

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Regulatory Decisions

Annual Report 2019/20

Regulatory Operations Department
Legal & Enforcement Department

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Executive Summary

1. The Bar Standards Board (BSB) takes regulatory decisions in a number of different ways. We take proactive decisions in the face of evidence of a thematic concern that needs to be addressed, for example, in introducing targeted regulation to address evidence of poor standards of advocacy in the Youth Court. We also take reactive decisions in response to information that is provided to us, for example, about the conduct of an individual barrister.
2. This is the first report by the BSB following our reforms to how regulatory decisions are taken which took effect in October 2019. These sought to streamline our approach to the handling of incoming information and to ensure a consistent approach to assessing concerns that are raised with us. They also led to reform in the governance of our regulatory decision-making framework. The reforms are now fully in place and bring about a number of positive changes that are highlighted in the report. In particular, our newly formed Contact and Assessment Team has provided a more coherent approach to managing information and in ensuring that any regulatory response is targeted and that there is no duplication of effort across different BSB teams. Combining our supervisory responsibilities under one team has ensured greater consistency in how we supervise both AETOs delivering either work-based learning or vocational based training and provided opportunities for shared learning and good practice.
3. We have modernised our approach to regulatory decision-making by creating a single body, the Independent Decision-Making Body (IDB), responsible for taking all regulatory decisions that require input independent of the executive. The revised decision-making regime reflects our commitment to the governance principles that: processes must protect our regulatory independence; decisions should be delegated to the lowest level possible; “committee” structures should be of a minimum size possible to maintain quality; and decision-making should have both lay and barrister input. The new regime vests powers in the IDB to take decisions and has, for the first time, vested direct decision-making powers in the executive by the creation of the role of Commissioner (held by the Director General) as a vehicle for delegating such powers to staff. The IDB is a pool of barristers and lay people who meet in panels of three or five, with a lay majority, to take decisions, principally in relation to enforcement cases.
4. This year has also seen the practical implementation of our approach to Future Bar Training and our reforms to the education and training pathways for a career at the Bar, with the authorisation of organisations to deliver the new Bar Training Course. It is encouraging to see the innovation and creativity that has been shown by applicants and we are particularly pleased to see, in the Inns of Court College of Advocacy, a new entrant to the barrister training market.
5. Regulatory decision making is at the core of the work of the BSB. It is through these functions that we ensure that people entering the profession meet the standards expected of them and continue to do so throughout their careers. Through our supervisory work we focus on areas of risk to the public interest with the aim of helping barristers and chambers to address areas of concern that have been identified.

Enforcement action is then reserved for the most serious or persistent breaches of the BSB Handbook including cases of professional misconduct.

6. Through the decisions that we take we have identified areas that require further analysis and monitoring. Most notable will be the impact of COVID-19 on barristers, chambers, pupils and training providers and this will be a primary focus of the work of the Supervision team in particular over the next 12 months. The report also highlights our work on bullying and harassment and on developing our approach to addressing conduct arising in barristers' non-professional lives. Both of these are the subject of on-going consideration and upon which we will be seeking to engage with interested parties over the coming year.

Context

7. This report covers the period between April 2019 and March 2020 and in doing so includes the implementation of reforms to our regulatory decision making in October 2019. The reforms:
 - streamlined our approach to the management of incoming information through the establishment of the Contact and Assessment Team (CAT);
 - established the Independent Decision-Making Body (IDB) to take regulatory decisions requiring input independent of the executive, principally enforcement cases and appeals from authorisation decisions. The IDB replaced the Professional Conduct Committee and the Authorisation Review Panels. It meets in panels of three to decide authorisation cases and five to decide enforcement cases;
 - changed the terminology we use for any incoming information, including concerns about the conduct of barristers or those we regulate, by treating such information as "reports" and no longer referring to "complaints". The latter change was introduced to promote transparency and understanding of our regulatory role. We have no powers to offer redress where a barrister has provided a poor service to a client - that is the role of the Legal Ombudsman. The previous use of the term complaints was potentially misleading and caused confusion for the public. All "reports" are now processed in the same way and, where relevant, are risk assessed against a new risk assessment methodology that has been standardised across the BSB;
 - established the role of Commissioner to act as a vehicle by which decision-making powers can be delegated to the executive;
 - introduced Regulations which enshrine the new approach to regulatory decision making. The Complaints Regulations have therefore been replaced with the Enforcement Decision Regulations; and
 - established the Regulatory Operations Department and the Legal and Enforcement Department to reflect the reforms.
8. Broadly, this report covers the work of the Regulatory Operations and the Legal and Enforcement Departments. Its focus this year is not on the performance of those

departments against published Key Performance Indicators¹ but on the themes and areas of interest that have arisen from the work of the two departments over the last 12 months. In doing so, it complements the corporate level reporting through the BSB's Annual Report. The report breaks down into two main sections.

- i. Regulatory casework – this covers consideration of our casework functions and the statistics from those activities. In this section we look at what those statistics are telling us and any themes that arise.
 - ii. Non-casework regulatory decisions – this section focuses in particular on the proactive work of our Supervision Team and highlights key findings and themes about the impact of our regulation, risks that we are seeking to address now and in the future and examples of good practice that we think it is useful to share.
9. In covering the period up to the end of March 2020 it does not reflect the impact of COVID-19 on our regulatory decision-making functions nor does it cover the management of the centralised examinations in August 2020.

Regulatory Casework – Statistical Analysis

10. This section provides an analysis of our regulatory casework. It covers the work of the:

- Authorisation Team
- Contact and Assessment Team
- Investigations and Enforcement Team

Authorisation Team

11. The Authorisation Team is responsible for dealing with applications for waivers and exemptions from our practising requirements. This includes requests by foreign lawyers seeking to transfer to the Bar of England and Wales and dispensation from all or part of pupillage. The team also deals with the authorisation of Approved Education and Training Organisations and Alternative Business Structures and Entities.

