

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Meeting of the Bar Standards Board
Thursday 18 September 2014, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda
Part 1 – Public

			Page
1. Welcome and introductions (4.30 pm)		Chair	
2. Apologies		Chair	
3. Members' interests and hospitality		Chair	
<u>Items for discussion</u>			
4. Entity regulation (4.40 pm)	BSB 062 (14)	Ewen Macleod	3-27
5. Professional Conduct Committee / Professional Conduct Department Enforcement Annual Report 2013/14 (4.50 pm)	BSB 063 (14)	Simon Lofthouse QC / Sara Jagger	29-69
6. Governance of Education and Training regulation (5.10 pm)	BSB 064 (14)	Simon Thornton-Wood / Vanessa Davies	71-78
7. GRA Committee report to the Board (including Annual report from the Independent Observer) (5.20 pm)	BSB 065 (14)	Malcolm Cohen / Isobel Leaviss	79-94
<u>Items for noting</u>			
8. Chair's Report on Visits and Meetings: Aug-Sept 14	BSB 066 (14)	Chair	95
9. Director General's Report (5.45 pm)	BSB 067 (14)	Vanessa Davies	97-110
10. Any other business • Board appointments		Chair	
11. Dates of next meeting Thursday 23 October 2014			
12. Private Session			

John Picken, Board & Committees Officer

JPicken@barstandardsboard.org.uk

11 September 2014

Entity regulation

Status:

1. For approval
2. Public

Executive Summary:

3. The BSB recently consulted on some rule changes relating to entity regulation. The consultation proposed some changes to the Handbook rules for entities to facilitate regulatory action on the basis of contractual remedies as an interim alternative to the statutory power of intervention and information gathering that we propose to acquire via a s69 order in due course.
4. The consultation also sought views on the key principles of the BSB's proposed minimum terms of insurance for entities.
5. This paper summarises the key issues raised in the consultation and seeks the Board's authority to proceed. A more detailed consultation response will be published in due course.

Recommendation

6. The Board is requested to:
 - a. **Note** the issues raised by respondents to the consultation;
 - b. **Approve** the proposed amendments to the BSB Handbook that were outlined in the consultation;
 - c. **Approve** the proposed principles for minimum insurance terms and delegate to the Handbook Working Group responsibility for publishing detailed minimum terms guidance in the light of these;
 - d. **Approve** the further recommendation that single-person entities be required to insure with BMIF; and
 - e. **Note** the commitment to keep the insurance terms under review as experience of entity regulation develops.

Background

7. The Board has previously agreed that it should seek a statutory power of intervention and information-gathering powers via an order made under section 69 of the Legal Services Act 2007. The order will also place on a statutory footing the BSB's disciplinary regime for entities. We are currently progressing this with the Ministry of Justice and expect to consult on the content of the order around the end of this month. The order is currently expected to be in force by summer 2015.
8. In the interim, the BSB's authority to regulate entities will be explicitly contractual in nature. The Board therefore agreed to make amendments to the Handbook to ensure that entities, their owners and managers give explicit consent to be bound by our regulatory arrangements and to ensure that we have contractual remedies available in situations that might otherwise require a statutory power of intervention.
9. The Board also agreed in principle the minimum terms of insurance that would be required of entities. After taking additional expert advice, the Handbook Working Group published a consultation on the above topics, which closed on Friday 5 September.

10. 11 substantive responses were received, including:
 - a. The Legal Services Consumer Panel;
 - b. The Legal Ombudsman;
 - c. The Bar Council;
 - d. The Institute of Barristers' Clerks;
 - e. The Inner Temple Bar Liaison Committee;
 - f. The Bar Association for Commerce, Finance and Industry (BACFI);
 - g. One chambers;
 - h. Three individual barristers, and
 - i. The Bar Mutual Indemnity Fund (BMIF).
11. The Council of the Inns of Court expressed its support for the BSB becoming a regulator of entities, but declined to comment in detail on our proposals.
12. The members of our stakeholder (consumer) engagement group were invited to discuss the proposals but they declined. We also scheduled a number of open meetings for members of the Bar or members of the public to attend.
13. The individual responses are available on request and will be published in due course where respondents have given their permission for us to do so.

Summary of issues raised

14. The responses were generally supportive, both in relation to the proposed contractual remedies and the insurance requirements. There was some concern expressed by individual barristers about the direction of travel (i.e. objections in principle to entity regulation) and a number of respondents were concerned that these proposals would increase the financial burden on the Bar as a whole, both through practising certificate fees and BMIF premiums for the self-employed Bar (we have separately issued a consultation on entity regulation fees, detailing how we will ensure cost recovery for this area of work). There was also a concern that we should not impose disproportionate burdens on entities (particularly smaller entities) as unnecessary barriers to entry may not be in the wider public interest.
15. Two responses raised general concerns about the need to acquire statutory intervention powers. The rationale was that the risk of needing to make an intervention was lower for BSB entities because they would not be permitted to hold client money and in most cases there would be a professional client which offered additional protection to the client. The Bar Council therefore felt that intervention powers should be limited to situations where entities were undertaking direct access or litigation work and that every effort should be made to use the non-statutory alternatives highlighted in the consultation paper. BACFI felt that interventions should be limited to cases of dishonesty by managers and noted that receivers would have intervention-style powers in the event of insolvency. On the other hand, the Legal Ombudsman was strongly supportive of intervention powers, not just for entities but for individual barristers and chambers.
16. The Bar Council also noted that it was unclear whether there would be an opportunity for statutory intervention decisions to be challenged, pointing to provisions in the Legal Services Act 2007 that enable certain actions to be reviewed by the High Court.

17. These wider points about statutory intervention powers will be considered further when we consult on the section 69 order in due course. For the time being (and to guide the drafting of the order) the Board is asked to endorse the principle that our interventions power should mirror the powers in Schedule 14 to the Legal Services Act 2007 (which we would acquire in any event if we become a Licensing Authority for ABS entities).

Contractual remedies

18. BACFI raised a concern that whilst the broad types of enforcement action seemed appropriate, the need to access premises without a warrant given that barristers may manage and operate entities from residential properties was a concern. Concern was also raised at the proposed blanket application of automatic consent to access and control client files and the suggestion was made that this should be limited to those clients who are in receipt of public funding and that the BSB should seek consent directly from private clients when the need arises.
19. Whilst these concerns are noted, the Board is asked to approve the rules in relation to the contractual remedies proposed. Barristers operating from residential properties will be under a duty to keep their professional files separate and confidential and it may be necessary to take control of client files urgently irrespective of their source of funding in circumstances where it is not feasible to seek individual consent from each client.

Insurance

20. On the insurance proposals, respondents were more evenly split between those who felt that the minimum level of cover, scope of minimum terms and aggregation arrangements were appropriate and those who raised questions about the adequacy of the proposals.
21. The BMIF response raised general concerns about the sustainability of the mutual model of insurance cover for the self-employed Bar, particularly if single-person entities (or barrister-only entities more generally) were to incorporate in large numbers and leave the mutual with a significantly reduced membership (they note that the single-person entity model is likely to be attractive to many self-employed barristers for fiscal and limitation of liability reasons). They put forward a number of arguments that there was a public interest in maintaining a monopoly provider of the primary layer of cover for the whole Bar (including barrister-only entities and those entities that present similar risks), including:
- a. Assurance for clients that appropriate cover will be available at a reasonable cost without the profit motive that commercial providers might have;
 - b. Greater stability and certainty for the market with a single provider rather than multiple providers entering and leaving the market and a “seemingly annual tumult” of insurance renewal evident in the solicitors’ PI market;
 - c. The ability to guarantee cover for barrister-only and similar entities;
 - d. Avoidance of “cherry-picking” by commercial operators, leaving the mutual as the insurer of last resort;
 - e. The maintenance of a level playing field of consistent cover across the self-employed Bar and BSB authorised entities;
 - f. That BMIF premiums were likely to be higher for individual entities if it had to compete with commercial providers, because of the need to undertake an individual and subjective assessment of each entity that sought cover from it.
22. Nevertheless, the position of BMIF remains that it would be prepared to enter the BSB entity market on a case-by-case basis if it proceeded without a monopoly for the mutual fund.

23. The Handbook working group has considered the arguments raised by BMIF, particularly in the light of the expectation we now have that most entities are likely to be single-person companies, at least in the short term. Significant numbers of single-person entities (if they opted for an insurer other than BMIF) could indeed have an impact on the sustainability of the mutual over time and the Working Group agrees that there is a public interest in protecting the mutual model. Arguably, since the single-person entity would be practising in almost exactly the same way as a self-employed barrister, it would be reasonable to expect them to have the same primary layer of cover in place. However, this is not necessarily the case for larger entities.
24. Discussions that we have had so far with brokers in the commercial market have indicated limited interest in insuring single-person entities, and most providers are adopting a wait and see attitude to our entity proposals more generally. The Working Group therefore believes that securing a commitment from BMIF to cover all single-person entities would significantly promote the introduction of our entity regime, which is also in the wider public interest. BMIF has not committed to insure all BSB entities and we would therefore rely on the commercial market (which BMIF may participate in) to provide cover for larger entities.
25. The Working Group recommends that we require all single-person entities to be insured with BMIF, on the condition that BMIF agrees to insure all of them on the minimum terms. This could be done by a notice under rC76.2, but the Working Group will consider whether a further rule change is needed if the Board agrees to this proposal. Further discussion would also be needed with BMIF to confirm the arrangements and our application to the LSB would need to be updated.

Minimum level of cover

26. There was some concern that the minimum level of cover per claim may be insufficient especially in light of possible aggregation issues (aggregation is discussed further below). The Legal Services Consumer Panel felt that there had been insufficient evidence provided to reach an informed view about whether £500,000 was an appropriate minimum level of cover per claim and suggested further research.
27. The BMIF response provided some evidence of their experience of insuring the self-employed Bar. It noted that over 26 years and 13,624 notifications of potential or actual claims, it had received less than five notifications where the barrister had only the minimum level of cover available and that level of cover was insufficient to satisfy his or her liabilities for damages, interest and claimant's costs. Two of these related to run-off cover, where the barrister had unwisely chosen to reduce their cover from the BMIF maximum of £2,500,000 to the minimum level on retirement. It was also noted that in perhaps 50 out of the 13,624 cases there was a respectably argued claim that was either defeated at trial or settled within the minimum level of cover of £500,000, but which might have exceeded that amount in damages had the claimant been successful at trial and succeeded on some or all of his or her heads of loss. BMIF agreed in the light of this evidence that a minimum level of cover of £500,000 plus defence costs was reasonable.
28. The Inner Temple Bar Liaison Committee noted that it was unwise to have only a minimum level of insurance regardless of the number of fee-earners, turnover and nature of business. There was general agreement to the absence of a cap on the overall level of insurance required.
29. The Board is asked to note the concern raised by the Consumer Panel about evidence, which has been addressed in part by the subsequent BMIF submission. Given this is a new area of

activity, it is suggested that the Board undertake to gather further evidence and review the implementation of these proposals so that the minimum level of cover may be reviewed at an appropriate point post implementation. The point made by Inner Temple will be picked up in guidance, as it will be a requirement to have reasonable cover in place taking into account the nature of the business, irrespective of the minimum cover.

Scope of minimum terms

30. The Legal Ombudsman and the Legal Services Consumer Panel stated that minimum terms should focus on more vulnerable clients as different types of client have differing requirements and levels of understanding. Those that are considered vulnerable or ‘unsophisticated’ consumers of legal services would benefit from minimum terms whereas corporate clients or other more sophisticated clients should have the flexibility to opt out or arrange more suitable alternative insurance cover. Other responses disagreed. In particular, BMIF noted that provision of insurance on the same terms to all has provided confidence across the market and that any move away from this position would risk a lack of clarity over who was covered, agreeing with the statement in our consultation that the “claims made” basis of cover complicated the issue with a risk that clients might fall through the gaps if their level of sophistication changed in the period between instruction and claim, or if a level of cover negotiated directly with the entity was not maintained in subsequent years.
31. It is recommended that the Board keep this matter under review, as we learn from our experience of authorising and supervising entities, but that the current proposal be implemented for the time being, for the reasons stated in the consultation.

Aggregation

32. Overall, it was felt that it was important to have a clause on aggregation. Two responses specifically referred to the (as yet unsettled) case of *Godiva*¹ and the potential impact that may have on the protection afforded to clients (which is one of the reasons for adopting the current BMIF wording on aggregation – BMIF acknowledged that would mean the outcome of the *Godiva* litigation would not be directly relevant because the disputed wording in that case is different). The Legal Ombudsman and the Consumer Panel in particular were wary that aggregation of claims, for example in a class action or multiple claims arising from the same retainer, might mean that consumers were not fully compensated. However, BMIF agreed that it is essential to balance the competing public interests of ensuring claimants receive full compensation with the need to ensure there continues to be a viable market for the provision of insurance cover. They noted that if we do not have a sensible aggregation clause then it is difficult to envisage any well-regarded underwriter being willing to insure the entities that we wish to authorise.
33. The experience of BMIF (since the current aggregation wording was adopted in April 2006) has been that the clause has not given rise to any problems for either claimants or barristers (or indeed BMIF’s reinsurers and commercial market excess layer insurers, who also use that wording). BMIF has only had to consider aggregation of claims twice in its history. The cases predated the current wording, but in both cases clients were protected because the barristers had sufficient excess layer cover and were not under-insured.

¹ *Godiva Finance v Travellers Insurance*, in which both the Law Society and the SRA have intervened due to a dispute over the interpretation of the SRA’s aggregation clause. A number of insurers in the solicitors market have expressed concern that the regulator is challenging what they consider to have been the widely held understanding of the operation of the aggregation clause.

34. Noting the concerns raised and the current uncertainty around the *Godiva* case, it is recommended that the Board retain the current wording in relation to aggregation, but undertakes to review this in the light of experience and the possible outcome in *Godiva*. In the meantime it is suggested that guidance on whether insurance is reasonable over and above the minimum requirement should take into account the nature of the business and the relative risk of aggregation (for example, if the activities are more transactional in nature this would firstly suggest that the entity may not be appropriate for BSB regulation, but it would in any case suggest that additional cover may be required to protect clients from the risk of aggregation, should the BSB agree to authorise it).

Other issues

35. In relation to the other issues in the consultation, there was no substantive disagreement in relation to run-off cover and successor practices (although BMIF suggested that the BSB seek advice from Leading Counsel who is familiar with the SRA rules when drafting the precise terms of successor practice rules, as the application of those rules to actual cases has not been straightforward.)
36. In relation to avoidance for misrepresentation and non-disclosure there was no objection in principle, although there was an acknowledgement that this may constitute a barrier to entry for providers, or lead to an increase in premium (however, BMIF was unlikely to be troubled by the proposed wording.)

Handbook amendments to be approved

37. The Board is asked to approve the following amendments to the Handbook:

Annex C: BSB Handbook References

Text shown in bold is new (strikethrough text relates to ABS entities and will form part of the Licensing Authority application).

rS113.4-.5 – Terms of Authorisation

Authorisations and licences must, in all cases, be given on the conditions that:

.4 if the conditions outlined at rS113.5 apply, the *Bar Standards Board* may without notice:

.a modify an authorisation granted under rS116;

.b revoke an authorisation under rS117;

.c require specific co-operation with the *Bar Standards Board* as provided for in rC64 and rC70;

.d take such action as may be necessary in the public or *clients'* interests and in the interests of the regulatory objectives; and

.e recover from the *BSB authorised body* any reasonable costs that were necessarily incurred in the exercise of its regulatory functions.

.5 The conditions referred to in rS113.4 are that:

.a one or more of the terms of the *BSB authorised body's* authorisation have not been complied with;

.b a person has been appointed receiver or manager of the property of the *BSB authorised body*;

.c a relevant insolvency event has occurred in relation to the *BSB authorised body*;

.d the *Bar Standards Board* has reason to suspect dishonesty on the part of any *manager or employee* of the *BSB authorised body* in connection with either that *BSB authorised body's* business or the business of another body of which the person was a manager or employee, or the *practice* or former *practice* of the *manager or employee*;

.e the *Bar Standards Board* is satisfied that it is necessary to exercise any of the powers listed in rS113.4 in relation to the *BSB authorised body* to protect the interests of *clients* (or former or potential *clients*) of the *BSB authorised body*.

rC22 – Accepting Instructions

Where you first accept *instructions* to act in a matter:

.1 you must, subject to Rule rC23, confirm in writing acceptance of the *instructions* and the terms and/or basis on which you will be acting, including the basis of charging;

.2 where your instructions are from a *professional client*, the confirmation required by rC22.1 must be sent to the *professional client*;

.3 where your instructions are from a *client*, the confirmation required by rC22.1 must be sent to the *client*

.4 if you are a *BSB authorised body*, you must ensure that the terms under which you accept instructions from *clients* include consent from *clients* to disclose and give control of files to the *Bar Standards Board* or its agent in circumstances where the conditions in rS113.5 are met.

rC64 – Provision of Information to the Bar Standards Board

You must:

.1 promptly provide all such information to the *Bar Standards Board* as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and

.2 comply in due time with any decision or sentence imposed by the *Bar Standards Board*, a *Disciplinary Tribunal*, the *Visitors*, an *interim panel*, a *review panel*, an *appeal panel* or a *medical panel*

.3 if you are a *BSB authorised body* or an *owner or manager* of a *BSB authorised body* and the conditions outlined in rS113.5 apply, give the *Bar Standards Board* whatever co-operation is necessary, including:

.a complying with a notice sent by the *Bar Standards Board* or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a *BSB authorised body* (such notice may require such documents to be produced at a time and place fixed by the *Bar Standards Board* or its agent; and

.b complying with a notice from the *Bar Standards Board* or its agent to redirect communications, including post, email, fax and telephones.

rC70 – Access to Premises

You must permit the *Bar Council*, or the *Bar Standards Board*, or any person appointed by them, reasonable access, on request, to inspect:

.1 any premises from which you provide, or are believed to provide, *legal services*; and

.2 any documents or records relating to those premises and your *practice*, or ***BSB authorised body***,

and the *Bar Council*, *Bar Standards Board*, or any person appointed by them, shall be entitled to take copies of such documents or records as may be required by them for the purposes of their functions **and, if you are a *BSB authorised body*, may enter your premises and operate from those premises for the purpose of taking such action as is necessary to protect the interests of clients.**

Resource implications

38. There are no resource implications arising directly from this paper. Arrangements have been made to have a more substantive minimum terms document drafted. The Supervision Department will have regard to the issues outlined above when deciding whether an entity has undertaken a reasonable risk assessment when assessing its level of insurance cover.

Equality & Diversity implications

39. A full equality analysis was undertaken of our entity regulation proposals, which accompanied our application to the LSB. The consultation responses have highlighted the need to ensure that vulnerable clients are sufficiently protected, whilst not imposing disproportionate regulatory burdens on smaller entities (which may include barristers with protected characteristics that are disproportionately represented in sole practice currently). However, the level of regulation that is suggested in this paper is considered essential to ensure that clients are appropriately protected and therefore justified.

Consultation

40. Attached at annex 1.

Lead responsibility

Ewen Macleod, Director of Regulatory Policy

Annexes

- Annex 1: Consultation document.



Entity Regulation: Consultation

Introduction

1. The Bar Standards Board (BSB) has submitted to the Legal Services Board (LSB) an application for approval of a number of changes to its Handbook, the effect of which will be to permit the authorisation of (non-ABS) entities by the BSB. The application is available on the [LSB website](#). If approved, this will enable the BSB to authorise entities whose owners and managers are all authorised persons under the Legal Services Act 2007 (LSA). The BSB proposes to authorise entities that are focused on advocacy, litigation and specialist legal advice, subject to other considerations about whether the BSB is the most appropriate regulator – the types of entity that we envisage authorising are described in the attached policy statement. In due course, the BSB proposes to become a Licensing Authority for alternative business structures (ABS), which would enable us to authorise entities with lay owners and managers (but this will be the subject of a later application to the LSB).
2. The purpose of this paper is to consult on some policy changes that have been developed by the BSB since its [last consultation](#) on entity regulation. These are:
 - a. reinforcement of the consent based contractual regime discussed below;
 - b. changes that follow from further examination of the remedies outlined in the previous consultation that could be pursued by the BSB if entities were failing, abandoned or engaged in significant dishonesty; and
 - c. proposals relating to the minimum insurance terms that entities would be expected to have in place.
3. The changes proposed in this consultation will not directly affect individual barristers authorised by the BSB. They will only affect entities, their owners and managers who have consented to be bound by these new rules (although paragraph 33 and question 6 make reference to a proposal on insurance that may have more general application in the future).
4. As the consultation is taking place during the LSB's statutory decision-making period the time available for responses has been shortened, but the BSB is proactively engaging with key stakeholder groups to ensure that all those with an interest are able to contribute. We are specifically contacting the following stakeholders and offering to discuss our proposals with them:
 - a. previous respondents to consultations on entity regulation;
 - b. participants from recent entity regulation focus groups;
 - c. Specialist Bar Associations;
 - d. the Institute of Barristers' Clerks and Legal Practice Managers' Association;
 - e. the Legal Services Consumer Panel;
 - f. organisations representing consumers of legal services;

- g. specialist brokers in the professional indemnity insurance market; and
 - h. the Association of British Insurers and specialist insurers.
5. We will also be holding briefing sessions and arranging meetings with those who would like to contribute to the consultation during July. It is not necessary to submit a formal written response, as we will be taking minutes of any discussions. If you would like to meet BSB staff to discuss any of these matters then please contact us on entityregulation@barstandardsboard.org.uk as soon as possible. The deadline for responses is **5 September 2014** and responses should be sent to the same address.

Contractual regime: consent to regulation by the BSB

6. The constitution of the Bar Council was amended in 2013 to permit the Bar Council (via the BSB) to authorise and regulate non-barristers (including entities and their managers). The Bar Council therefore is permitted by its constitution to enter into contractual arrangements with non-barristers that are authorised by it, under which those entities and individuals agree to abide by the Handbook and submit to the jurisdiction of the Bar Tribunal and Adjudication Service in disciplinary matters. It is not necessary for them to become members of the Bar Council in order to be bound by that agreement for the purposes of being regulated by the BSB (and, indeed, membership of the Bar Council is entirely a matter for the Bar Council in its representative capacity). The s69 order discussed further below will simplify the legal basis of the entity regime by giving the Bar Council express authority to authorise and discipline persons other than barristers (including entities, their owners and managers). In the meantime, a consent-based contractual regime will be in place.
7. In order to make explicit the consent to our regulatory jurisdiction, and hence the contractual relationship with the BSB, we have amended the proposed authorisation rules for entities to require explicit consent from both entities and their managers to be bound by the BSB Handbook and disciplinary arrangements. This consent will be required as a condition of authorisation and will be evidenced as part of the initial application and in the event of any change of management.
8. The BSB proposes to amend the mandatory requirements for authorisation at rS83 to require an entity to have arrangements in place to provide explicit consent by the entity, its managers, Head of Legal Practice and Head of Finance and Administration to be bound by the BSB's regulatory arrangements (including its rules and disciplinary arrangements). A similar change will be made in relation to approval of changes in management personnel.

Question 1: Is this change to the authorisation criteria a proportionate way of clarifying the BSB's regulatory jurisdiction?

Remedies

9. In its last entity regulation consultation, the BSB considered whether it was necessary to acquire a statutory power of intervention. In broad terms, intervention is the process by which the regulator is able to take control of client money and client files in the public interest when something has gone seriously wrong. Schedule 14 to the Legal Services Act 2007 provides a statutory power of intervention in relation to licensed bodies (ABSs), which the BSB will acquire if it becomes a licensing authority for ABS entities. The grounds for intervention under the LSA can be broadly summarised as:
- a. Failure to comply with one or more terms of the license;

- b. The appointment of a receiver or another defined insolvency event;
 - c. Suspected dishonesty by a manager or employee;
 - d. Undue delay in dealing with a matter;
 - e. It is necessary to exercise the power for the benefit of clients.
10. The power to intervene in a solicitors' practice has existed since 1943. The power is closely linked to, and was introduced at the same time as, the Law Society's Compensation Fund. Together these two elements of the solicitors' statutory scheme are primarily directed at the protection of client money. To contextualise the risk of the BSB needing to exercise intervention powers in relation to a non-ABS entity, it is worth considering the operation of the SRA's intervention regime. The SRA's regulated community is over eight times the size of the BSB's with 130,612 practising solicitors and 10,589 entities at January 2014. The SRA carried out only 47 interventions in 2013; the majority of which were into practices run by a sole practitioner (accounting for 34 of the interventions). Put another way, in 2013 the SRA intervened into 1 in approximately every 225 entities.
11. In the original Handbook consultation our stated view was that it was not necessary to acquire a statutory power of intervention for non-ABS entities. This was primarily because the need to take control of client money does not arise, given the prohibition proposed for BSB regulated entities.
12. However, the BSB has concluded that in the longer term it would be desirable to have the statutory power of intervention over all entities to eliminate any residual risk in the event of significant dishonesty, insolvency or abandonment preventing the regulator from taking action to protect clients where something had gone very wrong. These events would fall into the 'high-impact, low-likelihood' category, but there may be situations where a statutory power of intervention, or the threat of it, is necessary in the public interest.
13. It is therefore proposed that in parallel with the LSB application to become an entity regulator we should seek their recommendation that the Lord Chancellor grant an order under s69 of the LSA to grant the Bar Council (via the BSB) a statutory power of intervention. This would not be in place at the beginning of our entity regulation regime, so we have considered whether any changes are needed to our proposed rules in the interim, to ensure that there is sufficient public protection in place. **We will consult separately on the policy issues relating to the s69 order – this consultation focuses on the Handbook rules that may be needed in the interim before we have the new statutory powers.**
14. In situations where an entity is failing, entering administration or insolvency, is unable or unwilling to co-operate with its regulator or has been abandoned by its owners and managers, the regulator needs to be able to move in and take charge of affairs so as to protect the interests of clients, to obtain alternative representation for them and to secure papers or other assets which may belong to them. In our original proposals, we highlighted a number of tools that the BSB could use as alternatives to statutory intervention powers in such circumstances. These included, if necessary:
- a. imposing a requirement on BSB regulated individuals within entities that they will take all reasonable steps to inform clients and distribute files if the organisation itself is unable to do so, in order to ensure continued representation for clients and otherwise to ensure that the entity is wound down in an orderly manner;

- b. seeking the co-operation of any administrator and establishing protocols and procedures to ensure that any insolvency is undertaken in a manner that ensures clients' interests are protected. Such co-operation would be in the interests of an administrator because the alternative would be for the BSB to withdraw authorisation from the entity, the effect of which would be to prevent it from continuing as a going concern; and
 - c. applying for a court supervised receivership in the public interest.
15. On the basis that entities will be contractually bound to comply with the BSB's regulatory regime, the BSB will be able to make use of the additional remedies available to enforce a contract. The BSB's cause of action would arise following an actual or threatened breach of contract by the entity, in the form of a regulatory breach. There are a range of remedies for breach of a contract; however the most relevant in these circumstances are specific performance and injunctions. In seeking specific performance or an injunction the BSB will be seeking the court's support to grant a discretionary remedy in the public interest.
16. An alternative route would be the court's power to appoint a receiver who could take control of documents and, if necessary, could manage the affairs of the entity including its assets for instance in circumstances where the practice had been abandoned. The High Court has a jurisdiction to appoint a receiver by an interim or final order in all cases in which it appears to the court to be just and convenient to do so (s. 37(1) Senior Courts Act 1981). The objective of a court-appointed receiver would be to preserve or safeguard property from any danger with which it is threatened. The appointment of a receiver by the court to preserve property may be made when litigation is pending to decide the rights of the parties or where misconduct or maladministration is alleged against persons who are in a fiduciary capacity.
17. Following further consideration, we believe it is necessary to introduce some further additional rules to the Handbook, which will supplement the general duty to co-operate with the regulator as required by Core Duty 9. This will strengthen the BSB's ability to act where necessary to protect clients' interests – the purpose of these is to give effect to the type of remedy that was originally envisaged, building on the general duty to co-operate with the regulator but enabling the BSB to take action where the entity is either unable or unwilling to co-operate. The changes primarily enable the BSB to act quickly where (for example) it is necessary to take control of client files in a situation where an entity is being non-co-operative or has been abandoned. In all cases where these new rules have been introduced these powers would only be exercised by the BSB in the most serious of situations, where it was clearly in the public interest to act.
18. The circumstances in which these powers would be exercised are set out in the proposed rS113.5 (which is based on the corresponding provisions of the intervention powers in the Legal Services Act):
 - a. one or more of the terms of the entity's authorisation have not been complied with;
 - b. a person has been appointed receiver or manager of property of the entity;
 - c. a relevant insolvency event has occurred in relation to the entity;
 - d. the BSB has reason to suspect dishonesty on the part of any manager or employee of the entity in connection with:
 - i. that entity's business; or

- ii. the business of another entity in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee.

