

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Enforcement

Statistical Report 2017/18

Professional Conduct Committee
Professional Conduct Department

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Introduction

- 1.1 The Bar Standards Board publishes a Handbook with which barristers comply. Where there is evidence that the Handbook has been breached, the BSB will consider what action may be necessary by way of enforcement or otherwise. The work of enforcing the Handbook is carried out by the Professional Conduct Committee and Professional Conduct Department of the BSB. We investigate complaints and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 1.2 This Statistical Report accompanies the Enforcement Annual Report for 2017/18 and presents the statistical data collected between 1 April 2017 and 31 March 2018 concerning the new complaints that we received or raised, the caseload that we worked on throughout the year and the outcomes of this work. This data was extracted from our Case Management System (the 'Enforcement database') in April 2018. Where possible, figures for 2016/17 are also provided for comparison.

Casework

- 2.1 The following tables provide statistical data for the 1,024 pre-complaints logged in 2017/18, 475 complaints we opened in 2017/18 and the 475 complaints we concluded. They also provide information on our overall caseload throughout the year. All figures represent numbers of complaints. For further analysis please refer to the Enforcement Annual Report for 2017/18 which is published on the BSB website.

Table 1 New pre-complaints logged

Year	Quarter	Pre-complaint cases	Converted cases
2015/16	1	227	58
2015/16	2	206	45
2015/16	3	194	53
2015/16	4	256	49
Total		883	205
2016/17	1	259	63
2016/17	2	211	45
2016/17	3	199	43
2016/17	4	294	81
Total		963	232
2017/18	1	276	92
2017/19	2	232	53
2017/20	3	244	45
2017/21	4	272	48
Total		1024	238

Table 2**Categories of new pre-complaints**

Category	2016/17	Converted	2017/18	Converted
Bankruptcy(barrister)	20	0	21	0
Fitness to Practise	2	1	4	0
General Enquiry	51	1	91	0
Interim suspension	4	0	0	0
Litigation cases	2	0	0	0
Other	179	8	133	0
Potential Complaint	338	89	389	93
Potential Complaint (Internal)	84	33	73	26
Potential Complaint (Referral)	104	45	123	66
Potential Complaint (Self-report of serious misconduct)	77	38	57	31
Potential Complaint (Report of serious misconduct by another)	33	17	76	22
Pretending to be a barrister	1	0	1	0
Refer to LeO	68	0	56	0
Total	963	232	1024	238

Table 3**Aspects of converted self-reports of serious misconduct**

Aspect	2016/17	2017/18
Failure to obtain practising certificate	8	10
Failing to preserve client confidentiality	2	4
Criminal conviction for drink driving	3	3
Failing to renew practising certificate	2	3
Rudeness/misbehaviour out of court	1	2
Breach of confidentiality	0	2
Criminal conviction other than drink driving	3	1
Accepting instructions when not authorised to do so	0	1
Performing reserved legal activities when not authorised to do so	0	1
Other diminishing trust and confidence	0	1
Illegal fee arrangements	0	1
Paying or receiving referral fees	0	1
Disciplinary finding by another body	0	1
Other	4	0
Dishonesty in professional or personal life	2	0
Harassment	1	0

Table 4**Aspects of converted reports of serious misconduct by another**

Aspect	2016/17	2017/18
Dishonesty in professional or personal life	3	4
Making misleading/false/unfounded submissions or statements	0	4
Rudeness/misbehaviour in court	0	3
Holding out as a barrister when not authorised to do so	1	2
Other misleading the court	1	1
Conducting litigation when not authorised to do so	0	1
Performing reserved legal activities when not authorised to do so	0	1
Not acting in the client's best interests	0	1
Making unsupported allegations of fraud/false assertions	0	1
Failing to consider if best interests served by other representation	0	1
Failing to report a bankruptcy or other associated proceedings	0	1
Illegal fee arrangements	0	1
Handling client money	1	0
Inappropriate communications with clients or others	1	0
Inappropriate use of position as a barrister	1	0
Inappropriate drafting of documents	1	0
Fee dispute	1	0
Failing to follow instructions	1	0
Other breach of Public Access Rules	1	0
Failing to act independently	1	0
Inappropriately remaining in or withdrawing from instructions	1	0
Failing to comply with regulations on witnesses	1	0

Table 5**New complaints opened**

Year	Quarter	External Complaints	Internal Complaints	Total Complaints
2016/17	1	66	44	110
2016/17	2	55	18	73
2016/17	3	42	21	63
2016/17	4	92	29	121
Total		255	112	367
2017/18	1	71	53	124
2017/18	2	85	32	117
2017/18	3	60	40	100
2017/18	4	88	46	134
Total		304	171	475

Notes

External: Complaints received from sources external to the BSB (such as members of the public or solicitors).

