

*Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.*



REGULATING BARRISTERS

## Meeting of the Bar Standards Board

**Thursday 1 December 2022, 4.30 pm** (Hybrid meeting - in person and online)

**etc Venues, 50-52 Chancery Lane London WC2A 1HL / MS Teams**

### Agenda - Part 1 – Public

**This meeting will be recorded for the purposes of minute taking as previously agreed by the Board. Your consent to this is assumed if you decide to attend. The recording will be deleted once the minutes are formally approved at the next meeting**

***Note: this meeting will be preceded by a seminar for Board Members commencing at 3.15 pm on Bar Training (same venue)***

				Page
1.	<b>Welcome / announcements</b> (4.30 pm)		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of minutes from the last meeting</b> <b>(22 September 2022)</b>	Annex A	Chair	<b>3-6</b>
5.	a) <b>Matters arising &amp; Action List</b> b) <b>Forward agenda</b>	Annex B Annex C	Chair Chair	<b>7</b> <b>9-10</b>
6.	<b>Director General's Report – public session:</b> a) <b>Performance Update</b> b) <b>Strategic Update</b> (4.35 pm)	BSB 058 (22) BSB 059 (22)	Mark Neale Mark Neale	<b>11-24</b> <b>25</b>
7.	<b>Regulatory Decisions Annual Report 2021/22</b> (4.50 pm)	BSB 060 (22)	Oliver Hanmer / Sara Jagger	<b>27-67</b>
8.	<b>IDB Annual Report 2021/22</b> (5.10 pm)	BSB 061 (22)	Iain Christie	<b>69-80</b>
9.	<b>Annual Report to the Board on Bar Training</b> (5.20 pm)	BSB 062 (22)	Victoria Stec / Julia Witting / Mike Molan	<b>81-116</b>
10.	<b>BSB review of governance documents – Governance Manual</b> (5.40 pm)	BSB 063 (22)	Rebecca Forbes	<b>117-158</b>
11.	<b>Governance, Risk &amp; Audit Committee (GRA) Annual Report</b> (5.50 pm)	BSB 064 (22)	Stephen Thornton	<b>159-161</b>

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- |     |  |              |                |                |
|-----|--|--------------|----------------|----------------|
| 12. | <b>Chair's Report on Visits &amp; External Meetings</b><br>(5.55 pm)                                   | BSB 065 (22) | Chair          | <b>163-164</b> |
| 13. | <b>Schedule of Board Meetings: Jan 2023 – Mar 2024</b>   | BSB 066 (22) | Rebecca Forbes | <b>165</b>     |
| 14. | <b>Any other business</b><br>(6.00 pm)   |              | Chair          |                |
| 15. | <b>Date of next meeting</b> <ul style="list-style-type: none"><li>• Thursday 26 January 2023</li></ul> |              |                |                |
| 16. | <b>Private Session</b><br><br><b>John Picken</b><br><b>Governance Officer</b><br>24 November 2022      |              |                |                |

<p style="text-align: center;">BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

**Part 1 - Public****Minutes of the Bar Standards Board meeting****Thursday 22 September 2022 (5.00 pm)****Hybrid Meeting (Rooms 1.4-1.7, BSB Offices & MS Teams)**

- Present:** Kathryn Stone OBE (Chair)  
 Alison Alden OBE  
 Emir Feisal JP  
 Steve Haines  
 Andrew Mitchell KC  
 Irena Sabic  
 Adam Solomon KC  
 Stephen Thornton CBE – via Teams
- By invitation:** Malcolm Cree (Chief Executive, Bar Council) – via Teams  
 Lorinda Long (Treasurer, Bar Council)  
 Nick Vineall KC (Vice Chair, Bar Council)  
 James Wakefield (Director, COIC)
- BSB Executive & Resource Group in attendance:** Richard Cullen (Director of Finance) – via Teams  
 Christopher Fitzsimons (Communications Manager)  
 Rebecca Forbes (Head of Governance & Corporate Services)  
 Teresa Haskins (Director of People, BSB) – via Teams  
 Sara Jagger (Director of Legal and Enforcement)  
 Ewen Macleod (Director of Strategy & Policy)  
 Mark Neale (Director General)  
 John Picken (Governance Officer)  
 Paul Pretty (Head of Investigations and Enforcement) – via Teams  
 Wilf White (Director of Communications & Public Engagement)
- Press:** Neil Rose, Legal Futures – via Teams

**Item 1 – Welcome / Announcements**

1. Kathryn Stone welcomed those present to the meeting. She paid tribute to the former Chair, Tessa Blackstone, for her work and also thanked Members, the Bar Council and the BSB Executive for their warm welcome to her new role as BSB Chair.
2. She confirmed that BSB Board meetings are held in public to provide transparency on Board Member discussions about public agenda items and, in addition, to allow comments from those observing the meeting. Her aim is to conduct meetings so that Board Members act as critical friends to the Executive in a constructive and respectful manner.
3. **Item 2 – Apologies**
  - Leslie Thomas KC
  - Mark Fenhalls KC (Chair, Bar Council)
  - Oliver Hanmer (Director of Regulatory Operations)

**Item 3 – Members' interests and hospitality**

4. None.

**Item 4 – Approval of Part 1 (public) minutes (Annex A)**

5. The Board approved the Part 1 (public) minutes of the meeting held on 14 July 2022.

**Item 5a – Matters arising & Action List**

6. There were no matters arising. The Board **noted** progress on the action list. Pressure on diary time has meant it has not yet been possible for Ewen Macleod and Irena Sabic to discuss the issue of social media and the threats that some barristers have received (re min 29c – 14/07/22).

**Item 5b – Forward agenda**

7. The Board **noted** the forward agenda.

**Item 6a – Director General’s Report: Performance Update**

BSB 045 (22)

8. Mark Neale commented that:
- the public agenda now has a separate item on performance to reflect the Board’s earlier decision to focus its attention on the delivery of core regulatory operations;
  - the Board has also established a Task and Finish Group on performance to help support and to challenge the Executive;
  - the private agenda includes a paper on proposals to accelerate investigations. As this contains commercially confidential data it was not possible to present it in public session though its content has already been shared with the Bar Council.
9. With reference to the report, he stated that:
- productivity was severely impacted in April and May by a cyber attack. This affected operational work for some five to six weeks afterwards;
  - since then, significant progress has been made in reducing the accumulated backlog (currently around thirty more reports are cleared every month than are received by the Contact and Assessment Team).
10. In response to a question from Alison Alden, he confirmed that the “pupillage tasks” referred to in the annex relates to the authorisation of pupillage providers. This work should be completed by the end of the year.

**11. AGREED**

to note the report.

**Item 6b – Director General’s Report: Strategic Update**

BSB 046 (22)

12. Mark Neale highlighted the following:
- the BSB is planning a series of roundtable meetings with the profession at various locations in England and Wales. Kathryn Stone will attend these events;
  - a key discussion point will be how best to consolidate information about good practice and so enhance the role of chambers in overseeing standards and issues of equality and access;
  - since writing his report, the BSB has launched a 12-month digital comparison tool (DCT) pilot to assist consumer choice. This focuses on employment law. Any barristers wishing to take part in the pilot are welcome to contact us directly.
13. In response to questions raised, the Executive commented as follows:
- a summary of the aims and objectives of the pilot will be circulated to the Board;
  - Board Members are welcome to join any of the roundtable meetings and the Executive will circulate the dates;
  - barristers are already mandated to comply with equality rules, hence the reference to “compliance” at paragraph 10 of the discussion paper for roundtable meetings.

## Part 1 - Public

14. Alison Alden noted that the discussion paper currently makes no reference to “wellbeing”. Though this is not a regulatory requirement, she considered it would be useful to include as a topic for discussion. Mark Neale agreed with this suggestion.
15. Kathryn Stone referred to an earlier discussion with Lorinda Long and acknowledged that the employed Bar is in a different position to barristers practising from chambers. She hoped, however, that they would still feel able to engage with the roundtable discussions as the BSB wishes to encourage as wide a participation as possible.
16. **AGREED**
- a) to note the report.
  - b) to circulate the aims and objectives of the DCT pilot to Board Members
  - c) to circulate the dates / locations of roundtable meetings to Board Members.
  - d) to include a reference to wellbeing in the discussion paper for the roundtables.

EM  
CF  
MN**Item 7 – Wellbeing at the Bar**

BSB 047 (22)

17. Ewen Macleod highlighted the following:
- this follows on from discussion at an earlier Board meeting (25 May 2022);
  - the updated statement (Annex A of the paper) now links more directly to the BSB equality enabling strategy which the Board previously approved;
  - it has since been shared with Sam Stein KC, a former Board Member and current member of the Criminal Bar Association. He has endorsed it as a helpful step in continuing discussions about good practice and the role of chambers.
18. In response to a question from Emir Feisal about any need for an annual review, Ewen Macleod referred to the barrister working life series of surveys run by the Bar Council. This is complemented by other work that the Bar Council has completed on this topic.
19. **AGREED**
- to approve the updated statement on wellbeing set out in Annex A of the paper for publication.

EM

**Item 8 – Annual Report 2021/22 and Cost Transparency Metrics**

BSB 048 (22)

20. Wilf White commented as follows:
- preparation of the Annual Report for 2021/22 had been delayed because auditing of the financial data was interrupted by the cyber attack;
  - it reports on the final year of a three-year strategic plan and has already been seen and approved by the Strategic Planning and Resources Committee;
  - the Cost Transparency Metrics are currently published separately but we plan to incorporate these within a single document in future;
  - both documents will be published on our website with appropriate explanatory text.
21. **AGREED**
- to approve the 2021/22 Annual Report and Cost Transparency Metrics for publication.

WW

**Item 9 – Chair’s report on visits and external meetings**

BSB 049 (22)

22. Since writing this report, the roundtable dates have been added to the Chair’s diary. She thanked Chris Fitzsimons for his work on this. She reiterated her wish to engage with the profession and looked forward to meeting barristers from all areas of practice.

**Item 10 – Any Other Business**

23. None.

**Item 11 – Dates of next meetings**

24. • Tuesday 11 October 2022 (Board Away Day)  
• Thursday 1 December 2022 (ordinary Board meeting).

**Item 12 – Private Session**

25. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 14 July 2022
  - (2) Matters arising and action points – Part 2.
  - (3) Accelerating Investigations
  - (4) Consolidated Risk Update
  - (5) Budget proposal – 2023-24 financial year
  - (6) Contract for Tribunal Services
  - (7) Appointment and recruitment of Board members
  - (8) Recording Part 1 (public) meetings
  - (9) Director General's Strategic Update – Private Session.
  - (10) Any other private business.
  - (11) Salary for Chair and Vice Chair
26. The meeting finished at 5.30 pm.

## BSB – List of Part 1 Actions

1 December 2022

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
16b (22/09/22) – DG strategic update	circulate the aims and objectives of the DCT pilot to Board Members	Ewen MacLeod	immediate	23/11/22	<b>Completed</b>
16c (22/09/22) – DG strategic update	circulate the dates / locations of roundtable meetings to Board Members.	Chris Fitzsimons	immediate	23/09/22	<b>Completed</b> – details emailed to Board Members
16d (22/09/22) – DG strategic update	include a reference to wellbeing in the discussion paper for the roundtables.	Mark Neale	immediate	23/11/22	<b>Completed</b> – I have been highlighting well-being and chambers' role in my opening remarks
19 (22/09/22) – wellbeing at the Bar	publish the updated statement on wellbeing set out in Annex A of the paper	Ewen MacLeod	immediate	6/10/22	<b>Completed</b> – published on website
21 (22/09/22) – Annual Report 2021/22	publish the 2021/22 Annual Report and Cost Transparency Metrics	Wilf White	immediate	27/09/22	<b>Completed</b> – published on website
29c (14/07/22) – barristers facing intimidation on social media from politically motivated individuals	contact Irena Sabic to discuss further the points she raised about guidance for barristers in terms of their duties to clients and any grounds for refusing to take cases	Ewen Macleod	before 15 Sept 2022	23/11/22	<b>Completed</b> – we are discussing the extent to which there is a risk with stakeholders and will consider updating the risk index accordingly
				14/09/22	<b>To be completed</b> – at time of writing, the discussion is still to take place





## Forward Agenda

### Thursday 26 January 2023

- Annual Diversity Data Report
- Governance: policies on declaration of interests and gifts and hospitality
- BSB approach to supervision
- Access (and associated work on digital comparison)
- Feedback from roundtable meetings
- Director General's Report (performance report and strategic update)
- Corporate Risk Report – summary
- LSB Regulatory Performance Assessment
- Standards (in response to the LSB's outcomes on competence)
- Accelerating Investigations – update on progress

### Thursday 30 March 2023

- BSB Business Plan 2023/24
- Director General's Report (performance report and strategic update)
- Consolidated Risk Report
- Conduct in Non-Professional Life

### Thursday 25 May 2023

- Scoping paper: Part 5 Review of Handbook
- Corporate risk report - summary
- Director General's Report (performance report and strategic update)
- Year-end report of the Strategic Planning & Resource Committee (SPR) 2022/23
- LSB Regulatory Performance Assessment – new approach – self assessment

### Thursday 6 July 2023 (Board Away Day)

### Thursday 27 July 2023

- Annual Report 2022-23 and Cost Transparency Metrics
- Director General's Report (performance report and strategic update)

### Thursday 5 October 2023

- Consolidated Risk Report
- Budget proposal – 2024 / 25 financial year
- Self Assessment on performance for LSB
- Director General's Report (performance report and strategic update)

### Thursday 30 November 2023

- IDB Annual Report
- The Bar Standards Board Equality and Diversity Strategy 2022 to 2025: update on progress
- Regulatory Decisions Annual Report 2022/23
- Mid-year financial report (2023-24)
- GRA Annual Report
- Annual report – Bar Training
- Corporate Risk Report (summary)
- Director General's Report (performance report and strategic update)

### Thursday 25 January 2024

- Annual Diversity Data Report
- Corporate Risk Report - summary
- Director General's Report (performance report and strategic update)
- Self Assessment on performance for LSB – to discuss the LSB's response to our submission

**Thursday 21 March 2024**

- BSB Business Plan 2024/25
- Consolidated Risk Report
- Director General's Report (performance report and strategic update)

**Bar Standards Board – Director General’s Performance Update – 1 December 2022****For publication****Performance**

1. This overview covers - at annex A - our usual quarterly report on the delivery of our regulatory operations. The current report deals with performance in the second quarter of the year to the end of September. It therefore coincides with the adoption by the Board of the action plan to accelerate investigations but does not reflect the impact of that plan. We have provided a separate update for the private session of the Board on progress in implementing the plan and key points are also picked up in this overview.
2. Consistent with the Board’s endorsement for the development of a balanced scorecard of performance measures, my commentary covers:
  - **the quality of decisions:** do we take decisions which are fair, evidence-based and consistent with our rules?
  - **productivity:** are we dealing efficiently with reports, applications and investigations and allowing for fluctuations in volumes, keeping pace with in-flows?
  - **speed:** are we turning round decisions on reports and applications and completing investigations promptly to timescales which are serviceable for those seeking, or affected by, our decisions?
  - **Service quality:** do consumers and barristers engaging with our services receive a good service and clear communications?

**Quality**

3. Despite the pressure to increase productivity in the wake of the cyber-attack, the quality of our decision-making remains high. The Independent Reviewer upheld all the assessments of reports on which a review was requested during the quarter.
4. There was one successful appeal against the imposition of administrative sanctions or against the decisions of the Independent Decision-making Body in the second quarter of the year.

**Productivity**

5. The cyber-attack in April and May caused a backlog of both reports and authorisation applications to build up. Those backlogs have been substantially reduced, although not yet eliminated. The number of reports resolved, and authorisation applications dealt with in Quarter 2 exceeded the flows of new reports and applications, so reducing caseloads in both respects. We expect to have eliminated the backlogs by early 2023. The number of authorisation applications determined was – at just over 250 – the highest since the third quarter of last year.
6. This progress reflects a great deal of hard work by the relevant teams despite challenges filling vacancies and inducting new colleagues. The very recent and sad death of Al Tucay in November will decrease the productivity of the Contact & Assessment Team during the next quarter. We are urgently seeking to fill the vacancy on an acting basis.
7. As discussed more fully in the report for the private session of the Board, we are seeing early progress with our action plan to accelerate the pace of investigations. Mid-way through the quarter, we expect to conclude more than twice as many investigations this quarter as in quarters 1 and 2 of the year. This reflects the impact of the plan, particularly the out-sourcing of discrete parts of the process, and the filling of previously vacant posts.

***Speed***

8. Because of the way the KPIs are defined – as the proportion of reports and authorisation applications completed within the service standard over the quarter – the effect of clearing the cyber-attack backlogs is to depress the key KPIs in the short-term. So, despite the good productivity, 60% of reports were assessed within eight weeks compared to a target of 80%. We cleared 86% of authorisation applications within 12 weeks (target: 98%) but did less well against the targets for 6 and 8 weeks respectively.
9. For much the same reason, performance against the KPIs in taking forward investigations was weak in the second quarter, but this preceded the adoption of the action plan and the filling of vacant posts in the Investigations & Enforcement Team. There was, however, a small increase in the number of investigations concluded in Q2.

**Service quality**

10. The Senior Management Team is conscious that we are not always good at identifying cases with operational urgency or reputational risks if not handled efficiently. We have asked the relevant teams to put in place a process for identifying and then tracking such cases.

**Mark Neale**

Director General

Business Plan Summary				
Task	Assigned	Priority	Status	Budget
Strategic Aim 1 - Efficiency				
3. Conduct in non-professional life	LST	High		
4. Rules on how barristers market services and receive instructions	S&P	Medium		
5. Code of Conduct: reviewing the Core Duties	S&P	Medium		
6. Clarifying the rules around cyber security and PII	S&P	High		
7. Regulatory Operations review	ROD/OST	High		
8. Reviewing authorisations framework	ROD	High		
9. Review of CRM	DG	High		
10. Scoping the review of our Enforcement Regulations	LED	High		
Strategic Aim 2 - Standards				
5. Evaluation of reforms to Bar training	S&P/ROD/Comms	High		
6. Assessment of negotiation and advocacy	ROD	High		
7. Review of BCAT	S&P	High		
8. Assuring standards at the Bar - CPD	ROD	High		
9. Evaluation of our work on Coroner's Courts	ROD/S&P	Low		
10. Assuring standards at the Bar - EYP	ROD/S&P	High		
11. Regulatory Return	ROD	High		
12. Expectations of chambers	ROD	Medium		
Strategic Aim 3 - Equality				
5. Tackling bullying, discrimination and harassment at the Bar	OST	High		
6. Equality and diversity in AETOs	ROD	Low		
7. Apprenticeships	ROD	Medium		
8. Good practice disability case studies	S&P/E&AJ	High		
9. Review of Equality Rules	S&P	Medium		
10. Equality and Diversity - best practice in chambers	ROD	High		
Strategic Aim 4 - Access				
5. Unbundling legal services	ROD	High		
6. Digital Comparison Tools	S&P	High		
7. Regulatory Information Service	Comms	High		
Strategic Aim 5 - Independence				
4. Reviewing reward and recognition	HR	High		
5. Promoting wellbeing	HR	High		
6. Learning and development	HR	High		
7. Promoting diversity and inclusion	HR	High		
8. Putting our values into action	HR	High		
9. Reviewing the case for incorporation	DG/G&CS	High		

**Note/s**  
¹ Index is a calculation of the actual versus budget, multiplied by 100 - showing how far above or below budget the actuals are. For example, index 120 means 20% above budget and index 80 means 20% below budget.  
² Status field greyed out where there is no milestone for this quarter.

KPI Summary		C&A - General Enquiries		C&A - Initial Assessment
On target	5	General enquiries addressed (5 days) - 80%	General enquiries referred (3 days) - 80%	Concluded or referred (8 weeks) - 80%
<10% below target	1	59%	32%	64%
>10% below target	9			
I&E - Referral of Cases	I&E - Investigation	I&E - Quality Indicators		
Accepted or referred back (2 weeks) - 80%	Decision on disposal (25 weeks) - 80%	Original decision upheld by IR following review - 95%	Successful appeals against admin. Sanctions - 0%	Successful appeals of DT where BSB is responsible - 0%
7%	38%	N/A	0%	0%
Authorisation - Authorisation, Exemptions & Waivers			Authorisation - Entity Authorisation	
Applications determined (6 weeks) - 75%	Applications determined (8 weeks) - 80%	Applications determined (12 weeks) - 98%	Authorisation decisions made (6 months) - 100%	Authorisation decisions made (9 months) - 100%
36%	46%	73%	100%	100%
	Supervision - Allocations	Supervision - Reg. Response	Supervision - Visits	
	Cases assigned after referral from CAT (2 days) - 80%	Regulatory response agreed (20 days) - 80%	Visit report letters issued (5 days) - 80%	
	100%	55%	0%	

Financial Summary				
Category	Q2 YTD Actual	Q2 YD Budget	Variance	Index²
Income	3,168	3,273	-105	97
Expenditure	1,871	2,002	-131	93
Category	FY Actual	FY Forecast	Variance	Index²
Income	6,321	14,304	-105	44
Expenditure	3,258	8,248	-131	40

Corporate Risk Summary (Action Priority)				
Period	High	Medium-High	Medium	Low
Q2 22/23	6	3	10	4
Q1 22/23	6	3	9	5

Directorates	% of occupied posts	
CPE	Communications and Public Engagement	100%
G&CS	Governance & Corporate Services	100%
LED	Legal & Enforcement	80%
ROD	Regulatory Operations	90.20%
S&P	Strategy & Policy	77.78%

Service Complaints Summary				
Q2 Received	11	YTD Received / Upheld	25	9



## 2022-23 Quarter 2 Performance report – Regulatory Operations and Legal and Enforcement Departments

### Executive Summary

1. This report includes charts to illustrate workload volume as a year-on-year comparison. Each set of graphics is supported by a brief written analysis of the data in summary.
2. What is clear from these graphics is that the executive is determining more decisions and closing more cases than are being received. It should be noted that overall productivity is heavily challenged by limitations to resourcing arising, particularly, from difficulties in filling vacant posts.
3. The overview is one of teams working hard to meet performance targets and keeping quality to a high standard (the Independent Reviewers report supports this) while simultaneously addressing the backlog created by the cyber-attack.
4. Vacancies and the length of time taken to recruit to these positions add to the pressure on Teams which need to ensure that new people are trained and supported as they familiarise themselves with the work. Resilience is heavily challenged, with no latent capacity across teams to absorb unexpected demands.
5. This inevitably has a detrimental impact on performance against KPIs (as well as morale of people working in these teams). Once resource is in place and trained, we are confident that each team will be able to manage workloads in line with current performance targets, but this is not a quick fix and performance gains will therefore take time to materialise.
6. It has long since been recognised that current KPIs do not adequately capture the volume and quality of the work of the teams, nor do they reflect the productivity of the people delivering the service. The visual presentation within this report supports the view that a balanced scorecard to capture the key dimensions of our performance is the way forward.

### Contact & Assessment Team

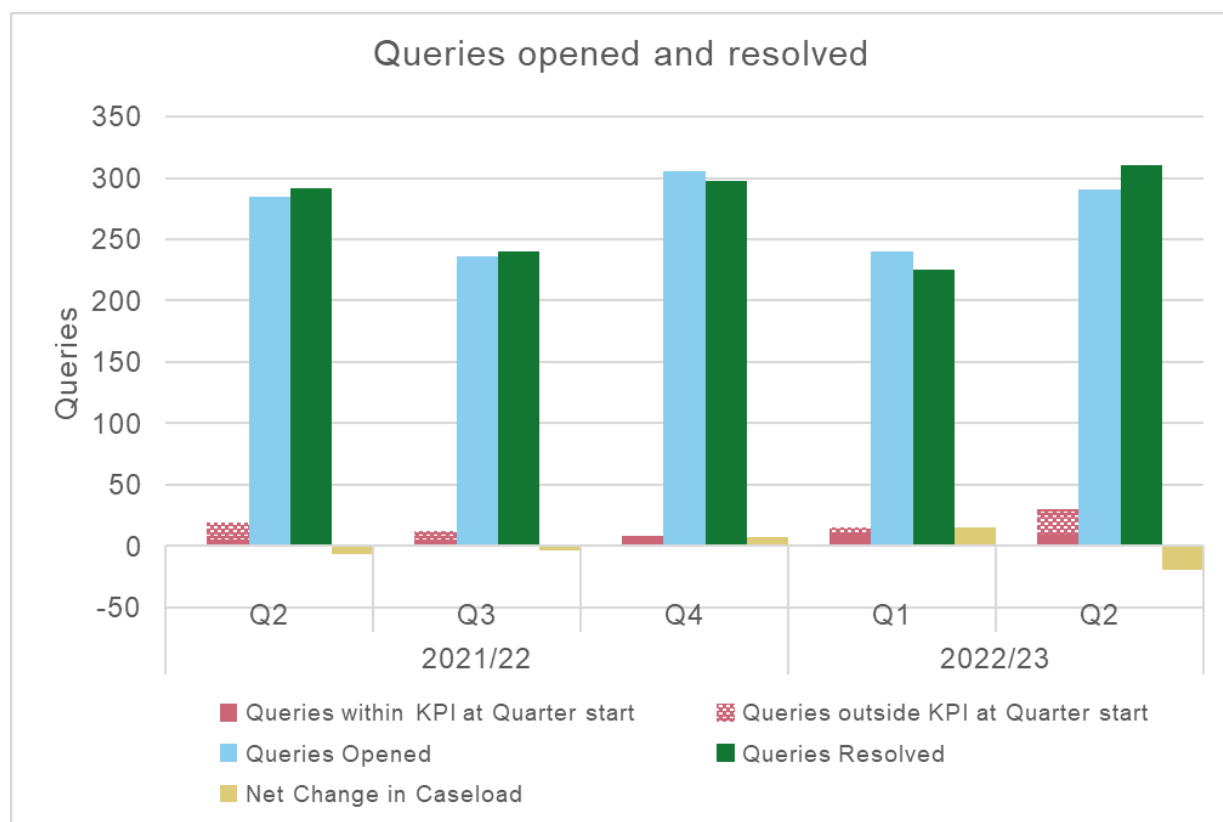
#### Key points

7. Performance during this quarter has improved and the team is managing to meet incoming work volumes, there is every indication that KPIs for general enquiries should be achieved by the end of this reporting year. There is a consistency in the number of reports opened during this reporting period to the comparative period in 2020-21. Reports assess are greater than reports opened over the quarter indicating that performance is stabilising. Additional resourcing has contributed to the increased productivity and reduction in backlog of cases.
8. Performance against both general enquiries KPIs has improved since last quarter.