19. If the BSB considers that one or more of the conditions are satisfied, it will then consider whether in all the known circumstances it is in the public interest to act. Such an assessment will take into account not only the need to protect the public and safeguard public confidence in the profession of regulated legal services but also the inevitably serious consequences of the regulatory action for the authorised body. In addition to the rules listed below, there would be a standard condition placed on any entity's authorisation that would enable the BSB to modify or revoke the authorisation or take any other necessary action (including potentially recovering the costs of such action from the entity) if these conditions are met.

Question 2: Do the criteria proposed at rS113.5 offer appropriate grounds to enable the BSB to act when it is necessary in the public interest to do so?

rC22 – defining the terms or basis on which instructions are accepted

20. This rule will be amended to ensure that the terms under which an entity accepts instructions from clients includes consent from clients to disclose and give control over files to the BSB or its agent in certain circumstances, where it is necessary for the regulator to act in the public interest as described above. This will enable the BSB to take urgent action without first needing to get clients' consent to access their files. The BSB will not provide legal services to clients, but will seek to ensure that clients are able to access alternative representation.
21. This is similar in effect to the contractual arrangements entered into with the Legal Aid Agency, whose contract standard terms impose a duty on the provider to supply to the Agency certain third party documents that it may request (in the case of legal aid, clients consent to this by signing an application form which includes a clause on access to personal data specifying that the Agency may need to access the information in the file for audit or bill assessment purposes).

rC64 – provision of information to the BSB

22. This rule will be amended to introduce a duty (when the circumstances above are satisfied) on the entity and its owners/managers/employees to give the BSB whatever co-operation is necessary, including delivering all documents under its control to the BSB or its agent and assisting with the redirection of communications (including post, email, telephones etc.) This is an extension of the duty to co-operate with the regulator, set out at Core Duty 9 in the Handbook, but will make explicit the need to assist in circumstances where this will be needed urgently.

rC70 – access to premises

23. This rule will be amended to introduce a duty (when the circumstances outlined above are satisfied) not only to permit the BSB or its agent to enter an entity's premises (which was in the earlier version of the Handbook) but to operate from those premises for the purpose of taking such action as is necessary to protect the interests of clients. This further clarifies the need for the BSB to act urgently in certain situations to protect clients' interests.

Question 3: Are the proposed amendments to rC22, rC64 and rC70 feasible and proportionate, in order to ensure the BSB can access client files and take action when it is necessary in the public interest to do so?

Insurance requirements

24. Rule rC76 of the Code of Conduct requires that BSB regulated persons have adequate insurance (taking into account the nature of their practice) which covers all the legal services that are supplied to the public. There is a further requirement to comply with any notice from the BSB stipulating a minimum level of insurance and/or minimum terms for the insurance. rC77 also requires all self-employed barristers to be members of BMIF.
25. Whilst all members of the self-employed Bar are covered by BMIF, this may not be sufficient for their needs. The minimum level of cover provided by BMIF is £500,000 and the maximum is £2,500,000. Depending on the nature of a self-employed barrister's practice they may have to top up their cover with additional insurance purchased from the wider insurance market.
26. BSB regulated entities will be subject to the general duty to have adequate insurance in addition to a condition of their authorisation that they confirm (and provide evidence) that they have obtained adequate insurance sufficient to meet their obligations under rC76 (the relevant authorisation rules are at rS83). There will also be a requirement on entities to undertake an annual risk assessment and confirm that they have undertaken such an assessment and that they continue to have reasonable insurance for all their legal services which takes account of that assessment. Nevertheless, we believe that some minimum terms are necessary in order to ensure consumer protection, especially in circumstances that might not otherwise be covered by insurance policies. It is also desirable to have certainty for consumers, the regulated entities and their insurance providers, and to avoid regulatory arbitrage due to significant differences in the minimum required by different regulators (for example, entities might choose one regulator over another because of a perception that their rules required less comprehensive, and hence cheaper, insurance with a consequent impact on consumer protection).
27. This part of the consultation relates primarily to the BSB's intention to issue a notice under rC76, specifying certain minimum terms for entities. The BSB will require annual evidence of the level of cover and the terms of insurance, either in the form of a certificate from the insurance company or a broker's letter of undertaking. The BSB will have a power to revoke authorisation if adequate insurance is not in place and the entity's risk analysis in order to determine its level of cover will be scrutinised by our Supervision Department.
28. In determining the minimum terms that we will set for entities, we have considered the terms on which the self-employed Bar is currently mandatorily insured by the BMIF and compared these terms with the requirements of other regulators of entities. Our main objective is to ensure that consumers should, substantively, have no less protection if they are clients of a BSB authorised entity than they would if they were clients of a self-employed barrister or an entity regulated by another Approved Regulator. In addition to the obvious consumer protection issues, there is a risk of regulatory arbitrage if Approved Regulators adopt significantly different insurance terms. With this in mind we will continue to monitor developments in the market and discuss minimum insurance requirements with the other Approved Regulators – it is possible that our minimum requirements will evolve over time, with experience of authorising entities and further analysis of the market. The key policy issues in relation to insurance terms are summarised below. Our starting point is that the insurance required for entities should be broadly similar to that currently provided to the self-employed Bar unless there is a regulatory reason to treat them differently. An example of where a difference is dictated by the fact of being an entity is the need for there to be provisions dealing with successor practices.

29. An important point to bear in mind when considering professional indemnity cover is that it is provided on a claims-made basis – the cover available is determined by the policy in place at the time of a claim against the insured professional (or the time the professional becomes aware of a potential claim and notifies the insurer) rather than the policy that was in place at the time of instruction or at the time of the error. Professionals must ensure on an ongoing basis that they are appropriately covered for past activities in addition to the current ones, in order to ensure that clients are fully protected. This should be borne in mind when considering a number of the issues below (and will be reflected in any guidance issued by the BSB in due course).

Minimum level of cover per claim

30. It is anticipated that the entities authorised by the BSB will vary in size and corporate structure. We envisage significant numbers of ‘one person’ companies, but also much larger companies or partnerships with several managers, many fee-earners, significantly higher turnovers and a potentially wider range of activities than that usually undertaken by a single self-employed barrister. We therefore need to set a minimum level of cover that does not overburden the smallest/lowest risk structures. As a matter of principle, any minimum that avoids imposing excessive burdens on those at the low end of the scale is unlikely to be adequate for those at the other end of the scale. However, the right way to address that issue is for the BSB to ensure that the overriding obligation to hold reasonable insurance cover is understood and observed, rather than imposing a minimum which might represent an obstacle to smaller entities entering the market.
31. As the risks associated with the work done by a ‘one person’ entity are likely to be broadly similar to those at the self-employed Bar, we believe that it is appropriate to require the same minimum level of cover per claim as the self-employed Bar. This is currently £500,000. That also accords with the SRA’s recent proposals in relation to its own minimum. The minimum would apply to each and every claim. The BSB does not consider that it would be in the interests of clients to cap the overall amount of insurance cover required as that could mean that a few large claims early in the year would leave no insurance cover for later claims.

Question 4: Is the proposed minimum level of cover per claim (with proposed accompanying guidance) sufficient?

Question 5: Do you agree with the absence of a cap on the overall level of insurance required?

32. It is important to note that this will only be a minimum. Accompanying guidance will clarify the steps that entities should go through to satisfy themselves that they are appropriately insured – this is likely to include considering a multiple of turnover.
33. The BSB is considering whether, in due course, it should propose in a separate consultation a future requirement (for both the self-employed Bar and entities) that they carry whichever is the higher of a minimum level of insurance cover per claim and a multiple of turnover (possibly subject to a maximum above which it would be a matter for the entity whether to carry additional cover). The ICAEW has provisions to this effect in relation to accountancy regulation and the BSB considers it possible that this might, in future, represent a more effective approach than setting a minimum level alone (which at present is the approach taken by both the BSB and the SRA). However, it would not, on any view, be appropriate to make such a change solely for entities. Moreover, any such change should also be

coordinated with other Approved Regulators to avoid risks of arbitrage. At this stage, therefore, the BSB simply wishes to gauge interest and collect views with a view to assessing whether to engage in further dialogue with stakeholders, including the BMIF, other Approved Regulators and the LSB, about this possibility. We would welcome views on this.

Question 6: Do you have any views on the possible future requirement (for both the self-employed Bar and entities) that they carry whichever is the higher of a minimum level of insurance cover per claim and a multiple of turnover?

Aggregation

34. 'Aggregation' is the process by which several claims from different clients can be treated as a single claim by the insurer (therefore with a single excess and a single limit of cover). The current minimum terms for the SRA and the BMIF terms allow aggregation into one claim in certain circumstances, largely relating to whether they arose out of a single act or omission or a series of related acts or omissions. For example, one missed deadline by a litigator may result in a loss for several clients, but for the purposes of the excess and any limit of cover, the claims of all the clients would be treated as one.
35. In the regulatory context, it is necessary to balance the interests of consumers against the cost and availability of insurance within the market. The interest of particular consumers will depend on their situation. In some cases consumers may benefit from aggregation as there is only one excess payable, and firms that have to pay multiple excesses may find themselves in financial difficulties. In others they may lose from aggregation as it would result in multiple claims becoming subject to a limit of cover. However, it is in the interests of all parties that there is a high degree of certainty as to the construction which will be placed upon the relevant clauses.
36. As to aggregation clauses defining what is to count as one claim for the purposes of the excess and limit of cover for any one claim, the BSB is not aware of any evidence that the aggregation provisions in the BMIF cover have been problematic in the past. We therefore propose to take broadly this approach in defining our minimum terms. This would permit a single limit of cover for all claims which, in the reasonable opinion of the insurer, arise from or are attributable to:
 - a. The same act or omission;
 - b. A series or group of related acts or omissions;
 - c. A series or group of similar acts or omissions; or
 - d. The same originating cause.

Question 7: Do you agree that the proposed aggregation clause is appropriate?

37. We are aware of considerable uncertainty in the solicitors' insurance market at the moment, given the ongoing litigation about the interpretation of the aggregation clause in the SRA's minimum terms in *Godiva Finance v Travelers Insurance* (yet to come to trial). Clearly the BSB will monitor that litigation and its implications for the future.

Run-off and successor practices

38. For reasons discussed above, the fact that professional indemnity insurance is provided on a “claims made” basis means that consumers must continue to be protected for a reasonable period in the event that an entity ceases practising or its practice transfers to another entity.
39. The terms of cover for the self-employed Bar need not deal with successor practices, although self-employed barristers have run-off cover in place on retirement. When the BSB authorises entities the insurance requirements must include provisions to deal with the entity ceasing to practise or merging with another practice (in which case there must be continuity of insurance provision for the clients of the previous practice). There are two ways in which this could happen:
- a. The original practice may simply choose to cease and obtain run-off cover. The minimum terms should require this run-off period to cover at least the statutory limitation period of six years. The purchase of run-off cover is a significant expense and can be a barrier to exiting the market for some firms, with particular difficulties in recovering run-off premiums where a business is insolvent. Providers may wish to offer different ways of managing this – for example, a run-off deposit might be held in escrow for the duration of cover, which would be relatively low initially but topped-up after each year of practice to acknowledge increases in exposure over time. We have considered whether there would be any value in reducing the run-off period, as there is evidence that the majority of claims occur in the early years following cessation. However, precisely for this reason, most claims would still be covered even if the period of run-off cover was reduced and therefore we do not believe that reducing the run-off period (and the consequent loss in consumer protection in respect of claims that manifest towards the end of the six years) could be justified by the likely small reduction in premium;
 - b. The liabilities of the previous practice will continue to be insured under the policy held by the new practice.
40. The BSB is likely to adopt a format for defining successor practices similar to that which has been operated by the SRA for some years, albeit that the provisions in respect of corporate succession are likely to be revised to ensure that succession is not easily avoided. This may involve concentrating on the destination of the major fees earners of the original practice at the point it comes to an end. The policy priority in drafting successor practice terms is that an entity which takes ownership of any part of a previous entity’s practice must become a successor and have insurance in place to cover claims relating to the previous practice. Failing this, the original entity must enter run-off cover.

Question 8: Does the proposed approach in relation to run-off cover and successor practices provide the right amount of protection for consumers?

Avoidance for misrepresentation and non-disclosure

41. The BMIF has traditionally been able to avoid liability on the grounds of fraudulent misrepresentation or non-disclosure of a material fact by the person insured. Whilst this has not led to problems in relation to insuring individuals, that may be because the BMIF has rarely if ever declined cover on this ground. In an entity structure, it is much more likely that an individual within the entity might fail to disclose a material fact, or make misrepresentations in the hope of covering up something that they had done that might lead to a claim. In such situations, the entity as a whole should not be denied cover by the insurance provider.
42. The BSB therefore proposes to include minimum terms preventing the insurer from avoiding, repudiating, reducing or denying liability on grounds of non-disclosure or misrepresentation,

whether fraudulent or not, but permitting recovery of any payments resulting from such misrepresentation or non-disclosure from those shown to be responsible for it.

Question 9: Do you agree that minimum terms should prevent avoidance for misrepresentation and non-disclosure?

Who should be protected by compulsory insurance cover?

43. We have considered whether the compulsion in respect of insurance cover should apply only to more vulnerable or unsophisticated client groups (leaving, for example, corporate clients to negotiate their own arrangements with an entity when instructing it) as the SRA proposed in its recent consultation. We have rejected this option for a number of reasons, largely due to difficulties related to the nature of claims-made cover. For example, any assessment of the status of the client would have to be made at the time of instruction, whilst the client (particularly if it is a business) may have changed significantly by the time of claim. We doubt that clients would be in a position adequately to negotiate the terms of cover they require, even if they are wealthy individuals or businesses. In any case, such negotiation would not guarantee that any additional cover agreed would be maintained in subsequent years, in order to ensure it was in place when a claim was made. For these reasons, we will apply the minimum terms to all clients. We note that the SRA has concluded that a further review is needed before it takes any further steps in relation to this proposal and we will monitor developments in our own regime and keep this matter under review.

Question 10: Do you agree that the minimum terms should apply to all clients?

Bar Standards Board

July 2014

Annex A: Summary of questions

Contractual regime

Question 1: Is this change to the authorisation criteria a proportionate way of clarifying the BSB's regulatory jurisdiction?

Remedies

Question 2: Do the criteria proposed at rS113.5 offer appropriate grounds to enable the BSB to act when it is necessary in the public interest to do so?

Question 3: Are the proposed amendments to rC22, rC64 and rC70 feasible and proportionate, in order to ensure the BSB can access client files and take action when it is necessary in the public interest to do so?

Insurance requirements

Question 4: Is the proposed minimum level of cover per claim (with proposed accompanying guidance) sufficient?

Question 5: Do you agree with the absence of a cap on the overall level of insurance required?

Question 6: Do you have any views on the possible future requirement (for both the self-employed Bar and entities) that they carry whichever is the higher of a minimum level of insurance cover per claim and a multiple of turnover?

Question 7: Do you agree that the proposed aggregation clause is appropriate?

Question 8: Does the proposed approach in relation to run-off cover and succession practices provide the right amount of protection for consumers?

Question 9: Do you agree that minimum terms should prevent avoidance for misrepresentation and non-disclosure?

Question 10: Do you agree that the minimum terms should apply to all clients?

Annex B: Entity regulation policy statement

1. Part 3 of the Handbook sets out the requirements for authorisation as an entity by the BSB. This paper expands on the discretionary criteria in those rules and is the entity regulation policy statement referred to in rS99, gS20 and rS101.
2. To be authorised by the BSB as an entity, an applicant must:
 - a. Satisfy the mandatory requirements in rS83 and rS84
 - b. Be considered by the BSB to be an appropriate entity for it to regulate (rS99)
 - c. Satisfy the BSB that it will be competently managed and comply with the rules, and that its owners, managers, HOLP and HOFA meet the suitability criteria rS101)
3. If an applicant does not meet the mandatory criteria, it cannot be authorised by the BSB and its application will be refused.
4. If an applicant does meet the mandatory criteria, then the BSB will consider whether it is an appropriate entity for it to regulate. If it concludes that it is, the BSB may nevertheless refuse to authorise it if it is not satisfied that it will be adequately managed and run in compliance with the rules. This is discussed further in paragraphs below.
5. In reaching its decision on whether an entity is an appropriate one for it to regulate, the BSB must take account of its analysis of the risks posed by the applicant, the regulatory objectives and this entity regulation policy statement.

BSB Policy Objectives

6. The Bar Standards Board (BSB) is a specialist legal services regulator. Its particular specialist focus is on the regulation of advocacy and related litigation services and expert legal advice. In designing its entity regulation regime it has analysed the legal services market and its own capacities and capabilities, in addition to the opportunities for regulation by other Approved Regulators and identified the market segment that is appropriate for BSB regulation.
7. The overall policy objectives of the BSB are that:
 - a. The market should have the opportunity to develop, with authorised persons being able to innovate in ways that are compatible with the regulatory objectives and the associated risks being managed effectively and proportionately;
 - b. As business models change, the specialist skills and expertise associated with the Bar should be preserved and standards of advocacy should be maintained, thereby safeguarding the public interest;
 - c. Individual responsibility (in particular the accountability of the individual advocate or other authorised individual to the Court and the client) should be at the heart of the regulation of advocacy and related services;
 - d. Regulatory arbitrage is minimised;
 - e. The BSB should build on its regulation of individual barristers to give entities the option of being regulated by the BSB, particularly those wanting to specialise in advocacy and litigation;
 - f. The BSB minimises the risk of regulatory failure by regulating only those entities that fit well with its capacities and capabilities, ensuring that entities and their managers consent to the jurisdiction of the BSB;
 - g. Risk assessment and management should be at the heart of the BSB's regulatory arrangements;

- h. Entities which the BSB authorises should manage their own risks well and comply with their regulatory obligations;
- i. The BSB regulatory regime is proportionate to the risks it needs to regulate.

BSB approach

- 8. The BSB has developed its policy on what entities it would be appropriate for it to regulate in the light of these objectives. In exercising its discretion, the BSB will be sensitive to developments in the market and innovative practices that might be in clients' interests and which might differ from the type of entity described below. In such cases, the BSB will assess the risks posed by the entity in question and decide whether it is in the public interest for the BSB rather than another Approved Regulator to authorise such an entity.
- 9. This policy statement reflects the BSB's decision that it should be a niche regulator concentrating on those entities whose activities are similar to those traditionally undertaken by the Bar (and which the BSB therefore has experience of regulating), which do not hold client money, whose structure is simple and transparent, with work being closely overseen by authorised individuals and minimal risk of divergent interests between owners and managers. As both the BSB and those it regulates gain experience, and as the market develops, the BSB will consider whether it would be in the public interest for it to widen the scope of its entity regulation and if so it will publish a revised policy statement.
- 10. The BSB's risk framework (published alongside this policy statement) will be central to any decision to authorise an entity and to the BSB's approach to ongoing supervision of the entity. The BSB will assess the nature of the risks posed by an entity, taking into account its structure and governance arrangements, the kind of the services it is intending to provide, its impact on the wider legal services market and its own risk assessment and mitigation procedures.
- 11. The BSB would normally only authorise an entity if:
 - a. any owner¹ of the entity is also a manager;
 - b. the entity will not be providing any services other than legal work², subject to any minor or incidental examples of other activities which are carried on in the course of supplying the main service and do not materially detract from the focus being legal work.
- 12. There may be exceptional circumstances where the BSB would authorise an entity that is not able fully to satisfy the criteria in paragraph 11 but, in the BSB's judgment, poses similar risks to those posed by entities which do satisfy the criteria.
- 13. When assessing the risks associated with an entity, the BSB will also take other factors into account, including:
 - a. the services that the entity intends to provide and the nature and extent of any non-reserved activities;
 - b. the proposed proportion of managers to employees;
 - c. the proposed proportion of authorised individuals to non-authorised individuals;

¹ Owner as defined in the BSB Handbook as person who holds a material interest in the entity

² Defined as reserved legal activity and any other activity which consists of the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes or the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes, and includes activities of a judicial or quasi-judicial nature (including acting as a mediator and other forms of alternative dispute resolution) and legal academic work such as lecturing.

- d. the extent to which its managers have been and/or are going to be actively involved in advocacy and/or litigation services or related advice;
 - e. whether any persons with an ownership interest (whether material or not) are not individuals;
 - f. whether any managers are not individuals;
 - g. whether the entity is intending to provide high-volume, standardised legal advice or standardised legal transactional services direct to lay clients and, if so, whether this is likely to constitute a substantial or significant proportion of its practice; and
 - h. the systems that the entity will have in place to manage such services and associated risks.
14. The following factors, when present, would tend to indicate that it may be appropriate for the BSB to regulate an entity:
- a. all owners and all managers are individuals;
 - b. 50% or more of the owners and 50% or more of the managers are entitled to exercise rights of audience in the Higher Courts;
 - c. a substantial part of the services to be provided are advocacy and/or litigation services and expert legal advice;
 - d. the entity is not intending to provide high-volume, standardised legal transactional services;
 - e. 75% or more of owners and 75% or more of managers are authorised individuals³;
 - f. a substantial proportion of employees are going to be authorised individuals; and
 - g. each manager supervises only a small number of employees.
15. The following factors, when present, would tend to indicate that it may not be appropriate for the BSB to regulate an entity:
- a. not all owners and managers are individuals;
 - b. fewer than 50% of owners and fewer than 50% of managers are entitled to exercise rights of audience in the Higher Courts;
 - c. the provision of specialist advocacy and/or litigation services or other expert legal advisory services is not a significant proportion of the proposed practice;
 - d. a substantial part of the services to be provided are high-volume, standardised legal transactional services direct to lay clients;
 - e. fewer than 75% of owners and 75% of managers are authorised individuals⁴; and
 - f. a substantial proportion of employees will be non-authorised individuals.
16. The factors listed above are not exhaustive of the matters that may be relevant to the BSB's consideration of the appropriateness of an entity for BSB regulation. In each case, the BSB retains a discretion to grant or refuse authorisation in the light of its overall consideration of the risks posed by the entity, the regulatory objectives and the BSB's policy objectives.
17. In particular, even if the factors listed in paragraph 14 are present, the BSB may refuse authorisation if its analysis of the risks posed by the entity indicate that it may not be appropriate for BSB regulation. In making this decision it will take into account not only the extent to which the entity has assessed its own risks and put in place appropriate systems to manage those risks, but also whether the BSB itself has the necessary experience and skills to regulate the entity effectively.

³ Only relevant to ABSs

⁴ Only relevant to ABSs

Management and compliance

18. Rules rS101 and rS102 set out the aspects of management, control and compliance about which the BSB must be satisfied before granting authorisation. In exercising its discretion under these rules, the BSB will consider whether the arrangements are satisfactory for the nature and type of business which the applicant intends to provide. If the BSB concludes that the minimum requirements are satisfied and that it should therefore authorise the applicant, it will take account of its conclusions about the strength of the controls and management in its assessment of the risks posed by the entity and hence the future monitoring and supervision arrangements which would be appropriate.
19. In considering whether a person meets the suitability criteria despite having disclosed an event which might call that suitability into question, the BSB will have regard to when that event took place and any evidence about subsequent behaviour. The test it will normally apply is whether the person is currently suitable for the role concerned and whether it and the public can have confidence in that person in that role.

Annex C: BSB Handbook References

Text shown in bold is new (strikethrough text relates to ABS entities and will form part of the Licensing Authority application).

rS113.4-.5 – Terms of Authorisation

Authorisations and licences must, in all cases, be given on the conditions that:

.4 if the conditions outlined at rS113.5 apply, the *Bar Standards Board* may without notice:

.a modify an authorisation granted under rS116;

.b revoke an authorisation under rS117;

.c require specific co-operation with the *Bar Standards Board* as provided for in rC64 and rC70;

.d take such action as may be necessary in the public or *clients'* interests and in the interests of the regulatory objectives; and

.e recover from the *BSB authorised body* any reasonable costs that were necessarily incurred in the exercise of its regulatory functions.

.5 The conditions referred to in rS113.4 are that:

.a one or more of the terms of the *BSB authorised body's* authorisation have not been complied with;

.b a person has been appointed receiver or manager of the property of the *BSB authorised body*;

.c a relevant insolvency event has occurred in relation to the *BSB authorised body*;

.d the *Bar Standards Board* has reason to suspect dishonesty on the part of any *manager* or *employee* of the *BSB authorised body* in connection with either that *BSB authorised body's* business or the business of another body of which the person was a manager or employee, or the *practice* or former *practice* of the *manager* or *employee*;

.e the *Bar Standards Board* is satisfied that it is necessary to exercise any of the powers listed in rS113.4 in relation to the *BSB authorised body* to protect the interests of *clients* (or former or potential *clients*) of the *BSB authorised body*.

rC22 – Accepting Instructions

Where you first accept *instructions* to act in a matter:

.1 you must, subject to Rule rC23, confirm in writing acceptance of the *instructions* and the terms and/or basis on which you will be acting, including the basis of charging;

.2 where your instructions are from a *professional client*, the confirmation required by rC22.1 must be sent to the *professional client*;

.3 where your instructions are from a *client*, the confirmation required by rC22.1 must be sent to the *client*

.4 if you are a *BSB authorised body*, you must ensure that the terms under which you accept instructions from *clients* include consent from *clients* to disclose and give control of files to the *Bar Standards Board* or its agent in circumstances where the conditions in rS113.5 are met.

rC64 – Provision of Information to the Bar Standards Board

You must:

.1 promptly provide all such information to the *Bar Standards Board* as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information; and

.2 comply in due time with any decision or sentence imposed by the *Bar Standards Board*, a *Disciplinary Tribunal*, the *Visitors*, an *interim panel*, a *review panel*, an *appeal panel* or a *medical panel*

.3 if you are a *BSB authorised body* or an *owner* or *manager* of a *BSB authorised body* and the conditions outlined in rS113.5 apply, give the *Bar Standards Board* whatever co-operation is necessary, including:

.a complying with a notice sent by the *Bar Standards Board* or its agent to produce or deliver all documents in your possession or under your control in connection with your activities as a *BSB authorised body* (such notice may require such documents to be produced at a time and place fixed by the *Bar Standards Board* or its agent; and

.b complying with a notice from the *Bar Standards Board* or its agent to redirect communications, including post, email, fax and telephones.

rC70 – Access to Premises

You must permit the *Bar Council*, or the *Bar Standards Board*, or any person appointed by them, reasonable access, on request, to inspect:

.1 any premises from which you provide, or are believed to provide, *legal services*; and

.2 any documents or records relating to those premises and your *practice*, or ***BSB authorised body***,

and the *Bar Council*, *Bar Standards Board*, or any person appointed by them, shall be entitled to take copies of such documents or records as may be required by them for the purposes of their functions and, **if you are a *BSB authorised body*, may enter your premises and operate from those premises for the purpose of taking such action as is necessary to protect the interests of clients.**

**Professional Conduct Committee / Professional Conduct Department Enforcement
Annual Report 2013/14**

Status:

1. For noting
2. Public

Executive Summary:

3. Attached is the Annual Report for the Professional Conduct Committee and Professional Conduct Department providing a detailed look at our enforcement work for the year 1 April 2013 to 31 March 2014.
4. The main statistical findings are as follows:
 - a. We received a similar number of external complaints (300) to previous years, but opened significantly fewer internal complaints (108) due in the main to changes in the BSB's approach to CPD and changes in our handling of internal complaints. The caseload of the department decreased accordingly.
 - b. We made 64 new referrals to disciplinary action in 2013/14. We concluded 108 complaints that had been referred to disciplinary action, with findings of professional misconduct made in 91 cases. Nineteen barristers were disbarred in 2013/14.
 - c. We met our KPI target for 2013/14, concluding or referring to disciplinary action 76.7% of cases within our service standards compared with a target of 75%. We are increasing the target to 80% for 2014/15.
 - d. Our survey results showed a general improvement in all areas. The biggest improvements were in "Accessibility" – particularly on whether or not our procedures for handling complaints were made clear – and "Transparency and openness" – where the proportion of complainants that felt that our enforcement process is not open and fair improved by 14 percentage points. There is still room for improvement though and this is reflected in the action points based on the findings of this report.

