

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

## **Enforcement**

**Annual Report 2015/16**

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Professional Conduct Committee  
Professional Conduct Department

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## Introduction

- 1.1 The Bar Standards Board publishes a Handbook with which barristers are required to 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 report provides an overview of our enforcement work for the year 1 April 2015 to 31 March 2016. In this report we focus on the key trends in the new complaints that we received or raised, the caseload that we worked on throughout the period and the outcomes of this work. We then go on to analyse our performance over the year in terms of the time we took to progress cases and also in areas such as the accessibility of our service, staff performance in handling complaints and the openness and transparency of our enforcement system.
- 1.3 In addition to the information contained in this report, all of the key supporting raw data is published in an accompanying Statistical Report for 2015/16 which is available on the BSB website.
- 1.4 The BSB became an approved regulator of entities – companies or partnerships that provide advocacy and expert legal services – in the autumn of 2014 and formally authorised the first entity in April 2015. No complaints about entities or employees of entities were received or opened in 2015/16 and, therefore, the casework and performance sections of this report do not include statistics on entity complaints.

## Data sources

- 1.5 We maintain electronic records on our Enforcement Database of all the cases we open. This allows us to report on the types of complaints we receive, the outcomes of our investigations and disciplinary action, and performance information in relation to the progression of complaints.
- 1.6 To gain further insight into our handling of complaints, we also carry out a User Feedback Survey. Upon the conclusion of cases, all complainants and barristers are sent a questionnaire and asked to provide feedback on how we did and how we can do better. We sent out 520 questionnaires in 2015/16 and received 145 responses as compared to 467 questionnaires in 2014/15 and 169 responses.

## Our approach to cases

- 1.7 We take an outcomes-focused, risk-based approach to our enforcement activities.
- 1.8 Part 2 of the BSB Handbook<sup>1</sup> sets out the Code of Conduct for barristers and the outcomes the provisions of the Code are intended to achieve – such as that “*the proper administration of justice is served*” (oC2). The outcomes are derived from the regulatory objectives defined in the Legal Services Act 2007. The Handbook also sets out our Enforcement Regulations (Part 5) which outline what will happen when concerns are raised about the conduct of a barrister.
- 1.9 Our Enforcement Strategy<sup>2</sup> sets out our approach to taking enforcement action, underpinned by the provisions of Part 5 of the Handbook. We take a risk-based approach to enforcement – focused on achieving the outcomes outlined in the Handbook. This enables us to concentrate our resources on those issues which present the greatest risk to the regulatory objectives.

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<sup>1</sup> In January 2014, the 8<sup>th</sup> edition of the Bar’s Code of Conduct was replaced with the BSB Handbook

<sup>2</sup> Our Enforcement Strategy is published on the BSB website on the Complaints and Professional Conduct page. [https://www.barstandardsboard.org.uk/media/1555518/140105\\_-\\_the\\_enforcement\\_strategy\\_-\\_handbook\\_-\\_final.pdf](https://www.barstandardsboard.org.uk/media/1555518/140105_-_the_enforcement_strategy_-_handbook_-_final.pdf)

When we first receive a complaint or information that may lead us to raise a complaint<sup>3</sup>, our first step is to assess whether there is any evidence of a breach of the Handbook and whether there is a risk to consumers of legal services or the wider public. This enables us to make a decision on whether or not to carry out a formal investigation.

- 1.10 Where we investigate a complaint, we will write to the barrister and any other people who we consider might provide information of relevance to the complaint, asking for comments and relevant documents. Once we have all the information we need we will assess whether there is sufficient evidence that the barrister has failed to comply with the Handbook. Where there is, we will decide the appropriate action to take. This could include the imposition of an administrative sanction in the form of a written warning or a fine of up to £1,000 for individuals and £1,500 for entities, or, for more serious matters amounting to professional misconduct, disciplinary action.
- 1.11 If we decide that disciplinary action is appropriate we will either refer the case to the Determination by Consent procedure (see the section on “Disciplinary action

outcomes”) or an independent Disciplinary Tribunal.

## Enforcement structure

### Professional Conduct Committee

- 1.12 The Professional Conduct Committee (PCC) has the delegated authority of the Bar Standards Board to take decisions on complaints. It has the power to refer complaints to disciplinary action, impose administrative sanctions and resolve complaints with the Determination by Consent procedure<sup>4</sup>. The PCC – split into two teams – meets every three weeks to make decisions on cases. Individual members of the Committee, both barrister and lay, can also provide advice on complaints during the assessment and investigation of complaints.

### Professional Conduct Department

- 1.13 The Professional Conduct Department (PCD) considers complaints under the authority of the Professional Conduct

Our aims and objectives	
<p>Our main aims are to:</p> <ul style="list-style-type: none"> <li>• Act in the public interest;</li> <li>• Protect the public and other consumers of legal services;</li> <li>• Maintain the high standards of the Bar;</li> <li>• Promote confidence in the complaints and disciplinary process; and</li> <li>• Make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed.</li> </ul>	<p>Our objectives are to:</p> <ul style="list-style-type: none"> <li>• Deal with complaints made against barristers promptly, thoroughly and fairly;</li> <li>• Ensure appropriate action is taken against barristers who breach the BSB Handbook; and</li> <li>• Be open, fair, transparent and accessible.</li> </ul>

<sup>3</sup> Under the Enforcement Regulations we can consider complaints made by persons other than the Bar Standards Board and also raise complaints on behalf of the Bar Standards Board.

<sup>4</sup> The full powers of the Professional Conduct Committee are detailed in Part 5 of the BSB Handbook.

Committee. The staff of the PCD assess and investigate complaints and, where appropriate, take action against barristers who have breached the BSB Handbook. The staff are also responsible for developing policy, managing enforcement projects and the day-to-day work of supporting the PCC and keeping the enforcement system operating efficiently and fairly.

### **BSB representatives (prosecutors)**

- 1.14 When we decide to refer a case to a Disciplinary Tribunal on charges of professional misconduct, it is the BSB's role to bring charges against the barrister before an independent panel convened by the Bar Tribunal and Adjudication Service (BTAS). We rely primarily on a panel of barristers working on a pro-bono basis to represent us at the Tribunals. The panel currently consists of 47 barristers<sup>5</sup>, one of whom will be instructed immediately after a referral to disciplinary action is made and will remain with the case through to the Tribunal.

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<sup>5</sup> The PCD is currently carrying out a recruitment exercise for new prosecutors to join the panel.

## Casework

- 2.1 By way of introduction to this section, it is important to note a major factor which has affected this year's data and statistics. One particular chambers was the source of 11% of all new complaints raised in 2015/16. Two barristers from that chambers had 48 cases opened against them. To put that in context, the total number of complaints that we opened for all chambers over the year was 433.
- 2.2 As Table 1 illustrates, the 433 new complaints we opened in 2015/16 represents a similar figure to that of last year (a 2% decrease). There was no significant difference in the number of complaints being made to the BSB (the "external complaints"); but the number of internal complaints opened on behalf of the BSB fell by 7%. Our overall caseload, having increased during 2014/15, decreased in 2015/16 from 311 complaints at the start of the year to 246 at the close of the year.

### New external complaints

- 2.3 We receive complaints from clients of barristers (via the Legal Ombudsman<sup>6</sup>), members of the public, solicitors or other professionals and organisations. We refer to these as external complaints, treating the person who made the complaint as the "complainant" and keeping them informed throughout the lifecycle of the case.

- 2.4 Since the Legal Ombudsman started operating in September 2010 we have consistently received around 300 complaints per year from external sources – and 2015/16 was no different as we received 299 complaints. Many of the trends we have seen in recent years were also repeated in 2015/16:

- Civil litigants were the source of the highest number of individual complaints (20% of external cases) followed by criminal law litigants and solicitors;
- Referrals from the Legal Ombudsman made up 20% [60] of external complaints (for comparison, in 2014/15 referrals from the Legal Ombudsman made up 14% of external complaints);
- In 2015/16, the most common allegations were dishonesty (18% of external complaints) and failing to co-operate with the Legal Ombudsman (17% of external complaints).

### Legal Ombudsman

- 2.5 In 2015/16 we opened 60 complaints following referrals by the Legal Ombudsman.

<b>Complaint Source</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16</b>
External	308	316	300	297	299
Internal	320	175	108	144	134
<b>Total</b>	<b>628</b>	<b>491</b>	<b>408</b>	<b>441</b>	<b>433</b>

<sup>6</sup> The Legal Ombudsman receives complaints from clients of barristers: its jurisdiction extends only to investigating issues relating to the service provided. Where the Legal Ombudsman identifies any potential conduct issues arising from service complaints then those matters are referred to the Bar Standards Board.

While this was a similar figure to previous years, it should be noted that the two individual barristers referred to in paragraph 2.1 accounted for 77% [46] of the referrals made by the Legal Ombudsman. Similarly, in 2014/15 70% of the referrals from the Legal Ombudsman related to barristers from the same chambers as those mentioned in paragraph 2.1. This means that for two consecutive years one chambers has had a significant impact on our statistics in this area. Due to the effect of ongoing enforcement action one of the barrister's ability to practise has been restricted. This should result in a diminishing number of referrals next year from the Legal Ombudsman. Given the relatively small number of complaints that the BSB handles on an annual basis, situations like this where individual barristers are subject to multiple complaints can have a significant effect on the caseload and overall complaint figures.

2.6 In 2015/16, the vast majority of the referrals from the Legal Ombudsman were for barristers failing to co-operate with the Ombudsman service. Although this occurred last year as well, the increase compared to

previous years is purely as a result of the two barristers highlighted above.

### Aspects of external complaints

- 2.7 As previously noted, the most common allegations in the external complaints received in 2015/16 were failing to co-operate with the Legal Ombudsman (17%) and discreditable or dishonest conduct (18%). "Discreditable or dishonest conduct" was previously something of a "catch-all" category<sup>7</sup> for general conduct issues as defined by paragraph 301 of the 8<sup>th</sup> edition Code of Conduct, covering a wide range of issues from conduct in the handling of cases to conduct outside of barristers' professional lives. The BSB Handbook, which came into force in January 2014, takes a different approach, instead referring to a barrister's honesty, integrity and independence.
- 2.8 In 2015/16 we started using new, more specific allegation categories in our case management software. Although this makes comparisons with previous years more difficult, as a result of the new categories we have been able to provide a more detailed view of the allegations made against barristers and provide the best possible

Table 2		External complaint statistics in 2015/16																											
Total external complaints received	299	Referrals from the Legal Ombudsman (LeO)	60																										
<b>Complaint categories</b> <table border="1"> <caption>Complaint Categories Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Other Categories</td> <td>44%</td> </tr> <tr> <td>Civil Litigants</td> <td>20%</td> </tr> <tr> <td>Criminal Proceedings</td> <td>13%</td> </tr> <tr> <td>Family Law Litigants</td> <td>11%</td> </tr> <tr> <td>Barristers/Solicitors/Judges</td> <td>12%</td> </tr> </tbody> </table>		Category	Percentage	Other Categories	44%	Civil Litigants	20%	Criminal Proceedings	13%	Family Law Litigants	11%	Barristers/Solicitors/Judges	12%	<b>Complaint aspects</b> <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Dishonesty</td> <td>53</td> </tr> <tr> <td>Failure to co-operate with LeO</td> <td>52</td> </tr> <tr> <td>Making misleading submissions or statements</td> <td>29</td> </tr> <tr> <td>Other misleading the court</td> <td>27</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>22</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Dishonesty	53	Failure to co-operate with LeO	52	Making misleading submissions or statements	29	Other misleading the court	27	Rudeness/misbehaviour out of Court	22	...	
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<sup>7</sup> Such categories are referred to internally, and elsewhere in this report, as 'aspects'. A complaint may be recorded as having more than one aspect.

information for identifying and monitoring risks to the regulatory objectives<sup>8</sup>. Of course, the fact that an allegation is made does not mean that the BSB Handbook has been breached and a finding of professional misconduct will be made. Where disciplinary findings are made, we were already recording those under the new rules and Core Duties of the BSB Handbook (paragraph 2.55) when the conduct post-dated January 2014.

- 2.9 The number of complaints with allegations of discrimination has fallen since 2012. In 2012/13 there were 26, but since 2013 this figure has consistently been in the region of 14 to 20, with the number in 2015/16 being 15. We take these complaints very seriously and frequently obtain expert advice prior to making any decisions on discrimination complaints. However, in many cases the allegations are unsubstantiated meaning that we cannot consider taking enforcement action. To date we have closed 11 of the 15 cases without taking any enforcement action.

### **Adjournments**

- 2.10 Often we receive complaints about barristers where the parties to the complaint are involved in ongoing litigation and the involvement of the BSB could be disruptive to the resolution of those proceedings, or where there are other ongoing proceedings which may affect our consideration of a complaint. In such circumstances we usually postpone consideration of the complaint pending the conclusion of the legal proceedings and explain to the parties the reasons for our having done so. We then regularly review these cases to ensure that it is appropriate that they remain on hold and the parties are kept updated.
- 2.11 Of the 299 new external complaints opened in 2015/16, we immediately put 20 (7%) on

hold<sup>9</sup> – 18 because of ongoing legal proceedings, and two because of ongoing proceedings with other organisations. The median length of time that new external complaints remained on hold was 11 months. The number of these types of cases being placed on hold has halved since last year (when there were 40 such cases). As the number of external complaints opened last year was similar (297), this means that the percentage of cases that were immediately put on hold fell by 6% during the year. This fall can be attributed to the nature of the complaints received but also to the more robust approach that has been taken to progressing complaints while litigation is ongoing.

