



REGULATING BARRISTERS

**Professional Conduct Department
Trends and Performance**

Annual Report 2012/13

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Executive Summary

- 0.1 **The Professional Conduct Department (PCD) works under the authority of the Professional Conduct Committee (PCC). We investigate complaints and, where appropriate, assist the PCC in taking action against barristers who have breached the Code of Conduct. This is the annual report for the PCD providing a summary of our activities and those of the PCC for the period 1 April 2012 to 31 March 2013.**
- 0.2 Set out below is a summary of the main statistical findings in relation to each section of the report:

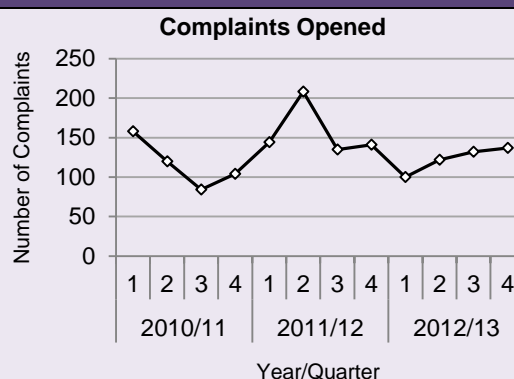
How many new complaints did we receive?

- a. We received 316 complaints from external sources – a figure consistent with 2011/12. The number of complaints from litigants in person remained at the high level seen in the previous year and the most common allegations made in complaints about barristers were those classified as “discreditable/dishonest conduct” and “misleading the court”.
- b. We raised 175 internal complaints against barristers and raised an additional 272 administrative warnings and fines – mostly in relation to barristers failing to comply with the CPD requirements of the profession. This was a significant decrease in the number of internal complaints opened – due to a considerable decrease in the number of practising certificate breaches referred to the PCD – but the highest number of annual *Warnings & Fines* cases raised since the introduction of the system in 2009.

How many complaints did we work on during the quarter?

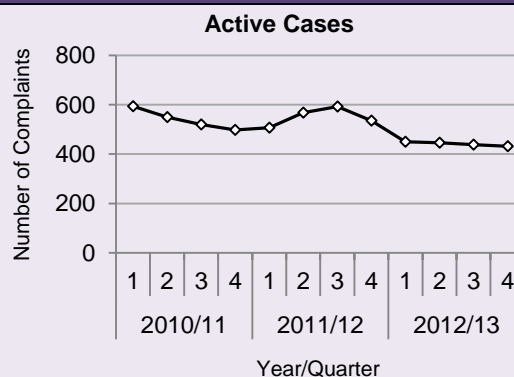
- c. We had 850 individual complaints ongoing within the department during the year. Throughput of cases was steady and with the exception of the fourth quarter, we

New complaints



External complaints	316
Internal complaints	175

Overall caseload



External complaints	507
Internal complaints	343

closed more complaints than we opened in each quarter. Over the course of the year we referred 116 cases to disciplinary action and closed a total of 550 complaints.

- d. For external complaints, 65% of cases were closed without investigation; 27% were closed after investigation and 8% were closed after a referral to disciplinary action. For internal complaints – which are only raised when supported by evidence of a breach of the Code of Conduct – 42% were closed after a referral to disciplinary action.
- e. Findings of professional misconduct were made in a total of 87 cases and in 49% of these cases the barrister was fined. Eleven barristers were disbarred during the course of the year.

How quickly did we deal with complaints?

f. 2012/13 was the first year where we set Key Performance Indicators (KPIs) against which we benchmarked our performance.

g. **Initial Assessment:** We completed our initial assessment of 47% of external complaints within one month. In the first and second quarters we concentrated on embedding the new KPI into our working practises and managing our outstanding caseload, which to some extent had a negative impact on our performance figures. In the second half of the year our performance level increased and 57% of cases were concluded or referred to investigation within one month.

h. **Investigation:** Where we investigated complaints, we concluded or referred to disciplinary action 62% of complaints within six months. When analysed separately, 80% of internal complaints were within the six month service standard compared with 33% of external complaints.

i. Throughout 2012/13 we reported on our performance against these KPIs and collected data for each stage of our complaints handling processes. We found both areas where we can improve but also some additional factors – such as our need to request expert advice or make further enquiries – that were not taken into account when the service standards were set. Far from being “exceptional” circumstances as we originally thought, these factors were found to be both common and fundamental to our ability to make fair and informed decisions on complaints. As our 2012/13 KPIs do not truly reflect the timescales that barristers and complainants can expect for the handling of their complaints, our performance indicators for 2013/14 have been adjusted accordingly

Performance against KPIs	
The percentage of complaints concluded or referred to investigation within 1 month	47.2%
The percentage of complaints concluded or referred to disciplinary action within 6 months following investigation	62.2%

Looking forward

- j. In 2012, the BSB embarked on a significant and ambitious three year change programme designed to ensure that our regulatory approach accords with current good practice and meets the regulatory objectives set out in the Legal Services Act 2007. The programme also incorporates the work required to meet the Regulatory Standards Framework set by the Legal Services Board.
- k. The PCD and PCC, as part of the change programme, are currently working on making changes and additions to the enforcement system to build the necessary infrastructure to support effective enforcement of the new Handbook – due to replace the current Code of Conduct in January 2014. This work will continue throughout the next year.

What risks to the public have been identified?

- l. At this stage we do not consider that the data collected in 2012/13 identifies any new issues that would present a risk to the public. However, the number of complaints we received from litigants in person remained at the high level seen in the previous year.

Independent Observer

- m. In her Annual Report to the Governance, Risk and Audit Committee (covering the period June 2012 to May 2013) the Independent Observer gave the work of the PCD and PCC a positive assessment commenting that:
 - Potential breaches of the Code are being identified and appropriately pursued;
 - Decisions are fair and consistent;
 - Communications are clear;
 - Decisions are well reasoned;
 - Staff are polite and professional in their written contacts.

Introduction

- 1.1 **The Professional Conduct Department (PCD) works under the authority of the Professional Conduct Committee (PCC). We investigate complaints and, where appropriate, assist the PCC in taking action against barristers who have breached the Code of Conduct.**
- 1.2 This is the annual report for the PCD providing a summary of our activities and those of the PCC for the period 1 April 2012 to 31 March 2013. In this report we focus on the key trends in complaints received or raised by the BSB and the outcomes of complaints. The report also covers the Department's and the Committee's performance in handling complaints.
- 1.3 We only have jurisdiction to deal with complaints about barristers' conduct following the transfer of the previous jurisdiction over service complaints to the Legal Ombudsman in October 2010. In order to ensure the statistics in this report are consistent and remain applicable to BSB work since then, all complaints relating only to service are excluded from the figures for previous years.
- 1.4 We receive complaints from clients (via the Legal Ombudsman), members of the public, solicitors or other professionals and organisations. We refer to these as external complaints. We also raise internal complaints against barristers in circumstances where the BSB itself has identified a potential breach of the Code of Conduct. In this report, where paragraphs refer solely to internal or external complaints they will be highlighted in bold as **Internal** or **External**.
- 1.5 The statistics in this report are based on data extracted from the complaints database at the end of June 2013, but relate only to complaints handled during 2012/13.

Our main aims are to:

- Act in the public interest;
- Protect the public and other consumers of legal services;
- Maintain the high standards of the Bar;
- Promote confidence in the complaints and disciplinary process; and
- Make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed.

Our objectives are to:

- Deal with complaints made against barristers promptly, thoroughly and fairly;
- Ensure appropriate disciplinary action is taken against barristers who breach the Code of Conduct; and
- Be open, fair, transparent and accessible.

How many new complaints did we receive?

2.1 **We opened a total of 491 complaints in 2012/13.** As Table 1 illustrates, this represents a 22% decrease compared with the previous year; although it should be noted that the number of internal complaints opened was unusually high in 2011/12.