Recommendations

5. There are no specific recommendations but the Board should note the conclusions set out at page 35 of the report and the action points set out at page 36 and below:

Action points

6. Based on the findings of this report the PCD intends to carry out the following actions during the course of the next twelve months:
 - a. Commissioning qualitative research into the experiences of barristers and complainants. This will enable us to take an evidence based approach to making improvements to the way in which we communicate with the parties to complaints [by October 2015];

- b. Amending the aspects which we use to record the nature of the complaints we receive. This will ensure that they properly reflect the terminology used in the BSB Handbook [by October 2014];
- c. Overhauling the Enforcement section of the BSB website to ensure that information on our procedures can be found quickly and easily [by March 2015];
- d. Ensuring that leaflets are sent to all barristers and complainants with our first communications [already implemented];
- e. Continuing our KPI monitoring programme, exploring areas where we can eliminate delays in the enforcement processes. This will include a review of the Disciplinary Tribunal service standards [ongoing – review of the Disciplinary Tribunal service standards will be carried out in conjunction with the review of the regulations which is due to be completed by October 2015].

Background

- 7. The Professional Conduct Committee and Department produce an Annual Report to provide the Board and the public with a detailed view of our enforcement work. This includes trends in our caseload, the disciplinary action we took and our performance throughout the year.

Comment

- 8. Not applicable.

Resource implications

- 9. There are no new resource implications associated with this report. The commitment to carry out further research into our User Feedback Survey results was made 12 months ago following the previous report. The project to overhaul the Enforcement section of the BSB website has already commenced. All other action points will be address internally by the Professional Conduct Department.

Equality Impact Assessment

- 10. Not applicable

Risk implications

- 11. Not applicable

Impacts on other teams / departments or projects

- 12. Not applicable

Consultation

- 13. Not applicable

Regulatory objectives

14. Monitoring and reporting on our enforcement work assists with ensuring the regulatory objectives of protecting and promoting the public interest and the interests of consumers are met.

Publicity

15. The report will be published on the BSB's website.

Annexes

16. The full report is Annex 1 to this paper.

Lead responsibility:

Sara Jagger
Director of Professional Conduct

Simon Lofthouse QC
Chair of the Professional Conduct Committee

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Enforcement

Annual Report 2013/14

Professional Conduct Committee
Professional Conduct Department

Table of Contents

Introduction.....	3	Information provided to the public.....	33
Data sources	3	Projects	33
Our approach to cases	3	Conclusions and action points	35
Enforcement structure	4	Action points.....	36
Casework.....	6	Looking forward.....	37
New external complaints	6	Entity regulation.....	37
New internal complaints	8	CPD numbers.....	37
Caseload	9	Disciplinary Tribunal Regulations review	37
Enforcement outcomes.....	10	User feedback online.....	37
Referrals to disciplinary action.....	10	Mechanisms for enforcing disciplinary fines	37
Decisions to close	11	37
Comebacks and reconsiderations.....	12		
Disciplinary action outcomes	12		
Sentences	14		
Charges upheld.....	14		
Appeals	15		
Legal action.....	15		
Compliance and revenue arising from the			
enforcement system	16		
Performance.....	18		
Timeliness.....	18		
Accessibility.....	25		
Staff Performance	27		
Transparency and openness	28		
Checks and Balances.....	29		
Quality of Service	31		
Other work streams	32		
Bankruptcies/Individual voluntary			
arrangements (IVA)	32		
Disciplinary history checks	32		
Fitness to Practise.....	32		
Interim Suspension.....	33		

Introduction

- 1.1 The Bar Standards Board publishes a Handbook that barristers must keep to, and will consider taking action where there is evidence that the Handbook has been breached. The work of enforcing the Handbook is carried out by the Professional Conduct Committee and Professional Conduct Department of the BSB. We investigate complaints and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 1.2 This report takes a detailed look at our enforcement work for the year 1 April 2013 to 31 March 2014. In this report we focus on the key trends in the new complaints that we received or raised, the caseload that we worked on throughout the year and the outcomes of this work. We then go on to analyse our performance over the year, both in terms of the time we took to progress cases and also in areas such as the accessibility of our service, staff performance in handling complaints and the openness and transparency of our enforcement system.
- 1.3 In January 2014, the 8th edition of the Bar's Code of Conduct was replaced with the BSB Handbook (see "Our approach to cases"). While the majority of complaints opened during 2013/14 related to potential breaches of the 8th edition Code, we opened 24 cases under the Handbook. Where the change in Code has made a difference to the statistics or our handling of complaints, this is highlighted in the report.
- 1.4 In addition to the information contained in this report, all of the key supporting raw data is published in an accompanying Statistical Report for 2013/14.

Data sources

- 1.5 We maintain electronic records on our Enforcement Database of all of the cases we

open. This allows us to report on the types of complaints we receive, the outcomes of our investigations and disciplinary action, and performance information in relation to the progression of complaints.

- 1.6 To gain further insight into our handling of complaints, we also carry out a User Feedback Survey. Upon the conclusion of cases, all complainants and barristers are sent a questionnaire and asked to provide feedback on how we did and how we can do better. We sent out 554 questionnaires in 2013/14 covering cases concluded between January and December 2013 and received 199 responses.

Our approach to cases

- 1.7 We spent the autumn of 2013 taking steps towards adopting a fully outcomes-focused, risk-based approach to our enforcement activities. This work came to fruition in January 2014 when the BSB Handbook came into force.
- 1.8 Part 2 of the Handbook sets out the Code of Conduct for barristers and the outcomes the provisions of the Code are intended to achieve – such as "*oC2 The proper administration of justice is served*". The Handbook also sets out our Enforcement Regulations (Part 5) which outline what will happen when a barrister's conduct has an adverse effect on an outcome.
- 1.9 In addition to our existing powers to dismiss complaints, take no further action or refer a case for disciplinary action, the Handbook now gives us the options to:
 - Impose administrative sanctions for all breaches of the Code, whereby we determine that a barrister's conduct did constitute a breach of the Handbook but that a written warning or fine would be more appropriate than taking disciplinary action (and would be sufficient in the public interest).

- Refer any complaint or information to the Supervision Team, where we consider that there are wider concerns about a barrister’s individual practice (such as that they have fallen behind with their CPD obligations) that would warrant supervisory intervention. The purpose of such a referral is to mitigate the risk of further non-compliance with the Handbook.

These new powers ensure that we have the options to allow us to take the most appropriate and proportionate action given the individual circumstances of each case.

- 1.10 Our Enforcement Strategy¹ sets out our approach to taking enforcement action, underpinned by the provisions of Part 5 of the Handbook. We take a risk-based approach to enforcement – focusing on those issues which present the greatest risk to the regulatory objectives set out in the Legal Services Act 2007. When we first receive a complaint or information that may lead us to raise a complaint², our first step is to assess whether there is any evidence of a breach of the Handbook and whether there is a risk to consumers of legal services and the public. This enables us to make a decision on whether or not to carry out a formal investigation.
- 1.11 Where we investigate a complaint, we will write to the barrister and any other people who can provide information on the complaint, asking for comments and relevant documents. Once we have all the information we need we will assess whether there is sufficient evidence that the barrister has failed to comply with the Handbook. Where there is, we will decide the appropriate action to take. This could include the imposition of an administrative sanction

in the form of a written warning or a fine of up to £1,000³, or, for more serious matters amounting to professional misconduct, disciplinary action.

- 1.12 If we decide that disciplinary action is appropriate we will either refer the case to the Determination by Consent procedure (paragraph 2.26) or refer the complaint, or parts of it, to an independent Disciplinary Tribunal.

How do we assess risk?

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

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

Enforcement structure

Professional Conduct Committee

- 1.13 The Professional Conduct Committee (PCC) has the full delegated authority of the Bar Standards Board to take decisions on complaints. It has the power to refer complaints to disciplinary action, impose administrative sanctions and resolve complaints with the Determination by Consent procedure⁴. The Committee – split into two teams – meets every three weeks to make decisions on cases.
- 1.14 The Professional Conduct Committee is the largest of the BSB’s Committees, although

¹ Our Enforcement Strategy is published on the BSB website on the Complaints and Professional Conduct page.

² Under the Enforcement Regulations we can consider complaints made by persons other than the Bar Standards Board and also raise complaints on behalf of the Bar Standards Board.

³ From January 2014 when the Handbook came into force. Prior to this, administrative sanctions under paragraph 901.1 of the 8th edition of the Code of Conduct were fixed at £300.

⁴ The full powers of the Committee are detailed in Part 5 of the BSB Handbook.

the number of members in 2013/14 decreased from 55 at the start of the year to 46 at the end. This brought us closer to having parity between the number of barrister (24) and lay members (22). While at present the Committee Terms of Reference require a minimum of 10 barristers to be members, in practice we aim to keep the numbers higher than this to enable the work of the Committee – such as giving advice on cases and preparing cases for Committee meetings – to be carried out expeditiously.

- 1.15 Six new members⁵ joined the Professional Conduct Committee in 2013/14. New members are mentored by existing members of the Committee and attend a Disciplinary Tribunal and a Chambers visit as part of their training.

Professional Conduct Department

- 1.16 The Professional Conduct Department (PCD) works under the authority of the Professional Conduct Committee. The staff of the PCD assess and investigate complaints and, where appropriate, assist the PCC in taking action against barristers who have breached the BSB Handbook. The staff also take a lead on drafting policies, managing enforcement projects and the day-to-day work of supporting the Committee and keeping the enforcement system operating efficiently and fairly.

Prosecutors

- 1.17 When we decide to refer a case to a Disciplinary Tribunal on charges of professional misconduct, it is the BSB's role to bring charges against the barrister before an independent panel convened by the Bar Tribunal and Adjudication Service (BTAS). We rely on a panel of barristers working on a pro-bono basis to represent us at the Tribunals. The panel currently consists of 57 barristers, one of whom will be instructed immediately after a referral to disciplinary action is made and will remain with the case through to the Tribunal.

Our aims and objectives

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 action is taken against barristers who breach the BSB Handbook; and
- Be open, fair, transparent and accessible.

⁵ Two barrister members and four lay members

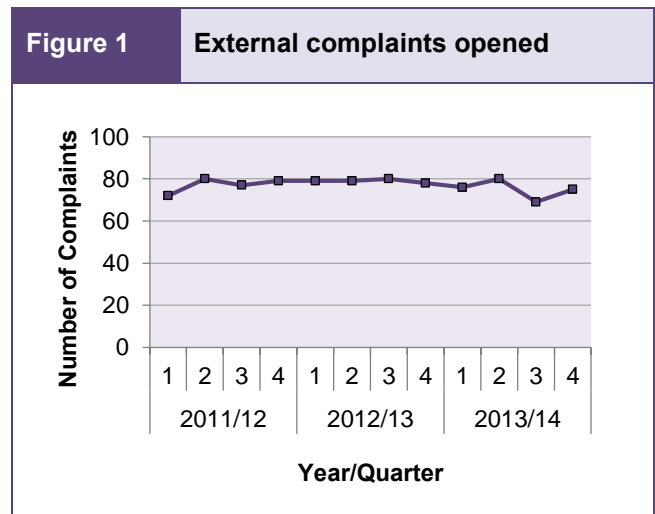
Casework

- 2.1 We opened a total of 408 complaints in 2013/14. As Table 1 illustrates, this represents a 17% decrease compared with the previous year. There was no difference in the number of complaints being made to the BSB (the “external” complaints); rather the decrease was in the number of internal complaints we raised on behalf of the BSB. This was anticipated due to changes introduced in 2013 in the way in which the BSB handles CPD requirements and potential breaches of the Handbook. Our caseload fell throughout the year: we had 426 complaints ongoing at the start of the year and 334 complaints ongoing at the close.

New external complaints

- 2.2 We receive complaints from clients of barristers (via the Legal Ombudsman), members of the public, solicitors or other professionals and organisations. We refer to these as external complaints, treating the person who made the complaint as the “complainant” and keeping them informed throughout the lifecycle of the case.
- 2.3 In 2013/14 we received 300 complaints from external sources. This was a similar total to the previous two years. Indeed, since the

Legal Ombudsman opened in October 2010, we have received 70-80 cases per quarter every quarter, as Figure 1 illustrates.



- 2.4 We have seen little variation in the nature of the complaints we have received across the past two to three years. In common with previous years, civil litigants were the source of the highest number of individual complaints (31% of external cases), followed by family and criminal law litigants. By far the most common allegations were of discreditable or dishonest conduct on the part of the barrister (50% of cases) – something of a “catch-all” for general conduct unbecoming of a barrister – followed by allegations of misleading the court (33% of cases)⁶.

Table 1 Complaints opened – annual comparison 2009/10 to 2013/14

Complaint Source	2009/10	2010/11	2011/12	2012/13	2013/14
External	408	295	308	316	300
Internal	143	171	320	175	108
Total	551	466	628	491	408

⁶ It should be made clear that in 2013/14 only 6% 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. Of the 98 cases featuring allegations of misleading the court, only two were made by barristers, solicitors or judges who were witness to the events. In a similar pattern to previous years, litigants in person were the primary source of complaints that a barrister had misled the court (63% of cases from litigants in person). A PCD thematic review in 2012 revealed that litigants in person frequently misunderstand the role of the barrister and their duties to the court and their client in legal proceedings. This results in complaints of “misleading” the court when there is no evidence that the Handbook has been breached.

- 2.5 Allegations of discreditable or dishonest conduct covered a wide range of subjects in 2013/14 from conduct in the handling of cases to conduct outside of barristers’ professional lives. Analysis of a sample of complaints shows that the most common allegations were of “failing to disclose information” (14%), “failing to properly advise/misleading their client” (14%) and dishonesty (10%). However, the precise nature of the allegations were usually unique to each case. Often complainants had multiple concerns grouped under the same complaint and in 26% of cases complaints of discreditable conduct were made together with allegations of misleading the court. However, as paragraph 2.20 indicates, in the majority of cases allegations of discreditable or dishonest conduct were not supported by any evidence or, such as in allegations of “failing to assist the court”, confused a barrister’s responsibilities to their client with discreditable conduct.
- 2.6 The 8th edition of the Code of Conduct explicitly stated at paragraph 301 that a barrister must not engage in conduct which is dishonest or otherwise discreditable to a

barrister. The BSB Handbook takes a different approach, instead referring to a barrister’s honesty, integrity and independence. We will therefore be moving away from the definition of discreditable conduct by setting up new aspects for complaints to ensure that our reports in future reflect the Handbook as accurately as possible.

- 2.7 Last year we reported on a threefold increase in allegations of discrimination. This year we received fewer complaints (19) but still significantly more than we were receiving historically. As with last year, race (8) and disability (7) discrimination made up the bulk of the allegations. 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. As with last year though, in many cases the allegations were unsubstantiated or unclear (even after we had attempted to solicit further information). We cannot consider taking disciplinary action against a barrister in those circumstances and so, to date, we have closed 13 of the 19

External complaint statistics in 2013/14																															
Total complaints received	300	Average complaints received per quarter	75																												
Complaints received from litigants in person	56	Referrals from the Legal Ombudsman	32																												
Complaint categories <table border="1"> <caption>Complaint Categories Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Other Categories</td> <td>30%</td> </tr> <tr> <td>Civil Litigants</td> <td>31%</td> </tr> <tr> <td>Family Law Litigants</td> <td>13%</td> </tr> <tr> <td>Criminal Proceedings</td> <td>11%</td> </tr> <tr> <td>Barristers/Solicitors/Judges</td> <td>15%</td> </tr> </tbody> </table>		Category	Percentage	Other Categories	30%	Civil Litigants	31%	Family Law Litigants	13%	Criminal Proceedings	11%	Barristers/Solicitors/Judges	15%	Complaint aspects <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Discreditable/dishonest conduct</td> <td>151</td> </tr> <tr> <td>Misleading the Court</td> <td>98</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>25</td> </tr> <tr> <td>Discrimination</td> <td>19</td> </tr> <tr> <td>Rudeness/misbehaviour in Court</td> <td>13</td> </tr> <tr> <td>Failure to co-operate with LeO</td> <td>10</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Discreditable/dishonest conduct	151	Misleading the Court	98	Rudeness/misbehaviour out of Court	25	Discrimination	19	Rudeness/misbehaviour in Court	13	Failure to co-operate with LeO	10	...	
Category	Percentage																														
Other Categories	30%																														
Civil Litigants	31%																														
Family Law Litigants	13%																														
Criminal Proceedings	11%																														
Barristers/Solicitors/Judges	15%																														
Aspect	Complaints																														
Discreditable/dishonest conduct	151																														
Misleading the Court	98																														
Rudeness/misbehaviour out of Court	25																														
Discrimination	19																														
Rudeness/misbehaviour in Court	13																														
Failure to co-operate with LeO	10																														
...																															

cases accordingly. One complaint has been referred to a Disciplinary Tribunal and assessments and investigations are ongoing in the other cases.

New internal complaints

- 2.8 In using the term “internal complaints” we are referring to complaints raised where the BSB itself identifies a potential breach of the Handbook. Where the breach is brought to the attention of the PCD direct – via either a barrister’s reporting obligations under the Code or perhaps an external source such as a press report – a risk assessment is completed and a manager of the PCD or an Office Holder of the Committee may authorise the raising of a formal (internal) complaint for investigation. We also receive referrals from other sections of the BSB and the Bar Council such as barristers who have failed to comply with the Authorisation to Practice or CPD requirements for the profession⁷.
- 2.9 We opened a total of 108 internal complaints in 2013/14 for investigation. This figure was

significantly lower than the previous year’s total of 175, primarily due to changes in our CPD regime. In previous years, the BSB required all barristers to submit a record of their CPD and any failures to comply were referred to the PCD for enforcement action. This somewhat heavy handed approach has been replaced by a system of “spot-checks” and supervisory action, which has greatly reduced the need for enforcement action.

- 2.10 In addition, in January 2014 we introduced formal risk assessments prior to opening complaints. If this risk assessment indicates that a barrister’s conduct represents a low risk to consumers and the public we will not raise a formal complaint⁸.
- 2.11 Table 2 shows the types of internal complaints we raised in 2013/14 compared with the previous year. Along with the decrease in CPD cases (and associated failures to pay administrative fines), we also saw a drop in reports of drink driving cases and disciplinary findings by other bodies (such as the Solicitors Regulation Authority). Criminal conviction cases not relating to

Aspect	2012/13	%	2013/14	%
Practising without a practising certificate	44	25%	40	37%
Dishonesty/discreditable conduct	17	10%	15	14%
Criminal conviction(s) - other	15	9%	11	10%
Failure to comply with a sentence of a tribunal/panel	4	2%	8	7%
Failure to pay administrative fine	32	18%	8	7%
HoC failing to administer chambers properly	1	1%	7	6%
Failure to comply with CPD requirements	52	30%	6	6%
...				

⁷ Prior to January 2014, some CPD or Authorisation to Practice cases were dealt with immediately via the imposition of an administrative warning or fine under paragraph 901.1 of the Code. In the first three quarters of 2013/14 we imposed 19 written warnings under our Warnings & Fines system – all in relation to late compliance with the ATP scheme.

⁸ Referrals from other sections of the BSB or Bar Council such as CPD or Authorisation to Practice breaches are only made where there is evidence of a breach of the Handbook and often some attempt at encouraging compliance has been made. These referrals are judged to be at least medium risk and raised as formal complaints.

drink drive offences remained at a higher level and were the third most common type of internal complaint. However, these did include five linked cases against a single barrister. Criminal convictions ultimately led to six disbarments during the year (see paragraph 2.34).

New ways of working: Serious Misconduct

The BSB Handbook, launched in January 2014, introduced new requirements on barristers to report promptly to the BSB when they have committed serious misconduct (rC65.7) and when they believe that there has been serious misconduct by a barrister or a registered European lawyer (rC66). We began receiving these reports in the fourth quarter of 2013/14 and will report on the numbers in subsequent BSB Enforcement Reports. A definition of what might constitute serious misconduct can be found in the BSB Handbook at gC96.

Caseload

2.12 Over the past two years we have observed a gradual decrease in the number of individual complaints that we have ongoing within the department. Figure 2 illustrates the trend over the last three years and shows that in 2013/14 we went from having 426 active cases in the first quarter to 334 in the fourth

quarter. There has been little change in the numbers of external complaints, rather the pattern comes from the fact that the numbers of internal complaints that we have been raising has been falling.

2.13 The impact of this decrease in our caseload is two-fold: on the one hand it frees up resources within the PCD – an important factor now that we have the added task of carrying out formal risk assessments. But on the other hand, with fewer new complaints being raised, the internal complaints that we do close tend to be the older, more difficult cases – which inevitably impacts on our performance. This will settle down as we approach a new baseline for the numbers of internal complaints we will be working on.

Figure 2 Active cases within the PCD

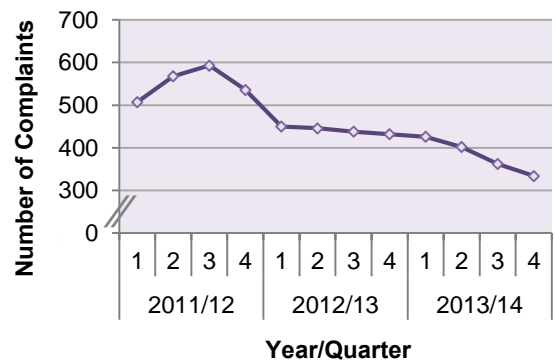
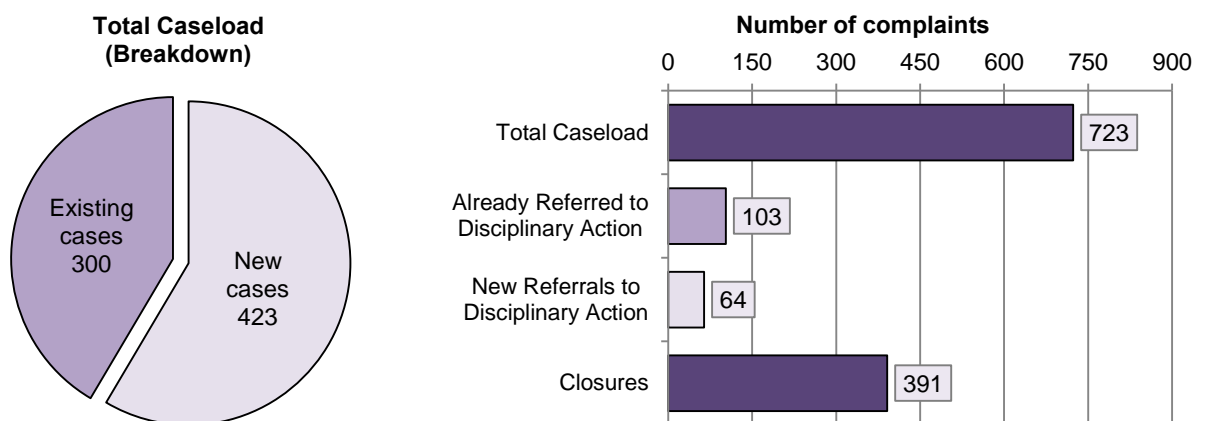


Figure 3 Our 2013/14 caseload and how we progressed it



Enforcement outcomes

- 2.14 We started the year with 197 cases at our assessment and investigation stages⁹ and opened (or reopened) a further 423 cases during the year. We came to a decision on 73% of these 620 cases, as illustrated by Table 3.

Outcome	#	%
Closed without investigation	239	53%
Closed after investigation	152	33%
Referred to disciplinary action	64	14%

- 2.15 PCD staff took 58% of decisions – including 30% of decisions to refer cases to disciplinary action – whereas the Committee took 34% (including 8% made by individual members of the Committee¹¹). The remainder of cases were either withdrawn or referred to the barristers' Chambers for consideration.

- 2.16 In addition we concluded 108 of the cases that had been referred to disciplinary action, bringing the total number of closures for the year to 499.

Referrals to disciplinary action

- 2.17 Following investigation of a complaint, either the Professional Conduct Committee or the staff of the PCD will make a decision as to whether or not enforcement action should be taken, either by means of an administrative sanction or a referral to disciplinary action. In line with our Enforcement Strategy since January 2014, the decision will be based on, amongst other factors: the risk posed to, or the impact on, one or more of the regulatory objectives¹²; whether any of the outcomes in the BSB Handbook have been adversely affected and whether there is a realistic prospect of a finding of professional misconduct being made.
- 2.18 Of the complaints we referred to disciplinary action in 2013/14, 28% were made under the new Enforcement Strategy and 72% under the Complaints Rules which were in force up to January 2014. Under the Complaints Rules, the decision was based on whether there was a realistic prospect of a finding of

119	The number of cases on which the PCC took a decision on whether or not to refer for disciplinary action	17	The number of findings of professional conduct made by the PCC under the Determination by Consent procedure
109	The number of cases on which members of the PCC gave expert advice to the PCD	49	The number of Committee members (past and present) who took on case work – either giving advice or preparing cases for Committee meetings
38	The number of cases on which Experienced Members of the PCC took a decision ¹⁰		

⁹ Also 103 cases that had already been referred to disciplinary action (88 at Disciplinary Tribunals and 15 at Determination by Consent)

¹⁰ Experienced Members of the PCC are authorised by the PCC to dismiss complaints and at the same time give advice to the barristers as to their future conduct. In circumstances where advice may need to be given to a barrister, cases will usually be referred to Experienced Members – one barrister and one lay – for a decision.

¹¹ Both Office Holders and Experienced Members of the PCC are authorised by the PCC to make decisions on cases outside of Committee meetings.

¹² As set out in Part 1 of the Legal Services Act 2007.

professional misconduct being made and whether the regulatory objectives would be best served by pursuing disciplinary action.

- 2.19 Over the course of 2013/14, we referred 49 cases to Disciplinary Tribunals and a further 15 cases to the Determination by Consent (DBC) procedure. In total this equalled 30% of our post-investigation decisions; slightly lower than the 35% figure from 2012/13. The percentage of complaints that we refer to disciplinary action is usually governed by the types of case within our system. In 2013/14 we had an unusually low number of criminal conviction complaints under investigation – cases which are highly likely to result in a referral for disciplinary action – which in turn led to a lower overall referral rate than the previous year.

Decisions to close

- 2.20 In total we closed 391 complaints without making a referral to disciplinary action during the year. Table 4 illustrates the differences in the decisions we made for external and internal cases. The patterns are similar to previous years: complaints from external sources are more likely to be unsubstantiated or do not disclose a breach and therefore not apt for investigation compared with internal complaints, which are only raised where we have some evidence of

a breach of the Handbook. Even so, 69% of internal complaints were closed without a referral to disciplinary action.

- 2.21 Of the 96 internal complaints closed without referral to disciplinary action, 59 (62%) were closed by members of PCD staff. This indicates that a high proportion of the cases originally raised by PCD staff members were also closed by PCD staff members. Analysis of the cases reveals that 49% related to practising certificate breaches and 20% related to CPD breaches. This goes some way to explaining the relatively high dismissal rate: these cases are always opened to allow us to establish the facts behind the breach but the individual circumstances often mean that disciplinary action is not a proportionate course of action.

New ways of working: Risk

In the fourth quarter of 2013/14 we began formally assessing all cases for risk. We assessed 69 cases in the fourth quarter.

