



INNER TEMPLE RESPONSE TO THE BAR STANDARDS BOARD'S CONSULTATION ON PROPOSED AMENDMENTS TO THE EQUALITY RULES

The Inner Temple fully supports the Council of the Inns of Court (COIC) response on the above consultation. We would also like to respond in greater detail on matters relating specifically to the infrastructure of Inner Temple (recommendations 9 and 10 of the consultation) and have done so below.

The BSB proposals on access to premises

The BSB's proposals would require barristers to "to take reasonable steps to ensure that premises from which you conduct your practice are fully accessible to all". This would apply even if no current tenants or pupils had any mobility impairments.

Fully accessible is defined in the BSB consultation document as follows:

"There is independent access to enter and exit the building, and move within the building to independently access toilets, communal areas, a conference room, and clerks' room".

There would be an obligation:

"to have a written plan that is reviewed each year (and made available to the BSB on request) to ensure that the premises from which you operate will be fully accessible as soon as practicable, and in any event within five years of the Equality Rules coming into force unless there is a reasonable justification for not being able to achieve this".

As to "reasonable justification", the consultation says (para 67):

"Where members of chambers and entities have made reasonable efforts to make their premises accessible, and where there are justifiable reasons that would prevent moving premises (for example affordability, support provided by the Inns etc.), we will not take enforcement action."

The clear implication is that chambers in premises which are not fully accessible, and cannot be made so within five years, should move premises unless they cannot afford to do so.

Given the advantages of being co-located in the Inns for barristers' chambers, and the decline in the central London office market following the covid-19 pandemic, rents in the Inns tend to be higher than in other areas. Affordability is unlikely therefore to be a barrier to chambers moving premises. As is explained further below, the Inns' rental income is critical to the work of the Inns and there would be serious adverse effects for the profession, and the public interest, if chambers did vacate premises in the Inns.

The position of the Inner Temple

Most of the buildings in the Inner Temple have multiple characteristics which would prevent them from being made fully accessible in terms of the BSB's consultation.

The approach to the majority of the buildings is stepped, in whole or in part. A sesame step lift – such as that installed at 7 Bedford Row – is not possible for many of the Inn's buildings, because the steps and entrance ways are too narrow to enable an escape route to remain available when the lift is in use, and the physical situation is such that it is not possible to install the necessary machinery/motor. Where platform lifts or similar can be installed to provide access into a building, this is exceptionally difficult and expensive due to the buried archaeology in the Temple. For example, mediaeval artefacts (requiring an archaeological dig) and buried utilities both had to be addressed for the external access lift at Farrar's Building when access improvements were made.

For many buildings in the Inn, creating a secondary entrance is not possible, due to the building being terraced with no available space for a secondary entrance to be created, often because the building backs on to another building or structure, or because the space is entirely enclosed by other buildings, has no pedestrian access, or is too narrow to be used for access let alone the installation of an external lift.

Even where level access into a building is possible, it is often not possible to install an internal lift up a building because the main entrance leads into a small stair landing, with internal steps up and down to access a floor of the building. Most buildings in the Inn back onto another building or structure which also means that it is not possible to install an external lift shaft attached to the outside of the building.

There are also very considerable barriers to movement within buildings in the Inn. In almost all the Inns buildings, the internal staircases are too narrow and the landings too small to meet accessibility requirements. Staircases need to be able to accommodate safe refuges on the non-ground level landings and landings need to be large enough to make a turn when using evacuation chairs and to enable wheelchair users to be able to use them, especially electric wheelchairs. Staircase flights generally need to be straight and wide for evacuation chairs to be used. They need to have a limited number of risers in each stretch of staircase and the risers should not be greater than a certain height. The Inn's buildings generally do not meet these requirements.

Moreover, where lifts already exist in buildings in the Inn, many are too small to accommodate many sizes of wheelchairs due to the internal physical constraints of the buildings. The existing lift at 6 King's Bench Walk is too small for the majority of wheelchairs and the doors of the lift open onto the stair landings. The lifts at 1 and 2 Harcourt Buildings are too small for larger wheelchairs, and the ground floor landing space is too small to allow a wheelchair to turn a right angle outside the lift, making access to the lift difficult or impossible for some wheelchair users. The lift at 2 Mitre Court Buildings is too small for independent wheelchair use. The lift at 1 Temple Gardens is too small for wheelchair users and can only be accessed having ascended a flight of stairs. Any new lifts to be installed in the future would also be subject to the same limitations, given the physical constraints of the existing buildings in the Inn.