12. The Team received 981 applications for waivers and exemptions between April 2019 and March 2020. Of which the majority were made up of:

- i. requests by Foreign Lawyers to be admitted to the Bar (174 applications),
- ii. requests for certificates of academic standing in respect of qualifying degrees (151 applications)
- iii. applications to be authorised to conduct litigation (110 applications)
- iv. applications from solicitors wishing to be admitted to the Bar (102 applications)
- v. applications for a reduction in the length of pupillage (90 applications).

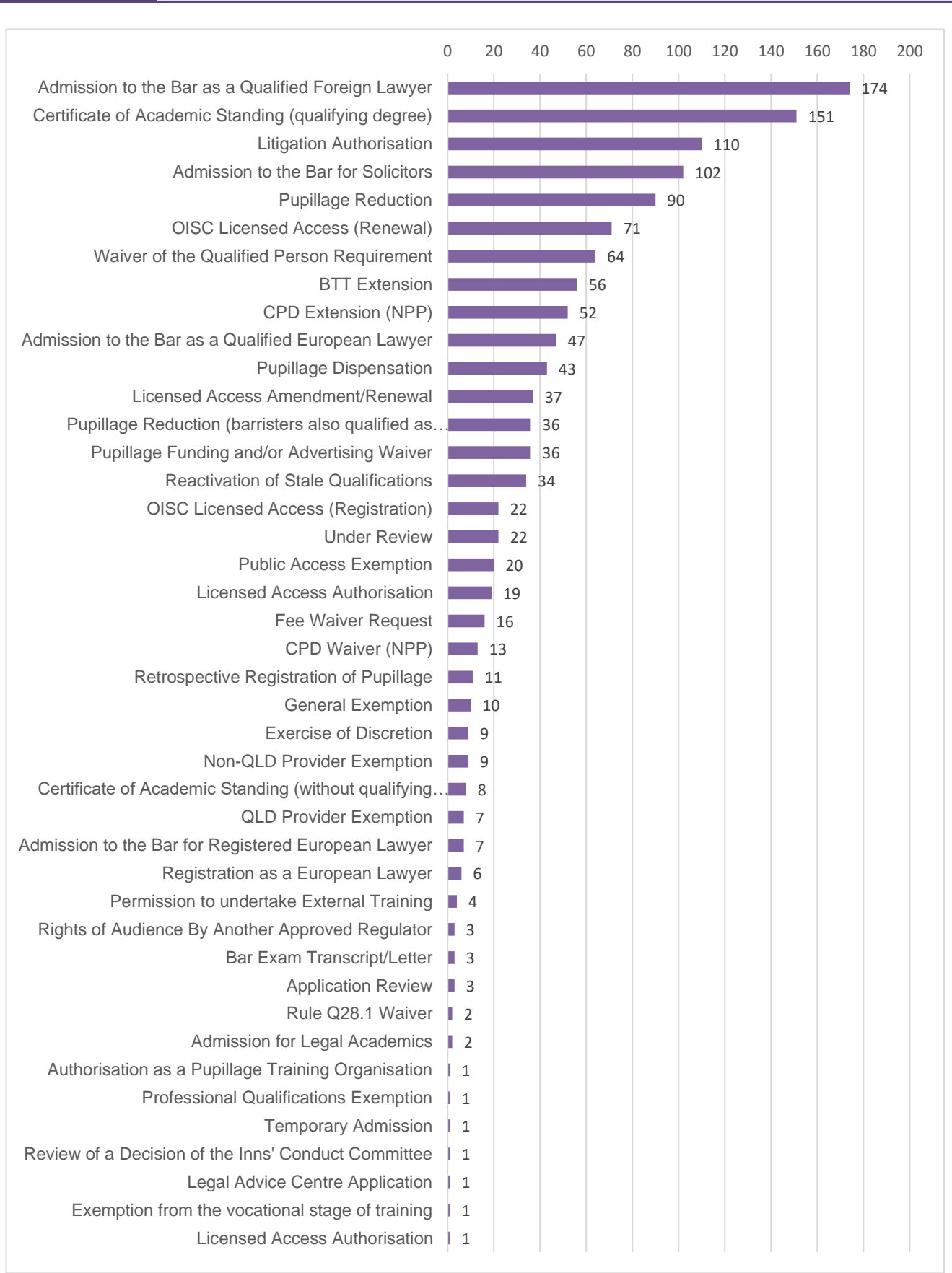
¹ New KPIs were introduced in October 2019 to reflect the new regulatory operations systems, therefore full year performance statistics are not available for this report. The first full year reporting of KPI performance will therefore be included in the Regulatory Decisions Report 20/21.

Brexit

13. We had anticipated a spike in applications from EU transferring lawyers due to Brexit and the likely impact that will have on the ability of European lawyers to practise in England and Wales. We have though seen a marked increase in enquiries from EU lawyers seeking to understand the options available to them and the waivers that they might need if and when Brexit is fully implemented. It would seem, perhaps understandably given the uncertainty around the future post Brexit, that EU lawyers interested in transferring to the Bar of England and Wales are deferring their applications until there is greater clarity about the impact and implications of any Brexit settlement.

Figure 1

Types of applications received in 2019/20



Authorisation of Authorised Education and Training Providers (AETOs)

Vocational AETOs

14. During the period of this report, we started to receive applications from prospective providers of the new vocational Bar training courses, which AETOs began to deliver in the Autumn of 2020. These applications were considered against the Authorisation Framework <https://www.barstandardsboard.org.uk/training-qualification/information-for-aetos/the-authorisation-framework.html> , a key feature of our Future Bar Training Programme <https://www.barstandardsboard.org.uk/training-qualification.html> which sought to add greater flexibility and accessibility to training to become a barrister. Applications were received from all the existing providers of the Bar Professional Training Course as well as from the Inns of Court College of Advocacy, a new entrant to the barrister training market. All applicants have now been authorised. The applications received reflected the desire by prospective providers to respond positively to the need to make Bar training more accessible, flexible and affordable without compromising high standards. It is encouraging to see the expectations of the Authorisation Framework embraced fully and providers coming forward in their applications with innovative and creative ways of delivering the course. A particular feature of the new education pathways is the introduction of the two part delivery model with the first part designed to teach and assess students in the core knowledge subjects and the second part covering intensive teaching and assessment in the skills based subjects such as advocacy. The splitting of the course keeps cost down for the student and provides an opportunity for the student to assess at the end of part one whether they wish to proceed to the more intensive (and therefore more costly) part two of the course. This is a useful option for students to consider alongside other models.