## KPIs &amp; performance data

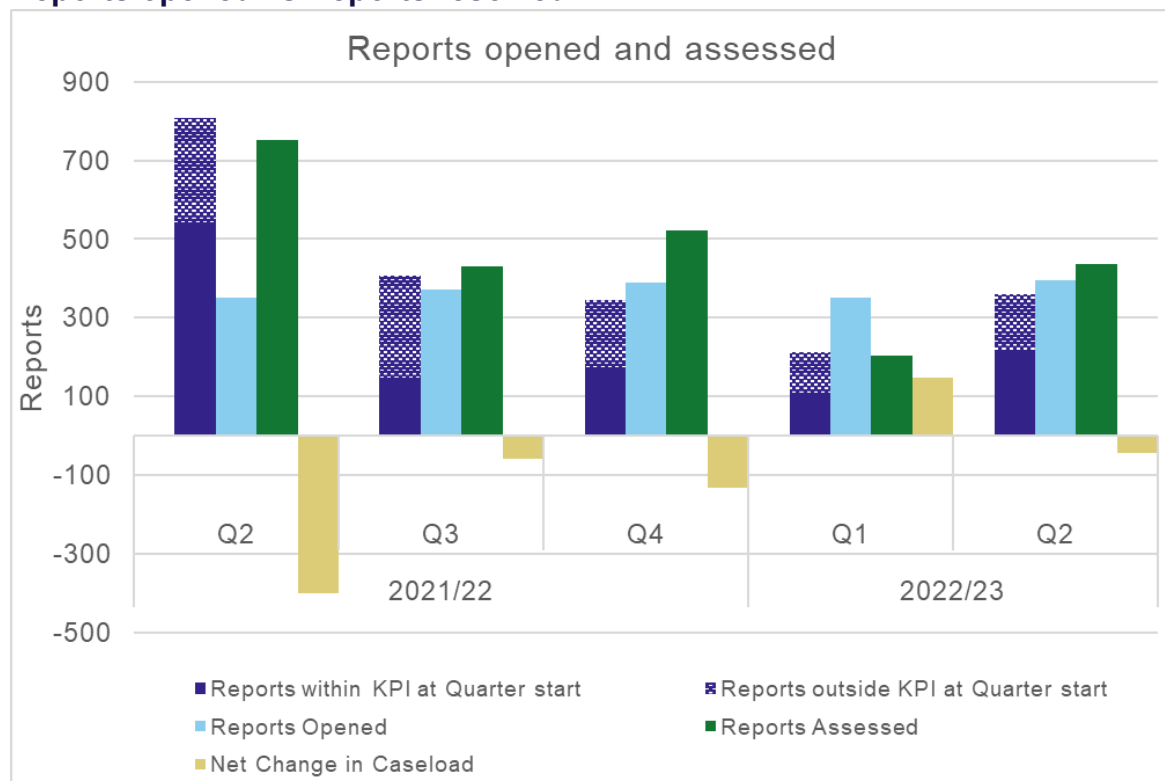
KPI	Target	Performance Q2	Adjusted KPI
<b>General Enquiries</b>			
The percentage of substantive responses to general enquires, that can be addressed by CAT, provided within 5 working days.	80%	79.4%	79.4%
The percentage of general enquiries, which cannot be answered by CAT, that are referred to another team within 3 working days.	80%	61.7%	61.7%
<b>Initial Assessment</b>			
The percentage of reports assessed and concluded by CAT, or referred to another team for action, within eight weeks.	80%	58.3%	59.9%
<b>Quality indicators</b>			
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	100.0%	100.0%

## General Enquiries





### Reports opened vs Reports resolved



## Authorisations Team

### Key points

- The team has determined more applications this quarter than at any time since Q3 of 2021-22. This is despite the fact that the team has carried vacancies for some time which hindered its ability to meet the demands of incoming applications, while simultaneously clearing a backlog of work and handling there-authorisation of pupillage providers. The latter process also impacted on the overall performance against KPIs and once this project concludes we expect that the team can redirect resources to core work. The team is beginning a period of recovery which is expected to be slow, yet steady as newly recruited people become familiar with the work.

### KPIs and performance data

KPI	Target	Performance Q2	Adjusted KPI
<b>Authorisation, Exemptions and Waivers</b>			
The percentage of applications determined within six weeks of receipt of the complete application.	75%	36.0%	36.0%
The percentage of applications determined within eight weeks of receipt of the complete application.	80%	49.0%	52.0%
The percentage of applications determined within twelve weeks of receipt of the complete application.	98%	86.0%	93.0%

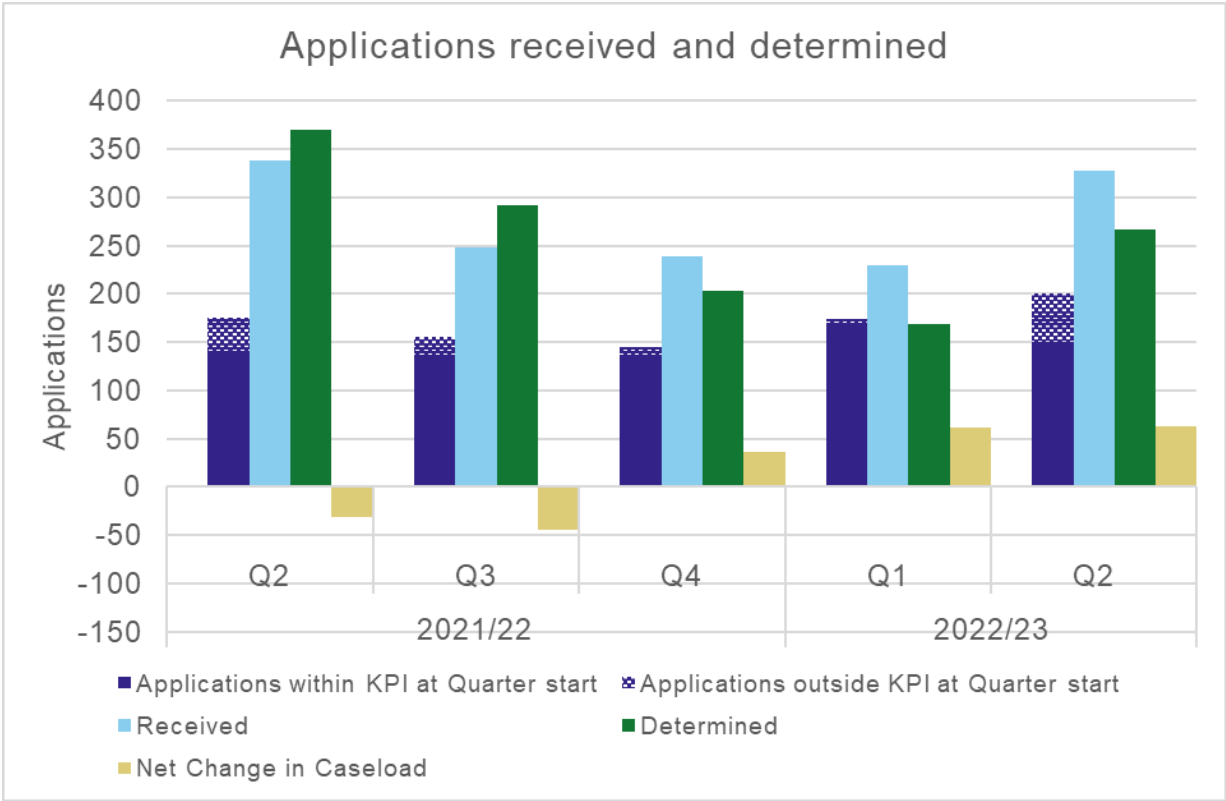
KPI	Target	Performance Q2	Adjusted KPI
<b>Entity (including ABS) Authorisation</b>			
The percentage of authorisation decisions made within six months of receipt of the application and associated fee.	90%	50.0%	75.0%
The percentage of authorisation decisions made within nine months of receipt of the application and associated fee.	100%	75.0%	100.0%

**Cases closed**

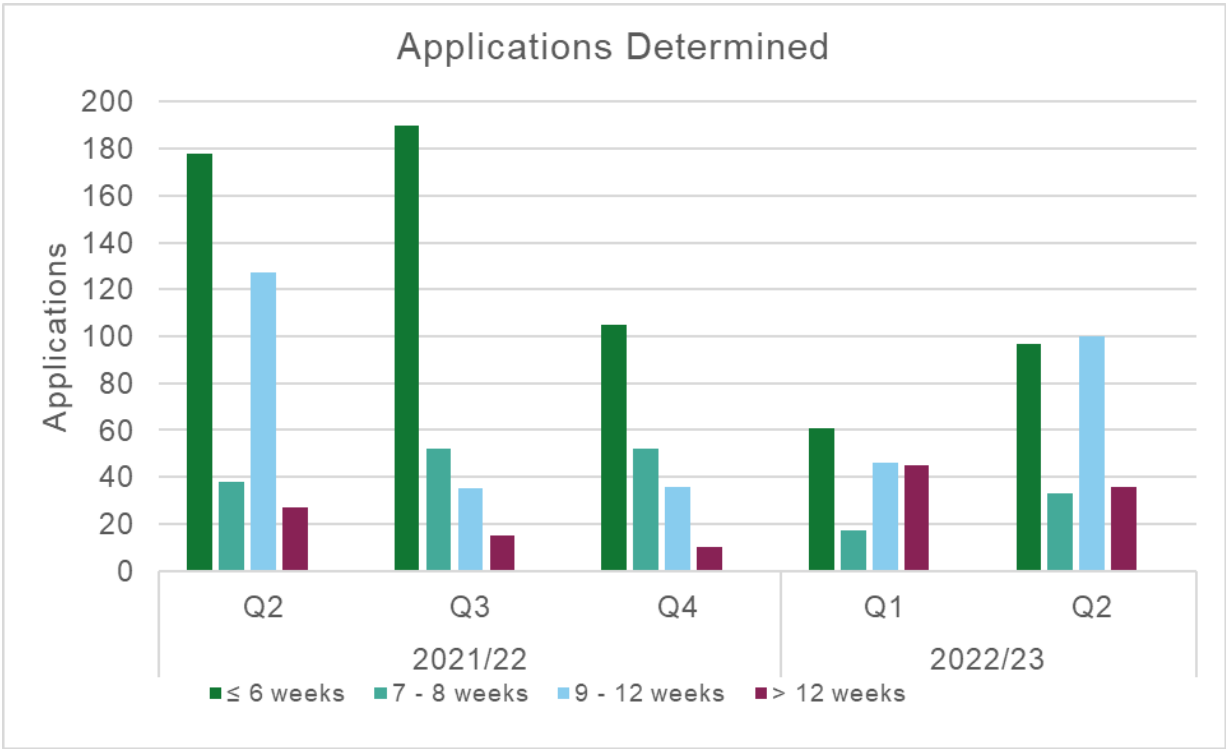
(as a % of the total number of applications determined)

KPI	2021/22			2022/23	
	Q2	Q3	Q4	Q1	Q2
<b>Authorisation, exemptions and waivers</b>					
Applications determined within six weeks of receipt of the complete application	178 (48%)	190 (65%)	105 (52%)	61 (36%)	97 (36%)
Applications determined within eight weeks of receipt of the complete application	216 (58%)	242 (83%)	157 (77%)	78 (46%)	130 (49%)
Applications determined within twelve weeks of receipt of the complete application	343 (93%)	277 (95%)	193 (95%)	124 (73%)	230 (86%)
<b>Entity (including ABS) Authorisation</b>					
Authorisation decisions made within six months of receipt of the application and associated fee	4 (80%)	3 (100%)	3 (100%)	1 (100%)	2 (50%)
Authorisation decisions made within nine months of receipt of the application and associated fee	5 (100%)	3 (100%)	3 (100%)	1 (100%)	3 (75%)

Applications received and determined



Applications determined



## Investigations and Enforcement Team

### Key points

10. Although the team has not yet met the KPI bearing on the referral of cases, the position is improving and, with the success of the accelerating investigations plan, it expects to do so in Q3. There is a consistency in the number of investigations concluded when compared to previous years. The targeted closure of historical cases will impact on the KPIs and results will not be seen immediately. Successful recruitment to the team will further support capacity to achieve KPIs. The team expects to see a slow and steady improvement over the next 6 months as new staff become familiar with the work and processes are reviewed. There is also collaboration with BTAS to identify areas for improvement within current processes.

### KPIs and performance data

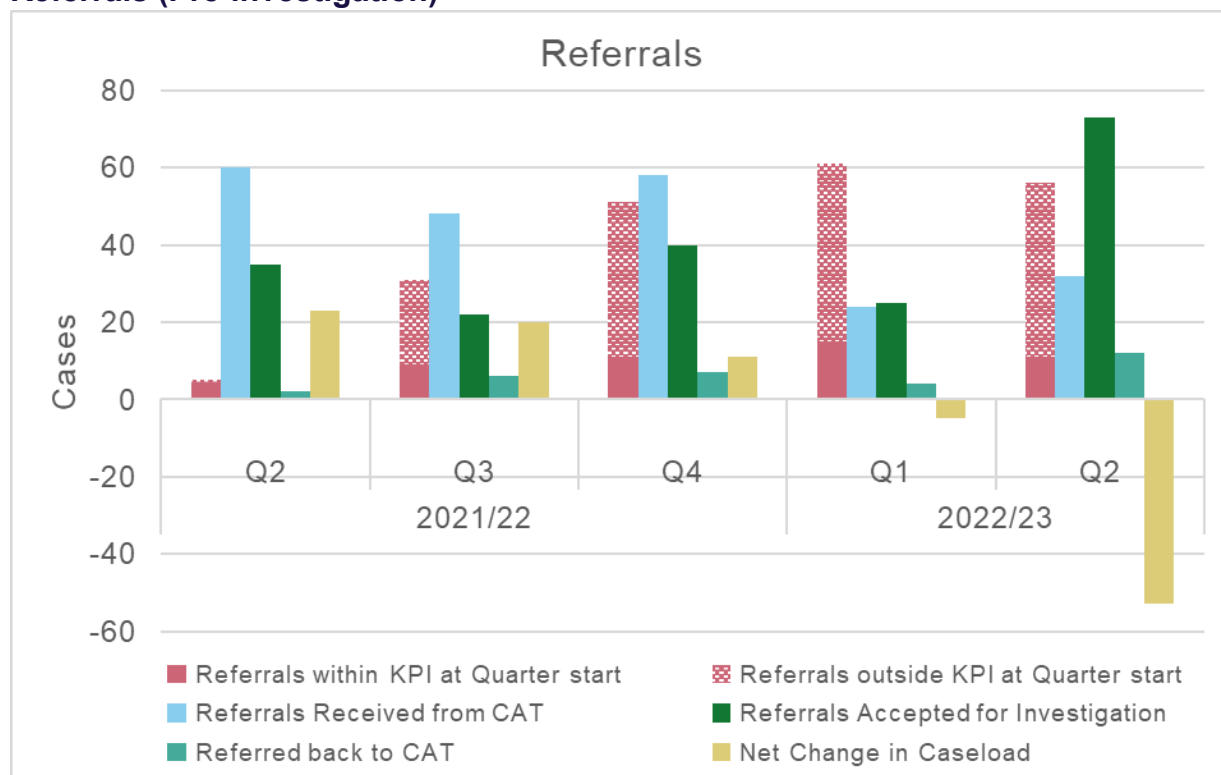
KPI	Target	Performance Q2	Adjusted KPI
<b>Referral of cases</b>			
The percentage of cases referred by CAT to another team for regulatory action that are accepted or referred back to CAT within 2 weeks.	80%	21.2%	21.2%
<b>Investigation of allegations</b>			
The percentage of investigations of allegations of breaches of the Handbook completed, and a decision taken on disposal, within 25 weeks of acceptance.	80%	38.7%	38.7%
<b>Quality indicators</b>			
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	75.0%	75.0%
Number of successful appeals against the imposition of administrative sanctions.	0%	0.0%	0.0%
Number of successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process.	0%	0.0%	0.0%

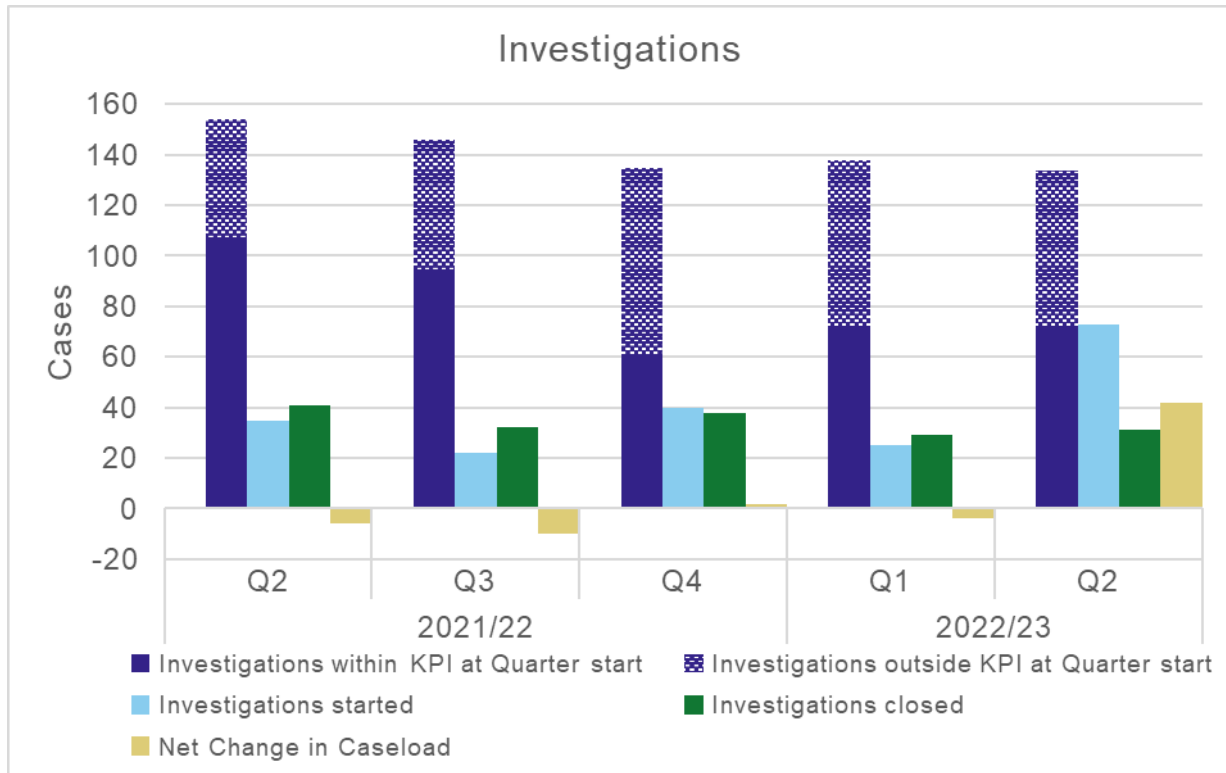
**Cases closed**

(% of this total that were within service standard)

KPI	2021/22			2022/23	
	Q2	Q3	Q4	Q1	Q2
<b>Referral of cases</b>					
Accepted or referred back (2 weeks)	37 (62.2%)	28 (21.4%)	46 (10.9%)	29 (6.9%)	85 (21.2%)
<b>Investigation</b>					
Decision on disposal (25 weeks)	41 (53.7%)	32 (31.3%)	38 (15.8%)	29 (37.9%)	31 (38.7%)

Service Standard	2021/22			2022/23	
	Q2	Q3	Q4	Q1	Q2
<b>Determination by Consent</b>					
Process completed (93 working days)	2 (50.0%)	1 (100.0%)	1 (0.0%)	2 (0.0%)	0
<b>Disciplinary Tribunal</b>					
Cases concluded (197 working days)	7 (85.7%)	8 (25.0%)	6 (33.3%)	4 (25.0%)	4 (50.0%)

**Referrals (Pre-investigation)**



## Supervision Team

### Key points

11. The team is performing well against the KPIs, while clearing a backlog of work accumulated during the cyber-attack. The statistical data for year-on-year comparison, demonstrates the volume of work generated by the regulatory returns, transparency spot checks and referrals made via the CAT.
12. Overall caseload remains consistent during the last 6 months and performance is stable.
13. The team met two out of three KPI targets this quarter, marginally missing the third. The cyber-attack impacted on the teams' ability to close open actions and conduct visits, creating a backlog of work.