As an example of the internal access challenges, the entrance to 2 Dr Johnson's Buildings is stepped at the front, and has a cross-fall slope, but, even if access into the building could be provided, the building could not physically be made accessible internally. The entrance is narrow and opens onto a very small landing, with then stairs either up to the ground floor or down to the basement. The staircase is narrow and steep and the landings are very small. There is no lift internally and no possibility physically of installing one. As another example, 1 Hare Court (Grade I listed) has a flight of steps up to the entrance, with narrow doors opening onto a very small landing. There are then internal stairs either up to the ground floor or down to the basement. The staircase is narrow and steep and the landings are very small.

In order to make the Inn's buildings fully accessible in the terms set out by the BSB would require a massive programme of changes to almost all the Inn's buildings. In many cases, the scale of the changes required to make the buildings fully accessible in the BSB's terms – especially to provide lifts, and staircases and landings, which are large enough – would effectively require the rebuilding of large parts of these buildings. This is practically and financially impossible and, for the listed buildings, would never be allowed.

Three-quarters of the buildings in the Inner Temple are listed. Moreover, the buildings are within the Temple Conservation Area, save for one building which is part of the Fleet Street Conservation Area.

The BSB consultation document refers to planning permission (para 61), but does not refer at all to the need for listed building consent (LBC). Some accessibility works would not need planning permission as they will not fall within the ambit of "building operations" for the purposes of s55(1) of the Town and Country Planning Act 1990, or they will be works for the improvement or alteration of a building which affect only the interior of the building, or do not materially affect the external appearance of the building, under s55(2). They will, however, need LBC if the building is listed, as three-quarters of the Inn's buildings are.

LBC is by far the greater hurdle to obtaining the necessary consents for accessibility works, even on a scale much more modest than the BSB's proposals would require. This is not recognised by the BSB consultation at all.

LBC is required for all internal and external works that have the potential to affect the special architectural or historic interest of a building. All accessibility works to a listed building are likely to require LBC, even if purely internal or small in scope (eg changes to doorways). Under s16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, in considering whether to grant LBC for any works, the local planning authority must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Case law has established that “preserving” in this statutory duty involves doing no harm to the interest features of the building. Case law also establishes that this duty requires decision-makers to give a high priority and considerable importance and weight to the desirability of preserving a listed building's interest features, which must be the first and primary consideration in determining an LBC application, and that the duty creates a strong statutory presumption against the grant of consent where changes would cause harm to such features.

Beyond the statutory duty, there is national planning policy which provides that great weight should be given in decision-making to the conservation of the heritage asset – with the weight being greater the more important the asset -and that substantial harm to the significance of a Grade I or II* listed building should be wholly exceptional. Seven of the Inn's buildings are listed at Grade I, the highest level.

The historic interest features of the buildings in the Inn, as recognised in the Temple Conservation Area Character Summary, include the steps leading up to the entrances of buildings, staircases in timber with turned balusters or in stone with cast-iron handrails and balusters, and round-arched doorways, and that chambers generally followed the collegiate plan with floors of uniform sets of rooms flanking a staircase, protected by secure doors ('oaks') which open on to an inner door. These are precisely the kind of features which would be affected by accessibility works.

Individual buildings will also have individual features of interest identified in their official list descriptions. The official list descriptions of the Grade I listed buildings at 1 to 7 King's Bench Walk, for example, refer to these buildings retaining their original round-arched, brick doorways with pilasters and segmental pediments. There are also other features noted, such as the doorway at 3KBW with painted impost blocks and entablature, and the early C19 doorcase at basement level at 7KBW. Again, these are precisely the kind of features which would be affected by accessibility works.

A full survey and accessibility audit of the Inn was undertaken in 2001, which led to the creation of a Disability Access Plan (DAP). This was used to guide access improvements in the Inn over the subsequent years. Platform lifts were, for example, installed into Hall, and at Francis Taylor Building, 12KBW and 4 Paper Buildings. The lifts in 1 and 2 Harcourt Buildings were extended down to street level in 2011.