Work based learning (pupillage) AETOs

15. Chambers or other potential providers of pupillage are required to be authorised by the BSB under the Authorisation Framework. There were approximately 300 pupillage providers authorised as Pupillage Training Organisations (PTOs) to be transitioned to AETOs. These have been grouped and assessed as three distinct categories, “high”, “medium” and “low” following a risk and evidenced based analysis of information held by the Supervision Team and provided in our 2017 survey. We have transitioned the “high” group and currently have 40 “medium” applications in progress, which are scheduled for completion by December. In addition, and in response to the more flexible approach to pupillage, we have received an increasing number of applications from solicitors’ firms and alternative business structures to be authorised as an AETO. As with vocational AETOs, it is encouraging to see potential providers of pupillage embracing the principles of the Authorisation Framework in offering greater flexibility and accessibility in their model of pupillage delivery, for example in offering pupillage part time.

16. We will evaluate the impact of the new approach to barrister training in future reports for 2021/22 and 2022/23.

Entities and Alternative Business Structures

17. At the end of this reporting period there were 125 authorised entities including alternative business structures. The chambers model of governance for self-employed barristers remains the predominant approach and there is limited demand for more varied forms of structure. That said, we saw 25 new entities authorised in 2019/20 with a small increase in the number of applications from solicitors who are looking to set up a business that more naturally aligns to the Bar model of legal services delivery than those models which are regulated by the Solicitors Regulation Authority.
18. The risk profile of entities is generally low and that is reflected in our ongoing regulation of them. We remain keen to hear from anyone who would like to set up an entity and are willing to discuss informally novel or innovative proposals before any authorisation application is made.

Contact and Assessment Team (CAT)

19. The period covering this report marked the introduction of Regulatory Operations changes on 15 October 2019. These changes introduced a new case management system, and the formation of the CAT to undertake the initial assessment of incoming information. Prior to 15 October 2019, we operated a complaints process whereby people could make formal complaints about barristers. These were called, for the purposes of our systems, “External Complaints”. The Assessment Team would assess those complaints and either dismiss them or refer them to the Investigations and Hearings team for an investigation.
20. Alongside External Complaints, we considered information from other sources such as those from barristers making reports in line with their obligations under the BSB Handbook to report professional misconduct, press reports, and other regulators. In these cases, we take decisions on whether they give rise to concerns that we should take forward as the BSB.
21. The Regulatory Operations programme, and the regulation changes that accompanied it, created a new regime. Under the previous regime, cases were classed as complaints and pre-complaints. Pre-complaints comprised information that came into the BSB that was not a formal complaint. If they disclosed a potential breach of the BSB handbook that warranted further investigation, they would be converted to what we called an “internal complaint”. Instead of the system of pre-complaints and complaints, all new information comes into the BSB as reports. These reports are evaluated by the CAT, which replaced the Assessment Team, to consider the regulatory issues disclosed within the report and determine which team within the BSB, if any, should consider further regulatory action. When CAT considers that a report should be considered by another team, it will allocate the report to that team. Though the majority of reports received relate to individual barristers, the new system considers a much broader range of concerns relating to the market. This means that systemic or thematic issues can be identified either through single or grouped reports and enables the BSB to target its

regulatory response at both a macro (whole or section of the barrister market) level or a micro (individual barrister, chambers of entity) level.

22. Given the reform to the methodology for handling concerns that we receive, we cannot undertake a like-for-like statistical comparison against previous years. However, broad comparisons can be made against previous years.

Incoming information

23. Overall, the number of reports received showed an increase of around 10%. In 2019/20 the number of reports² received totalled 1489. This is an increase on 2018/2019 where 1340 reports were received. In 2017/18 1242 were received and in 2016/17 1098 were received. Of the reports received in 2019/20, 105 were made by barristers in accordance with their reporting obligations. Again, this is an increase on the previous year's total of 100. The numbers of reports made under reporting obligations in 2016/17 and 2017/18 were 110 and 133, respectively.
24. The number of general enquiries registered on our system has increased to 701. This reflects that all inquiries are now routed through CAT rather than across the BSB as opposed to any underlying causes.
25. 600 reports and queries were received through our online reporting form. This is approximately 27% of all reports and queries which is in line with our assumptions for the operation of the new system. We are keen to encourage greater use of the online reporting form and will be considering ways in which we can raise awareness of this means of bringing matters to our attention.

Output

26. Due to the changes to the regulations and the case management system in October 2019 and the way in which information is now recorded, it is difficult to compare the number of cases closed in 2019/20 to previous years. 697 cases were assessed in 2019/20. In 2018/19, 309 complaints were assessed. Whilst, this does not represent an exact like for like comparison - as in 2018/19 since the system then did not account for all cases - of the 697 cases received in 2019/20, 418 required detailed and full assessment which indicates an increase therefore in considered cases on previous years. It is too early to say whether this is in direct response to the change in our approach to dealing with incoming information and we will be better placed to form a judgment on that after a further 12 months of operating the new system.
27. In total across the full year 176 cases were referred to investigation (see also paragraph 37 below), 82 of which were referred by the CAT after 15 October 2019. Therefore, the rate of referral by CAT in the second half of the year was slightly down on the previous six months (82 as compared to 94). It is too early to tell whether this decrease is indicative of a trend. Additionally, 35 cases were allocated to supervision. Prior to 15

² We have adopted the "reports" terminology and applied it to those cases prior to October 2019.

October 2019, allocations to supervision were not captured by the Case Management System.