In 41 external cases we found no evidence of a breach and cases were dismissed accordingly. The remaining 28 cases were assessed as follows:

- *High risk: 39%*
- *Medium risk: 29%*
- *Low risk: 32%*

Table 4		External and internal complaint outcomes			
External:		Internal:			
Outcome	#	%	Outcome	#	%
Closed without investigation	225	71%	Closed without investigation	14	10%
Closed after investigation	70	22%	Closed after investigation	82	59%
Referred to disciplinary action	21	7%	Referred to disciplinary action	43	31%

2.22 Despite the decision not to refer these complaints to disciplinary action, in some cases¹³ there was evidence of a breach of the Handbook or conduct requiring action other than a full dismissal. In six cases we issued administrative fines and in a further four cases we issued warnings to the barristers subject to the complaints¹⁴. We gave advice as to their future conduct to the barristers in a further 37 cases.

Comebacks and reconsiderations

- 2.23 Under our “comebacks” policy, if a complainant disagrees with a PCD or PCC decision to close a complaint – either before or after investigation – without a referral for enforcement action, they can ask us to review the decision and submit further evidence if it has come to light. Of the 295 external complaints we closed without a referral, to date we have received comebacks in relation to 43 complaints (15%). This proportion is typical of previous years.
- 2.24 After reviewing the complaints, the original decision was overturned in four cases. In three cases, the original decision not to investigate was reviewed by a PCD manager, an Office Holder of the Committee or, in one case, the full Committee and a decision was taken that an investigation should take place. In the remaining case, new evidence was provided which warranted further investigation. One case was then subsequently withdrawn by the complainant and two went on to be closed without referral for enforcement action for a second time; one case is ongoing.
- 2.25 A further eight cases were reopened during the year: two of which were complainants unhappy with the outcome of cases that we

had originally referred to Chambers for resolution.¹⁵

New ways of working: Supervision

Since January 2014 we have been able to refer complaints and information to the Supervision Team of the BSB (see “Our approach to cases”). While our first formal referrals of complaints to Supervision took place after the timeframe of this report, we did begin the referral of information in the fourth quarter of 2013/14.

Information from five enforcement complaints was referred to Supervision during the fourth quarter; predominantly concerning the administration of Chambers. We will report on the proportion of complaints which we refer to Supervision in future BSB Enforcement Reports.

Disciplinary action outcomes

Determination by Consent

- 2.26 A total of 19 cases were closed after referrals to the Determination by Consent procedure. This is a procedure by which the Professional Conduct Committee can, with the barrister’s agreement, make a finding of professional misconduct. In 17 cases the Committee found the barrister guilty of professional misconduct – in all cases after the barrister had admitted the conduct – and appropriate sanctions were imposed and accepted by the barrister.
- 2.27 The remaining two cases were closed by the Committee without a finding: one was withdrawn on medical grounds and one dismissed with advice following the receipt of further information. In both cases it was deemed disproportionate to continue with disciplinary proceedings in the circumstances.

¹³ 31 internal cases and 16 external cases

¹⁴ These fines and warnings were issued under 901.1 of the 8th Edition of the Code of Conduct. We did not issue any administrative sanctions under the BSB Handbook during the 2013/14 year

¹⁵ The remaining six cases were: three cases where the complainants reconsidered their decision to withdraw their case or withhold information; two cases where the barrister had asked for a reconsideration of the decision against them and one instance of resuming a case against a barrister returning to practice.

Disciplinary Tribunals

- 2.28 Where we have made a decision to refer a complaint to a Disciplinary Tribunal, the case is heard before an independent Disciplinary Tribunal convened by the Bar Tribunal and Adjudication Service (BTAS) with the BSB acting as prosecutor.
- 2.29 A total of 89 cases were concluded at the Disciplinary Tribunal stage in 2013/14: 78 at hearings¹⁶ and a further 11 cases which were withdrawn prior to a Tribunal hearing taking place. In five cases we reconsidered the cases before we served charges on the defendants¹⁷. The remaining six cases were concluded at the directions stage.

Directions

- 2.30 Six of the cases that we referred to Disciplinary Tribunals ended at the directions stage and did not proceed to a Tribunal. One case was struck out. In the remaining five cases we chose to “offer no evidence” –

effectively withdrawing the cases without contest. In three of the five cases, the barristers were subject to simultaneous proceedings and were suspended or disbarred by other Tribunals. The remaining two cases were reconsidered by the Committee following the receipt of new evidence (1) and advice from the prosecutors involved as to the prospects of success (1).

Tribunal Hearings

- 2.31 In 74 cases (95% of cases that were heard before a Disciplinary Tribunal panel), one or more charges against the barrister were upheld. This compares with 82% of cases at hearings in 2012/13. We “offered no evidence” in all four of the cases that were not upheld at hearings¹⁸. This means that every case that we actively prosecuted at Tribunals in 2013/14 was upheld.

Case study:

The husband of one of the defendants in a civil proceedings case complained to the BSB about the opposing barrister's conduct and behaviour during the hearing. The complainant argued that the barrister was representing a fraudster and receiving wages from a 'sham charity'; that the barrister was ill-prepared for the hearing; and that the barrister had been rude to him.

The Assessment Team carried out a preliminary risk assessment on receipt of the complaint. No evidence was found to substantiate the first two of the complainant's three allegations and the risk level in relation to the rudeness allegation was assessed as low. As the complaint presented no significant risk to the regulatory objectives, the decision was taken not to investigate further and the complaint was dismissed.

In the dismissal letter, the BSB drew to the attention of the complainant rule rC29 of the BSB Handbook, also known as the 'Cab-Rank Rule', which states that a barrister must accept instructions from a professional client, irrespective of the identity of the client or nature of the case, if the instructions are appropriate taking into account the experience, seniority and field of practice of that barrister. In this case it was found that the barrister had rightly accepted the instructions from his client in line with the Cab-rank rule.

¹⁶ Technically the charges in one of the 78 cases were dismissed in advance of the hearing. An earlier hearing had been adjourned as the court judgement central to the case had been set aside. The BSB subsequently offered no evidence.

¹⁷ In two cases the barristers took remedial action making further disciplinary action disproportionate, in two cases we reconsidered due to the ill health and personal circumstances of the barristers involved and in one case the prosecutor assigned to the case advised us not to proceed on the grounds that we would not be able to prove the charges to the criminal standard

¹⁸ In three cases we received new evidence – in one case on the day of the hearing – that led us to reconsider. In the fourth case (which had been on hold for over two years on the grounds of ill health) we found that evidence on which we relied was no longer available. This was a learning point for us and we now ensure that, even if a case is adjourned, we seek to obtain as early as possible any documentary evidence that we may require in future.

- 2.32 From our survey results: 67% of complainants and 88% of barristers felt that the outcome of the hearing was fair.

BTAS

The Bar Tribunals and Adjudication Service was established by the Council of the Inns of Court in the wake of a number of well publicised issues with the appointment of Disciplinary Tribunal and Appeal panels between 2005 and 2012. BTAS appoint and administer Disciplinary Tribunal, Interim Suspension and Fitness to Practice panels, safeguarding the independence of the panels within the enforcement system.

Sentences

- 2.33 In total, 91 cases¹⁹ were upheld in 2013/14 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. Table 5 illustrates the sanctions that were imposed during the year.
- 2.34 The most severe sanction available is disbarment and nineteen barristers were disbarred in 2013/14, compared with eleven in the previous year. These were the most serious cases and included charges relating

to criminal convictions, dishonesty and disciplinary findings by other professional bodies.

- 2.35 This year also saw the first occasion where we appealed the decision of a Disciplinary Tribunal. In a case of dishonesty the Tribunal panel took various mitigating factors into account and, unusually, suspended the barrister from practice rather than disbarring him. After being provided with new evidence, we successfully challenged this decision at an appeal before the Visitors to the Inns of Court in January 2014 and the sentence was increased to disbarment.

Charges upheld

- 2.36 All of the charges upheld in 2013/14 related to the 8th Edition of the Code of Conduct as no BSB Handbook cases had progressed to disciplinary action by the end of the year. Table 6 illustrates the most common charges that were upheld during the year.
- 2.37 Charges under paragraph 301(a)(i) of the Code (dishonest or discreditable conduct) were the most common in 2013/14. Findings of discreditable or dishonest conduct were made in 26 cases, 14 (54%) involving criminal convictions and a further 5 cases where barristers were struck off by the

Table 5 Sentences imposed – annual comparison

Sentence	2012/13 (Cases)	%	2013/14 (Cases)	%
Disbarred	13	15%	23	25%
Suspended	8	9%	20	22%
Fined	43	49%	36	40%
Reprimanded	34	39%	27	30%
Advised as to Future Conduct	17	20%	2	2%
Other	15	17%	8	9%

¹⁹ 91 cases is the combined total of cases upheld at Disciplinary Tribunals (74) and cases upheld following the Determination by Consent Procedure (17)

Solicitors Disciplinary Tribunal or another professional body. We also upheld charges including threatening behaviour, harassment and falsifying qualifications under 301(a)(i) of the Code. All findings of professional misconduct are published on the BSB and BTAS websites and include details of the charges and sanctions imposed.

Appeals

2.38 Where findings of professional misconduct are made, barristers have the right to appeal against either the finding or the sentence imposed. Historically appeals have been heard before the Visitors to the Inns of Court (“the Visitors”), but the appeal jurisdiction transferred to the High Court on 7 January 2014 for appeals against the findings of Disciplinary Tribunals taking place after that date. From 18 April 2014, any new appeal against a Disciplinary Tribunal decision must be made to the High Court. Existing appeals that had been made to the Visitors will remain with the Visitors until their conclusion.

2.39 We received 15 appeals against Tribunal decisions in 2013/14: twelve to the Visitors and three to the High Court. These were in addition to the 18 ongoing appeals we had at the start of the year. A total of 14 appeals were concluded: three were allowed, eight were dismissed and three were discontinued. Where appeals were allowed, in two cases the original finding was quashed although no costs were awarded against the BSB; while in one case the severity of the sentence was reduced²⁰.

2.40 At the close of the year we had 19 appeals ongoing: 16 to the Visitors and 3 to the High Court. The appeals with the Visitors will be the last to be heard by the Visitors to the Inns of Court.

Legal action

2.41 Beyond our appeal and comeback procedures, barristers and complainants have the right to challenge decisions or the way we made decisions through the courts. These may take the form of claims against the BSB or judicial reviews.

Charge	Cases	%
301(a)(i) Being dishonest or otherwise discreditable	26	29%
301(a)(iii) Acting in a manner likely to bring the profession into disrepute	16	18%
905(d) Failing to respond promptly to a complaint	15	16%
905(f) Failing to comply with a sentence of a tribunal	10	11%
202(c) Failure to renew practising certificate	8	9%
202(b) Failure to complete CPD	7	8%
901.2 Failing to pay non-disciplinary fine	7	8%
301(a)(ii) Acting in a manner prejudicial to the administration of justice	5	5%
...		

²⁰ Of the findings that were quashed, one case was overturned due to an issue of potential bias with the Tribunal panel appointed by COIC. One of the panel members was also a Bar Council committee member at the time of sitting. The other finding was quashed on the basis that the offence was not serious enough to justify a finding of professional misconduct. The Tribunal had originally thought the case to be borderline but had considered a disciplinary finding to be appropriate.

Judicial Reviews

- 2.42 Judicial reviews are a challenge to the way in which our enforcement decisions have been made – either by the BSB or by an independent Tribunal or Appeal panel.
- 2.43 Judgements in two judicial reviews were handed down in 2013/14. The first of these was important in that it challenged the validity of the Disciplinary Tribunal and Appeal panels appointed by the Council of the Inns of Court. This stems from the well-publicised issues that were uncovered in 2011 with the appointment of panels between 2005 and 2012. The specific issues in these cases concerned panel members who had not been officially reappointed after their initial appointments had expired – the “time expiry” issue highlighted in the Browne Report²¹. Based on a previous appeal judgement, we had argued that while the appointments had technically expired, this issue did not invalidate the decisions of the numerous panels which were affected. At the judicial review hearing in July 2013, the court refused permission on part of the applications of three barristers seeking to challenge the disciplinary findings and dismissed the other parts on their merits.

- 2.44 The second judicial review related to a case where the Visitors observed that the BSB had failed to follow due process when serving evidence during the course of taking disciplinary action. However, the Visitors did not consider this to have had an impact on the outcome of the hearing. After summing up the evidence against the claimant, the Judge reviewing the case at a hearing in July 2013 refused to quash the Visitor’s decision. The original finding stands – subject to an appeal to the Court of Appeal – but this is a learning point for us in our future prosecutions nonetheless.

Compliance and revenue arising from the enforcement system

- 2.45 In 2013/14 we issued administrative fines totalling £3.6K and disciplinary fines were imposed, either by the PCC or a Disciplinary Tribunal, totalling £41.7K. This represented a significant decrease in administrative fines as compared to 2012/13 when a total of £55.8K were issued. The reduction was due to the phasing out of our Warnings & Fines system as a method of dealing with CPD cases. We received payment of administrative fines totalling £11.9K and disciplinary fines totalling £30.7K.

Case study:

A barrister who had failed to renew her Practising Certificate was referred to the Professional Conduct Department by the Bar Council’s Records department because she had failed to respond to a reminder letter.

Barristers are in breach of the Code if they undertake reserved legal activities without a valid practising certificate. Having identified a possible breach of the Code, the Assessment Team opened an internal complaint about the barrister and passed it to the Investigation and Hearings Team for formal investigation.

Further enquiries were made of the barrister who accepted that she had carried out reserved legal activities without a practising certificate. She explained that she had suffered from a serious illness during part of the period in question and, as a result of this, had been unaware that her practising certificate had not been renewed.

Despite there being reasonable prospects of establishing professional misconduct, the PCD took into account the regulatory objectives and decided that it was not in the public interest to take the matter further. However, the barrister was issued with written advice in relation to the breach.

²¹ Council of the Inns of Court (2012): “Final Report From The Council Of The Inns Of Court (COIC) Disciplinary Tribunals And Hearings Review Group”

2.46 Compliance with disciplinary fines is an area that we will be attempting to address in the coming year. Currently we have no powers to reclaim debts, so if a barrister fails to pay a fine, our only recourse is to raise an internal complaint against the barrister for failing to comply with a disciplinary finding. While in many cases this will be the right course of action, in some it is disproportionate. Further, disciplinary proceedings do not provide a means to enforce payment. Thankfully, such events are the exception rather than the rule. Of the fines that were due in 2013/14, 80% of barristers have complied to date, although only 34% of barristers paid by the due date.

Performance

- 3.1 We are committed to providing a high-quality service. In particular, we are committed to:
- Dealing with complaints and disciplinary action as promptly as we can, taking into account the need for a thorough investigation and fairness;
 - Making sure the action we take fits the circumstances of the case and is necessary to protect the public, by acting proportionately and taking an outcome focused and risk based approach to maintaining the standards of the profession;
 - Working in an open way which takes account of the need to protect, as far as possible, the confidentiality of clients, complainants and barristers;
 - Giving clear and well-reasoned explanations for decisions; and
 - Being polite and professional in all our dealings with people.
- 3.2 We make every effort to track our performance, specifically by tracking the timeliness of our casework using our Enforcement Database and by surveying both barristers and complainants with recent experience of our service. In our User

Feedback Survey we ask questions in five key areas: accessibility; staff performance; timeliness and efficiency; transparency and openness; and quality of service.

- 3.3 There are also checks and balances in place in the form of an Independent Observer – whose role is to check that the enforcement system is operating in line with its aims and objectives; and the Quality Review Sub-Committee – a sub-Committee of the PCC tasked with checking the quality of the decision making within the Professional Conduct Department.
- 3.4 The combined approach of database monitoring, surveying and the checks and balances we have in place ensures that we identify both areas where we are performing well and areas where we need to improve.

Timeliness

Key Performance Indicator

- 3.5 One of our main aims is to ensure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. We have three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. We then have an overarching Key Performance Indicator (KPI) which tracks how long it takes us to come to

Table 7 KPI Performance in 2013/14

Indicator	Description	Performance	Target
KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	76.7%	75%
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	73.8%	80%
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	83.3%	70%
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	83.3%	80%

a decision on whether or not to refer complaints for disciplinary action.

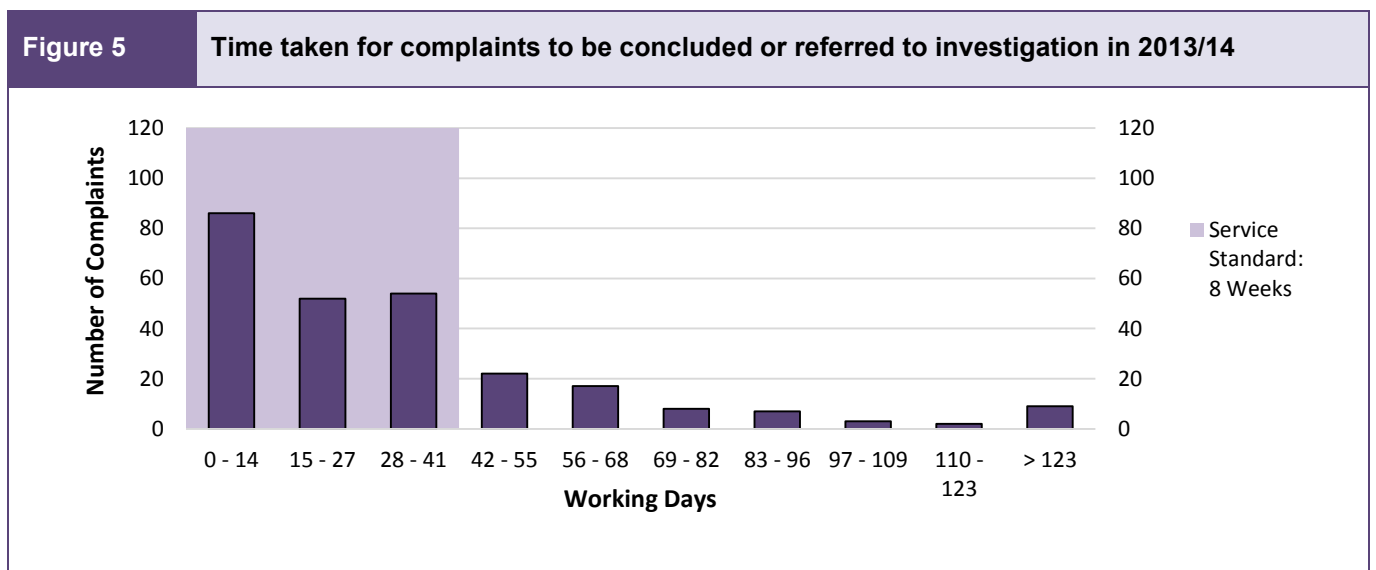
- 3.6 Our Performance Indicators for 2013/14 are set out in Table 7. Our KPI target for the year was to conclude or refer to disciplinary action 75% of cases within our service standards.
- 3.7 We met the KPI target for 2013/14, concluding or referring 76.7% of cases within service standards. This is a considerable improvement compared with the previous year when our equivalent performance was 64%. Only in the third quarter did we dip below the 75% mark – when the lowest quarterly figures for all three operational performance indicators coincided. This was mainly attributable to our work in the third quarter on implementing the new BSB Handbook and a lack of available performance reports while we transitioned from our old database to our new Enforcement database. Our performance bounced back immediately in the next quarter. In order to challenge ourselves to improve, we are increasing our target to 80% for 2014/15.

First OPI: Assessment

- 3.8 When we receive an external complaint, we aim to make a decision as to whether or not to investigate the complaint within eight weeks. We measure how long it takes from

the point at which we receive a complaint until the point at which the complaint is either accepted for investigation or the complainant is provided with the reasons why we do not intend to carry out a formal investigation.

- 3.9 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We either met or were close to this target in all but the third quarter where performance dipped, bringing our overall performance down to 73.8%. The third quarter performance can in part be attributed (as above) to the Handbook project and performance reporting but in that quarter we also closed six cases which took over 100 working days to conclude – all of which had required us to carry out extensive further enquiries – so the conclusions of some of the oldest cases happened to coincide in the third quarter.
- 3.10 Figure 5 illustrates how long each of our assessments took in 2013/14 and shows that a further 8% of cases concluded just outside of the 8 week limit. As we continue to improve our reporting and case monitoring we should be able to improve our performance for cases like those and get our performance above the 80% target on a regular basis. However, there will always be some instances where we need to obtain more information from complainants or other



parties before being able to make a proper assessment and in some cases this will take longer than our service standard allows.

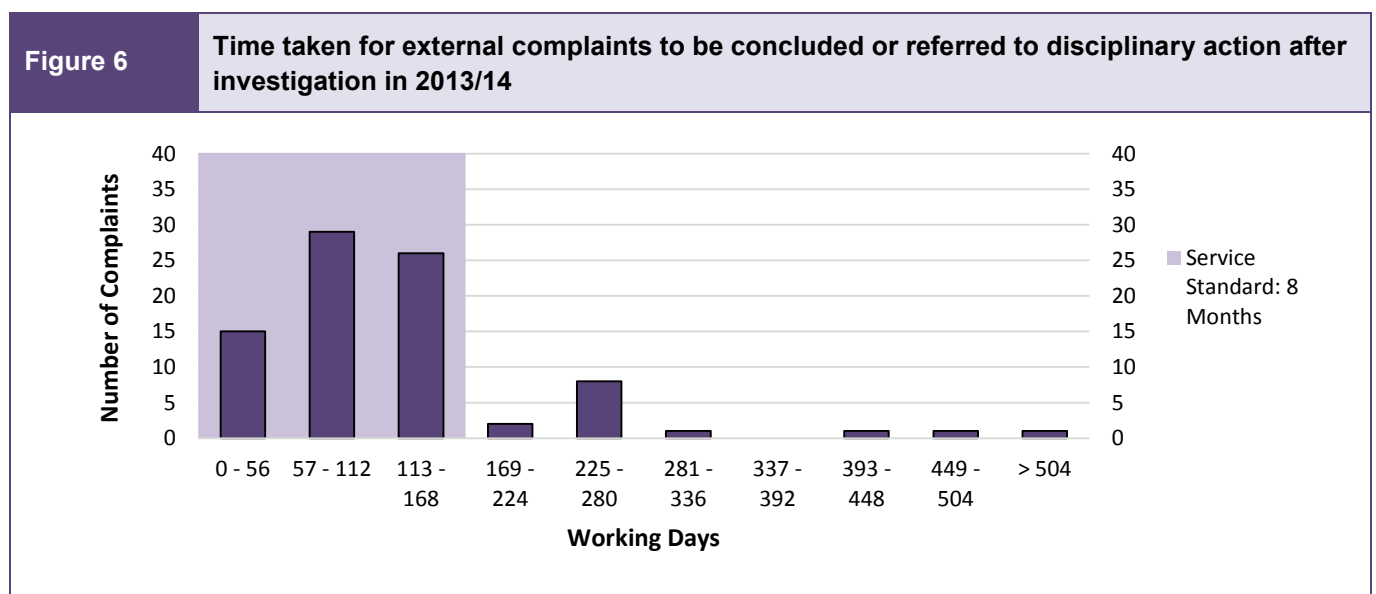
- 3.11 Amongst our outstanding cases at the end of the year, 15% (12) of assessment complaints were outside the eight week mark²². These cases will contribute negatively to future performance figures when we are able to make a decision on them, but the small number of cases shows that there is no significant backlog of work and that this OPI is a true indicator of our performance.

Second OPI: Investigation of external complaints

- 3.12 For external complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within eight months. We measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation. This includes the Professional Conduct Committee stage of the process if the decision was made by the Committee.
- 3.13 Our target for the year was to conclude or refer to disciplinary action 70% of cases

within eight months. We met this target in every quarter and overall concluded or referred 83.3% of cases within eight months. This is a significant increase compared with the previous year where our performance was 53.9%. We are increasing our target to 80% for 2014/15.

- 3.14 Figure 6 illustrates how long each of our external complaint investigations took in 2013/14 and shows that the cases that fell outside of the performance indicator tended to have taken quite significantly longer than eight months to conclude. Half of the cases were affected by our need to seek advice or make further enquiries. While we allow some time for further enquiries within the service standard, on these occasions they took longer than the 25 days allowed. The longest running complaints were three linked cases which suffered because of ongoing litigation which continually delayed our ability to investigate the complaints as well as the need to obtain transcripts and carry out necessary enquiries.
- 3.15 Amongst our outstanding cases at the end of the year, 10% (5) of external investigation complaints were outside the eight month mark. These cases will contribute negatively



²² Three quarters of the cases had involved further enquiries and/or advice which took longer than the 20 days allowed within the eight week service standard. Five of these cases had been sent to us while the litigation at the heart of the complaints was still ongoing.

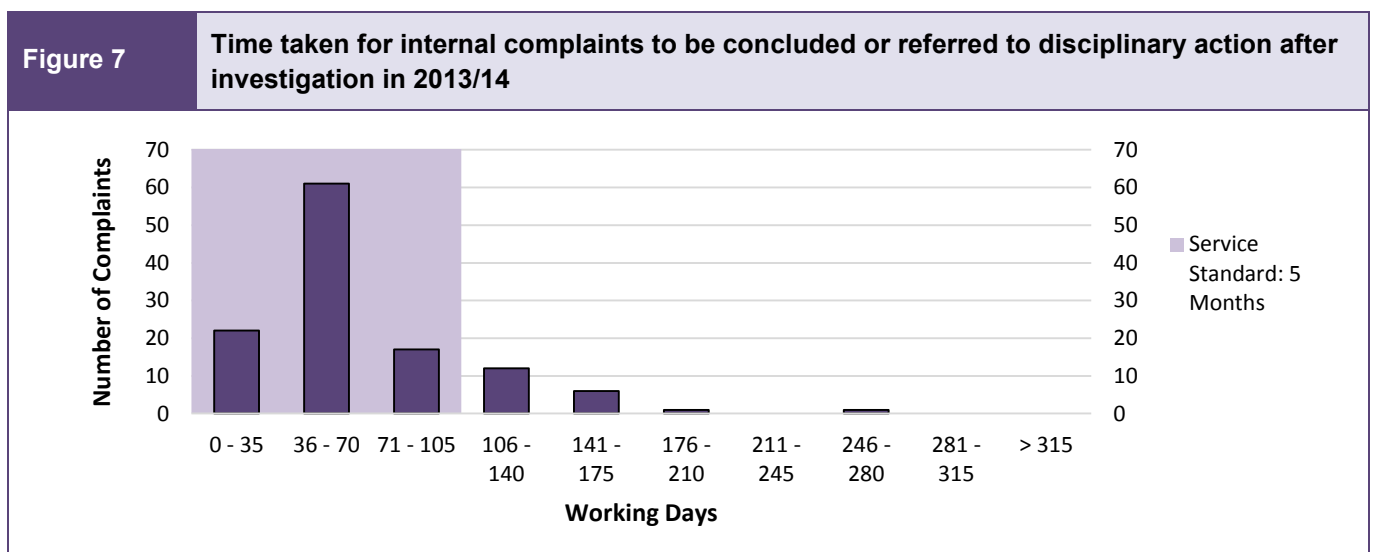
to future performance figures when we are able to make a decision on them, but the small number of cases shows that there is no significant backlog of work and that this OPI is a true indicator of our performance.

Third OPI: Investigation of internal complaints

- 3.16 For internal complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within five months. We reason internal complaints should take less time than external complaints as we do not need to take the time to clarify the complaint and correspond with a complainant. As with external complaints, we measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation.
- 3.17 Our target for the year was to conclude or refer to disciplinary action 80% of cases within five months. We met this target in the first and second quarters but our performance dipped in the second half of the year. Nonetheless, overall we concluded or referred 83.3% of cases within five months.
- 3.18 Figure 7 illustrates how long each of our internal complaint investigations took in 2013/14 and shows that a further 10% of cases were only just outside the five month

period. However, this masks our performance in the second half of the year. We concluded or referred 36 cases in the second half of the year compared with 84 in the first half. Twelve of these cases were outside the KPI. In part this is a consequence of the fact that we were opening considerably fewer internal complaints around that time. This meant that we had very few “young” cases that we could close quickly and therefore the older cases that we were concluding were dominating the statistics. Nonetheless, the fact is that those twelve cases (bringing the total for the year to twenty) were closed outside of five months. Again these cases were characterised by our need to carry out further enquiries to enable us to make an informed and fair decision. These took longer than the 15 days we allow within our five month service standard.