Such works are, however, very expensive. The two most recent projects can be given as examples. A platform lift installed in 2004 allowed access from Church Court into the Inner Temple Treasury Building, which – together with new lifts undertaken during the Project Pegasus redevelopment in 2022 – collectively cost over £1 million to install. The accessibility works undertaken to Farrar's Building in 2023

involved the installation of an external access lift from Church Court into the basement of the building, the removal of doors and the increase in width of other doors, creation of an accessible toilet, and improvements to the landings for access to the existing internal lift. These works cost more than £1.5 million (excluding VAT).

The Inner Temple is already planning to undertake such access improvements as are feasible and affordable. The Inn used specialist access consultants Proudlock Associates (who advised on Project Pegasus) to advise the Inn on the BSB's proposals. The Inn will also shortly commission fresh reports on 38 of the Inn's premises, to provide a systemic update to the 2001 DAP. Specialist architects Bates Zambelli are working on accessibility proposals for the insertion of a lift at the rear of a single building at 11KBW – where, rarely in the Inn, this is possible – has an early cost estimate of £1.5 million.

Another firm of specialist architects, Purcell, are working for both Inner and Middle Temple, with the Corporation of London planning and conservation officers and Historic England, to prepare a design code. The design code will include a series of proposed typologies for access improvements which are agreed in advance as being acceptable in principle to the Corporation and Historic England. This will, once completed and agreed, provide a means of speeding-up subsequent applications for LBC and any planning permission required. It is unlikely that the design code will be completed and adopted before the end of 2025, despite it being a priority, as this is how long such processes take. It is hoped that this work will also lead to the ability to enter into a Listed Building Heritage Partnership Agreement would allow the Corporation to grant listed building consent for the duration of the agreement for specified works of alteration of those listed buildings covered by the agreement, under the Planning (Listed Buildings and Conservation Areas) (Heritage Partnership Agreements) Regulations 2014.

The Inn has also been working closely with the Corporation on its future planning policy. The current 2015 City development plan says nothing in its policy on the Temple about accessibility improvements. The policy on the Temple in the original consultation draft of the new City Plan also said nothing about accessibility improvements.

The Inn engaged with the Corporation in 2023 and 2024 about the draft new City plan, including on the need for accessibility improvements to be supported expressly by the policy, as part of the Corporation's pre-submission public consultation. The Corporation agreed to make the change to the draft policy which the Inn sought, after a number of meetings and site visits.

Now, as a result of the Inn's engagement with the Corporation, the August 2024 submission version of the new City Plan includes in Policy TP1 a statement that improvements to the accessibility of buildings in the Temple will be supported. The supporting text explicitly recognises that "to enable the continued use of the buildings in the Temple, physical changes to the fabric of the historic buildings, especially for the purposes of improved accessibility, may be required" (para 14.1.2).

The new City plan will now be subject to statutory examination by the Secretary of State. It can be expected that the new plan, including policy TP1, will be adopted in late 2025, after which the new policy will take effect in the Corporation's decision-making as part of the City's statutory development plan.

In addition, planning and historic buildings experts from Savills are currently in the process of providing advice to the Inn on the longer-term future of the Inn's estate, given accessibility and sustainability challenges, as well as challenging conditions post-covid with changes in working patterns. This will inform the discussion and agreement with the Corporation of a 'masterplan' document for the Inn. There have already been a number of meetings between the Inn and the Corporation to discuss how this will be done, and the process is underway, with Savills advising the Inn.

In short, the Inn is doing as much as it can to ensure that its estate is as fit for purpose as possible in the future, including in terms of accessibility, given the practical constraints faced by the Inn and the resultant high costs of making changes.

The premise of the BSB's consultation

The premise of the BSB's consultation on access to premises is that the case for applications for permission for building alterations would be strengthened if the BSB imposed the proposed regulatory requirement in relation to the accessibility of premises. This premise is seriously flawed. In both law and practice, such a regulatory requirement would not help and indeed, if considered relevant by a local planning authority, is likely to be counter-productive.

The BSB's proposals take no account of the framework in legislation and case law for determining applications of the relevant sort.

First, applications for planning permission, must be determined in accordance with the statutory development plan under s38(6) of the Planning and Compulsory Purchase Act 2004. Case law establishes that the policies of the development have primacy in the determination of planning applications and are given priority over other considerations. As noted above, the Inn has worked with the Corporation to ensure that the new City plan includes an express recognition that improvements to the accessibility of buildings in the Temple will be supported. This is the most important change that can be made for the determination of planning applications for accessibility changes in the future. The BSB's regulatory requirement would add nothing material to this, as it would at most be a secondary material consideration.