28. The signs over the first six months of the operation of CAT are positive. The introduction of a more streamlined approach to receiving information and a consistent approach to assessing the information received has both a positive impact on those bringing concerns to our attention and on ensuring that information is considered quickly and by the right team within the BSB. CAT sends out a satisfaction survey to all people whose queries are handled by CAT or who have submitted a report. Whilst satisfaction is often linked to the outcome of our consideration, there is general recognition that the more streamlined means of bringing matters to our attention is preferred.

Notable trends

29. Due to the change in case management system, we cannot pull comparative data from previous years, apart from manually collected data, to show whether there has been an increase in a particular type of issue being raised with us. There are, however, a number of common themes that arise from the cases that we have considered since the new system came into effect in October 2019. These include:

Conduct outside professional life

30. Of the cases received during the year and assessed after the new regulatory operations arrangements came into effect in October 2019, there were 175 cases where conduct reported clearly fell outside normal professional life. This compares with 405 cases where the conduct clearly occurred in relation to professional legal work as a barrister (such as conduct during proceedings or conduct in chambers). This is a considerably higher proportion of reports relating to conduct in a non-professional setting. The regulation of non-professional activities is a topic that has generated much debate both within legal regulation and more generally particularly with the increasing use of social media by professionals. We have committed to considering and developing, in 2021/22, our approach to the factors and issues we will take into account when assessing whether the conduct of barristers outside the direct sphere of their professional lives should be a matter for regulatory intervention.

Sexual harassment

31. CAT identified 15 cases received in 2019/20 that related to sexual harassment. This is an increase from 2018/19 and 2017/18 when nine cases were received in each of the years. Harassment and bullying at the Bar remain areas of real concern for the BSB and we will continue to develop our approach to eliminating this behaviour, both in how we can encourage people to raise their concerns and to support them when they do, and in addressing systemic issues with the culture at the Bar as detailed in paragraphs 81-83 below.

Area of law

32. Under CAT we now have the ability to record the area of law from which the report about a concern arises. This allows us to identify whether there are broader concerns in relation to different sectors of the Bar or the legal market. The highest proportion of reports arose from Family proceedings, followed by Crime. This is likely to reflect the highly contentious nature of proceedings in these areas. We will continue to monitor this closely. It would be open to us to introduce targeted regulation if we had evidence of a systemic conduct or performance issue within an area of law (see for example our approach to the regulation of Youth Court Advocacy or representation in the Coroners' Courts below).

Investigations and Enforcement (I&E)

General overview

33. Our enforcement work covers three main stages: investigation of potential breaches of the BSB Handbook; post-investigation decisions on what action, if any, to take made by either I&E staff or the IDB, which includes the imposition of administrative sanctions; and disciplinary action for professional misconduct. I&E are responsible for handling enforcement cases in conjunction with the IDB and our Tribunal Representation Panel.

34. In 2019/20, the referrals to investigation of potential breaches of the BSB Handbook increased by 20% as compared to 2018/19 (up from 146 to 176). There was also a 55% increase in the number of Disciplinary Tribunal cases heard. The increase in work was accompanied by a slow-down in progressing cases: both in relation to the number of investigation cases closed and the time taken to do so. As Tribunal cases are the most time-consuming to deal with, a significant increase in hearings inevitably impacts on capacity to progress investigations.

35. Timeliness in progressing cases was also affected by two other factors. First were the changes in process and systems referred to early in this report. Those changes involved a significant amount of time in both developing the processes and becoming familiar with their operation post-introduction, including working with the newly formed IDB. The second factor was a period of substantial understaffing in the autumn of 2019 in I&E (a 40% reduction in case officer capacity), which was not fully resolved until shortly before the COVID-19 crisis emerged in the last few weeks of the reporting period.

36. The following sections provide more detail of the performance and trends in our enforcement work.

Investigations

37. The number of cases referred for investigation increased in 2019/20 by 20% up from 146 in 2018/19 to 176. This level of referrals is more in line with the years before 2018/19: with 199 being referred in 2017/18 and 175 in 2016/17.

38. Throughput of investigation cases slowed in 2018/19. We closed 92 cases after investigation (excluding referrals to disciplinary action) whereas in 2018/19 the figure was 133: a reduction of 30%. The principal reasons for this were those referred to above, in particular the period of understaffing, and this is supported by the figures, with 60 cases being closed prior to October 2019 and only 32 after that date. Overall, if referrals to disciplinary action are included in the completed investigation statistics, there was still a significant reduction in the total completed in the year. In previous years we have concluded between 177 and 192 investigations, whereas in 2019/20 we only completed 123. This is disappointing, but a reflection of the circumstances described above. Indications are that in 2020/21 the throughput has picked up again with 90 investigations being concluded in the first two quarters.

Outcomes of investigations

39. Although the total number of decisions taken at the post-investigation stage was down, the proportion taken by staff as compared to the independent decision makers (the Professional Conduct and subsequently panels of the IDB) was similar to 2018/19. Excluding decisions to refer to disciplinary action 66% of decisions were taken by staff and 24% by the independent decision makers (as compared to 68% and 29% in 2018/19). There was no significant difference in these proportions pre- and post-October 2019: 65% of post-investigation decisions were taken by staff before October 2019 and 69% after.

Dismissals

40. The proportion of investigation cases where the complaint/allegations were dismissed at the post-investigation remained similar to the previous year at around 50%. Of this 50% the majority (70%) were dismissed because the investigation revealed that there was no breach of the BSB Handbook.

Imposition of administrative sanctions

41. There continued to be a downward trend in the imposition of administrative sanctions with only 38 such sanctions being imposed in the year as compared to 57 in 2018/19 and 71 in 2017/18. This reflects the continuing improvements in the BSB achieving compliance with its authorisation and practising certificate requirements.

