



Bar Council response to the Legal Services Board's (LSB) "Draft Business Plan 2023-24" consultation paper

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the LSB consultation paper entitled "Draft Business Plan 2023-24".¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview- Remit of the LSB

4. Given the terms of the draft business plan and consultation paper, and the continuing dialogue between the Bar Council and the LSB on the proper remit of the LSB,² the Bar Council considers it useful to preface its responses to the consultation with an explanation of its understanding of the proper remit of the LSB. The statutory remit of the LSB prescribes the limits of what activity may be appropriate for the LSB.
5. The statutory functions of the LSB are set out in the Legal Services Act 2007:

5.1. Section 2 provides for the creation of the LSB and Schedule 1 makes provision for its composition, etc.

¹ LSB 2022, [Business Plan 2023-24 consultation](#)

² For example, LSB letter dated 16 December 2022 (Chief Executive to Chief Executive).

5.2. Section 4 requires the LSB to assist in the maintenance and development of standards (a) in relation to the regulation by the approved regulators of persons authorised by the approved regulators to carry out reserved legal activities and (b) in relation to the education and training of such persons. Section 49(3) notes in simpler language that the LSB's "*principal role is the oversight of approved regulators*". The LSB has limited other statutory functions, such as overseeing the Office for Legal Complaints and the Solicitors Disciplinary Tribunal, but the thrust of the LSB's role is oversight of approved regulators.

5.3. There are six reserved legal activities specified in s. 12(1) which materially include the exercise of a right of audience and the conduct of litigation. The giving of legal advice is not a reserved legal activity, nor is the provision of representation other than in the exercise of a right of audience, nor is acting as a mediator, conciliator or other dispute resolver.

6. The first point useful to note, therefore, is that there are a whole host of legal and related activities falling within what might be characterised as the legal services sector in which the LSB has no role at all. The LSB does not have a legal sector-wide role either as a general policy-maker nor as an oversight regulator. Where the LSB carries out, or proposes to carry out work on this premise, it is over-stepping the role set for it by Parliament and acting beyond its remit.³

7. Significant parts of the remainder of the 2007 Act set out other required functions of the LSB and the means by which the LSB must or may carry out those required functions. For example:

7.1. Section 8 requires the LSB to establish and maintain the Consumer Panel "*to represent the interests of consumers.*" Ss. 8- 11 sets out the role of the Consumer Panel.

7.2. Ss. 27 to 70 map out how the regulation of approved regulators is to take place. By way of example, Section 29 prohibits the LSB from interfering with the representative functions of an approved regulator. Section 30 requires the LSB to make internal governance rules towards, among other matters, maintaining regulatory independence of the exercise of an approved regulator's regulatory functions from its representative functions. Section 51 gives the LSB control of the practising certificate fees charged by approved regulators.

³ The Consultation paper which LSB provided for its draft strategy for regulation 2021-22 is an example which shows the LSB is treating its remit as wider than it in fact is:

- The Foreword by the LSB's Chair said this: "*As we reach the end of our 2018-21 strategic period, we decided not just to create another corporate strategy for the LSB, but rather to develop a strategy for sector*".
- The Executive Summary explained that "*[The LSB's] vision was to develop a strategy for the entire sector and not just for the Legal Services Board.*"

8. The consistent and central focus of LSB materials, including the current consultation, is the eight regulatory objectives defined in s.1(1) of the 2007 Act. However, considerable care must be taken to understand how they legitimately apply to the permitted work of the LSB through Section 3 of the 2007 Act.

9. Section 3 contains two-fold mandatory requirements that in discharging its “functions” the LSB must:

9.1. so far as is reasonably practicable, act in a way compatible with, and most appropriate for the purposes of meeting, the regulatory objectives.⁴

9.2. have regard to the ‘Better Regulation Principles’, that is in all regulatory activities “*should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed*” together with any other principle appearing to represent the best regulatory practice.⁵

10. In principle, then, the role of the LSB is carefully circumscribed in law:

10.1. The functions of the LSB are not the achievement of the regulatory objectives. The functions of the LSB are set out in the 2007 Act.

10.2. The LSB has no general role in the promotion of the regulatory objectives, but only:

10.2.1. so far as may be reasonably practicable in the discharging of its stipulated functions;

10.2.2. and in carrying out permitted regulatory activity, the LSB must have regard to the Better Regulation Principles, including proportionality and that activities are targeted only at cases in which action is needed.