### **New internal complaints**

- 2.12 In using the term “internal complaints” we are referring to complaints raised where the BSB itself identifies a potential breach of the Handbook. Where the breach is brought to the attention of the PCD directly – for example via a barrister’s reporting obligations under the Code or an external source such as a press report – a risk assessment is completed. A manager of the PCD or an Office Holder of the Professional Conduct Committee may then authorise the raising of a formal (internal) complaint for investigation. We also receive referrals from other sections of the BSB and the Bar Council such as barristers who have failed to comply with the Authorisation to Practise requirements for the profession.

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<sup>8</sup> As set out in Part 1 of the Legal Services Act 2007.

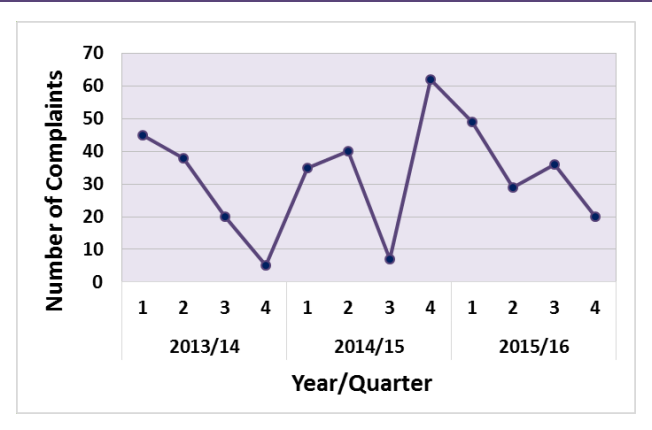
<sup>9</sup> For the purposes of this report, we have differentiated between the terms “on hold” and “adjourned”. The term “on hold” is used to describe situations where an internal decision has been taken to pause consideration of a complaint pending the outcome of another event/issue, and the term “adjourned” is used to describe situations where a tribunal/other panel/directions judge has ordered that proceedings be formally adjourned.



2.13 In our Enforcement Annual Report 2014/15 we highlighted an increase in the number of internal complaints we were opening. To some extent this trend was reversed in 2015/16. We assessed around 300 reports and pieces of information in 2015/16 and opened 134 internal complaints which were assessed to be medium or high risk or a priority area for the BSB – a 7% decrease in complaint numbers compared with the previous year. However, as Figure 1 shows, the fall in the number of internal complaints was not spread evenly across the year – as the number of these rose in Q3 as a result of referrals from our Supervision Department for failures to complete CPD.

2.14 Table 3 shows the nature of the new aspects we investigated in 2015/16 relating to internal complaints, showing the eight most common in order of frequency. The most common category during the year was for cases involving allegations of barristers practising without a practising certificate. It should be noted however, that the number of these occurrences has fallen greatly: there were only 15 this year, as opposed to 49 last year. Last year, half of these types of

**Figure 1** Internal complaints opened



complaints related to new barristers who completed their pupillage and began practising but did not realise that they needed to apply for a new practising certificate (inadvertently practising while not authorised to do so). The reduction in this category since last year can be attributed to the steps that have been taken within the BSB's Education and Training and Supervision teams to ensure that barristers are well informed of their obligations once they complete pupillage. Table 3 also shows

**Table 3** Aspects opened for internal complaints – annual comparison 2014/15 to 2015/16

Aspect	2014/15	%	2015/16	%
Criminal conviction other than drink driving	8	6%	16	12%
Practising without a practising certificate	49	34%	15	11%
Failing to provide information promptly to the BSB <sup>10</sup>	N/A	0%	14	10%
Failure to complete Authorisation to Practise	3	2%	14	10%
Performing reserved legal activities when not authorised to do so <sup>11</sup>	N/A	0%	9	7%
Dishonesty/discreditable conduct	38	26%	8	6%
Failure to obtain practising certificate <sup>12</sup>	N/A	0%	8	6%
Dishonesty in professional or personal life <sup>13</sup>	N/A	0%	7	5%
...				

<sup>10</sup> N.B. This category was only introduced in 2015/16.

<sup>11</sup> As above.

<sup>12</sup> As above.

<sup>13</sup> As above.

that the numbers of complaints involving allegations of failing to complete authorisation to practise increased since last year. Some of the increase can be explained by the fact that reminders to renew practising certificates are now sent by email rather than by post. Following investigation, it transpired that a number of barristers had not informed us of a change of their work email address and therefore did not receive the reminder emails. All of the barristers affected by this issue were quick to remedy the situation and none of these cases resulted in enforcement action.

- 2.15 As noted above, during 2015/16 we introduced several new complaints categories in our case management software. As a result, four of the eight categories in Table 3 have results of 'N/A' for 2014/15, as those categories did not exist in the system at the time. Despite this, we can draw a comparison between the aspect "Failing to provide information promptly to the Bar Standards Board" and two categories from 2014/15: "Failure to co-operate with BSB" (3) and "Failure to comply with BSB Supervision team" (7). The 2015/2016 and 2014/2015 results of 14 and 10 respectively are broadly comparable.
- 2.16 Another trend that we can see in Table 3 is that the number of new internal complaints opened relating to allegations of dishonesty/discreditable conduct have fallen from 38 in 2014/15 to eight in 2015/16. While superficially this may seem to suggest that dishonesty/discreditable conduct is reducing, it needs to be taken into account that other new complaint categories have been added to the system that also cover such conduct (e.g. "dishonesty in professional/professional life"). To put this into context, before 2015/16, there were only 68 allegation categories to choose from, which provided much less specificity in identifying the nature of allegations. Since the start of this year

(April 2015) we have 151 allegation categories available for selection when cases are opened. As mentioned in the "aspects of external complaints" section (paragraph 2.7), discreditable or dishonest conduct was something of a "catch-all" category. The new allegation categories seek to provide more specificity when cases are logged and to bring the data on our case management system more in line with the BSB Handbook.

### **Reports of serious misconduct**

- 2.17 Under the BSB Handbook, barristers are required to report promptly to the BSB when they have committed serious misconduct (rC65.7) and when they believe that there has been serious misconduct by another barrister or a registered European lawyer (rC66).
- 2.18 In 2015/16 we received 30 such reports from barristers about themselves and a further 51 such reports about other barristers. Of these 81 reports, 35 were assessed as high or medium risk and converted to internal complaints. Of the reports that were converted to complaints, the most frequently reported issues included: criminal convictions [6] and dishonesty/discreditable conduct [5].
- 2.19 A further 38<sup>14</sup> reports were assessed but not opened as complaints. These included an instance where two live complaints regarding the same issue were already being considered by the Professional Conduct Department, so it was deemed unnecessary to raise an internal complaint. Other such reports involved allegations of misleading the court, which had been caused by the barristers receiving inaccurate information from other sources, and the errors were quickly appreciated and rectified in these cases. In such cases the barristers' behaviour was assessed as low risk or it was

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<sup>14</sup> 8 reports were still undergoing assessment at the close of 2015/16.

decided that the conduct did not constitute a potential breach of the Handbook. While not all reports of “serious misconduct” are ultimately deemed to fall within this category as defined by the Handbook (gC96), it is in the public interest that the BSB is made aware of potential instances of serious misconduct and we encourage barristers to continue making reports.

## Interim Suspension

- 2.20 In certain circumstances – such as where we receive a complaint or information that a barrister has been convicted or charged with a criminal offence<sup>15</sup> – the PCC will consider whether the barrister should be suspended from practice pending a Disciplinary Tribunal hearing. Where the PCC considers that such a course of action is justified for the protection of the public, the Committee will refer the matter to an Interim Panel convened by BTAS. The PCC (or the Chair on its behalf) may also, in exceptionally high risk situations, impose an immediate interim suspension which will remain in force until the matter can be considered by an Interim Panel.
- 2.21 In the majority of cases, barristers facing potential Interim Suspension will voluntarily undertake not to practise or to place restrictions on their practice until disciplinary proceedings have concluded, meaning that the Interim Suspension procedure does not need to be invoked. One new interim suspension procedure was initiated in 2015/16 and renewed. The former involved a practising barrister who had been struck off by the Solicitors Disciplinary Tribunal for misconduct as a solicitor .

## Fitness to Practise

- 2.22 In the context of barristers, Fitness to Practise refers only to whether a barrister’s health impacts on their ability to practise. A

barrister’s fitness to practise is brought into question if it appears that they have an incapacity due to a medical condition (including an addiction to drugs or alcohol), and as a result, the barrister’s ability to practise is impaired to such an extent that restrictions on practice are necessary to protect the public.

### How do we assess risk?

*Each case is rated High, Medium or Low risk based on a combination of two tests:*

- *Firstly a series of questions covering common areas of risk or possible risk to consumers of legal services and the public (such as whether the information relates to dishonesty on the part of the barrister). The answers are used to calculate a risk level;*
- *Secondly a Case Officer of the PCD will assess the case in context and determine whether the risk level calculated from the answers to the questionnaire is appropriate.*

- 2.23 When the PCC receives information which raises genuine concerns as to a barrister’s fitness to practise, the matter will be referred to a Fitness to Practise panel convened by BTAS. The panel – which will include a medically qualified member – must consider all of the available evidence and act to protect the public.
- 2.24 Where a Fitness to Practise panel has decided that an individual is unfit to practise it may decide to place a restriction on the barrister or place a condition on the individual such as submitting to a regular medical examination.

<sup>15</sup> The circumstances under which the Interim Suspension regulations come into force are listed in full in the BSB Handbook at Part 5, Section D.

2.25 We began one new Fitness to Practise proceeding in 2015/16 – it concluded in the same year. The Fitness to Practise panel confirmed that the barrister was fit to practise, allowing the barrister in question to continue practising without restriction or conditions. On the basis of an earlier medical report, the panel made clear that the BSB was right to have begun Fitness to Practise proceedings in this case.

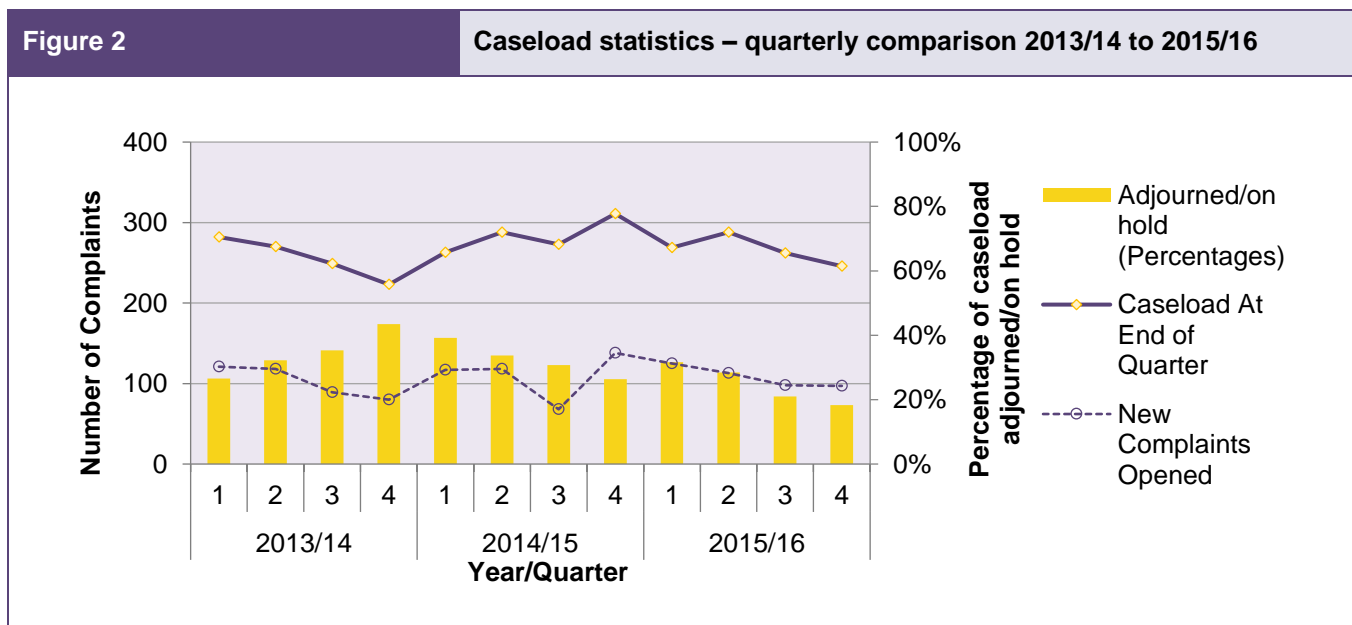
## Caseload

2.26 In our Enforcement Annual Report 2014/15 we highlighted an increase in the caseload of the Professional Conduct Department. This trend was reversed in 2015/16. We started the year with 311 active complaints within the department and ended with 246 complaints, albeit 45 complaints were either

above, the opposite happened in the previous year).

2.27 The factors contributing to the decrease in our caseload include:

- An 2% decrease in the number of complaints being opened (compared with the previous year);
- A different quarterly pattern in internal complaints. As Figure 1 illustrates, we opened 20 internal complaints in the fourth quarter of 2015/16 compared with 62 in the fourth quarter of 2014/15. This meant that far fewer internal complaints remained ongoing at the end of the year.
- A considerable increase in the number of cases closed compared to the



on hold or adjourned.<sup>16</sup> In total we worked on 760 active cases in 2015/16. If we compare this to the previous year, during which we worked on 675 cases, we can see that staff throughput was much higher in 2015/16. During 2015/16 we closed more complaints than we opened (as stated

previous year – in 2015/16 we closed 513 compared to 364 cases closed in 2014/15. One of the reasons for this was that in 2015/16, a large number of linked cases [49] against two barristers (from the chambers mentioned in paragraph 2.1) were closed. Another barrister was

<sup>16</sup> 4 complaints were adjourned by Disciplinary Tribunals. The remaining 41 were placed on hold at the assessment or investigation stages for the following reasons:

Ongoing legal proceedings	33	Pending criminal investigation	4
Ongoing litigation	4		

subject to 10 linked complaints which were closed during the year. Further, internal complaints tend to be concluded much quicker than external complaints and 2015/16 saw an increase in such complaints.