- 3.19 The number of cases (both internal and external) affected by further enquiries taking longer than we anticipate is small, but is indicative of a wider issue of barristers and complainants exceeding our deadlines in responding to our enquiries and providing further information. This is an area we are targeting for improvement in 2014/15.
- 3.20 Amongst our outstanding cases at the end of the year, 31% (11) of internal investigation



complaints were outside the five month mark²³. Inevitably we will have some cases which are complicated or challenged by the barrister or their representatives but, in the past, eleven cases would not have made up such a significant proportion of our caseload. Again, with relatively few new cases being raised, the older internal cases within our system are beginning to stand out. We were able to make a decision on five of the eleven cases within weeks of the end of the year – referring three of the cases to Disciplinary Tribunals.

Stage breakdowns

- 3.21 To gain further insight into where delays are occurring in our day-to-day handling of cases, our system allows us to monitor in detail each stage of the enforcement process. Table 8 sets out how long the stages of our process took compared with our standards.
- 3.22 Where assessment or investigation stages fall outside of the time allowed, the delays tend to come where we are seeking barrister comments or from our carrying out further

enquiries or seeking advice. While we allow time for these to take place, there is a tendency for only half of cases to be completed within the allowed time. We have taken steps in recent years to address the time taken in these areas – such as sending reminders before the deadlines have passed – but, if no response is forthcoming, often we cannot simply carry on with cases without compromising the fairness of the system.

- 3.23 Although the shortest stage of the process, one area where we can improve is in the pre-investigation stage²⁴. Due to the short timeframes involved it is inevitable that in some instances a Case Officer may not be immediately available to review new complaints, but the statistics show that half of cases were delayed at this stage. As the pre-investigation and investigation stages are so closely linked, in most cases in 2013/14 we recovered the time at investigation and the KPI was met. However, by better management of caseloads using the tools available to us on our Enforcement Database we aim to increase our performance in this area and keep

Table 8 Performance at each stage in 2013/14

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
Preliminary Assessment	External	207	41	74%
Pre-Investigation	External	41	8	54%
Investigation	External	59	85	78%
Professional Conduct Committee	External	78	34	37%
Pre-Investigation	Internal	109	3	48%
Investigation	Internal	118	50	74%
Professional Conduct Committee	Internal	35	34	54%

²³ Four of the eleven cases are linked complaints relating to a single Chambers

²⁴ In order to handle high volumes of new complaints as efficiently as possible, the initial assessment of complaints (as described in the section “Our approach to cases”) is carried out by a separate team within the PCD to the investigation of complaints. The pre-investigation stage marks the transition between the two teams: allowing a short timeframe for the allocation of each complaint to a new Case Officer within the Investigations and Hearings Team and a review of the complaint to be carried out. Following review the Case Officer will either formally accept the case for investigation or – less frequently – query the need for an investigation.

complaints moving smoothly through the enforcement process.

3.24 The Committee stage often takes three to four weeks longer than the time allowed, in part due to the need for Case Examiners of the Committee to review files, prepare a Committee note and then be available to present the note to the next Committee meeting all within a tight timescale. In addition, in 16% of cases the Case Examiner required some further information before they could form a recommendation for the Committee. No time is currently allowed for further enquiries at the Committee stage. Fortunately, in 2013/14 any delays at the Committee stage did not have a significant impact on our performance against the KPIs.

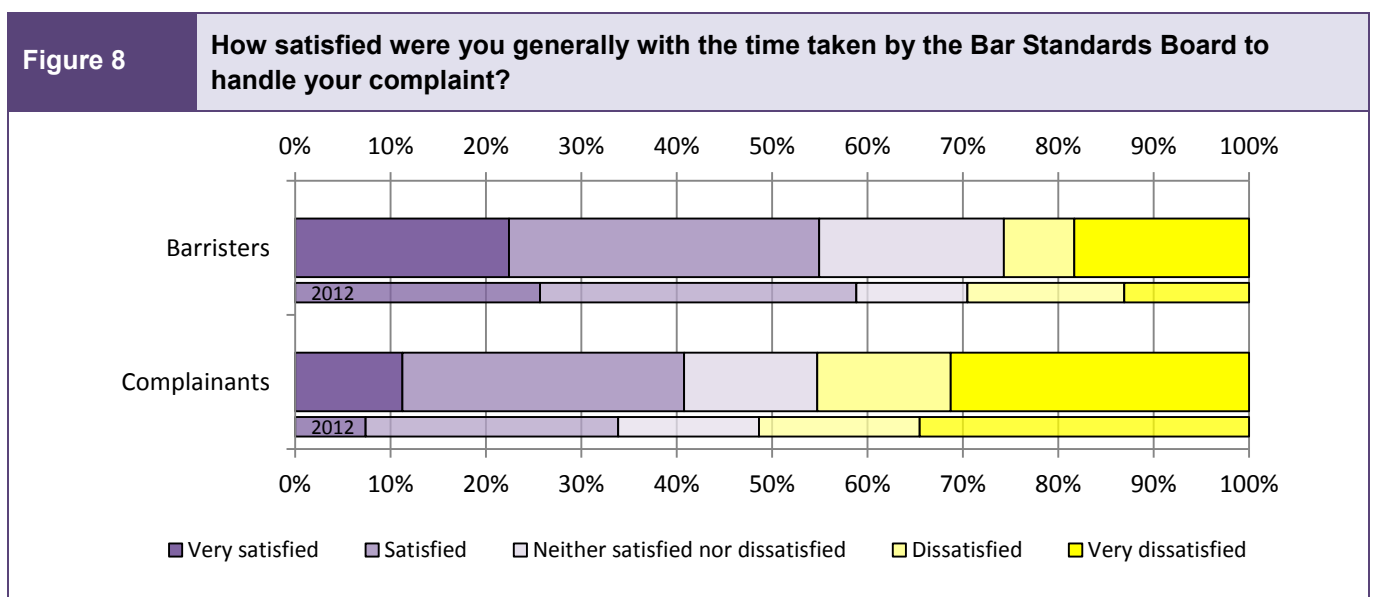
Survey Results

“ At the same time as the complaint against me [was made] to the BSB, a very similar complaint was made against my instructing solicitor to the Solicitors Regulation Authority. This almost identical complaint is nowhere near resolution and in this instance the BSB compares most favourably
 Barrister response #01901

3.25 While we performed well against our performance indicators in 2013/14, we asked barristers and complainants how satisfied

they were generally with the time we took to handle their complaints. Despite our improved performance against the KPI, Figure 8 shows that many complainants were not satisfied – with only 41% responding that they were satisfied or very satisfied. This is, however, an improvement compared with last year’s figure of 34%. Barristers gave more positive ratings than complainants with 55% of barristers responding that they were satisfied and a further 19% had no strong opinion.

3.26 We also asked some specific questions about timeliness which show that, as with previous years, complainants and barristers tend to agree that the time taken to acknowledge their complaint (or notify them of the complaint against them) and the time taken to respond to calls, emails and letters was acceptable. The big issue for both complainants and barristers was the time taken to come to a final decision on their complaint with 25% of barristers and 51% of complainants responding that they were dissatisfied. This points to a more general dissatisfaction with the overall timescale of our enforcement procedure. Detailed analysis shows that this is particularly true for complaints that were investigated but not referred for disciplinary action.



- 3.27 From our survey results it is difficult to know whether the issue is that complainants (and to a lesser extent barristers) are not aware that the process of investigation could take up to eight months – as per our second Operational Performance Indicator – or whether they consider five or eight months to be too long. This is an area where further research would be beneficial. We took considerable care in setting our performance indicators at a realistic level; taking into account all of the relevant factors that impact on our consideration of a complaint. These include the need to operate a fair and transparent system (obtaining responses from both barristers and complainants and keeping all parties updated), the high proportion of cases which require further enquiries to be carried out or require expert advice and the need to refer many cases to the Committee for a decision to be made. While we are committed to making improvements and have demonstrated this in our performance against our KPI in 2013/14, reducing the time it takes us to assess and investigate complaints by any considerable amount would require fundamental changes to our procedures and may not be in keeping with our aims and objectives.
- 3.28 In our survey report last year, we considered that further qualitative research into user experiences should be carried out depending on the results of our 2013/14 survey. Considering timeliness (and other areas to be discussed) remains an issue for both

complainants and barristers, a research project will go ahead.

Disciplinary action service standards

- 3.29 Our KPI provides a measure of the time it takes us to come to a decision on whether to refer a case to disciplinary action. 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 less suitable for setting Key Performance Indicators. Nonetheless, it remains important that we monitor the time taken for the Determination by Consent procedure – which is within our control – and Disciplinary Tribunals and make improvements where possible. Table 9 compares our 2013/14 figures for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.
- 3.30 Determination by Consent cases have generally been completed within the service standard in the past as these are, for the most part, within our direct control and the barristers are engaged with the process. In 2013/14 we completed 60% of cases within our service standard. In two-thirds of the cases that took longer, there were long delays in the barristers agreeing to the charges and facts of the cases which made it impossible to complete the cases within the time limit. While there is potential for us to be more robust in our application of time limits for responses, the DBC process cannot

Table 9 Disciplinary action stages completed within service standards 2013/14

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
Determination by Consent	Internal	15	93	60%
Three-person Disciplinary Tribunal	Internal	21	86	0%
Three-person Disciplinary Tribunal	External	11	166	27%
Five-person Disciplinary Tribunal	Both	45	197	60%

continue without the barristers' involvement. If we have to terminate the DBC process, the alternative is to take cases to a more costly and time consuming Disciplinary Tribunal. So we have to balance our performance against costs, and in some cases it is worth allowing barristers an extension of time to ensure that the DBC process can conclude successfully.

- 3.31 Disciplinary Tribunals in general continue to take longer than our service standards allow. As we have strict timescales governing the service of charges, our analysis shows that most of the time is spent in obtaining the availability of parties – especially difficult where barristers have representation – and in BTAS convening Directions Hearings and Tribunals. The fundamental changes in the numbers and types of internal complaints that we are raising also means that the service standard for three-person Tribunals may no longer be appropriate as that service standard was set on the basis that we could block-book a large number of cases into Tribunals at the same time. We will therefore be carrying out a review of the service standards to ensure they remain robust and realistic. In addition, as a result of the establishment of BTAS, a number of

improvements have been made to streamline the process of convening hearings. We anticipate that the ongoing work of BTAS will also contribute to an improved performance in future reports.

Accessibility

- 3.32 We aim to make it as easy as possible for someone to make a complaint to the Bar Standards Board. We also aim to ensure that barristers are able to access everything they need when they are facing a complaint against them. Our approach is to try to ensure everyone knows how our enforcement system works, thereby allowing complaints to be progressed efficiently and managing expectations.
- 3.33 We asked our survey respondents a number of questions about how they obtained information about the BSB and their experience of making a complaint.
- 3.34 We asked complainants where they first heard about the BSB's enforcement procedure. While almost a third of respondents told us that the internet was where they first heard about us, there remained quite a spread of different sources. The most important thing is that potential

Case study:

A complaint, made by a defendant against a barrister acting for a close family member in a property dispute, was investigated by the Professional Conduct Department.

Following investigation, the Investigation and Hearings Team was satisfied that sufficient evidence existed to prove that the barrister had breached the Code of Conduct. The Professional Conduct Committee agreed that the barrister was professionally embarrassed because the case was one in which he was likely to be a witness and because he had a direct financial interest in the outcome of the case. The Committee further considered that the barrister lacked sufficient experience or competence to handle a property dispute matter and referred the case to a 3 person disciplinary tribunal.

Significant delays, caused mainly by the lack of availability of the barrister's representative, slowed the progression of the disciplinary proceedings. As a result, the case fell outside of the BSB's key performance indicator.

The barrister was charged with three counts of professional misconduct, all of which he admitted. The panel took into account the previous unblemished record of the barrister and agreed that the barrister's misconduct presented no future risk to the public. The barrister was reprimanded for each of the three charges.

complainants find out about the BSB and that they can complain to the regulator. In that respect it is positive that complainants hear about us in a variety of ways. Still, a number of respondents commented that we need to do more to get information into Courts and prisons.

“ *The [complainant] should be advised by the Court of any complaint system. I would not have known about you if it were not for the outrage of Trading Standards at the judgement*

Complainant response #01943

- 3.35 Just over a third of complainants telephoned the PCD before making their complaint seeking advice or assistance and all but one respondent was able to speak to someone. In rating the advice or assistance they received, satisfaction levels remained similar to the previous year. Although the number of complainants who were very satisfied increased to 36% and a further 25% were satisfied, still 20% of respondents indicated that they were not satisfied.
- 3.36 We asked complainants whether making a complaint to the BSB was easy and 63% of respondents agreed that it was easy. We improved overall as only 14% of respondents disagreed that making a complaint was easy compared with 25% disagreeing last year. There were two clear areas of improvement: 68% of complainants (up from 56%) and 71% of barristers agreed that information about our procedures was easy to obtain; and 55% of complainants (up from 42%) and 76% of barristers felt that the procedures for handling complaints were made clear. Although 19% of complainants still felt unclear about our procedures, the figure was 35% last year so we are moving in the right direction.
- 3.37 We use leaflets and our website as our main methods of providing information to complainants and barristers about our procedures for handling complaints.

Leaflets

- 3.38 Around a third of complainants and barristers recalled receiving leaflets on the BSB's enforcement procedures. A further third could not recall whether or not they received anything. Of those that did, however, 95% of respondents found them easy to understand and informative. This is very positive feedback, and shows that our leaflets are a good way of getting information across, but the fact that it only applies to a third of respondents means that the scope is limited. We are, therefore, committing to sending leaflets with our first communications to all complainants and barristers regardless of whether they have already accessed our website. This would also address the comments of some barrister respondents who would have liked more information about our processes up-front.

Website

“ *I found the staff approachable and clear in their directions. The website is quite clear though finding the code of conduct on the site seems overly complicated*

Barrister response #11767

- 3.39 Over two thirds of complainants and almost half of barristers recalled looking for information on our enforcement procedure on the BSB website. While 81% of barristers were able to find the information they were looking for without too much trouble, only 60% of complainants agreed. A further 37% of complainants and 17% of barristers could find the information but not easily. This means that only a tiny minority of respondents were unable to find what they were looking for; so the information is there but we could do more to make it more accessible. To this end a project has already begun to overhaul the Enforcement sections of the website. We are taking expert advice with the aim of improving the accessibility,

layout and clarity of the information on the website and also our hard copy leaflets.

Staff Performance

3.40 We asked barristers and complainants how they would rate their overall experience of the Bar Standards Board’s staff. Overall, 76% of barristers rated their experience as good or excellent. Complainants’ ratings were lower with 50% giving our staff a positive rating but 32% rating staff as poor or very poor. Essentially this is the pattern we have seen in the previous two years. Further analysis reveals that where complaints were referred to disciplinary action, the complainants involved were almost twice as likely to rate the staff as good or excellent (85%).

“ I am satisfied that I was kept properly informed of the progress of this enquiry and of the result. That does not, however, mean that a single complaint procedure is right for all situations.

Complainant response #02114

3.41 We also asked some specific questions about staff performance which show that we made some small improvements in all areas. Two thirds of complainants and 80% of barristers rated our staff as good or excellent at being polite and professional and handling

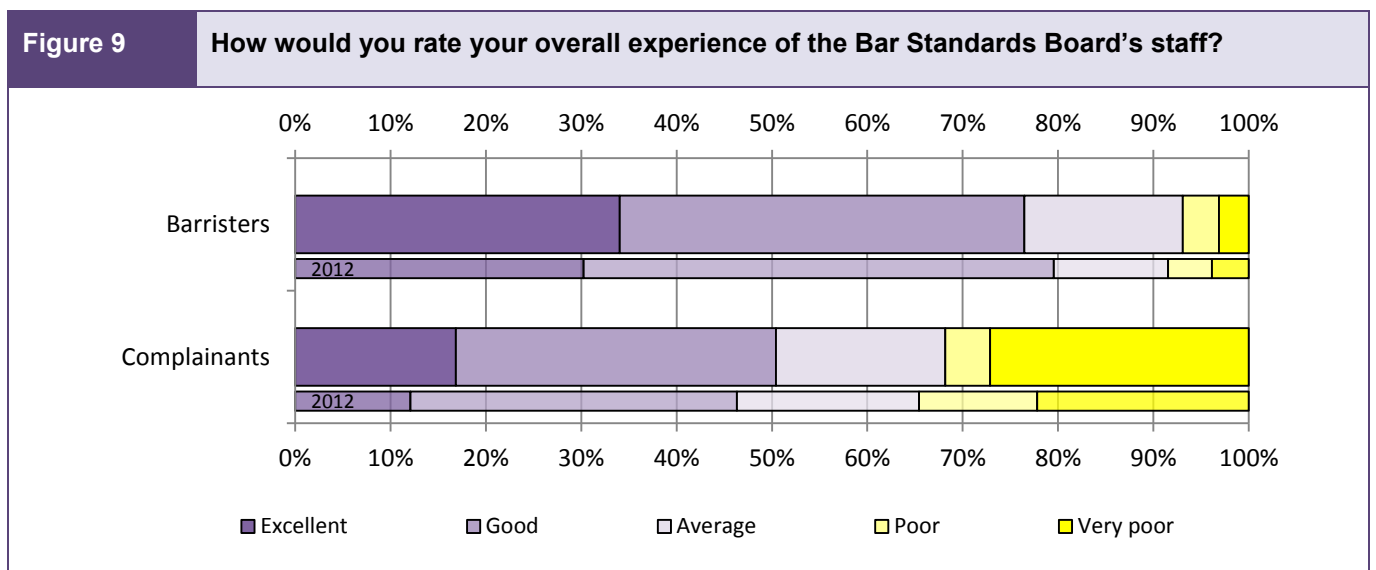
calls. Barristers were similarly positive about our performance in being helpful and answering queries while complainants were more likely to rate staff as average in these areas.

“ I cannot stress how impressed I was with the incisive, intelligent and thoughtful response to the complaint against me, as well as relieved that the BSB grasped immediately the issues and what lay at the heart of the complaint

Barrister response #01667

3.42 We also asked how we performed in providing information about the progress of cases (without the parties having to ask). Again we improved slightly but, as with previous years, this was the area where our staff received their lowest ratings. Although 83% of barristers rated the staff average or above average, only 61% of complainants agreed.

3.43 So where complainants have issues they tend to be around our performance in answering queries (which ties in with the “accessibility” results) and providing updates, both of which suggests that complainants may be looking for a more personalised service than we currently provide. Whether or not this is appropriate in the context of our



role as a regulator, as opposed to a complaints handling body, is an issue we will be considering in 2014/15 as part of a review into the role of the complainant within our enforcement system.

In-house training

3.44 We are always looking for ways to improve our staff performance. The BSB has a training programme for all staff members, which this year included customer service training; particularly relevant to Enforcement. In addition, we run our own training programme, specific to the knowledge and skills required by the staff of the PCD. Throughout 2013/14 we ran eight training sessions on topics such as:

- Regulatory case law updates;
- Investigation skills;
- Bankruptcy;
- Data protection, and
- How other regulators operate

3.45 We intend for our in-house training programme to continue in forthcoming years.

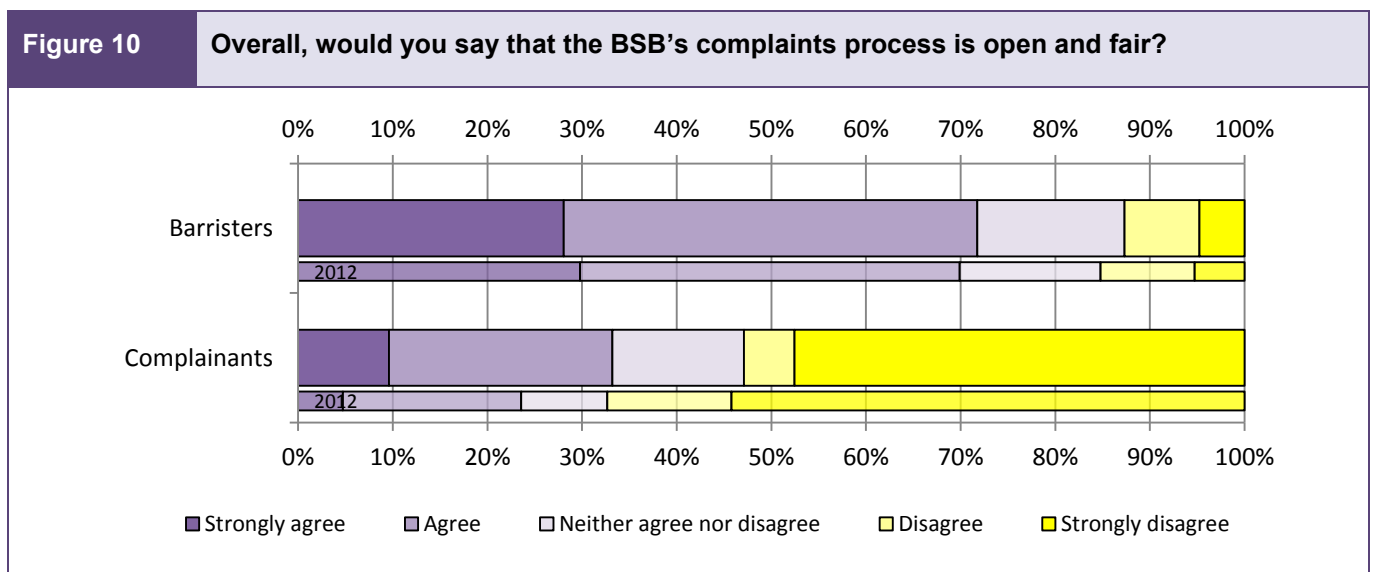
Transparency and openness

3.46 Openness, fairness and transparency are of critical importance to our enforcement work. A legal regulator cannot operate any other way. We asked barristers and complainants whether they would agree that the BSB’s complaints process is open and fair. In past surveys this question has revealed a marked difference between the views of barristers and complainants and our past research has shown that the outcome of a case often has a considerable impact on responses²⁵.

“ The process appears to work only where the behaviour complained about is obviously awful and wrong. Where the behaviour treads a fine line between sharp practice and dishonesty and matters complained of are seemingly trivial (but affect the mind of the court in subtle ways) the process appears unable to cope.

Complainant response #02115

3.47 Figure 10 shows that this year 72% of barristers agreed that our enforcement process is open and fair and only 13% disagreed. For complainants, 33% agreed and 53% disagreed, which does represent an improvement as last year 67% disagreed.



²⁵ Bar Standards Board (2011): “Understanding Complaints Data”

So although the gap between barristers and complainants has closed, there is still a disparity between the two. For both barristers and complainants, there is a strong correlation with the decision we took on their complaints. Where we referred cases to disciplinary action, 71% of complainants agreed that we were open and fair, while for barristers the figure fell to 53%.

- 3.48 We also asked the survey recipients to indicate how strongly they agreed or disagreed with a series of statements relating to the openness and fairness of the enforcement system. The results show a significant improvement compared with the previous year, but still the big issues for complainants remain the same: 52% of complainants felt that we did not consider all of the evidence relating to their complaint and 55% of complainants disagreed that the reasons for the final outcome were clear. We also saw a familiar pattern in the comments left by complainants, whereby upon receiving a decision that we do not intend to refer a complaint to disciplinary action, some complainants suspect we are siding with the barristers or question the extent to which the BSB is regulating in the public interest.

“ You need to overcome the perception that the BSB exist for the benefit of barristers not the public. Overall, I feel my complaint was a waste of time and effort

Complainant response #01931

- 3.49 When we close a case without a referral to disciplinary action we inform the complainant of the precise reasons why we took that decision. This is an area where we have completed a considerable amount of work over the past three years – particularly at the initial assessment stage. So while it is encouraging that our performance has improved, it is disappointing that we have not been able to address complainants concerns more fully. The work of the Independent Observer (see below) assures us that the

issue is one of perception rather than a systemic problem but it remains an issue nonetheless.

- 3.50 Understandably, dissatisfaction levels are highest amongst those complainants whose complaints we deemed unsuitable for disciplinary action, but a large proportion of external complaints we receive are unsubstantiated, do not represent a breach of the Handbook or represent very little, if any, risk to the public or the regulatory objectives. We cannot take action in these cases but we must endeavour to demonstrate clearly that our processes are open and fair. To not do so would run the risk of dissuading members of the public from bringing to the attention of the BSB issues of concern in the future. We will continue to work in this area and it may be that the further research that we carry out into our survey results will reveal ideas for a fresh approach.

“ *The complaint against me was plain vexatious. The time spent handling it was excessive, and caused stress. More protection should be afforded to barristers against vexatious complainants.*

Barrister response #01965

Checks and Balances

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

Independent Observer

- 3.52 The BSB appoints a lay Independent Observer (IO) to ensure that the enforcement system is operating in line with

- its aims and objectives. The second IO, Isobel Leaviss, was appointed in May 2011.
- 3.53 In her latest report to the Governance, Risk and Audit Committee of the BSB (covering the period November 2013 to June 2014)²⁶ she gave the work of the PCD and PCC a positive assessment commenting that:
- “I have continued to observe good administrative standards in the handling of complaints and prosecution of misconduct cases.”
 - “I have seen clear evidence of decision makers referring to relevant policies, procedures and guidance to inform their decision-making.”
 - “I have observed a demonstrable commitment to transparency and fairness when responding to complainants and/or barristers.”
- 3.54 Based on her observations the IO made nine new recommendations in her two reports covering the period June 2013 to June 2014. These included:
- Extending the remit of the Quality Review Sub-Committee to include assessing timeliness, thoroughness and whether the process has been open, transparent and accessible;
 - Providing additional guidance to barristers about the format, content and evidence of mitigation or financial information they would like to be taken into account during the enforcement decision making process;
 - Engaging with intermediary consumer groups to promote understanding of the BSB’s enforcement role and improve signposting to assist legal consumers.
- 3.55 The PCD has accepted all nine recommendations and four have been implemented already.
- 3.56 The work of the Independent Observer is highly beneficial in ensuring the enforcement system is operating effectively and the recommendations made to date have resulted in many improvements to the enforcement processes and the public facing work of the PCD.
- QRSC**
- 3.57 Members of the PCD staff are authorised by the Professional Conduct Committee to make certain decisions to dismiss complaints, impose administrative sanctions and refer complaints to disciplinary action. In order to ensure that the quality of the decision making remains high, the Quality Review Sub-Committee (QRSC) of the PCC – a three member panel with a lay chair – spot-checks these staff decisions on a quarterly basis.
- 3.58 The QRSC was formerly the Dismissal Review Sub-Committee (DRSC) and it was in this form that the sub-committee reviewed 10% of complaints dismissed by members of PCD staff in each of the first, second and third quarters. In all cases the DRSC considered the complaints to have been fairly dismissed.
- 3.59 The remit of the sub-committee was extended for the fourth quarter to include staff decisions to refer cases to disciplinary action and impose administrative sanctions. The QRSC reviewed 10% of dismissed cases and all referrals to disciplinary action. While the QRSC agreed that all of the dismissal cases had been handled in accordance with the relevant regulations and procedures and were fairly dismissed, they disagreed with the decision on one of the referrals to disciplinary action.
- 3.60 The QRSC considered that the seriousness of the breach was not sufficient for a referral to disciplinary action and therefore the action was withdrawn. This is a key learning point for us and, as the case was still ongoing, we

²⁶ Reports by the Independent Observer are published on the Bar Standards Board website

were in a position to rectify the situation. This shows the value of the QRSC and more generally the effectiveness of the checks and balances which we have in place.