Table 1	Throughput of investigation cases			
Outcome	2016/17	2017/18	2018/19	2019/20
Closed after investigation	111	155	133	92
Referred to Disciplinary action	66	37	50	31
Total	177	192	183	123

Referrals to disciplinary action

42. 2019/20 saw a reduction in referrals to disciplinary action with 31 cases being referred as compared to 50 in 2018/19, which went against the trend envisaged by the 2018/19 Enforcement Report, where the early signs indicated that referrals would continue going up in 2019/20. The reduced number of referrals is a result of the slowdown in throughput referred to above. The rate of referral year on year fluctuates: 66 were referred in 2016/17, this then reduced in 2017/18 to 37, but went back up in 2018/19 as indicated above.

Disciplinary action

43. Disciplinary action takes two forms: consideration of cases under the Determination by Consent (DBC) procedure; and cases heard by Disciplinary Tribunals. In total, 47 disciplinary action cases were concluded in 2019/20: five by DBC and 42 by Disciplinary Tribunals. The former is a reduction on 2018/19 of 45% (down from nine in 2018/19 to five in 2019/20). In the two years before 2018/19, the average level of DBC cases concluded each year was 8.5 and therefore the figure for this reporting year is also likely to be a reflection of the slowdown in progressing cases. However, the number of Disciplinary Tribunal hearings in 2019/20 represented a substantial increase: up from 27 in 2018-19 to 42 in 2019-20 – an increase of 55%. This increase was predicted in the Enforcement Report for 2018/19 as we noted then a substantial increase in the number of cases awaiting a hearing. Concluded Tribunal cases in previous years fluctuated with 56 in 2016/17 and 39 in 2017/18.

44. It is not anticipated that there will be any significant long-term impact from the Covid 19 health crisis in relation to Disciplinary Tribunals. Most hearings have been able to take place remotely and there is sufficient capacity to increase the frequency of cases if required.

Outcomes of disciplinary action

45. Overall, the outcome of cases determined under the DBC are likely to result in a misconduct finding as the process is reserved for cases where there is no dispute on the facts. In 2019/20, four of the five cases dealt with under the DBC procedure resulted in

Table 2	Disciplinary action cases concluded			
Disciplinary action	2016/17	2017/18	2018/19	2019/20
Determination by Consent	9	8	9	5
Disciplinary Tribunal	56	39	27	42
Total	65	47	36	47

proven professional misconduct findings with fifth being withdrawn from the process by the PCC.

46. The rate at which findings were made by Disciplinary Tribunals (i.e. where one or more charges were found proved) remained relatively steady. Of the 40 cases fully determined by the Tribunal in the period, 35 resulted in one or more charge being proved, that is 88% of cases. The previous reporting year saw 21 out of 25 cases have the same result, or 84%.

Sanctions imposed

47. The picture in relation to sanctions imposed by Tribunals looks quite different in 2019/20 to that in 2018/19. There was a significant increase in disbarments (up from four in 2018/19 to 10 in 2019/20) as compared to five in 2017/18 (there were 20 in 2016/17 but this was recognised at the time to be unusual). The number of orders of suspension from practice also went up substantially (15 in 2019/20 as compared to four in 2018/19 and eight the previous year). In contrast, there was a substantial decrease in fines and reprimands imposed. Fines imposed reduced from 18 in 2018/19 to six in 2019/20 (in the previous two years they were 18 and 25). The number of reprimands dropped from 16 to nine having stood at around 15 for several years.

48. It needs to be borne in mind that the number of Tribunal cases was much higher in 2018/19. Nevertheless, the picture continues to be one of an increasing proportion of cases attracting higher sanctions imposed by Tribunals, which in turn reflects the BSB's risk based approach that means only the most serious cases are referred to Tribunal and, if proved, are likely to attract higher sanctions.

49. In relation to disbarments, the most common reason for this sanction being imposed arose from proved charges in relation to findings by another regulator (five) and criminal convictions (three). Suspensions were imposed for a wider variety of types of conduct, but similarly, the most common reason was for criminal convictions (four) and a finding

Table 3		Sanctions imposed by Disciplinary Tribunal panels or under the Determination by Consent procedure			
Sentence	2016/17	2017/18	2018/19	2019/20	
Disbarred	20	5	4	10	
Suspended	6	8	4	15	
Fined	25	18	18	6	
Reprimanded	16	15	16	9	

by another regulator (three). Other suspensions were imposed for sexual misconduct and barristers' conduct on social media.

Non-casework regulatory action

Supervision activity

50. In October 2019, the BSB's Supervision functions were merged and the team now covers supervision of vocational Authorised Education and Training Organisations (AETOs) in addition to the supervision of pupillage AETOs, barristers, chambers and BSB entities. The Supervision Team will also monitor the relevant activities of the Inns under the new [Memorandum of Understanding](#) agreed as part of the Future Bar Training project.

Bar training

51. The new Bar Training Rules were launched on 1 April 2019 and this was a period focussed on implementation of the new rules.

52. Towards the end of this reporting period, as the impact of the health pandemic began to take effect and lockdown started, the Supervision Team began working closely with the Authorisation, Exams, Professional Standards and Communications teams, as well as other stakeholders such as the Inns, the Circuits and the Bar Council, in the [BSB's response to Covid-19](#), to ensure that training and assessments continue to be delivered and that standards are maintained. In particular:

- Assessing the impact at each stage of training and identifying solutions to enable training and assessments to continue, whilst maintaining high standards.
- Approving alternative assessments proposed by the vocational AETOs in place of their scheduled assessments.
- Publishing FAQs for pupillage AETOs, to support them to continue to deliver training and complete pupilages in progress.
- Surveying AETOs to identify the [impact on pupillage](#).

53. A significant amount of work in this area continues and we continue to monitor the impact on the profession.

Vocational component

54. The focus in this period was on authorisation of AETOs under the new [Authorisation Framework](#), rather than on proactive supervision activity in this area. The Supervision Team supported the Authorisation Team in the authorisation of the vocational AETOs. The information gathered through the authorisation process, together with information provided by AETOs in their annual reflective reviews, information reported by our team of External Examiners and other information reported to us, is now being used to shape our supervision strategy for vocational AETOs.