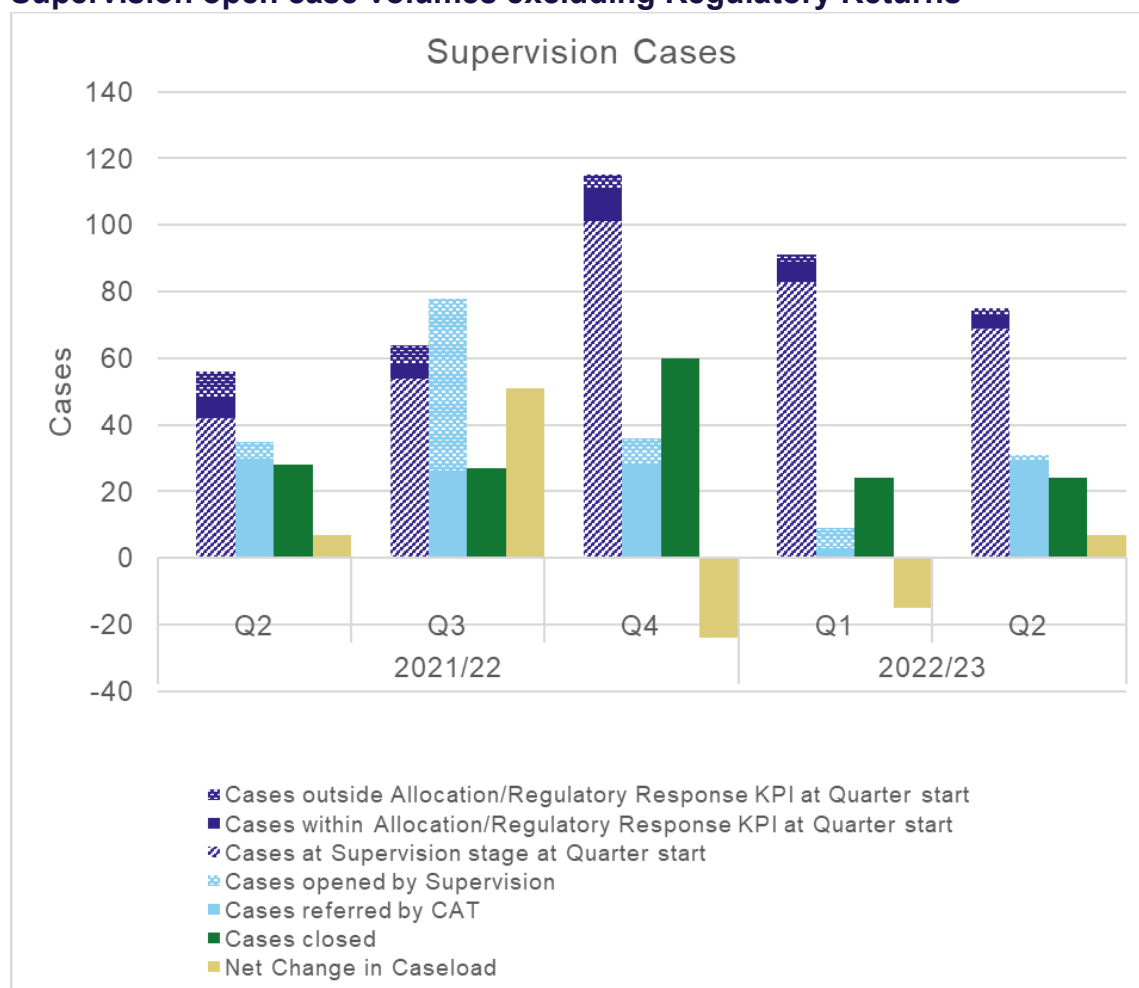
### KPIs and performance data

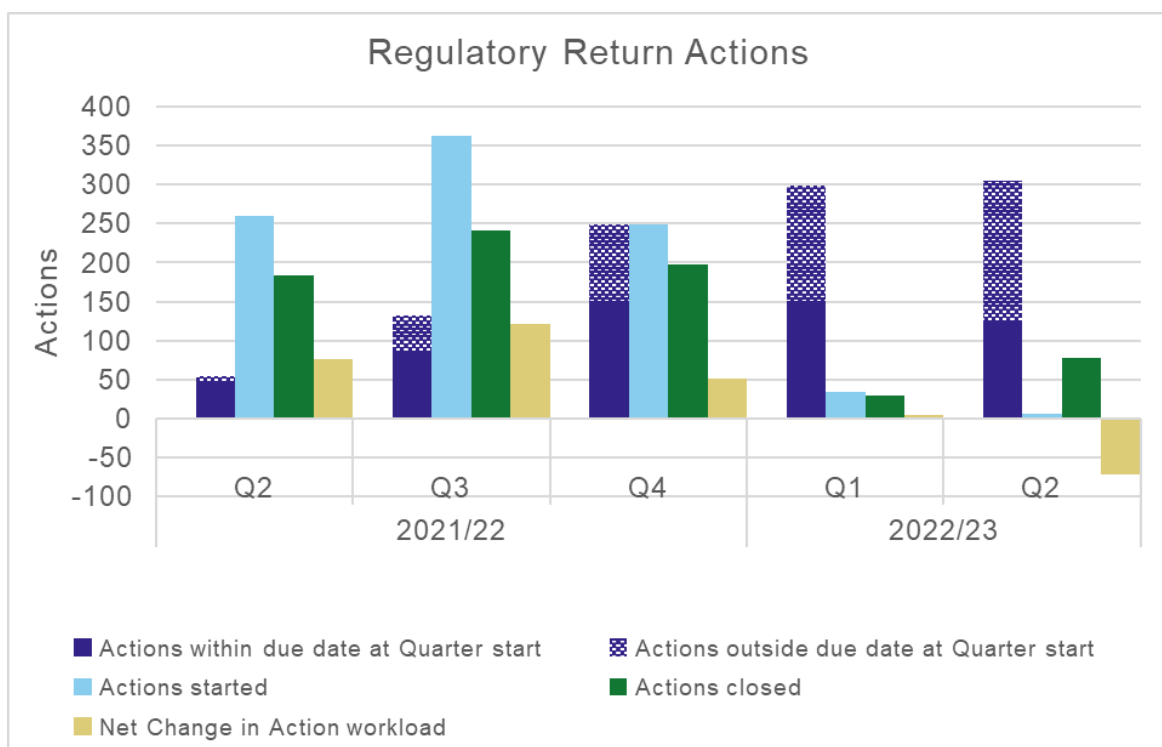
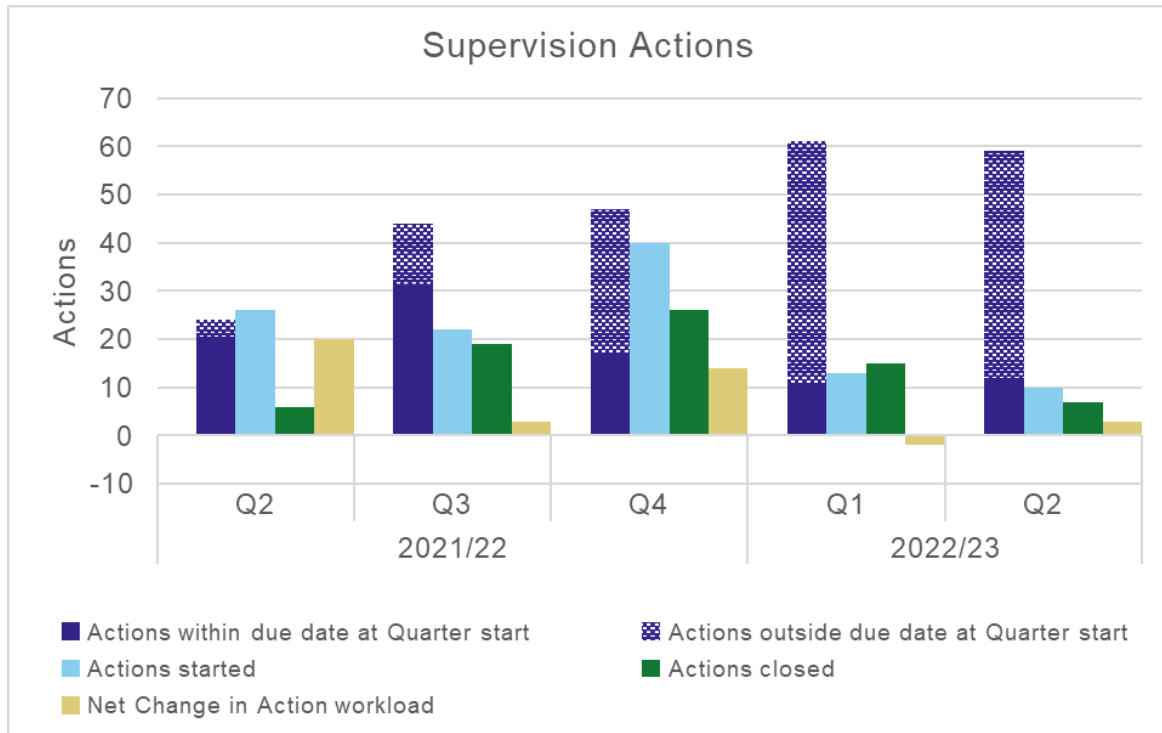
KPI	Target	Performance Q2	Adjusted KPI
<b>Allocations</b>			
Cases assigned within 3 working days of the team receiving the referral from CAT.	80%	100.0%	100.0%
<b>Regulatory Response</b>			
Cases for which a regulatory response was agreed within 20 working days of the case being assigned.	80%	91.7%	91.7%
<b>Visits</b>			
Visit report letters issued within 5 working days of a visit to an organisation.	80%	0%	0%

**Cases actioned**

(% of this total that were within service standard)

KPI	2021/22			2022/23	
	Q2	Q3	Q4	Q1	Q2
<b>Allocations</b>					
Cases assigned (3 days)	32 (100.0%)	24 (87.5%)	30 (100.0%)	3 (100.0%)	29 (100.0%)
<b>Regulatory Response</b>					
Response agreed (20 days)	39 (84.6%)	74 (95.9%)	43 (81.4%)	11 (54.5%)	24 (91.7%)
<b>Visits</b>					
Letters issued (5 days)	1 (100.0%)	1 (100.0%)	1 (100.0%)	0	0

**Supervision open case volumes excluding Regulatory Returns**





**Bar Standards Board – Director General’s Strategic Update – 1 December 2022****For publication****Role of Chambers: roundtables**

1. By the time of the Board, we shall have held four roundtables on the role that chambers can play in overing standards, equality and access: two in London, one in Manchester and one in Bristol. We have scheduled further roundtables in the other circuits either side of the New Year.
2. These events have been constructive both in their own terms and as an example of BSB’s willingness to engage with the Bar. There has been near unanimous agreement that it would be helpful to chambers to consolidate in accessible form our expectations of chambers’ role and links to the policies and good practice that would enable chambers to meet our expectations. Participants have emphasised that they would like us to work in partnership with the Bar Council on this. There is less agreement on how best to move forward with this. Generally, smaller and medium chambers would welcome precision in the shape, for example, of template policies. Larger chambers are more open to an outcome-focused approach which gives them greater latitude over implementation. Some participants have advocated reviving a benchmark scheme on the lines of *Barmark*, others have been firmly against such an initiative.
3. We plan to revert to the Board in March with our preliminary conclusions in the light of the roundtables. We expect to publish a summary document in the Spring outlining what we have heard and what we intend to do next.

**International Conference of Regulators: Chicago, 26-28 October**

4. The Chair and I represented the BSB at this conference in Chicago. The Chair spoke at a session entitled: *Shifting Sands – What Is An “Ethical” Lawyer in the 21st Century?* – for which I acted as the rapporteur.
5. The Conference offered much interesting debate and insight. The question of how far lawyers should make ethical choices about their clients and the extent to which doing so conflicted with the principle of access to justice was clearly common to many jurisdictions. The Chair outlined the ethical principles which govern the Bar, including the priority which the rule of law has over duties to clients, and also outlined the role that the Cab Rank rule plays in sustaining the independence of the Bar.
6. We also attended and took part in interesting sessions on access to justice, on cyber security and on well-being.

**Mark Neale**

Director General



**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

## **Regulatory Decision-making**

### **Annual Report 2021/22**

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Regulatory Operations Department  
Legal & Enforcement Department

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## Executive Summary

1. Regulatory operations cover many of the core functions of the Bar Standards Board. It includes, amongst other things, our work on authorising universities to deliver the Bar course, our risk-based supervision of barristers, chambers and other BSB authorised organisations and our assessment of incoming reports about barristers' conduct and any investigation and enforcement action that may follow as a result.
2. This report covers 2021/2022. The impact of COVID-19 on the effective operation of the BSB's regulatory activities has lessened in 2021/22. Productivity and quality of decision making has remained high (see the section from our Independent Reviewer), but we continue to see substantial volumes of reports about barristers' conduct, resulting investigations and applications for waivers and exemptions from practising requirements. This has impacted upon our ability to meet service standards for the timeliness of decisions. Whilst speed of decision making is an important measure of performance, it should not be at the expense of rigorous assessment, careful case analysis and fair enforcement processes. We intend therefore to develop a more balanced set of performance metrics that will both hold the BSB to account for all aspects of its decision making and provide a clear picture on performance externally.
3. Performance in delivering our enforcement work is not where we would like it to be. The volume and complexity of investigation cases has increased, and, although the quality of our decision-making has remained high, we have struggled to keep pace with this. The result is slower performance against the timeliness service standards across all stages of the enforcement process. Steps have been, and are being taken, to address this. An increase in people was agreed in 2020/21 but unfortunately did not fully materialise in 2021/22 due to difficulties in recruitment. While outside the reporting year, action has been taken to improve the prospects for recruitment and to accelerate the pace of investigations.
4. In addition to our reactive work on reports and applications received, we are proactive in our regulation where there is evidence of a need for intervention or closer monitoring. The supervision section in the report highlights a number of these areas. It includes our work to monitor the engagement of barristers with the sanctions regime and, with the Bar Council and others, to raise awareness of what is expected of barristers when instructed to act for sanctioned individuals. Given the referral nature of the Bar, we view the risks for barristers in this area to be moderate, but nevertheless have taken a range of steps to engage with barristers and chambers who are most likely to be involved in acting for sanctioned individuals. This is a fast-moving area and we work closely with other regulators, the Treasury and the Office of Financial Sanctions Implementation to ensure that the BSB is able to respond quickly should there be evidence of greater risks materialising.

5. The report also highlights the emerging findings from the recent regulatory return exercise. The return sought information from chambers and other authorised entities on a range of regulatory issues. The information gathered is used to inform our risk analysis of the barrister market, to assess levels of regulatory compliance and to evaluate the impact of policy initiatives that we have implemented. We are very grateful for the care and attention that was given to the responses to the return, and we appreciate the time burden that was involved. We will, over the course of the next 12 months, share our thematic analysis of the return and provide examples of good practice.
6. We also continued to strengthen our relationship management approach to supervision. Our work to monitor the delivery of the Bar course is a good example of that in action. We recognise that there is more work to be done to understand the variable pass rates amongst authorised training providers. As a result, we have started a thematic review in 2022/23 looking at differential outcomes and the admissions arrangements of training providers. This review will give us assurance that providers are meeting the expectations of the Authorisation Framework to deliver accessible and flexible courses, whilst maintaining high standards and value for money. It will also help us to ensure that we are targeting our regulation where there is evidence of greatest need.

## Regulatory action, performance & statistics

7. This section provides an analysis of our regulatory casework, when responding to reports made to us, and the proactive work that we do to support our regulatory objectives. It covers the work of:

- The Authorisations Team
- The Contact and Assessment Team
- The Investigations and Enforcement Team
- The Supervision Team
- The Independent Reviewer – Quality Assurance

### The year in numbers

#### *Authorisations Team*

- **1,211** applications for authorisation decided up 6% on 2020-21
- **2,360** general enquiries received by telephone and **17,033** by email
- **1** more vocational training provider authorised bringing the total to 10
- **14** more BSB authorised entities bringing the total to 148

#### *Contact and Assessment Team*

- **3,388** reports and general enquiries received by CAT compared to 3,300 in 2020-21
- **2,196** of these were reports, up from 1,885 in 2020-21
- **2,517** reports in total were dealt with, a 54% increase on 2020-21
- Cases closed which related to conduct in non-professional life fell from 274 to **194** but cases involving social media rose from 49 (involving 27 barristers) to **89** (involving 36 barristers)
- Cases relating to conduct at work that was not related to the provision of legal services rose from 131 to **304**

#### *Investigations and Enforcement Team*

- Cases referred for investigation rose from 129 to **238** (an increase of 41% even after removing the increase in cases relating to failure to renew a practising certificate)
- **164** referrals were accepted for investigation and **106** investigations were decided compared to 128 and 91 such cases in 2020-21
- **24** out of 29 cases heard at Tribunal were found proved, each case may result in more than one sanction
  - **6** led to disbarments
  - **7** to suspensions
  - **9** to fines and
  - **11** to reprimands

### *Supervision Team*

- **119** reports were referred to Supervision from CAT an increase of 35% and a further **90** cases were received directly by Supervision compared to 27 in 2020-21
- **577** barristers began their pupillage in 2021 compared to 400 in 2020 and 504 in 2019
- **318** Regulatory Returns were received and
- **94%** of chambers were found to be compliant or partially compliant with our transparency rules

### *Independent Reviewer – Quality Assurance*

- **131** decisions in the reporting period were reviewed following a request by a party and in **7** cases the Independent Reviewer made recommendations for further action, or a reconsideration of the decision reached, and/or concluded that although the right outcome had been reached, incorrect factors had been taken into account.



## Authorisations Team

### *Performance against service standards*

8. The Authorisations Team is responsible for authorising providers of vocational Bar training and work-based learning/pupillage as Authorised Education and Training Organisations (“AETO”s), and for authorising entities to provide legal services. In addition, the Team assesses applications from individuals for exemptions and waivers from requirements of Bar Training or individual rules of the BSB Handbook. The Team manages the administration of the pupillage registration and completion processes, and this includes the issue of provisional practising certificates (“PPC”s) and letters confirming full qualification (ie eligibility to apply for a full practising certificate as a barrister). The Team responds to a significant number of enquiries received by telephone and email regarding its various functions, including requests for advice on the components of Bar training and the progress of individual waiver and exemption applications.
9. Since its launch during the previous reporting period, the Team has continued to develop its use of the [Service Update page](#) on the BSB website. The page is updated regularly to act as a primary source of guidance for stakeholders and to assist in anticipating likely queries relating to the work of the Team and current application processing times.

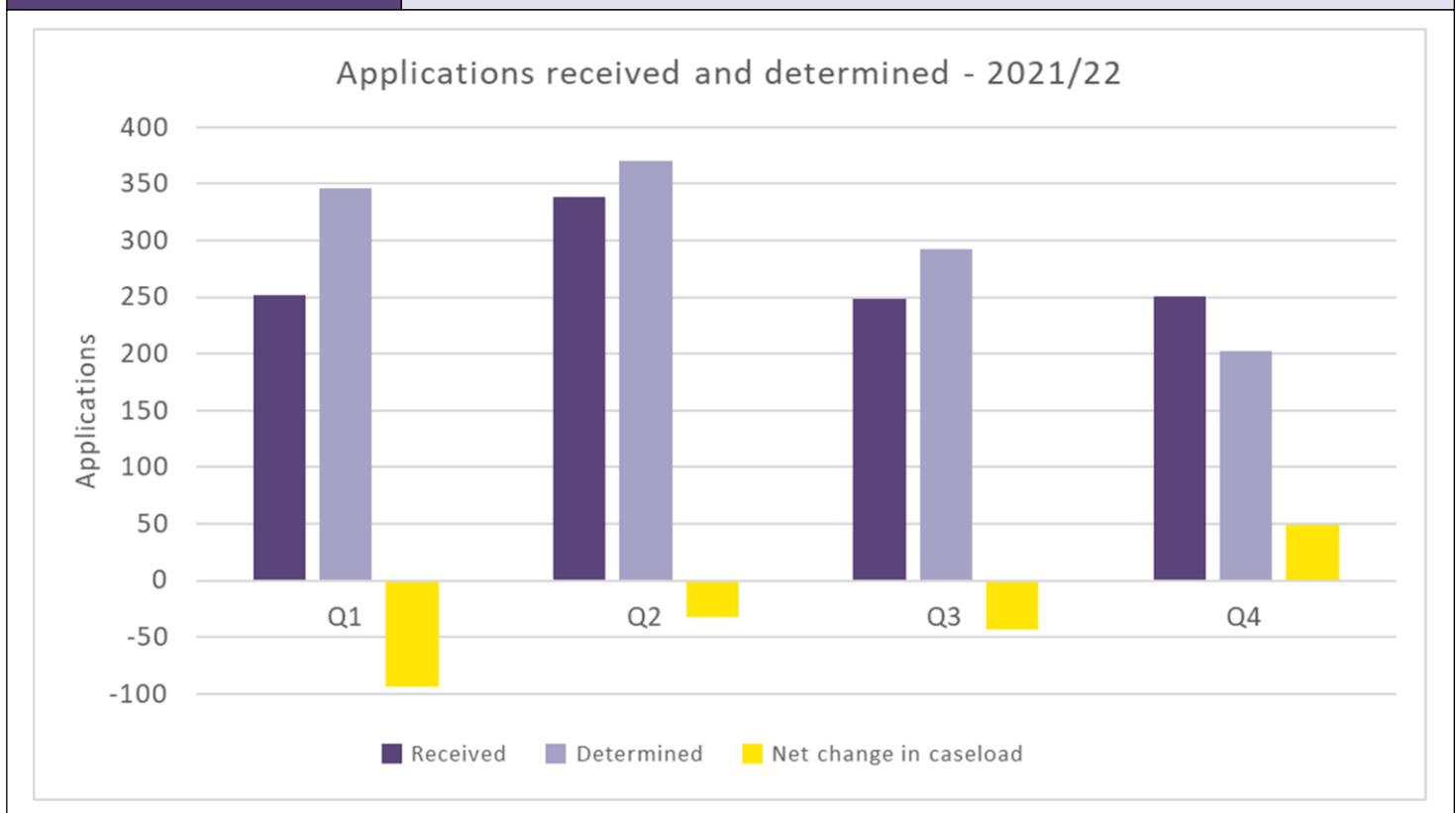
### *Authorisation casework*

10. During the reporting period, the Team processed a total of 1,211 applications, an increase of 6% on the previous reporting period, with 82% determined within 12 weeks.
11. While performance has fallen below our expected service standards for timeliness, productivity has remained high and overall, there has been a significant improvement in performance across the reporting period. There has been a rise in the overall number of applications received by the Team, but the Team has worked hard to prioritise cases and remain as productive as possible.
12. The Team has seen significant turnover of people. The nature of applications can be technical and there is therefore a lead in time before new starters are up to speed. This has an impact on performance in the short term (before the more positive effect of new resource is felt).
13. Table 1 reflects the Team’s overall improvement in performance during the reporting period.

Table 1	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2021/22
<b>Authorisation, exemptions and waivers</b>					
Applications determined within six weeks of receipt of the complete application <b>(Target 75%)</b>	17.1%	48.1%	65.1%	51.7%	43.9%
Applications determined within eight weeks of receipt of the complete application <b>(Target 80%)</b>	24.0%	58.4%	82.9%	77.3%	57.6%
Applications determined within twelve weeks of receipt of the complete application <b>(Target 98%)</b>	52.3%	92.7%	94.9%	95.1%	82.1%
<b>Entity (including ABS) Authorisation</b>					
Authorisation decisions made within six months of receipt of the application and associated fee <b>(Target 90%)</b>	100.0%	80.0%	100.0%	100.0%	92.3%
Authorisation decisions made within nine months of receipt of the application and associated fee <b>(Target 100%)</b>	100.0%	100.0%	100.0%	100.0%	100.0%

Figure 1

## Throughput of Applications in 2021/22



### **Types of applications from April 2020 to March 2021**

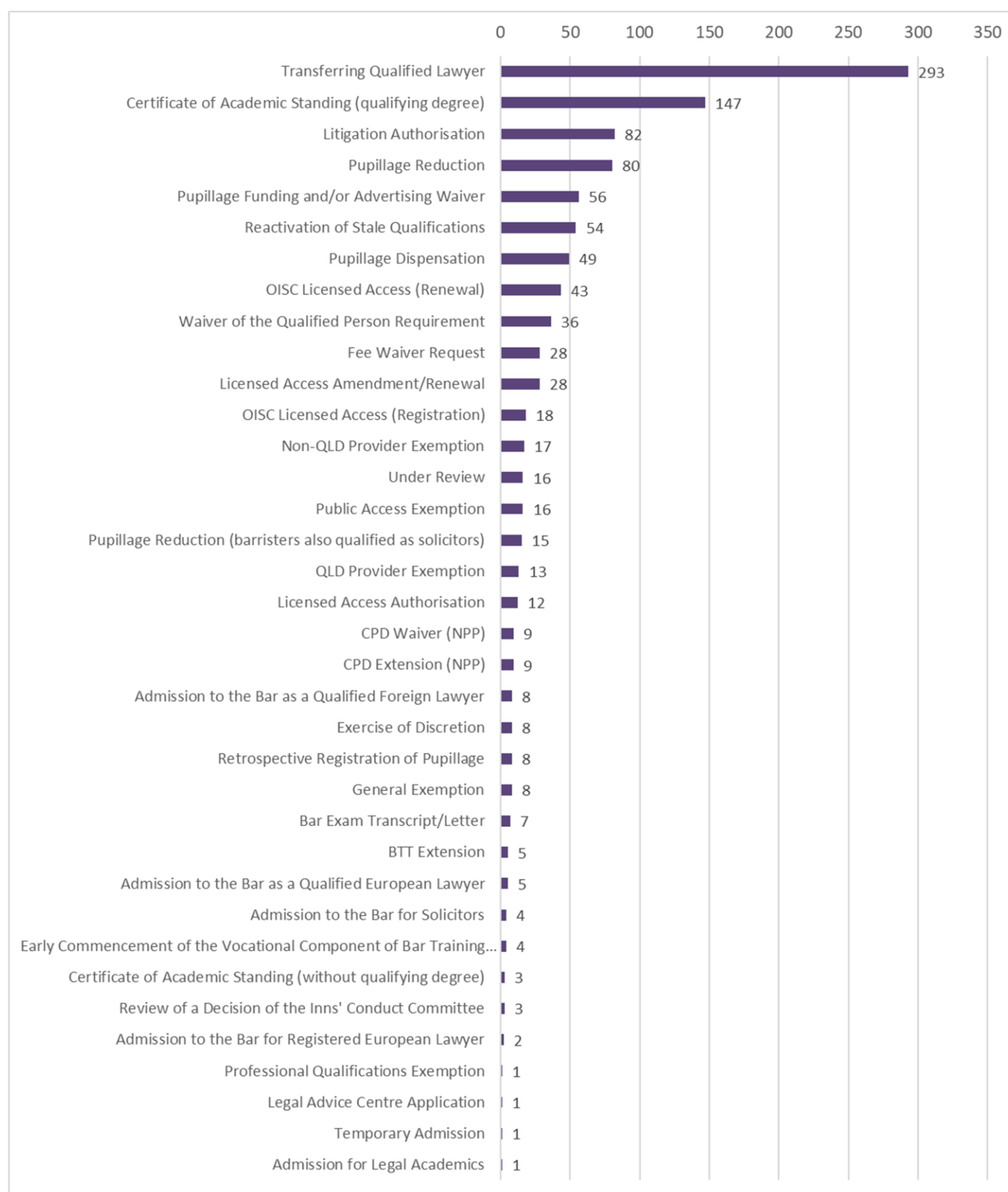
14. The most common applications are:
  - Admission to the Bar as a Transferring Qualified Lawyer (“TQL”) (293)
  - Certificate of Academic Standing (147)
  - Authorisation to conduct litigation (82)
  - Pupillage reduction (80)
  - Waiver of the pupillage funding, advertising & recruitment requirements (56)
15. The three most common application types during the reporting period were also the most common types, in the same order, in the previous reporting period.

### **General Enquiries**

16. The Team responded to 2,360 telephone calls during the reporting period and 17,033 email enquiries.
17. Telephone enquiries commonly relate to the status of an application submitted to the Team, but also to the pupillage registration and completion processes and more generally to the work of the Team. The high volume of calls and enquiries needs to be carefully balanced alongside the need to process applications. There is a connection between the number of calls and the speed of decision making (given that a reasonable percentage of queries are seeking updates on applications). More timely decision making should result in fewer calls.