2.28 We finished the year with a lower figure of 246 complaints ongoing within the department. It is worth noting however, that 47 of those complaints (19%) are about a single barrister.

2.29 As predicted in last year's annual report, there was a large increase in internal complaints<sup>17</sup> in the first quarter of 2015/16 (four times higher than the average internal complaint closure rate of 2014/15), after the gradual build-up of cases in the previous year.

#### Case study

*The BSB received a complaint from a member of the public who had been a witness in a criminal trial. The complaint was that in the course of their closing speech the defence barrister made a misrepresentation of fact, which was not corrected before the jury.*

*The BSB Handbook states that a barrister has a duty to the court and must not 'knowingly or recklessly mislead or attempt to mislead the court'. Based on the information received which indicated that was a possible breach of the BSB Handbook, the Professional Conduct Department investigated the complaint. A transcript of the closing speech was obtained as were the observations of the Recorder who heard the case. The evidence was reviewed by a member of the Professional Conduct Committee (PCC) who assessed that the transcript did not indicate any deliberate misleading of the court by the barrister and that the decision not to correct the fact before the jury was made by the Recorder having heard from both parties in the case.*

*Given this, the PCC agreed that there was no evidence of a breach of the Handbook by the barrister and the complaint was dismissed.*

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<sup>17</sup> The number of decisions on cases made by PCD staff rose by more than 100 since 2014/15. Please see paragraph 2.35.

## Risk

- 2.30 Where we initially identify some evidence of a breach of the Core Duties or an outcome in the Handbook that has been adversely affected or put at risk, we carry out a risk assessment. This assessment establishes the likelihood and impact of a risk to the Regulatory Objectives and informs our decisions on the enforcement action, if any, that we will take. Both the PCD and the PCC monitor and sometimes alter a case's risk level as the investigation progresses and further information becomes available.

<b>Risk Profile</b>	High risk	36% [133]
	Medium risk	17% [61]
	Low/no risk	47% [171]

- 2.31 In total we completed 365 risk assessments in 2015/16, both to determine whether we would raise internal complaints (based on incoming reports and information) and to inform our decision making on all complaints. The outcomes of these were as follows:
- 2.32 A further 209 assessments were not rated for risk due to a lack of evidence of a breach of the BSB Handbook or an adverse effect on the outcomes in the Handbook. We have no power to take enforcement action where there is no evidence of a breach of the Handbook and cases that are assessed as being low or no risk will not generally proceed to enforcement action as we focus our resources on the areas which are the greatest risk to the regulatory objectives and the public. The option to refer cases to the Chambers<sup>18</sup> of the barrister in question to be dealt with under the Chambers' internal complaints procedure is used in low risk cases where the issues raised by

complainants might be better resolved by a remedy available to Chambers – such as an apology.

### Most common aspects assessed as high risk:

Failure to co-operate with Legal Ombudsman <sup>19</sup>	45
Criminal conviction other than drink driving	13
Dishonesty in professional or personal life	6
Failure to report criminal charges/convictions	6
Making misleading submissions/statements	5

## Complaint decisions

- 2.33 Following the assessment and investigation of complaints we can take enforcement action by imposing administrative sanctions and/or referring complaints to disciplinary action. We came to a decision on 552 complaints during 2015/16, as illustrated by Table 4.
- 2.34 Although the proportion of complaints that we referred to disciplinary action was slightly lower than in 2014/15 (20%), the figures were generally consistent with the trends we have reported in recent years.

Outcome	#	%
Closed without investigation	213	39%
Closed after investigation (No enforcement action)	157	28%
Administrative sanction	76	14%
Referred to disciplinary action	106	19%

<sup>18</sup> We referred six complaints to Chambers during 2015/16. In these circumstances, if the complainant is not happy with the way in which their complaint has been dealt with by Chambers, it is open to them to ask the BSB to reopen the original complaint and consider any conduct issues.

<sup>19</sup>As previously mentioned in paragraphs 2.5 and 2.6, this number is unusually high due to one particular chambers with two barristers accounting for 41 out of the 45 high risk cases that were opened following referrals from the Legal Ombudsman.

- 2.35 PCD staff took 67% of decisions – including 36%<sup>20</sup> of decisions to refer cases to disciplinary action – whereas the PCC took 29%. The remainder of the cases were either withdrawn or referred to the barristers' Chambers for consideration. The high percentage of decisions taken by the PCD staff was affected by the number of multiple complaints against individual barristers. The number of decisions taken by staff rose by 100 as compared to 2014/15 mainly for this reason.
- 2.36 In addition we concluded 67 of the cases that had been referred to disciplinary action, bringing the total number of closures for the year to 513.

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<sup>20</sup> Regarding the cases referred to disciplinary action, those referred by PCD staff related to 10 barristers and those referred by the PCC related to 50 barristers.

## Decisions to close without action

2.37 In total we closed 369 complaints without taking enforcement action during the year. Table 5 illustrates the differences in the decisions we made for external and internal cases. The patterns are similar to previous years: complaints from external sources are more likely to be unsubstantiated or do not disclose a breach and therefore not apt for investigation compared with internal complaints, which are only raised where we have some evidence of a breach of the Handbook.

### Most common aspects closed without enforcement action:

Discreditable/dishonest conduct	73
Misleading the court	49
Rudeness/misbehaviour out of Court	25
Discrimination	19
HoC <sup>21</sup> failing to administer chambers properly	19

## Requests for review and reconsiderations

- 2.38 Under our requests for review policy, if a complainant disagrees with a PCD or PCC decision to close a complaint without taking enforcement action – either before or after investigation – they can ask us to review the decision and submit further evidence if it has come to light. Of the 306 external complaints we closed without a referral, to date we have received such requests in relation to 57 complaints (19%). This proportion is typical of previous years.
- 2.39 After reviewing the complaints, the original decision was overturned in only one case. In this case, the original decision not to investigate was reviewed by a member of the Committee and a decision was taken to reopen the complaint and to refer it to the Investigations & Hearings team.

2.40 A further 4 cases were reopened due to the submission of new information but, after reconsideration, it was decided the original decision should stand. Three cases are still being considered and in relation to the remaining 49, it was decided there was no reason to reopen or reconsider the decisions.

### Most common aspects closed with administrative sanctions imposed:

Practising without a practising certificate	48
Failure to complete Authorisation to Practise	3
Dishonesty/discreditable conduct	3
Failing to provide information promptly to BSB	3
Breach of practice rules	2

## Enforcement decisions

2.41 Following investigation of a complaint, either the Professional Conduct Committee or the staff of the PCD will make a decision as to whether or not enforcement action should be taken, either by means of an administrative sanction or a referral to disciplinary action. In line with our Enforcement Strategy, since January 2014 the decision will be based on, amongst other factors: the risk posed to, or the impact on, one or more of the regulatory objectives; whether any of the outcomes in the BSB Handbook have been adversely affected and, where disciplinary action is contemplated, whether there is a realistic prospect of a finding of professional misconduct being made.

<sup>21</sup> Head of Chambers.



## Administrative sanctions

<b>Key Stats</b>	Barristers	76
	Total fines	£2,650

- 2.42 Where the PCC or staff of the PCD consider that there is evidence that the BSB Handbook has been breached but the breach is not so serious as to amount to professional misconduct, we will consider whether to impose an administrative sanction in the form of a written warning or a fine of up to £1,000.
- 2.43 We imposed a total of 76 administrative sanctions – 70 warnings and six fines – in relation to medium to low risk complaints. This number has increased substantially since 2014/15 when only 11 were imposed. Last year we correctly anticipated that administrative sanctions would become more common as staff became more used to the risk based approach and to exercising the new power to impose administration sanctions for any breach of the Code which was introduced 2014. In many medium risk cases, the imposition of an administrative sanction is a more proportionate form of enforcement action than disciplinary action.

## Referrals to disciplinary action

- 2.44 Over the course of 2015/16, we referred 92 complaints to Disciplinary Tribunals and a further 14 complaints to the Determination by Consent (DBC) procedure. In total this equalled 31% of our post-investigation decisions.
- 2.45 The number of complaints referred to disciplinary action increased in 2015/16 as Figure 3 illustrates. This is due to the fact that the number of new cases being opened in Q4 of 2014/15 and Q1 of 2015/16 was higher than usual. This in turn meant that there were more cases available to be assessed and then referred on to disciplinary action. If we look at the statistics relating to barrister numbers, the 92 cases referred to disciplinary tribunal relate to just 45 barristers<sup>22</sup> (in 2014/15 the cases involved 38 barristers).

### Most common aspects referred to disciplinary action:

Failing to co-operate w/ Legal Ombudsman <sup>23</sup>	35
Discreditable/dishonest conduct	18
Criminal conviction(s) - other	14
Failure to report criminal charges/convictions	10
Criminal conviction(s) – drink driving	4

<b>Table 5</b>		<b>External and internal complaint outcomes 2015/16</b>			
<b>External complaints:</b>			<b>Internal complaints:</b>		
<b>Outcome</b>	<b>#</b>	<b>%</b>	<b>Outcome</b>	<b>#</b>	<b>%</b>
Closed without investigation	210	58%	Closed without investigation	3	2%
Closed after investigation	96	27%	Closed after investigation	137	71%
Referred to disciplinary action	53	15%	Referred to disciplinary action	53	27%

<sup>22</sup> One of these 45 barristers had 39 cases open at the disciplinary tribunal stage.

<sup>23</sup> 28 of the 35 cases mentioned here relate to one barrister from one chambers (see paragraphs 2.5 and 2.6).

## Disciplinary action outcomes

### Determination by Consent

- 2.46 A total of 11 cases were closed following referrals to the Determination by Consent procedure. This is a procedure by which the Professional Conduct Committee can, with the barrister's agreement, make a finding of professional misconduct. In all 11 cases the PCC found the barrister guilty of professional misconduct after the barrister had admitted the conduct – and appropriate sanctions were imposed and accepted by the barrister.

#### Most common aspects closed at the Determination by Consent stage:

Discreditable/dishonest conduct	3
Criminal conviction(s) - other	3
Criminal conviction(s) - drink driving	2
Failure to renew practising certificate	2
Disciplinary finding by other professional body	1

### Disciplinary Tribunals

- 2.47 Where we have made a decision to refer a complaint to a Disciplinary Tribunal, the case is heard before an independent Disciplinary Tribunal convened by the Bar Tribunal and Adjudication Service (BTAS) with the BSB acting as prosecutor. Disciplinary Tribunals can make findings of professional misconduct and have additional powers of sentencing compared with the PCC – including suspension and disbarment.

#### Most common aspects closed at the Disciplinary Tribunal stage:

Discreditable/dishonest conduct	17
Failure to co-operate with Legal	7
Criminal convictions – other	6
HoC failing to administer chambers properly	6
Practising without a practising certificate	6

### Determination by Consent

*The DBC procedure is an alternative way of dealing with cases which would otherwise be referred to a disciplinary tribunal.*

*Under DBC, if the barrister agrees, the case against them will be dealt with on the papers and the PCC decides whether the individual is in breach of their professional obligations as set out in the Handbook and, if so, what sentence to impose. Sanctions can include reprimands or fines, but not suspensions or disbarments which can only be imposed by a Disciplinary Tribunal panel.*

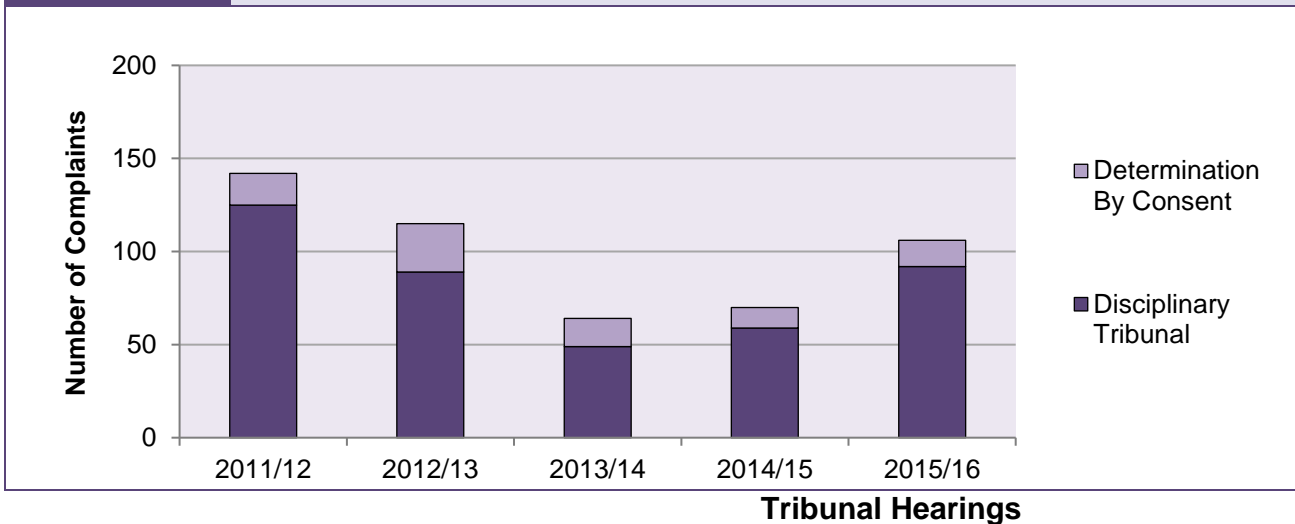
*The barrister is given the opportunity to accept or reject the PCC's finding(s) and sentence.*

*The aim of the DBC procedure is to conclude the disciplinary process more quickly than a referral to a Disciplinary Tribunal hearing where the issues are straightforward and the facts are not in dispute.*

- 2.48 A total of 55 cases were concluded at the Disciplinary Tribunal stage in 2015/16: 42 at hearings and a further 13 cases which were withdrawn prior to a Tribunal hearing taking place. Eight of these cases were reconsidered before serving charges on the defendant as a result of new information coming to light which reduced the prospects of success or changes in circumstances meant it was not proportionate to continue or, as a result of a disbarment in other proceedings meant it was not in the public interest to pursue the cases further. The remaining five cases were concluded at the directions stage.