55. Supervision also worked with the Authorisation Team to agree a revised approach to:

- the Bar Transfer Test for transferring lawyers, to bring it into line with the new [Curriculum and Assessment Strategy](#); and
- to establish a new structure of subject specialist External Examiners for vocational training assurance. Recruitment of a new team of External Examiners followed. You can read more about the role of our External Examiners in [section 8 of the Supervision Strategy and Framework](#).

Pupillage component

56. We had a period of focussed communication activity prior to the 2019/20 pupillage season, to communicate the changes to the Bar Training Rules. This included writing directly to all AETOs; providing more guidance on our website and in the Bar Qualification Manual; raising awareness on social media, via the monthly Regulatory Update email to the profession, and in articles for Counsel and The Barrister magazines; publishing a short video on implementing the Professional Statement on our website and YouTube; attendance at pupil supervisor training events organised by the Inns; and providing information to newly registered pupils.

57. We completed the two-year pilot of the implementation of the Professional Statement in pupillage. Feedback was consistently positive and from 1 September 2019 it was rolled out as a requirement for all pupillage AETOs to use the Professional Statement to assess the competence of pupils, in place of the old checklists. The pilot was used to develop guidance in the new Bar Qualification Manual.

58. Whilst most AETOs are delivering a high standard of pupillage training, some are not. We continued to see more pupils (and others) reporting their concerns to us about poor standards of pupillage training, as well as failure to adhere to our rules on advertising pupillages. We recognise that it can be very difficult for pupils to take this step and tell us about their experience. We take all such reports very seriously and handle them sensitively. You can read more about what happens when a pupil reports their concerns to us in section 8 of the [Supervision Strategy and Framework](#). Pupillage will continue to be a feature of our supervision work over the next 12 months, particularly, given the challenges that are likely to have arisen from COVID-19.

59. In the first half of the financial year, we were receiving reports from pupils at the rate of around four per month, on average, which was up from three per month in the previous six months. We think this reflects the increased publicity about Bar training with the Future Bar Training programme of work. In one case, this resulted in a referral to the Authorisation Team with authorisation to train pupils subsequently withdrawn following review by the Independent Decision-Making Panel. The introduction of the new Authorisation Framework in April 2019, which is now being rolled out to all chambers and organisations that train pupils, will help to ensure that all AETOs consistently meet the four principles of Bar training – flexibility, accessibility, affordability and high standards. In addition, the introduction of a new outcomes-based framework for

mandatory pupil supervisor training and refresher training, which we introduced following stakeholder workshops over the summer, will help to ensure consistent standards of pupil supervision.

60. Our Recruitment and Advertising project was set up because we had identified that [pupillage recruitment practices](#) created barriers to diversity at the Bar (see also the [BPTC key statistics](#) and [Differential Attainment research](#)). During this period, we conducted a targeted engagement programme on two proposals: (1) mandating a timetable for all pupillage recruitment and (2) mandating written agreements for pupillage. These were approved by the Board in January 2020 and have since been implemented. We also worked with the Bar Council to strengthen the guidance provided to the profession in the Fair Recruitment Guide. Our report on the impact of COVID-19 on pupillage raises a concern that it may affect future pupillage recruitment and, consequently, diversity in pupillage. We will continue to monitor this.

Assuring the competence of barristers

61. We are continuing to build an evidence base around quality assurance and are establishing a framework for analysing that evidence in order to ensure that our regulatory intervention is proportionate and targeted to where there is evidence of the greatest risk to the regulatory objectives. Our focus over the period of this report has been on the following areas.

Continuing Professional Development (CPD)

62. We conducted [research](#) into the implementation of the [CPD rules](#) that were introduced in 2017 for Established Practitioners. A key finding that emerged from this work was the need to support barristers further in their understanding of effective “reflection” on their training needs, which is a vital element of the CPD scheme. Further work is commencing in this area.

63. We also conducted a spot check on those identified in 2018 as non-compliant with their CPD obligations. Generally, the profession is meeting the CPD requirements although we think that more work is needed so that CPD is not seen as a box ticking exercise but instead an integral means by which barristers reflect on their learning and development. We are particularly keen to understand from other sectors and jurisdictions how they have embedded CPD into the regulatory framework as something that is meaningful and valuable to their regulated communities. Associated to that, are the expectations that arise from the [Competition and Market Authority legal sector market study](#) to our actions in response to the study) in relation to barristers and chambers collecting feedback from clients and the use that can be made of that information to help identify development opportunities and areas for improvement.

64. We will be commencing a review of the New Practitioners Programme in 2020/21.

Youth Proceedings Competences

65. We consider Youth Court work to be a high-risk area of work following our [Youth Proceedings Advocacy Review](#) in 2015. This Review found that standards of advocacy in the Youth Court were variable and as a result the interests of some of the most vulnerable people within the criminal justice system were not being adequately represented.
66. As a response to the Review, we published the [Youth Proceedings competences and guidance](#) and introduced a change to the Handbook. Rule S59 requires barrister and pupils working in the Youth Court to register that with us and declare that they have the specialist skills, knowledge and attributes necessary to work effectively with young people.
67. In 2019 we spot checked 122 barristers who conduct work in the Youth Court. The purpose of the review was to assess the extent to which barristers have used the Youth Proceedings competences and guidance to reflect on their practice in the Youth Court in 2019/20. We were encouraged by the result; the responses we received from barristers were overwhelmingly detailed and insightful. Over 80% of respondents reflected on their recent experience in the Youth Court by directly referring to the Youth Proceedings competences and guidance document.
68. We will be further evaluating the impact of our regulation of Youth Court advocacy in 2021/22

Coroners Courts Competences

69. Reports by Bishop James Jones into the Hillsborough Inquiry and Dame Elish Angiolini DBE QC into deaths and serious incidents in police custody raised concerns, amongst other things, about the approach taken by barristers working in the Coroner's Court.
70. As a result of these reports and of further research carried out by the Ministry of Justice (MOJ), we have set up a working group jointly with the SRA, which includes the MOJ, representatives from the Chief Coroner's Office, the Deputy Chief Coroner, INQUEST and solicitors and barristers working in this area.
71. The purpose of the group is to assist us in developing standards and resources for barristers working in the Coroners' Courts. The group will also consider how best to engage with interested parties as we develop our approach, how best to communicate any new approach and to consider how we might encourage poor practice to be reported.
72. We are also consulting relevant stakeholders, including speaking with families who have been represented in the Coroner's Court, to develop the competences and resources required for barristers practising in the Coroners' Courts.
73. A report on our work on this area will be produced in early 2021.