Secondly, applications for LBC (which are not mentioned in the consultation, despite their importance) must be determined in line with the statutory duty in s16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as explained above. Given the importance of the desirability of preserving a listed building's interest features set out in the legislative framework, anything the BSB did would have very limited impact. In any event, under the Government's planning practice guidance for LBC

applications, the main consideration in the determination of LBC applications, beyond the statutory duty in s16(2), is the relevant policy in the statutory development plan. As noted above, the provisions of the new City plan will support applications for improvements to the accessibility of buildings in the Temple. The BSB's regulatory requirement would add nothing material to this.

It is unlikely that the Corporation would take into account the BSB's proposed regulatory requirement, or give it weight if it was taken into account, because it has expressly been created, outside the normally planning system, to seek to influence decision-making. This is the purpose stated expressly in the BSB consultation document. It is likely to be regarded as an illegitimate attempt to influence or 'rig' the system from outside, bypassing the proper and legitimate processes which the Inn is attempting to follow under the statutory framework, working in conjunction with the Corporation as planning authority, with its representations on the draft plan during the Corporation's pre-submission consultation process, and the work to create a design code and heritage partnership agreement for access improvements, and masterplan for the future of the Inn's estate. The right way, in accordance with the statutory framework, to seek to address the challenge of access to premises is to work with the Corporation through the planning system, as the Inn is doing. It is not to attempt to influence the system on an ad hoc and unprecedented basis from the outside, as the BSB is doing.

The BSB's regulatory requirement, if it was to be taken into account by planning authorities, is likely in truth to be counter-productive. If there was a requirement as proposed to make a building fully accessible, any application for accessibility improvements which proposed significant accessibility improvements but which fell short of the full accessibility required by the BSB, would be likely to lead the planning authority to conclude that it should not grant consent for those changes. This would be because the chambers would need to leave the building in the foreseeable future anyway, in order to meet the BSB's extensive requirement for full accessibility. The authority might well judge that there would be no point in allowing harm to the historic interest of a building to make significant accessibility improvements, if those improvements are not going to be enough to allow a barristers' chambers to remain in the building.

The BSB proposals are based on a false premise and, if they have any effect, it is likely that it will be a negative and counter-productive one, making it harder to obtain consent for accessibility improvements.

The direct impact of the BSB's proposed requirement

As has been explained above, it will be impossible for many of the Inn's buildings to meet the "fully accessible" requirement, either because doing so would be physically impossible, or because it would be very unlikely to obtain LBC due to the extent of changes required to the building, or both. Even for those buildings which could be made fully accessible, it would be impossible to obtain LBC and any necessary planning permission and carry out the works within the five year period, at least for more than a handful of buildings. This is apparent from the Inn's experience of such accessibility works to date. Five years is

far too short a period to convert even the minority of buildings in the Inn which are physically capable of being made fully accessible in line with the BSB's definition.

In addition, given the costs involved, it would also be impossible financially to do the necessary works to make all the buildings in the Inn fully accessible as required by the BSB, whether in five years or indeed over a longer period. Even where it would be possible to do, the costs of dealing with access, both from the outside and access internally, would be in the order of £3 million per building, based on the combination of the actual cost of works at Farrar's Building and the estimated cost of works at 11 KBW. For comparison, the Inn's annual scholarship expenditure – including the Inn's disability awards of £15,000 each – is some £2 million.

Faced with this position, where, aside from reasons of affordability, it will be at the least very difficult to obtain LBC (and any necessary planning permission) and carry out the works within five years, many of the Inn's tenants will decide to leave the Inn rather than face the risk of enforcement action. Most of the Inn's tenants occupy on lease terms which would allow them to do this, with just six months' notice. This will be especially the case as tenants will not know whether or not their building could be made fully accessible and if so by when. It can be expected that, faced with the risk of enforcement action, the uncertainty, and having to meet the very high standard stated in paragraph 67 of the consultation document to prevent enforcement action, tenants will begin to leave the Inn soon after the requirement is introduced, and progressively so over the five year period, especially once a trend is set.

Given recent examples, in those circumstances it can be expected that many chambers will opt to operate fully virtually or from new premises which do not include rooms for barristers to work in chambers (only a clerks room, conference rooms, and some communal space).