**Figure 3**

**Referrals to disciplinary action – annual comparison 2011/12 to 2015/16**



**Directions**

- 2.49 The directions stage refers to the process for establishing the timetable for submission of evidence and addressing other case management matters in preparation for the Disciplinary Tribunal hearing.
- 2.50 Five of the cases that we referred to Disciplinary Tribunals ended at the directions stage and did not proceed to a Tribunal. In all of these cases we chose to “offer no evidence” – effectively withdrawing the cases without contest. Three of these cases were linked cases relating to one barrister. The cases were dismissed as another case against that barrister already addressed the charges (effectively making the three cases superfluous duplicates). Regarding the two other cases, one of them was stayed at the suggestion of the Directions Judge as the allegation had already been considered by a different Tribunal. On the other, the case was reconsidered on the basis of the receipt of further evidence and information.

- 2.51 In total 42 complaints were heard before a Disciplinary Tribunal panel in 2015/16. In 35 cases (83%), one or more charges against the barrister were proved<sup>24</sup>. In these cases the barristers were found guilty of professional misconduct and sanctions were imposed. With respect to the remaining seven cases, four were dismissed by the Tribunal panels, on one case the BSB offered no evidence, and on another two cases the Tribunal ordered a stay of the proceedings.
- 2.52 Issues that arose in the four cases that were dismissed include a case where it was considered that the conduct issues were not serious enough to warrant a finding of professional misconduct as well as a case in which the matters (contempt of court) were more appropriately dealt with in court than in a tribunal. In the two cases where the Tribunal ordered a stay of the proceedings, the reason was the barrister’s ill health and lack of ability to give evidence. In relation to the case where the BSB offered no evidence, the BSB received new evidence just before the tribunal. In just one case the barrister applied for costs and was given them after the Tribunal held that the case

<sup>24</sup> 13 out of the 26 barristers facing charges at Disciplinary Tribunals pleaded guilty to one or more charges of professional misconduct (52%). Eight of the 26 barristers did not attend the hearing, and were treated as not having admitted the charges in line with the Regulations.

should not have been brought by the BSB, on the basis that the facts did not support a realistic prospect of a finding of professional misconduct being reached. This was the only case where costs were awarded, meaning that the panels considered that the BSB was acting properly in bringing the cases before the Tribunals even though the charges were dismissed.

- 2.53 The total number of complaints where we “offered no evidence” in 2015/16 was six – or 11% of all cases closed at the Disciplinary Tribunal stage. This is a similar level to previous years where we withdrew 10-12% of complaints in this way.
- 2.54 Whenever charges are dismissed at hearings or we offer no evidence, we conduct a review of the case to establish where we could improve and what lessons we can learn. However, we need to ensure that the lessons really are learned and fed back effectively into improvements in our enforcement processes. We noted last year that there is more that we can do in relation to knowledge management and quality assurance and, therefore, we have recruited a Professional Support Lawyer in the PCD to

## Charges proved and sentencing

<b>Key Stats</b>	Barristers	35
	Disbarments	7
	Total fines	£22,000

- 2.55 In total, 35 barristers had one or more charges against them proved in 2015/16. Table 6 illustrates the most common charges that were proved during the year. The majority of the charges related to the 8<sup>th</sup> Edition of the Code of Conduct which preceded the Handbook, with charges under rules or Core Duties of the BSB Handbook becoming more common towards the end of the year.
- 2.56 All findings of professional misconduct are published on the BSB and BTAS websites and include details of the charges and sanctions imposed.
- 2.57 Where findings of professional misconduct

<b>Table 6</b>	<b>Charges proved in 2015/16</b>	[Charges under the Handbook in bold]
<b>Charge</b>		<b>Cases</b>
301(a)(i) Being dishonest or otherwise discreditable		9
<b>Other Breach of duties</b>		8
404 HoC <sup>25</sup> / <b>rC89</b> Failure to ensure proper administration of chambers		7
301(a)(iii) Acting in a manner likely to bring prof into disrepute		6
<b>rC64.1</b> Failing to provide information to BSB promptly		6
905(b) Failing to report criminal charges or convictions		5
<b>rC8</b> Undermining honesty, integrity or independence in public eyes		2
<b>rC64.2</b> Failing to comply with a decision or sentence of BSB/BTAS panel		2
...		

both support our existing systems and to drive improvements.

are made against barristers, it is open to the Disciplinary Tribunal panel (or the PCC for Determination by Consent case) to impose

<sup>25</sup> Head of Chambers.

sanctions on the barristers in question. Table 7 illustrates the sanctions that were imposed during the year.

2.58 The most severe sanction available is disbarment and seven barristers were disbarred in 2015/16. These were the most serious cases heard at Disciplinary Tribunals and included charges relating to criminal convictions (three fraud convictions) and dishonesty (four cases) including false declarations in application forms and failing to inform the BSB that they were the subject of another Tribunal or restrictions order. The most common sanctions imposed by Disciplinary Tribunal during 2015/16 were suspensions [8], disbarments [7] and fines [10]<sup>26</sup>. This is an indication that only the most serious and highest risk cases are being referred to Disciplinary Tribunals now that we have options to take more proportionate enforcement action by way of administrative sanctions.

## Appeals

against administrative sanctions are heard by an Appeal Panel convened by BTAS whereas appeals against Disciplinary Tribunals are made to the High Court.

2.60 In total we received one new appeal against an administrative sanction and five barristers appealed to the High Court against Tribunal decisions<sup>27</sup>. To date, five of the 26 barristers sentenced at Disciplinary Tribunals in 2015/16 have appealed. We concluded appeals in relation to 16 cases in 2015/16, with just one allowed. The appeal that was allowed was against an administrative warning issued by the PCD. The appeal panel took the view that the allegation against the barrister was not proved, on the basis that it had not been identified to the barrister with sufficient specificity. The administrative sanction was therefore cancelled. We have since amended our processes to prevent this error recurring.

2.61 At the close of the year, four barristers had appeals against disciplinary findings or sentences pending. However, even though

**Table 7**

**Sanctions imposed by Disciplinary Tribunal panels or the Professional Conduct Committee (DBC) – annual comparison 2014/15 to 2015/16**

Sentence	2014/15		2015/16	
	Barristers	%	Barristers	%
Disbarred	13	32%	7	20%
Suspended	8	20%	8	23%
Fined	18	44%	18	51%
Reprimanded	15	37%	11	31%
Advised as to Future Conduct	4	10%	1	3%
Other	4	10%	2	6%

2.59 Where administrative sanctions are imposed or findings of professional misconduct are made by a Disciplinary Tribunal, barristers have the right to appeal against either the findings or the sentence imposed. Appeals

the number of appeals ongoing at any one time is small, these cases often take up a significant amount of PCD resources.

<sup>26</sup> Three of the ten barristers who were fined at disciplinary tribunals were also suspended

<sup>27</sup> Relating to 20 individual cases

## Legal action

2.62 Beyond our appeal and request for review procedures, barristers and complainants have the right to challenge decisions, or the way we made decisions, through the courts. These normally take the form of judicial reviews of the decisions taken.

### Judicial reviews

- 2.63 Applications for Judicial review include attempts to challenge the manner in which enforcement decisions have been made – either by the BSB or by an independent Tribunal or Appeal panel – as well as the substance of the decision. At the start of 2015/16 we were handling seven judicial reviews and one new application was received during the year.
- 2.64 Two of these eight reviews were dealt with in June 2015. One was remitted to the Visitors<sup>28</sup> on 25 June 2015 and the other was submitted in error and was listed for directions on 23 June 2015, where it concluded. This left six cases at judicial review.
- 2.65 In October a further two cases were dealt with. One case was refused permission and this has not been challenged. Another case was converted to a High Court appeal as it

was challenging a Tribunal finding and the appeal route had not been exhausted.

2.66 In February 2016, the BSB was served with proceedings in the Employment Tribunal arising out of a professional conduct case. At the end of 2015/16, this was at the preliminary stage and the Tribunal was considering whether it had jurisdiction to hear the matter.

## Compliance and revenue

2.67 In 2015/16 we issued administrative fines totalling £1,750 and disciplinary fines were imposed, either by the PCC or a Disciplinary Tribunal, totalling £22K. We received payments totalling £22K in payment of fines

### Case study:

*A barrister who had completed pupillage failed to obtain a full practising certificate within a month of completion. They had erroneously assumed that the Full Qualification Certificate issued at this time was sufficient. Once the matter came to light, the barrister reported the matter to the BSB and immediately rectified the situation.*

*This meant that there was period of around 6 weeks when the barrister carried was practising when not authorised to do so. Practising without a practising certificate is a failure to comply with a regulatory obligation and a breach of the BSB Handbook. Barristers not observing their regulatory obligations are identified as a strategic risk by the BSB and are normally considered to be 'high risk'.*

*A risk assessment was carried out and the matter was deemed to be "medium risk" on the basis that although there had been a breach of the BSB Handbook, 1) The barrister had reported the breach as soon as possible; 2) Prompt action had been taken to remedy the breach, which was a one off; 3) There was genuine remorse and willingness to apologise on the barrister's part. Taking these factors into account, the barrister was issued with an administrative warning in accordance with the complaints regulations.*

<sup>28</sup> The Visitors to the Inns of Court was the previous appeal route from Disciplinary Tribunal. The case remitted was still subject to this jurisdiction. The route of appeal is now with the High Court.

imposed both in 2015/16 and outstanding amounts from previous years.

- 2.68 Currently we have no express powers to reclaim debts, so if a barrister fails to pay a fine, our normal recourse is to raise an internal complaint about the barrister for failing to comply with a disciplinary finding<sup>29</sup>. While in many cases this will be the right course of action, in some it is disproportionate. Further, disciplinary proceedings do not provide a means to enforce payment. Fortunately, such events are the exception rather than the rule. Of the fines that were due in 2015/16, 70% of barristers have complied to date. We closely monitor compliance with administrative and disciplinary fines and we offer the option for the fines to be paid in instalments where a barrister is having difficulties in paying.

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<sup>29</sup> One of the core values of the BSB is "value for money" so while the option to make a debt recovery claim to the courts is available, any decision to take civil recovery action is taken on a case by case basis, applying the value for money principles in a proportionate manner .

## Performance

3.1 We are committed to providing a high-quality service. In particular, we are committed to:

- Dealing with complaints and disciplinary action as promptly as we can, taking into account the need for a thorough investigation and fairness;
- Making sure the action we take fits the circumstances of the case and is necessary to protect the public, by acting proportionately and taking an outcome focused and risk based approach to maintaining the standards of the profession;
- Working in an open way which takes account of the need to protect, as far as possible, the confidentiality of clients, complainants and barristers;
- Giving clear and well-reasoned explanations for decisions; and
- Being polite and professional in all our dealings with people.

3.2 We make every effort to track our performance, particularly by tracking the timeliness of our casework using our Enforcement Database and by surveying both barristers and complainants with recent experience of our service. In our User Feedback Survey we ask questions in five key areas: accessibility; staff performance;

timeliness and efficiency; transparency and openness; and quality of service.

3.3 There are also checks and balances in place in the form of an Independent Observer (see paragraph 3.53) – whose role is to check that the enforcement system is operating in line with its aims and objectives; and the Quality Review Sub-Committee – a sub-Committee of the PCC tasked with checking the quality of the decision-making within the Professional Conduct Department.

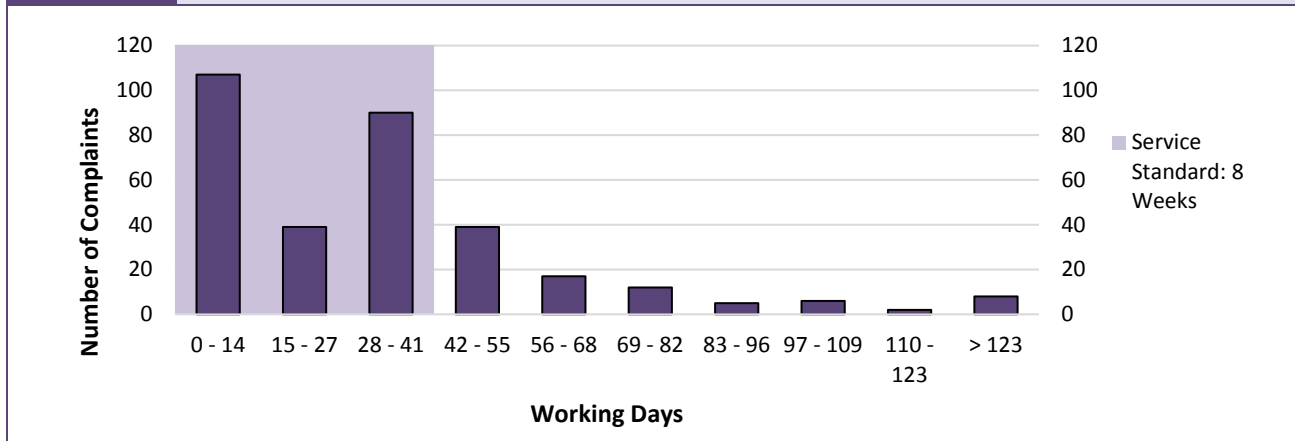
3.4 The combined approach of database monitoring, surveying and the checks and balances we have in place ensures that we identify both areas where we are performing well and areas where we need to improve. As mentioned above, we have employed a Professional Support Lawyer who has been contributing to improving our quality assurance systems further.