Figure 2

## Types of applications received in 2021/22



## Transferring Qualified Lawyers (TQLs)

18. Applications for admission to the Bar from the various categories of Transferring Qualified Lawyer (“TQL”) continue to be the most common applications received by the Team. Demand for access to the online portal to submit an application continues to be very high; although the demand for access to the portal does not necessarily translate immediately to an equivalent number of submitted applications.
19. Changes to the arrangements for TQLs to undertake Bar Transfer Test assessments were implemented from August 2021. Decision-making for TQLs wishing to transfer to the Bar of England and Wales now refers explicitly to the Professional Statement and, where individuals are required to take assessments as a condition of their admission, these assessments are aligned with those taken by Bar training students, helping to ensure consistency of standards whichever route a barrister takes to qualify. There is also more flexibility in the transfer system as a TQL can now have unlimited attempts at any required assessment(s) within a five-year period without needing to apply for a new authorisation decision after two years, as was the case previously.

## COVID-19

20. The knock-on effects of the pandemic on all components of Bar training meant that the usual cyclical peaks and troughs of work for the Team were still somewhat disrupted, although less so than in the previous reporting period. The pupillage registration and completion peaks are still approximately one month out of sync with previous years.

## *Authorisation of Authorised Education and Training Providers (AETOs)*

### Bar training providers (Vocational AETOs)

21. One institution which had not been authorised previously to deliver vocational Bar training was authorised in November 2021. No other prospective providers have come forward seeking authorisation in the period under review in this report.
22. The Team continues to process material change requests from the existing providers, eg for changes to the mode of teaching/assessment, authorisation of new locations for existing providers, etc. The use of computer-based examinations (authorised initially in the early stages of the pandemic) has continued for some, though not all, of the Bar Course providers as in-person/on campus teaching and assessment has begun to be reintroduced. We are continuing to work closely with these providers to ensure that students are able to complete their Bar Courses and continue with their careers.
23. The Team works closely with the BSB’s Supervision Team to identify issues arising from the authorisation processes that may require additional monitoring.

## Pupillage providers

24. The Team has continued to manage the transition of Pupillage Training Organisations (“PTO”s) to authorised status under our new regime. The deadline for the completion of the transition has been extended from 31 March 2022 to 31 December 2022 to allow sufficient time for the processing of all outstanding applications. The Team has continued to send out targeted communications to existing pupillage providers that have not yet submitted an application to ensure that they do apply in advance of the deadline.
25. The Team has authorised 165 former pupillage providers and more than 100 others are in various stages of processing (eg initial assessment, awaiting outstanding information, pending a decision, etc). The process of authorising pupillage providers is fundamental to ensuring that there are clear and consistent outcomes for pupils as they move in to the early stages of their career at the Bar.
26. Interest from solicitors’ firms and BSB entities to deliver work-based learning in the future has continued. Up to date information on the [AETO transitional arrangements](#) is available on our website.

## Entities

27. At the end of this reporting period, there were 148 BSB authorised entities (including 13 Alternative Business Structures, which include lay ownership or management). The chambers model of governance for self-employed barristers remains the leading approach and there is limited demand for more varied forms of structure. Fourteen new entities were authorised in 2021/22. The Team met both the six-month and nine-month service standards for entity authorisation applications.
28. We remain keen to hear from anyone who would like to set up an entity and we are willing to discuss informally novel or innovative proposals before any authorisation application is made.

## Contact and Assessment Team (CAT)

29. The total number of matters (Reports and General Enquiries) received by CAT increased slightly this year from 3300 to 3388 (3%). However, there was a substantial increase in Reports received from 1885 to 2196 (16%). With the addition of temporary resource, CAT was able to assess more reports than received (2517). This represents 54% increase in the output from the previous year.

### Performance against service standards

#### General Enquiries

30. CAT met the first service standard for general enquiries: that the percentage of substantive responses to general enquiries that can be addressed by CAT were provided in 5 working days. The standard is 80% and CAT achieved 80.3%.
31. For those enquiries that could not be answered by CAT, but rather forwarded to another team, the percentage which were so forwarded within three days was 57.1%. This fell short of the 80% standard.

#### Initial Assessment

32. CAT did not meet the standard for Initial Assessments. 49.1% (set against the target of 80%) of cases were concluded within 8 weeks of receipt across the year as a whole, although by the fourth quarter 71% of reports were assessed within eight weeks.

Table 2	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2021/22
General Enquiries					
General enquiries addressed within 5 days (Target 80%)	305 (76.7%)	250 (80.4%)	202 (79.7%)	250 (85.2%)	1007 (80.3%)
General enquiries referred within 3 days (Target 80%)	73 (56.2%)	42 (50.0%)	36 (47.2%)	47 (72.3%)	198 (57.1%)
Initial Assessment					
Concluded or referred within 8 weeks (Target 80%)	595 (55.6%)	753 (28.4%)	431 (49.4%)	528 (71.0%)	2307 (49.1%)
Quality Indicators					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)	25 (100.0%)	26 (96.2%)	43 (97.7%)	31 (100.0%)	125 (98.4%)

## Quality

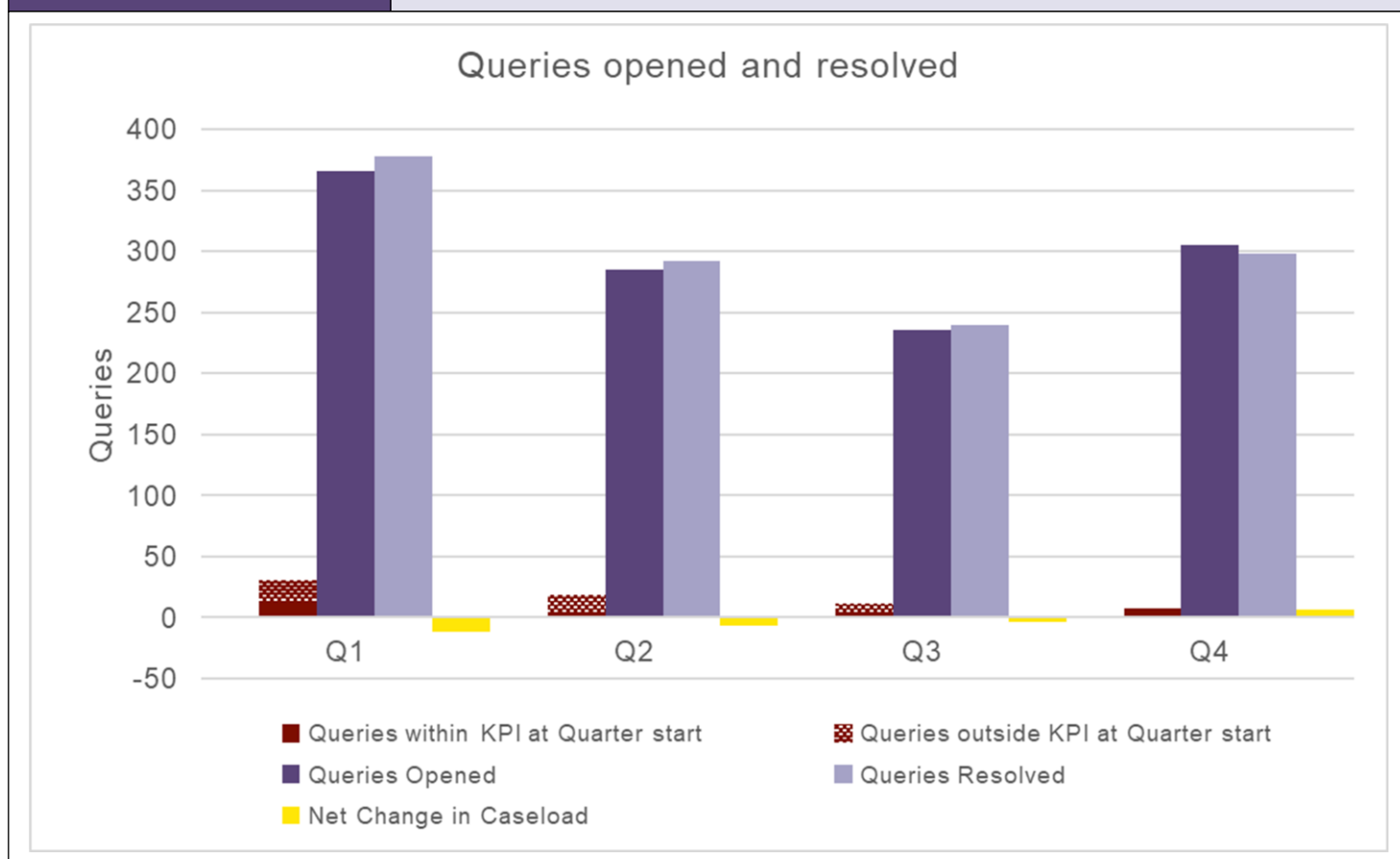
33. CAT met the service standard for the quality of decisions. Across the year there were 125 requests for reviews. In 98.4% of these, the decision was upheld by the Independent Reviewer. We are clear that we should not compromise the quality of our decision-making in order to increase our chances of meeting our timeliness standards. We have a responsibility to ensure that all reports are given proper consideration and are assessed in line with our published processes.

## Productivity

34. The CAT Team significantly improved its productivity across the year. CAT output increased from 1634 matters (excluding general enquiries) to 2517 matters. This is an increase of 54%. This is set against a 29% increase in headcount for part of the year. Accordingly, in 2021/22, CAT became more efficient in assessing reports. That efficiency was insufficient, however, to overtake the increased reports.
35. It should be noted that in Q4, when headcount reached the full 29% increase, there was a substantial rebound in performance against KPI with the team reaching 71% from a quarterly low of 28.4%.

Figure 3

Throughput of General Queries in 2021/22

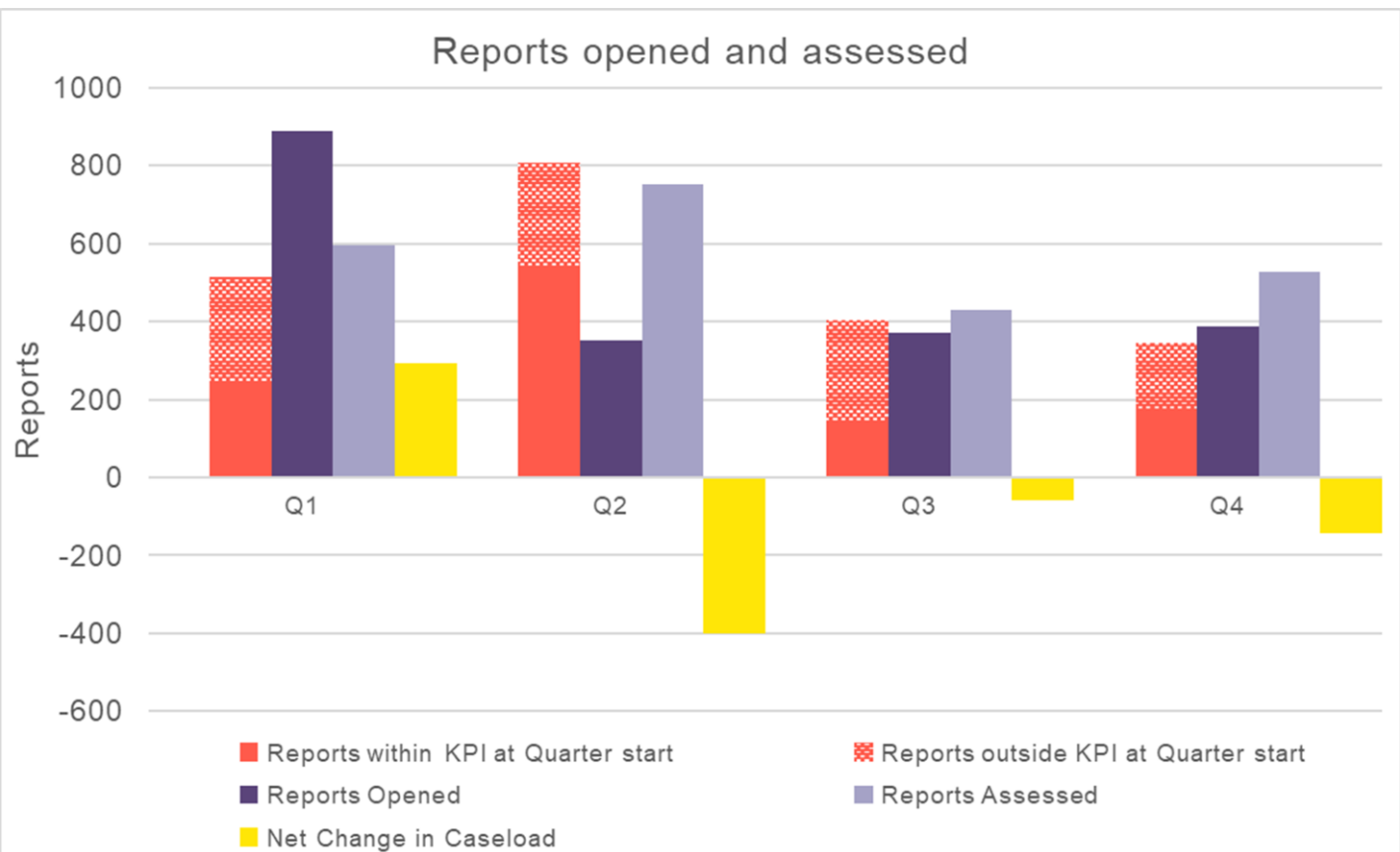




36. When looking at performance, resource capacity is only one part of the equation. We should also look at the effectiveness of our decision-making processes. We will be reviewing CAT's operating processes as part of the review of the changes made in 2019 to our regulatory operations. In particular, we will look at whether there is a means of streamlining our approach to dealing with cases where there is no evidence of misconduct. These make up a significant majority of the cases and we need to ensure we are taking a proportionate approach to their handling so that the Team has capacity to focus sufficiently on cases which may require further investigation or regulatory action.

Figure 4

Throughput of Reports in 2021/22



*Themes and trends***Conduct outside professional life**

37. This year saw a reduction of cases (from 274 to 194) where we identified the setting as occurring outside a barrister's professional life. However, in cases involving social media, which often relate to non-professional life, there was a substantial increase in reports assessed. In 2020/21 49 distinct cases involving 27 distinct barristers were assessed. In 2021/22 these figures rose to 89 and 36, respectively.
38. Throughout this year, the BSB was engaged in a project concerning non-professional life. As a result of this work we released, in July 2022, Interim Social Media Guidance. This will provide both barristers and the public clearer expectations around social media use. In turn, we are hopeful that in the year to come, we should see a reduction in reports in relation to social media.

**Area of law**

39. The area of law which occupies the highest proportion of cases remains Family law (7.4%). This was a small increase from 2020/21 (6.5%) and is the same as 2019/20.
40. We saw a slight increase (3.5% from 2.8%) in the number of reports relating to Criminal law.
41. Also notable was Employment law where the number of reports received more than doubled. Immigration is another area where we saw numerical increases in reports.

**Other notable trends**

42. The number of cases involving Litigants in person increased numerically but was stable in terms of percentage of reports.
43. We also saw an increase in reports involving conduct at work but not in relation to the provision of legal services. This would, include, for example, conduct in chambers. This year we assessed 304 cases of this nature up from 131 the previous year.

## Investigation and Enforcement Team

### *General overview*

44. 2021/22 was an extremely challenging year for enforcement work, particularly in relation to the acceptance and completion of investigations. We struggled to hit timeliness performance standards throughout the year. 54% of cases referred to the Team were accepted for investigation within two weeks and 34% of investigations were concluded within 25 weeks (see Table 3).
45. The main reasons for this poor performance are twofold: a substantial increase in the number of referrals to investigation; and ongoing problems with understaffing. However, against this background the team was still able to accept more cases for investigation than in 2020/21 and also conclude more investigations, whilst progressing to conclusion the same number of disciplinary cases.
46. The picture therefore is one of investigations slowing down and cases taking longer to progress, but not one of reduced productivity or lower quality. The issues with staff capacity were recognised by the Board during the year and an increase in people within the team was agreed. Unfortunately, it proved difficult in the current labour market to recruit to the new posts and to vacancies arising during the year. By the year end, the team complement had not increased, and at times it had fallen below the level prior to the agreed increase. There was therefore insufficient capacity to handle the increase in referrals and hence the service levels were adversely affected.
47. While our people are to be commended for continuing to maintain the throughput of cases, the low performance against the timeliness standards, both in this year and previous years, is a cause for concern. We are not complacent. Following the year end, an action plan was put in place with a view to recovering the position by the end of 2022/23 and we hope to report an improved position in next year's report. Further, as part of the review of the changes in 2019 under the Modernising Decision-Making initiative ("Regulatory Operations Review"), we will be considering ways to streamline the investigation process and will be examining whether changes to the regulations need to be made to facilitate this when we review Part 5 of the BSB Handbook in 2023/24.
48. The following sections provide more detail of the performance and trends in our enforcement work.

*Performance against service standards*

49. Table 3 below shows performance against the service levels.

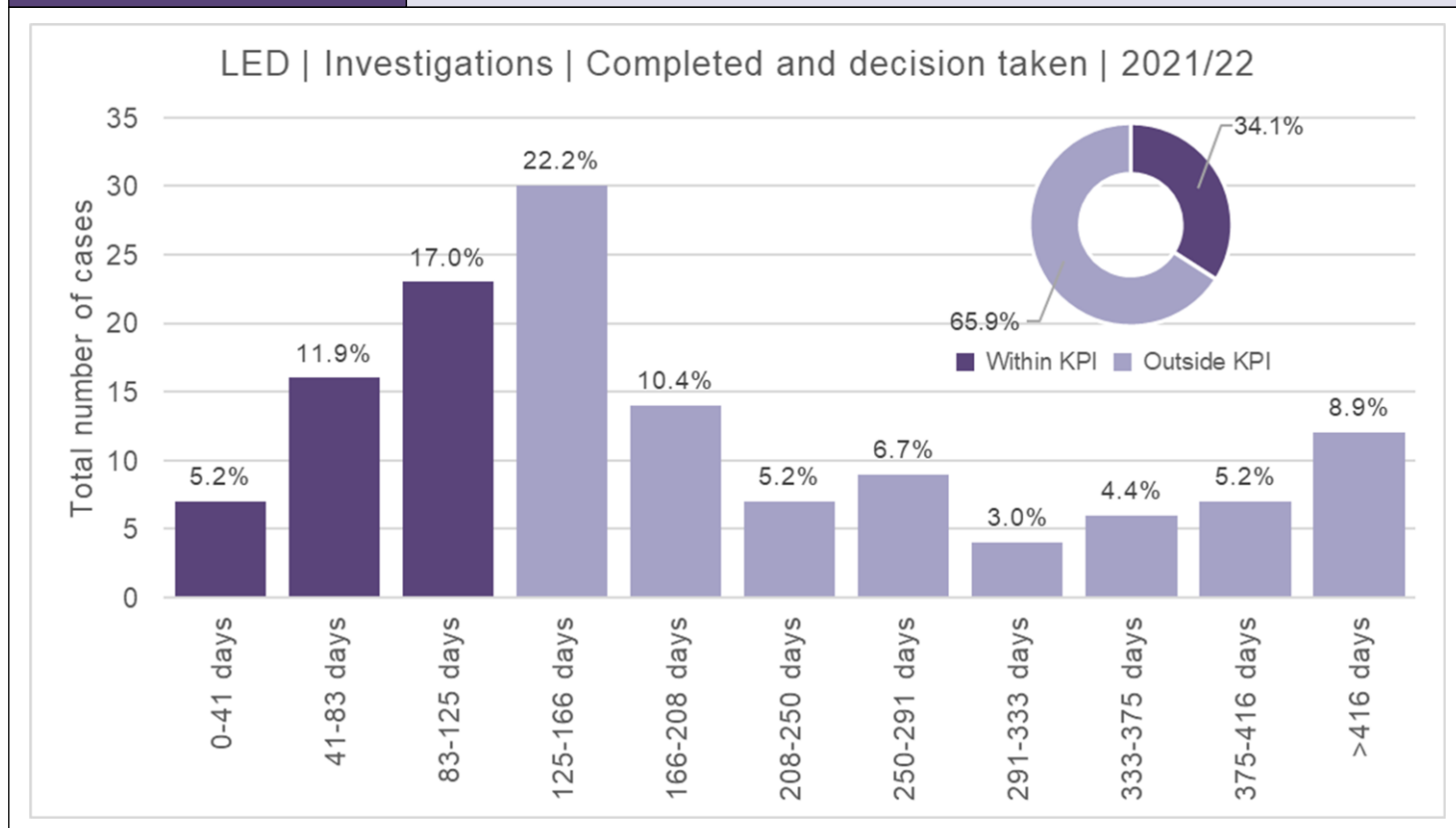
50. **End to end times for investigations:** the BSB currently monitors time taken to conclude cases based on the individual stages, eg assessment, referral and investigation. We recognise that this does not provide a full picture of how long it is taking from receipt of information to the conclusion of any enforcement action taken. We intend to remedy this as part of the wider review of our service standards. In 2021/22, the median time it took for investigations to be closed, from date of receipt of the initial reports, including the imposition of administrative sanctions, was 318 days as compared to 296 in 2020/21. This figure includes periods when investigations are put on hold, usually due to the ill health of the barrister or the need to await the conclusion of associated criminal or civil proceedings, the outcome of which would have a bearing on the investigation.

Table 3	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2021/22
<b>Referral of cases</b>					
Accepted or referred back within 2 weeks <b>(Target 80%)</b>	73 (89.0%)	37 (62.2%)	28 (21.4%)	46 (10.9%)	184 (53.8%)
<b>Investigation</b>					
Decision on disposal within 25 weeks <b>(Target 80%)</b>	24 (33.3%)	41 (53.7%)	32 (31.3%)	38 (15.8%)	135 (34.1%)
<b>Quality Indicators</b>					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review <b>(Target 95%)</b>	1 (100.0%)	1 (100.0%)	3 (66.7%)	1 (100.0%)	6 (83.3%)
Number successful appeals against the imposition of administrative sanctions <b>(Target 0%)</b>	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (100.0%)	1 (100.0%)
Number successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process <b>(Target 0%)</b>	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)

51. **Quality indicators:** while the timeliness of our work is important in ensuring that we meet our obligations and provide an effective service, it is also important that we monitor the quality of our work to ensure that decisions are fair and robust. In 2021/22, there were six requests for review arising from decisions taken at the end of an investigation by either staff or a panel of the Independent Decision-making Body (IDB). In one case, the Independent Reviewer recommended that the decision be taken again and in another she recommended that part of the decision be revisited. This meant that we missed our target of 95% of decisions being upheld with an outturn of 83.3%. We also did not meet the target of 0% for successful appeals from administrative sanctions. However, as Table 3 above indicates the outturn of 100% arose because the one decided appeal during the year was successful. There were no successful appeals of Disciplinary Findings and therefore the target for this KPI was met.

Figure 5

## Age distribution of LED Investigations decided in 2021/22

*Workload/productivity*

52. As indicated above, the overall picture in relation to the timeliness KPIs is that performance reduced. However, the timeliness KPIs provide only a limited picture and do not reflect the volume of work the team handled during the year or the throughput of cases.

53. As the paragraphs below demonstrate, the overall volume of work increased in 2021/22. The number of cases accepted for investigation and the number concluded during the year increased (164 accepted for investigation and 106 closed after investigation in 2021/22, compared to 128 and 91 respectively in 2020/21). The team was also able to maintain the number of disciplinary cases concluded (33).

### *Investigations*

54. In 2021/22, an unprecedented number of cases were registered as being received from CAT as referrals throughout the course of the year: up from 129 in 2020/21 to 238 – an increase of 83%. The volume of work the team had to handle and/or absorb, without the additional staffing, was therefore significant. The fact that only 184 referrals were accepted or referred back to CAT shows that a backlog of cases awaiting acceptance for investigation built up.
55. A significant percentage of the additional throughput of referrals related to referrals from the Barrister Records Team for failures to renew practising certificates. In 2020/21 there were only four such cases referred for investigation, whereas in 2021/22 there were 60 such cases. These cases therefore accounted for 55% of the increase in the throughput of investigation referrals in 2021/22.
56. The increase in practising certificate referrals is likely to have arisen from the impact of Covid and the extended payment arrangements in consecutive years. While the investigation of such cases requires staff capacity to progress, the time involved is less than other cases and they usually result in a staff decision so are less resource intensive. Nevertheless, they impact on the ability to deal with other cases. Even if such cases are removed from the overall throughput of referrals for the last two years, the increase in referrals for 2021/22 was still up by 41% as compared to 2020/21.
57. As most of the investigations of practising certificate breaches result in an administrative warning imposed by staff, following the year end we considered ways of handling such breaches in a more proportionate and efficient manner. The intention in the future is that such breaches will be addressed earlier in the process by CAT without the need for a formal investigation.