11. It is clear from the tenor, presentation and detailed content of LSB materials, including the present consultation, that the LSB regards its remit as wider than it is. For example, in his letter of 16 December 2022, the Chief Executive of the LSB stated that the LSB’s duty is “*to make full use of our powers to ensure that the regulatory system as a whole delivers the objectives set for it by Parliament.*” That is not, however, a proper characterisation of either the scope or purpose of the functions of the LSB as provided in the 2007 Act. Its role is a discrete one, principally as oversight regulator of approved regulators as provided in s. 4, together with the other functions stipulated in the 2007 Act, and with reference to the regulatory objectives as carefully balanced against what is reasonably practicable and with full regard to the Better Regulation Principles as stated in the terms of s. 3. It is very far from being an untrammelled strategic purpose or aim of the LSB to ‘ensure’ that the regulatory objectives are delivered as explicitly recently stated by Mr Hill.

⁴ S. 3 (2) LSA 2007.

⁵ S. 3 (3) LSA 2007.

12. On that basis the whole emphasis and much of the content of the Business Plan 2023/24 is wrong-headed. Detailed points are set out against each of the questions raised below, but some headline points are made here.

13. First, the three strategic themes set out under the heading of the LSB's self-stated overarching strategy of 'Reshaping legal services' plainly over-reaches its role as an oversight regulator for the 13 or so approved regulators and as prescribed by the 2007 Act. The LSB has no role in setting strategy or policy for legal services such as "Lowering unmet legal need across large parts of society"; "Reforming the justice system"; or "Supporting responsible use of technology that commands public trust" to cite just three of the nine bullet points said to set out the LSB's strategic themes underpinning its business plan. Desirable though these may be, these are social and political aims relevant to politicians, Parliament and representative bodies, such as the Bar Council, not regulators or, still less, an oversight regulator. While "improving access to justice" is one of the regulatory objectives, it is critical to understand that the achievement of the regulatory objectives is not the function of the LSB. Further, it is not reasonably practicable, not consistent with the Better Regulation Principles, nor, indeed, consistent with common-sense for such vaunting ambitions to be the centrepiece of the strategy underpinning an oversight regulator's business plan. If there is a need for strategic aims for the LSB at all they should centre on the functions of the LSB, in particular, in the oversight of the performance of the approved regulators in carrying out their regulatory functions.

14. Secondly, it is plain that the weight and attention given to the eight regulatory objectives, referred to at s. 3(2) of the 2007 Act, is far greater or (to all appearances to the reader) even to the exclusion of the mandatory requirements of s. 3(3) of the 2007 Act. In this regard it is telling that the first four of 12 pages setting out the Business Plan are only concerned with the strategic themes and the regulatory objectives. We would think that a balanced appropriate Business Plan would start, and finish, with the functions of the LSB and address the regulatory objectives, what may be reasonably practicable, and the Better Regulation Principles when doing so, giving equal status and priority to the mandatory requirements both s.3(2) and s.3(3).

15. Thirdly, the Bar Council objects to the LSB continuing with, or adopting, workstreams that fall outside its statutory remit:

15.1. The LSB has no role in setting a legal sector-wide strategy for the reshaping of legal services or otherwise.

15.2. The LSB has no "convening role" as stated at paragraph 12 of the consultation paper, still less a "convening power" as stated at paragraph 27. No such power exists nor may be regarded as implicit in the terms of the 2007 Act. Nor is it, as an (oversight) regulator, appropriate for the LSB to be involved in "discussions on wider public policy matters." Events such as the recently instituted annual conference are not appropriate and do not fall within the LSB's statutory remit.