Table 8		KPI performance in 2015/16		
Indicator	Description	Performance	Target	
KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	75.7%	80%	
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	72.6%	80%	
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	81.3%	80%	
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	79.2%	80%	



Figure 4

OPI 1: Time taken for complaints to be concluded or referred to investigation in 2015/16



## Timeliness

### Key Performance Indicator

- 3.5 One of our main aims is to ensure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. We have three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. We then have an overarching Key Performance Indicator (KPI) which tracks how long it takes us to come to a decision on whether or not to refer complaints for disciplinary action.
- 3.6 Our Performance Indicators for 2015/16 are set out in Table 8 along with our performance figures for the year. Our KPI target for the year was to conclude or refer to disciplinary action 80% of cases within our service standards.
- 3.7 Unfortunately, at the close of the year we narrowly failed to meet the KPI target for 2015/16, concluding or referring 75.7% of cases within service standards. While our target in terms of timeliness was narrowly missed, last year our overall KPI was 68.9% and so our performance in progressing cases has improved. In addition to that, the throughput of the department has improved

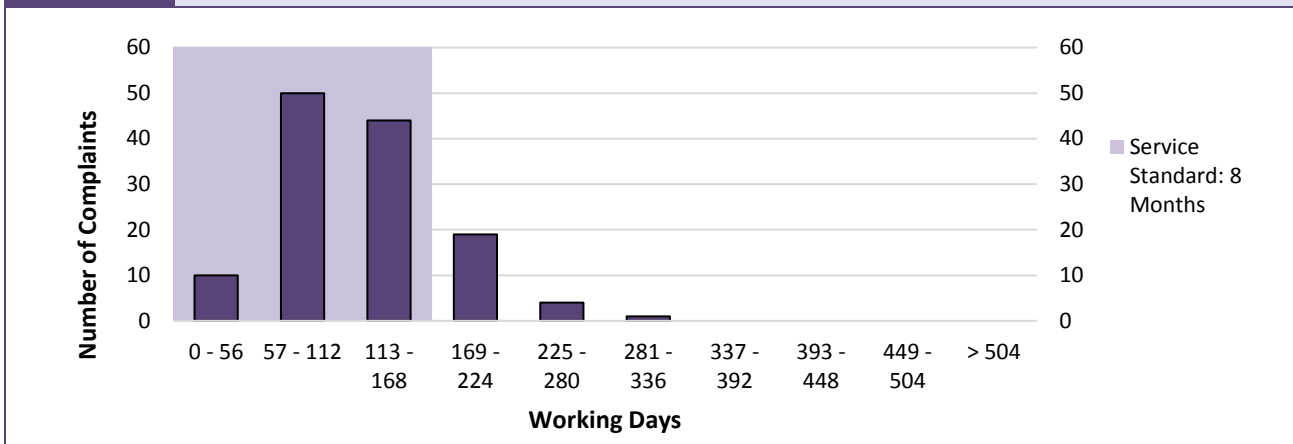
significantly whilst maintaining these faster timescales. If we compare the total number of cases that passed through all three OPIs: in 2014/15 407 cases were dealt with under these OPIs, but in 2015/16 the figure was 626. This equates to a rise in 54% and so this also is a significant improvement.

- 3.8 The operational performance indicators show that the main reason why the target was missed was an issue at the assessment stage (OPI1) in quarter one. In late 2014/15, two key members of our small Assessment Team left the organisation. The failure to meet the performance target in quarter four of 2014/15 was a result of staff shortages and meant that many of the cases<sup>30</sup> that were allocated to the team in Q1 of 2015/16 had already gone over the 8 week service target, thereby causing the percentage of cases dealt with inside the service standard target to be lower than average [56%] (despite much higher output than average for the team in that quarter).

<sup>30</sup> Of the 102 complaints undergoing assessment at the close of 2014/15, we had 31 cases with the team that had already exceeded the eight week limit.

**Figure 5**

**Time taken for external complaints to be concluded or referred to disciplinary action after investigation in 2015/16**



**First OPI: Assessment**

- 3.9 When we receive an external complaint, we aim to make a decision as to whether or not to investigate the complaint within eight weeks. We measure how long it takes from the point at which we receive a complaint until the point at which the complaint is either accepted for investigation or the complainant is provided with the reasons why we do not intend to carry out a formal investigation.
- 3.10 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We met this target in both the second and fourth quarters of the year but in the first and third quarters of the year the target was not met. In those quarters, the results were 56% and 62% respectively. The lower performance figures in these quarters can be explained: for quarter one, please see paragraph 3.8. The reason that the performance target was met in quarter two but was not met in quarter three is that the cases that were concluded in quarter two were younger in age than those dealt with in quarter three. As a result most of the cases that were not dealt with in quarter two would probably have already passed (or almost passed) the eight week time frame by the start of the quarter three, making it inevitable for a lower percentage of cases being closed or referred on within the target in quarter three.

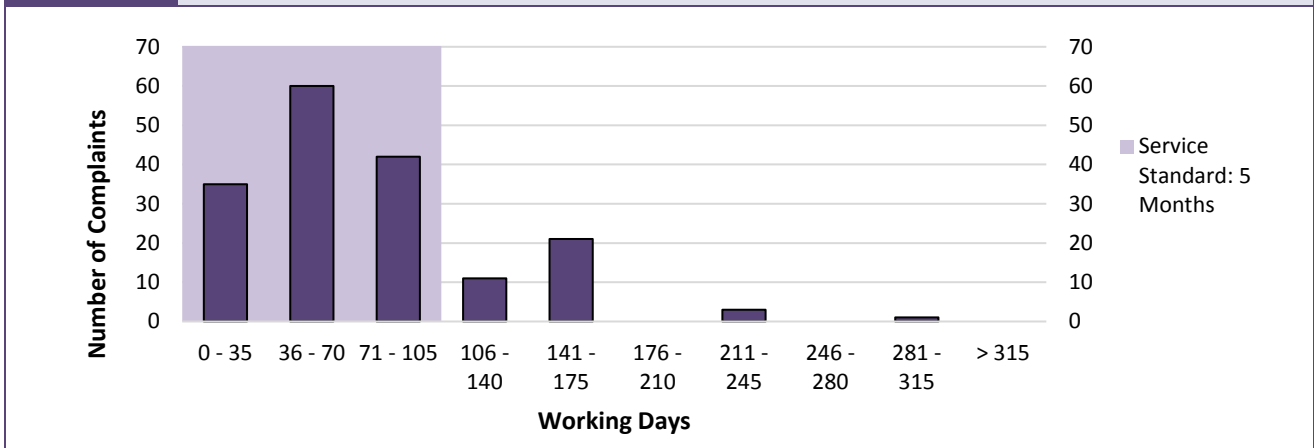
3.11 The impact of the first quarter figures meant we missed our target of 80% for the year, concluding or referring for investigation 73% of complaints within eight weeks. Figure 4 illustrates how long each of our assessments took in 2015/16.

**Second OPI: Investigation of external complaints**

- 3.12 For external complaints, we aim to conclude the investigation and make a decision as to whether or not to refer the complaint to disciplinary action within eight months. We measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation. This includes the Professional Conduct Committee stage of the process if the decision is made by the PCC.
- 3.13 Our target for the year was to conclude or refer to disciplinary action 80% of external cases within eight months. We failed to meet this target in the first and second quarters of 2015/16 as we cleared a small backlog of complaints that were over-running at the end of the previous year. However, a strong performance in the remaining quarters meant that overall we met the target, concluding or referring 81% of external complaints within eight months.

**Figure 6**

**Time taken for internal complaints to be concluded or referred to disciplinary action after investigation in 2015/16**



3.14 Figure 5 illustrates how long it took us to assess and investigate external complaints in 2015/16.

**Third OPI: Investigation of internal complaints**

3.15 For internal complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within five months. We reason that internal complaints should take less time than external complaints as we do not need to take the time to clarify the complaint and correspond with a complainant. As with external complaints, we measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation.

3.16 Our target for the year was to conclude or refer to disciplinary action 80% of cases within five months. We narrowly missed this target with an overall performance figure for the year of 79.2%. The issue was our performance in the first quarter (70%). To a large extent the first quarter figures were affected by the nature of the caseload at the

end of 2014/15. In quarter four of 2014/15, 62 internal complaints were opened, much

higher than the usual quarterly trend of about 35. Also, only nine cases were closed or referred to disciplinary action in that quarter. As a result, a larger than normal number of cases fell to be dealt with under OPI 3 in quarter one of 2015/16. It is clear that a large number of older cases were dealt with in the first quarter of 2015/16 – 26 out of the 87 cases were outside of the five month target. It should be noted however, that while quarter one had the worst statistical percentage relating to the OPI target in the year, it was by far the quarter with the highest throughput, with more cases being concluded or referred to disciplinary action than the other three quarters combined. This was a result of a push in that quarter to bring down the number of internal complaints in our caseload<sup>31</sup>.

3.17 While the situation at the end of 2014/15 was unfavourable, the situation at the end of 2015/16 is very different. The percentage of cases for OPI 3 overrunning at the end of the year is 14% compared to 27% at the end of

<sup>31</sup> This is backed up by the fact that the average age of cases at the Investigation stage in the first half of 2015/16 was 11 months, whereas in the second half of the year the cases at this stage had been open for a period of four months on average.

2014/15. This puts us in a healthier position for the start of 2016/17.

3.18 Figure 6 illustrates how long it took us to investigate internal complaints in 2015/16.

**Forecast of performance for 2016/17**

3.19 There will always be some instances where we need to obtain more information from complainants or barristers, seek expert advice or have to deal with other factors which will cause a case to over-run our service standards. To account for some of these instances we set our targets at 80%. In 2014/15 we added additional monitoring tools to our case management system which help us to track our caseload and identify possible issues. These help us both to take action in advance and see where cases are already over-running our service standards – forecasting the impact this will have on our future performance figures.

3.20 At the end of 2015/16, 14% of complaints undergoing assessment or investigation were over-running our service standards. While these complaints will contribute negatively to future performance figures, the percentage of over-running cases is lower

than at the end of 2014/15 (25%). The over-running cases relate to our OPIs as follows:

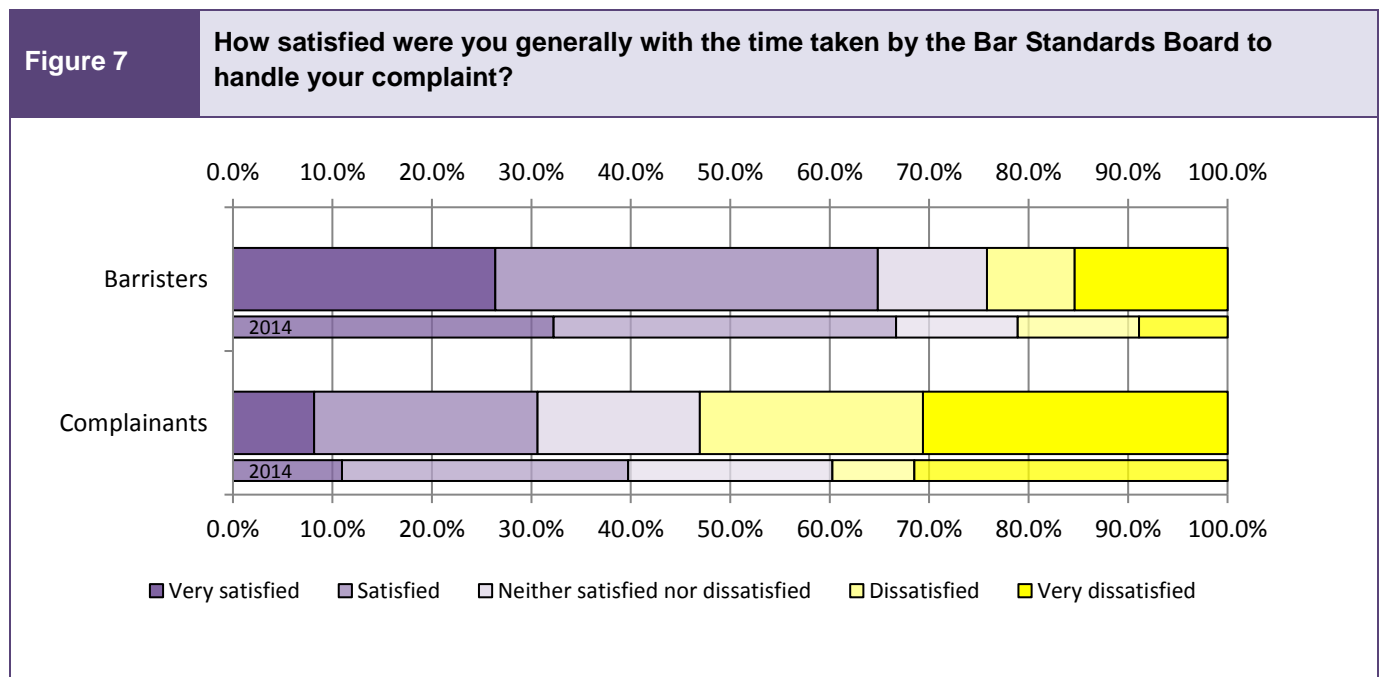
- OPI 1:** 8 cases outside eight weeks (15%);
- OPI 2:** 8 cases outside eight months (12%);
- OPI 3:** 6 cases outside five months (14%);

3.21 Given the fact that the percentages for each of the three OPI’s are looking healthy at the start of 2016/17 – all with under 20% outside the target – we are well placed for the year ahead. As of the end of May 2016, each OPI still has 80% or more of the cases within the target. Therefore, depending on the age of the cases closed or referred, we can expect to meet our OPI and KPI targets in quarter one of 2016/17.