Quality of Service

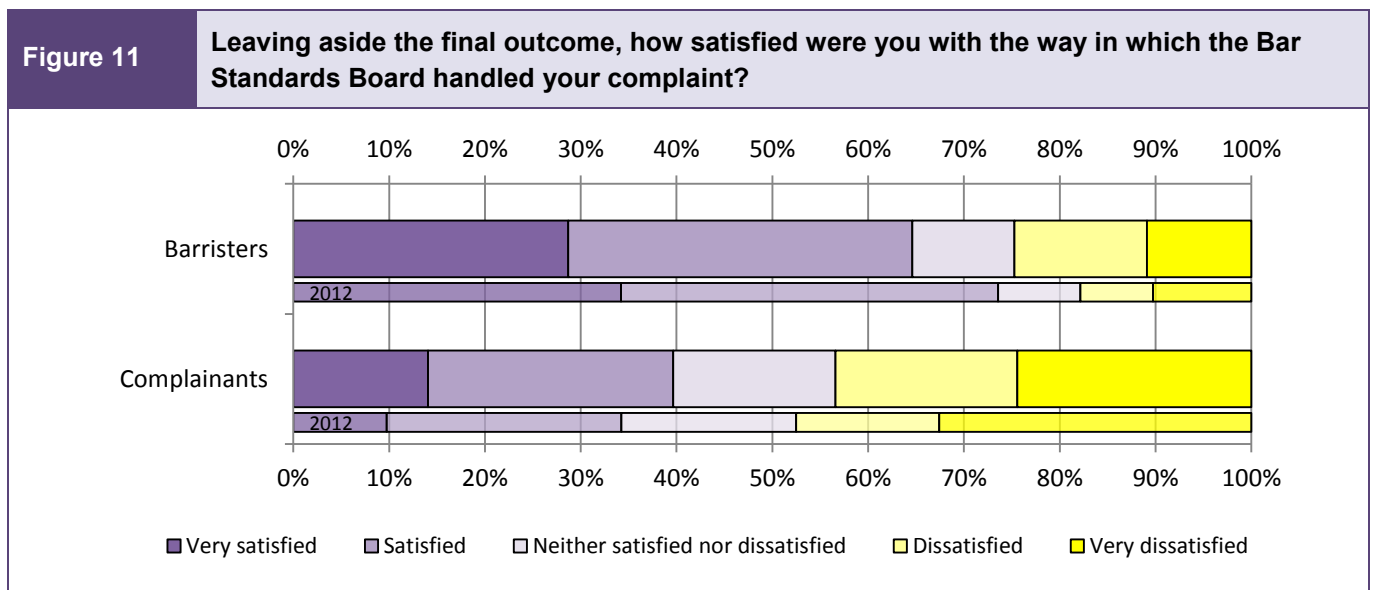
3.61 As an overall measure, we asked complainants and barristers to leave aside the final outcome²⁷ and say how satisfied they were with the way in which we handled their complaint. Figure 11 shows that 64% of barristers were satisfied with our handling of the complaints against them compared with 40% of complainants. For complainants this was an improvement compared with the previous year, while barristers' views fell back to a similar level to two years ago after a significant increase in performance last year.

“ I have been very satisfied with the way my complaint has been dealt with. My case was handled properly
Complainant response #02029

that it is reasonably common for there to be a difference between the satisfaction levels of complainants and the professional/commercial object of their complaints. Realistically, the high proportion of external complaints which we close without a referral to disciplinary action and the impact this has on the perceived fairness of the system makes it impossible to achieve parity in this area. However, we are committed to improving and if year-on-year we can improve on our staff performance, timeliness and better demonstrate the openness and fairness of our system – as we have this past year – then this will hopefully contribute to more positive feedback on our quality of service in future.

“ On the whole I was satisfied with the service even though I'm unsure if I agree with the outcome of my case. Initially I found it difficult to get an answer by telephone in advance of my complaint, but once it was submitted communication was very good.
Complainant response #02059

3.62 So the gap between the views of barristers and complainants has closed and the increase in complainants' satisfaction is a positive sign. Our 2011 research indicated



²⁷ Our 2011 study: “Understanding Complaints Data” by IFF Research highlighted that, as the outcome of a complaint may have a significant bearing on the response to the question, any general question relating to “quality of service” should be clearly separated into satisfaction with the outcome of the complaint and satisfaction with the level of service

Other work streams

- 4.1 While our primary function is in taking action where the BSB handbook has been breached, our work throughout the year encompasses a number of other work streams:

Bankruptcies/Individual voluntary arrangements (IVA)

- 4.2 While becoming bankrupt or entering into an IVA is not a breach of the Handbook on its own, barristers are required to report these events to the BSB. In the PCD we monitor bankruptcies and IVAs and ensure that barristers are complying with their obligations. This function will be transferring to the Supervision Department in 2014/15.
- 4.3 In 2013/14 we received 47 reports of or by barristers filing for bankruptcy or entering into an IVA. We typically receive 45-50 reports per year.
- 4.4 Over the course of the year we raised formal complaints relating to three bankruptcy cases: two where the barristers involved accepted bankruptcy restrictions undertakings – which can be indicative of discreditable behaviour – and a further barrister who failed to respond to our communications. Following investigation we decided not to take disciplinary action in any of these cases.

Disciplinary history checks

- 4.5 A disciplinary history check is where we cross reference a barrister against our Enforcement Database and report on any disciplinary findings made against the barrister. This is usually for the purpose of issuing a Certificate of Good Standing but we also respond to requests from the Judicial Appointments Commission and the Inns of Court.
- 4.6 In addition we have a memorandum of understanding with the Queen's Counsel Appointments body in which we agree to

report on any disciplinary findings or ongoing disciplinary proceedings for each Queen's Counsel applicant. These are then taken into consideration when QCA are assessing applications.

- 4.7 We completed 546 disciplinary history checks in 2013/14, including checks on 226 QC applicants.

Fitness to Practise

- 4.8 In the context of barristers, Fitness to Practise refers only to whether a barrister's health impacts on their ability to practise. A barrister's fitness to practise is brought into question if it appears that they have an incapacity due to a medical condition (including an addiction to drugs or alcohol), and as a result, the barrister's ability to practice is impaired to such an extent that restrictions on practice are necessary to protect the public.
- 4.9 When the PCC receives information which raises genuine concerns as to a barrister's fitness to practise, the matter will be referred to a Fitness to Practise panel convened by BTAS. The panel – which will include a medically qualified member – must consider all of the available evidence and act to protect the public.
- 4.10 Where a Fitness to Practise panel has decided that an individual is unfit to practise it may decide to place a restriction on the barrister or place a condition on the individual such as submitting to a regular medical examination.
- 4.11 We began one new Fitness to Practise proceeding in 2013/14 which concluded in the same year without a hearing taking place. A Fitness to Practise panel in one further case took the decision to take no further action, allowing the barrister in question to continue practising without restriction or conditions.

Interim Suspension

- 4.12 In certain circumstances – such as where we receive a complaint or information that a barrister has been convicted or charged with a criminal offence²⁸ – the PCC will consider whether the barrister should be suspended from practice pending a Disciplinary Tribunal hearing. Where the PCC considers that such a course of action is justified for the protection of the public, the Committee will refer the matter to an Interim Panel convened by BTAS. The PCC (or the Chair on its behalf) may also, in exceptionally high risk situations, impose an immediate interim suspension which will remain in force until the matter can be considered by an Interim Panel.
- 4.13 In the majority of cases, barristers finding themselves facing potential Interim Suspension will voluntarily undertake not to practise or to place restrictions on their practice until disciplinary proceedings have concluded; meaning that the Interim Suspension procedure does not need to be invoked. In 2013/14 we did not begin any Interim Suspension proceedings as two barristers undertook to place restrictions on their practice under the circumstances. However, shortly after the end of the year, the PCC referred a barrister to an Interim Panel, feeling that it was necessary to protect the interests of the barrister's clients and a voluntary undertaking was not forthcoming.

Information provided to the public

- 4.14 Although we are not currently subject to the Freedom of Information Act, we work in the spirit of the Act when we receive requests for enforcement data. We regularly receive requests from researchers, reporters, complainants and other members of the public, typically asking for numbers for different types of complaints or outcomes

and sanctions we have imposed. Where the information is available we always comply with the request and provide anonymised data.

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

Projects

- 4.16 In our Annual Report for 2012/13 we highlighted two projects that we would be focussing on in 2013/14. Our new Enforcement Database – a customised Case Management System – went live in August 2013, fully functional and on schedule. This gave us immediate benefits in terms of streamlining the administrative handling of cases and, as we added functionality throughout the remainder of the year, it also gave us far superior performance monitoring and reporting abilities.
- 4.17 The other major project for us concerned the implementation of the new Handbook and the BSB change programme – designed to ensure that our regulatory approach is outcomes focussed and risk-based in line with the Regulatory Standards Framework set out by the Legal Services Board. To be ready for the new Handbook, which came into force on 6th January 2014, we completed extensive preparations: the development of a new Enforcement Strategy, a review of our policy and guidance framework, amends to our Enforcement Database and training for staff, PCC members and prosecutors. A big change for us in Enforcement was the application of the BSB wide risk framework to our decision making process as well as the development of mechanisms to support

²⁸ The circumstances under which the Interim Suspension regulations come into force are listed in full in the BSB Handbook at Part 5, Section D.

risk-based decision making. As described earlier, we implemented this using our Enforcement Database, creating assessment forms to be completed at the assessment and investigation stages before any decision is taken. When we received our first complaint under the new Handbook on 14 January 2014 we had everything in place to progress the complaint within the new regime.

- 4.18 In our Annual Report for 2012/13 we also gave particular focus to a number of issues with Council of the Inns of Court (COIC) panel appointments that came to light in late 2011. These had the potential to affect the validity of a large number of Tribunal decisions, but in the event, less than 20 barristers raised challenges. The issues led to the Browne Report of 2012 which contained 82 recommendations for improvements to the management of Disciplinary Tribunals and Appeals and led directly to the formation of the Bar Tribunals and Adjudication Service (BTAS).
- 4.19 Towards the end of 2013/14 the BSB published an update on the contractual arrangements between the BSB and COIC/BTAS and a progress report on the recommendations. As of 26 February 2014, 75% of the recommendations had been completed with a further 22% ongoing. The BSB have a Contract Management Officer in post to ensure that the new contract for services with COIC, including ongoing monitoring requirements, is adhered to.
- 4.20 In terms of the legal challenges, one of the appeal hearings and one of the judicial review proceedings that concluded in 2013/14 related to panel anomalies. The appeal was not contested, but the judicial review was found in favour of the Visitors to the Inns of Court. This supports our position whereby we indicated that the “time expiry” issues highlighted in the Browne Report did not invalidate the Tribunal or Appeal findings.

Conclusions and action points

- 5.1 This was another year of change for both the Professional Conduct Department and the Committee. The drive to implement the new BSB Handbook took considerable time and resources and led to new ways of working: risk assessments, administrative sanctions and a closer relationship with Supervision; while the nature of our caseload changed from previous years with the decrease in internal complaints. Despite these changes, we increased our performance: achieving our KPI target to conclude or refer to disciplinary action 75% of complaints within our service standards.
- 5.2 In terms of new complaints it was very much business as usual with regards to external complaints, but the number of internal complaints we opened fell dramatically. This was due in the main to changes in the BSB's approach to CPD and changes in our handling of internal cases. It remains to be seen how many internal complaints we will be investigating in the coming years but we anticipate that the numbers will be lower than we have seen in the past. The decrease in the numbers of new internal complaints being opened led to a steady decrease in our caseload throughout the year and also had an impact on our KPI performance in handling internal cases.
- 5.3 We continued to closely monitor the time it takes us to come to a decision on whether or not to refer complaints for disciplinary action. While our performance against our KPI increased significantly compared with 2012/13 and we met our target, we can still identify areas where we can improve – particularly in setting and enforcing deadlines for responses from barristers and complainants and in reviewing files prior to investigation. Our survey results show that some barristers and complainants still have concerns about the time we take to come to a final decision on their complaints. We intend to carry out further qualitative research to ascertain how we can best address these concerns without making fundamental changes to our enforcement procedures and compromising the fairness of the system.
- 5.4 Our User Feedback Survey continues to be a hugely valuable tool for gaining feedback on where we are performing well and where we can improve. Our survey results in 2013/14 showed a general improvement in all areas and particularly in the accessibility and the “openness and fairness” of our enforcement system. However, there are still some issues which we need to address.
- 5.5 While barristers and complainants agree that our leaflets and website are a good source of information, not enough can recall receiving leaflets and too many find the information on our website difficult to find. We intend to overhaul the Enforcement section of the BSB website in 2014/15 and will be ensuring that leaflets are sent out to all parties with our first communications. The issues that we have seen in previous years around complainants' perception of the transparency and the openness of our enforcement work remain to a large extent. We hope that further research will help us to bridge the gap between barristers and complainants in this area and reveal ideas for a fresh approach.
- 5.6 There will always be room for improvement, but the overall picture of 2013/14 was a positive one. The changes we have driven through in recent years helped our performance figures for 2013/14 improve on what was already a solid foundation. We met our KPI target and have set a higher target for 2014/15 in order to push ourselves further. In addition we are now taking the risk-based and outcomes-focused approach to cases that is required of a modern regulator. There is still work to be done though and the coming year will provide more challenges and more opportunities to improve.

Action points

- 5.7 Based on the findings of this report, we intend to carry out the following actions during the course of the next twelve months:
- Commissioning qualitative research into the experiences of barristers and complainants. This will enable us to take an evidence based approach to making improvements to the way in which we communicate with the parties to complaints;
 - Amending the aspects which we use to record the nature of the complaints we receive. This will ensure that they properly reflect the terminology used in the BSB Handbook;
 - Overhauling the Enforcement section of the BSB website to ensure that information on our procedures can be found quickly and easily;
 - Ensuring that leaflets are sent to all barristers and complainants with our first communications;
 - Continuing our KPI monitoring programme, exploring areas where we can eliminate delays in the enforcement processes. This will include a review of the Disciplinary Tribunal service standards.

Looking forward

- 6.1 In this section we look ahead to some of the projects that we will be working on in 2014/15 and some of the background to the enforcement work we are likely to be carrying out in the near future.

Entity regulation

- 6.2 The BSB is aiming to become an approved regulator of entities – companies or partnerships that provide advocacy, litigation and expert legal advice services – in the autumn of 2014. Similarly to the Handbook implementation of 2013/14, we need to be ready for when the first complaint about an entity or an employee of an entity is received. Again this will involve a comprehensive review of our policies and procedures, amends to our Enforcement Database to enable it to handle complaints about organisations and its employees as opposed to individual barristers and training for staff, PCC members and prosecutors.

CPD numbers

- 6.3 In previous years, CPD complaints made up 10% of our caseload and a significant number of “Warnings & Fines” cases (paragraph 2.9). The BSB no longer takes the heavy-handed approach of taking enforcement action in every case, but is instead focusing its resources on assisting barristers to achieve compliance. Where barristers still fail to comply, we will consider enforcement action; but the numbers will certainly be much smaller going forward so CPD cases will not form such a high proportion of our work.

Disciplinary Tribunal Regulations review

- 6.4 Our Disciplinary Tribunal Regulations are published in the BSB Handbook. We will be addressing comments made in recent judgements by undertaking a review of the

Regulations in 2014/15 to ensure that they remain fit for purpose. Specific points that the Working Group will be considering include: amendments proposed by the COIC DTR Working Group in 2013/14; giving Tribunals the power to impose administrative sanctions where they consider that a breach of the Code does not justify a finding of professional misconduct; and adjusting the Regulations to better match the new definition of professional misconduct.

User feedback online

- 6.5 Our User Feedback Survey is currently a postal survey, with paper questionnaires sent out to barristers and complainants with recent experience of our enforcement work and responses scanned in and collated electronically.
- 6.6 While this methodology gives us a good response rate, many complainants and barristers would prefer to give their feedback online if the option were available. We will be working on providing a secure online platform for carrying out our ongoing survey during the course of 2014/15.

Mechanisms for enforcing disciplinary fines

- 6.7 As we described in our section on compliance, currently our only option when a barrister fails to pay a disciplinary fine is to raise a new complaint against the barrister. We will be looking into other mechanisms for enforcing disciplinary fines in 2014/15.

Sara Jagger

Director of Professional Conduct

Simon Lofthouse QC

Chair of the Professional Conduct Committee

September 2014

Governance of Education and Training regulation

Status:

1. For approval
2. Public

Executive Summary:

3. This paper proposes amended terms of reference for the Education and Training Committee, along with a broad scheme of delegations with areas to be undertaken by the executive. This structure supports the Board's stated principles of governance and enables the Board's vision for legal education and training according to the Post LETR Plan to be enacted. The formal letters of delegation will need to be signed by the Chair on behalf of the Board.
4. The Education and Training Committee is working with the executive to develop clear decision-making processes for all regulatory functions to be delivered by the Committee, its sub-committees and the executive. It is intended that all of these governance documents will be published on the BSB website.
5. Other related matters, including membership, will be addressed as part of the Board's wider review of BSB governance in the coming year, and are therefore not addressed in this paper.

Recommendation

6. The Board is requested to:
 - a. **Approve** the amended terms of reference for the Education and Training Committee, and
 - b. **Approve** the scheme of delegations, including the delegation of certain functions to the executive, with oversight by the Committee, and
 - c. **Agree** that the BSB Chair will sign formal letters of delegation (and rescinding any delegations in preceding letters, as necessary) on behalf of the Board.

Background

7. In March 2014, the Board adopted a Governance Manual including a scheme of delegations which brings together the regulatory decision-making powers across the organisation. It was recognised at that time that resolution of these powers in relation to education and training would need to follow, in light of LETR plans and other changes.
8. The updated scheme of delegations presented to the Board includes greater detail for education and training regulation. It encompasses the responsibilities as laid out in the proposed new Terms of Reference for the E+T Committee and those for the executive.
9. The proposed new Terms of Reference in Annex 2 are still subject to some amendments following advice from the Committee, at their meeting held on 9 September, though the principles were agreed. This will be finalised by electronic circulation this week and sent to Board members, and tabled at the meeting.
10. For completeness, the updated scheme of delegations also now includes some further detail on already-agreed delegations, most of which relate to the functions of the Qualifications Committee and its Panels and to the executive. All new notes are in red.

11. The Board can expect another update to the scheme of delegations in October, to include regulatory functions relating to the Supervision department, including entity regulation.

Comment

12. It is imperative that a clear 'golden thread' of delegation runs from the Legal Services Act, through the Board to nominated Committees, their sub-groups and to the executive. A clear principle of the Board is that it reserves to itself, within its Standing Orders (paragraph 51e) the function of "*making of rules forming part of the regulatory arrangements*" i.e. those which appear in the BSB Handbook and Code of Conduct. Other regulatory functions in support of these rules are delegated, and we must be clear where the responsibilities lie.
13. Until now the Education and Training Committee's Terms of Reference could be read to imply that almost all decisions were to be taken to the Board, which does not reflect the practicalities of the business conducted or enable the Board to focus its attention at a strategic level. The newly proposed Terms of Reference clarify which responsibilities fall entirely to the Committee (including those which it may delegate); which regulatory arrangements the Board requires the Committee's expert advice upon in order to make its decisions, and what oversight duties the Committee must perform, of activity that is undertaken by the executive. The Scheme of Delegation documents the distribution of these powers, alongside that regulatory decision-making authority which the Board will invest in the executive (the Committee does not have those powers of delegation).

Resource implications

14. The resolution of decision-making structures within the BSB has a primary objective in improving efficiency in the conduct of business. No significant direct cost is identified for the changes proposed here.

Equality & Diversity implications

15. No direct implications for equality and diversity have been identified in the proposed changes.

Consultation

16. The principles of the changes proposed here have been discussed with the Director General and the Chair of the Education and Training Committee.

Lead responsibility

Andrew Sanders, Chair of the Education and Training Committee

Annexes

- Annex 1: Current Terms of Reference for the Education & Training Committee (extract from BSB Standing Orders, November 2013) – to be replaced.
- Annex 2: Proposed new Terms of Reference – note a final draft will be circulated before the meeting and tabled.
- Annex 3: updated scheme of delegations (new content in red – please contact the Board and Committees Officer for an alternative format).

Current Terms of Reference for the Education & Training Committee (extract from BSB Standing Orders, November 2013) – **to be replaced**

The terms of reference of the Education and Training Committee are:

1. to formulate policy for approval by the BSB on all matters relating to the setting of standards for:
 - a. entry to the Bar;
 - b. education and training for barristers, including CPD;
2. in consultation with the Qualifications Committee, to keep under review and propose changes to the Bar Training Regulations and any regulations replacing them in respect of entry and training;
3. to supervise the development of effective processes and procedures for monitoring standards in relation to
 - a. entry to the profession;
 - b. provision and the quality of education and training for the profession including the validation and revalidation of courses of training and of organisations offering training, advocacy training and CPD;
4. to issue guidance on the interpretation of the relevant rules and regulations;
5. to liaise, where appropriate, with other organisations on matters related to education and training for the profession;
6. to liaise and consult with the other BSB committees, the Inns' Council and the judges as appropriate in exercising its functions;
7. to take responsibility for the consideration and approval of Public Access Training Courses. The Education and Training Committee may seek advice from any other BSB committees when considering applications, if deemed appropriate.
8. to undertake such other tasks as the BSB may from time to time require; and
9. to report to the Board on its work as and when required.

The membership of the Education and Training Committee shall be:

10. A chair and a vice-chair of whom one must be a lay member and one must be a practising barristers.
11. Between three and five lay members, provided that the total number of lay members shall not be less than half the number of barristers appointed to the Committee.
12. Not fewer than 6 and not more than 12 practising barristers.
13. At least two members who are senior legal academics with experience of vocational training (in addition to the lay members above).

Quorum

14. One third, at least two barristers and two lay members

Proposed New Terms of Reference for the Education & Training Committee

1. to advise the Board on strategic matters relating to the education and training for regulated persons, including but not limited to:
 - a. the Qualification Rules (in consultation with the Qualifications Committee)
 - b. entry to the Bar
 - c. continuing professional development (CPD)
 - d. the scope of the training required
 - e. the framework for assessment;
2. oversee the development of policy relating to education and training, including but not limited to:
 - a. the definition of the standards required for authorisation to practise, relating to professional knowledge, skills and experience
 - b. the quality assurance of those standards, in the course of the required training and at the point of authorisation, as deemed appropriate
 - c. other risk and regulatory considerations that should or must be addressed in relation to the delivery of education and training (including the Regulatory Objectives, Statutory Guidance and equality and diversity)
 - d. the issuing of information and guidance on the interpretation of regulations
 - e. the management of, and making of changes to, courses and assessments according to agreed frameworks
 - f. the monitoring and evaluation of standards for entry to the profession, and of any training that is deemed appropriate to that end;
3. to decide the regulatory requirements that implement the Rules (including the BPTC Handbook, the BTT Handbook, the Pupillage Handbook and the General Guide to CPD, relevant sections of the BSB Handbook Guidance and any instrument that may replace them);
4. to supervise the delegation of, and where necessary, decide the approval, rescinding of approval or refusal to approve individuals and organisations to provide training, supervision or assessment, where required by the regulations;
5. to oversee liaison with external parties and coordination with other parts of the organisation as appropriate to the effective delivery of the regulatory objectives in training for the Bar;
6. to undertake such other tasks as the Board may from time to time require; and
7. to report to the Board on its work, as and when required.

[the membership paragraph is unchanged]

Proposed New Terms of Reference for the Education & Training Committee

1. to formulate policy for approval by the Board ~~advise the Board~~ on strategic matters relating to the education and training for regulated persons, including but not limited to:
 - a. the Qualification Rules (in consultation with the Qualifications Committee)
 - b. entry to the Bar
 - c. continuing professional development (CPD)
 - d. the scope of the training required
 - e. the framework for assessment;
2. oversee the development of policy relating to education and training, including but not limited to:
 - a. the definition of the standards required for authorisation to practise, relating to professional knowledge, skills and experience
 - b. the quality assurance of those standards, in the course of the required training and at the point of authorisation, as deemed appropriate
 - c. other risk and regulatory considerations that should or must be addressed in relation to the delivery of education and training (including the Regulatory Objectives, Statutory Guidance and equality and diversity)
 - d. the issuing of information and guidance on the interpretation of regulations
 - e. the management of, and making of changes to, courses and assessments according to agreed frameworks
 - f. the monitoring and evaluation of standards for entry to the profession, and of any training that is deemed appropriate to that end;
3. to decide the regulatory requirements that implement the Qualification Rules and any other education and training arrangements (including the BPTC Handbook, the BTT Handbook, the Pupillage Handbook and the General Guide to CPD, ~~relevant~~ sections of the BSB Handbook Guidance relevant to education and training, and any instrument that may replace them);
4. to supervise the delegation of, and where necessary, decide the approval, rescinding of approval or refusal to approve individuals and organisations to provide training, supervision or assessment, where required by ~~the~~ regulations relating to education and training;
5. to oversee liaison with external parties and coordination with other parts of the organisation as appropriate to the effective delivery of the regulatory objectives in training for the Bar;
6. to undertake such other tasks as the Board may from time to time require; and
7. to report to the Board on its work, as and when required.

[the membership paragraph is unchanged]

Regulatory Activities Scheme of Delegation						Key Red writing: changes since the last Board approval	Executive decision-making guidance and criteria			
BSB Board	Chair	Relevant Committee	Chair of Relevant Cttee	Relevant Sub-Cttee	Executive		Source	responsible for operations	operational delivery	operational delivery
Regulatory Policy										
Create rules forming part of the regulatory arrangements						reserved to the Board within its Standing Orders paragraph 51e				
Approve formal/published guidance on the interpretation of rules and regulations (Education and Training, Standards, Supervision)						SOs Annex 2a (2d); 2g (3); 2h (2)	on terms set by negotiation between Head of department and relevant committee or the Board as they see fit. Dir Reg Policy process agreed by Standards Committee.	Directors	Executive Teams	
Making "exempt changes" to the rules, including the Handbook						Legal Services Act paragraph 19(2)(c) of Schedule 4	Process agreed by Standards Committee to be linked	Director of Regulatory Policy		
Grant waivers from requirements of the Handbook where appropriate, except those which are the responsibility of the Qualifications Committee						BSB SOs Annex 2g (4)	Process agreed by Standards Committee to be linked	Director of Regulatory Policy		
Education and Training										
Removal of Pupil Supervisors REPLACED BY NEW ToR						Handbook rQ52 4-	review of decisions retained at Cttee level in HBK. Policy to be designed for Executive before this is enacted by executive. To be added to ToRs?	Education and Training Committee	Director of Education and Training	
Issue guidance on the interpretation of rules and regulations REPLACED BY NEW ToR						BSB SOs Annex 2a (4)	STW has authority to do this.			
Approval of the Qualification Rules (in consultation with the Qualifications Committee); policy relating to entry to the Bar; policy relating to continuing professional development (CPD); the scope of the training required and the framework for assessment.						BSB SOs Annex 2a (1a-e) part of the regulatory arrangements, therefore reserved to the Board				
Approval of the regulatory requirements that implement the Rules (including the BPTC Handbook, the BTT Handbook, the Pupillage Handbook and the General Guide to CPD, relevant sections of the BSB Handbook Guidance and any instrument that may replace them);						BSB SOs Annex 2a (3)	The ETC is able to delegate to its SCs but it has not decided to do this.			
Supervision of the delegation of, and where necessary, decisions to approve, rescind approval or refuse approval of individuals and organisations to provide training, supervision or assessment, where required by the regulations						BSB SOs Annex 2a (4) Involves Handbook rules: rQ52.4,	ability to delegate these tasks to sub-committees and to the executive is to be approved in principle and decided within the upcoming review of ETC workstreams. No executive enactment until processes agreed by the ETC	tbd		
Definition of the standards required for authorisation to practice, relating to professional knowledge, skills and experience						BSB SOs Annex 2a (2a)	for delegation to the executive by the Board, with Cttee oversight. Processes for executive decision-making to be developed and agreed with ETC	Director of Education and Training	E+T staff team	
The quality assurance of those standards, in the course of the required training and at the point of authorisation, as deemed appropriate						BSB SOs Annex 2a (2b)	as above	Director of Education and Training	E+T staff team	
Responsibility for other risk and regulatory considerations that should or must be addressed in relation to the delivery of education and training (including the Regulatory Objectives, Statutory Guidance and equality and diversity)						BSB SOs Annex 2a (2c)	as above	Director of Education and Training	E+T staff team	
Issuing of information and guidance on the interpretation of regulations						BSB SOs Annex 2a (2d)	as above	Director of Education and Training	E+T staff team	
Managing, and making changes to, courses and assessments according to agreed frameworks						BSB SOs Annex 2a (2e)	as above	Director of Education and Training	E+T staff team	
Monitoring and evaluation of standards for entry to the profession, and of any training that is deemed appropriate to that end						BSB SOs Annex 2a (2f)	as above	Director of Education and Training	E+T staff team	
Qualifications										
Determine applications for exemption from any requirement of the Bar Training Rules (Section 4B of the Handbook);						BSB SOs Annex 2f (1a) and Section 4B Handbook	Delegated from Qualifications Committee to Panel 1 (Transferring Qualified Lawyers), Panel 2 (Pupillage) and Panel 6 (Academic Stage) as appropriate, in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegation to Executive under terms approved by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
Determine applications for transference by Qualified Solicitors and Qualified Foreign Lawyers (under section 4B)						BSB SOs Annex 2f (1a) and Section 4B Handbook	Delegated from Qualifications Committee to Panel 1 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegation to executive under terms approved by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
Determine any request for review made under 4B10, 3C6 or 3E11 of the Handbook						BSB SOs Annex 2f (1b) and Handbook rules 4B10, 3C6, 3E11	Decisions always taken by full Qualifications Committee - never delegated to executive.			