- 15.3. Standardisation of the provision of legal services and innovation in their delivery are matters for the market, the regulators, the representative bodies, Government and Parliament, and not for the LSB. The LSB might, if reasonably practicable, proportionate, and if action is needed, be involved in assisting the approved regulators with setting minimum standards for any standardised or new services as they come into place. In that respect only when carrying out a function under the 2007 Act regard would be had by the LSB to the regulatory objectives. The LSB, however, has no role in leading or influencing the market with the aim of ensuring the regulatory objectives are met as appears to be suggested.
- 15.4. There should be no continuing financing or use of the Public Panel. It plainly duplicates the work of the Consumer Panel, and it is highly susceptible to delivering the outcomes that the LSB hypothesise for it (as we have previously commented in relation to the continuing competency statement of policy consultation). Its operation is without the checks and balances provided by the 2007 Act. As a matter of law, certainly so far as the LSB is concerned, the consumer interest is represented by the Consumer Panel. Any necessary consumer research should be carried out through the Consumer Panel. There is, in any event, nothing in the LSB's functions stated in the 2007 Act that warrants or permits research by reference to non-consumer members of the public.
- 15.5. It has recently come to our attention that the LSB plan a call for evidence "to address concerns about the important role that legal professionals can play in ensuring that non-disclosure agreements ("NDAs") are not misused, for example to conceal wrongdoing including sexual misconduct, harassment, and discrimination." NDAs are lawful. It is for Parliament to consider whether they should be made unlawful, or perhaps made unenforceable unless both parties to them are legally represented. Whilst they remain lawful, if a lawyer is instructed to draft an NDA on behalf of their client, that is what they must do, in line with the professional principle that authorised persons should act in the best interests of their clients. Accordingly, the call for evidence and any subsequent public policy work or regulatory activity is not something that the LSB should be involved with because it has nothing to do with the LSB's functions under the Act.
16. The reason for the Bar Council's strong views in relation to these matters are two-fold:
- 16.1. First, it is vital, the Bar Council considers, that it is understood that the LSB's finances for its Business Plan comes by way of a levy upon regulated persons and, ultimately, as the cost has to be passed through, is paid for by the consumers of regulated legal services. It is not, therefore, appropriate for the LSB to spend (in substantial part without real accountability) consumer's money on matters for which Parliament has not deemed it has a role.

16.2. Secondly, it is clear that the LSB does have an expansionist agenda in which many of the wide-ranging initiatives to which the Bar Council objects sit.⁶ As the Chief Executive of the LSB recently accepted⁷ there appears to be no likelihood of the statutory framework around legal services regulation being revised by Parliament in the short-medium term. The Bar Council for its part wants the strong, effective delivery of regulatory functions by an organisation that understands the Bar as a (generally) specialised referral profession. A sector-wide regulator simply would not do that.

17. The Bar Council, therefore, seeks that the LSB take a quite different approach to its Business Plan and sets out further detail below.

Q1 – Do you agree with our proposed workstreams for the 2023/24 business plan?

Existing workstreams

Disciplinary and enforcement processes

18. Regulators' disciplinary processes are critical to their functioning and we all want to see fair and effective policies and processes that are tailored to the profession being regulated. The LSB states that it wishes to “develop principles to underpin effective disciplinary and enforcement processes along the regulators”.⁸ What we said in our response to last year's LSB draft business plan is worth repeating:

“Where issues with (the public confidence in) enforcement and discipline are demonstrated to exist, the LSB may assist those regulators with developing and improving enforcement principles. However, it must be careful not to constrain frontline regulators with unduly prescriptive principles, recognising that there is great variety amongst legal service providers and the types of disciplinary issues that may arise. Barristers, for example, do not handle client money, which means disciplinary issues seldom relate to client account issues/misappropriation of client funds.”⁹

⁶ This is demonstrated not only by way of seeking to set a legal services sector-wide strategy, but organisationally too: See the “Frequently Asked Questions” that went to public consultees to the Ongoing Competence in Legal Services consultation:

“The LSB could not establish a single regulator for legal services as the law would need to be changed in Parliament to do this. While it is the LSB's view that ultimately moving to a single regulator would have significant benefits for consumers, for now it promotes achieving benefits for consumers in other ways, such as cross-sector collaboration between the regulators.”

⁷ <https://www.legalfutures.co.uk/latest-news/legal-services-act-with-us-for-one-or-two-decades-lsb-chief-says>

⁸ LSB Draft Business Plan [consultation](#) 2023-24, p.7

⁹ Bar Council [response](#) to LSB Draft Business Plan 2022-23, p.4

19. We understand that the BSB is undertaking some review work on its disciplinary processes. They are well placed to identify areas for improvement, and we look forward to commenting on any proposals in due course.

Equality, diversity and inclusion

20. The Bar Council shares and supports the LSB's objective of advancing equality, diversity and inclusion in the legal sector. The work of the representative bodies in delivering programmes that improve diversity in the professions should be considered and taken into account. There is a role for the regulators in setting minimum standards but it is more appropriate and effective for the representative bodies to promote best practice through research, education, training and mentoring programmes, to give a few examples. A full list of the Bar Council's work on diversifying the Bar at entry and on retention and progression is located in the response to question 8.