**Feedback survey results**

“ *The complaint took too long to resolve. Other than that it was handled well and with care.* ”

*Complainant response #12833*



3.22 To accompany our performance figures in 2015/16, we asked barristers and complainants how satisfied *they* were generally with the time we took to handle their complaints. There was no significant change compared with the previous year, with 67% of complainants and 73% of barristers either responding that they were satisfied or having no strong opinion. However, this still leaves around a third of complainants dissatisfied with the time we took to handle their complaints.

3.23 We also asked some specific questions about timeliness which show some improvements in the time we took to acknowledge complaints (or notify barristers of the complaints against them) and both complainants and barristers tended to agree that the time taken to respond to calls, emails and letters was acceptable. The big issue for complainants – and the biggest area of disparity between complainants and barristers – was the time taken to come to a final decision on their complaint. Just over half of complainants responded that they

under two-thirds of barristers were either satisfied or very satisfied with the time we took. This trend is consistent with our survey results in previous years.

“ *My complaint was handled fairly and openly. The only issue was the long delay in reaching a decision.*

*Barrister response #12951*

3.24 The consistency of our survey results across recent years shows that the dissatisfaction amongst complainants is not due to any performance issues specific to 2015/16. Still, it is difficult to know whether the issue is that complainants (and to a lesser extent barristers) are not aware that the process of assessment and investigation could take up to eight months<sup>32</sup> – as per our second Operational Performance Indicator – or whether they consider our service standards to be too long. We took considerable care in setting our performance indicators at a realistic level; taking into account all of the

Table 9		Disciplinary action stages completed within service standards 2015/16			
Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards	
Determination by Consent	Internal	10	93	30%	
Three-person Disciplinary Tribunal	Internal	5	86	0%	
Three-person Disciplinary Tribunal	External	1	166	0%	
Five-person Disciplinary Tribunal	Both	10	197	40%	

were either very dissatisfied or dissatisfied, which points to a more general dissatisfaction with the overall timescale of our enforcement procedure. In contrast, just

relevant factors that impact on our consideration of a complaint. These include the need to operate a fair and transparent system (obtaining responses from both barristers and complainants and keeping all parties updated), the high proportion of

<sup>32</sup> Please see paragraph **Error! Reference source not found.** – Action Points.

cases which require further enquiries to be carried out or require expert advice and the need to refer many cases to the Committee for a decision to be made.

### **Disciplinary action service standards**

- 3.25 Our KPI provides a measure of the time it takes us to come to a decision on whether to refer a case to disciplinary action. We also monitor the time taken for the Determination by Consent procedure and Disciplinary Tribunals so that we can give barristers and complainants an indication of how long disciplinary proceedings take and also to identify areas where we can improve. Where a referral to a Disciplinary Tribunal has been made, the BSB acts as the prosecutor in each case and the timely progress of the cases becomes less under our control. This makes Disciplinary Tribunals less suitable for setting key performance indicators but nevertheless it is imperative that we monitor the time taken and set internal standards. In contrast, the Determination by Consent procedure is substantially within our control. Table 9 compares our figures for 2015/16 for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.
- 3.26 Following on from the trend observed in 2014/15, Determination by Consent procedures continued to take longer than the service standard, with only 30 percent of cases concluding within the time limit. As with last year, in three of the seven cases that took longer, there were delays in the barristers agreeing to the charges and facts of the cases which made it impossible to complete the cases within the time limit<sup>33</sup>. This poses a problem as the DBC process cannot continue without the barristers' involvement and the alternative – should we

terminate the DBC process – would be a more costly and time consuming Disciplinary Tribunal. Therefore, we must endeavour to conclude rather than stop the process.

- 3.27 As the Determination by Consent procedure is substantially within our control, there are opportunities for improvement and we must be aiming to conclude more than half of complaints within the service standard.
- 3.28 The time taken for Disciplinary Tribunals to progress from referral to hearing worsened compared with 2014/15, with no external three-person Tribunals concluding within our service standard<sup>34</sup> along with 40% of five-person Tribunals. It should be noted however that, of the cases that are being referred to disciplinary action, the proportion of those that are going to Disciplinary Tribunals has greatly reduced since 2014/15 – the percentage falling from 84% to 62%. This shows us that cases are more commonly being dealt with through the Determination by Consent procedure. If this trend of smaller numbers of complaints going to Tribunal continues, we can hope for higher percentages of targets being met in our statistics for this area.
- 3.29 The lower percentages from 2015/16 compared to the previous year indicate that more cases of an older age (and therefore out of the target time) were closed, showing that the backlog of older cases is being dealt with. This is backed up by the fact that cases which were closed at Disciplinary Tribunals (DTs) in 2015/16 were on average 101 days older than the average age of cases closed at DTs from the previous three years. As we have seen no spikes in the number of new cases opened in 2015/16, we can hope that any cases needing to be referred to disciplinary action in 2016/17 will be closed within targets. It is however difficult to predict

<sup>33</sup> The longest running case was unusual in that the PCD had to seek additional advice from a Committee member during the course of the DBC procedure. The service standard does not allow any time for seeking advice. A further two cases fell only a matter of days outside the service standard.

<sup>34</sup> In our Enforcement Annual Report 2014/15 we reported that 54% of external three person Disciplinary Tribunals concluded within the 166 day service standard.

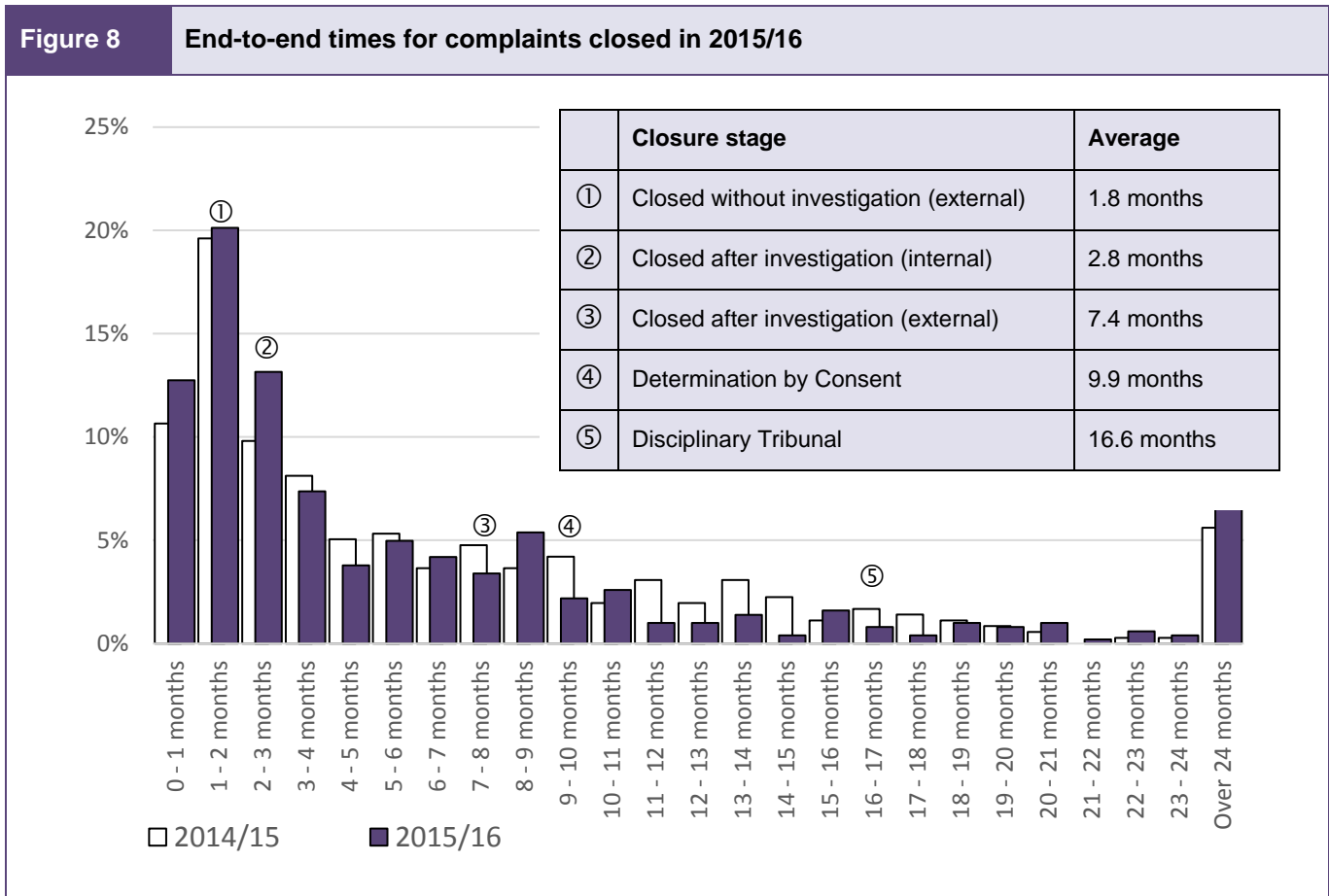
without knowing the number of new cases that will be opened in the year or the complexity of the issues raised.

### End-to-end times

3.30 Our performance indicators have been designed to give an accurate indication of the length of time which complainants and barristers should expect that it will take for complaints to be assessed (eight weeks) and investigated (five or eight months). However, in our reporting we only indicate what proportion of complaints fell inside or outside of these indicators. To provide further information, we also publish end-to-end times for our entire enforcement process. These indicate how long – in real time – complaints took to close in 2015/16<sup>35</sup>.

3.31 Figure 8 illustrates how long each of the complaints closed in 2015/16 took from opening to final closure: whether this be at assessment, investigation or a Disciplinary Tribunal. Also marked on the chart are the average times taken for different complaint outcomes<sup>36</sup>.

3.32 The general pattern reflects our performance indicators, with a decrease in the average time for a complaint to be concluded from 4.4 months in 2014/15 to 3.4 months in 2015/16. For comparison, the overall KPI of 2015/16 was 76% up from 69% in 2014/15. The graph shows us that this year more complaints were closed earlier in the process than in the previous year (in the 0-3 months bracket) and that overall fewer cases were closed after the 3 month bracket. It should be noted however, that while more cases were closed earlier this year than in the



<sup>35</sup> Periods of adjournment and periods where cases were placed on hold are included in the figures, so if, for example, a complaint was on hold for 10 weeks pending the outcome of a court case and then assessed in 6 weeks, the reported figure will be 16 weeks.

<sup>36</sup> As the data is skewed to the right, the figures given are median averages rather than mean averages.

previous year, the average time taken for complaints referred to Determination by Consent or to Disciplinary Tribunals to close (from first opening to final hearing) rose by on average around 1.5 to 2 months respectively. This can be seen in Figure 8 by the larger proportion of complaints taking more than 18 months to conclude.

## Accessibility

- 3.33 We aim to make it as easy as possible for someone to make a complaint to the Bar Standards Board. We also aim to ensure that barristers are able to access everything they need when they are facing a complaint against them. Our approach is to try to ensure everyone knows how our enforcement system works, thereby allowing complaints to be progressed efficiently and managing expectations.

“ [On whether the BSB could improve the complaints system]:

*No, it is very easy to understand.*

*Barrister response #03077*

- 3.34 We asked our survey respondents a number of questions about how they obtained information about the BSB and their experience of making a complaint.

- 3.35 We asked complainants where they first heard about the BSB’s enforcement procedure. In common with last year’s result, a third of respondents told us that the internet was where they first heard about us. However, there remained quite a spread of different sources<sup>37</sup>. The most important thing is that potential complainants find out about the BSB and that they can complain to the regulator. In that respect it is positive that complainants hear about us in a variety of ways.

- 3.36 Just over a third of complainants telephoned the PCD before making their complaint seeking advice or assistance and all of those that did were able to speak to someone. In rating the advice or assistance they received, satisfaction levels decreased compared to the previous year. The number of complainants who were satisfied decreased to 56%, however only 6% of respondents indicated that they were not satisfied as opposed to 12% in the previous year.

“ [The BSB should] enable the complainant to find out how to make a complaint – it should be more user friendly.

*Complainant response #02985*

### Case study:

*The BSB were made aware by the police of a barrister having received a conditional discharge. Upon closer investigation of previous convictions, it emerged that the barrister had not declared all of these on their application to their Inn of Court.*

*The PCC considered the matter and agreed that in light of the dishonesty the matter was high risk and was a breach of the Code of Conduct in place at the time of the declaration to the Inn. They referred the matter to a five person disciplinary tribunal.*

*Agreeing with the PCC, the Disciplinary Tribunal found two charges of professional misconduct proved. In ordering that the barrister be disbarred, the Tribunal found that there had been prolonged dishonesty and that there would be serious harm to the reputation of the profession if the defendant was permitted to practise in the future.*

<sup>37</sup> Other sources include: solicitors [10%], the Bar Council [10%] and the Legal Ombudsman [8%]. Full results are included in the Statistical Report accompanying this report.