Compliance with Transparency Rules

74. We brought new transparency rules into force as of 1 July 2019, with an implementation period until January 2020. This follows the Competition and Markets Authority's recommendation in December 2016 that the legal regulators deliver a step change in transparency standards to help consumers understand the price and service they will receive, what redress is available and the regulatory status of their provider.
75. In January 2020, we checked the websites (or factsheets in the absence of a website) of 439 sole practitioners, chambers and BSB entities for compliance with the price, service and redress transparency rules. Detailed feedback through one-to-one engagement was given to those assessed as non-compliant or partially compliant. A [report](#) on the outcomes of this work was published.
76. Further evaluation of the impact of the rules is ongoing and the Supervision Team continues to monitor compliance rates. Where chambers, entities or sole practitioners persist in non-compliance, we shall take enforcement action.

Addressing Bullying and Harassment at the Bar

77. In 2019 the BSB began work on looking at the BSB's approach to addressing bullying and harassment at the Bar with the purpose of improving the capability of the BSB in handling reports of such conduct, and supporting and encouraging the reporting of such behaviours, with the overall aim of assisting in reducing levels of harassment at the Bar.
78. This work is ongoing and includes:
- Monitoring and assessing the efficacy of our pilot scheme that gives waivers, from the requirement to report serious misconduct by others, to those involved in giving support and advice to members of the profession who have experienced harassment;
 - Carrying out further research into the incidence of bullying and harassment at the Bar and the barriers to reporting of such conduct;
 - Reviewing our internal systems for handling reports of bullying and harassment including examining our handling of past cases to identify points of learning and further areas for improvement;
 - Liaising with external bodies, both national and international, to share experiences and learning to inform our approach, including organising a series of roundtable meetings with regulators, other bodies and the profession;
 - Implementing a specialist training programme for staff responsible for addressing reports of bullying and harassment; and
 - Improving internal communications to ensure a swift and co-ordinated approach to reports of bullying and harassment.

Concerns reported to the BSB

79. Supervision received 71 reports in the period April to September 2019 that it assessed and acted on. This included the cases relating to pupillage referred to above.
80. As in the previous period, Supervision continued to receive reports from the Immigration Tribunal, the Home Office and the Office of the Immigration Services Commissioner about cases of poor advocacy and unregulated persons acting under the supervision of barristers under s84 of the Immigration and Asylum Act. This led to supervision engagement with relevant barristers. Supervision also worked with the Professional Standards Team on the consultation and application for rule change to ensure barristers can no longer supervise unsuitable persons struck off by other regulators. Barristers that enter into an arrangement to supervise an immigration adviser must [report the association to the BSB and adhere to our guidance](#). The BSB has hosted roundtable meetings of stakeholders including judges and other regulators, in order to manage risk to vulnerable consumers and promote high standards of representation.
81. From October 2019, all [reports to the BSB](#) are directed to the Contact and Assessment Team (CAT) for risk assessment in the first instance. The Supervision Team worked closely with the CAT project team in this period to test new systems, the new risk assessment methodology and ensure appropriate policies were in place for the launch of CAT.
82. 31 cases were referred to Supervision in the period October 2019 to March 2020. The drop from 71 cases in first half of the year and 157 cases in total in the prior year is in line with our expectations because CAT does not refer anything assessed as low risk to Supervision, where a regulatory response would not be proportionate. This leaves Supervision free to focus on the highest risk cases where Supervision action is needed. CAT, Supervision, Risk and the Legal and Enforcement departments all meet regularly to review the effectiveness of the new processes, to ensure that the risk assessment methodology is working as intended and is being applied consistently by staff.
83. The cases acted on by Supervision in this period included the following:
- Further concerns about competence in the field of immigration services.
 - Financial impropriety, including handling client money and alleged bribery.
 - Viability of chambers.
 - Failure to advertise pupillage.
 - Potential breaches of scope of practice (failure to have a Qualified Person, taking instructions on a licensed or public access basis when not authorised to do so and conducting reserved legal activities when not authorised).
84. The Supervision module of the Case Management System was delivered in April 2020. This ensures that all information relating to risk assessment, supervision and enforcement activity is available to view by staff on one platform, facilitating effective risk management and consistent regulatory decision-making.

Anti-Money Laundering Supervision

85. The BSB is responsible for the supervision of barristers and BSB entities under the 2017 [Money Laundering Regulations](#). The Regulations were [amended](#) on 10 January 2020. They are referred to collectively here as “the Regulations”.
86. This section of the report provides an overview of the supervision activity undertaken to encourage the reporting of actual or potential breaches of the Regulations and measures carried out to monitor, and enforce, compliance by barristers and BSB entities with their obligations. Anti-money laundering continues to receive considerable national focus and we engaged extensively with government, OPBAS, law enforcement, other regulators and other stakeholders in this period. A new Legal Sector Intelligence Sharing Expert Working Group was formed. This will help the Professional Body Supervisors under the Regulations, including the BSB, to meet their obligations under the Money Laundering Regulations to co-operate with other supervisory authorities, the Treasury and law enforcement authorities. We also subscribe to SIS, the Financial Conduct Authority’s Share Intelligence Service.
87. The number of “relevant persons” under the Regulations (based on self-declaration) was as follows:

	2019	2020
Number of barristers	976	571
Number of BSB entities	14	11
Trust and Company Service Providers (included in the above)	4 (1 barrister and 3 BSB entities)	4 (1 barrister and 3 BSB entities)

88. Historically, barristers have over-declared and there is ongoing engagement with the profession to get more accurate data. We therefore expected these numbers to reduce from 2019 to 2020 and they are likely to reduce further as a result of engagement with chambers through the Regulatory Return in 2020-21.