Financial protection arrangements

21. We understand it mainly to be an issue for solicitors. We therefore leave it to others, who are better placed to comment on this than we are, to respond.

Review of education and training guidance

22. This area is uncontentious.

Review of first tier complaints rules and guidance

23. This work is timely given the planned implementation of new Legal Ombudsman scheme rules in the Spring that will impact the first-tier complaints handling process.

Rule of law and professional ethics

24. The barristers code of conduct, contained within the BSB Handbook¹⁰, underpins their regulation by the Bar Standards Board. They must comply with it or risk facing disciplinary action. Furthermore, all barristers are responsible for reporting themselves and other barristers for serious misconduct. The Bar Council plays an important role in upholding and promoting these ethical standards. It operates the Ethical Enquiries Service (EES), delivered by the Ethics Committee and a team within the executive. The EES assists thousands of barristers every year to identify, interpret and comply with their ethical obligations by phone and email. It is the most frequently used service of a wide range of services offered by the Bar Council to its members. It also gives access to a comprehensive and up to date collection of ethics guidance on its ethics and

¹⁰ <https://www.barstandardsboard.org.uk/uploads/assets/de77ead9-9400-4c9d-bef91353ca9e5345/a9fd5bc5-edb7-4b52-be7f4cbcd4560996/second-edition-test31072019104713.pdf>

practice website.¹¹ Barristers are also supported to uphold their ethical obligations through training and seminars offered by the Inns of Court, Specialist Bar Associations and Bar Council. The collegiate nature of chambers, where the majority of barristers practise, and regular teamwork of barristers also lends itself to their seeking ethical guidance from more senior colleagues. The structure of chambers incentivises high ethical standards because barristers wish to maintain their chambers' reputation as well as their own.

25. Barristers' adherence to the code of conduct promotes the rule of law because of a primary duty to the court in the administration of justice which prevents, for example, them misleading the court. To take another example, the cab rank rule and requirement not to withhold services on the grounds that the nature of the case of objectionable or the conduct or beliefs of the prospective client are unacceptable to the barrister or any section of the public is conducive to ensuring access to legal advice and representation. We are not aware of any significant risks to the rule of law that are caused by deficiencies in barristers' code of conduct.

26. Perceived issues with legal professionals' conduct may warrant specific targeted action. But some are driven by regulations, e.g. the Money Laundering Regulations, and law, e.g. defamation law, are and as such are a matter for government and Parliament, not the LSB. Although we agree with the LSB on the importance of this theme, demonstrated by our responding with our views to various consultations on Strategic Litigation Against Public Participation (SLAPPs)¹² and signposting barristers to relevant sanctions regulations, we are not confident that the LSB is best placed or has the remit to address the issues.

Technology and innovation

27. As mentioned in the overview section of this response, we think this work sits outside the remit of the LSB. We have reservations about whether statutory guidance is necessary in this area, however, it is difficult to comment further without sight of the detail.

28. As discussed in our response to the LSB's business plan consultation for the 2022-23 period, we continue to have reservations about the cost-benefit ratio of a single register of all regulated legal professionals, given that this information is already readily available from individual registers.

¹¹ <https://www.barcouncilethics.co.uk/>

¹² <https://www.barcouncil.org.uk/uploads/assets/50ab911d-7e34-4634-b7f6ca01c3809041/SLAPPs-call-for-evidence-response.pdf>, <https://www.barcouncil.org.uk/uploads/assets/472e5b20-76bc-4f59-8334d6dad826f539/SLAPP-Bar-Council-of-E-W-Preliminary-Position-Paper-EU-consultation.pdf>, <https://www.barcouncil.org.uk/uploads/assets/e19d3b21-ba06-4cb3-b03828fe7e70e32d/Bar-Council-response-to-SLAPP-online-questionnaire.pdf>

Other functions

29. The LSB's discharge of regulatory functions, including oversight of the Office for Legal Complaints (OLC), is important. Likewise, their oversight of regulators' performance through the full implementation of the new regulatory performance framework is a key activity.

