

Kathryn Stone
Chair

Via email



The Chair's Office
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29th November 2022

www.legalservicesboard.org.uk

Dear Kathryn

Thank you for your letter of 22 November in response to mine of 18 November, further to our Board to Board meeting on 17 November.

Let me start by reiterating that the LSB welcomes the BSB's explicit recognition of our role as oversight regulator, which encompasses holding regulated bodies to account and assessing the efficacy of their regulation and their contribution to furthering the regulatory objectives. One important implication of this is that while words of reassurance from Boards will carry some weight in our deliberations, they are rarely likely to be sufficient on their own. We would very much encourage you to avoid misinterpreting this position as disrespect.

Turning to the main point of your letter, which is to ask the LSB to particularise its concerns.

There has of course been quite extensive communication between us on a range of issues. However, we can see the merit, not least the courtesy to you as a new Chair, in collating a summary of issues of concern in one place. A summary is annexed to this letter with appropriate references to assist your team in locating relevant documents if that is needed.

It is perhaps illustrative of the nature of our concerns that this list expanded while in preparation, with the news of the BSB's apology to a leading KC.

We think it important to reflect on whether the concerns taken together indicate more systemic challenges that need to be addressed holistically if the public and the barristers profession are to have the demonstrably competent, effective and high performing regulator that engenders their confidence.

While we recognise that some action has been taken on some of the issues set out in the Annex, it is suboptimal for all concerned to continue to deal with them individually and often after something has gone wrong, with detriment to the public, to barristers, or to both.

That brings me to the words of reassurance in your letter about your board's understanding of the scale of the challenge facing the BSB. However, we have not found either the account provided of the BSB's current strengths and weaknesses or the improvements needed to make the BSB more effective convincing; not least because of the lack of specifics cited, which could have evidenced both insight and a real commitment to improvement.

I welcome your Board's clarification that it has spoken with a single voice. This is particularly striking in relation to the apparent unanimity about past shortcomings in leadership. I would

very much encourage the BSB board to reflect, however, as to why such concerns were not made available to the LSB during its 2020 “well-led” review of the BSB, or otherwise acted upon, as it may have implications for governance and the ability for the Board to surface issues of concern as a group.

I know you as Chair will share the LSB’s desire for the BSB to have the opportunity to take responsibility for its own performance and governance arrangements. We are therefore providing a further short window for the BSB to demonstrate that it has recognised the seriousness of the situation, that it is committed to fundamental reform and that it will move with appropriate pace and rigour to devise, plan and execute a credible programme of change that satisfies the expectations of the oversight regulator and begins to rebuild confidence with the public and stakeholders.

I would therefore be grateful if you could write to me no later than **Tuesday 6th December** to confirm your acceptance of this position. If you do, we will move to schedule further close engagement early in the New Year in order for the BSB to outline its emerging plans for fundamental change (by which time you will have also had the opportunity to consider our 2022 formal assessment of the BSB’s performance). I should add that my Board is not expecting the BSB to provide further responses on the individual concerns listed in the Annex at this stage.

As indicated in previous correspondence, we think there is a strong public interest in putting information into the public domain setting out these concerns. Accordingly, the LSB will publish this letter, yours of 22 November and mine of 18 November alongside our Board papers on 29 November and your response to this letter in due course.

Finally, I am copying this letter to the Chair of the General Council of the Bar in view of the potential for the LSB’s formal powers to be engaged, although that would be something whose likelihood we hope will be mitigated by your reply.

Yours sincerely

A handwritten signature in cursive script, reading "Helen Phillips".

Dr Helen Phillips
Chair

Annex - Summary of key issues of concern

What is set out below is a summarised rehearsal of our key issues of concern. Most are matters on which we have already corresponded, sometimes at length and in detail. Several are matters of public record. There may be other causes for concern that are not available to the LSB at the time of writing and this list should not be considered as exhaustive.

While not intended to be a comprehensive index, key documents are referenced with approximate dates.

Please do not hesitate to ask for assistance if you have not retained records of any of the below.

- The unilateral decision to withdraw from “Legal Choices” in 2019 without considering the impact on the regulatory objectives and what alternatives would need to be put in place by the BSB, as set out in the Well Led review. A decision the BSB took without proper information and analysis to support it.
- Serious mishandling of the August 2020 Bar exams caused by poor governance and regulatory approach, which led to technical problems and lack of reasonable adjustments made for some disabled students leading to students having to resit later in the year. In connection with this issue, failing to alert the LSB and failing to co-operate effectively with the LSB in promptly providing appropriate information, as set out in Matthew Hill’s letter to Mark Neale of 30 October 2020 and reflected in the November 2021 assessment.
- Serious mishandling of the Ryan Eve case. In July 2021, the High Court heavily criticised the BSB for its mishandling of an application from a bar student, Ryan Eve, for the grant of an exemption from the vocational component of training to be a barrister. The Independent Decision-making Body (which upheld the BSB’s decision) was criticised for not providing reasons for its decision. This was reflected in the November 2021 assessment.
- The practice of “replying by silence” - set out in Matthew Hill’s letter to Mark Neale of [20 April 2021](#) - remaining largely unaddressed.
- A series of leadership and governance failings identified in the [“Well-led” review published on 1 July 2021](#); failure to co-operate effectively with the LSB during the period leading up to the review
- The LSB’s conclusion, in our [November 2021 assessment](#), that the BSB lacks access to sufficient capability, capacity and resources to effectively and efficiently carry out its regulatory functions and protect the public.
- Failures to recognise the implications for regulation of the development of intermediary platforms which source public access barristers, and appear to handle client money, as in the case of “Absolute Barrister” which later collapsed, with associated financial loss to members of the public who had paid the platform. Some members of the public were left without representation. As well as correspondence and discussions between senior colleagues at the LSB and BSB on this matter commencing in December 2021, this was repeated in Matthew Hill’s letter to Mark Neale of 16 May 2022 (“the May 2022 letter”) and in the June 2022 assessment.

- Longstanding and significant underperformance against the BSB's own KPIs for core regulatory work (enforcement, investigations, and supervision) leading to a backlog of cases over an extended period of time, particularly in respect of enforcement, as set out in our November 2021 and June 2022 assessments.
- A series of concerns set out in our correspondence in 2022 and senior level meetings including [a communication from the LSB Chair to the BSB Chair on 28 March 2022](#), in relation to the Post Office miscarriages of justice including unilateral decisions taken by junior staff to pause complaint progression and an apparent failure by the Board to engage effectively with the strategic implications for the regulation of barristers raised by the cases.
- A series of concerns in relation to sanctions imposed in relation to the war in Ukraine set out in the May 2022 letter: publication of incorrect information regarding the application of the sanctions regime to legal services, unsupported assertion that the Bar was low risk, early risk assessment based on a faulty understanding of the UK nexus of the regime, insufficient assessment of the risk profile of the BSB's regulated community despite the BSB's own APEX expert expressing concern about the BSB's insufficient oversight and data to assess the substantive risks, initial reluctance to pursue basic compliance assessment and provide assurance despite clear expectations set for all regulators by the LSB.
- BSB's general reluctance to co-operate with the LSB (Well led review, sanctions, our enquiry into the August 2020 Bar exams) and to bring emerging issues of concern to the LSB's attention in a timely manner.
- Shortcomings in policies and procedures which left the BSB apparently unable to act in the Goldberg case as set out in the May 2022 letter.
- The events leading to the BSB's apology to a leading KC : [BSB statement of 22 November 2022](#)