Measures taken to encourage the reporting of actual or potential breaches of the Money Laundering Regulations to the BSB

89. All barristers must declare at Authorisation to Practise (when they renew their practising certificate annually), whether they engage in work that falls within the scope of the Money Laundering Regulations and, if so, to confirm that they have not been convicted of a “relevant offence” as set out in the Regulations. BSB entities must do the same upon authorisation and annual renewal.

90. To assist barristers to comply with their obligations, they are signposted to guidance when making the annual declaration. In January, we published joint legal sector guidance on the amended Regulations. The changes included:

- an expanded definition of “tax advisers” that come within scope of the Regulations;
- additional requirements relating to Customer Due Diligence checks; and
- a new requirement to report discrepancies on the register at Companies House.

91. We also published joint legal sector [guidance to managing risks arising from the COVID-19 pandemic](#) and are working with colleagues across the legal sector to update the Joint Legal Sector guidance, to make it more user-friendly. We anticipate that this will be submitted for approval to HM Treasury later in 2020.

92. Measures are in place to ensure that breaches of the Regulations are reported to the BSB. These include:

- All barristers and BSB entities have an obligation under the BSB Handbook to [report serious misconduct](#) by themselves or others. Further information about such reports during this period are included elsewhere in this report.
- Our [Money Laundering Hotline](#) is a confidential service that anyone can use to report a concern to us, about a person or an organisation we regulate, in connection with Money Laundering. During this period, we received no reports to the hotline.
- Anyone who has a concern about the conduct of a barrister or a BSB entity can make a [report](#) to us. Staff in the new Contact and Assessment Team that was established this year were provided with training in November to ensure they can identify red flags that might indicate a risk of money laundering.
- We work closely with other regulators and have signed a number [Memoranda of Understanding](#) in order to support sharing of intelligence.
- Two staff in the Supervision Team have undergone security vetting to enable them to receive reports from the National Crime Agency relating to barristers or entities we authorise.
- As part of our ongoing programme of supervision, chambers and entities are required to complete a self-assessment of compliance with the Regulations, as set out below.

Measures carried out to monitor compliance with the Money Laundering Regulations

93. In accordance with [regulation 17](#), we identified the following clusters of inherently higher risk activity within the Bar:

- [Trust or Company Service Providers](#) (TCSPs) as defined in [regulation 12\(2\)](#), which the [National Risk Assessment](#) identified as high risk; and
- [Tax advisory work](#) as suggested by the [Panama Papers](#) revelations.

These clusters were subject to supervision monitoring in this period as follows.

Trust and Company Service Providers (TCSPs)

94. TCSPs, as defined in [regulation 12\(2\)](#), are firms or sole practitioners who provide services relating to company formation, acting (or arranging for another person to act) as a company director or secretary, providing a registered office or other related services for a company, and acting (or arranging for another person to act) as a trustee or a nominee shareholder.

95. In September 2019, TCSPs were issued with a questionnaire to gather information to help us better understand the type and scale of TCSP activity of each barrister/entity, to give us a better view of inherent risk in our population and for the TCSPs to tell us about their policies and processes so we could assess the control environment and level of compliance at each one. The questionnaire covered the following areas:

- Type of work undertaken.
- Risk Assessment.
- Policies, controls and procedures.
- Customer Due Diligence.
- Suspicious Activity Reports.
- Financial sanctions.
- Training.

96. The four TCSPs (3 BSB entities and one self-employed barrister) are small-scale operations carrying out low value transactions for the local area they are based in. None has an offshore presence or establish offshore entities. We have assessed all as low risk for Money Laundering or Terrorist Financing.

Tax advisory work

97. In November 2019, we issued a similar questionnaire to ten chambers and one BSB entity which specialise in tax advisory work. The majority of tax work undertaken by this cluster is contentious tax litigation (which does not fall within the scope of the Regulations) as opposed to tax advisory work.

98. We have assessed all questionnaires and rated the chambers and entity as high, medium or low risk, based on their responses and our follow-up visits. The chambers assessed as high risk were subject to a supervision visit. Of the two, one implemented the corrective actions we set and have now been rated as low risk. The other chambers are actively putting measures in place to comply with our corrective actions. We continue to engage with the rest to ensure full compliance with the Regulations.

Enforcement

99. The BSB is required to take appropriate action against barristers and BSB entities where they have failed to meet their obligations. [Regulation 49\(1\)\(d\)](#) requires that effective, proportionate and dissuasive disciplinary measures are in place. The enforcement regulations in the [BSB Handbook](#) and the [BTAS Sanctions Guidance](#) provide the framework for sanctions. We also have a [policy on publishing disciplinary findings](#).

100. For the period in question, none of the barristers and BSB entities that were subject to our compliance monitoring (as set out above) have received a sanction for breaches of the Regulations. Our strategy in undertaking our supervision activity is to foster a constructive relationship with those we regulate, to achieve appropriate outcomes, resulting in less enforcement action and better protection and promotion of consumers' interests. Whilst we seek to engage constructively through Supervision action, we will refer issues to the relevant team to consider whether enforcement action is needed when the subject is unwilling to engage, potential serious misconduct is identified and/or the level of risk indicates that it is appropriate and proportionate to do so. Those subject to review in this period have engaged constructively with us to strengthen controls and enforcement has not been necessary.

Conclusion

101. This report highlights a busy period for the regulatory decision-making functions of the BSB, during which we have implemented a major programme of reform to how we take those decisions and how we receive and assess incoming information. Through the report we have identified areas of focus for the coming years as well as consolidated our efficiency in the handling of individual cases. We will continue to monitor the impact of COVID-19 on the profession and in particular on pupillage so that we can provide appropriate regulatory intervention where it is needed either to address areas of concern or to remove unnecessary barriers.