Proposed new workstreams

Market surveillance and horizon scanning

30. The Bar Council understands the LSB must be able to anticipate and respond to any risks facing the regulated legal sector, and that information and intelligence should be gathered in order to do so. However, we encourage the LSB to be mindful that it does not duplicate work in the areas of climate change and the cost of living crisis that has already been carried out by representative bodies and regulators. For example, the Bar Council has a dedicated Working Group on the climate crisis¹³ and the Law Society website has a dedicated page with resources on climate change.¹⁴ Although details of the intelligence being sought by the LSB have not been provided, which makes it hard to comment further, we expect the LSB to engage with stakeholders to determine which research has already been carried out.

31. The Bar Council will be including questions in our biennial Barristers Working Lives survey, which will be sent to all practising barristers in spring 2023, on the cost of living crisis and sustainability. We would welcome the opportunity to share our findings with the LSB when they are published.

32. We note that in the Business Plan, the LSB have indicated that they will be considering risks across the whole of the sector.¹⁵ We remind the LSB to be mindful of its remit and to focus its efforts solely on the regulated sector.

Consumer vulnerability

33. We welcome the LSB's continued work on improving access to justice for people in vulnerable circumstances and the intention to base policies on evidence provided by regulators.

¹³ <https://www.barcouncil.org.uk/policy-representation/policy-issues/climate.html#:~:text=The%20Bar%20Council%20recognises%20the,worst%20effects%20of%20climate%20change.>

¹⁴ <https://www.lawsociety.org.uk/topics/climate-change>

¹⁵ [LSB Business Plan 2023-24](#), paragraph 14

Review of LSB's enforcement policy

34. We do not object to the LSB reviewing the scope and use of its statement of policy on enforcement. As the last review of the policy was in 2017, the Bar Council agrees it is important to consider whether it aligns with existing expectations in 2023.

Evaluation of the Internal Governance Rules

35. The Bar Council supports the planned review of the Internal Governance Rules introduced in 2020 and welcomes the opportunity to share its views with the LSB in due course.

Q2 – Are there any areas missing from our proposed business plan 2023/24 that you consider should be included?

36. No

Q3 – Do you have any comments on our proposed research programme?

37. The business plan envisages using the Public Panel 'to enable us to engage more directly with members of the public' and '[to] ensure the public are at the heart of our policy development process'. As presaged in paragraph 15.4 above, we do not support the use and continued financing of the Public Panel as part of the research programme (or at all).

38. We fail to understand what function the Public Panel performs which is not already met by proper and full use of the Legal Services Consumer Panel. The Consumer Panel comprises eight lay members, whose appointments were approved by the Lord Chancellor, and is an independent arm of the Legal Services Board. It was created by the 2007 Act expressly to "*provide high quality, evidenced-based advice to the Legal Services Board, in order to help them make decisions that are shaped around the needs of the users ... The [Consumer] Panel has legal powers to publish its advice and the Legal Services Board has a legal duty to explain its reasons when it disagrees with the advice that we publish.*"

39. As a matter of law, so far as the LSB is concerned, the consumer interest is represented by the Consumer Panel. That is clear from s.8 of the 2007 Act which requires the LSB to establish and maintain the Consumer Panel "*to represent the interests of consumers*". Quite why, therefore, the Public Panel is required to engage with '*consumer research ... on perceptions of the rule of law and professional ethics*', as proposed in paragraph 23 of the Business Plan is not understood. Nor can it be right that the Public Panel will provide assistance in relation to Prices Research which could not be provided by the Consumer Panel, being the representative body for those likely to have some insight into pricing: consumers.

40. The Public Panel appears to bypass the existing statutory mechanisms under the 2007 Act which enable it to canvas the views of the public and users of legal services about matters which are properly within its remit. The 2007 Act provides for the circumstances in which the LSB is to engage with consumers and to gather evidence from such persons (or, more accurately, their representatives) (see, s.8). Parliament saw fit and intended to impose a series of checks and balances to ensure the body of persons who formed the panel were from an appropriate pool, which it must be taken to have intended were thought to be likely to assist the LSB in achieving its objectives.

41. Secondly, as regards the specific areas of research:

42. We support and have no objection in principle to undertaking a Legal Needs Survey.

43. We take objection to the proposal to use the Public Panel to research the perceptions of the rule of law and professional ethics, for the reasons set out above. Such research should be carried out within the LSB's function and using the Consumer Panel, if any panel at all.