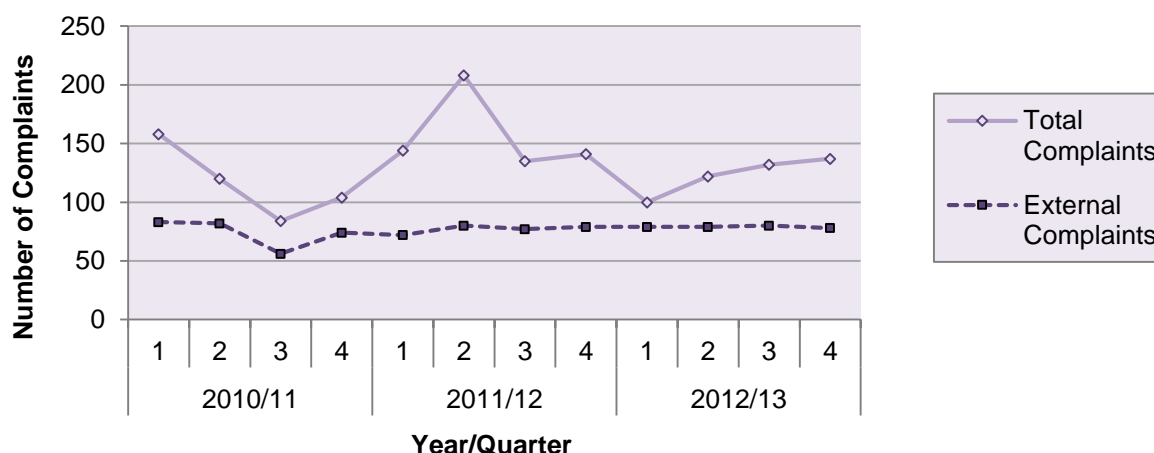
Table 1 Complaints opened – annual comparison 2008/09 to 2012/13

Source	2008/09	2009/10	2010/11	2011/12	2012/13
External	368	406	295	308	316
Internal	287	143	171	320	175
Total	655	549	466	628	491

External complaints

2.2 We received 316 complaints from external sources. Since October 2010, when the Legal Ombudsman opened, we have consistently received 70-80 cases per quarter, as Figure 1 illustrates. The total for the year included 48 conversions of referrals from the Legal Ombudsman; almost double the figure for 2011/12. However, this is somewhat misleading as 26 of those complaints related to a single barrister involved in a Chambers matter that we are currently investigating¹. Without those linked cases, the overall annual figure for external complaints would have been slightly lower than previous years.

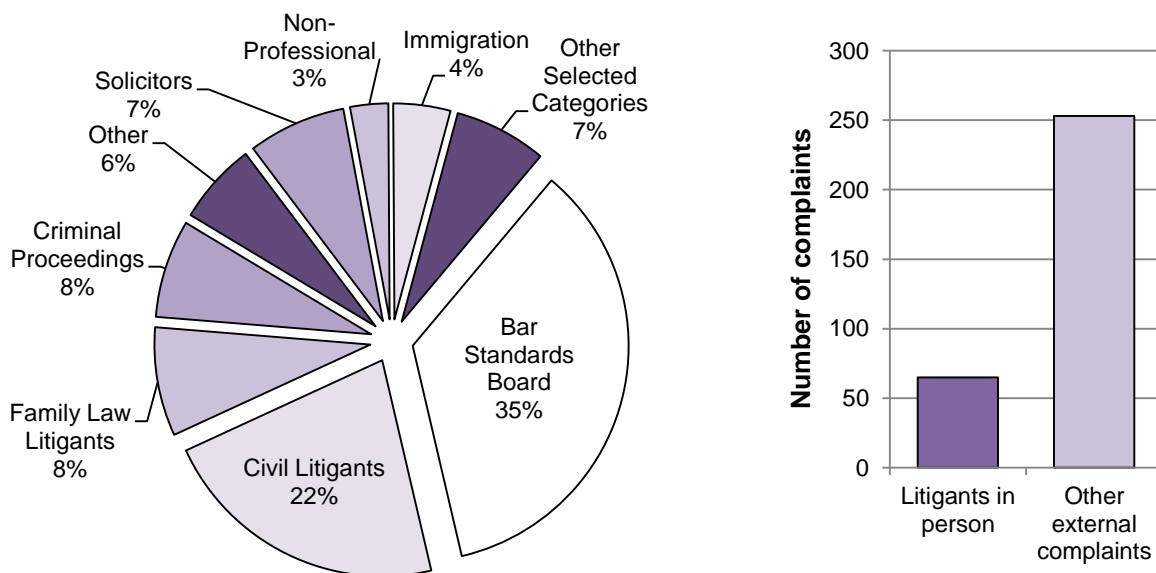
Figure 1 External complaints opened – quarterly comparison 2010/11 to 2012/13



¹ In 2012/13 we received 29 external complaints and opened 3 internal cases against a single barrister. These cases have affected our annual statistics in the following areas: an increase in immigration category complaints (19); an increase in cases against Heads of Chambers for failing to administer Chambers properly (17); an increase in cases of “not acting in the clients best interests” and an increase in cases of “undue delay in dealing with papers”.

- 2.3 **Legal Ombudsman:** The Legal Ombudsman receives complaints from clients of barristers and is authorised to investigate any 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. In 2012/13 the Legal Ombudsman received a total of 632 cases relating to barristers compared with 526 in the previous year – a 20% increase – and referred 50 cases to the BSB.
- 2.4 **Complainant categories:** Figure 2 shows that the BSB was the largest source of complaints overall in 2012/13. However, in relation to external complaints, civil litigants continued to be the source of the highest number of individual complaints, followed by family and criminal law litigants. The figures for all these categories were consistent with previous quarters.
- 2.5 Complaints from solicitors increased by almost 50% from 25 to 36 and covered a wide range of aspects including discreditable conduct, allegations of “misleading the court” and rudeness/misbehaviour out of court. There was no clear single factor that contributed to the increase in complaints from solicitors. The number of cases relating to immigration work also increased significantly: purely because of the linked complaints referred by the Legal Ombudsman highlighted above (paragraph 2.2). Conversely, “non-professional” complaints – cases which do not relate to a barristers legal work – halved in number.

Figure 2 Complaints opened in 2012/13 by complainant category



- 2.6 Complaints received from members of the public representing themselves – known as litigants in person – made up 21% of all external complaints with 65 complaints received. This figure is slightly lower than the 80 complaints received in 2011/12 but is still a significant increase compared with previous years². In December 2012 we published a thematic review on the subject of complaints received from litigants in person³; the conclusions of which mirrored those made by other bodies about the need to provide greater public information about the roles and expectations of parties to litigation where one side is not legally represented. In April 2013 – to coincide with the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) coming into force – the Bar Council very helpfully published a guide to “Representing yourself in court” to aid litigants in person and to inform them on the role of the barrister on the other side. Our future plans include reviewing the information we provide (including our website) to make clear the role of the BSB and its powers. Nonetheless, we anticipate that we will continue to receive a high proportion of complaints from litigants in person in 2013/14 as the number of people representing themselves has increased considerably due to cuts in Legal Aid.
- 2.7 **Aspects:** As with previous years, by far the most common allegations made in external complaints against barristers were those classified as “discreditable/dishonest conduct” (47% of cases) and “misleading the court” (25% of cases). It should be noted that the former is something of a catch-all for behaviour defined under paragraph 301 of the Code of Conduct⁴ and, as this is by far the largest of the recorded aspects, we intend to break this down further when our new database becomes operational (see *Looking forward*, paragraph 2.60). It should also be made clear that in 2012/13 (Table 6) less than 5% of allegations of “misleading the court” resulted in a disciplinary finding against the barrister in question. Therefore, the high number of complaints received about misleading the court is not considered to be indicative of a risk to the public. Table 2 shows the most frequently occurring aspects for external complaints in 2012/13.

² In 2010/11 we received 25 complaints from litigants in person.

³ [Bar Standards Board \(2012\): "Thematic Review - Complaints Received from Litigants in Person"](#)

⁴ A barrister ... “*must not engage in conduct whether in pursuit of his profession or otherwise which is: dishonest or otherwise discreditable to a barrister; prejudicial to the administration of justice; or likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute*”. Code of Conduct, Eighth Edition 2004

Table 2 Aspects opened for external complaints – annual comparison

Aspect Description	2011/12	% of Complaints	2012/13	% of Complaints	+/-
Discreditable/dishonest conduct	156	50.6%	148	46.8%	-5.1%
Misleading the Court	97	31.5%	80	25.3%	-17.5%
Other	35	11.4%	37	11.7%	+5.7%
Rudeness/misbehaviour out of Court	41	13.3%	26	8.2%	-36.6%
Discrimination	9	2.9%	26	8.2%	+188.9%
Rudeness/misbehaviour in Court	28	9.1%	22	7.0%	-21.4%
HoC failing to administer chambers properly	7	2.3%	21	6.6%	+200.0%
Not acting in the client's best interest	4	1.3%	18	5.7%	+350.0%
Incompetence	11	3.6%	15	4.7%	+36.4%
Other Aspects	75	24.4%	100	31.6%	+33.3%
Total Complaints	308		316		

2.8 The proportions of cases featuring allegations of “discreditable/dishonest conduct” and “misleading the court” are the same as last year when the linked cases referred to in paragraph 2.2 are taken into account. As we have seen in the past, aspects other than these were much less common. The only significant difference concerns allegations of discrimination which increased almost threefold.