Figure 6

## Throughput of Referrals in 2021/22

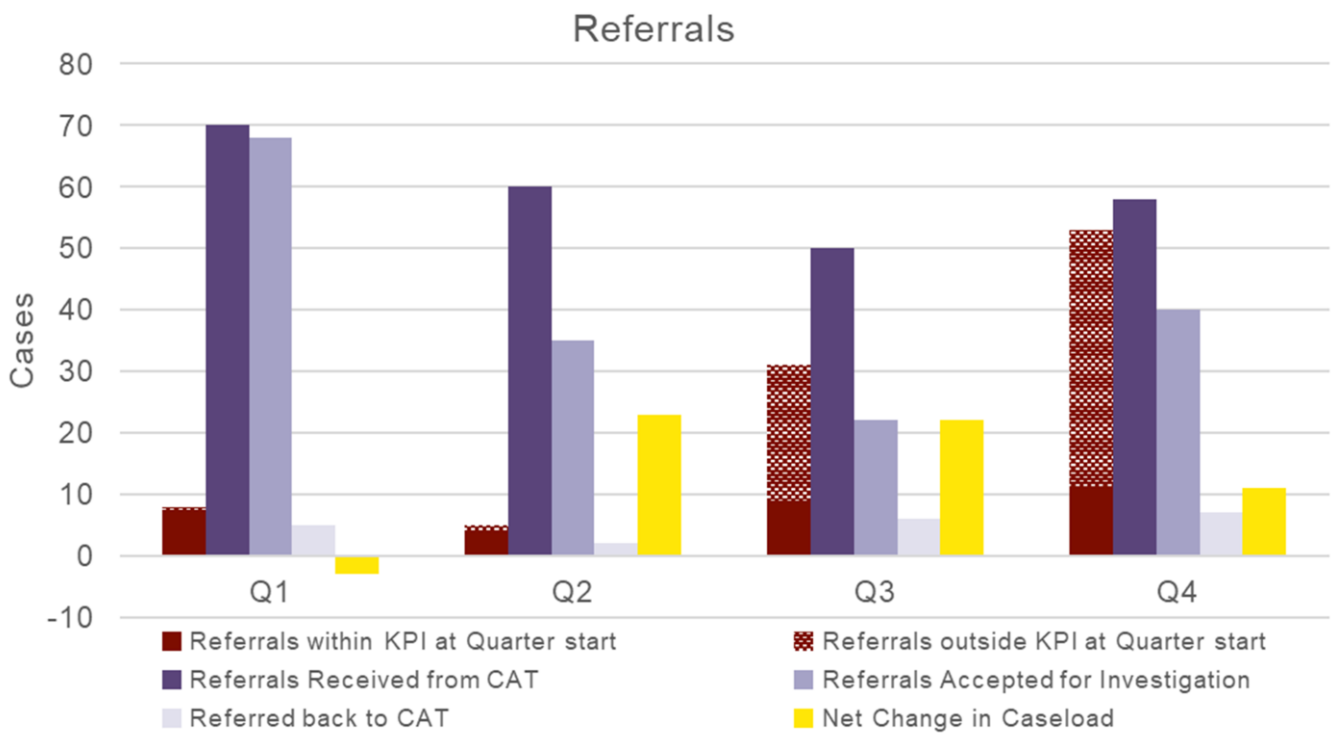


Figure 7

## Throughput of Investigations in 2021/22

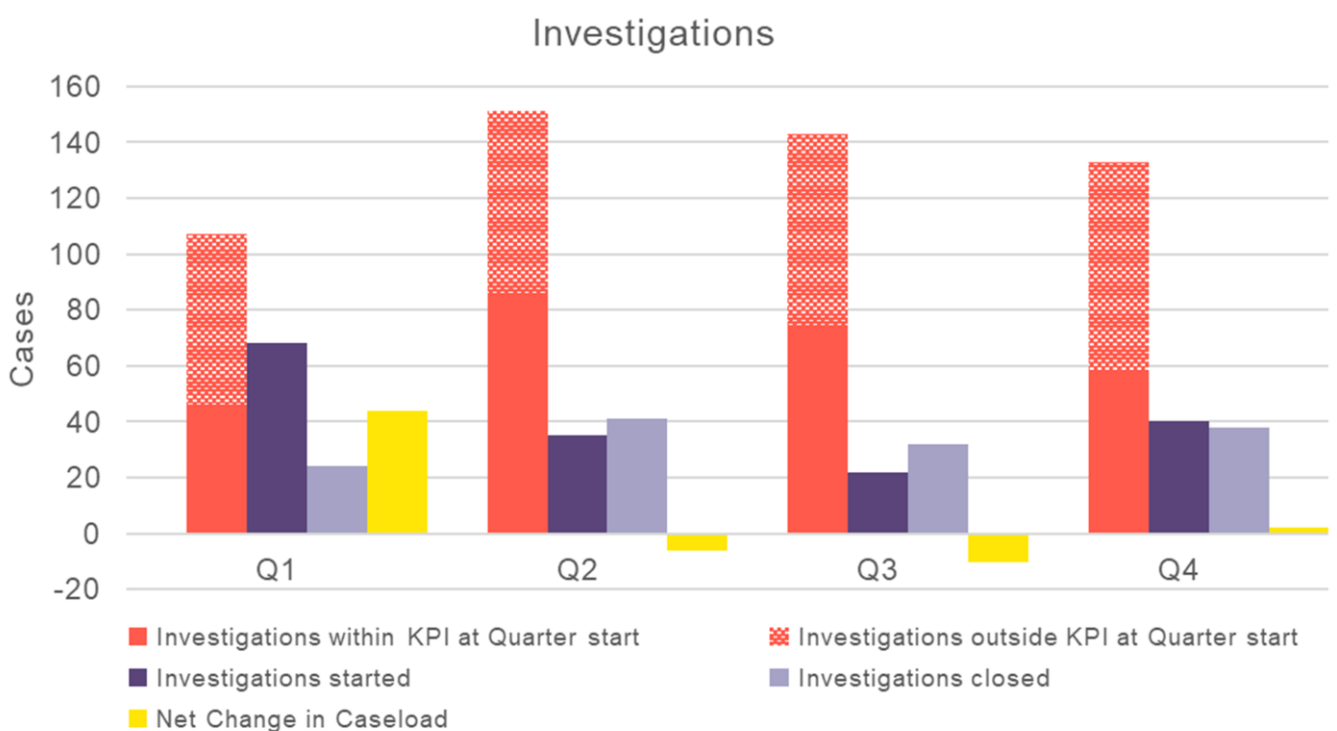


Table 4	Open cases at year end		
Stage	2019/20	2020/21	2021/22
Referrals	27	8	63
Investigations	108	98	129
IDB/PCC	3	12	9
Determination by Consent	1	2	2
Disciplinary Tribunal	29	34	29
Appeals	9	4	11
<b>Total</b>	<b>177</b>	<b>158</b>	<b>243</b>

### Types of conduct investigated

58. We record the types of conduct investigated as “aspects” of case. Where more than one type of conduct is covered in a case, it will have multiple aspects therefore the number of aspects will always be higher than the total number of cases.
59. As indicated above, there was a big increase in the number of cases investigated related to failures to renew practising certificates on time. This was the highest category of aspects recorded as accepted for investigation at 12% of the total (as compared to 2% in 2020/21). Inevitably, such cases have skewed the percentage figures in relation to different types of conduct investigated. Therefore, leaving aside breaches of practising requirements, the next highest number of cases investigated related to the aspect “other diminishing trust and confidence”, ie breaches of Core Duty 5 where the conduct does not fit within any other specific category: these were up from 39 to 57. This aspect covers a wide range of conduct and examination of the types of conduct investigated in 2021/22 does not reveal any significant trends. The most common types of conduct arising under this heading in 2021/22 were: issues with the drafting/submission of court documents; holding out as a barrister when not entitled to do so; breaches of confidentiality; and use of social media.
60. As Table 5 shows, the next highest aspect in the top-five aspects was “some form of misleading” which again encompasses a wide range of conduct from misleading the court to misleading any person whether in professional or non-professional life. Investigations which included this type of conduct almost doubled in 2021/22 from 16 to 31. Holding out as a barrister also increased as an aspect from 10 to 25, some which related to conduct associated with practising



certificate breaches. The increase in the aspect of “failing to report own serious misconduct” was significant, up from 1 in 2020/22 to 19 in 2021/22. This aspect is included in a case where conduct comes to attention to the BSB that should have been reported by the barrister under their reporting obligations but was not. The majority of these aspects (14) were associated with investigations of failures to review/obtain a practising certificate. The others related to a failure to report a breach of confidentiality by multiple barristers in one case.

61. **Harassment:** In 2021/22, there were eight new cases that included the aspect of “harassment” (including sexual harassment). Two of these eight cases related to unregistered barristers and were referred back to CAT because it was not possible to carry out an investigation. This compares to three cases referred back to CAT in 2020/21. During 2021/22, ten investigations relating to harassment and/or sexual misconduct were closed. Five were closed after investigation, and five were referred to disciplinary action. Of the five closed after investigation, one was withdrawn, one resulted in an administrative sanction, two were dismissed and one was not proceeded with following counsel’s advice. In addition, two cases were closed after referral to disciplinary action, in both cases the charges were proved (one case resulted in a suspension, the other resulted in disbarment).
62. **Social media:** in 2021/22, six cases relating to social media were referred for investigation as compared to nine in 2020/21. This contrasts starkly with the 83 reports of concerns about the use of social media by barristers that were received by CAT. While not necessarily the same cases as referred during the year, seven cases related to social media were concluded in the year. None were referred to disciplinary action, two cases resulted in the imposition of administrative sanctions and the rest were dismissed.

Table 5	Top-five Aspects of new Investigation cases (as a percentage of all aspects)	
Aspect	2020/21	2021/22
Failing to renew practising certificate	4 (2%)	60 (12%)
Other diminishing trust and confidence	39 (17%)	57 (12%)
Some form of misleading	16 (7%)	31 (6%)
Holding out as a barrister when not authorised to do so	10 (4%)	25 (5%)
Failing to report own serious misconduct	1 (0.5%)	19 (4%)

## Outcomes of investigations – overview

63. The following paragraphs provide an overview of the outcomes of investigations concluded in 2021/22 – more detail on each of the outcomes is provided in subsequent sections.
64. Investigations can result in allegations being dismissed because of lack of evidence, administrative sanctions being imposed for breaches that do not amount to professional misconduct or a referral to disciplinary action. Cases which result in a dismissal or an administrative sanction are classed as “closed after investigation”. Cases that are referred to disciplinary action, while not closed, are counted in the figures for outcomes of investigation.
65. At the end of an investigation, the decision on what action, if any, to take is either taken by staff or a panel of the Independent Decision-Making Body (IDB). Staff have the power to dismiss cases due to lack of evidence and to impose administrative sanctions, but only very limited powers to refer cases to disciplinary action.
66. In total, 135 investigations were concluded in 2021/22. This was up by six cases on the year before – a small increase of just under 5%. Of the 135 concluded investigations, 106 were closed after investigation (78.5%) and 29 referred to disciplinary action (21.5%) – see paragraphs 63-71 for further analysis of the outcomes.
67. As Table 6 shows, in the last five years there have been fluctuations in the number of cases concluded after investigation with significantly more cases being concluded in the years 2017/18 and 2018/19 as compared to the last three years. In the main this is due to a difference in approach within the Records team in 2018 in chasing up failures to renew practising certificates, thus reducing the number of such failures that need to be investigated. There was a spike again in these cases in 2021/22 (see paragraph 49 above) due to the impact of Covid and revised deadlines for renewing. Just over half of the investigations of these cases were concluded in 2021/22.
68. Of the 106 cases closed after investigation, the proportion of decisions taken by staff remained consistent with previous years at around 69%. There has been little fluctuation of this figure in the last three years. Thus, the proportion of decisions taken by staff as compared to those taken by panels of the IDB remains roughly at two thirds to one third respectively: thus demonstrating, as far as is possible, decisions are being taken at the lowest level possible.

## Dismissals

69. Investigations are recorded as “dismissed” where there is either no evidence/ insufficient evidence of the original alleged breach(es) referred to investigation, or, occasionally, there is evidence of a breach but the risk to the regulatory objectives is too low to warrant taking enforcement action.
70. In 2021/22, 50 cases were dismissed at the end of investigations equating to 37% of all investigations concluded in the year, the same percentage as last year, when 48 of the 129 investigations concluded resulted in dismissals. Where cases are dismissed, but there is still cause for concern the decision can be accompanied with formal advice to the barrister. Six of the 50 cases dismissed (12%) were subject to such advice: a lower proportion than in 2020/21 when 10 dismissals decisions included formal advice (21%).
71. The relatively high dismissal rate after investigation, in part, reflects our current process but is also a reflection of the fact specific nature of investigation cases. Decisions to carry out an investigation are based on the information presented to CAT at the initial assessment stage (see above). This information does not include the barrister’s comments on the matters alleged or any enquiries of relevant witnesses. Such information is obtained during the investigation and in many of the cases that are dismissed the barrister’s account, and/or that of witnesses, produces a fuller picture of the circumstances that results in the dismissal.
72. A review of the changes to the enforcement processes, introduced in 2019 as part of the Modernising Decision-Making initiative, as well as the Enforcement Regulations, is planned for 2022/23 -2023/24. A part of this will be considering whether adjustments to the earlier stages of the processes can be made to reduce the proportion of cases dismissed after investigation.

Table 6		Throughput of Investigation cases				
Decisions		2017/18	2018/19	2019/20	2020/21	2021/22
Closed after Investigation		154	130	96	91	106
Referred to Disciplinary Action		37	47	30	38	29
<b>Total</b>		<b>191</b>	<b>177</b>	<b>126</b>	<b>129</b>	<b>135</b>

## Imposition of administrative sanctions

73. Where there is evidence of a breach of the BSB Handbook, which is not so serious as to amount to professional misconduct, both staff and an IDP can impose administrative sanctions in the form of a warning or fine up to £1,500 for individual barristers. The imposition of an administrative sanction does not constitute a disciplinary finding.
74. In 2021/22, the number of administrative sanctions imposed increased quite substantially from a total of 32 in 2020/21 to 49 in 2021/2. The vast majority of these (94%) were warnings as opposed to fines. They were imposed for a wide range of conduct but mostly: failures to renew a practising certificate (while continuing to practise); holding out as a barrister when not entitled to do so; and misleading others as to status.

## Referrals to disciplinary action

75. Disciplinary action refers to action taken in the most serious cases where the conduct is considered to amount to professional misconduct as opposed to only a breach of the Handbook requirements. There are two forms of disciplinary action available: the Determination by Consent procedure or a Disciplinary Tribunal. The former is a procedure whereby the charges of professional misconduct are decided by a panel of the IDB on the papers with the consent of the barrister.
76. In 2021/22 there was a relatively significant reduction in the number of cases referred to disciplinary action: down by nine cases (23%) from 38 in 2020/21 to 29. This reduction is not likely to be due to any changes in behaviours at the Bar but to the slowdown in the time taken to investigate cases and the number that are still awaiting decision.
77. The main types of conduct that led to the referrals to disciplinary action were: criminal convictions (7); dishonesty (5), harassment (4) and misleading the court or others (4).

## *Disciplinary action*

78. The same number of disciplinary cases (33) were concluded in 2021/22 as in the previous year although this number related to only 29 individual barristers given that some barristers were subject to more than one disciplinary case relating to separate incidents of misconduct. These 33 cases consisted of four that were dealt with under the Determination by Consent procedure and 29 that were heard in front of a Disciplinary Tribunal.
79. The median time taken to conclude the Tribunal cases, from the date the report was first received and the end of the hearing, increased substantially in 2021/22 from 638 days (21 months) in 2020/21 to 805 days (26.5 months). The figure includes periods when cases are put on hold or formally adjourned by a Tribunal.

Such pauses generally arise due to ill health of the barrister or witnesses or associated ongoing criminal or civil proceedings relevant to the case. The increase in the median time is not necessarily a reflection of the increased time it was taking to investigate cases as the median time to conclude Tribunal cases from the date of referral remained similar to last year at 386 days as compared to 380. We recognise that these timescales are too long and need to be reduced. The increased staffing referred to above and the action plan that has been in place to accelerate investigations will assist with this. However, we also recognise that systemic issues may be contributing, whether this is the case will be examined as part of the Regulatory Operations and Part 5 reviews.

### Outcomes of disciplinary action

80. As in 2020/21, there were four cases that were dealt with under the DBC process relating to three barristers. Two arose from a criminal conviction for drink driving, one from a police caution and the other arose from matters of failing to keep a client updated and associated Solicitors Regulatory Authority finding. All four resulted in findings of professional misconduct and sanctions of reprimands and/or fines.
81. Of the 29 cases concluded at Tribunal, 24 cases resulted in one or more charges being found proved equating to nearly 83% of the cases heard. This was an increase on last year where the percentage was approximately 70%. In the other five cases four were dismissed by the Tribunal and in one case, due to receipt of further evidence, the BSB offered no evidence. No costs orders were made against the BSB during the year, thus indicating that in the cases where the charges were dismissed, the Tribunal considered they were properly brought.

Table 7	Disciplinary action cases concluded				
Disciplinary Action	2017/18	2018/19	2019/20	2020/21	2021/22
Determination by Consent	8	9	5	4	4
Disciplinary Tribunal	39	28	42	29	29
<b>Total</b>	<b>47</b>	<b>37</b>	<b>47</b>	<b>33</b>	<b>33</b>

Table 8

## Sanctions imposed by Disciplinary Tribunal panels or under the Determination by Consent procedure

Sentence	2017/18	2018/19	2019/20	2020/21	2021/22
Disbarred	6	4	10	4	6
Suspended	9	4	15	9	7
Fined	18	18	10	11	12
Reprimanded	15	16	13	10	14
<b>Total sanctions</b>	<b>48</b>	<b>42</b>	<b>48</b>	<b>34</b>	<b>39</b>
<b>Total barristers</b>	<b>32</b>	<b>27</b>	<b>36</b>	<b>24</b>	<b>26</b>

## Sanctions imposed

82. The sanctions available for proved disciplinary findings range from no further action through to a fine, suspension and disbarment, although the latter two sanctions cannot be imposed under the Determination by Consent procedure. In 2021/22, 39 separate sanctions were imposed on 26 barristers arising from the 28 proved cases. The sanctions imposed are set out at Table 8 above and the pattern and number of the sanctions of each type remained broadly similar to last year.
83. The six disbarments mainly involved some form of dishonest conduct. Two were directly related to conduct that led to a criminal conviction (dishonest immigration claims and anti-money laundering failures). Three arose from the barristers' conduct in relation to their legal practice: misleading a client (combined with a benefits conviction), and two cases, against the same barrister, for providing false evidence/documents to the court. The sixth was imposed for sexual misconduct but was later reduced on appeal to a suspension. The suspensions imposed arose from a range of conduct including criminal convictions, harassment, misleading the court, and handling client money.
84. **Sanctions Guidance:** on 1 January 2022, the Bar Tribunal and Adjudication Service issued revised Sanctions Guidance applicable to all sanctions imposed on or after that date. The revised Guidance generally increased the indicative sanctions for misconduct and substantially increased the band levels for fines and the indicative sanctions for sexual misconduct, discrimination, and harassment. In the three months of 2021/22 when the new Guidance was applicable, only four disciplinary cases fell to be decided under it. Two of these involved dishonesty (the indicative sanction for which is disbarment both under the old and new Guidance). The other two were cases where the panel reconvened for sanction after 1 January 2022, but the finding of misconduct was made prior to the introduction of the new Guidance. The Tribunal decided in both cases that the old Guidance should apply. Therefore, the revised sanctions levels in the new Guidance were not relevant in any of these cases. The impact of the revised Guidance will be assessed in next year's report, when it will have been in place for a full reporting year.

## Supervision Team

85. Our [Supervision Strategy and Framework](#) sets out our approach to supervising barristers, chambers, BSB entities and Authorised Education and Training Organisations. The focus of supervision is to seek assurance that risks identified at both an individual and sector level are being controlled in a proportionate manner so that those risks do not materialise (or if they do, they can be mitigated effectively). The team takes both a reactive and proactive approach: reactive in terms of the unsolicited information we receive from a range of sources about practice at the Bar, and proactive, to gather evidence to support our risk-based approach and to ensure that we are targeting our resources where they are most needed.

### *Concerns reported to the BSB*

86. The team met all of its service levels this year.
87. The Contact and Assessment Team referred 119 reports to Supervision for action, which is a 35% increase on the previous year and reflects the increase in volumes described elsewhere in this report.
88. In addition, Supervision opened 90 cases, compared to 27 last year. This includes 45 cases related to testing compliance with the transparency rules (see paragraph 110 below).
89. The additional spike in cases that is reflected in Figure 8 is caused by the number of cases opened following assessment of the Regulatory Returns (see paragraph 99 below).
90. The open caseload therefore rose over the course of the 12 months. Where reports were relevant to the topics covered in the Regulatory Returns, officers reviewed them with chambers and entities as part of that process (eg a report concerning complaints procedures was assessed in the context of the information provided by the chambers in the Regulatory Return).
91. Where reports related to concerns about pupillage, Supervision officers liaised with the Authorisations Team as applications from pupillage providers were assessed, to ensure a co-ordinated approach. As the timeframe for the authorisation process has been extended, we have changed our approach and decided not to delay supervision action on new cases where the applications have not been submitted or assessed. However, where Supervision concerns arise, these are referred to Authorisations to prioritise assessment and chase late submission of the application.

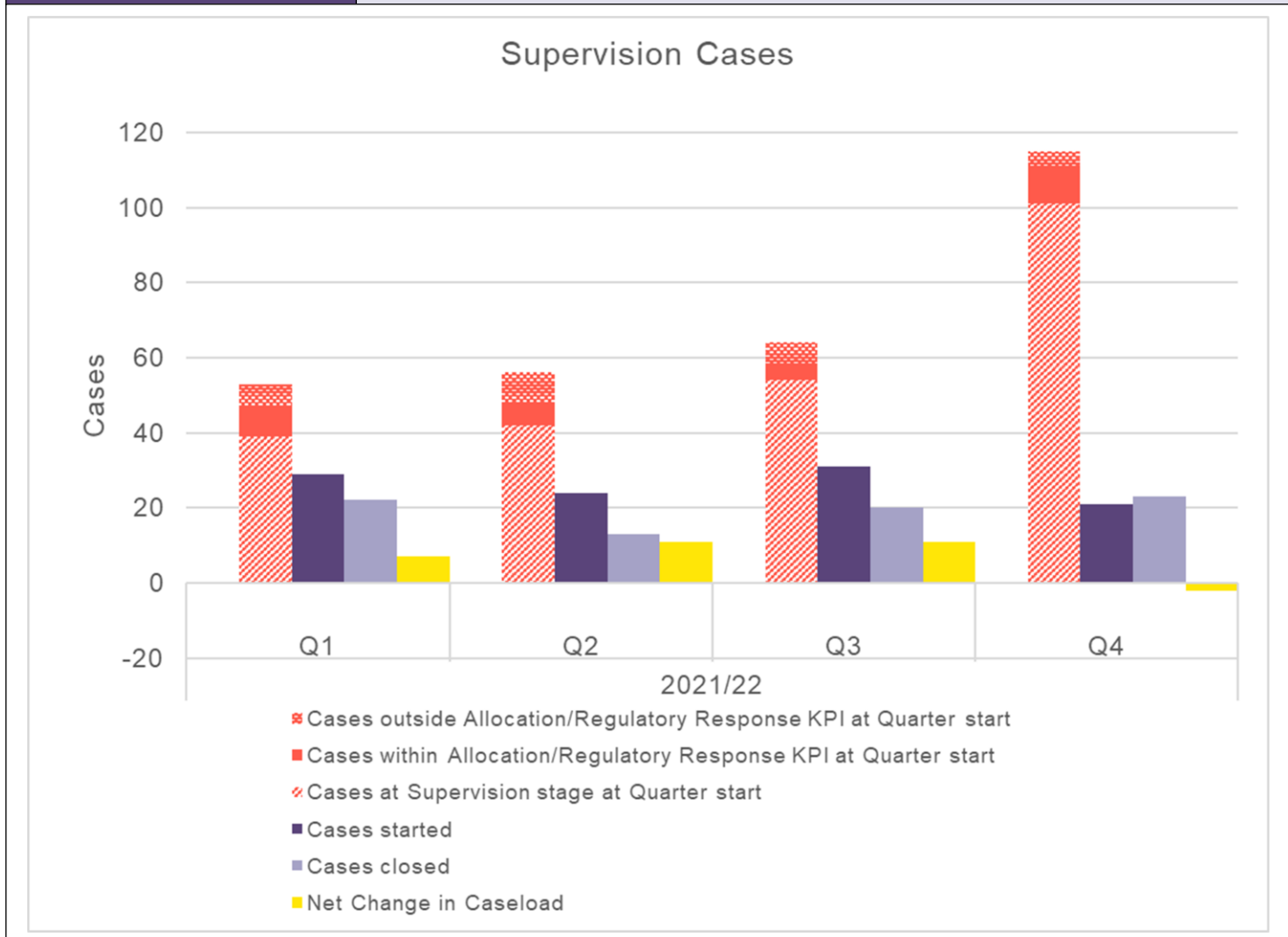
Table 9

## Quarterly KPIs

KPI	Q1	Q2	Q3	Q4	2021/22
<b>Allocations</b>					
Assigned within 3 working days (Target 80%)	32 (96.9%)	32 (100.0%)	24 (87.5%)	30 (100.0%)	118 (96.6%)
<b>Regulatory Response</b>					
Agreeing a regulatory response within 20 working days of the case being assigned (Target 80%)	44 (93.2%)	39 (84.6%)	73 (95.9%)	43 (81.4%)	199 (89.9%)
<b>Visits</b>					
Report letters issued within 5 working days of a visit to an organisation (Target 80%)	3 (100.0%)	1 (100.0%)	1 (100.0%)	1 (100.0%)	6 (100.0%)

Figure 8

## Throughput of Supervision Cases in 2021/22





92. There is a risk that Supervision’s ability to progress cases could be impacted by the backlog in the Enforcement Team (see paragraph 48 above) where cases are referred by the Contact and Assessment Team to both teams. This typically arises where the Enforcement Team is considering barrister misconduct and the Supervision Team is considering the policies, processes and culture in chambers that may have contributed to it. For example, this typically arises in cases relating to bullying and harassment. Where this happens, the team heads meet regularly to agree aspects of the case that can be progressed by the Supervision Team without impacting the enforcement process.