44. It is important to be aware of existing research conducted by Approved Regulators and frontline regulators. There is a lot of valuable information already available for the LSB to use. Care must be taken not to duplicate existing research which would be a waste of resources.

45. Some examples of research pertaining to the Bar on Equality, Diversity & Inclusion are listed below:

Bar Council (own research/research partnerships)

- In 2021 the Bar Council published a detailed report on how race at the Bar impacts admission to the Bar and progression within it,¹⁶ as well as a progress report¹⁷ at the end of 2022.
- The Bar Council undertakes biennial research called "Barristers Working Lives"¹⁸ which explores barristers' experience of practice and working conditions and specifically bullying, discrimination and harassment, in addition to wellbeing. Practice areas and income data¹⁹ is cut by the protected characteristics of sex and race. This helps us track the experience of different groups and design appropriate interventions;
- Pupillage Gateway (Recruitment) data²⁰ is analysed annually and cut by the protected characteristics enabling us to track performance in securing pupillage by practice area;

¹⁶ [Bar Council Race at the Bar: A Snapshot Report, 2021](#)

¹⁷ <https://www.barcouncil.org.uk/uploads/assets/731674e4-831b-41a5-b9040a3acf996bac/Race-at-the-Bar-progress-report-November-2022.pdf>

¹⁸ <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

¹⁹ <https://www.barcouncil.org.uk/uploads/assets/234f3cc0-c82c-406d-bff3c2e6db925646/Barrister-earnings-by-sex-and-practice-area-2022-update.pdf>

²⁰ <https://www.barcouncil.org.uk/resource/pupillage-gateway-report-2021.html>

- Ad hoc research is undertaken on specific cohorts e.g. recent reports include: Young Bar²¹ (<7 years Call); Employed Bar (due for publication 8 February 2023) – this research includes focus groups and is cut by the protected characteristics to establish differences in experiences and outcomes for different groups, and;
- The Bar Council also partners with third party researchers to understand the experiences of different groups e.g., social background on income (LSE) – part way through a 3-year study; sexual harassment in Bar mini-pupillages (Warwick). We also have data sharing agreements with various government bodies (e.g. SFO, CPS) to track data on Panel Appointments and work allocation and briefing practices by protected characteristics.

Third Party research analysed by the Bar Council

- King’s Counsel Appointments (KCA)- we monitor Silk information provided by KCA by protected characteristic.
- Judicial Appointments- we monitor Judicial appointments and judicial diversity using information from the Judicial Appointments Commission and Judicial Office.

BSB

- The BSB produces diversity data on the profession²² and Bar students annually (e.g. fees/enrolment/results by provider;²³ course providers’ approach to EDI; students experience of training;²⁴ differential outcomes²⁵. They also publish longitudinal studies.²⁶
- The BSB also produces income data and periodic research on issues e.g., Sex;²⁷ income by Sex and Race;²⁸ and, harassment & bullying.²⁹

²¹ <https://www.barcouncil.org.uk/resource/life-at-the-young-bar-report.html>

²² <https://www.barstandardsboard.org.uk/uploads/assets/8e1b9093-b2f7-474f-b5faa3f205d26570/BSB-Report-on-Diversity-at-the-Bar-2022-FinalVersionv2.pdf>

²³ <https://www.barstandardsboard.org.uk/uploads/assets/adeb685a-26f7-434d-9c0ccb33c05de50f/BAR-TRAINING-2022-STATISTICS-BY-COURSE-PROVIDER.pdf>

²⁴ <https://www.barstandardsboard.org.uk/uploads/assets/3955f014-fed3-4850-81bd3a373e1be3e0/2308-Final-Student-Experiences-of-the-BTC-YouGov-report.pdf>

²⁵ <https://www.barstandardsboard.org.uk/uploads/assets/99cb4f09-84ef-4c16-b5ab32b68bb30bb0/8fa2ed8b-f2ca-4911-ac5ef2816be194f8/BSB-Differential-Outcomes-on-the-BPTC-2014-2020-Full-Report.pdf>

²⁶ <https://www.barstandardsboard.org.uk/uploads/assets/12aaca1f-4d21-4f5a-b213641c63dae406/Trends-in-demographics-and-retention-at-the-Bar-1990-2020-Main-Body.pdf>

²⁷ <https://www.barstandardsboard.org.uk/uploads/assets/118b1db5-d15f-4e53-a214b0e71622f9aa/womenatthebarreportv4.pdf>