2.9 **Discrimination:** It is unclear why allegations of discrimination have increased so markedly in number: from 9 in 2011/12 to 26 in 2012/13. The most common allegations were of race (11) and disability (9) discrimination, although in four cases the complainant was not specific about the nature of the discrimination. We take these complaints very seriously and we will not dismiss complaints of discrimination without first seeking advice from the BSB’s Equality and Diversity Advisor or a suitably experienced member of the Professional Conduct Committee. However, with only one case still ongoing, none of the 2012/13 complaints has been referred for disciplinary action. In the majority of cases there was either insufficient information provided (even after our attempts to solicit it) or no evidence to support the allegation. Under those circumstances we cannot consider taking disciplinary action against a barrister. We will continue to monitor the figures into next year.

Case Study

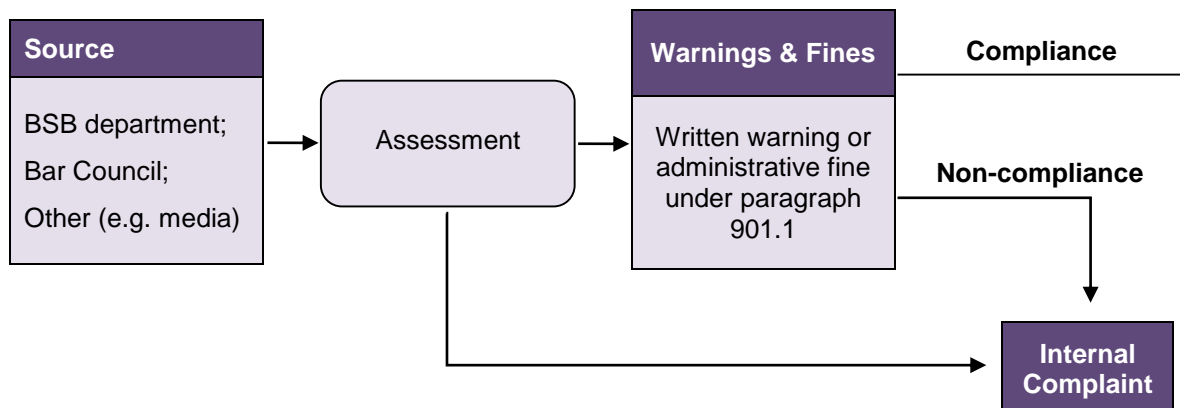
A complaint was received about a barrister acting for an insurance company during a case in which the complainant had been found guilty of fraud. The complainant complained of having been discriminated against by the barrister on the grounds of a chronic, recognised medical condition that all parties to the court case were aware of. In particular, the complainant argued that in using a specific English idiom to describe her behaviour, the barrister had deliberately referred to the complainant's disability and in doing so had discriminated against her.

During preliminary assessment the Assessment Team sought advice from the Equality and Diversity (E&D) Team at the BSB. The E&D Team advised that the idiom used was a common phrase which bears no correlation with the medical condition cited. Having found no evidence of discrimination, the Assessment Team advised the complainant that there had been no breach of the Code of Conduct on the part of the barrister and dismissed the case.

Internal complaints

- 2.10 In using the term “internal complaints” we are referring to complaints of professional misconduct raised where the BSB itself identifies a potential breach of the Code of Conduct. Where the breach is brought to the attention of the PCD direct – via either a barrister’s reporting obligations under the Code or perhaps an external source such as a press report – a manager of the PCD or an Office Holder of the Committee will authorise the raising of a formal (internal) complaint for investigation. However, we also receive referrals from other sections of the BSB and the Bar Council in relation to barristers who have failed to comply with the practising requirements of the profession. The details of barristers who have failed to complete the required CPD hours will be referred by the BSB’s CPD section while barristers who failed to renew their practising certificate on time are referred by the Records department of the Bar Council. In some cases the option is available to deal with such matters immediately via the imposition of an administrative warning or fine under paragraph 901.1 of the Code rather than as a formal complaint⁵.
- 2.11 **Warnings & Fines:** Under this process the barrister is issued with a written warning or administrative fine under paragraph 901.1 of the Code and given an opportunity to rectify the breach without a formal complaint being raised. Failure to comply with the *Warnings & Fines* procedure will constitute professional misconduct and result in an internal complaint being raised against the barrister.

⁵ The option to impose a warning or fine under paragraph 901.1 is also available following a formal investigation.

Figure 3 PCD process for raising internal complaints

2.12 As Table 3 illustrates, we received a total of 286 referrals in relation to failures to comply with the practising requirements of the profession and raised 272 warnings or fines under paragraph 901.1 of the Code. This is the highest number of annual *Warnings & Fines* cases raised since the introduction of the system in 2009.

Table 3 Warnings & Fines records opened in 2012/13

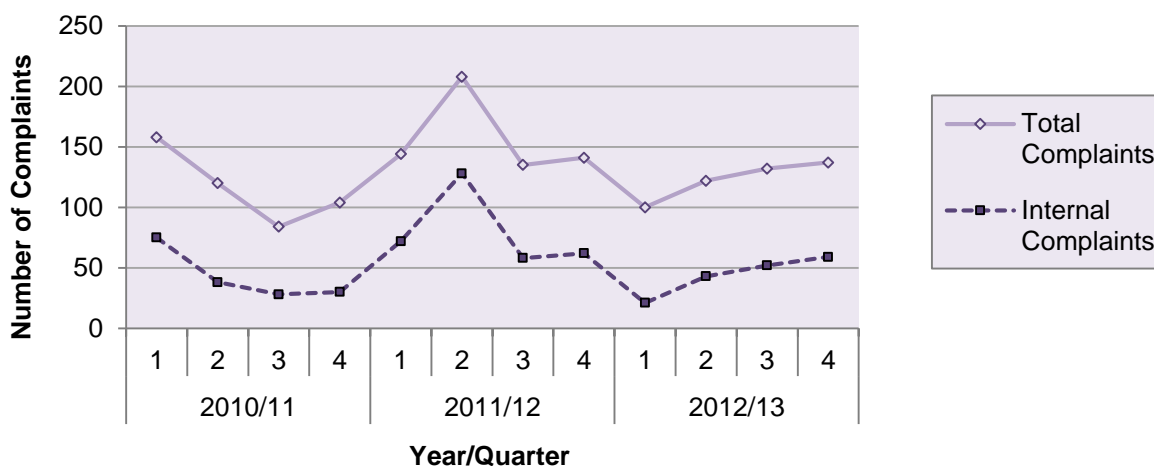
Referral Type	Warnings & Fines Records Opened
Failure to comply with CPD requirements	204
Failure to respond to Chambers Monitoring	25
Practising without a practising certificate	18
Failure to renew practising certificate	17
Failing to register or have insurance with BMIF	5
Late compliance with CPD requirements	2
Rudeness/misbehaviour out of Court	1
Total Warnings & Fines	272

2.13 Three quarters of the *Warnings & Fines* raised in 2012/13 related to barristers' failures to comply with the CPD requirements of the profession. Due to delays in the referral process, we received the majority of both the 2010 and 2011 referrals in batches throughout the year where normally we would only work on cases relating to the previous year. This resulted in the unusually large volume of *Warnings & Fines*. We also issued 35 warnings against barristers who had failed to renew their practising certificate in 2012. As conducting reserved legal services without a practising certificate is now a criminal

offense, these cases are not usually suitable for the *Warnings & Fines* procedure. However, if the barrister has paid their Practising Certificate Fee but failed to complete the online Authorisation to Practice procedure, we will consider issuing a warning and allowing the barrister to rectify the breach. Failure to comply would result in an internal complaint being raised with a view to investigating the conduct of the barrister. Based on previous years, we would expect to achieve compliance in around 70% of cases where an administrative warning or fine was imposed.