Internal: Complaints raised where the BSB itself identifies a potential breach of the Handbook.

Table 6 Sources of new complaints

Complainant Categories	2016/17	2017/18
Bar Standards Board	114	138
Barrister	17	74
Chambers Staff	1	0
Civil Litigant	54	103
Criminal - defendant	8	7
Criminal - defendant prisoner	6	5
Criminal - non-defendant	7	7
Family - ancillary relief	10	8
Family - child proceedings	23	40
Family - other	6	14
Head of Chambers	0	1
Judge (or official on his behalf)	0	1
Legal Ombudsman	8	8
Legal Services Commission	2	0
Non-Professional	6	11
Other	75	17
Solicitor(s)	9	9
Solicitor(s) - on behalf of lay client	5	6
Tribunal - employment	4	14
Tribunal - other	12	12
Total	367	475

Table 7 Aspects of new external complaints

Aspect	2016/17	2017/18
Making misleading/false/unfounded submissions or statements	55	99
Other misleading the court	56	50
Inappropriate communications with clients or others	22	45
Rudeness/misbehaviour in court	8	27
Rudeness/misbehaviour out of court	14	26
Other	40	24
Conspiracy/collusion	3	23
Inappropriate use of position as a barrister	8	19
Discrimination	6	18
Other abuse of role as an advocate	9	17
Breach of confidentiality	6	16
Dishonesty in professional or personal life	20	15
Other diminishing trust and confidence	9	15
Providing an incompetent standard of work/service	7	15
Inappropriate handling of information or evidence	17	13
Conflict of interest	14	11
Making statements designed to insult/annoy/humiliate	3	11
Misleading a person or client	10	10
Failing to provide or disclose information	7	10
Inappropriate drafting of documents	9	9
Making serious allegations without proper foundation	4	9
Holding out as a barrister when not authorised to do so	11	8
Failing to comply with a court order	7	8
Harassment	2	8
Inappropriate content on social media	8	7
Failing to submit documents on time	4	7
Not acting in the client's best interests	5	6
Failing to properly advise client	1	6
Conducting litigation when not authorised to do so	6	5
Failing to co-operate with the Legal Ombudsman	4	5
Failing to preserve client confidentiality	2	5
Providing legal services when not authorised to do so	0	5
Failing to take steps to ensure court has all relevant information	7	4
Accepting instructions when not authorised to do so	5	4
Making unsupported allegations of fraud/false assertions	4	4
Performing reserved legal activities when not authorised to do so	3	4
Private dispute	3	4

Table 7 Aspects of new external complaints continued

Aspect	2016/17	2017/18
Fee dispute	2	4
Victimisation	4	3
Failing to follow instructions	3	3
Failing to consider if best interests served by other representation	0	3
Civil debt (including clerks) or bankruptcy	0	3
Other breach of Public Access Rules	0	3
Failing to act independently	13	2
Wasting the court's time	5	2
Inappropriate cross-examination	2	2
Calling witnesses to give evidence that is misleading/false	1	2
Undue pressure to accept settlement/plead guilty	1	2
Failing to administer chambers/entity competently/efficiently	1	2
Failing to acknowledge complaints promptly	1	2
Misleading clients about the nature/scope/terms of work	0	2
Encouraging witness to give misleading or untruthful evidence	0	2
Drafting statements/documents not properly arguable	6	1
Drafting statements/documents not supported by client or instructions	3	1
Failing to administer practice properly/efficiently	2	1
Other breach of regulations on instructions	1	1
Inappropriate contact with witnesses/making payments to witnesses	1	1
Failing to notify client of required information	1	1
Failing to keep records	1	1
Making allegations not put in cross examination	0	1
Inappropriately accepting instructions	0	1
Rehearsing, practising or coaching witnesses	0	1
Paying or receiving referral fees	0	1
Failing to report a bankruptcy or other associated proceedings	0	1
Failing to report disciplinary action by another regulator	0	1
Failing to keep proper records	0	1
Failing to keep proper records	0	1
Failure to comply with the complaints handling regulations	0	1
Failing to use own professional judgement	2	0

Table 7 Aspects of new external complaints continued

Aspect	2016/17	2017/18
Failing to comply with regulations on witnesses	2	0
Making inappropriate media comments	2	0
Failing to report criminal charges or convictions	1	0
Holding out as an entity when not authorised to do so	1	0
Acting outside role as employed barrister in non-authorised body	1	0
Acting outside role as self-employed barrister	1	0
Failure to obtain practising certificate	1	0

Notes

“Aspects” describe the allegations made in a complaint. A complaint may have multiple different aspects.