### *Bar training*

#### **Vocational component**

93. The turbulence of the previous year that was caused by the pandemic coinciding with the launch of the new Bar courses, began to settle as training providers went into the second academic year (2021/22) of delivering the new courses. There was still some impact on providers, particularly at the start of the academic year, requiring us to assess some further material change requests relating to how assessments were delivered, in collaboration with the Authorisations Team. We conducted a Supervision visit at one provider where communication with students had not worked well during the pandemic, and we reviewed and monitored the plans that the provider had in place as a result of lessons learned.
94. We meet with all providers quarterly and recently we were able to get back to an in-person meeting together with external examiners, to reflect on the first two years of the reforms. Providers were particularly positive about the flexibility that our reforms created, enabling them to be more creative in the delivery of the courses, helping them to promote high standards and to prepare students for a career at the Bar or elsewhere. They are reflecting on what has worked well and feel that as they enter a more stable period, this creativity will continue to evolve.
95. This year, we began to see the benefits of our subject-based external examiner team structure that we introduced the previous year. The teams collaborated well, helping to assure consistency of standards in the assessments that are set and marked by the providers. In addition to individual reports to providers, themes were shared with all providers.
96. Overall, the quality of assessments is high across providers. In most cases they are appropriately challenging, realistic and in line with the Curriculum and Assessment Strategy and the Professional Statement. Generally, marking, second marking and moderation processes at providers appear to be working and are robust. Where individual areas of concern were identified, external examiners and the Supervision Team worked with providers to address issues raised and set actions where needed.

97. Providers deliver their courses through a range of cohort start dates, and some have taken up the opportunity of the new 4-part pathway, splitting the Bar course into two parts. That means that there is a wide range of academic calendars, and our external examiner teams need to plan their time accordingly. In some cases, providers have not given external examiners sufficient time to review materials and the scheduling of some assessment boards has been problematic. In a couple of cases, this has meant that results have not been released to students when they should have been. We anticipate improvements this year.
98. Legal Research and Opinion Writing was an area of change in the new Curriculum and Assessment Strategy. The Subject Lead reported some initial inconsistencies, which were resolved.
99. As responsibility for assessment of Professional Ethics during the vocational component moved from the BSB to providers, the external examiner team had a particular focus on ensuring consistent standards, when there was a wide variety of assessment formats. The team worked hard with providers to ensure consistency of standards, whilst giving providers the freedom to create their own approach to assessment. Providers told us that they have particularly welcomed the flexibility that the reforms have given to embed the teaching of ethics across the Bar course, meaning that the qualification prepares students well for pupillage, as well as creating training held in high regard internationally.

### **Pupillage component**

100. We were pleased to see that pupillage numbers bounced back strongly after the dip that was caused by the pandemic. 577 pupillages commenced in the 2021 calendar year, compared with 400 in 2020 and 504 in 2019.
101. We regularly present at the pupil supervisor training delivered by some of the Inns and Circuits to ensure that pupil supervisors understand the regulatory requirements, and would welcome the opportunity to do so at others. These forums provide an opportunity for us to meet pupil supervisors and share examples of good practice, in addition to the common themes seen by the Supervision Team when things go wrong. We are pleased that pupils are confident in approaching the BSB when their concerns cannot be resolved internally, and that the Bar Council encourages pupils that contact their pupillage helpline to contact us. The typical reasons that things go wrong in pupillage continue to be those that we have reported in previous years, and we urge all AETOs to be mindful of the following:
  - Robust policies and processes are crucial in making sure that pupillages are successful, particularly in relation to having a clear training plan and robust feedback mechanisms.
  - Pupillage providers should have arrangements in place so that both they and their pupils know what to do if a pupillage is not going well. Pupils should have people other than their pupil supervisor to turn to if necessary.

- The pandemic has accelerated the trend towards more remote working, both within chambers, and with clients and cases. Providers need to keep under review how effective pupillage training can be sustained, how pupil supervisors engage with pupils and how training may need to be adapted to address different skills that may be needed.
  - The first BSB-set and marked ethics exam in pupillage was successfully delivered to the first cohort of pupils in April 2022. The Supervision Team worked with the Exams Team to provide [information](#) to AETOs and pupil supervisors about the new exam and what pupils need to do to prepare and register for the exam.
102. We are currently working with academics, the Inns and the Circuits to implement the final reforms to the Curriculum and Assessment Strategy, in relation to Advocacy and Negotiation Skills training and assessment during pupillage.

### **Apprenticeship pathway**

103. The apprenticeship pathway was approved in principle as part of our Bar training reforms in 2019 but is not yet available to students. There is a growing interest from both the employed and self-employed Bar, as well as the vocational providers, who all see the potential it has to increase diversity at the Bar and open up new opportunities for a career at the Bar. We are currently working with interested parties to test whether it will be feasible to introduce this pathway. Anyone interested in getting involved should contact [supervision@barstandardsboard.org.uk](mailto:supervision@barstandardsboard.org.uk).

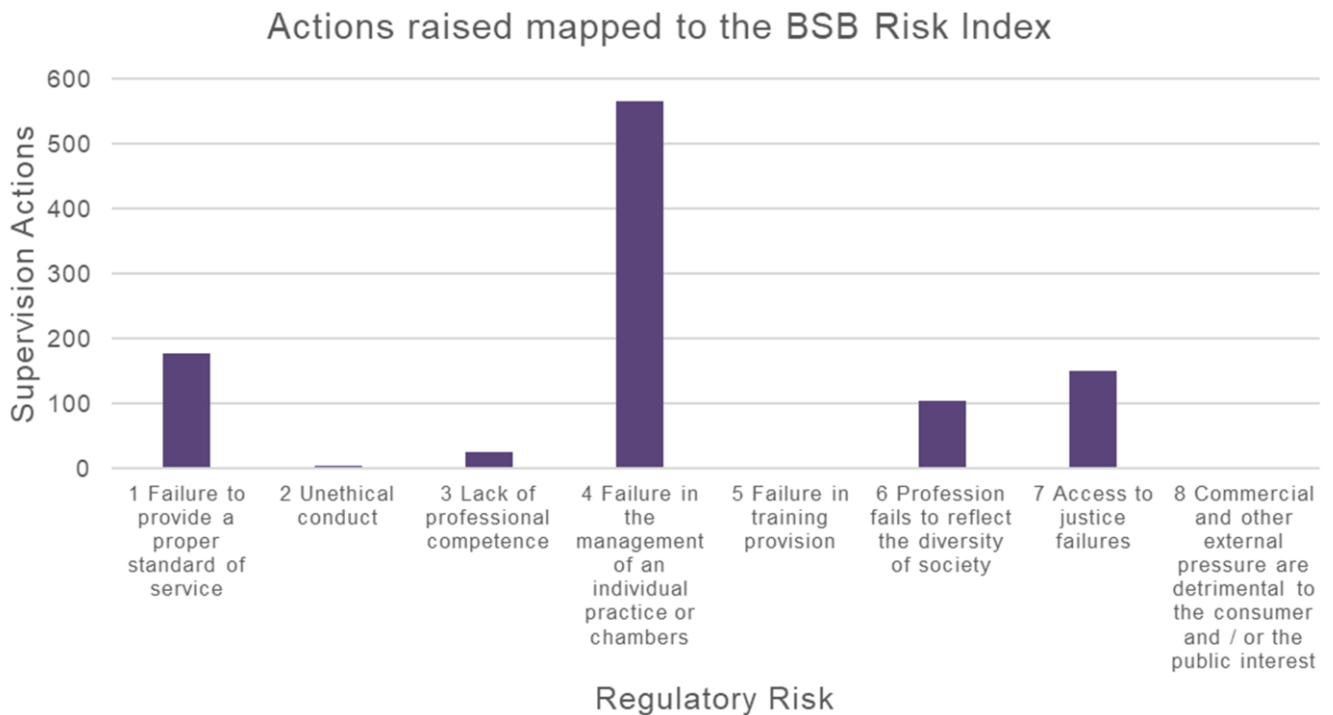
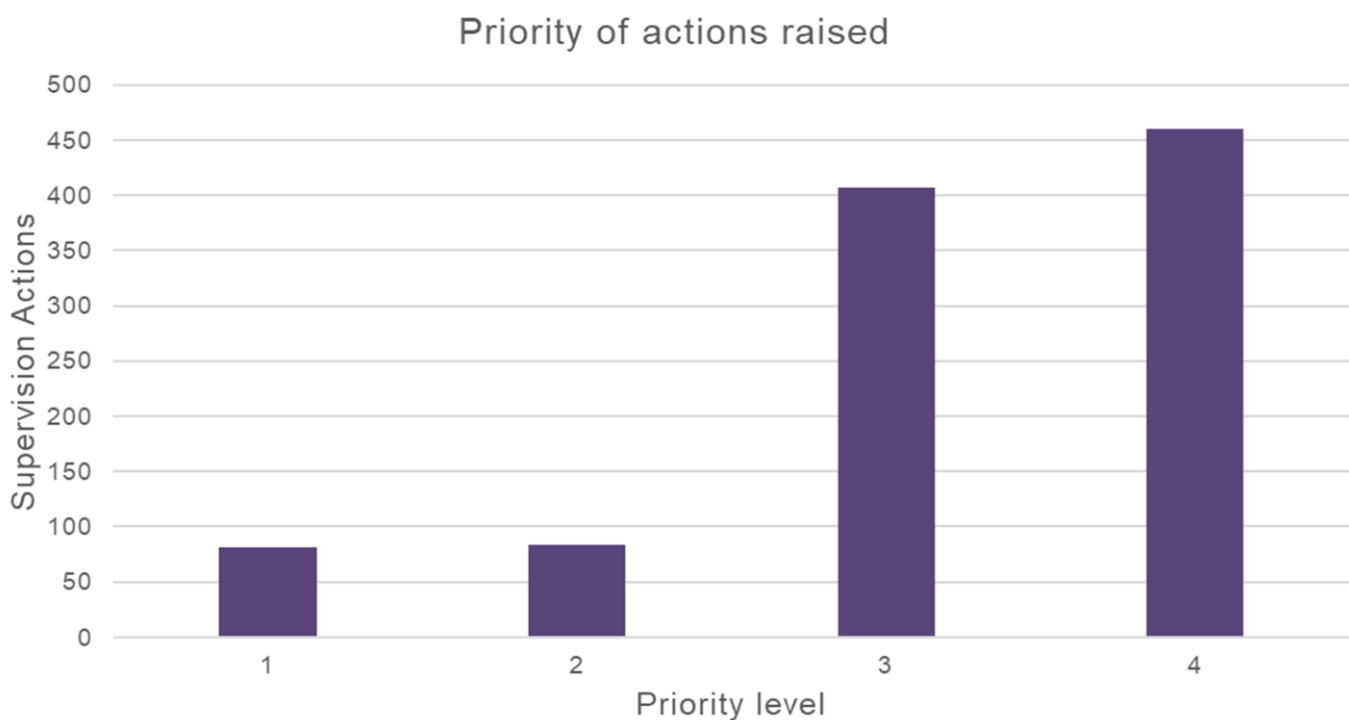
*Supervision of chambers, BSB entities and sole practitioners***Regulatory Return**

104. We completed our supervision assessment of the Regulatory Returns. In total, 318 were completed. The Return provided an opportunity for those selected to explain how effectively potential risks are being managed within their organisations or entities, how they ensure compliance with the BSB Handbook, and how high standards of practice are maintained. We carried out a risk assessment based on the responses provided and contacted the relevant chambers, entity or sole practitioner, either to provide the outcome of the assessment or, where relevant, to seek clarification in certain areas or to obtain further information where a response to one or more questions was not sufficiently detailed. This has helped us to refresh our understanding of risk at an organisation or practice level and represents a considerable amount of individual engagement between members of the Supervision Team and those that participated.

105. As we anticipated, the vast majority were assessed as low or medium risk.



106. As part of this process, 1,031 actions were set, which we mapped against the categories in the [BSB Risk Index](#). Given the focus of the questions, we would expect the majority of actions to fall in the category “management of an individual practice or chambers”, which has been the case. Actions were prioritised according to risk, with priority 1 actions being the most urgent, reflecting the areas of highest risk. The implementation of those rated priority 1 to 3 are followed up by the Supervision Team. Priority 4 actions represent other areas where controls could be strengthened; the Supervision Team does not monitor the implementation of these actions, but they should be followed up by the relevant organisation or individual. As at 18 November 2022, 187 actions remain open and are in the process of being followed up by the Supervision Team.
107. In addition to providing individual feedback to all those who completed the Return, we have already used a great deal of information in the Returns, for example:
- It has informed our latest three-year strategy.
  - It has helped us to evaluate the Price, Service and Redress Transparency Rules (see paragraph 110 below).
  - Responses have informed the problem definition phase of both the Ongoing Competence project and the Early Years of Practice project, and will feed into the development of policy changes as the projects progress.
  - The bullying and harassment project used the responses to gain a better understanding of how chambers can guard against allegations of bullying and harassment, and how they can effectively deal with reports of harassment when they occur.
108. We will be publishing a series of thematic reports providing more granular information on the headline areas highlighted above – both risks identified and examples of good practice. These will cover areas such as risk management; complaints handling; data protection and information risk management; equality, diversity and inclusion; the role played by chambers and entities in ensuring barrister competence; and the changing use of technology and innovation in the profession. A particular theme that has recurred in the course of discussions with chambers, that we aim to address, is a desire for more clarity about our expectations of what standards smaller chambers should be aiming for, ensuring that we are acting proportionately as a regulator, and also more guidance about what they can realistically and practically contribute to objectives such as improved diversity and inclusion.
109. You can read more about this on our [website](#).

**Figure 10****Supervision Actions mapped to BSB Risk Index****Figure 11****Priority levels of Supervision Actions**

## Sanctions regime compliance

110. All barristers and BSB entities must comply with the UK's sanctions regime and must have procedures in place to ensure that sanctions are not breached. There are some exemptions for which a licence can be sought from the Office of Financial Sanctions Implementation (OFSI). These include in order to receive reasonable fees for the provision of legal advice. In addition, legal professionals have certain reporting obligations. Barristers must inform OFSI promptly if they know or reasonably suspect that a person is a designated person or has committed offences under sanctions regulations, where that information is received in the course of carrying on business.
111. This came into sharp focus in February this year, following the Russian invasion of Ukraine, when the government imposed a raft of new sanctions. The government sought the support of all regulators to raise awareness of the regulations and to test compliance.
112. In response, we published a series of articles in the [Regulatory Updates](#), we created a new [page on our website](#) and we wrote to a number of the Specialist Bar Associations to explain the requirements and raise awareness.
113. We have also been working closely with HM Treasury, the National Crime Agency and other regulators to share good practice and intelligence about where there is the greatest risk of breaches. OFSI (which is located within HM Treasury) has proved a little harder to engage with as a result of their significant workload, which has clearly stretched their resources, but we continue to liaise with HM Treasury and the Ministry of Justice. Reflecting this engagement, and with the input of our own [APEX](#) expert, we prepared our own risk assessment. From this, we developed a compliance testing plan which focuses on those conducting work under the Money Laundering Regulations (where we had previously already conducted some Supervision activity) and members of Combar, the Specialist Bar Association for commercial barristers advising the international business community. This work is in progress, and we will report any themes that emerge from it for others to learn from.
114. In September, following Russia's proclaimed annexation of the Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporizhzhia, the Government announced new sanctions, including a ban on transactional legal advisory services for certain commercial activity. We are awaiting further details and barristers should monitor our website and Regulatory Updates.

## Price transparency

115. Since the Bar Transparency Rules came into force in 2019, the Supervision Team has supported effective implementation by the profession through a programme of compliance testing. This work has involved extensive engagement with the profession, helping chambers, BSB entities and sole practitioners to

understand and meet their obligations and meet the objective of improving the information available to the public before they engage the services of a barrister. We also asked for feedback about the impact of the rules in the Regulatory Return, which the Research team used to inform their analysis. In July, we published [two new reports](#) on compliance with the rules and their impact on consumers.

116. The first report shows that the Bar has made encouraging progress in ensuring compliance with the rules, as only 6% of those assessed were neither compliant nor partially compliant. This is a significant improvement on the figure of 25% from our last report in 2020. It is now three years since these rules came in and where a chambers, BSB entity or sole practice is assessed as non-compliant and has not engaged satisfactorily with the actions set to achieve compliance, enforcement action is taken.
117. The second report shows positive trends in consumer behaviour between 2019 and 2021:
  - the proportion of consumers who obtained details of service or price before choosing a barrister increased from 10% to 23% obtaining details of services and 25% obtaining prices;
  - awareness of complaints procedures increased and the levels and proportions of complaints that relate to cost and clarity of information about costs have both declined, as has the level and proportion of complaints that relate to the timescales of cases;
  - the percentage of clients shopping around when choosing a barrister increased from 7% to 17% who obtained details of services from more than one provider, and from 6% to 20% who obtained prices from more than one barrister; and
  - awareness among clients of the regulatory status of their barrister increased from 63% to 71% (and to 83% for public access clients).
118. This evaluation is being used to inform the next phases of our work around ensuring transparency for clients, together with the Research and Policy Teams, including:
  - reviewing our guidance to ensure that it is sufficiently clear;
  - considering whether further guidance is needed for barristers who use third party marketing platforms, particularly where that is the primary means through which they publish information about their services; and
  - we have recently launched a [pilot on Digital Comparison Tools](#) in order to understand whether this can promote access to barristers' services for consumers.
119. We will continue to check compliance with the rules through our Supervision activity.



## Supervision of relevant persons under the Money Laundering Regulations

120. We are responsible for the supervision of relevant persons under the Money Laundering Regulations. The Regulations require us to publish a separate annual report on our supervisory activity, which can be found [here](#).

## Quality assurance – Independent Reviewer

121. The Independent Reviewer (IR) role was created by the Bar Standards Board in 2019 to provide an independent mechanism for quality assuring the BSB's regulatory decision-making.
122. As such, the role's main functions are to carry out:
123. Quarterly quality assurance audits of a random sample of cases in which relevant decisions, across the regulatory process, have been taken by staff.
- In the year 2021/22, while making a number of recommendations arising from her audits, the IR found that decisions in the cases she audited had all ultimately been made appropriately.
124. Reviews of decisions taken in a case, when requested by a party to a report or case. In these cases, the IR makes a recommendation which may be accepted or declined by the relevant Director or Head of department.
- The IR reviewed 131 decisions in the reporting period following a request by a party.
  - Most requests were made by parties who were dissatisfied with the decision of the Contact and Assessment Team (CAT) not to take further action in their case: 125 in total. Two requests related to staff decisions at the Investigation and Enforcement (I & E) stage and a further four related to decisions of the Independent Decision-Making Body. In a total of seven cases across the different stages, the IR made recommendations for further action, or a reconsideration of the decision reached, and/or concluded that although the right outcome had been reached, incorrect factors had been taken into account.

## *Lessons learned and improvements in decision-making process*

125. In addition to considering the appropriateness of a particular decision, the IR also considers more general matters, such as whether regulations and policies have been applied correctly and whether the case was handled fairly.
126. The IR has made a number of recommendations arising from her consideration of those general matters. Recommendations have been wide ranging, and include:

- ensuring only necessary personal data is retained
  - consideration of how much information is provided to those making reports where the report is referred or partly referred for further investigation
  - consideration of greater use of triage at the assessment stage
  - consideration of an alert system to ensure progression of cases
  - consideration as to how relevant matters are shared with other regulators
  - consideration of whether there is consistency in approach to risk in certain matters (for example, closure of chambers).
127. Timeliness in case handling has been seen to be a challenge through the last year, for various reasons including the IT security issues and the volume of reports. As last year, it continues to be the case that where case managers provide regular updates about the progress of cases, parties are generally very understanding of delays and appreciate the reassurance that their case or application has not been forgotten about.
128. The IR has also noted a number of improvements (both in response to her feedback and generally) and examples of good practice, which include the following:
- Full and clear reasons for decisions are now provided in nearly every case
  - A form of triage is now in place so that, for example, cases which cannot be considered for jurisdictional reasons, are identified early and the information provider is promptly informed
  - Staff continue to show sensitivity in appropriate cases and signpost to sources of help
  - Timeliness appears to have improved in recent months.

### *Nature of cases referred for review*

129. At all stages it is nearly always the person who originally made the report to the BSB who makes a request for review. Very often, the person making the report has been or is a litigant in person and their report arises from a dispute or hearing where the respondent barrister represents the party on the other side. Unrepresented parties may not fully understand the role of the barrister in a contested case, or that a report to the BSB will not in itself alter a disappointing outcome in a dispute.
130. As context, it continues to be the case that barristers' alleged conduct in disputes about family proceedings (especially where child contact is involved) often gives rise to requests for review. Cases involving social media and expression of opinion have also given rise to many requests for review over the last year; the decisions in such cases are finely judged but parties in them often hold very strong views and ask for the decision to be reviewed. Concerns about information providers' own barristers have also again featured regularly in requests for review. These reports generally have to be referred first to the Legal Ombudsman and information providers have often challenged the jurisdictional constraints placed on the BSB to consider this type of report and/or the need to

refer the report to the Ombudsman. We intend to review this position so that we are able to consider conduct matters concurrently with the Legal Ombudsman's investigation of service issues.

### *Development of IR role*

131. All those who request a review of the decision made in their case are entitled to a thorough, careful and independent consideration of their request. The IR has continued to seek to ensure that information providers can be reassured that their concerns have been fully considered (even if the recommendation is ultimately to confirm the original decision).
132. The number of decisions where a review is requested has grown each year since the IR role started, and a second independent reviewer has recently been recruited. The additional resource will not only help with workloads, but also provide a fresh perspective on decision-making and quality assurance.

## Concluding comments

133. This reporting year has presented challenges for the BSB, particularly in relation to the timeliness of progressing cases. The quality of our decision making remains high (which is acknowledged by our Independent Reviewer) as does the productivity of the case work teams. The performance of our regulatory operations will continue to be a priority for the BSB and we will during 2022/23 also be carrying out a review of our decision making processes to ensure that they remain fit for purpose, efficient and robust.
134. Key to the success of the BSB's regulation is building constructive relationships with the profession, consumers and other interested parties. This helps develop the picture of how effectively our regulated community is in meeting our expectations and those of consumers. The report highlights examples where we have taken active steps to identify potential risks to high standards of practice and to address them through targeted and proportionate interventions. We see this more proactive approach to our regulation as critical to our effectiveness and it will be an increasing feature of how we engage with the profession and others. We will report on progress in 2022/23.



BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

## Independent Decision-Making Body

Annual Report 2021/22

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Legal & Enforcement Department  
Regulatory Operations Department

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## Chair's introduction

- 1.1 This is the third Annual Report of the Independent Decision-making Body (IDB) and the first in which a direct comparison with a full previous year of data is possible. The inaugural Report covered the six-month period between the IDB's creation in October 2019 to 31 March 2020. Thus, although some analysis of the data was possible, it was not feasible to identify themes or trends. It may still be too early to do so, only having two full years of data, but there are some notable differences between this year and last.
- 1.2 While the number of Enforcement meetings has remained broadly constant, the number and format of Authorisations meetings has increased - volume has increased by 42%, and all meetings in this reporting period were half-day. This in part reflects the lessons learned by the IDB and BSB following the judgment of the High Court in *Eve v BSB*, handed down on 22 July 2021. The judgement criticised the absence of detailed reasons for the IDB decision to uphold the BSB Executive's decision. One of the actions taken by the Executive was to reduce the number of cases considered at Authorisations panels, so that while in 2020/21, 32 applications were considered at seven meetings, in 2021-22, 22 applications were considered at ten meetings. The full details of this are contained in the Performance Statistics section of the report. The aim of this change to scheduling was to ensure that sufficient time was allocated to allow the IDB to give reasons against each of the grounds for review. IDB members have commented positively on these changes, and I am pleased to report that there have been no new Appeals to the High Court or Judicial Reviews of IDB decisions during 2021-22.
- 1.1 July 2021 saw the establishment of the new post of Regulatory Panel Manager, a key part of whose role is to be the first point of contact for IDB members and to oversee the operation of the body as a whole. The creation of this post has increased levels of administrative support to both the Office Holders and members of the IDB, whilst also providing a consistent secretariat function at IDB panel meetings (the latter role having previously been carried out by Investigations & Enforcement Case Officers).
- 1.2 As mentioned in last year's report, we appointed Rohan Sivanandan as Vice-Chair of the IDB in September 2021. Rohan brought with him a wealth of executive and non-executive experience from the judicial, education, health and social care sectors, with significant expertise in the area of Equality, Diversity and Inclusion. Rohan has given considerable assistance in the leadership of the IDB since his arrival and is an asset to the team.