- 2.14 **Complaints:** We opened a total of 175 internal complaints in 2012/13 for investigation – including 45 conversions of *Warnings & Fines* cases from 2012/13 and the previous year. Figure 4 shows the quarterly pattern of internal complaints. The total figure was significantly lower than the previous year's total of 320 complaints as in 2011/12 we opened 169 cases against barristers for failures to hold a valid practising certificate or pay the second instalment of their practising certificate fee⁶. In contrast, in 2012/13 we opened 47 internal complaints relating to practising certificate breaches. The nature of internal complaints has therefore varied considerably over the past few years.

Figure 4 Internal complaints opened – quarterly comparison 2010/11 to 2012/13



- 2.15 Table 4 shows the aspects of internal complaints raised in 2012/13. In addition to the 47 practising certificate cases, 52 of the complaints we opened related to breaches of the CPD requirements and 32 also included elements around failures to pay non-disciplinary fines – essentially failure to comply with the *Warnings & Fines* process. Beyond these the numbers are much smaller: 24 criminal conviction cases (9 drink driving and 15 “other”); 11 cases concerning unregistered barristers offering to supply legal services while not in

⁶ In 2010 the option to pay the Practising Certificate Fee in instalments was introduced. However, the number of barristers who failed to pay either the first or second of their instalments in 2011/12 was disappointingly high and led to both the raising of 99 internal complaints against those barristers and also the withdrawal of the instalments scheme. [Bar Standards Board \(2011\): "Professional Conduct Department - Trends and Performance Report 2011"](#)

possession of a valid practising certificate (“holding out”) and 16 general discreditable/dishonest conduct cases. The number of cases featuring an element of “Failure to respond to BSB communications” decreased from 21 in 2011/12 to 6 in 2012/13 which is a welcome reduction and demonstrates an improvement in the profession cooperating with its regulator.

Table 4 Aspects opened for internal complaints – annual comparison

Aspect Description	2011/12	% of Complaints	2012/13	% of Complaints	+/-
Failure to comply with CPD requirements	37	11.6%	52	29.7%	+40.5%
Practising without a practising certificate	7	2.2%	44	25.1%	+528.6%
Failure to pay non-disciplinary fine	42	13.1%	32	18.3%	-23.8%
Other	3	0.9%	18	10.3%	
Discreditable/dishonest conduct	85	26.6%	16	9.1%	-81.2%
Criminal convictions(s) - other	9	2.8%	15	8.6%	+66.7%
Non-practising barrister holding out	16	5.0%	11	6.3%	
Criminal convictions(s) - drink driving	11	3.4%	9	5.1%	-18.2%
Disciplinary finding by other professional body	4	1.3%	8	4.6%	+100.0%
Failure to renew practising certificate ⁷	103	32.2%	3	1.7%	
Other Aspects	65	20.3%	36	20.6%	-44.6%
Total Complaints	320		175		

Case Study

The Training Compliance Team referred a barrister who had failed to submit evidence of his continuing professional development (CPD) for 2011 to the Assessment Team. All barristers are required to undertake twelve hours of CPD activities each year and to submit proof of this to the BSB via completed record cards.

In response, the Assessment Team issued a £300 administrative fine to the barrister under paragraph 901.1 of the Code; giving him 28 days to appeal or comply. The barrister completed his outstanding CPD hours and sent in his completed record card and the £300 fine. Having complied fully with the Warnings & Fines procedure, the case was taken no further.

⁷ “Failure to renew practising certificate” cases are listed in Table 4 despite there only being 3 cases in 2012/13. This is to show the contrast with 2011/12 where there were 103 cases (see paragraph 2.14 for details).

How many complaints did we work on during the year?

2.16 **The number of individual complaints ongoing within the department gradually decreased throughout 2012/13:** from 450 in the first quarter to 432 in the fourth quarter as Figure 5 illustrates. Throughput of cases was steady and, with the exception of the fourth quarter, we closed more complaints than we opened in each quarter. There were a total of 850 active cases within the department across the whole year.

Figure 5 Number of active cases within the Professional Conduct Department



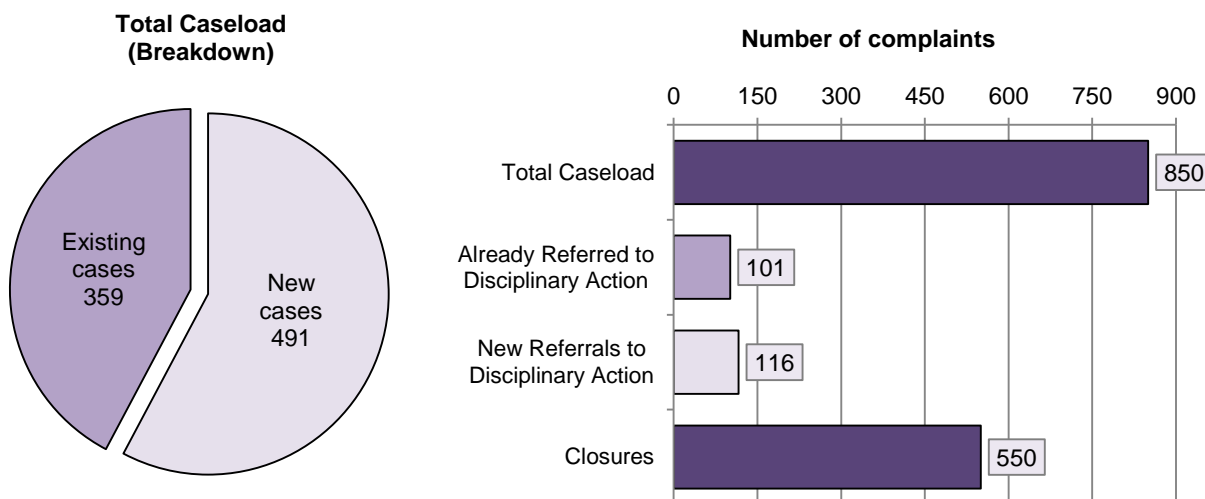
Progress and outcomes of cases

- 2.17 Over the course of the year, the PCD and Committee referred 116 cases to disciplinary action and closed a total of 550 complaints. At the end of 2012/13, we carried exactly 300 outstanding cases over into the next year compared with 349 cases the previous year. As our throughput of cases was similar to 2011/12, this decrease came about mainly from the reduction in numbers of new internal complaints opened in 2012/13 (see paragraph 2.1).
- 2.18 **Referrals to Disciplinary Action:** 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 a referral should be made to disciplinary action. This decision will be based on whether there is a realistic prospect of a finding of professional misconduct being made and whether the regulatory objectives would be best served by pursuing disciplinary proceedings⁸.

⁸ [Code of Conduct Annex J: The Complaints Rules 2011](#)

- 2.19 Over the course of 2012/13, the PCD and Committee referred 89 cases to Disciplinary Tribunals and a further 27 cases to the Determination by Consent (DBC) procedure. In total this equated to 16% of the caseload – excluding those complaints that had already been referred to disciplinary action – which is a lower proportion than previous years. This is due to both the nature and timing of the internal complaints that were within the system at the time. In 2011/12 the high number of practising certificate cases within the system (paragraph 2.14) resulted in a high number of referrals to disciplinary action due to the seriousness of the breaches⁹.
- 2.20 The nature of the complaints in 2012/13 allowed staff to take more responsibility for referrals to Disciplinary Tribunals¹⁰. Staff decisions made up 37% (33) of referrals in 2012/13 compared with 28% (37) in 2011/12; albeit the actual number of referrals was smaller.

Figure 6 Our 2012/13 caseload and how we progressed it



- 2.21 **Closures:** In total, 550 complaints (65% of the caseload) were closed by the end of the year; maintaining the level achieved in the previous year. Table 5 illustrates the outcomes for external and internal complaints.

⁹ In 2011/12 we charged 47 barristers with failing to renew their practising certificate compared with 1 barrister in 2012/13.

¹⁰ PCD staff are authorised to refer "Category 1" complaints to disciplinary action without the direct involvement of the Professional Conduct Committee. These are internal complaints relating to breaches of the practising requirements, criminal convictions for deception or dishonesty, or failures to comply with orders of Tribunals or the DBC process – providing the cases are not factually complex or would have wider implications for the public interest, Bar or BSB.