Table 8 Aspects of new internal complaints

Aspect	2016/17	2017/18
Failing to renew practising certificate	28	43
Failure to obtain practising certificate	26	30
Dishonesty in professional or personal life	6	10
Performing reserved legal activities when not authorised to do so	8	9
Other failing to comply with authorisation to practise regulations	2	9
Disciplinary finding by another body	3	8
Making misleading/false/unfounded submissions or statements	3	7
Criminal conviction other than drink driving	8	6
Holding out as a barrister when not authorised to do so	7	6
Criminal conviction for drink driving	4	6
Failing to pay BMIF premiums	4	6
Failing to report disciplinary action by another regulator	3	6
Failing to preserve client confidentiality	2	6
Not acting in the client's best interests	3	5
Rudeness/misbehaviour in court	2	5
Providing an incompetent standard of work/service	0	5
Providing legal services when not authorised to do so	0	5
Other diminishing trust and confidence	4	4
Misleading a person or client	2	4
Failing to consider if best interests served by other representation	0	4
Misleading clients about the nature/scope/terms of work	0	4
Breach of confidentiality	0	4
Inappropriate communications with clients or others	5	3
Failing to provide information promptly to the BSB	4	3
Rudeness/misbehaviour out of court	2	3
Failing to comply with sentence of a tribunal	2	3
Failing to provide or disclose information	1	3
Illegal fee arrangements	0	3
Failing to report a bankruptcy or other associated proceedings	0	3
Other misleading the court	4	2
Failing to keep proper records	2	2
Failing to keep proper records	2	2
Other abuse of role as an advocate	1	2
Civil debt (including clerks) or bankruptcy	1	2
Making unsupported allegations of fraud/false assertions	1	2
Conducting litigation when not authorised to do so	1	2

Table 8 Aspects of new internal complaints continued

Aspect	2016/17	2017/18
Failing to administer practice properly/efficiently	1	2
Inappropriately accepting instructions	0	2
Failing to comply with legal or other non-regulatory obligations	0	2
Paying or receiving referral fees	0	2
Other	5	1
Inappropriate use of position as a barrister	3	1
Other breach of Public Access Rules	2	1
Accepting instructions when not authorised to do so	2	1
Making statements designed to insult/annoy/humiliate	1	1
Wasting the court's time	1	1
Failing to report criminal charges or convictions	1	1
Handling client money	1	1
Making serious allegations without proper foundation	0	1
Failing to properly advise client	0	1
Failing to use own professional judgement	0	1
Conflict of interest	0	1
Other breach of regulations on instructions	0	1
Inappropriate contact with witnesses/making payments to witnesses	0	1
Inappropriate handling of information or evidence	0	1
Inappropriate content on social media	0	1
Failing to comply with FTP/Interim Suspension	0	1
Holding out as an entity when not authorised to do so	0	1
Unregistered barrister failing to provide information to client	0	1
Undertaking reserved legal activities when not authorised to do so	0	1
Failing to take steps to ensure court has all relevant information	3	0
Failing to follow instructions	2	0
Inappropriate drafting of documents	2	0
Failing to define the terms on which instructions are accepted	1	0
Failing to inform client that cannot carry out instructions	1	0
Inappropriately remaining in or withdrawing from instructions	1	0
Discrimination	1	0
Harassment	1	0
Drafting statements/documents not supported by client or instructions	1	0
Failing to act independently	1	0
Failing to comply with a court order	1	0

Table 8 Aspects of new internal complaints continued

Aspect	2016/17	2017/18
Failing to comply with regulations on witnesses	1	0
Failing to report own serious misconduct	1	0
Practising without 'qualified person(s)'	1	0
Failing to notify client of required information	1	0
Late compliance with CPD requirements	1	0
Failing to keep records	1	0
Failing to notify clients of right to complain/Ombudsman	1	0
Acting outside role as self-employed barrister	1	0
Fee dispute	1	0

Notes

“Aspects” describe the allegations made in a complaint. A complaint may have multiple different aspects.

Table 9

Caseload statistics

Year	Quarter	Caseload at End of Quarter	Live Complaints	On Hold or Adjudged Complaints
2016/17	1	252	199	53
2016/17	2	217	161	56
2016/17	3	200	131	69
2016/17	4	196	165	31
2017/18	1	199	173	26
2017/18	2	176	132	44
2017/18	3	175	134	41
2017/18	4	203	171	32

Notes

Caseload at End of Quarter: The total number of cases that were either live or on hold/adjudged at the end of each quarter.