“ *The online complaint form is difficult to complete. It was impossible to save a partly completed form.*

*Complainant response #02955*

- 3.37 We asked complainants whether making a complaint to the BSB was easy and 45% of respondents agreed that it was easy. Unfortunately this was a worse result to the previous year where 67% of respondents agreed that it was easy. However, on the whole complainants and barristers gave similar responses to previous years: just over half of complainants felt that our complaints form was easy to fill in and information was easy to obtain. In addition, 41% of complainants and 79% of barristers felt that the procedures for handling complaints were made clear. There is, however, more that we can do for the 23% of complainants and 7% of barristers who indicated in the survey that they felt unclear about our procedures. We use leaflets and our website as our main methods of providing information to complainants and barristers about our procedures for handling complaints.

### **Leaflets**

- 3.38 In 2015/16, 42% of complainants could recall receiving a leaflet and of those that did, 84% found them easy to understand and informative. Similarly, while fewer barristers recall receiving a leaflet (25%), of those that did, 96% found them easy to understand and informative.

### **Website**

- 3.39 Just over 70% of complainants and just under 50% of barristers recalled looking for information on our enforcement procedure on the BSB website. The survey results show a similar result as the previous year in the percentage of complainants who were able to find the information they were looking for without too much trouble (68%), but still 25% of complainants and 23% of barristers

could not easily find the information and 6% of complainants could not find the information they needed at all. These figures show an increase in usage of the website by both barristers and complainants, however, the ease of finding information has not improved since last year, according to the results of this survey.

- 3.40 Over the last year we have acted upon similar feedback and the enforcement web pages have been revised and were relaunched in March 2016 (as part of the Public Information Project – please see the section called “Projects” for more information on this), with more updates and improvements still in progress. It is disappointing that some of those surveyed struggled to find the information that they needed on the website – however it should be noted that nearly all the questionnaires would have been completed before the new web pages went live. We hope that future feedback in relation to this area (for example, in next year’s report covering 2016/17) will have improved by the time it is produced.

“ *Your information on the whole is accessible.*  
*Complainant response #03221*

### **Staff Performance**

- 3.41 We asked barristers and complainants how they would rate their overall experience of the Bar Standards Board’s staff. Overall, 80% of barristers rated their experience as good or excellent. Complainants’ ratings were lower with 35% giving our staff a positive rating but 39% rating staff as poor or very poor. Essentially this is the pattern we have seen in the previous three years. Further analysis confirms the correlation, seen in previous years, with the outcomes of complaints – where complaints were referred to disciplinary action, all of the complainants

“ *A screen is required on the website with simple buttons that will direct you to relevant areas.*

*Barrister response #12935*

responding in 2015/16 rated the staff as excellent, good or average.

“ *Very satisfied with your service at present.*  
*Complainant response #03218*

3.42 We also asked some specific questions about staff performance. The majority of complainants and barristers rated our staff as good or excellent at being polite and professional and handling calls. Barristers were similarly positive about our performance in being helpful and answering queries while complainants were more likely to rate staff as average in these areas.

3.43 We also asked how we performed in providing information about the progress of cases (without the parties having to ask). This was the area, as with previous years, where our staff received their lowest ratings. Although 79% of barristers rated the staff average or above average, only 58% of complainants agreed.

3.44 So where complainants have issues they tend to be around our performance in providing updates and, to some extent answering queries; both of which suggests that complainants may be looking for a more personalised service than we currently provide. Whether or not this is appropriate in

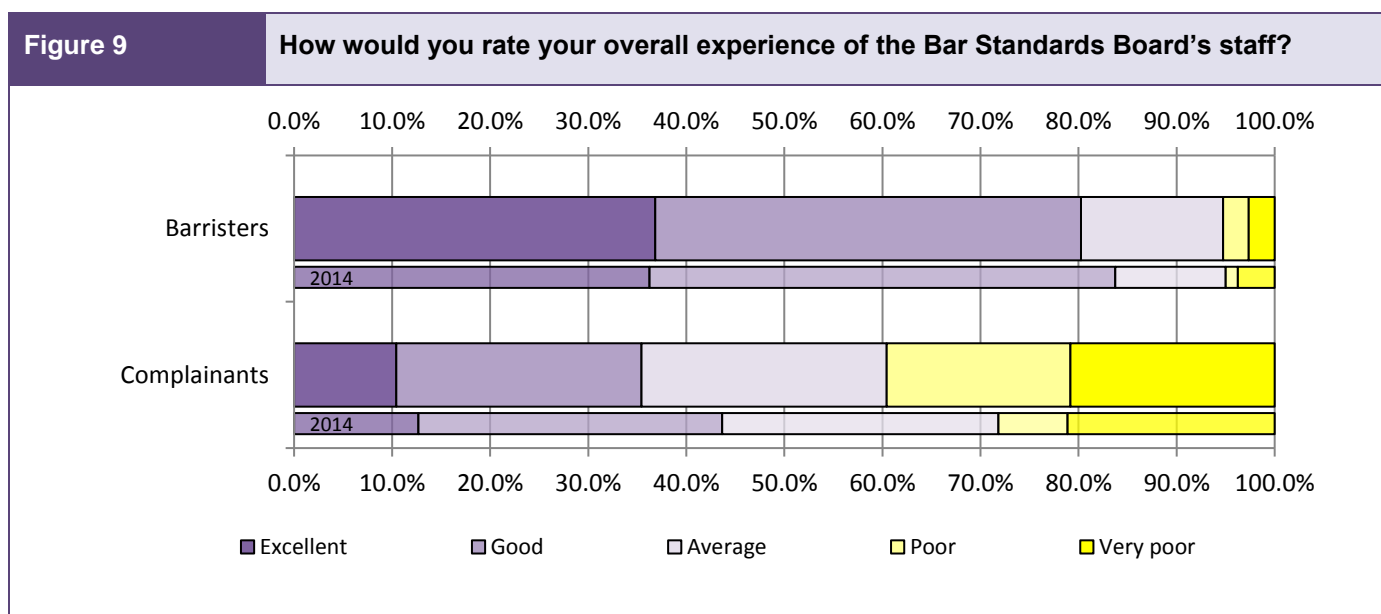
the context of our role as a regulator, as opposed to a complaints handling body, has been an issue of concern in recent years. Nonetheless, we want complainants to feel that they can come to us with issues and we continue to train our staff to help us to achieve this.

“ *The process took too long and left all concerned anxious for longer than necessary.*

*Barrister response #02807*

### In-house training

3.45 We are always looking for ways to improve our staff performance. The BSB has a training programme for all staff members, which this year included legal training for members of staff without legal qualifications. In addition, we run our own training



programme, specific to the knowledge and skills required by the staff of the PCD. Throughout 2015/16 we ran several training sessions on topics such as:

- Legal Aid;
- Project Management
- Entity regulation training
- Data protection
- Case law updates

3.46 We intend that our in-house training programme should continue in this forthcoming year with a particular emphasis on casework and casework administration skills and case law.

### Transparency and openness

3.47 Openness, fairness and transparency are of critical importance to our enforcement work. A legal regulator cannot operate any other way. We asked barristers and complainants whether they would agree that the BSB's complaints process is open and fair. In past surveys this question has revealed a marked difference between the views of barristers and complainants and our past research has shown that the outcome of a case often has a considerable impact on responses.

3.48 Figure 10 shows that this year 79% of barristers agreed that our enforcement process is open and fair and only 8% disagreed. For complainants, 14% agreed and 69% disagreed. These figures show that the responses from barristers have remained relatively constant, however those from the complainants have been less positive than they were last year. The disparity between the views of complainants and barristers is still there and the gap between them has increased. For complainants, there is a strong correlation with the decision we took on their complaints. Where we referred cases to disciplinary action, all of the

complainants agreed that we were open and fair.

3.49 We also asked the survey recipients to indicate how strongly they agreed or disagreed with a series of statements relating to the openness and transparency of the enforcement system. The big issues for complainants remain the same: 69% of complainants felt that we did not consider all of the evidence relating to their complaint and 63% of complainants disagreed that the reasons for the final outcome were clear<sup>38</sup>. We also saw a familiar pattern in the comments left by complainants, whereby upon receiving a decision that we do not intend to refer a complaint to disciplinary action, some complainants say that we did not take their concerns seriously or suspect that we are siding with the barristers.

“ *If an allegation is made of professional conduct against a barrister the BSB should exhaust all lines of enquires*

*Complainant response #03113*

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<sup>38</sup> In addition, 35% of complainants disagreed that they were given adequate opportunity to put forward their case.

3.50 When we close a case without a referral to disciplinary action we inform the complainant of the precise reasons why we took that decision. This is an area where we have completed a considerable amount of work over recent years – particularly at the initial assessment stage. Despite our ongoing commitment and work towards improvements, the survey results show that more complainants than last year felt that the complaints process is not open and fair. The work of the Independent Observer (see below) assures us that the issue is one of perception rather than a systemic problem but it remains an issue nonetheless. It may be no coincidence that the embedding of risk-based and outcomes-focussed approach has come at the same time as an increase in the dissatisfaction of individual complainants.

3.51 Understandably, dissatisfaction levels are highest amongst those complainants whose complaints we deemed unsuitable for disciplinary action, but a large proportion of external complaints we receive are unsubstantiated, do not represent a breach of the Handbook or represent very little, if any, risk to the public or the regulatory objectives. We cannot take action in these cases but we must endeavour to demonstrate clearly that our processes are open and fair. Not to do so would run the risk of dissuading members of the public from

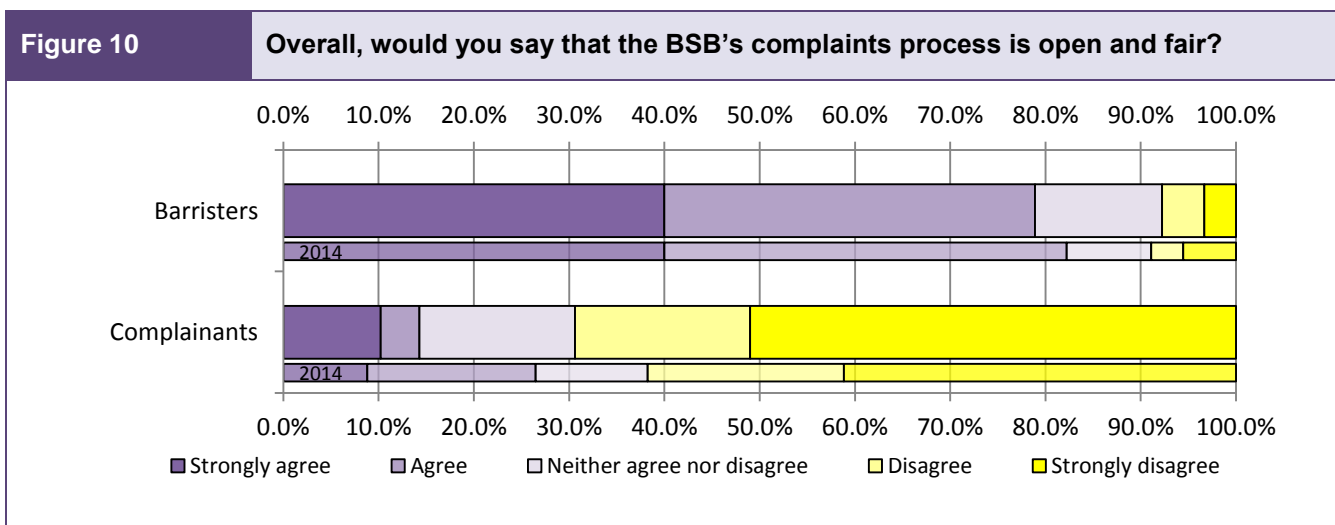
the BSB in the future. But we have to recognise that the purpose of the enforcement system is not to provide a personalised resolution service that is characteristic of complaints handling bodies. Our role is in maintaining the high standards of the profession rather than working with complainants to provide the outcomes they want. We need to ensure that we can keep complainants involved with our processes but balance this against the need to perform our functions as regulator. It would seem that many complainants feel that we should be working in their best interests rather than the wider public interest.

“ A finely tuned balanced: proportionate service fair to the complainant and the practitioner.

Barrister response #02409

### Checks and balances

3.52 Our PCD managers carry out regular checks on our caseload (including spot-checking and case review meetings to ensure cases are progressing as they should), but often a review from outside the PCD is the most effective means of identifying potential issues and driving improvements. To this end we have an Independent Observer taking an overview of our enforcement system and a sub-committee of the PCC



bringing issues of concern to the attention of

reviewing staff decisions.

## Independent Observer

3.53 The BSB appoints a lay Independent Observer (IO) to ensure that the enforcement system is operating in line with its aims and objectives. The second IO, Isobel Leaviss, was appointed in May 2011.

3.54 The latest IO report to the Governance, Risk and Audit Committee (covering the period July 2015 to December 2015) spanned six months of 2015/16. In this report, the IO gave the work of the PCD and PCC a positive assessment commenting that:

“I have continued to observe that complaints and disciplinary proceedings are being handled in line within the BSB’s Enforcement Strategy and in accordance with the PCD’s policies and procedures. I have not identified any systemic issues or any individual cases giving rise to serious concerns.”

3.55 All reports by the Independent Observer are published on the Bar Standards Board website.

3.56 Based on her observations, the IO made five new recommendations which were accepted by the PCD. These were:

- That the PCD introduces measures to ensure that the Litigation Register<sup>39</sup> is complete and regularly updated for its cases and that corporately the BSB reviews the format of the Litigation Register to ensure that it is fit for purpose.
- In the interests of efficiency, the PCD liaises with the High Court to ensure that it has ready access to copies of relevant BSB rules (e.g. Handbook, DT Regulations) and guidance (e.g. Sentencing Guidance).
- That user friendly summary case notes are prepared for judgements made

available on the BSB website and for those circulated internally and to PCC members and prosecutors so that users can more readily identify cases and issues of interest or relevance to them.