Table 5 Outcomes for external and internal complaints closed in 2012/13¹¹

Outcome	External Complaints	% of External Closures	Internal Complaints	% of Internal Closures
Dismissed	260	80.5%	58	27.0%
Dismissed (with Advice)	11	3.4%	42	19.5%
Dismissed (Chambers)	6	1.9%	0	0.0%
NFA	0	0.0%	2	0.9%
No Decision Possible	2	0.6%	0	0.0%
Upheld (Chambers)	2	0.6%	0	0.0%
Upheld (Fine)	3	0.9%	2	0.9%
Upheld (Warning)	4	1.2%	4	1.9%
Up to Committee closure sub-total	288	89.2%	108	50.2%
Proved	10	3.1%	76	35.3%
Proved (Overturned on Appeal)	1	0.3%	0	0.0%
Not Proved	2	0.6%	8	3.7%
BSB Offered No Evidence	7	2.2%	3	1.4%
Struck Out	0	0.0%	0	0.0%
Disciplinary action closure sub-total	20	6.2%	87	40.5%
Closed - Referred to Another Body	0	0.0%	0	0.0%
Reject - Outside Jurisdiction	3	0.9%	0	0.0%
Withdrawn	11	3.4%	20	9.3%
Other	1	0.3%	0	0.0%
Miscellaneous closure sub-total	15	4.6%	20	9.3%
Total Closures	323	100.0%	215	100.0%

2.22 Overall, 41% of cases were closed without investigation (for the most part being unsupported by any evidence of a breach of the Code), 38% were closed after investigation and 21% were closed after a referral to disciplinary action. Where complaints were dismissed, 60% of decisions were made by members of PCD staff compared with 52% in 2011/12. Both this increase and the increase in staff referrals to Disciplinary Tribunals are positive in light of the Legal Services Board's recent assessment of the BSB which stated that *"the LSB considers that more should be done to empower the executive staff to make decisions and to use the committee and other experts only for more complex*

¹¹ These are the final outcomes of complaints closed in 2012/13. If a complaint has been reopened, any interim decisions are excluded.

matters and, even then, perhaps primarily in an advisory rather than decision-making capacity”.

- 2.23 The PCD staff are able to make decisions on complaints only under the delegated authority of the Professional Conduct Committee. To ensure the quality of staff decision making remains high, in January 2013 a standing sub-committee of the PCC was set up – the Dismissal Review Sub-Committee – to review a sample of staff decisions on a quarterly basis. In April 2013, the Sub-Committee reviewed a random sample of six complaints closed in the fourth quarter of 2012/13 and endorsed the staff decision made in each case.
- 2.24 For external complaints, 65% of cases were closed without investigation; 27% were closed after investigation and 8% were closed after a referral to disciplinary action. For internal complaints – which are only raised when supported by evidence of a breach of the Code of Conduct – 42% were closed after a referral to disciplinary action.
- 2.25 **Comebacks:** Under our “comebacks” policy, if a complainant should disagree with a PCD or PCC decision to dismiss a complaint – either before or after investigation – they can ask us to review the decision and submit further evidence if it has come to light. The file is then escalated to a more senior decision maker for review. Of the 291 external complaints closed up to Committee in 2012/13, to date we have received comebacks in relation to 39 cases (13%). For comparison, in 2011/12 we received comebacks in relation to 17% of dismissed cases.
- 2.26 For the 2012/13 comebacks, after review the original decision was overturned in three cases. In all three cases the original decision not to investigate the cases was reviewed by an Office Holder of the Committee and a decision was taken that an investigation should take place. One case was then subsequently withdrawn by the complainant; the other two are ongoing. These were the only cases that were reopened in 2012/13 and represent 1% of all relevant decisions.

Disciplinary Action

- 2.27 **Determination by Consent:** A total of 25 cases were closed via 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 25 cases the Committee found the barrister guilty of professional misconduct – in most cases after the barrister had admitted the conduct – and appropriate sanctions were imposed and accepted by the barrister.
- 2.28 **Hearings:** 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 Council of the Inns of Court (COIC) with the BSB acting as prosecutor. In February 2013, COIC set

up a new dedicated tribunals service, the Bar Tribunal and Adjudication Service, following a wide ranging review of COIC's disciplinary functions¹².

- 2.29 A total of 91 cases were concluded at the Disciplinary Tribunal stage in 2012/13: 76 at hearings and a further 15 cases which were withdrawn prior to a Tribunal hearing taking place. The most common reason for a withdrawal (or a decision to "offer no evidence" at a Directions Hearing) was that new evidence had been obtained which led to a reconsideration of the complaints by the Committee. This occurred in seven of the fifteen cases. In two cases the barristers in question gave undertakings not to practice in future which were accepted and the complaints were taken no further. The remaining six cases featured individual circumstances which came to light after the referral to disciplinary action had been made but meant that it would be unrealistic to expect a finding of misconduct to be made at a Tribunal.
- 2.30 In 62 cases (82% of cases that were heard before a Disciplinary Tribunal panel), one or more charges against the barrister were upheld. This compares with 86% of cases at hearings in 2011/12. Overall – if we include the withdrawn cases described in paragraph 2.29 – 68% of all complaints that were closed after referrals to Disciplinary Tribunals were upheld. This equates to 77% of internal complaints referred to Tribunals and 44% of external complaints. In 2012/13 external complaints were more likely to be withdrawn after a referral to a Disciplinary Tribunal than internal complaints and we will be looking into the reasons for this during 2013/14.
- 2.31 Of the fourteen cases not upheld by Disciplinary Tribunal panels, the Committee decided in four cases to "offer no evidence" after reconsidering the complaints¹³. Therefore, those

Case Study

On receipt of information from the Office of the Immigration Services Commissioner, the BSB raised an own motion complaint against a non-practising barrister who had been convicted of unlawfully providing advice in a Court. The Investigation and Hearings Team carried out a full investigation which included obtaining court records, witness statements and comments from the barrister. The Investigation and Hearings Team then referred the case to the Professional Conduct Committee.

The Professional Conduct Committee decided that by failing to inform the BSB of his criminal conviction and continuing to provide legal advice as a barrister the case was serious enough that, having regard to the likely sentence of a finding of misconduct, referral to a 5 Person Disciplinary Tribunal was appropriate. After finding the charges proved, the Tribunal agreed with the Professional Conduct Committee and the barrister was disbarred.

¹² [Council of the Inns of Court \(2012\): "Final Report from the Disciplinary Tribunals and Hearings Review Group"](#)

¹³ As with the withdrawn cases described in paragraph 2.29, two of the four cases where we "offered no evidence" were reconsidered due to new evidence being obtained and one was reconsidered in light of the outcome of a similar Tribunal earlier in the year. In the remaining case the barrister died prior to the Tribunal taking place.

cases were not contested. The remaining ten cases were dismissed by the Tribunal panels either because the panel accepted the defendants evidence (4); did not find the breach to be serious enough to amount to professional misconduct (4) or did not find the case to be proved to the criminal standard (1). In one case evidence was provided on the day of the hearing leading to a last minute withdrawal of the charges. The Disciplinary Tribunal panels did not award costs against the BSB in any of the cases¹⁴ so it is clear that, on the evidence available, the Tribunals considered it was reasonable for the BSB to bring the proceedings. However, in many cases the defendant failed to engage with us in terms of providing meaningful comments prior to the hearing. Had they done so it may be that we would not necessarily have taken disciplinary action against them. We are considering what measures we can take to encourage defendants to engage with us more constructively and avoid evidence emerging so late in the day.

- 2.32 Ultimately, for all cases closed in 2012/13, 3% of external complaints and 35% of internal complaints resulted in a finding of professional misconduct. Table 6 lists the most frequently occurring aspects for complaints, along with their outcomes in 2012/13. For cases that were closed after a referral to disciplinary action in 2012/13, Table 7 lists the charges raised against the barristers and their outcomes. These do not differ significantly from the tables for previous years.