²⁸ <https://www.barstandardsboard.org.uk/uploads/assets/af6c9471-1328-4f4d-8f1baf5adb349d64/Income-at-the-Bar-by-Gender-and-Ethnicity-2022.pdf>

²⁹ <https://www.barstandardsboard.org.uk/uploads/assets/896b55e0-72b2-4388-be291617735b8a25/ea23e7ad-cc4a-438f-b50d6929f2001c5d/October-2020-BDH-at-the-Bar-full-report.pdf>

46. Further, Bar Council delivers an extensive programme of online and in-person EDI training in chambers, as well as helpline services to the profession (for individuals and chambers) which provides intelligence on emerging issues which are then explored in deep-dive, follow up research and evidence-based policy making as required.

Q4 – Is there anything missing from our proposed research programme that you think we should focus on?

47. No, save that the Bar Council considers, as mentioned, that the Business Plan should be focussed on the statutory functions of the LSB.

Q5 – Do you agree with our proposed budget for 2023/24? CL

48. We are encouraged to see that the LSB has not proposed an increase of its budget in 2023/24 at an above inflation rate. However, the addition of £2.11 to the practising certificate fee represents a significant increase to those barristers whose annual earnings place them in the lower income bands and has to be viewed in the context of the other compliance costs that regulated legal professionals are subject to, for example, registration with the Information Commissioner’s Office and their annual professional indemnity insurance.

49. While we are pleased to hear that the LSB has critically appraised its workstreams for 2023/24, we reiterate that the LSB must focus on its core functions within the remit of the Legal Services Act 2007 and must be cost-effective. The LSB are continuing with workstreams in 2023/24 which we both do not consider strictly necessary, such as the annual conference, and which, if it is to be held, could be delivered in a more cost-effective way, for example, by hosting the conference online.

50. With the cost of living crisis impacting not just consumers, but also legal practitioners, the LSB needs to be much more critical of its activities and whether they fall within its remit. Increasing its budget to fund activities which are ‘nice-to-haves’ rather than essential to the LSB fulfilling its statutory duties will put further pressure on practitioners, in particular those who are junior and publicly funded. It is well documented that such financial pressures have compelled some criminal practitioners to leave the Bar. This in turn, impacts access to justice for consumers, not just for those who struggle to find a barrister to represent them, but also in increased waiting times for trial, as the Crown Court backlog grows.

Q6 – Are there any other factors regarding the proposed budget for 2023/24 that you believe we should consider?

51. None, other than the factors set out in our response to Question 5.

Q7 – Do you have any comments regarding equality issues which, in your view, may arise from our proposed business plan for 2023/24?

No.

Q8 – Are there any wider equality issues and interventions that you wish to make us aware of?

52. The Bar Council has an extensive programme of work underway on equality, diversity and inclusion. We are working to create a profession ‘representative of all and for all’. Activities involve identifying and seeking to address barriers and assumptions that inhibit the progression of those with a protected characteristic³⁰ or those from an under-represented background into and within the profession.

The Bar Council delivers the following services and initiatives:

- A telephone helpline (for barristers and pupils facing unequal treatment and chambers/others looking to manage issues/develop good E&D practices) and AI/online reporting for incidents of discrimination, harassment and bullying;
- E&D Training as well as wider education on these issues across the Bar;
- Guidance/Policy Support (on compliance with the BSB’s E&D Rules and good practice);
- Research (data on the profile of the students, pupils, and the profession – intersectional, and including by different ethnic minority groups - and trends);
- Assistance to/collaboration with Bar stakeholders e.g., FreeBar, BBN, BDbar & AWB; Bridging the Bar etc.; and
- Discrete Bar Council-led programmes to promote and support equality, diversity, and inclusion.

53. The Bar Council’s key campaigns for 2023 include:

- Modernising working practices at the Bar including tackling earning inequality to support progression;
- Tackling bullying and harassment, and;
- Promoting race equality. “The Bar Council’s Race at the Bar: A Progress Report”, was published in November 2022. This details the interventions the Bar Council is responsible for. An excerpt of the relevant section of the report is annexed below.³¹

54. This work sits alongside the following ongoing work:

³⁰ Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex, Sexual Orientation (Equality Act 2010)

³¹ [Bar Council Race at the Bar: A Progress Report](#), 2022

- Supporting barristers' wellbeing;
- Improving socio-economic diversity at the Bar;
- Improving Courts/Chambers access for those with a disability;
- Supporting judicial diversity, and;
- Supporting and promoting diversity networks across the Bar.