- The PCD considers how best (within the Litigation Register or elsewhere) to identify, address and disseminate any lessons arising from Judicial Review proceedings.
- That the PCD consider engaging consumer organisations and/or consumers on issues raised in the consultation particularly the ‘issues of principle’ that will inform ‘the potential direction of travel in the medium term’ and/or any supporting guidance that is developed as part of the implementation of the new Disciplinary Tribunal Regulations.

3.57 The work of the Independent Observer is highly beneficial in ensuring the enforcement system is operating effectively and the recommendations made to date have resulted in many improvements to the enforcement processes and the public facing work of the PCD.

## QRSC

3.58 Members of the PCD staff are authorised by the Professional Conduct Committee to make certain decisions to dismiss complaints, impose administrative sanctions and refer complaints to disciplinary action. In order to ensure that the quality of the decision making remains high, the Quality Review Sub-Committee (QRSC) of the PCC – a three member panel with a lay chair – spot-checks these staff decisions twice a year. The QRSC assess the timeliness, thoroughness, transparency and accessibility of PCD decision-making along with the decision itself.

3.59 The QRSC reviewed 10% of the decisions made by PCD staff during the course of

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<sup>39</sup> This is the he BSB wide tool for recording cases before the courts, rather than those part of the enforcement process.

2015/16. These were all examples of either cases dismissed by staff, cases in which staff had made the decision to pursue disciplinary action or where an administrative sanction had been imposed by staff.

- 3.60 The QRSC agreed that all but two<sup>40</sup> of the dismissal cases had been handled in accordance with the relevant regulations and procedures and were fairly dismissed. They also deemed two<sup>41</sup> cases to have not been dealt with in an open and transparent manner, despite agreeing with the decision made.
- 3.61 When reviewing the cases that were referred to disciplinary action they agreed that the decisions were appropriate given the circumstances of the cases.
- 3.62 In reviewing the administrative sanctions, the QRSC agreed with all of the sanctions imposed and that, in all but one case<sup>42</sup>, the handling of the cases was open, honest and accessible.
- 3.63 This shows the value of the QRSC and more generally the effectiveness of the checks and balances which we have in place – not only in providing quality checks but also in driving improvement. The feedback received has improved the audit trail of the decision making process and the reasons for decisions on cases as well as looking at matters from different perspectives.

## Quality of Service

- 3.64 As an overall measure, we asked complainants and barristers to leave aside the final outcome and say how satisfied they were with the way in which we handled their complaint. Figure 11 shows that 80% of barristers were satisfied with our handling of

the complaints against them compared with

“ *[On whether the BSB could improve their service]:*

*No. It was very efficient.*

*Consistency and one port of call.*

*Complainant responses #02533 and #03192*

27% of complainants. While this was a slight improvement for barristers, the views of complainants did not markedly change since the previous year.

- 3.65 So in two fundamental areas – the openness and fairness of the complaints process and the overall quality and speed of service – complainants responding to our survey were less satisfied than in the previous year and the gap between the views of barristers and complainants increased. Realistically, the high proportion of external complaints which we close without a referral to disciplinary action and the impact this has on the perceived fairness of the system makes it impossible to achieve parity in this area. However, we are committed to improving and it is disappointing that despite the work that has been carried out in recent years, the views of complainants have not improved in any of the areas questioned in this year's survey.

“ *The time taken to investigate my complaint seemed very long [...] I only received two letters during the whole investigation.*

*[The BSB could improve by] keeping clients better informed about their complaint.*

<sup>40</sup> In one of these cases, the QRSC were of the view that the case should have been put on hold (the issue was there was an ongoing investigation with another regulator at the same time). In the other case, it was decided that there was at least a possibility of further investigation into whether the barrister may have been providing legal services without a practising certificate.

<sup>41</sup> In both of these two cases, the QRSC decided that a fixed penalty fine (FPF) would have been better suited. The cases involved strict liability offences (SLOs) and FPF's should be the starting point in cases such as these.

<sup>42</sup> The QRSC decided that a fixed penalty fine would have been more appropriate in the circumstances surrounding this case, rather than just an administrative warning. The case involved issues relating to strict liability offenses.

3.66 There is no doubt that the information provided by complainants is extremely valuable and we need potential complainants to feel confident in bringing potential issues of misconduct to our attention. However, we are no longer the same complaints handling body that we were in 2010 when we dealt with complaints about poor service and made findings in support of the complainants. Our role now is in taking action for breaches of the Handbook where there is a real risk to the regulatory objectives and maintaining the high standards of the profession. If anything, though, our connection with complainants is now stronger than it was in 2010 as we have

“ What impressed me was the quick turnaround between notifying me of the complaint and the thoroughness of the reasoning behind the decision.

Barrister response #02920

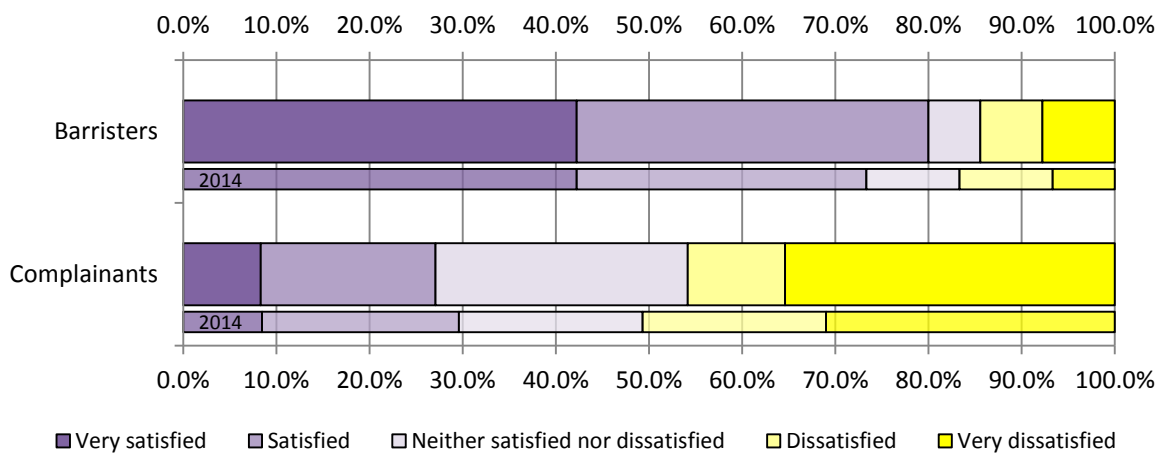
made considerable efforts to engage with

complainants and develop the detailed reasons we give for the decisions we make. At the same time, the introduction of outcomes-focused and risk-based regulations is taking us in a direction that may be perceived by complainants as dismissive of their concerns. Dismissing a complaint where there is evidence of a breach but the risk is too low to warrant enforcement action may be a hard concept for complainants to understand and lead to greater levels of dissatisfaction.

3.67 The issue is one of managing expectations: inviting complainants to provide information and still keeping them up to date and informed, but making it very clear that we operate in the public interest, that we may not be taking action in relation to their individual issues and not using terminology that encourages complainants to think that we act for them. We may still not see the improvements in the feedback we receive, but the enforcement system will be more transparent and stronger. We are currently looking at restructuring the assessment processes across the BSB and in doing so we will be looking at the role complainants play in our regulatory system including ways we can manage expectations.

Figure 11

Leaving aside the final outcome, how satisfied were you with the way in which the Bar Standards Board handled your complaint?







## Other work areas

- 4.1 While our primary function is in taking action where the BSB Handbook has been breached, our work throughout the year encompassed a number of other areas of work.

### Disciplinary history checks

- 4.2 A disciplinary history check is where we cross reference a barrister against our Enforcement Database and report on any disciplinary findings made against the barrister. This is usually for the purpose of issuing a Certificate of Good Standing but we also respond to requests from the Judicial Appointments Commission (for use in handling applications for judicial office) and the Inns of Court (pupil supervisors).
- 4.3 In addition we have a memorandum of understanding with the Queen's Counsel Appointments (QCA) body in which we agree to report on any disciplinary findings or ongoing disciplinary proceedings for each Queen's Counsel (QC) applicant. These are then taken into consideration when QCA are assessing applications.
- 4.4 We completed 850 disciplinary history checks in 2015/16, including checks on 241 QC applicants.

### Information provided to the public

- 4.5 Although we are not currently subject to the Freedom of Information Act, we work in the spirit of the Act when we receive requests for enforcement data. We regularly receive requests from researchers, reporters, complainants and other members of the public, typically asking for numbers for different types of complaints or outcomes and sanctions we have imposed. Where the information is available we always comply with the request and provide anonymised data. In 2015/16, we received and answered over 20 requests from external sources for data.

- 4.6 We want our enforcement data to be as transparent as possible and so accompanying this Annual Report is a Statistical Report of data that will address many of the data requests that we anticipate receiving. This will allow for fast access to information for the public without us having to generate custom reports each time. The Statistical Report can be found on our website.

## Projects

### Alternative Business Structures

- 5.1 During 2015/16 the BSB made an application to become a licensing authority for Alternative Business Structures (ABS) – organisations that can include non-barrister ownership. An ABS Implementation Project was set and in collaboration with other BSB departments, the PCD has been ensuring that we have appropriate systems in place to deal with this pending extension to our jurisdiction. For PCD this has involved re-examining our policies and procedures to ensure that we are able to take appropriate action if concerns are raised about an ABS.

### Centralised Assessment Team

- 5.2 A project is underway to improve the consistency of our risk based assessment systems across the BSB. The desired result is to design and implement a centralised assessment unit to deal with all incoming information. In conjunction with moves to upgrade our Information Systems, it is intended that this team will, in due course, provide a more aligned, effective and consistent approach to assessing incoming information on the basis of risk.

### Public Information Project

- 5.3 During 2015/16 we carried out a comprehensive review of the BSB's available public information on the enforcement system. This resulted in a complete rewrite of the relevant web pages which went live in

March 2016. Informal feedback so far indicates that users are finding the pages much easier to use and navigate. The Project has now moved onto revising our public leaflets and we hope to launch new leaflets later in the year.

## Disciplinary Tribunal Regulations Review

- 5.4 A project to review the Disciplinary Tribunal Regulations commenced in 2014 and a revised set of regulations was developed in 2015/16. Following a public consultation, the Board agreed the revised Regulations early in 2016 and it is intended, following approval by the Legal Services Board, the Regulations will come into force by the end of 2016. The project has now moved on to the implementation phase. This will include revising guidance, developing revised supporting policies and procedures and training staff, Committee Members, Prosecutors and Tribunal members.

## Conclusions and action points

- 6.1 2015/16 has been a year of consolidation and continuous improvement following the introduction of the BSB Handbook in 2014 but also a period of planning for change. The risk based approach to decision making is firmly embedded in our processes and appears to be working well. This is demonstrated by the increase in use of administrative sanctions (up nearly 600%) and the outcomes of Tribunals where the most common sanctions were disbarment and suspensions. Our monitoring systems are continually improving which in turn have allowed us to learn from our experiences and implement appropriate changes. In particular the changes to our allegation categories are allowing us to report more accurately on the nature of the concerns that are raised with us. The full benefit of this is likely to be seen in the forthcoming year and beyond.
- 6.2 Our performance in just missing the KPI by 4% (76% against a target of 80%) is disappointing particularly given the dedication and hard work of the staff. However, this needs to be contrasted with the significant increase in throughput. Staff dealt with far more cases this year (up 40%) and it is to their credit that they were able to improve on last year's performance despite the ongoing impact of staff shortages in 2014/15. Further the number of outstanding cases at the end of the year was 21% less than last. We ended the year with a much smaller proportion of complaints over-running our service standards than the previous year, allowing us to start 2016/17 on a better footing with a strong prospect of meeting the KPI in 2016/17.
- 6.3 Overall this report demonstrates that the enforcement system is working well. The uphold rate at Tribunal, at 83%, is healthy and the fact we were only subject to one cost award indicates that even where charges were dismissed, the cases were rightly brought. The checks and balances in the system in the form of the Independent

Observer and the Quality Review Sub-Committee have provided assurance that the decisions are being taken fairly and openly in line with our objectives. However, it is clear that complainants still do not perceive this to be the case given the ongoing low rates of satisfaction in relation to the openness and transparency of the system. We have worked hard to try to manage expectations and ensure our role is clear and we will continue to do so. It may, however, always remain the case that satisfaction will be low in light of the direct correlation between outcomes and satisfaction and the overall percentage of external complaints that do not result in enforcement action (on average 80% or more).

## Action points

- 6.4 We intend to carry out the following actions during the course of the next twelve months to further improve the enforcement system.
- Continue to develop our approach to risk – ensuring the consistent approach to risk taken by the BSB (based on the Risk Outlook, Framework and Index) is reflected in our enforcement work. This work will be focussed in 2016/17 on the development of the proposals for a Centralised Assessment Unit.
  - Continue to improve our IT systems (as part of Bar Council's Information Management Programme) to improve communication and the sharing of data across relevant departments.
  - To maintain and enhance our staff training and up skilling programmes. This will prepare the PCD staff to take on an increased amount of executive decision making.
  - Continue our KPI monitoring programme to ensure that we can deal with the over-running complaints in an efficient way and to explore areas where we can eliminate delays in the enforcement processes.

- Carry out a review of our KPIs and OPIs to ensure they remain an appropriate and effective means to monitor performance.
- Update and revise our leaflets as well as continue improving the website pages as part of the ongoing Public Information Project.

**Sara Jagger**

**Director of Professional Conduct**

**Aidan Christie QC**

**Chair of the Professional Conduct Committee**

**July 2016**