## Update on the work of the IDB

### The Year in Review

- 2.1 2021/22 was the second full year of the IDB's operation, during which time Enforcement meetings and Authorisations meetings continued to take place remotely. Most of these meetings ran relatively smoothly, with just the occasional technical glitches. Papers for meetings continued to be made available electronically via the CaseLines platform.
- 2.2 A continuing theme in this year's work is the volume of papers that need to be read for each meeting and in a number of cases, the evidential issues can be complex. Members continue to devote a considerable amount of time reading the papers in preparation for the meeting for which they are currently not separately remunerated. Papers are usually circulated a week in advance of the meeting and in most cases, this allows sufficient time for members to prepare.
- 2.3 Members play an important role in assisting the Panel Secretary in producing written reasons for decisions at meetings. Producing an accurate decision sheet is important and can sometimes take longer than the time spent discussing the case. However, there have been occasions where, due to the complexity of the case, it has been necessary for the Panel Secretary, in conjunction with members, to complete the drafting of the decision sheet after the meeting has finished and to ensure it is signed off. As ever, members continue to work closely with the Executive to find ways to improve the efficiency of this process.
- 2.4 Members are kept up to date on current issues via the monthly IDB newsletter, as well as the quarterly training sessions.

### Recruitment and induction

- 2.5 A recruitment process was undertaken in the summer of 2021 by the BSB's Governance Team. In September 2021 the BSB formally appointed five new barrister members and eight lay members for a three-year term of office. Most members participated in a three-day induction programme in September 2021, which was organised by the Operational Support Team, and delivered remotely.
- 2.6 The first day of induction programme comprised a one-day session providing an outline of relevant BSB functions, delivered by the Executive, including an introduction to the assessment of incoming information, an overview of the enforcement process as well as an in-depth session on the BSB Handbook – which is vital to the work of the IDB. The second day session, which was delivered by two external trainers, covered the role of the chair and was highly inter-active, involving group discussions on case studies and various styles of questioning. The third day session, also delivered by external trainers, included a session on equality and diversity, which is mandatory for all members within their first three months of office, as well as a session on writing effective reasoned decisions. This latter session took into account the lessons learned from the then recent judgment in *Eve v BSB*, on which more detail is given in paragraphs 4.9 – 4.11 below.
- 2.7 We are grateful for the support and guidance we received from these external trainers. Overall, we received positive feedback from the new members on their induction and we are pleased to report that they have all engaged in their new duties in a very enthusiastic manner. It is also clear that existing members have been very supportive to the new members, sometimes guiding them through the decision-making process and the complexities of the BSB's Handbook.



**Part 1 - Public**

- 2.8 In addition, in Spring 2022 several new members attended (remotely) a Disciplinary Hearing run by Bar Tribunals & Adjudication Service (BTAS). This allowed members the opportunity to observe the process of how a BTAS Disciplinary Tribunal operates.

### Office Holders

- 2.9 The Chair and the Vice-Chair continue to meet with the Executive on a quarterly basis, partly to finalise the content of the quarterly training sessions, but also to discuss other matters that are pertinent to the work of the IDB. The Chair and the Vice-Chair play a valuable role in chairing the quarterly training sessions, including facilitating lively debate on topics and generally encouraging members to provide feedback to the Executive.

### Composition

- 2.10 As reported in last year's Annual Report, seven members' terms of office expired on 31 August 2021. As reported above (see paragraphs 2.5), in September 2021 the BSB formally appointed thirteen new IDB members. This meant that as of September 2021, there were 32 members of the IDB (13 barristers and 19 lay members).

### Impact of COVID-19

- 2.11 The induction training in September 2021 for the newly appointed IDB members, as well as meetings and the quarterly training sessions for all members, continued to take place remotely. Surveys undertaken during the reporting period indicated that most members were content for the meetings and training sessions to take place remotely, although some members suggested that they would welcome attending events in person. Nevertheless, it is clear from the feedback on the quarterly training events provided by members that they have benefitted from the shared experience of learning together remotely and a sense of cohesion and support is apparent at the regular IDB meetings.

## Performance Statistics

- 4.1 This section outlines the work carried out by the IDB covering the reporting period 1 April 2021 to 31 March 2022.
- 4.2 Number of panel meetings and cases considered:

Number of meetings	Cases considered	Decisions	Type
<b>Enforcement</b>			
<b>40 meetings</b> <b>Full day - 18</b> <b>Half day - 22</b>	68	<b>Referred to disciplinary action - 29</b> DBC* referrals - 2 DBC* proved - 3 Referral to 3-person Tribunal - 5 Referral to 5-person Tribunal - 19  <b>Closed after investigation - 34</b> Administrative sanctions issued - 7 (Fines - 6) (Warnings - 1) Referred to Supervision - 0 Dismissed - 27  <b>Put back for further enquiries – 5</b>	
<b>Authorisations</b>			
<b>10 meetings</b> <b>Full day - 0</b> <b>Half day - 10</b>	22	<b>Executive Decisions:</b> Affirm Executive Decision - 7 Substitute Another Decision - 8 Further information required - 3  <b>ICC Hearing Panel Decision:</b> Affirm ICC Decision - 3 Adjourn case - 1	Pupillage Reduction - 4 Admission to the Bar as a Transferring Qualified Lawyer - 7 Admission to the Bar as a Solicitor - 2 Admission to the Bar as a Qualified European Lawyer - 1 Admission to the Bar as a qualified foreign lawyer - 1 General Exemption - 1 Pupillage Funding and Advertising & Recruitment Requirements Waiver - 1 Reactivation of Stale Qualifications - 1 Inns' Conduct Committee (ICC) decision - 4

\*Determination by Consent

### Number of panel meetings

- 4.3 Table showing the number of IDB meetings covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to March 2022.

Meeting Type	2020/21	2021/22
<b>Enforcement</b>	<b>38</b>	<b>40</b>
Full Day	15	18
Half Day	23	22
<b>Authorisations</b>	<b>7</b>	<b>10</b>
Full Day	1	0
Half Day	6	10

### Enforcement & Authorisations cases

- 4.4 Table showing the breakdown of cases/applications considered covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022.

Meeting Type	2020/21	2021/22
<b>Enforcement</b>		
Cases	73	68
<b>Authorisations</b>		
Applications	32	22

### Decisions taken

- 4.5 Table showing the outcomes of enforcement meetings covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022.

Outcome	2020/21	2021/22
<b>Put back for further enquiries</b>	<b>4</b>	<b>5</b>
<b>Closed after Investigation</b>	<b>33</b>	<b>34</b>
Administrative Sanction - Discretionary Fine	4	6
Administrative Sanction – Warning	6	1
Referred to Supervision	1	0
Dismissed	21	27
<b>Referred to Disciplinary Action</b>	<b>37</b>	<b>29</b>
D5	17	19
D3	12	5
DBC* - initial referral	3	2
DBC* - proved	5	3

**Part 1 - Public**

- 4.6 Table showing the outcomes of authorisation meetings covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to March 2022.

<b>Outcome</b>	<b>2020/21</b>	<b>2021/22</b>
<b>Executive Decisions</b>	<b>29</b>	<b>18</b>
Affirm Executive Decision	24	7
Substitute Another Decision	5	8
Further information required	0	3
<b>ICC Hearing Panel Decision</b>	<b>3</b>	<b>4</b>
Affirm ICC Decision	3	3
Adjourn case	0	1

## Reviews and appeals of IDB panel decisions

- 4.7 IDB panel decisions can be reviewed or appealed under two mechanisms.
- Decisions to refer cases to disciplinary action or dismiss allegations are not open to appeal. However, the BSB has an internal review mechanism in the form of the Independent Reviewer (IR). The IR has a wide remit in relation to reviewing enforcement decisions that are not subject to a formal appeal mechanism<sup>1</sup>. A review by the IR can be requested by the person who made the original report about the barrister or by the barrister subject to the report. The IR has no decision-making powers and can only make recommendations. If the IR recommends that a decision of an IDB panel should be re-considered, the recommendation will be put to a newly constituted IDB panel to decide if the recommendation should be accepted. During the period covered by this report there were five requests for review.
  - Where an administrative sanction is imposed by an IDB panel (or indeed staff members), barristers have the right to appeal the decision to an Appeal Panel, convened by BTAS. During the period covered by this report, there were no such appeals.
- 4.8 For authorisations IDB decisions, there is a statutory right of appeal to the High Court pertaining to the Bar Qualification Rules (Part 4, B4 of the BSB Handbook). In this reporting period no appeals were lodged.
- 4.9 We reported in last year's Annual Report about the case of *Eve v Bar Standards Board* [2021] EWHC 2030 (Admin) which was handed down in July 2021. The judgment found in Mr Eve's favour and in doing so raised concerns about the quality of the BSB decision-making process and in particular the depth of reasons given for the decisions that were taken. Criticisms were levelled at both the BSB and IDB handling of the case. As chair of the IDB I carried out a thorough and extensive lessons learned review which sat alongside the BSB's own lessons learned exercise. Together we made a number of recommendations to improve the quality and process of decision making. At its March 2022 meeting the Board accepted those recommendations in full.
- 4.10 The BSB produced an action plan arising from the reviews which has been fully implemented. In so far as concerns the IDB, the actions included: IDB members receiving additional training on giving reasoned decisions at their quarterly training sessions in September/October 2021; newly appointed panel members receiving guidance on drafting authorisations decisions at their induction training in September 2021; new processes for settling decision-letters including post-meeting finalisation; reduction in the number of applications considered at authorisation meetings and the cessation of full

<sup>1</sup> Formal appeal mechanisms are in place in relation to decisions to impose administrative sanctions and decisions on authorisations.

**Part 1 - Public**

day meetings; awareness-raising of the IDB's independence from the BSB executive and the need to consider the authorisation application afresh. Further reflection on the lessons learned was carried out with the 3 individual panel members who made the decision in Eve as part of their appraisal in the summer of 2021.

- 4.11 The improvements to the IDB's processes must be considered alongside the actions taken to change the way the Executive handles authorisation applications, such as: improving the consistency and quality of decision-making at first instance; amendments to the decision-making template; adopting a more flexible approach to applications with the intention of assisting the applicant to achieve their desired outcome; and additional support and training for the authorisations team. The BSB has also made a number of changes to the way in which it handles litigation, including engaging with the IDB office holders and relevant panel members in respect of a challenge arising out of an IDB decision. Whilst the prospect of a further successful appeal to the High Court cannot be ruled out, I am as satisfied as I can be that these reforms will substantially reduce the risk of an IDB authorisation decision being overturned in future.
- 4.12 There were two further appeals lodged to the High Court against IDB decisions in respect of findings of the Inns Conduct Committee which were reported in last year's Annual Report. Both appeals were settled without a hearing and were remitted back to the IDB for consideration. In both cases, the IDB affirmed the decision of the Inns' Conduct Committee.
- 4.13 In respect of Enforcement cases, there were five cases considered by the Independent Reviewer (IR) in the reporting period; three decisions were confirmed and two were referred back to the panel to reconsider. In one case, following a decision to dismiss with advice the barrister provided new evidence and asked that the decision be reviewed. The original panel considered the advice of the IR and withdrew its advice to the barrister. In the other case, issues were raised by those involved in reporting the matter relating to the operation of Article 10 of the ECHR, and a decision was made that the matter should be reconsidered by another IDB panel. At the time of writing, that matter is yet to be reconsidered.
- 4.14 There were also two appeals against administrative sanctions imposed by the IDB. One of these, relating to a barrister's comments on social media, was allowed by the appeal panel with considerable publicity by the barrister who waived his right to anonymity.
- 4.15 Finally, while not an internal route of review, IDB decisions can potentially be subject to scrutiny in the courts via an application for judicial review. No applications for judicial review against IDB decisions were received in the reporting period.
- 4.16 IDB decisions made in the reporting period 1 April 2021 to 31 March 2022 which were subject to review, Appeal to the High Court, Appeal to BTAS, or Judicial Review.

IDB decisions subject to:	Number of cases	Outcome
Independent review	5	All Enforcement Confirmed - 3 Reconsider - 2
Appeal to BTAS	2	All Enforcement Successful - 1 Dismissed - 1
Appeal to the High Court	0	n/a
Judicial Review	0	n/a

- 4.17 Table showing the number of completed reviews of IDB decisions, by the year of the original IDB decision, covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022. Please note that the review may have been completed in a subsequent reporting year(s) than when the original decision was made by the IDB.

Review type	2020/21	2021/22
<b>Enforcement</b>		
Independent review	3	5
Appeal to BTAS	0	2
Appeal to the High Court	0	0
Judicial Review	3	0
<b>Authorisations</b>		
Independent review	0	0
Appeal to BTAS	0	0
Appeal to the High Court	2	0
Judicial Review	0	0

- 4.18 Table showing ongoing reviews of IDB decisions, by the year of the original IDB decision, covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022.

Review type	2020/21	2021/22
<b>Enforcement</b>		
Independent review	0	0
Appeal to BTAS	0	0
Appeal to the High Court	0	0
Judicial Review	0	0
<b>Authorisations</b>		
Independent review	0	0
Appeal to BTAS	0	0
Appeal to the High Court	1	0
Judicial Review	0	0

## Quarterly training

- 5.1 During the period 1 April 2021 to 31 March 2022 quarterly training sessions continued to take place online via Microsoft Teams. Sessions were held in June, September/October and December 2021, and March 2022
- 5.2 The content of the quarterly sessions is based on feedback from IDB members and issues identified by the Executive and finalised in collaboration with the Chair and Vice-Chair.
- 5.3 The quarter one session included members being provided with an overview of the IDB appraisals' process and the BSB's Regulatory Risk Assessment Policy. The main focus of this session was on casework learning arising from both authorisations and enforcement panel meetings. Finally, the session provided an opportunity for the Chair to say farewell to departing members.
- 5.4 The quarter two session welcomed the 13 new members who had recently joined the IDB, as well as a short introduction to the Regulatory Panel Manager, who was just a few months into her new role. There was also a detailed session on the *Eve v BSB* High Court judgement and the lessons learned review. The session was wrapped up with a session on social media and its relevance to the work of the IDB.
- 5.5 The quarter three session began with an introduction to the Operational Support Team, where members met the three members of staff. The staff provide high level administrative support to both the Office Holders and members of the IDB, including organising meetings and training sessions and circulating information via CaseLines. This session was followed by training for members on the BTAS Sanctions Guidance which was published in early 2022. The Guidance is relevant in IDB Enforcement cases where the Panel is minded to refer the allegations to a Disciplinary Tribunal. There then followed a presentation on the day-to-day work of the Executive delivered by staff from the Centralised Assessment, Investigations and Enforcement, and Supervision Teams.
- 5.6 The final training session of the year featured a refresher on the application of the BTAS sanctions guidance (published in January 2022). Members learnt about the application of the Sanctions Guidance in small groups, using enforcement case studies. There was also an overview of the revised Authorisations rules and guidelines for applications and waivers.
- 5.7 Attendance at training sessions continues to be high and members have commented positively on the training received.

## Feedback from members

- 6.1 Each member is sent, within one day of a panel meeting having taken place, a link to an online feedback form in which they are invited to reflect on their own performance and comment on the performance of other members who attended the meeting. They are also invited to comment on other matters not relating to their own performance or that of other members. This has included comments on the scheduling of the cases, including whether the time allowed is realistic, given the complexity of some of the cases. Other members have commented favourably on the use of SharePoint for considering and drafting decisions, as well as acknowledging the support of the Duty Manager at the various meetings.
- 6.2 Overall, the feedback indicates that members work well together in the meetings, with plenty of opportunity for thorough discussion. Notwithstanding the challenges of conducting IDB meetings remotely, members have continued to work closely, offering support and guidance to their colleagues.

## Conclusions and Chair's comments on overall performance

- 6.3 Despite the phased exit from coronavirus lockdown between March to July 2021 and the eventual lifting of restrictions during this reporting period, the IDB has continued to meet remotely for both panel meetings and training. This has had the benefit of increasing flexibility for members, but we hope to be in a position to report a return to the more usual 'hybrid' way of working (some in-person attendance, some remote) by the time of the next IDB annual report. Indeed, we have already held one such training session in the latter part of this year. We feel it is important for members to meet and train together in person on a regular basis in order to develop a collegiate way of working and to build constructive relationships.
- 6.4 A formal appraisal process took place in the summer of 2021 in respect of the 18 members whose terms of office were due to expire on 31 August 2022, three of whom decided not to renew for a further term and stepped down from their positions. We have subsequently conducted a recruitment exercise for new barrister members and are in the process of appointing and arranging inductions for the successful candidates. We will report on this in more detail in next year's Annual Report.
- 6.5 To conclude, I should like to offer my thanks once again to all the members of the IDB and the Executive who have worked together to ensure the continued successful operation of the IDB over this reporting period in sometimes challenging circumstances.

**Iain Christie,**

**Chair of the Independent Decision-Making Body**

**November 2022**



<b>Meeting:</b>	BSB Board meeting	<b>Date:</b>	Thursday 1 December 2022
<b>Title:</b>	Annual Report to the Board on Bar Training		
<b>Author:</b>	<b>Multiple authors:</b> Dr Victoria Stec, Professor Mike Molan, Natasha Ribeiro, Charlie Higgs, Julia Witting, Julie Carruth, Oliver Jackling, Ben Margerison		
<b>Post:</b>	Head of Authorisation, Chair of the Centralised Examinations Board, Assessment Lead, Examinations Manager, Head of Supervision, Supervision Manager, Research and Evaluation Manager, Research and Evaluation Officer		

<b>Paper for:</b>	Decision: <input type="checkbox"/>	Discussion: <input checked="" type="checkbox"/>	Noting: <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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<b>Paper relates to the Regulatory Objective (s) highlighted in bold below</b>	
<b>(a) protecting and promoting the public interest</b>	
(b) supporting the constitutional principle of the rule of law	
(c) improving access to justice	
<b>(d) protecting and promoting the interests of consumers</b>	
(e) promoting competition in the provision of services	
<b>(f) encouraging an independent, strong, diverse and effective legal profession</b>	
(g) increasing public understanding of citizens' legal rights and duties	
<b>(h) promoting and maintaining adherence to the professional principles</b>	
<input type="checkbox"/> Paper does not principally relate to Regulatory Objectives	

### Purpose of Report

1. To provide the Board with strategic oversight of the operation and outcomes of Bar Training. The report draws together the work of teams from across the organisation.

### Executive Summary

2. The report offers an overview of Bar training covering the period from September 2020 to September 2022. It offers the Board insight into how standards in Bar training during both the vocational and pupillage components are set, met, and assured specifically in the following ways:
  - (a) how the four key principles of the Future Bar Training Programme (Flexibility, Accessibility, Affordability and High Standards) have been realised in implementing the programme of training reform;
  - (b) how the principle of maintaining High Standards is key and the other principles need to be understood in that context;
  - (c) how the implementation of reforms has resulted in greater geographical coverage of Bar training as well as reduced costs to students, and a wider range of options for the way the course is delivered;
  - (d) how we continued to assure standards when the implementation of reforms was significantly affected by the coronavirus pandemic in 2020-21;

- (e) how we now have enough data to see significant differential outcomes between vocational Bar training providers and whilst we do not see any indications of a specific risk, we recognise that we must look into this further;
  - (f) what we will do, including by way of continued research and collection of data, and a thematic review of differential outcomes, to look further into what the data may be telling us, and to seek assurance that training providers are supporting students appropriately to achieve their full potential;
  - (g) what lessons we have learned from previous challenges, particularly in relation to online exams and how applying those lessons led to the successful implementation of the new Professional Ethics exam during pupillage;
  - (h) how the Authorisation Framework is functioning well as a tool for authorisation and supervision that ensures consistency of Bar training experience during both the vocational and pupillage components of training; and
  - (i) how we assure consistency and standards of assessment for both the centralised assessments that are set and marked by the BSB's Centralised Examinations Board, and the locally set assessments that are set and marked by the training providers.
3. The paper overall indicates a range and variety of measures of assurance that are in place to give the Board confidence that regulatory oversight of Bar training is being managed in a way that ensures the integrity of delivery by the training providers. Where relevant we indicate where further detail can be found should any Board members wish to explore a particular topic in more depth.

### Recommendations

4. The Board is invited to discuss the report. It is intended for this to be an annual report, so it will be helpful if the Board can advise whether they are content for the present structure and indicative content of the report to be adopted going forward. As this is the first such report, and also covers a period of implementation of major training reform, it may be longer on this occasion than it will need to be in future.

### Background

5. The reforms to Bar training resulting from the Future Bar Training programme have almost all now been implemented and are subject to an ongoing programme of evaluation. The four key principles of reform were flexibility, accessibility, affordability and sustaining high standards. Authorised Education and Training Organisations (AETOs) are authorised on the basis that they can assure us that they can meet the indicators of compliance relating to these principles, as set out in the [Authorisation Framework](#). The annual report will reflect on how well these principles are being realised through the Bar training that is on offer. The report considers vocational training and pupillage/work-based learning separately.
6. As this is the first report to the Board on Bar training, we will reflect on the period from the start of the new vocational Bar training courses in September 2020 up to September 2022. This means that from the outset the new training arrangements will be kept under scrutiny and over time we will be able to develop a longitudinal view supported by research and by the activities of all teams involved in the authorisation, assessment and monitoring of Bar training.

7. There are some recurring narratives that we hear in relation to the regulation of Bar training, which are:
- (a) The vocational AETOs recruit too many students onto their courses that have no hope of passing the exams or obtaining pupillage. In particular, students with a 2:2 undergraduate degree have far less chance of succeeding and the entry requirement should be changed to a 2:1. It is therefore worth remembering three things at the outset:
- Outcome 5 of the LSB's Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007<sup>1</sup> says that regulators should not impose limits on numbers entering the profession either directly or indirectly (for example by restricting places on vocational training courses to those that have successfully obtained a pupillage or training contract).
  - Our Regulatory Objective is to encourage an independent, strong, diverse and effective legal profession. Our Equality Strategy supports this: "We are committing ourselves to ensure that we continue to build a workforce and working environment that is inclusive and reflective of the diversity of society, exemplifying what we expect of the profession. Through the implementation of this enabling strategy, we aim to reduce the inequalities experienced at the Bar. We will set mandatory requirements of the profession to promote equality, diversity and inclusion. We will communicate our expectations clearly and help the profession to meet them by sharing examples of good practice." <sup>2</sup> Accessibility is a key principle of our Authorisation Framework and we were clear when designing the reforms that the 2:2 minimum entry requirement was a key policy that supported that principle. The responses to our consultation were broadly in agreement that the Bar remain a graduate profession and that the minimum entry requirement remain 2:2. The Education and Training Committee at the time discussed changing the entry requirement to a 2:1 and the impact this would have on the equality and diversity of the Bar. It was noted that there was evidence to suggest that individuals from disadvantaged backgrounds under-achieve at academic work and raising the entry requirement may entrench a disadvantage that might already be present. The Committee agreed that the minimum requirement ought to normally remain a 2:2. This was approved by the Board and issued in a policy statement in 2017<sup>3</sup>.
  - It is tempting to use league tables of exam results as the marker of quality but in reality, there are a range of factors that need to be considered, not least the extent to which an AETO recruits diversely in support of the accessibility principle.

<sup>1</sup> [https://legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20140304\\_LSB\\_Education\\_And\\_Training\\_Guidance.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/20140304_LSB_Education_And_Training_Guidance.pdf)

<sup>2</sup> <https://www.barstandardsboard.org.uk/uploads/assets/8ae28ebe-4727-4c73-bcfd162524dc1/BSBEquality-Strategy.pdf>

<sup>3</sup> <https://www.barstandardsboard.org.uk/resources/press-releases/bsb-announces-decision-on-the-future-of-bar-training.html>

- (b) Some stakeholders think that we do not do enough to monitor the standards of training delivered by the AETOs. In this context, it is worth remembering that outcome 2 of the LSB's Guidance says; "Regulators complement rather than duplicate existing quality assurance processes such as those undertaken by higher education institutions themselves and those carried out by the Quality Assurance Agency (QAA). We would expect all regulators to undertake a review of their existing quality assurance processes to identify where changes can be made".
- (c) Our statistical reports show that ethnicity and socio-economic status have a significant impact on students' performance on the vocational Bar training courses and their ability to obtain pupillage.<sup>4</sup> It is important to remember that the reasons for this are complex, reflect the experience of other regulators and it is the subject of much external research. The Solicitors Regulation Authority has published [statistical research on its new SQE assessments](#) which show a large attainment gap<sup>5</sup> and as such, is undertaking a large [Attainment Gap Research project led by the University of Exeter](#). Three members of BSB staff are taking part in the SRA's project so we can identify steps that could be taken to make a difference and help to close the attainment gap in our own assessments.
8. We explore these themes in this report and aim to demonstrate to the Board that a wide and varied range of assurance mechanisms and activities are in place, with a great deal of collaboration across the Authorisations, Exams, Supervision and Research teams. That said, we are not complacent and, in particular:
- Next year we will carry out a thematic review of the vocational AETO admissions arrangements and how they ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point.
  - We are currently embarking on new research to identify which approaches to pupillage recruitment are most successful at generating diverse outcomes, and what the experiences of AETOs are at using different approaches to recruitment of pupils.

## VOCATIONAL COMPONENT

9. The new vocational Bar training courses commenced in September 2020. This was the point at which training reforms developed during the Future Bar Training Programme were fully implemented. Whereas there had previously been a closely prescribed course (the Bar Professional Training Course) and delivery timetable common to all providers, the reforms enabled greater flexibility within a range of permitted pathways, greater accessibility and made the courses more affordable, whilst clearly defining high standards and how they were expected to be met and sustained.

