

By email

Mark Neale
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4 May 2021

Dear Mark

“REPLYING BY SILENCE”

Thank you for your constructive reply of 27 April 2021, setting out the BSB's position and planned action concerning the practice of “replying by silence” to pupillage applications.

We welcome the action you propose to take through your supervision activities, and I have asked that this become a specific area of focus for future performance assessments. Therefore, this will form part of our annual regulatory performance information request in September 2021.

As this is an issue of wider public interest, I propose to publish the correspondence between us alongside our CEO report which will be published at the end of May. I would be grateful if you would let me know if you consider there to be any sensitivities in our correspondence ahead of publication.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Hill', is located below the 'Yours sincerely' text.

Matthew Hill
Chief Executive

Mark Neale
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20th April 2021

Dear Mark,

“REPLYING BY SILENCE”

I have received the attached correspondence from Mr Noah Gifford about the practice of “replying by silence” (which might be more accurately described as not replying at all) to applications for pupillage places.

On the face of it Mr Gifford appears to make a strong and fair point, one indeed that might go beyond the immediate concerns of courtesy and integrity that he describes, and raise questions about how diversity and inclusion in the pupillage process can be properly demonstrated. It is hard to avoid drawing the conclusion that in a process where many candidates do not even receive a reply, let alone feedback on their application, the power of open and transparent recruitment in achieving a more diverse and inclusive profession must surely be undermined. My Chair, Dr Helen Phillips, has written to the Chair of the Bar to make this point.

I have seen your correspondence with Mr Gifford on these points, and recognise the sympathetic terms in which it is framed. I also know that the BSB shares the LSB’s view that the promotion of diversity and inclusion in the legal services sector is a priority for regulation. My purpose in writing, therefore, is to ask you:

- whether it is right for the independent regulator of the Bar to rely on the representative body for action to address a regulatory issue (as opposed, for example, to mandating directly the provision of feedback to candidates – which of course would encompass notifying candidates of the outcome of their application)
- given the apparently widespread nature of “replying by silence”, whether that might indicate shortcomings in the pupillage Authorisation Framework (which your reply to Mr Gifford makes clear relies on the provision of candidate feedback as a means of demonstrating commitment to open and fair recruitment)
- what action, if any, you are planning where feedback is not being provided to candidates (which must presumably be the case for those who are “replying by silence”)

I would be grateful to understand the BSB's position on the above matters.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Hill', with a stylized flourish at the end.

Matthew Hill
Chief Executive

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

BY EMAIL

Matthew Hill
Chief Executive
Legal Services Board
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27 April 2021

Dear Matthew

REPLYING BY SILENCE

Thank you for your letter of 20 April 2021 passing on correspondence from Mr Gifford about recruitment to pupillage.

As I explained to Mr Gifford, we take very seriously the approach that pupillage providers take to the recruitment of pupils and how this impacts diversity and inclusion. One of the workstreams in our Future Bar Training programme included a project to identify potential barriers to diversity in pupillage caused by recruitment practices and considered what regulatory response was needed. During the project, we engaged with a range of stakeholders, reviewed available research and conducted new research. Our proposed response was tested with a stakeholder reference group, our then Education and Training Committee and the Board.

As part of this work we were concerned to ensure that the recruitment process was transparent to all applicants and that unsuccessful applicants had access to feedback that could assist them with future applications, particularly where this might improve diversity. Accordingly, we implemented a number of important changes, which are subject to evaluation as part of the Future Bar Training programme.

Mandatory recruitment timetable

From November 2020, we mandated the recruitment timetable for pupillage. This was a significant change that provides much greater transparency for applicants, particularly those who have no connections inside the profession to advise them how the recruitment process is typically conducted or other inside information that confers an advantage during the recruitment process. The new timetable means that there is now a fixed period for advertising,

interviewing, making offers and accepting offers that applies to all pupillage providers and all candidates. This means that it is very clear to all applicants, even if they do not receive a rejection letter, where they stand in the recruitment process and what their options are.

Feedback to unsuccessful applicants

We do think that it is important for pupillage providers to give feedback to applicants who have been unsuccessful. We do not mandate how this feedback is given; our Supervision team has engaged with a number of chambers who do this, either on an individual basis or by publishing a written report of themes arising from the recruitment process. This provides very important information for those applicants who do not have connections with the profession.

We have seen, for example, chambers that have rejected applicants, given them specific feedback and recruited them in a subsequent round, after observing that the applicant has acted on that feedback. We have provided this as an example of good practice that we have asked the Bar Council to include in its Fair Recruitment Guide. The Fair Recruitment Guide sets out that feedback should be given to unsuccessful candidates. The Bar Council is currently updating the Guide and we have asked them to make a stronger statement about the importance of telling candidates where they have not been selected for interview, either directly or through the status function on the Gateway recruitment portal.

We have also included this as an indicator in the Authorisation Framework, as part of mandatory criterion 37.3 under the Accessibility section of the Authorisation Framework, which is about open and fair recruitment. When applying for authorisation to provide pupillage, chambers must demonstrate a commitment to open and fair recruitment. In the guidance for chambers applying for authorisation under this Framework, feedback given to unsuccessful applicants is provided as an example of how chambers can demonstrate this. This is also set out as an example of good practice in Part 4C of the Bar Qualification Manual. This is reviewed by the Authorisations Team when an application is made to be a pupillage provider and is used as a standard against which the Supervision Team reviews pupillage recruitment practice. All chambers and organisations providing pupillage are required to be reauthorised under the new framework and are, therefore, being held to account for applying the fundamental principle of accessibility to pupillage and fair recruitment practice.

Guidance

As part of the project, we considered carefully whether we should publish our own fair recruitment guidance. We decided not to, because the Bar Council's guide is well known in the profession, is used in fair recruitment training, and referenced in the BSB Handbook. Rule C110 of the BSB Handbook says that every member of all selection panels must be trained in fair recruitment and selection processes. Training should ideally be undertaken via classroom sessions and should include study of relevant materials such as the Bar Council's Fair Recruitment Guide. If we produced a separate guide, it would have required pupillage providers to read two guides instead of one, which we did not think was helpful.

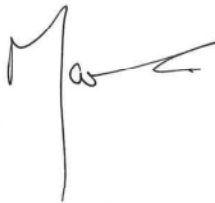
Given this range of actions to enforce fair and inclusive recruitment, I do not think it would have been proportionate to move immediately to further regulation in response to Mr Gifford's letter. I very much sympathise with Mr Gifford's point. It is a matter of common courtesy to send rejection letters to unsuccessful candidates. I am sorry to say that this lack of courtesy

is very common in the wider recruitment market. This would, however, have been a narrow point on which to have acted and would have anticipated the work underway to evaluate the existing measures and to review the need for others.

As part of the development of our next three-year strategy, we shall be looking at the way in which we regulate the chambers through which self-employed barristers practise to ensure that we have appropriate means of regulatory control and intervention. The evaluation of Future Bar Training will feed into those discussions, as will the findings from our recent regulatory return exercise. Further, we have committed in 2021/22 to a thematic review of the profession's response to our December 2020 anti-racist statement. This will provide an opportunity to evaluate the effectiveness of that statement in encouraging changes in culture and practice.

You will see, therefore, that we have not simply left this matter to the Bar Council to address. We have implemented important changes through which we can hold the Bar to account in its approach to ensuring diversity of recruitment into pupillage. These changes are subject to evaluation and we continue to monitor the diversity of recruitment to pupillage.

Yours sincerely

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

Mark Neale
Director General