Regulatory Activities Scheme of Delegation						Executive decision-making guidance and criteria	responsible for operations	operational delivery	operational delivery	
BSB Board	Chair	Relevant Committee	Chair of Relevant Cttee	Relevant Sub-Cttee	Executive	Source				
Qualifications continued										
						BSB SOs Annex 2f (2a) and Handbook rules rS20, rS21	Delegated from Qualifications Committee to Panel 4 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegated to executive in accordance with terms agreed by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
						BSB SOs Annex 2f (2b) and Handbook rules rS49	Delegated directly to executive. Guidelines at https://www.barstandardsboard.org.uk/regulatory-requirements-for-barristers/authorisation-to-conduct-litigation/	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
						BSB SOs Annex 2f (2c) and Handbook rules rC120	Delegated from Qualifications Committee to Panel 4 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegated to executive in accordance with terms agreed by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
						BSB SOs Annex 2f (2d) and Handbook rules section 4C	Delegated from Qualifications Committee to Panel 3 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/			
						BSB SOs Annex 2f (2e) and Handbook rules rC113	Delegated from Qualifications Committee to Panel 5 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/#Panel5			
						Handbook rules rQ39	as above			
						BSB SOs Annex 2f (2g) and Part 6 Handbook	Delegated from Qualifications Committee to Panel 4 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegated to executive in accordance with terms agreed by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
						BSB SOs Annex 2f (3) and Handbook rules rQ96/rQ97.2, rS80	Delegated from Qualifications Committee to Panel 1 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegation to executive under terms approved by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
						BSB SOs Annex 2f (4) and Part 6 Handbook	Delegated from Qualifications Committee to Panel 4 in accordance with guidelines at https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/forms-and-guidelines/bar-training-waivers-and-exemption-forms/ Further delegated to executive in accordance with terms agreed by Qualifications Committee	Director of Education and Training	Manager, Qualification Regulation	Training Regulations Officer
						BSB SOs Annex 2f (5) and rQ46 Handbook	policy to be designed for Executive before this is enacted			
QASA						Executive decision-making processes to be developed				
						QASA Handbook for Criminal Advocates: 2.68-2.69 & 4.40-4.41 and QASA Rules (BSB): 10,11, 12.0-12.12.	QASA Handbook for Criminal Advocates	Director of Supervision	Assessment Mgr	Quality Assurance Asst
						QASA Hbk: 2.86-2.92 and QASA Rules (BSB): 25, 26, 27, 28 & 29		Director of Supervision	Assessment Mgr	
						QASA Hbk: 2.24-2.26		Director of Supervision	Assessment Mgr	
						QASA Hbk: 2.70-2.73	QASA Rules (BSB)	Director of Supervision	Assessment Mgr	Quality Assurance Asst
						QASA Hbk: 2.74-2.75		Director of Supervision	Assessment Mgr	
						QASA Hbk: 2.93-2.96		Director of Supervision	Assessment Mgr	
						QASA Hbk: 2.99 and QASA Rules (BSB): 30		Director of Supervision	Assessment Mgr	
				*		*independent adjudicator, not linked to a Committee of the Board	Procedure to be developed	Appeals Adjudicator		
Professional Conduct										
						BSB SOs Annex 2e (1); power to authorise executive codified in BSB Handbook rE3	https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/professional-conduct-resources/	as in PCC Scheme of Delegation	as in PCC Scheme of Delegation	as in PCC Scheme of Delegation
						developed by operational managers		as in PCC Scheme of Delegation	as in PCC Scheme of Delegation	as in PCC Scheme of Delegation
						BSB SOs Annex 2e (2); power to authorise executive codified in BSB Handbook rE3	https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/professional-conduct-resources/	as in PCC Scheme of Delegation	as in PCC Scheme of Delegation	as in PCC Scheme of Delegation

Report of the Governance, Risk & Audit Committee (GRA)

Status: For noting and agreement.

Public.

Executive Summary:

1. The GRA Committee is required to update the Board on its activities on an annual basis; some of the work undertaken requires the Board's approval as set out in the recommendations below.
2. This paper also contains the Independent Observer's Annual Report (June 2013-14), which includes the Assurance Statement.

Recommendations

3. The Board is asked to:
 - a) **note** the contents of the update report;
 - b) **receive** the GRA Committee's assurance on the Independent Observer's report; and
 - c) **agree** to publish the IO's Annual Report (June 2013-14), which includes the Assurance Statement.

Background

4. The GRA Committee came into effect on 1 January 2012. The Committee's Terms of Reference include: reviewing corporate governance standards, integrity of internal controls, the risk management framework and the internal audit function; and providing opinion on the effectiveness of monitoring processes and whether reliance can be placed upon internal controls.

Update

5. The Committee met six times over the year since the last report in June 2013 (July and October 2013, January, April, July and September 2014) and has had a change of Chair and a new member. The post of Vice Chair is currently vacant.

Membership

6. The membership of the Committee includes:

Malcolm Cohen	Chair
Nicholas Dee	Barrister member
Judith Worthington	Lay member
Tim Fry	Lay member

Standing Orders Review

7. The Committee oversaw a number of amendments to the BSB's Standing Orders to enable the implementation of the BSB Handbook, which came into effect on 6 January 2014. A greater review was planned to take place during Summer 2014, however this has now been extended by the Board to encompass a fuller governance review, and will be commencing over the coming months. The associated Declaration of Interests and Gifts and Hospitality policies were also updated and rolled-out to all committees and the Board, along with implementation procedures.

Governance Manual and Scheme of Delegations

8. The GRA Committee oversaw the development and implementation of the organisation's first Governance Manual, describing the roles and responsibilities of the Board and its committees. It includes a scheme of delegations, showing which bodies and individuals are authorised to take regulatory decisions, and it is underpinned by formal letters of authorisation signed by the Chair of the Board.

Risk Management

9. The Committee receives the latest versions of the corporate risk register at every ordinary meeting, and carries out more detailed scrutiny of particular risks. The in-depth risk assessment reports during the period included the management of corporate risks, corporate management information, HR strategy and loss of key staff, and entity regulation.
10. The Committee spent time with the Chair of the Bar Council's Audit Committee to discuss the distinct roles and remits of each committee, supporting the independence of both the BSB and both committees, and also to clarify the reporting lines used to escalate risks from the BSB to the BC where necessary.

Independent Observer

11. The Committee received the Independent Observer's Interim report from June to October 2013 and annual report covering activity from June 2013 to May 2014. These described that the Professional Conduct Department continues to be subject to considerable change and it is commendable that day-to-day complaints handling has been largely sustained; for example, the Department is beginning to deal with cases under the new Handbook which came into force on 6 January 2014. Good administrative standards in the handling of complaints and prosecution of misconduct cases were observed, as was a demonstrable commitment to transparency and fairness when responding to complainants or barristers. All of the Independent Observer's recommendations have been accepted and will be implemented over the coming months with the GRA Committee monitoring progress. The Independent Observer's Annual Report is attached in annex 1, which will be published on the BSB's website, and it includes an Assurance Statement.
12. The Committee agreed that Isobel Leaviss should be re-appointed for a further two years as the Independent Observer until 31 May 2016. This is in line with current terms of office within the BSB. The extension will allow continuity of service in a time of change across the organisation and enable assurance to be sought during and after implementation.

Regulatory Standards Framework – Self Assessment

13. The Committee met in September to discuss the scrutiny of the BSB's interim Self-Assessment against the LSB's regulatory standards framework. The report from this session can be found in Part 2 paper BSB 068 (14).

Next update report

14. The next routine GRA Committee report is due to be presented to the Board in July 2015.

Financial implications

15. The greater governance review (referred to in paragraph 7) may have some financial and resource redeployment implications which will be fully investigated during that project during Q4 of 2014 and Q1 of 2015.

Equality Impact Assessment

16. No equality impacts identified.

Risk implications

17. This annual review paper is addressing the risk of the Board and the Committee not delivering against the corporate objectives.

Consultation

18. Consultation has taken place between the members of the GRA Committee.

Regulatory objectives

19. The GRA Committee plays a pivotal role in ensuring the BSB has adequate controls in place to help carry out its regulatory objectives.

Publicity

20. This report will feature in the public part of the BSB Board meeting.

Annexes

21. Annex 1 – Independent Observer's Annual Report (June 2013-14) with the Assurance Statement.

Lead responsibility

Malcolm Cohen
Chair of the GRA Committee

**Independent Observer's Annual Report
June 2013 – June 2014**

1. Introduction

1.1 My role is to provide independent assurance to the Governance, Risk & Audit Committee and ultimately the Board that the BSB's enforcement system is operating in line with its aims and objectives (Appendix 1). I make observations on the general application of BSB policies and procedures, rather than seek to evaluate the overall policy framework or to assess the merits of individual decisions. I present detailed six monthly reports to GRA and these are published on the BSB's website. This Annual Report summarises my findings for the Board.

2. Scope of Work

2.1 During the period June 2013 – June 2014 (my third year in post), I spent 55 days observing the BSB's handling of complaints and disciplinary matters. My activities included;

- observing the Professional Conduct Department (PCD) at work
- observing a BSB Equality and Diversity Committee meeting
- attending Board and Committee member Equality and Diversity training
- observing 7 (out of 15) Professional Conduct Committee (PCC) meetings and Away Day
- reviewing samples of case files and raising queries with case officers
- observing 20 Disciplinary Tribunals (total of 72 held during 2013) and 1 Review Hearing
- observing two days of Judicial Review proceedings
- observing a PCC Office Holders' Meeting
- attending one of the BSB's Handbook launch events
- observing a BSB stakeholder workshop with consumer facing organisations
- reviewing internal management information and performance reports

3. Limits on Assurance

3.1 My observations are made as a lay independent observer and must be considered in the context of the sample sizes of cases and number of meetings and proceedings that I have observed.

3.2 For the year 2013/14, the PCD did not prepare or publish detailed quarterly performance analysis due to the transition to a new database, a key staff absence and the focus on Handbook implementation. I had access to internal reports showing headline caseload

volumes and turnaround times. The PCD will shortly be publishing a comprehensive 2013/14 Annual Report and a Statistical Report and I look forward to using them to inform my work.

- 3.3 The BSB has statutory responsibility for ensuring that disciplinary arrangements are robust. Since October 2013 the BSB has had a formal contract in place with the Bar Tribunal and Adjudication Service (BTAS) to appoint and administer tribunals/panels for barristers facing regulatory action . This contract is overseen by a BSB Contract Manager. When observing Tribunal Hearings, I focus on the BSB’s role as investigator and prosecutor and pass on any observations on the administration of the tribunals to the BSB Contract Manager.

4. General observations

- 4.1 I have observed first hand that the past year has been one of intense activity and change.
- 4.2 The BSB is moving to a more ‘outcomes focussed and risk-based’ approach to regulation. The Handbook launch in January was preceded by comprehensive preparations for enforcement on the part of the PCD and PCC. These included a systematic review of policies and guidance, training (for staff, PCC members and prosecutors) and changes to the enforcement database.
- 4.3 The COIC Tribunal Service Change Programme (initiated in the wake of the Browne Report) has been ongoing and the PCD has also had to continue to deploy resources to defend legal challenges relating to historic Tribunal panel anomalies.
- 4.4 In terms of day-to-day case handling, whilst internal complaint volumes have dropped (as anticipated, due to changes in the approach to Continuing Professional Development), external complaint volumes have stayed at historic levels and it seems to me that there have been more highly complex cases (in substance, legal technicalities and/or procedurally). In addition, procedural challenges to prosecutions continue to complicate and prolong certain cases.
- 4.5 Staff turnover has been relatively high within PCD and even higher across the BSB. Overall, PCD resources have been stretched, particularly at senior management level and particularly in the months running up to the launch of the Handbook in January.
- 4.6 Given this context, I think that it is commendable that the PCD and PCC substantially delivered the Handbook Implementation Programme to the target timetable, increased their success rate for completed prosecutions and improved headline performance for turnaround times.

- 4.7 I have continued to observe good administrative standards in the handling of cases and a demonstrable commitment to fairness when responding to complainants and/or barristers. The PCD achieved a smooth transition to its new database (no mean feat) and I have observed that case officers and managers are increasingly in the habit of using the new management information tools to manage and prioritise their caseloads. Clear steps have been taken to improve internal knowledge management and support efficient and consistent case handling.
- 4.8 The PCD recognises that more remains to be done. In particular, whilst the BSB website contains a wealth of information and guidance in relation to enforcement, it has been updated in a very piecemeal fashion and is therefore difficult to navigate even for those who are very familiar with the process. A project to overhaul it has been initiated. This must be given the resourcing and priority it deserves in order to achieve greater transparency and accessibility.
- 4.9 The BSB now publicises disbarments and has started to engage with consumer facing organisations in order to improve awareness about the role of the regulator and to support potential complainants. However, much more could be done to promote wider understanding amongst the profession and consumers of legal services of the BSB's enforcement role. This would help promote adherence to professional principles and instil confidence in the enforcement process. I note that this is essentially Strategic Aim 2 (of 5) of the BSB's 2014-15 Business Plan. There will need to be more concerted efforts in order to achieve this.

5. Areas of focus

- 5.1 As agreed with GRA, over the course of the past year I have focused on the following:
- cases for which court transcripts were obtained to assess whether there were patterns of avoidable delays and if so what action might be taken to minimise them in future
 - actions taken in the light of the COIC Disciplinary Tribunal and Hearings Review Group recommendations, focusing specifically on those recommendations which had been implemented and which pertained most directly to the BSB
 - observing Tribunal Hearings
 - reviewing consistency of staff decision making
 - reviewing samples of cases for which turnaround times were outside PCD Key Performance Indicators and cases which appeared to be 'inactive'
 - observing PCC meetings and attending PCC Away Day
 - observing the Handbook roll out (January onwards)

5.2 My detailed observations and the basis for my recommendations are set out in my two six monthly reports (available on the BSB’s website). The key headlines are summarised below.

6. Requests for court transcripts and avoidable delays

6.1 I had previously formed an impression that cases involving PCD requests for court transcripts (e.g. to evidence whether or not a breach of the Code had occurred) featured significant avoidable delays. Having reviewed more cases, my conclusion is that whilst there are often delays, for the most part they fall beyond the PCD’s direct control. The delays are principally on the part of the courts in responding to requests, despite persistent (and clearly documented) follow-up by PCD. I have suggested a few ways to track and expedite requests.

6.2 A more recent observation has been that in a growing number of cases, complainants and/or barristers are themselves providing copies of transcripts at earlier stages of the process. If this is an accurate impression, it is to be welcomed and may reflect the greater emphasis on the need for evidence in the revised complaint form and in early stage PCD communications with complainants.

7. Implementation of the Browne Report

7.1 I looked at progress made to address the shortcomings identified by the COIC Disciplinary Tribunal and Hearings Review Group, chaired by Desmond Browne QC (‘the Browne Report’). This was published in July 2012 and highlighted a range of ‘systemic failures in the administration of the Tribunals Service’. The report made 82 wide-ranging recommendations and set out a draft action plan.

7.2 Initially, I found it difficult to assess overall progress. Whilst I could observe some changes first hand at Tribunal Hearings, the internal ‘COIC Tribunal Service Change Programme Project Board’ papers did not readily provide an overview, relying instead on exception based reporting. Neither COIC, nor BTAS nor the BSB had provided any information publically to update the profession and the public on the remedial action taken.

7.3 Following our discussions, the BSB’s Director initiated a line-by-line review of progress against each of the recommendations and this was presented to the Board in November 2013. A further update was prepared and published in March this year. It is not my role to test compliance with the new policies and procedures but my general observations are that Hearings continue to run smoothly and that PCD and BTAS appear to co-ordinate effectively (e.g. to ensure timely service of documents).

8. Observing Tribunal Hearings

- 8.1 During July 2013 I had become slightly concerned that I was beginning to detect a pattern of insufficient attention to detail in the preparation and presentation of prosecutions for apparently ‘straightforward’ cases (my description). Having attended 20 more Hearings since then, I have not observed any further such examples. In fact, I have observed many examples of careful attention to detail.
- 8.2 Since October, four of the twelve Hearings that I observed were convened and then adjourned. My observation was that two of these instances were avoidable. As detailed in my six monthly report, one arose due to late evidence being submitted by the BSB and the other due to an administrative error by the BSB, which resulted in the barrister not receiving notification of the Hearing date. Whilst unfortunate (inconvenience and unnecessary costs) my assessment is that they did not appear to affect the outcomes, were isolated incidents and unlikely to recur.

9. Consistency of staff decision-making

- 9.1 Based on my observations, I can give assurance that there are multiple mechanisms in place to promote consistency of staff decision-making. There is a panoply of policy and guidance notes. Whilst I find it challenging to keep a mental map of all these interrelated documents, they are at least now readily accessible on an intranet site and case officers refer to them regularly. There is meaningful oversight of case officers by senior case officers, team managers and the PCD Director.
- 9.2 I observe healthy debates within the open plan office. Case officers do not seem to hesitate to consult each other and their managers or indeed Office Holders and Experienced Committee Members for advice. All three teams within PCD have monthly team meetings and there are monthly one-to-one meetings between line managers and their staff. The Investigations and Hearings Team now have three weekly ‘Technical meetings’ for cases officers to discuss case related issues, resolve queries and log any lessons learnt.
- 9.3 In addition to these internal mechanisms, the PCC maintains oversight of the decisions it has delegated to staff. The Quality Review Sub Committee (QRSC) is a standing subcommittee comprising of three members; a lay chair, a lay member and a barrister member. QRSC reviews staff decisions to close files, refer cases to disciplinary action and (since January) to impose administrative sanctions.
- 9.4 The QRSC assesses whether staff decisions have been taken ‘appropriately, fairly, consistently and in accordance with the agreed procedures and decision making criteria’. I have recommended that its remit be extended to explicitly encompass ‘timeliness’ and also ‘openness, transparency and accessibility’ of communications in order to more fully reflect the aims and objectives for the enforcement system.

10. Samples of cases

- 10.1 Despite devoting more of my time this year to observing Tribunal Hearings, I have continued to undertake periodic reviews of samples of cases including those for which turnaround times were outside PCD Key Performance Indicators and cases that appeared to be ‘inactive’.
- 10.2 For the latter, I refer to a list of cases for which there has not been any database activity (i.e. logs of action taken, correspondence, decisions) for the previous 30 days. It is important to note that cases listed on this report may not in fact require action by the BSB; for example, cases that have been adjourned pending the outcome of underlying litigation involving the parties to the complaint.
- 10.3 However, I have found that it can be one route to identifying cases that require attention. It is also worth adding that this report will not identify all cases experiencing avoidable delay. My reviews of samples of cases did not highlight any issues of concern.

11. Professional Conduct Committee meetings

- 11.1 The PCC meetings that I have observed have been well attended. The number of cases considered by the Committee has decreased, corresponding with increased delegation to staff. Overall, their caseload seems to me to be increasingly complex in terms of substance, legal technicalities and procedurally.
- 11.2 It is difficult to quantify but my impression is that there are fewer polarised debates about cases. If accurate, there could be many possible reasons for this. In any event, based on my observations, I do not think it is a cause for concern. Members appear well prepared, tackle the central issues head on and pay close attention to detail. Barrister and lay members contribute to the debates in roughly equal measure. When differences of opinion arise, the Chair is careful to tease out the issues and ensure a full debate. Members do not appear to hesitate to raise questions, challenge the case examiners analysis and recommendations or seek clarification about procedural points.
- 11.3 The meetings are chaired effectively to ensure that there is a clear final Committee decision for each case. Nevertheless, the Chair and Secretary must continue to pay particularly close attention to the summing up and recording of decisions and reasons for cases involving multiple charges, particularly where the final decision differs from the case examiner’s recommendation, so that there is a clear audit trail showing the reasons for both referrals and dismissals.

12. Handbook roll out

- 12.1 The new BSB Handbook came into effect on 6 January 2014. During 2013, the PCD Handbook Implementation Project encompassed revising departmental policies and processes, providing training and preparing updated information for the public.
- 12.2 The PCC used its November 2013 Away Day to brief members on the new BSB Handbook and discuss the implications for enforcement decision-making. Since January, additional briefings have been provided at some of the PCC meetings to address particular issues. My observation is that members are well informed, up-to-date and that the transition is going smoothly.
- 12.3 Over the coming months I will observe the embedding of new practices (including risk assessments and staff decision making for administrative sanctions) and the testing and refinement of policies and guidance.

13. Equality and Diversity

- 13.1 An independent review of the enforcement system by the equality and diversity consultants Inclusive Employers was presented to the BSB Board and published in September 2013. In line with three recommendations relating to my work, my role description was revised last October to include a ‘watching brief’ on equality and diversity issues and I have since attended equality and diversity training and observed a meeting of the BSB’s Equality and Diversity Committee.
- 13.2 I am able to give assurance that in the course of my work to prepare this report, I have not observed anything to suggest general, systemic or inherent bias in the application of policies and procedures. Nor have I identified any specific causes for concern in relation to the handling of any of the individual cases that I have examined.
- 13.3 I have continued to see examples of sensitive handling of complaints alleging discrimination, appropriate steps taken to seek and take account of specialist equality and diversity advice where relevant and consistent efforts to ascertain whether parties require any reasonable adjustments to be made in the handling of their cases in view of any disabilities they may have. I have also observed the new recusals process for PCC meetings in operation. This aims to anonymise cases as far as possible (and hence reduce any risk of unconscious bias) whilst still enabling conflicts of interest to be identified and members to recuse themselves as appropriate.

14. Assurance

- 14.1 In my opinion and based on my observations as summarised above and detailed in my six monthly reports, I am able to provide the BSB Board with a substantial level of assurance that during the period covered in my review the enforcement system has operated in accordance with its aims and objectives. Specifically, I can assure the Board 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
 - equality and diversity issues are being appropriately addressed
- 14.2 In the course of my work I highlighted a handful of cases that required attention. All were promptly addressed and none gave rise to serious or wider concerns.
- 14.3 This year I made eleven new recommendations designed to further enhance the BSB's handling of complaints and disciplinary processes. They are listed in Appendix 2. I have also revisited earlier recommendations and summarise the outstanding ones in Appendix 3.
- 14.4 I would like to thank the Professional Conduct Department, the Professional Conduct Committee and all the other BSB staff for responding so thoroughly, promptly and patiently to my enquiries.

Isobel Leaviss
INDEPENDENT OBSERVER

Appendix 1: Aims and Objectives of BSB Enforcement System

Aims

To

- Act in the public interest
- Protect the public and consumers of legal services
- Maintain high standards of behaviour and performance of the Bar
- Provide appropriate and fair systems for dealing with complaints and disciplinary action;
- Promote public and professional confidence in the complaints and disciplinary process; and
- Ensure complaints are dealt with fairly, expeditiously and consistently

Objectives

To

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

Appendix 2: Recommendations made during 2013-14

Priority	Recommendation	Status
High	upon completing its review of progress in implementing the Browne Report recommendations, the BSB ensures that there is appropriate feedback to the profession and the wider public	Implemented
High	the BSB improves the accessibility and clarity of its service complaint policy on its website.	Implemented
Medium	systems are put in place to properly identify, record and monitor service complaints about PCD	Accepted in principle; subject to the understanding that the systems referred to in this recommendation form part of the organisation wide service complaint procedure, central responsibility for which lies with the Strategy and Communications Team.
Medium	the BSB gives early priority to engaging with intermediary consumer groups to promote understanding of its enforcement role and, where appropriate, improve signposting to assist legal consumers	Implemented
Medium	PCD ensures that decisions to withdraw all charges or 'offer no evidence' are formally reported to PCC, including indicating the reasons for those decisions and as appropriate, any lessons learnt	Accepted
Medium	PCD provides additional guidance to barristers about the expected format, content and evidence of 'mitigation/financial information' to be taken into account by the BSB in determining complaints and the imposition of administrative sanctions and considers offering barristers a further opportunity to submit such information once an investigation is near to conclusion and before any final decision on the imposition of a sanction/final disposal of the complaint (rather than only in the initial investigation letter)	Accepted

Appendix 2: Recommendations made during 2013-14

Priority	Recommendation	Status
Low	the PCD clarifies, on the BSB website, the options for complainants and/or barristers seeking to challenge enforcement decisions	Implemented
Low	the PCD considers my suggestions to help expedite transcript requests	Implemented
Low	the BSB uses the Handbook rollout as an opportunity to provide feedback to the profession about its enforcement caseload, the outcomes of complaints and ‘lessons’ for practitioners	Accepted but not fully implemented.
Low	the PCD considers my suggestions to further improve communication with complaint parties	Implemented
Low	QRSC’s remit be extended to include assessing timeliness and also whether the process has been ‘open’, ‘transparent and accessible’.	Accepted

Appendix 3: Status of outstanding recommendations from previous years

Year	Priority	Recommendation	Status
2012/13	Low	Following the organisation-wide review of the 'Unacceptable Behaviour by Members of the Public – Guidance to Staff', the BSB publishes an external facing statement or version of this policy.	<p>Accepted</p> <p>Summary statements are on website</p> <p>Understand that this should be addressed as part of the long-running corporate initiative to review service complaint policy, logging and handling (see p9)</p>
2012/13	Low	The PCD clarifies, on the BSB website, the options for complainants and/or barristers seeking to challenge enforcement decisions	<p>Implemented</p> <p>Information added to website but difficult to find.</p> <p>Website overhaul project initiated.</p>

Chair's Report on Visits and Meetings July-September 2014**Status:**

1. For noting

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last board meeting.

List of Visits and Meetings:

24 July	Attended dinner for outgoing Provost of Gresham College
26 July	Attended Bar Council meeting
28 July	Hosted dinner for Joshua Rozenberg and the Treasurer of Lincoln's Inn
29 July	Attended Communications Committee at House of Lords
4 Sept	Attended Westminster Legal Policy Forum Keynote Seminar: <i>The future of legal services regulation</i>
	Met with new BSB Legal & Policy Assistant
10 Sept	Attended briefing meeting for Board Budget meeting
11 Sept	Attending Board Budget meeting
16 Sept	Attending Bar Briefing Group on pupillage at Gray's Inn
17 Sept	Attending Board briefing meeting
	Attending Chairmen's Committee meeting

Equality Impact Assessment

3. No Impact

Risk implications

4. These reports address the risk of poor governance by improving openness and transparency.

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Baroness Ruth Deech QC (Hon)

Director General's report - BSB meeting 18 September 2014

For consideration and noting.

Director General

1. My work over the summer period (when not on two weeks' leave) has focussed on ensuring the entity regulation application to the LSB continues to progress, including addressing detailed matters in relation to the s69 order and other aspects of our powers as a regulator.
2. I have also had oversight of the LETR Programme planning work and of the development of the BSB budget and outline business plan for 2015/16.
3. With other senior management colleagues, we have agreed the content and approach for the next phase of learning and development for BSB staff. The focus for the coming autumn will be on risk-based regulation. I prepared and delivered the training on theoretical aspects of risk based regulation for the PCD and Supervision teams (referred to below.)
4. I took part with the Bar Council CEO in interviews to select a new Chief Information Officer who was able to start on 1 September. Similar interviews for a new HR lead have started with a view to an appointment commencing early October.
5. Finally, I have had the pleasure of initial meetings with Chair and Board members-designate to discuss prospective remit and induction, and of speaking at the Westminster Legal Policy Forum on the Future of Legal Services Regulation, on priorities for the BSB as front-line regulator. The agendas set out by key speakers at that Forum are likely to form the basis of discussions at the Regulators' Summit being held at the LSB on 2 October.
6. We have welcomed into the Chair and DG office team Stephanie Williams as a legal and policy assistant. Stephanie is an unregistered barrister and has most recently been working at the Criminal Cases Review Commission.