Table 6**Outcomes of the ten most frequently occurring aspects for complaints closed in 2012/13**

Aspect Description	Total Closed	Upheld	NFA	Dismissed/Withdrawn/Other
Dishonesty/discreditable conduct	182	6.6%	0.0%	93.4%
Misleading the Court	99	3.0%	0.0%	97.0%
Failure to comply with CPD requirements	54	35.2%	1.9%	63.0%
Other	40	0.0%	0.0%	100.0%
Practising without a practising certificate	40	15.0%	0.0%	85.0%
Rudeness/misbehaviour out of Court	39	7.7%	0.0%	92.3%
Failure to pay non-disciplinary fine	38	28.9%	0.0%	71.1%
Rudeness/misbehaviour in Court	33	6.1%	0.0%	93.9%
Non-practising barrister holding out	25	24.0%	0.0%	76.0%
Discrimination	23	0.0%	0.0%	100.0%

¹⁴ Although there were no costs awarded at Disciplinary Tribunals in 2012/13, the BSB was ordered to pay costs in seven cases in 2012/13: six cases following appeals to the Visitors and one case that was dismissed at a Directions Hearing in 2011/12. A further appeal was upheld in 2012/13 but costs were not awarded until the first quarter of 2013/14.

Table 7

Outcomes of the ten most frequently occurring charges for complaints closed in 2012/13

Charge Description	Total Closed	Upheld	NFA	Dismissed/ Withdrawn/ Other
Being dishonest or otherwise discreditable	39	71.8%	0.0%	28.2%
Acting in a manner likely to bring prof into disrepute	23	43.5%	0.0%	56.5%
Failing to respond promptly to a complaint	20	95.0%	0.0%	5.0%
Failure to renew practising certificate	18	83.3%	0.0%	16.7%
Failure to complete CPD	15	100.0%	0.0%	0.0%
Failing to pay non-disciplinary fine	10	100.0%	0.0%	0.0%
Knowingly or recklessly misleading the court	5	40.0%	0.0%	60.0%
Failing to report promptly bankruptcy proceedings	4	75.0%	0.0%	25.0%
Failure to comply with other provision of Code	4	50.0%	0.0%	50.0%
Acting in a manner prejudicial to admin of justice	4	25.0%	0.0%	75.0%

- 2.33 **Sentences:** In total, 87 cases were upheld in 2012/13 with findings of professional misconduct made against the barristers. In such cases it is open to the Disciplinary Tribunal panel (or the PCC for Determination by Consent cases) to impose sanctions on the barristers in question. Barristers were fined in 49% of cases and reprimanded in 39% of cases. Suspensions from practice were much less common than in previous years at 8% compared with 22% in 2011/12. The strongest sanction available is disbarment and eleven barristers were disbarred in 2012/13. These were the most serious cases and included charges relating to criminal convictions, dishonesty and disciplinary findings by other professional bodies.
- 2.34 **Appeals:** Where findings of professional misconduct are made, barristers have the right to appeal against either the finding or the sentence imposed. Appeals are then heard before the Visitors to the Inns or Court. In 2012/13 we received 11 appeals against Tribunal decisions which is in line with the 13 appeals we received in 2011/12. The number of outstanding appeals fell slightly from 27 at the end of 2011/12 to 23 at the end of 2012/13.
- 2.35 Eight appeals were heard during the year. Four appeals were allowed and four were dismissed. Where appeals were allowed, three had the original finding quashed and costs were awarded against the BSB. A further seven appeals were withdrawn without a hearing taking place.
- 2.36 With regard to the appeals that were allowed, there were a number of reasons why three of the original findings were quashed but common to two of cases were the Visitors' decisions that the Tribunal panels had not given sufficient reasons for their findings.

Another appeal was allowed due to irregularities with the appointment of the Disciplinary Tribunal panel (see paragraph 2.66).

Revenue arising from the complaints and disciplinary system

- 2.37 Fines imposed against barristers totalled £100.9K in 2012/13 compared with £115.5K in 2011/12. This represents £61.8K in administrative fines and £39.1K in disciplinary fines. In addition the BSB was awarded costs orders to the sum of £34.1K.

How quickly did we deal with complaints?

- 2.38 **One of our main aims is to make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. During 2011/12 we developed a set of preliminary service standards for each stage of our complaints and disciplinary process, outlining the length of time each stage should reasonably take.** For the first time we set ourselves Key Performance Indicators (KPIs) against which we could benchmark our performance. In short, the KPIs for 2012/13 were:

KPI (PCD001)	The percentage of complaints concluded or referred to investigation within 1 month;
KPI (PCD002)	The percentage of complaints concluded or referred to disciplinary action within 6 months following investigation;

- 2.39 Throughout 2012/13 we reported on our performance against these KPIs and collected data for each stage of our complaints handling processes. We found both areas where we can improve but also some additional factors – such as our need to request expert advice or make further enquiries – that were not taken into account when the service standards were set. Far from being “exceptional” circumstances as we originally thought, these factors were found to be both common and fundamental to our ability to make fair and informed decisions on complaints. As our 2012/13 KPIs do not truly reflect the timescales that barristers and complainants can expect for the handling of their complaints, our performance indicators for 2013/14 have been adjusted accordingly (paragraph 2.53); a change supported by the Independent Observer and approved by the BSB’s Planning, Resources & Performance Committee. However, for the purposes of this report we measure our performance against the KPIs we used throughout 2012/13.

First KPI: Initial Assessment

- 2.40 When we received an external complaint, we aimed to make a decision as to whether or not to investigate the complaint within one month. We measured how long it took from the point at which we opened a complaint until the point at which the complaint was either accepted for investigation or the complainant was provided with the reasons why we did not consider a breach of the Code occurred and therefore did not intend to carry out a formal investigation. This is our initial assessment stage.
- 2.41 Table 8 outlines our performance against this service standard over the four quarters of the year and shows that in 2012/13 we concluded or referred 47% of cases within one month.

Table 8**The percentage of complaints concluded or referred to investigation within 1 month**

Year	Quarter	Percentage of Complaints Within 1 Month
2012/13	1	44.0%
2012/13	2	30.5%
2012/13	3	57.1%
2012/13	4	57.1%

2012/13 Overall			
External Complaints (318 analysed)	47.2%	}	47.2%
Internal Complaints	N/A		

- 2.42 The figures for the initial assessment stage reveal a year of “two halves”. In the first and second quarters we concentrated on embedding the new KPI into our working practices, increasing throughput and concluding as many outstanding cases as possible – many of which were already beyond the one month service standard at the time. We succeeded in all of these areas which to some extent had a short-term negative impact on our performance figures. In the third and fourth quarters we began to see significant positive results with 57% of cases concluded or referred to investigation within one month.
- 2.43 However, even with figures approaching 60% it is clear that our performance was consistently below the one month benchmark. As paragraph 2.39 stated, our ongoing analysis of the stages of our complaints process has revealed a number of areas where the PCD is performing well and areas where improvements can and are being made. However, we also identified that in setting the service standards we incorrectly identified certain circumstances as “exceptional” where in reality they are common.
- 2.44 The service standards for the “assessment” KPI were based on the complainant providing a fully completed complaint form with accompanying evidence at the outset of their complaint. This frequently does not happen and in 45% of cases we have to make further enquiries of the complainant to clarify the central details of the complaints and/or elicit available evidence. These enquiries are fundamental in allowing for a fair initial assessment of the complaint. In addition, in over 30% of cases we require advice from a member of the Professional Conduct Committee or an Equality and Diversity Advisor before we can decide on how to proceed.
- 2.45 When setting the initial standard, our view was that further enquiries and expert advice were the exception rather than the norm and no time was allowed for undertaking them. However, throughout 2012/13, 92% of cases that were not concluded or referred within

the one month service standard involved one or both of these factors. It is clear that completing the assessment of cases with these factors within one month is an unrealistic standard and the most transparent solution is to take the factors into account by adjusting the KPIs accordingly.

- 2.46 From 2013/14 the service standard will increase to eight weeks to allow for further enquiries or expert advice to be sought. In 2012/13, applying an eight week standard would have produced a performance figure of 68% and the fourth quarter figure would have been 83%. Further work is ongoing to establish where improvements can be made to take performance to a higher level.

Second KPI: Investigation

- 2.47 For any type of complaint we investigate, we aimed to make a decision as to whether or not to refer the complaint to disciplinary action within 6 months; which was applicable to the investigation of both internal and external complaints. We measured how long it took from the point at which we opened a complaint until the point at which the complaint was referred to disciplinary action or dismissed following an investigation. This included the Professional Conduct Committee stage of the process if the decision was made by the Committee.
- 2.48 Table 9 shows our performance against this service standard for both internal and external complaints. In 2012/13 we referred or concluded 62% of complaints within six months. When analysed separately, 80% of internal complaints and 34% of external complaints were within the service standard. From 2013/14 this performance indicator will be split into internal and external complaints to distinguish between our performances for the two types of complaint.