The consequential impact of the BSB's proposed requirement

The Inn is a community of barristers, pupils and students, with a collegiate character and atmosphere. The function of the Inn is as an education and training provider for both aspiring and qualified barristers, and as a provider of common and collegiate facilities for barristers, pupils and students, such as the library, meeting and lecture rooms, dining facilities, and the like.

If there is a significant exodus of chambers from the Inn, as is expected, that would lead to the need to attract new tenants which comply with the Inn's Charter. Such tenants would have no particular reason to be in the Inn, unlike barristers' chambers. If they take space in the Inn, they will only be willing to do so at a much lower rent than is currently achieved. There will be significant elements of the Inn which will be unlettable, as current experience is showing to an extent with some lower quality parts of the Inn's estate proving very hard to let. The Inn's rental income is critical to fund the work of the Inn in outreach, education and training, including scholarships. The Inn has no alternative source of income. The predicted impacts of the BSB's proposals will inevitably lead to a much reduced ability of the Inns to fund outreach, education and training, including scholarships. The result will be that much of the good

work done by the Inns in widening access to the Bar for those from non-traditional backgrounds, including especially in socio-economic terms, will have to stop.

The proposals are likely to reduce the number of pupillages available, because the burden of supervising a pupil in virtual or hybrid chambers will be markedly greater than in physical chambers where all chambers' staff and barristers can play a part in oversight of the pupil. At the least, it will make training of pupils more time-consuming and less effective, reducing the quality of pupillage training. The same will apply to the quality of oversight and assistance provided to junior tenants in their early years of practice. A key issue will be the inability to ask barristers in chambers about difficult issues, be they of law, practice or ethics.

Dispersing chambers out of the Inns, even if they take equivalent replacement premises with rooms for barristers and pupils, will undermine the community of the Bar. Much of the benefit of the Bar, especially for pupils and junior tenants, comes from being co-located within the Inns and being part of a community of barristers, who can exchange views and good practice, outside chambers. This is especially important in relation to ensuring the highest ethical standards. It will also affect the extent to which barristers can use the Inn's facilities, including the library. This will reduce the utility of the Inn to barristers and compound the impact on community.

A key element of the professional standing of the Bar is the presence of chambers in the Inns. This adds to the stature of the Bar and attracts those who come for advice from barristers, rather than going to solicitors (who operate from less impressive buildings). It is part of the experience for many clients of coming to the Inns to take advice from a barrister. Dispersing chambers out of the Inns and into normal office buildings will undermine this intangible but important element of the Bar's standing and success. Relatedly, many chambers' goodwill is directly linked to their physical address in the Inn, because they are known by their address.

Having a community of barristers' chambers in the Inn is critical to the character of the Inn, and its functioning as part of 'legal London'. The Temple is a unique environment serving the needs of the legal profession, with a character and a sense of place which also contribute to the wider character of the City of London. As the Temple Conservation Area Character Summary says, the Temple "is a subtle combination of buildings and spaces with a character and environmental quality that is reminiscent of the collegiate atmosphere of Oxford and Cambridge", where "the area's character is influenced, in no small measure, by the use to which the activities of the legal profession has evolved and continues to carry on here".

Beyond that, the Temple is at the heart physically of the legal services industry which contributes so much to the City and UK plc. The Temple is a key part of the specialist legal cluster recognised in the London Plan, which identifies the additional benefits from specialist activities and services being agglomerated in a single cluster. The Corporation of London's policy objectives for the Temple is to maintain the traditional functioning and character of the Inn, and continuing the use of the buildings in line with the history of the Inn. Barristers' chambers seeking to move out of the Inn in the coming years

would erode the traditional functioning and character of the Inn, and – by dispersing barristers more widely into the central London or into virtual chambers – also erode the role that the Inn can play in supporting the City's policy aspirations for the Justice Quarter.

Conclusion

The BSB's proposal on access to premises is neither legitimate nor proportionate. It will not be effective and, if anything, is likely to undermine the ability of the Inn to secure such access improvement as are possible. The proposal will be counter-productive and will have very serious adverse consequences for the Inn and the work it does to improve diversity at the Bar. The Inn is already doing what it can to improve access to premises within the constraints of the regulatory framework and what is physically and financially achievable. The BSB's proposal would undermine this.

12 December 2024