Regulatory Policy***Risk***

7. Our new Regulatory Risk Manager, Pippa Prangle, has begun her role. In preparation for her appointment, the Senior Management Team has been working with risk consultants InfluenceInc to prepare a programme of work which will review and update the BSB's regulatory risk framework and roll out a programme of training for Board, Committees and staff (risk based regulation will be the priority for BSB training in the period before Christmas). Further information will be provided to the Board in due course.

Entity regulation

8. The team has been busy working on our entity regulation proposals:
9. The consultation on entity regulation rule changes and insurance requirements closed on 5 September. A summary of the key issues raised appears elsewhere on the agenda;

10. We have been liaising with the Ministry of Justice to draft an order under section 69 of the Legal Services Act 2007 to give the BSB additional powers. A consultation is expected to be released by the end of the month;
11. We have been liaising with the LSB to assist their consideration of the rule change application to enable us to introduce entity regulation.

Equality and Diversity Chambers Monitoring

12. Following the approval of the E&D chambers monitoring report all activities within the action plan have either been completed or are currently ongoing. The findings from the report have been presented and handed over to the wider Regulatory Policy team to form part of the upcoming Handbook review. To assist chambers in gaining a greater understanding of the Equality Rules, the E&D team have worked with the Communications team to produce an E&D Postcard which will be used in supervision visits to help support chambers.
13. The E&D team will be taking part in the Bar Council's Equality and Diversity Officers' Network event later this year to provide further support in relation to flexible working policy requirements and the monitoring of unassigned work.

Equality and Diversity Training for Board and Committee Members

14. The Equality and Diversity classroom training that is currently delivered to all new Board and Committee members will now be an online training course and the E&D team have received the completed first draft version from the software developer. The team are now reviewing the online draft and voiceovers to ensure they are correct. The course should be ready to launch by the end of the year and all new members will receive an email inviting them to complete the session.

BSB Equality Champions Group

15. The Champions Group meeting took place in September and discussed the potential equality impacts of the Bar Standards Board being subject to freedom of information requests. The group are looking into what requests we currently receive in regards to equality and diversity and how we manage that. This will be discussed at the next meeting. The group were all asked to disseminate and work from the approved BSB diversity monitoring form in any data collection exercises to ensure consistency across the organisation. The group were also presented with the new E&D rules postcard for the profession (discussed above) so that they could signpost any chambers or Barristers they work with towards the E&D support products.

Diversity Data on the Profession

16. In August the E&D team undertook the annual extraction of diversity data on the profession from the Core database. The data will be used by the E&D team alongside BCAT, BPTC and pupillage data to produce a report on the diversity of the profession. All data will be anonymised, aggregated, broken down by protected characteristics and in the case of the practising Bar by seniority. A draft report will be presented to the Equality and Diversity Committee in November and will be presented to the Board in January for approval and publication. The report must be published by the end of January 2015 in order for the BSB to meet its legal and regulatory duties.

Identifying Harassment in Complaints Training

17. Throughout August the BSB EDA ran a number of training sessions for members of staff in the Professional Conduct department on identifying harassment in complaints. The training covered anti-harassment legislation in the Equality Act 2010, key definitions and harassment case law. The training also covered the regulatory requirements in relation to chambers with a particular focus on the requirement to have an anti-harassment policy and the duty for barristers to report serious misconduct to the BSB, which includes harassment.

Staffing

18. The E&D SPO, Jessica Bradford is now on maternity leave and the temporary replacement for the SPO role; Sarah Charlesworth has now joined the BSB.

Supervision

19. Over the summer the Supervision team has begun the assessment of Supervision Returns. The deadlines for High Impact chambers to submit returns was 15 September. An assessment framework and moderation policy have been developed and it is apparent from the small number of returns that have already been assessed that the process will assist in identifying chambers that require closer supervisory attention, as well as identifying low risk chambers that are controlling and mitigating risk effectively themselves.
20. At the end of July the Supervision Team spent an afternoon with staff from the LSB that are considering the entity regulation application to explain the supervision process and demonstrate the policies and systems. A member of LSB staff then accompanied the Supervision Team on a chambers visit and a follow up meeting took place to explain the following action and discuss the report that was issued. The Supervision Team felt that these sessions went well and were a good opportunity to demonstrate the progress that has been made on supervision; the LSB did not raise any significant concerns about the supervision process during any of their visits or since.
21. The pilot visits programme has concluded and a report will be considered by the Supervision Committee on 23 September; this report will be considered by the Board in October. It covers the nine pilot visits and four additional risk-based visits. Since the report was drafted the Supervision Team was involved in another risk-based visit that was required at short notice to tie in with enforcement work being pursued by the Professional Conduct Department.
22. A number of additional chambers briefing sessions have been undertaken, bringing the total number of briefings this year to 17.

CPD Spot check

23. The final deadlines for submission of record cards for the spot check procedure has now passed and the CPD Assessment team is making progress on assessing the submissions. The intention is that all record cards will have been assessed by the end of September. A report on the process will be considered by the Board in early 2015, once the majority of the corrective action for non-compliant barristers has been completed.

Entity regulation

24. The programme for implementing the BSB's approach to entity regulation is progressing well. The authorisation process is now settled and the application forms that prospective entities will use are in final draft.
25. An Authorisation Manager has been appointed, Clíodhna Judge, who will join the BSB on 6 October. Clíodhna is an Irish barrister with significant experience also of business analysis and financial management. She will bring skills of real value to the BSB's work on authorisation and supervision of entities.
26. The consultation on proposed fees for authorisation of entities has been issued and this commences a concerted period of communication with the regulated community on the BSB becoming an entity regulator. Briefing sessions will be held for interested barristers and chambers and potential entities have been encouraged to contact the BSB to discuss their proposed business model and to better understand what will be expected of them through the application process.

Education and Training***Post LETR Plan***

27. A programme initiation document (PID) has been prepared in consultation with workstream leads, the Director of Education and Training and the Director General, for consideration by a newly constituted Programme Board at the end of September.
28. A communications plan is in preparation. An overarching programme 'brand' is being developed to ensure messages about the changes are consistent and coherent. A dedicated section of the BSB website will be developed.

Operational updates*Vocational Training*

29. In the first of two sittings in 2014 of the Bar Transfer Test, 47 candidates passed the full assessment and 130 failed. English language was identified as a particular problem this year.
30. Further progress has been made in the handover of responsibility for BPTC admissions from the BSB to Providers, and planned new systems are on track for delivery in time for recruitment from November.
31. The Policy & Quality Assurance Manager is progressing with a review of the system for external examination of the BPTC, in light of a number of concerns about the current system. Proposals for change will be brought forward after consultation with the BPTC Subcommittee.
32. An independent review was commissioned of the closure by Kaplan Law School of its BPTC programme; the review identified a number of weaknesses in process and in decision-making, though effective action by the BSB and by KLS BPTC staff have mitigated those problems.

Centralised Assessments

33. The Chair of the Examination Board published the standard report on the 2014 First Sit assessments in July (available online).
34. The 2014 First Sit assessments resulted in comparable achievement to past years by candidates in both Civil and Criminal Litigation, but a marked decline (21%) in passes for Professional Ethics. The possible causes of this decline will be carefully considered in consultation with Providers.
35. The review of Centralised Assessments has been commissioned, to report early in 2015.

Pupillage

36. An advisory group for pupillage met for the first time on 21 August 2014, and considered problems with the current rules on pupillage funding, which will now lead to the issuing of appropriate guidance to pupillage training organisations.

CPD

37. The CPD Project Board has agreed a restructured delivery plan for the revised scheme that has been agreed by the Board. The revised plan will deliver (i) a more substantial pilot of the scheme than was originally envisaged, continuing into 2016; (ii) continuity of accreditation for the existing scheme, in revised form, through to introduction of the revised scheme and (iii) introduction of the full revised scheme in 2017. The revised timetable takes account of the need to align the CPD changes with the wider post-LETR plan, and other regulatory changes in hand that will be subject to consultation over the next two years.
38. The contract for delivery of the Forensic Accounting course has expired, and we have notified BPP of our intention to re-tender.
39. Changes to the management of CPD Accreditation are planned for an interim period under the current rules, changing from a course-based scheme to provider-based.

Authorisation & Waivers

40. The Planning Resources and Performance Committee has now approved the following Key Performance Indicators for the Qualifications Committee:
 - The percentage of applications determined within six weeks of receipt of the complete application, including all required documentation and the application fee.
 - Target for 2014/5: 75%
 - The percentage of applications determined within twelve weeks of receipt of the complete application, including all required documentation and the application fee.
 - Target for 2014/5: 98%
41. We have now received our first appeal to the High Court against a decision of the Qualifications Committee since the jurisdiction transferred from the Visitors to the Inns of Court to the High Court.

Staffing

42. Paras Junejo has resigned from the post of Vocational Training Officer, leaving on 5 September. We are delighted that Paras has an opportunity to return to her legal career, in a Civil Service legal case worker role. Recruitment for her replacement is in progress.
43. Nana Amoako has been appointed to the role of Assessments Administrator, following the resignation of Racheal Busingye.
44. Maya Chopra has been appointed for a fixed term as LETR Legal and Policy Officer, to support the Post LETR Programme. Maya is a graduate of the BPTC.

External liaison

45. The Director of Education & Training met Annette Black of the New Zealand Law Society on 19 August, to discuss mutual interests in CPD regulation.
46. The Director of Education & Training and Andrew Sanders met with representatives of the Inns for a discussion about the future of the BPTC on 2 September 2014.

Professional Conduct

General

47. The first joint Away Day between the PCD and Supervision Departments was held on 2 September 2015 principally for the purpose of training and preparing staff for the introduction of entity regulation.
48. The programme included presentations on types of business structures relevant to entity regulation and the theory of risk. Scenario-based workshops, designed to promote collaborative working and effective information sharing, took place in the afternoon. Staff agreed that the event was a success and was useful from both a cross-team working and training perspective.
49. The PCD have successfully recruited to the post of Investigations and Hearings Team Manager following the departure of Gillian Seager at the end of July 2014. The new Investigations and Hearings Team Manager will join the PCD in early October 2014.
50. For more information on the work of the PCD, we would ask Board Members to refer to two major agenda items this month:
 - Annual Report from the Independent Observer (included in the GRA Committee Report to the Board)
 - PCD/PCC Annual Report.

BTAS Tribunal Hearings

51. In a departure from past years, during which COIC has been closed during August, three hearings were held at the BTAS tribunal suite this August, including the first Fitness to Practice and Interim Suspension hearings under the new BSB Handbook.

Judicial Reviews

52. The PCD remains subject to four applications for Judicial Review. Three of these are at the permission stage with the remaining one listed for a full hearing.
53. The position regarding appeals that have been lodged against the decision to dismiss the JR on the COIC appointment issues remains the same as in the last report. The Court of Appeal has decided that the permission application, and any resulting substantive hearing will take place on the same day and is unlikely to take place until the end of 2014.

Strategy and Communications

Business Support

Freedom of information

54. As per our Business Plan commitment, work has commenced on the development of a Freedom of Information compliance system. A business case and project plan have now been drafted.

Budget bid

55. The budget bid was presented to the Board on 11 September and will be put to the BC's Finance Committee in October 2014. The bid was scrutinised by the Planning, Resources and Performance Committee, and this dovetailed with quarter one reporting. A number of the BSB's fees and charges were reviewed in preparation of the bid to ensure that full cost recovery is achieved.

Contract Management

56. The PRP Committee endorsed the newly revised overarching Service Level Agreement between the Bar Council and the BSB; this includes a refreshed dispute resolution (escalation) process and a number of schedules that are currently being finalised.

Communications

57. August is a quieter month and intentionally we do not plan any major announcements over the summer period. It has been an opportunity to prepare for the next few months when we will have a lot of communications activity especially for some of our larger projects such as entity regulation and the post LETR review.

Online and social media

58. During the past month we promoted the entity regulation rule change and insurance provisions consultation on both our website and twitter. We have received around 52,352 visits to the BSB website since the last Board meeting (about 34,171 of those in the last month) and, at the time of writing, have over 9,300 followers on Twitter.

Conferences/events

59. Vanessa Davies gave a speech at the Westminster Legal Policy Forum on the future of legal services regulation.

Annual report

60. We published the annual report on the website and have been tweeting information from it in order to disseminate some of the achievements from the last financial year.

Regulatory knowledge and information

Research

61. The BCAT Impact Evaluation research project continues to require higher levels of input than expected to assist external providers to deliver the project to the level of quality we required. Their managing director is now involved.
62. The LASPO review is progressing well. The final draft of the report was circulated for comments.
63. The exit survey (which collects information about people leaving the profession) has been renamed “the Leavers’ form”, tested and is now live. Data on leavers will be collected, and reported on, monthly. Delay in the implementation of uEngage means that the form is still on SurveyMonkey.
64. The Youth Courts advocacy research is progressing very well. Five quality expressions of interest from reputable institutions were shortlisted for tender. The invitation to tender will be sent out week starting 15 September.
65. The BPTC Perceptions survey report is being completed. A final draft should be available week starting 15 September.
66. The Silent Consumer research project (in collaboration with LeO) is on hold due to delays experienced by LeO in securing funding from other key stakeholders.
67. Work continues to ensure that the data quality issues are addressed. Scoping is about to begin to ensure that all of the post-LETR data management work stream needs are identified and scoped properly. The cross-over with other projects will be carefully evaluated to ensure that there is no duplication of effort and the resulting solution is as effective and efficient as possible.
68. Recruitment is underway to fill the current Research and Information Officer vacancy with interviews to be held in the week of this Board meeting.

Resources Group

Current Key Business Projects

Document Management System

- Project closure process is underway to review success of project and monitor benefits realisation.
- DMS workflow development ongoing – Fees Collection in operation and BSB service complaints in prototype stage.
- Further refresher training to be offered to all staff during September.

Authorisation to Practise 2015

- An income based model has been formulated and agreed, guidance and development are underway.
- The technology specification has been scoped, agreed and development has been initiated with Netextra and NFP.
- Communications plan agreed and initial messages for the profession have been drafted - planned for release at the end of September.

Intranet

- Business requirements analysis has been completed.
- The procurement process is underway and shortlisted to two suppliers; visits to their existing clients are planned.
- A Content Editor has been recruited and brand, information architecture and content development initiated.

Developing Barrister Connect

- Requirements analysis ongoing until October when business case will be developed
- Performance of the current supplier continues to be monitored

CPD Regulation Implementation

- The project has been re-prioritised for a 2017 launch as part of BSB business planning process.
- The fee structure for the CPD provider level accreditation scheme is awaiting approval from the Education and Training Committee and BSB Board.
- The process review has been completed for the CPD provider level accreditation scheme and a review of guidance/forms is underway.
- The CPD Policy development process has been initiated for the 2017 scheme.

Entity regulation

- The PMO and IT are providing business analysis support to the development of the authorisation process.
- The PMO is also providing coaching and support to Project Management.
- The authorisation process has been agreed in principle subject to small amendments.
- The specification has been delivered to Netextra and NFP for the authorisation process; timescales and costs are being negotiated.
- A pilot authorisation process under development utilising Uengage.

Finance and HR processes and systems

- A process review has been initiated with business teams.
- An initial review of market and available suppliers has been undertaken.
- Planning has been completed and a project board constituted.

Bar Course Aptitude Test

- First year evaluation is complete and analysis and report are underway.
- An evaluation working group is working closely with the suppliers to ensure quality.

- The BCAT test cycle has been completed and an operational review meeting is planned for October.
- Adaption of processes in line with change the in BPTC application process is underway.

Upcoming projects

Post Legal Education and Training Review Change Programme

- The PMO is playing a programme assurance role.

Property strategy development

- An initial project meeting has been held to scope first steps.
- The project mandate process has been initiated in order to seek Senior Leadership Team vision for next 5-10 years.

Team Updates

Project Management Office – Richard Thompson

69. The staffing for the Project Management Office is four strong at present including a temporary staff member who we are seeking to transition to a fixed term position for two years to ensure continuity on Authorisation to Practise. This will also enhance our ability and capacity to support related other projects.
70. Project Gateway knowledge sharing sessions are planned throughout September and October as part of the roll out.
71. Project management training is planned for the RPS policy management team for early October.
72. Oct-Dec is earmarked to develop project management guidelines in conjunction with a community of practice across the business. Full learning and development activity is to be delivered in Jan-March 2015

Finance – David Botha

Budget 2015/16

73. Work has starting on bringing draft budget proposals including cost and income challenges to Finance Committee for their approval in October. These proposals will enable the FC to approve a budget envelope that meets the Bar Council's PCF commitments in light of the change to a barrister income basis, sets limits on expenditure and establishes appropriate income and margin targets.
74. This will enable the Bar Council to consult on its budget proposals in November and to secure agreement from LSB on the PCF levels by December. Work on the detail of the cost budgets will take place in December.
75. LSB/OLC Levy fees proposals will be brought to SLT in September.

Q2 Forecast

76. A timetable will be released shortly aiming to bring an up to date full year forecast for the organisation to FC in October.

Finance System Development

77. We are undertaking two parallel strands of work including the potential outsourcing of the Payroll transaction activity (which impacts on Finance and HR processes) and a replacement of the current finance system. This work is supported by the PMO.
78. The existing system, whilst up to date technically, is functionally poor and was configured pre-2004 for the organisation and business processes that existed at that time. Development of efficient payroll processes are limited by the functionality and configuration of the system and the lack of an effective interface with the HR data.
79. Workshops to determine new Finance system functionality will be held with business representatives to ensure that there is an effective two way communication and sharing of need and potential functionality so that a comprehensive requirements document can be developed.

Risk Management Workshops

80. The first risk management workshops, supported by Haysmacintyre, for RG & RPS were held in September to assist with redefining our risk management activities and reporting from team level upwards. There was good attendance with managers from all areas engaging in and contributing to the workshops. Outcomes and next steps will be brought to Audit Committee in October.

Human Resources – Andrea Roots

Performance review

81. A survey has been sent to staff asking for feedback on the new process in terms of how well it is being embedded into everyday working life and where further clarification / training is required in respect of any of the elements of the new process. The survey has one more week to run; the response so far has been good.
82. Next steps will then be:
- to collate feedback and communicate findings to all, detailing any commitment to review or amend any element of the process;
 - to draft and send an organisation wide communication signposting the forthcoming mid-year review and outlining expectations for that process in terms of quality, timeliness, deadlines, actions required etc but specifically clarifying the following:
 - How to interpret and use the competency framework
 - Performance ratings and the moderation process
 - Timeline for mid-year process

Recruitment audit

83. Since picking up Robert Grant's role, Andrea has audited the recruitment process and will present her findings and recommendations to SLT in the next couple of weeks. By way of summary, the process is currently hampered by the following:
- Poor system support;
 - Absence of attraction strategy and no preferred suppliers list;
 - Overlap of responsibilities between line management and HR are blurred and in need of clarification;
 - Unnecessary and onerous administration requirements expected of HR team by recruiting managers; and
 - A lack of interview skills training for line managers.

HR team - roles and responsibilities

84. Interviews are currently taking place for the new HR lead role.
85. Team structure and individual roles and responsibilities will be clarified this week in a note from Andrea to the organisation. Jo Lisowska has been re-designated Compensation and Benefits Analyst to reflect the main focus of her role, and she will also be responsible for HR Systems going forward, both in terms of process mapping in preparation for a new system, maintenance of existing and new systems (including the Absence Management system) and the production of management information.

Management development

86. With the training budget having been devolved to the business areas, line managers will be expected to have more ownership of the development needs of their team in the future and so they will be asked to identify training needs and areas for development of the people in their teams as part of the forthcoming mid-year review process. This will be different to previous years where the HR team has undertaken a skills gap audit at the end of the appraisal round. HR will still be responsible for advising on how to address the different development needs that are identified – this might be a combination of external courses, internal workshops and/or coaching and mentoring using expertise and resources that already exists within the organisation.
87. RPS ran the first of a number of team building events last week which was well received and we have basic project management skills training planned for early October.

HR metrics

88. Recruitment continues to be busy with 14 open vacancies at the current time.
89. Current headcount stands at 151 broken down as follows:
- RPS – 40 (including x 2 on maternity leave)
 - BSB – 79 (including x 2 on maternity leave)
 - Resources Group – 42

Staff turnover

90. For **Q1 2014/2015** (April-June) the total turnover breakdown is as follows:
- R&P – 9.3%
 - BSB – 5.2%
 - Resources Group – 6.25%
91. For the purpose of comparison, **Q4 2013/2014** (Jan-March 2014) was:
- R&P – 13.8%
 - BSB – 9.4%
 - CS – 7%
92. These figures relate to 'crude' turnover (both voluntary and involuntary), and includes all leavers including those who left due to dismissal or redundancy.

Planned HR activity for next quarter

- The design and implementation of a reward strategy that will include progression within post and will be adaptable for the purposes of introducing performance related pay;
- Implement new HR system - currently mapping processes. Likely to go hand in hand with outsourcing payroll;
- Communication of flexible /agile working policy – the recently introduced Children and Families Act 2014 extends the rights to request flexible working to all employees. Policy and guidance in terms of management approach has been drafted and is awaiting approval at senior level;
- Roll out of Dignity at Work policy and training – policy agreed in principle;
- Staff engagement survey planned for March 2015 – approach agreed in principle, next steps are to identify supplier and design content/communication plan;
- Launch of mid-year performance review process for 1 Nov 2014;
- Senior level recruitment activity – Head of Policy, RPS, HR lead, Senior Information Management Consultant, BSB
- Plan, draft and agree content and roles / responsibilities for implementation of new intranet;
- Organise first Staff Committee with new remit.

Facilities – Sam Forman

93. The Rent Review was completed and Memoranda were signed and issued.
94. Works to the upper floors have commenced and are currently on week eight of a 12 week project. The works to the Bar Council common areas (basement to 4th floor) have been agreed and will commence at the end of the 12 week project. A programme of works is yet to be finalised and details including a brief scope of works will be provided to staff in due course.
95. A video/audio/virtual meeting room solution, Starleaf has been agreed and will be implemented within the next month. Extensive trials of the system were carried out by various members of staff including the Chief Executive and Directors.
96. Security ID cards have been sourced and will be implemented from 29 September. The facilities team will manage the rollout including arrangements for photographing all

members of staff, user guides, demonstrations and go live dates for each department. Alarm fobs will also be replaced with a customised digit pin number.

97. New cold water machines were introduced on all floors following renegotiation of the existing contract with PHS.
98. A week-long meeting room study was conducted in August with the aim of capturing data relating to the ingrained culture surrounding booking meeting space within the building. These results and recommendations will be presented to SLT at their meeting on 9 October.
99. The FM and IT teams successfully managed the internal moves on the second floor following the restructure of Representation, Policy and Services.
100. A proposed floor plan for the Ground Floor Mezzanine has been agreed by the Head of Finance and HR Director. This will see the Finance Team move from the 4th floor to the GFM within the next few months. The current space occupied by Finance will be changed into meeting space for 1:1 meetings. A number of acoustic pods are being considered and costed for this area.

Information Services – Poli Avramidis

101. With the recent change in CIO it has not been possible to report in time for circulation of this paper. Anything substantive will be reported at the meeting.

Vanessa Davies
Director General BSB
11 September 2014



New board members for the Bar Standards Board

The Bar Standards Board (BSB) has today announced the appointment of three new board members – one lay person and two barristers – who will take up their respective positions in 2015.

The new board members are:

- Nicola Sawford;
- Adam Solomon; and
- Andrew Mitchell QC

Chair of the Bar Standards Board, Baroness Ruth Deech QC (Hon) said: “These three new appointments will add a fresh injection of energy, bolstering the rich range of talent and experience our members already bring. Though I am saddened that I will not be in post to see them join our talented team, I remain ever confident that I leave the board in very capable hands.”

The incoming board members were selected following a rigorous recruitment process undertaken by an independent appointments panel, chaired by Dr Kenneth Fleming.

Speaking about the appointments Dr Fleming said: "The panel interviewed a variety of engaged and experienced candidates in a competitive and fair selection process. We are delighted that Nicola, Adam, and Andrew have accepted our respective offers of the roles."

Mr Mitchell and Mr Solomon will join the BSB at the beginning of January 2015; Ms Sawford will start later, in September that year.

Keith Baldwin has been appointed as a Special Advisor to the board, and is due to serve from 1 January 2015 until 31 December 2016. This appointment is to assist with the board's activities – particularly those centred on finance and efficiency, and major IT projects. If a lay board member vacancy should arise between 1 September 2014 and 31 August 2016, this will be offered to Keith.

[Sir Andrew Burns KCMG](#) will serve as the new Chair of the BSB with effect from 1 January 2015. He succeeds Baroness Ruth Deech QC (Hon) whose maximum possible six year term of office will finish at the end of 2014. He is due to serve for an initial term of three years.

ENDS

Notes to editors**About Andrew Mitchell QC**

Andrew Mitchell QC was called to the Bar in 1992 and took silk in 2011. He specialises in commercial and civil litigation and arbitration. His practice is predominantly in the fields of banking, financial services, professional negligence, professional and financial regulation, and (re)insurance law, with a significant international element. He is a member of the Commercial Bar Association (COMBAR), and also an accredited Mediator. He is a member of Fountain Court Chambers where he chairs the Administration/Finance Committee and is currently an experienced member of the Professional Conduct Committee of the Bar Standards Board, on which he has sat since 2010.

About Nicola Sawford

Nicola Sawford has been Chief Executive at Serle Court, one of the leading commercial and chancery barristers' chambers, for over ten years. She is a qualified chartered accountant and prior to joining Serle Court worked in various sectors including telecommunications, retail, media and financial services. She is a trustee and Chair of the Audit Committee at Changing Faces UK, a charity which supports and represents people who have conditions or injuries which affect their appearance. She is also an Executive Committee Member at the Legal Practice Management Association.

About Adam Solomon

Adam Solomon read English Literature at Exeter College, Oxford, graduating in 1992, and read for a Master's degree in Critical Theory at Sussex University, graduating in 1994. He took a law conversion course at City University, which he completed in 1997. Prior to being called to the Bar at Gray's Inn in 1998, Adam worked briefly in the European Commission in Brussels, and even more briefly as a school master at Worksop College. Since 2000, Adam has been a Trustee and Director of Law for All (now in administration), a charity committed to providing access to justice for those who might otherwise be denied it. Prior to 2007, Adam practised at Cloisters, and since then he has been a barrister at Littleton Chambers, specialising in commercial, employment and regulatory law.

About Keith Baldwin

Keith Baldwin has extensive experience of working at Board level, in both public and private sectors, from his 20 years as a management consultancy partner with PricewaterhouseCoopers and his more recent non-executive roles. His current roles include a position as an Independent Advisor to the National Assembly for Wales Commission and member of the Audit and Risk Assurance Committee, Member of Council at the National Army Museum and member of the Audit Committee, and Trustee, Board member and member of the Audit Committee at CVQO Ltd (which delivers vocational qualifications to members of youth organisations). Keith is currently a member of the Planning, Resources and Performance Committee and the Qualifications Committee at the Bar Standards Board.

About Dr Kenneth Fleming and the Independent Appointments Panel

The BSB delegates the recruitment process for the Chair and members of the Board to an independent appointments panel. This is currently chaired by Dr Kenneth Fleming. Dr Fleming is the Director of International Affairs for the Royal College of Pathologists and has chaired the Independent Appointments Panel since 2010.

For more information about the Independent Appointments Panel see the Constitution of the BSB (page 9): <http://bit.ly/W7ifWx>

About the Bar Standards Board

For more information about our existing board members, visit: <http://bit.ly/1oWuCyE>

Our mission is to regulate the Bar so as to promote high standards of practice and safeguard clients and the public interest. For more information about what we do visit: <http://bit.ly/1gwui8t>

Contact: For all media enquiries call: 0207 611 1452 or email Press@barstandardsboard.org.uk.