Live Complaints: The number of complaints that were live at the end of each quarter.

On Hold or Adjudged Complaints: The number of complaints that were on hold or adjudged at the end of each quarter.

Table 10**Decision sources for closed complaints**

Decision Source	2016/17	2017/18
Determination by Consent	8	8
Directions Judge	2	2
Disciplinary Tribunal	96	36
Experienced Members	2	1
Office Holders	5	0
Other	12	19
PCD Staff	270	378
Professional Conduct Committee	34	31
Total	429	475

Table 11**Stages at which external complaints were closed**

Closure Stage	2016/17	2017/18
LeO Pre-investigation	7	1
Referred to Chambers	0	0
Preliminary Assessment	186	259
Pre-Investigation	0	2
Closed without investigation	193	262
Investigation	14	24
Professional Conduct Committee	24	17
Closed after investigation	38	41
Determination by Consent	1	0
Disciplinary Tribunal	61	13
Closed after referral to disciplinary action	62	13

Table 12 Stages at which internal complaints were closed

Closure Stage	2016/17	2017/18
Preliminary Assessment	1	3
Pre-Investigation	1	7
Closed without investigation	2	10
Investigation	61	104
Professional Conduct Committee	12	10
Closed after investigation	73	114
Determination by Consent	8	8
Disciplinary Tribunal	43	26
Closed after referral to disciplinary action	51	34

Table 13**Final outcomes of external complaints**

Decision Source	2016/17	2017/18
Closed without investigation	189	258
Closed/Rejected	5	4
Withdrawn	0	1
Dismissed	163	249
Other	17	2
Ongoing	4	2
Closed after investigation	36	40
Withdrawn	0	0
Dismissed	32	33
Administrative Warning/Fine	2	6
Other	2	1
Determination by Consent	1	0
Dismissed	1	0
Proved/Upheld	0	0
Disciplinary Tribunal	61	13
Closed/Rejected	0	0
Withdrawn/Struck Out/No Evidence Offered	46	1
Dismissed	3	3
Proved/Upheld	12	9
Other	0	0
Ongoing	0	0
Other	3	1
Closed/Rejected	0	1
Proved/Upheld	3	0
Total	290	312

Notes

The outcomes listed are the final outcomes of complaints. Where complaints were reopened, only the final outcome is listed, not any interim decisions.

Table 14**Final outcomes of internal complaints**

Decision Source	2016/17	2017/18
Closed without investigation	2	10
Withdrawn	1	8
Dismissed	0	2
Other	1	0
Closed after investigation	72	113
Closed/Rejected	0	0
Withdrawn	5	8
Dismissed	30	39
Administrative Warning/Fine	37	66
Determination by Consent	8	8
Proved/Upheld	8	8
Disciplinary Tribunal	43	26
Withdrawn/Struck Out/No Evidence Offered	7	3
Dismissed	2	1
Proved/Upheld	34	22
Total	125	157

Notes

The outcomes listed are the final outcomes of complaints. Where complaints were reopened, only the final outcome is listed, not any interim decisions.

Table 15 Sentences imposed in complaints upheld at disciplinary action

Sentence	2016/17	2017/18
Advised as to Future Conduct	1	0
Attend on nominated person for advice	1	0
Disbarred	21	7
Fined	25	18
No Further Action	0	2
No separate penalty	9	3
Other	0	1
Prohibited from Accepting Public Access Instructions	1	1
Reprimanded	16	16
Suspended	6	9
Total Complaints Upheld	51	39

Notes

The figures listed are numbers of complaints rather than the number of barristers who were subject to these sanctions. Individual barristers may have had multiple complaints against them.

Six individual barristers were disbarred in 2017/18.

Twenty individual barristers were disbarred in 2016/17.

