendance by Chairman of the Bar**

The BSB does not believe this is a problem in practice. As noted above, the BSB has ability to exclude any person from its meeting, including Bar Council representatives if necessary. This policy has been applied without difficulty and AAR representatives have not attended certain parts of BSB meetings in the past. Generally it is advantageous for the AAR to hear the BSB's deliberations at a formative stage and it is advantageous for the BSB to receive immediate contribution from the AAR.

Matters that would usually be suitable for private session include those that:

- a) relate to a particular complaint, investigation or application;
- b) are commercially sensitive;
- c) are a personal matter relating to an employee, Board member, committee member or office holder of the BSB, or a candidate for these positions;
- d) are subject to legal professional privilege;
- e) relate to the prevention or detection of crime or the prosecution of offenders;
- f) identify the source of any information given to the BSB in confidence; or
- g) are part of the early stages of policy making, where the BSB considers that it needs reasonable time and a measure of privacy to assess arguments and to debate internally. However, this will result in public consultation once the policy options have been properly considered.

Confidential business is conducted in private and in the presence of relevant members of staff or other organisations and, exceptionally, expert advisers to the Board, at the BSB Chair's discretion in each case. The order of exclusion would usually be:

- a) Public and Press;
- b) Public, Press and Observers;
- c) Public, Press, Observers and BSB staff; and
- d) Public, Press, Observers, BSB staff and Director.

The term Observers includes AAR office holders and staff as well as others who routinely attend the Board, such as the COIC representative.

All private session agenda items are considered to assess which people should attend or be excluded in advance of the meeting.

We would be very happy to discuss any of this with you. Thank you for the assistance to date. We have enjoyed working with you and your staff on this issue and look forward to continuing our constructive discussions and positive working relationship. Please do not hesitate to contact me if you have any queries.

Yours sincerely



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