Bar Council
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Annex 1- Excerpt from “Bar Council Race at the Bar: A Progress Report”, pages 10-12

Bar Council race-based activity

Following the recommendations of the 2021 Race at the Bar report, the Bar Council published its own [race action plan](#) outlining the activity that we would undertake to support the profession in delivering race equality. Our race equality work undertaken to date can be grouped into three areas:

- Advice and guidance for the Bar
- Stakeholder engagement
- Programme delivery

Advice and guidance for the Bar

The 2021 report identified gaps in the level of advice and guidance available to chambers who needed to address issues of race inequality but were unclear on how to go about this.

To support recommendations in the 2021 report, the Bar Council has now produced:

- [A target-setting guide](#)
- [A guide to programme planning and evaluation](#)
- [A guide to setting up a Bar-based network](#)
- [A toolkit for monitoring distribution of work by race](#)
- [A mentoring guide](#)

These materials are for use by chambers and other Bar-based stakeholders.

EDO Network: The Bar Council provides online support meetings for chambers’ Equality and Diversity Officers (EDOs) to discuss key topics related to equality, diversity and inclusion (EDI), share experiences with each other, and seek input from other EDI advisors.

In 2022, we have run sessions on:

- Race action planning
- Monitoring distribution of work
- Target setting

Chambers seeking to access the above resources or further support can find details under ‘Key resources and further reading’ below.

E&D Helplines: The Bar Council provides a [helpline/advisory service](#) and an online reporting tool ([Talk to Spot](#)) for individuals experiencing bullying, discrimination and harassment. The Bar

Council also supports chambers seeking to make progress on any aspect of equality, diversity and inclusion, including race inequality.

Stakeholder engagement

The Bar Council and its Race Working Group undertook to work collaboratively with others across the profession to ensure progress on race equality was accelerated. We have been, and are continuing to, work with the Bar Standards Board (BSB), the circuits, Specialist Bar Associations, Inns of Court, and government bodies in relation to the findings of the 2021 report.

BSB: The Race Working Group Co-Chairs delivered a briefing to BSB leadership and staff members/volunteers in January 2022. Following this, the BSB put out a statement endorsing the 2021 Race at the Bar report's recommendations and advising that chambers should follow these in order to meet the BSB's expectations set out in its own 2020 ['Race expectations statement'](#).

Government panels: In July 2022, the Bar Council conducted an [analysis of diversity on government panels](#) by sex and ethnicity. We have since liaised with relevant government bodies (GLD, SFO and CPS) to improve monitoring of panel membership and work allocation by race and sex.

Programme delivery

Training: During 2022 the Bar Council rolled out an ['Introduction to race'](#) training course, delivered by a panel of trainers selected for their expertise in anti-racism work and knowledge of the Bar. Since the development of this training, we have trained over 34 sets of chambers (delivering over 55 courses to 685 barristers in total).

The course continues to be in high demand from chambers. We are now looking at ways to make the course as accessible as possible to more barristers by holding some open/mixed set courses.

10,000 Black Interns: This new [Bar internship programme for Black students and graduates](#) is an initiative coordinated by the 10KBI Bar Steering Group, made up of volunteer barristers, chambers staff, and representatives from the Bar Council. We undertook a pilot programme in 2022. Over 70 organisations at the Bar came together to deliver a unique paid six-week internship for 24 interns who spent time between different sets of chambers and at the employed Bar. Feedback from participants was positive and we are currently organising a new round of internships for summer 2023.

Careers outreach: As part of our commitment under the 'access' recommendation the Bar Council committed to creating a [one-stop shop for students](#) to access information on how to come to the Bar and the support available to them.

Support for networks: The Bar Council provides support for independent Bar-led networks and initiatives providing effective programmes to support under-represented groups.

Using the funds raised from donations at the Race Summit 2021, the Bar Council sponsored the following programmes:

- [North Eastern Circuit's Diversity Feature Film](#)
- [Black Barristers' Network](#): a directory of Black barristers (currently in development)
- A new website for [BME Legal](#) (currently in development)
- An event at No. 5 Chambers in collaboration with Birmingham Black Lawyers celebrating [Black History in the Law](#) and providing networking opportunities for barristers and students.