Table 9 The percentage of complaints concluded or referred to disciplinary action within 6 months following investigation

Year	Quarter	Percentage of Complaints Within 6 Months
2012/13	1	61.9%
2012/13	2	56.3%
2012/13	3	59.7%
2012/13	4	69.0%

2012/13 Overall			
External Complaints (110 analysed)	33.6%	}	62.2%
Internal Complaints (181 analysed)	79.6%		

- 2.49 **External:** The fourth quarter figure of 43% for external complaints was a slight improvement over the previous three quarters but is still far from acceptable. Throughout the year we made a number of changes to our processes to shorten the time taken to investigate complaints – such as sending reminders before the due date for responses rather than sending chasers after the deadline – and these started to be reflected in the KPI figures towards the end of the year. However, even with these improvements in place, our performance would still have been consistently below the six month benchmark for external complaints. Detailed analysis both by the management team as well as the Independent Observer indicates that the six month timescale is also unrealistic given the additional factors described below that we were not in a position to identify when the initial KPIs were set.
- 2.50 Analysis of the investigations concluded between July and December 2012 showed that in 33% of cases we made at least one additional request of the barrister for information in order to complete our investigation. Furthermore, in 35% of cases at least one of the parties involved made a request for an extension of time. In the interests of operating a fair and evidence based process, we will allow an extension where there is a good reason to do so. When combined, 71% of external complaints¹⁵ that were not concluded or referred to disciplinary action within 6 months required either an extension of time or additional requests for information. These factors were not included in the original timelines, but given the prevalence of cases where these factors appear, they should be taken into consideration when setting service standards if they are to be realistic.
- 2.51 From 2013/14 the service standard for external complaints will increase to eight months to allow for the “assessment” factors outlined in paragraph 2.44 as well as either an additional round of enquiries or an extension of time in each external investigation¹⁶. In the 2012/13, applying an eight month service standard would have produced a performance figure of 52% for external complaints. There is, therefore, still considerable room for improvement.

Areas of improvement and future reporting

- 2.52 Advances in our data capture and reporting functionality since the KPIs were initially set have provided a more sophisticated level of information on our ability to progress complaints in a timely manner. Our initial, now recognised as somewhat optimistic, views of the timescales that were thought reasonable will be replaced by a more realistic and evidence based set of performance indicators from 2013/14. Nonetheless, there are areas of our performance that can be improved and steps have been taken to do this. We have

¹⁵ The same factors also apply to internal complaints: 72% of internal complaints that were not concluded or referred to disciplinary action within 6 months required either an extension of time or additional requests for information.

¹⁶ The service standard for internal complaints will decrease to five months. This factors in extensions of time and additional enquiries, but equally accounts for the fact that the investigation of internal complaints can generally be completed more swiftly than for external complaints.

instigated, or are considering, the following changes in a bid to improve performance; the effects of which should start to be seen in the coming quarters:

- Sending reminders before the due date for responses rather than sending chasers after the deadline for a response has expired *[Implemented]*;
- Reducing the time taken for the investigating officer to carry out a review of complaints prior to accepting a case for formal investigation¹⁷ by placing greater emphasis on ensuring that this part of the process is completed as quickly as possible *[Implemented]*;
- Considering extending staff decision making authorities to avoid the additional time in referring clear cut dismissal cases to the Committee, which can add up to six weeks or more to the timeline *[In progress]*;
- Reducing the level of exchange of information and opportunities to comment by both barristers and complainants during formal investigations where this is not strictly necessary to determine the outcome of the case, which could reduce turn round times in some cases by several weeks or even months *[In progress]*;
- Producing better performance information reports for staff so that they can monitor cases more closely to ensure, where possible, they are progressed *[Implemented but additional work is in progress]*;

2.53 In 2013/14 the PCD will report against a single KPI accompanied by three “operational” performance indicators. Our performance indicators for 2013/14 will be:

KPI	The percentage of complaints concluded or referred to disciplinary action within service standards
OPI (Assessment)	The percentage of complaints concluded or referred to investigation within 8 weeks;
OPI (Investigation)	The percentage of <u>external</u> complaints concluded or referred to disciplinary action within 8 months following investigation;
OPI (Investigation)	The percentage of <u>internal</u> complaints concluded or referred to disciplinary action within 5 months following investigation;

¹⁷ We allow five days for a Case Officer to review each file and confirm that an investigation is required. The ability of a Case Officer to complete their review of a file within this time scale is dependent on the work commitments of the individual officer at the time. Also, there is no time allowed for a member or Office Holder of the PCC to consider whether to investigate if there is any doubt.

2.54 We will also report against a supplementary performance indicator of “**The percentage of complaints concluded or referred to disciplinary action within 6 months**” which combines all three operational performance indicators. This is purely to allow for simple comparisons to be made with other regulators – many of whom have a 6 month published standard for complaints handling. In 2012/13 we concluded or referred to disciplinary action 75% of cases within 6 months which compares favourably with other legal and medical regulators.

Disciplinary Action

2.55 Our KPIs provide a measure of the time it takes us to come to a decision on whether we are going to refer a case to disciplinary action. Once that referral 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 the later stages of a complaint unsuitable for setting Key Performance Indicators. Nonetheless, it remains important that we monitor the time taken for the Determination by Consent procedure and Disciplinary Tribunals and make improvements wherever possible. Table 10 compares our 2012/13 figures for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.

Table 10 Disciplinary action stages completed within service standards in 2012/13

Stage	Case Type	Service Standard (Working Days)	Complaints Closed	Complaints closed within service standard
Determination by Consent	Internal	88 days	20	70.0%
Three-person Disciplinary Tribunal	Internal	86 days	36	8.3%
Three-person Disciplinary Tribunal	External	166 days	7	28.6%
Five-person Disciplinary Tribunal	Internal/External	197 days	31	41.9%

2.56 Determination by Consent cases are generally completed within the service standard as these are, for the most part, within our direct control and the barristers are engaged with the process. Disciplinary Tribunals are generally taking longer than our initial assessments say that they should. As we reported last year, many Disciplinary Tribunal cases are not straightforward: the numbers of barristers who are represented by solicitors or challenging the process are increasing. However, there will be more that we can do ensure that these cases are concluded more swiftly and we are considering where improvements can be made.

Case Study



A litigant in person representing himself in an ancillary relief case, made a complaint to the BSB about the behaviour of the barrister acting for the other side. The Assessment Team considered the complaint but could not make a fair decision based on the information supplied. An Assessment Officer wrote to the complainant a day later asking for more evidence in relation to the complaint.

Although the complainant responded to the letter quickly, he failed to supply all of the information requested. The Assessment Team wrote again with a list of questions requiring answers. Two weeks passed, no concrete evidence was forthcoming and it became apparent that the litigant in person did not fully understand the role of the barrister in court. Despite further correspondence reiterating the need for more information, nothing was received and the delays meant that a decision could not be made within one month. After six weeks, the Assessment Team made a decision based on the information that had been supplied and, having found no evidence of professional misconduct on the part of the barrister, dismissed the case.

Looking forward

Handbook & Change Programme

- 2.57 In 2012, the BSB embarked on a significant and ambitious three year change programme designed to ensure that our regulatory approach accords with current good practice and meets the regulatory objectives set out in the Legal Services Act 2007. The programme also incorporates the work required to meet the Regulatory Standards Framework set by the Legal Services Board. The programme involves a move to a more outcomes focussed and risk based approach which will require adaptations to working practices across the BSB's functions. The introduction of a new Handbook for barristers based on core duties and outcomes, due to replace the current Code of Conduct in January 2014, is central to the change programme.
- 2.58 The effective and proportionate enforcement of the professional standards set by the BSB is a key component of the Regulatory Standards Framework and as part of the BSB's self-assessment against the standards, the current enforcement system was examined. We assessed the system as being sound in isolation but that further work was required to ensure that a more outcomes focussed and risk based approach was taken to enforcement action. The Legal Services Board agreed with the BSB's assessment and our rating that we are *"Undertaking improvement and work is well underway"*;
- 2.59 The PCD and PCC, as part of the change programme, are therefore currently working on making changes and additions to the enforcement system to build the necessary infrastructure to support effective enforcement of the new Handbook. This work will continue throughout the next year. The main changes that will affect the approach to enforcement action are:
- The creation of a BSB wide risk framework and its application to enforcement decisions;
 - The introduction of risk based supervision and a Supervision Strategy;
 - The introduction of an overarching Enforcement Strategy; and
 - The extension of administrative sanctions to all breaches of the Code;

Enforcement database

- 2.60 Development work began in November 2012 on our new case management system; which is scheduled to be operational in August 2013. This is an exciting project for the PCD and the BSB and will streamline the administration of the complaints system, provide better management information at all levels and also allow us to keep records to ensure our enforcement regulatory functions are performed as consistently and fairly as possible. We anticipate that this will lead to performance improvements and potentially increased satisfaction amongst both complainants and barristers.