Table 16**Charges upheld at disciplinary action**

Charge	2016/17	2017/18
Other Breach of duties	26	11
rC8 Undermining honesty, integrity or independence in public eyes	7	11
rC64.1 Failing to provide information to BSB promptly	8	5
301(a)(i) Being dishonest or otherwise discreditable	9	3
301 General	1	3
rC65.2 Failing to report a criminal conviction/caution	5	2
rC120 Public Access - failure to comply with requirements	2	2
rS6 Carrying out reserved legal activity without authorisation	1	2
rS24 Inappropriate supply of legal services	1	2
rS8 Practising without a practising certificate	0	2
rC15.1 Failing to promote best interests of client	0	2
Other Failure to comply with other provision of Code	2	1
403 Failing to administer practice properly	2	1
rC65.7 Failing to report serious misconduct	2	1
404 HoC - failing to administer chambers properly	1	1
rC3.1 Misleading or attempting to mislead the court	1	1
rC71 Failing to provide reasonable assistance to LeO	1	1
rC87 Failure to ensure proper administration of practice	1	1
rC15.5 Failing to protect client confidentiality	1	1
rC125 Public Access - failing to provide proper notification of terms of engagement	1	1
rS20 Inappropriate practise by a barrister of less than three years standing	0	1
rC65 Failing to report (general)	0	1
307 Giving/receipt of gifts/payments/handling client money	0	1
rC121.1 Public Access Rules - non-compliance with requirements for under three years' standing	0	1
301(a)(iii) Acting in a manner likely to bring prof into disrepute	6	0
701(a) Failing to act courteously/competently or wasting court	3	0

Table 16**Charges upheld at disciplinary action continued**

Charge	2016/17	2017/18
401(a)(iii) Failure to comply with the Public Access Rules	3	0
905(b) Failing to report criminal charges or convictions	3	0
rC65.1 Failing to report a criminal charge	2	0
rC9.1 Misleading or attempting to mislead anyone	2	0
rC6.1 Making untrue or misleading submissions, representations or suggesting facts to witnesses	1	0
701(f) Failing to keep adeq records to support fees charged	1	0
rC89 Failure to ensure proper administration of chambers	1	0
905(d) Failing to respond promptly to a complaint	1	0
rC25 Failing to return instructions in line with requirements	1	0
905(f) Failing to comply with a sentence of a tribunal	1	0
401(a) Acting uninstructed	1	0
902 False declarations on Call or subsequently	1	0
301(a)(ii) Acting in a manner prejudicial to admin of justice	1	0

Notes

The figures listed are numbers of cases upheld following a Disciplinary Tribunal or the Determination by Consent procedure. Within a case the barrister may have breached the same paragraph of the Code of Conduct multiple times.

Performance

Key Performance Indicator

- 3.1 Our Key Performance Indicator (KPI) tracks how long it takes us to come to a decision on whether or not to refer complaints for disciplinary action. Here the results are accompanied by our three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. For further analysis please refer to the Enforcement Annual Report for 2017/18 published on the BSB website.

Table 17 Key Performance Indicator

<i>The percentage of complaints concluded or referred to disciplinary action within service standards</i>	2016/17	2017/18	Target
Annual Performance	80.1%	84.1%	80%
First Quarter	89.5%	76.7%	80%
Second Quarter	77.8%	85.0%	80%
Third Quarter	78.4%	84.0%	80%
Fourth Quarter	73.4%	91.2%	80%

Table 18 First OPI: Initial assessment

<i>The percentage of complaints concluded or referred to investigation within 8 weeks</i>	2016/17	2017/18	Target
Annual Performance	84.6%	83.9%	80%
First Quarter	89.3%	77.9%	80%
Second Quarter	79.2%	78.6%	80%
Third Quarter	96.2%	89.4%	80%
Fourth Quarter	72.3%	92.9%	80%

Table 19 Second OPI: Investigation of external complaints

<i>The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation</i>	2016/17	2017/18	Target
Annual Performance	70.4%	70.0%	80%
First Quarter	91.3%	66.7%	80%
Second Quarter	68.8%	80.0%	80%
Third Quarter	25.0%	66.7%	80%
Fourth Quarter	100.0%	62.5%	80%

Table 20 Third OPI: Investigation of internal complaints

<i>The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation</i>	2016/17	2017/18	Target
Annual Performance	76.4%	85.9%	80%
First Quarter	76.5%	88.6%	80%
Second Quarter	78.0%	88.1%	80%
Third Quarter	71.4%	76.2%	80%
Fourth Quarter	77.3%	86.7%	80%

3.2 Table 21 provides figures for the percentage of complaints concluded or referred to disciplinary action within 6 months. We monitor this figure to enable us to benchmark ourselves against other regulators – many of which publish figures at the 6 month mark.

Table 21 Information for comparison with other regulators

<i>The percentage of complaints concluded or referred to disciplinary action within 6 months</i>	2016/17	2017/18	Target
Annual Performance	84.3%	87.6%	N/A
First Quarter	87.2%	90.3%	N/A
Second Quarter	81.5%	88.0%	N/A
Third Quarter	82.4%	83.0%	N/A
Fourth Quarter	87.5%	89.0%	N/A

Notes

Targets are not set as the six month limit does not reflect our complaints processes.