What risks to the public have been identified?

- 2.61 At this stage we do not consider that the data collected in 2012/13 identifies any new issues that would present a risk to the public. However, the number of complaints we received from litigants in person remained at the high level seen in the previous year. Given the cuts to Legal Aid and the associated necessity for more members of the public to represent themselves in court we should expect to receive more complaints from litigants in person. However, our research in 2012/13 showed that litigants in person still need to have a better understanding of the role of barristers prior to entering the court environment. Hopefully the Bar Councils published guidance on “representing yourself in court” – which gained wide ranging media coverage – will help litigants in person and, in turn, assist in the administration of justice for all.

Independent Observer

2.62 In 2009, as a result of the Strategic Review of the complaints and disciplinary processes, the BSB created the role of Independent Observer (IO). This post is a part time appointment which reports to the Governance, Risk and Audit Committee of the BSB. The IO is tasked with assessing all aspects of the complaints and disciplinary system for which the BSB is directly responsible in order to ensure that it is operating effectively in line with its aims and objectives and good practice.

2.63 In May 2011, Isobel Leaviss, the second IO was appointed following a short break in appointments. In her Annual Report¹⁸ to the Governance, Risk and Audit Committee (covering the period June 2012 to May 2013) she gave the work of the PCD and PCC a positive assessment commenting that:

- Potential breaches of the Code are being identified and appropriately pursued;
- Decisions are fair and consistent;
- Communications are clear;
- Decisions are well reasoned;
- Staff are polite and professional in their written contacts.

She also commented that *“I am impressed by the collective dedication of the PCD and the PCC to ensuring that policies and procedures are robust and that their handling of complaints and disciplinary processes is prompt, thorough and fair.”*

2.64 Based on her observations, the IO made six recommendations in her Annual Report *“designed to further enhance the BSB’s handling of complaints and disciplinary processes”*. These included:

- Extending our Disclosure Policy to include Committee minutes and publishing it;
- Publishing a summary of the appointment process for our prosecutors;
- Creating a central repository for our records on cases that were dismissed at Disciplinary Tribunals, so we can improve our prosecutions in future;

The PCD has accepted all six recommendations, and two have been implemented already.

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

¹⁸ [Bar Standards Board \(2013\): "Independent Observer's Annual Report June 2012 - May 2013"](#)

Council of the Inns of Court – Panel appointment issues

- 2.66 The Council of the Inns of Court (COIC) is a body independent of the BSB responsible for the administration, recruitment and appointment of Disciplinary Tribunal and other panels. Very disappointingly, in early 2012, it came to light that over a period of seven years a number of anomalies had occurred in the appointments processes used by COIC which had the potential to affect the validity of a large number of Tribunal decisions.
- 2.67 Over a period of six months, the BSB devoted significant resources from across the organisation, but particularly the PCD, to work closely with COIC to establish the full extent of the problem. By August 2012, it had been established that up to 960 cases were affected by the issues which in the main related failures to renew appointment terms and failures to follow the agreed procedures for appointments.¹⁹ The position in each case was communicated to the barristers and complainants involved and barristers given the opportunity to challenge any findings made.
- 2.68 In the event, less than 20 barristers raised challenges. In a small number of cases, we accepted that the nature of the anomaly rendered the Tribunal proceedings invalid but in all other cases we have defended challenges based on advice from leading counsel. To date, we have been successful in our defence of such challenges in front of the Visitors to the Inns of Court (the body currently responsible for appeals from Disciplinary Tribunals). Three judgements have been handed down dismissing the challenges raised and supporting the BSB's stance that the proceedings remained valid.
- 2.69 There are still a number of appeal cases to be heard and also a number of judicial review applications pending involving the issues. These are likely to be heard in the next few months.
- 2.70 Inevitably, the situation had an impact on the PCD particularly at management level where a significant amount of time was devoted to addressing the issues. However, the Board took steps to ensure that the service to both the public and the profession was not unduly affected by the additional work: temporary staff were engaged to assist and by this means we were able to "ring fence" the impact and maintain performance.

¹⁹ [Council of the Inns of Court \(2012\): "Final Report from the Disciplinary Tribunals and Hearings Review Group"](#)

Conclusions

- 2.71 Following two years of substantial change within the complaints and disciplinary system and in the work of the Professional Conduct Department and Committee, 2012/13 – while not without its challenges – was an opportunity for us to consolidate. We introduced KPIs to enable us to monitor our performance more accurately and reviewed the changes that were made during the restructure of the department and complaints processes in January 2011. The overall picture is that the complaints and disciplinary system is operating well but there is no room for complacency. There is still a need to improve our performance against the KPIs and a significant amount of work to be done to adapt our processes to support the new Handbook and ensure that a more risk based approach is taken to enforcement action.
- 2.72 In terms of new cases, it was very much business as usual with regards to external complaints. The number of complaints we received never deviated from 70-80 per quarter and the number of complaints from litigants in person remained at the higher level observed in 2011/12. During the year we published a thematic review on the complaints we received from litigants in person since the changes in access to legal aid were introduced. External complaints were, however, notable for the high number of complaints against a single barrister (29) and an unrelated increase in the number of complaints concerning discrimination.
- 2.73 As with previous years, internal complaints were more inconsistent in nature. Whereas last year they were predominantly related to the renewal of practising certificates, in 2012/13 most of our work related to failures to comply with the CPD requirements set out by the BSB. Due to delays in the system we received most of the CPD referrals for both 2010 and 2011 during the year and as a result we issued a record number of administrative warnings and fines against barristers. In contrast to 2011/12, our ability to use the *Warnings & Fines* system for many of the issues referred to us meant that we had to raise far fewer actual complaints. On average, the *Warnings & Fines* system is successful in achieving compliance in 70% of cases.
- 2.74 At the start of the year we were anticipating that the large numbers of CPD referrals would put the department under considerable strain. As it happened, the numbers were smaller than expected and the workload has to date been manageable – with the help of the Committee – within the current staff complement. However, past analysis has shown that when a batch of internal complaints is created “en-masse”, the complaints not only move slowly through the complaints system themselves, but also cause delays in other complaints at the same stage in the process. We will, therefore, continue to monitor the situation.
- 2.75 Throughout the year the size of our caseload decreased very slightly as we closed more complaints than we opened in three out of the four quarters. Throughput of cases was at

the same level as last year, although the number of complaints closed was understandably lower²⁰. Staff decisions made up a higher percentage of closures but the outcomes remained the same: most external complaints (65% in 2012/13) reveal no evidence of a breach of the Code of Conduct and are dismissed at the assessment stage without an investigation.

- 2.76 The KPIs that we began using in 2012/13 were extremely useful in identifying where we could make improvements to ensure that we process complaints in a timely manner. Unfortunately our reports also identified a number of issues with our initial assessment of our service standards: specifically, the extent to which further enquiries and comments from both complainants and barristers are required as part of the standard process of assessing and investigating external complaints. These have been incorporated into our performance indicators for 2013/14 but as far as this year was concerned, our KPIs did not accurately reflect the complaints process and our performance figures were, therefore, impacted. Nonetheless, we now have the mechanisms in place for working with our performance indicators, and we started to observe significant improvements in our performance figures towards the end of the year.
- 2.77 We are now heading into another period of major change. With the introduction of the new barristers' Handbook scheduled for January 2014 along with a new case management system due in August 2013 – we have many challenges ahead in the next year. Fortunately the Independent Observer's continuing positive assessment of the operation of our complaints and disciplinary system indicates that we have a solid foundation on which we can build.

Sara Down
Head of Professional Conduct

Simon Lofthouse QC
Chair of the Professional Conduct Committee

July 2013

²⁰ In 2011/12, Experienced Members of the Committee dismissed an unusually large number of practising certificate cases that had been referred to the PCD during the year. These were not considered to be serious breaches of the Code of Conduct and the barristers were advised as to their future conduct.