<sup>4</sup> See our research on differential outcomes published in 2022, and 2017, found on our website here:

<https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/bsb-research-reports.html>

<sup>5</sup> The inaugural exam (SQE November 2021) had a passing rate of 66% for white candidates, while black candidates had the lowest passing rate of all ethnic groups at 39%: [https://sqa.sra.org.uk/docs/default-source/pdfs/reports/final\\_sqe1\\_november\\_2021\\_postassessment\\_report\\_v1-0.pdf?sfvrsn=e864d39d\\_2](https://sqa.sra.org.uk/docs/default-source/pdfs/reports/final_sqe1_november_2021_postassessment_report_v1-0.pdf?sfvrsn=e864d39d_2)

10. The table in **Annex 1** gives an overview of the courses offered by the vocational Bar training providers. Prior to training reform, we authorised eight providers across 15 locations. To date, since training reform, we have authorised [ten providers across 21 locations](#). The Inns of Court College of Advocacy and the University of Hertfordshire are new entrants to the market and The University of Law has introduced five new sites at Manchester, Bristol, Nottingham, Liverpool and Newcastle.
11. The [Authorisation Framework](#) introduced four permitted pathways with five providers being authorised to offer the Bar course in two parts (as part of the “four-step” pathway). Around 5% of students have opted for this pathway in the first two years of availability. However, some providers found that take-up of the two-part course has been less popular than anticipated and have discontinued it, at least for 2022/23. The three-step pathway (with the vocational component delivered in one part) has therefore proved the most popular means of undertaking vocational Bar training. Whilst two providers were authorised to deliver the integrated pathway combining academic and vocational components, only one has seen sufficient demand to deliver it. The apprenticeship pathway has not yet been adopted by any providers.
12. The BSB does not regulate the academic awards of providers, only the elements prescribed that make up Bar training. Academic Awards are a matter for the universities or, in the case of the Inns of Court College of Advocacy, their validating university partner, Kings College London. All providers incorporate vocational Bar training into the academic award of a Postgraduate Diploma; most also offer an LLM which incorporates Bar training. Northumbria University is the only provider to deliver the integrated academic and vocational pathway as an MLaw that incorporates Bar training.
13. It should be noted that whilst for ease of reference, we may still refer to academic years, widely understood as starting in September of each year, there are multiple start dates possible since reforms to Bar training. Whilst most students do still start in September, there is a significant intake in January at a number of providers, and smaller intakes in March and July at some.
14. The proportion of part-time students has decreased over time from 15.5% in 2011/12 to 8.5% in 2021/22, although the number of part-time students has not changed as markedly (for example, there were 208 part-time students enrolling in 2013/14, 160 in 2018/19, and 183 in 2021/22). This percentage change is mainly driven by the increase in the number of overseas students, who are more likely to study the course full-time than UK-domiciled students.

## HIGH STANDARDS

### Authorisation

15. All providers of vocational training, whether existing or new, were required to go through a process of authorisation in accordance with the requirements of the Authorisation Framework. This Framework was developed as a key tool for both the Authorisations and Supervision teams to enable us to determine how a training provider will demonstrate that they meet and continue to meet the indicators of compliance in the framework. The Authorisation Framework has already proved to be a valuable and

objective tool with which to authorise and supervise those who deliver training, and, along with the Curriculum and Assessment Strategy, has enabled us to see how well Bar training builds towards attaining the threshold standard and competences set out in the [Professional Statement](#).

16. Providers delivering vocational Bar training must:
  - provide evidence that they meet the requirements of the [Authorisation Framework](#) and continue to do so;
  - deliver the curriculum according to the [Curriculum and Assessment Strategy](#);
  - deliver examinations that are centrally set and marked by the BSB (Civil Litigation and Criminal Litigation); and
  - deliver locally set assessments that must abide by the BSB's common assessment criteria as set out in the Curriculum and Assessment Strategy.
17. In addition, it is a requirement of authorisation that all vocational Bar training providers are registered with the Office for Students, the independent regulator of Higher Education in England, or be regulated by the Higher Education Funding Council for Wales. This provides a degree of assurance in terms of institutional compliance with sector standards and we do not seek to duplicate that regulation; as a risk-based regulator we focus our efforts and resources on Bar training.
18. It should be noted that the launch date for new Bar training courses was September 2020, which was in the middle of the coronavirus pandemic. The Authorisations, Exams and Supervision teams all worked very closely with the AETOs to enable them to launch their courses despite ongoing external restrictions and challenges. Where external forces meant that requirements of the Authorisation Framework could not be met in exactly the way that had been authorised, we enabled appropriate alternative solutions to be put in place through a material change process which enabled us to give proper consideration to requests and to track alternative arrangements while they were in place.
19. After the turbulence of the first year of operation, things began to settle as AETOs went into the second academic year (2021/22) of delivering the new courses. There was still some impact on AETOs, particularly at the start of the academic year, requiring us to assess some further material change requests relating to how assessments were delivered. Again, the Authorisations Team, supported by the Supervision Team and the external examiners, reviewed and approved these changes.

### **Centralised assessments**

20. Candidates attempt BSB centrally set and marked assessments in Civil and Criminal Litigation alongside their AETO-set assessments. The first opportunity to attempt the centralised assessments in Civil and Criminal Litigation for the new courses was in December 2020; whether or not candidates did so was dependent on which pathway they were following and whether the structure of their course had an assessment point in December or at the next opportunity to sit the centralised exams which was in April 2021.

21. Although Professional Ethics is a locally assessed element of the vocational Bar course, the centrally set and assessed Professional Ethics assessment is now attempted during pupillage (see below).
22. The format of the Criminal Litigation assessment did not change with the Future Bar Training reforms.
23. We considered a range of options for the new format of the Civil Litigation exam, which was also to encompass Resolution of Disputes out of Court (formerly a separate provider-set assessment). The overriding objective for the assessment was that it is effective and fit for purpose ie that those who pass it and go on to pupillage are sufficiently qualified and prepared to do so. We introduced an open book element of the assessment (the White Book is permitted) as well as rolling case scenarios in order that the assessment is more reflective of practice. We split the assessment across two papers (taken on different days) to allow for a reliable and valid assessment instrument which covers the breadth of the syllabus material, but which is less intense for candidates than a five-hour exam; consideration of those requiring reasonable adjustments was also paramount in this decision. Candidates attempting the assessment need to achieve the pass standard across all 90 questions on both papers.
24. We have now had six sittings of the new format of the centralised assessment in Civil Litigation – the first was in December 2020. We have assessed 5,251 candidates in total. During this time, the passing rates have varied from 41.3% in August 2021 to 59.6% in April 2022.
25. As with the other centralised assessments, we have ensured that the Civil assessment has met the parameters that we set out to achieve, namely: validity, reliability and fairness. We publish a [Chair's report](#) after each sitting of the Litigation assessments which details the quality assurance processes undertaken, as well as how the passing standard has been set. The report notes the performance of the cohorts at each course provider. The report also sets out the role of the exam board and the operation of the assessment. The independent observer for centralised exams and the independent psychometrician attend each exam board and have approved our processes and methodologies.
26. Each examination paper goes through a lengthy drafting and checking process, and comprises a mixture of new and previously used questions. If a question is reused it has been shown to operate very reliably as an indicator of candidate ability. Examination papers are subjected to a process of standard setting ('the Angoff Method'), to ensure that the standard required to achieve a pass mark is consistent from one sitting of the assessment to the next. Using standard setting, the number of questions a candidate needs to answer correctly in order to pass the assessment may go up or down from one sitting to the next depending on the level of challenge presented by the exam paper as determined by the standard setters – hence there is no fixed pass mark.
27. The whole cohort passing rates for each of the two litigation subjects across the six sittings held to date are as set out in the table below:



	Aug 22	Apr 22	Dec 21	Aug 21	Apr 21	Dec 20
<b>Civil Litigation</b>						
No. of candidates	782	1,517	818	738	989	407
Passing rate	46.7%	59.6%	53.8%	41.3%	55.5%	55.8%
<b>Criminal Litigation</b>						
No. of candidates	802	1,653	824	825	1,104	383
Passing rate	52.5%	63.7%	56.0%	42.4%	46.2%	59.80%

28. Variations in whole cohort passing rates are to be expected as the mix of candidates will depend on the structure of AETO courses and whether the first sit offered is December or April (by which time students may have had more contact hours), and the balance between those sitting for the first time and those resitting following a previously failed attempt. The December 2020 sitting will have comprised first sit candidates only, as it was the first opportunity to attempt the centrally assessed Bar training examinations. Prior to the August 2022 sitting the BSB did not have clean data from AETOs on the breakdown of first sit or resit candidates within each AETO cohort. For the August 2022 sitting that data was available and indicated that, for each of the Litigation examinations, a preponderance (59%) of candidates were resitting.
29. To date 19 AETO centres have entered candidates for the centralised litigation assessments (there were only 9 in the first sitting in December 2020 as not all AETOs entered candidates for the first sitting; University of Hertfordshire and University of Law Newcastle have yet to enter any candidates as they are new centres). The passing rate achieved by a given cohort at a particular sitting is not a reliable guide as to whether or not that AETO is performing well, for two reasons:
- (a) cohort number can be very small (single figures) producing huge volatility in passing rates;
  - (b) comparing cohorts at the same sitting may not be comparing like with like where one cohort has a high number of resitters, and another is almost entirely made up of first sit candidates.
30. Hence, the preferred method for comparing the performance of the various AETOs, in terms of the passing rates achieved by candidates, is to consider the total number of examination entries at each AETO over the 6 cycles of centralised litigation assessments and to compare this with the number of candidates who have passed at each centre, as set out in the table below:



Bar Training Criminal and Civil Litigation assessments December 2020 to August 2022 (6 sittings)			
AETO	Total no of attempts	Total no of passes	% pass
The Inns of Court College of Advocacy	339	315	92.92%
University of Law Bristol	81	54	66.67%
University of Law Liverpool	40	26	65.00%
University of Law Leeds	252	163	64.68%
City University	1,997	1,246	62.39%
University of Law Manchester	237	147	62.03%
University of Law London	1,281	705	55.04%
University of Law Nottingham	58	31	53.45%
BPP Manchester	668	356	53.29%
Cardiff University	434	229	52.76%
University of Law Birmingham	483	244	50.52%
BPP Leeds	266	131	49.25%
BPP London	2,428	1,186	48.85%
BPP Bristol	171	83	48.54%
University of Northumbria, Newcastle	379	175	46.17%
University of the West of England	749	330	44.06%
Manchester Metropolitan University	165	63	38.18%
BPP Birmingham	422	155	36.73%
Nottingham Trent University	394	141	35.79%
<b>TOTAL</b>	<b>10,844</b>	<b>5,780</b>	

This table aggregates all the attempts by candidates at both the Criminal Litigation and Civil Litigation examinations across all six sittings from December 2020 to August 2022. In total there have been 10,844 Bar training course examination candidate entries, of which 5,780 have been successful (53.3%). As can be seen, 11 AETO centres fall below this overall passing rate, with eight AETO centres failing to achieve a 50% passing rate overall in the centralised assessments since the introduction of the Bar Training course in 2020.

31. Why might there be a differential in passing rates of over 57% between the Inns of Court College of Advocacy and Nottingham Trent University? Assuming all AETOs are adhering to the minimum entry requirements in terms of academic qualifications and English language proficiency, the differential suggests:
  - (a) That the centralised assessments are discriminating effectively between weaker and stronger candidates – the data available to the Centralised Examinations Board on the operation of each exam question helps support this conclusion, and the psychometrician advising the board reports on the reliability of each examination paper as a whole.

- (b) That notwithstanding adherence to the minimum entry requirements for the Bar training course, different AETOs recruit markedly different cohorts of students, depending on their profile, location, marketing and links with communities, both in the UK and overseas. It should, perhaps, not be a surprise that differences in input (in terms of candidate prior educational experience, financial stability, caring responsibilities, and social capital) are, to some extent, reflected in differences in output. Only if candidates were randomly assigned to AETOs would it be possible to draw a conclusion that differential passing rates were perhaps an indicator of an AETO failing to perform. Next year we will carry out a thematic review of the admissions arrangements and how AETOs ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point. In particular, when the Bar training reforms were introduced, we took the decision to maintain the minimum entry requirement at an undergraduate degree of 2:2. Concern is often expressed about whether this should be increased to a 2:1, particularly with the removal of the BCAT, since prior academic achievement generally correlates with success on the Bar course and progression to pupillage. We know that AETOs (both vocational and pupillage) are conscious of how socio-economic disadvantage can influence prior academic achievement and the knock-on effect this has for diversity at the Bar. For example, BPP is introducing a new foundation course for the Bar school, to support students early on who have a 2:2 degree.

32. A few other points are perhaps worth bearing in mind:

- (a) The table above is in the public domain as it is included in the Centralised Examinations Board Chair's report – hence candidates who have read the report are making an informed choice in opting to undertake Bar training at an AETO where there appears to be only a 35% chance of success in the centralised assessments.
- (b) Students have 5 years to complete vocational Bar training– hence data from many more cycles will be needed until a complete picture is available in terms of passing rates at each AETO centre. Candidates who fail a centralised assessment can resit as many times as permitted under the relevant AETO academic regulations. Candidates with complex health conditions or additional needs may well take longer to work through the system if they have extenuating circumstances on several occasions. This means that those AETOs with a backlog of failing candidates may clear them over time, and the overall passing rates rise accordingly.
- (c) We publish cohort outcomes by provider where overall results reflect combined centralised assessment results and locally-set assessment results but as noted above overall results need to be considered over time to gain a full picture of how students perform at each provider. The latest statistical report will be published shortly and will show progress of the 2020-2021 cohort. The complete picture for the progress of the cohort will be built up over subsequent years until that cohort has reached its maximum period of registration after five years.

- (d) AETOs are subject to a regime of supervision to ensure that they are meeting the terms of their authorisation and will be in a dialogue with the BSB if there are concerns about the level of candidate achievement in either local or centralised assessments – a dialogue supported by the work of the external examiners.
33. We ask the AETOs to give feedback on each of the exams; the consensus is that the exams are well balanced and reflective of the syllabus, the questions are clear and well-constructed, and that the papers are fair in that they have a range of hard, medium and easier questions. We have also been given general feedback on the changes to the Civil Litigation exam; the perception is that the examiners have listened to the AETOs during the settling-in period and that having two papers works well. The new question types have been a welcome development, as has been the opportunity for an open book assessment. We have been praised on our incorporation of dispute resolution as setting questions in this area is not easy.

### Locally set assessments

34. In addition to the centralised assessments, students take a number of assessments that are set and marked by the AETOs (Advocacy, Professional Ethics, Opinion Writing and Legal Research, Drafting, and Conference Skills). To ensure that the assessment process measures student achievement rigorously and fairly, in line with our Curriculum and Assessment Strategy, and the standards and the achievements of students are consistent between AETOs, we appoint a group of external examiners (a combination of practising barristers and academics) who provide us with specialist advice on the consistency of standards of the assessments. You can read more about our external examiners on our [website](#). As noted above, we publish cohort outcomes by provider where overall results reflect combined centralised assessment results and locally-set assessment results. The latest statistical report will be published shortly.
35. As part of the training reforms, we implemented changes to the way that we work with our external examiners. They are now organised into subject groups with a subject lead in each group. We are now seeing the benefits of this team structure. The teams collaborate well, helping to assure consistency of standards across all AETOs. We provide training and guidance to them, which we have been developing and improving, and provide regular opportunities for them to share good practice and learning.
36. As well as individual reports to AETOs, themes emerging from reviews by the external examiners have been shared with AETOs. Overall, the quality of assessments is high across AETOs. In most cases they are appropriately challenging and in line with the Curriculum and Assessment Strategy and the Professional Statement. Generally, marking, second marking and moderation processes at AETOs are robust. Where individual areas of concern were identified, external examiners and the Supervision Team worked with AETOs to address issues raised and set actions where needed.
37. As explained above, AETOs deliver their courses through a range of cohort start dates and pathways. That means that there is a wide range of academic calendars, and our external examiner teams need to plan their time accordingly. In some cases, AETOs have not given external examiners sufficient time to review materials and the scheduling of some assessment boards has been problematic. In a couple of cases, this has meant

that results have not been released to students when they should have been. We expect improvements this year.

38. There were some initial inconsistencies in relation to interpretation of Legal Research and Opinion Writing in the Curriculum and Assessment Strategy. The Subject Lead reported on this and the matters were then resolved.
39. As responsibility for assessment of Professional Ethics during the vocational component moved from the BSB to AETOs, the external examiner team had a particular focus on ensuring consistent standards across AETOs, when there was a wide variety of assessment formats. The team worked with AETOs to ensure consistency of standards, whilst giving AETOs the freedom to create their own approach to assessment. AETOs told us that they have particularly welcomed the flexibility that the reforms have given to embed the teaching of ethics across the Bar course.

### **Risk assessment and monitoring of standards in the delivery of courses**

40. The reform of the Bar training rules has, as described in this report, led to more flexibility and affordability (eg in the delivery of the new pathways), accessibility (eg through the authorisation of new AETOs and new locations for existing AETOs and the introduction of different cohort start dates) and removal of some of the prescription that we used to impose (eg in relation to class sizes). This means less homogeneity and AETOs differ as follows:
  - they each have their own Academic Regulations;
  - locally set assessments are delivered and assessed based on individual academic timetables;
  - some offer part-time provision in addition to full-time;
  - some have larger overseas cohorts than others; and
  - some are multi-site with hundreds of students whereas others are single site with less than 100 students.
41. We continue to have an annual programme of supervision activity that is conducted by external examiners in relation to the assessments that are set and marked by the AETOs and all AETOs submit an annual self-evaluation report to us, which includes reports on the outcome of their own internal and external quality assurance mechanisms.
42. Whereas we used to conduct Supervision visits to each AETO annually, we have now moved to a risk-based approach to our supervision activity and now prioritise our visits, and what we cover during those visits, according to our assessment of risk. We have developed AETO risk profiles. Through these profiles, we capture:
  - inherent risk, for example based on size and range of locations; and
  - control risks, for example based on information that we have collected through our external examiner reports, reviews conducted by the Supervision Team, the self-evaluation reports and other information that we have received from students or other stakeholders.

43. The risk profiles address areas such as governance and administration, quality assurance processes, risk identification and management, programme delivery and assessment procedures. We are continuing to refine the profiles so that we ensure that we are focussing on the most important risks.
44. Each AETO now has a fully populated risk profile. Currently we have two AETOs which are assessed as High Risk, and seven Low Risk (the University of Hertfordshire is delivering the course for the first time this year and the risk profile for this AETO will be developed during the course of this year). We review each profile every quarter to ensure that our information is up to date.
45. We have conducted Supervision visits to the AETOs assessed as High Risk. Risks were elevated as a result of information reported by external examiners and students in the following areas:
  - Communication issues within the AETO.
  - Communication between the AETO and students.
  - Lack of standardised practice in internal moderation activity across more than one subject area, indicating a systemic issue with the AETO's adherence to its moderation policies and procedures.
46. We set and monitored actions relating to quality assurance policies and procedures, communication strategies, internal system review and monitoring. Each action set has a timescale. The aim is to lower the risk level from High to Medium Risk or lower.
47. The fact that we do not conduct visits to all AETOs annually does not reduce the amount of supervisory engagement that we have with the AETOs; it simply means that it is more targeted to risk. As explained above, there is still an annual cycle of reflective reviews and external examiner assurance, which regularly results in further engagement with senior management at the AETOs to address risks and monitor actions. This is in addition to engagement by the BSB's centralised examinations team. Authorisation and Supervision Teams meet quarterly with AETOs to identify and manage risk and share good practice.

## **FLEXIBILITY AND ACCESSIBILITY**

### **Authorisation**

48. As noted above, there is now more flexibility in how AETOs choose to deliver vocational Bar training. In October 2022, we were able to hold an in-person forum with all AETOs together with external examiners, to reflect on the first two years of the reforms. AETOs were particularly positive about the flexibility that our reforms created, enabling them to be more creative in the delivery of the courses, helping them to promote high standards, in the interests of preparing students for a career at the Bar or elsewhere. For example, some AETOs have developed assessments that utilise the same brief across more than one subject area (Advocacy and Conference Skills) and this has involved cross-subject external examiner oversight in order to ensure the integrity of assessment. AETOs are reflecting on what has worked well and feel that as they enter a more stable period, this creativity will continue to evolve.

49. In order to facilitate the two-part model of course delivery, we introduced another sit of the centralised exams in Civil and Criminal Litigation, alongside the traditional assessment timings of April and August. The December sit allows AETOs to enter students enrolling in September for a first attempt at Criminal Litigation and Civil Litigation assessments if they wish. This additional sit supports flexibility in the way courses can be delivered, and can be seen to support accessibility as students have a wider choice of assessment points. We also removed the prescription that assessments must be passed within three attempts.

## Outcomes

50. The BSB has a statutory duty to encourage an independent, strong, diverse, and effective legal profession and accessibility was one of the four key principles of training reform. Previous BSB research has identified that ethnicity and socio-economic status have a significant impact on students' performance on the vocational Bar training courses and their ability to obtain pupillage.<sup>6</sup>
51. The new course does not appear to correlate with any standout changes in the proportions enrolling by demographic (see **Annex 2**). For the variables we have good data on, there is a continuation of longer-term trends seen throughout the years of the BPTC.
52. Each year, we publish a report on [key statistics](#) relating to vocational Bar training and progression to pupillage. These reports contain a lot of data about student demographics, and performance and this year we have decided to restructure the reports, in particular to provide more accessible information for prospective students that they can use to help inform them about their choice of AETO and their chances of success in obtaining pupillage. We are in the process of finalising these new reports for publication and reviewing the content of our website and how it is presented.
53. In August 2022 we published research on [vocational AETOs' approaches to equality and diversity](#), variations in policies and practices between providers, and their overall approach to compliance with the Public Sector Equality Duty and the Equality Act 2010. We also published research on [student experiences of equality and diversity](#).
54. Equality and diversity policies and support initiatives are generally set centrally by universities rather than by the department law schools running the Bar courses. The BSB sets minimum requirements for the provision of Bar training in its Authorisation Framework and its regulatory role is limited to ensuring that those requirements have been met. This analysis was used to develop our evidence base about AETOs' approaches to equality and diversity and their implementation on the Bar training courses.

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<sup>6</sup> See our research on differential outcomes published in 2022, and 2017, found on our website here: <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/bsb-research-reports.html>

55. The findings of this study were used to inform our [Research and Evaluation Strategy](#) and will be considered as part of our wider work on equality and diversity. As noted above, next year we will carry out a thematic review of the admissions arrangements and how AETOs ensure that standards are maintained once a student is admitted and what systems are in place to ensure that a student develops to their full potential, whatever their starting point.
56. We see it as a positive that the range of AETOs encompasses a wide range of student demographics; it is integral to the principle of accessibility that this remains the case, as was the decision to retain a 2:2 degree as a minimum entry requirement. The interaction of the key principles means that we also seek to ensure that this accessibility does not come at a cost to the assurance of High Standards. We seek to ensure that a student develops to their full potential, whatever their starting point, by using the mechanisms of the authorisation process and supervision activities to determine that AETOs have in place appropriate support in place for students who may have a lower starting point, so that they are enabled to develop to their full potential.

### Apprenticeships

57. The apprenticeship pathway was approved in principle as part of our Bar training reforms in 2019 but is not yet available to students. The employed Bar often tells us that they are looking to develop paralegal staff and therefore this is a potentially attractive alternative to the current pathway. There is a growing interest from both the employed and self-employed Bar, as well as the vocational AETOs, who all see the potential it has to increase accessibility and affordability, and consequently diversity at the Bar. We are currently working with interested parties to test whether it will be feasible to introduce this pathway.

### AETO Computer-Based Testing

58. We authorise AETOs to provide computer-based testing (CBT) for exams taken at the vocational stage. AETOs wishing to do so were subject to a light-touch authorisation process to ensure that their provision was in line with [our parameters](#). The parameters prompt AETOs to demonstrate how their CBT systems are accessible throughout the students' interaction with them, including: whether the technical requirements match what most students may have at home, whether there are opportunities for students to familiarise themselves with the platform and test their device's compatibility, how the system can facilitate a range of reasonable adjustments, and whether the system is compatible with assistive technology.
59. We have not prescribed how AETOs balance CBT and pen-and-paper exams beyond stating that AETOs may not exclusively offer online assessment except in cases of emergency; pen-and-paper exams must still be offered to candidates for whom CBT is not accessible (eg due to specific adjustments or lack of appropriate digital access). Some AETOs have offered their students a free choice; others use either CBT or pen-and-paper as the default option, but offer the other mode of assessment to candidates who require it. In order to ensure that AETOs had considered accessibility when deciding these policies, all AETOs (including those not offering CBT exams) were required to submit an Equality Impact Assessment (EIA) explaining how their policies surrounding

mode of assessment may impact on accessibility for various groups and addressing issues such as how they will meet the needs of candidates unable to be accommodated through their default mode of assessment.

### Civil Litigation examination

60. The Civil Litigation exam increased in length from that of the BPTC exam from 75 to 90 questions to fully cover the additional syllabus area (dispute resolution, which was previously a separate, provider-assessed subject). In order to ensure that there would be no adverse impact in terms of accessibility for students with disabilities, we split the exam across two papers, taken on different days.

## AFFORDABILITY

### Fees

61. The BSB collects a per capita fee from all AETOs in line with full cost recovery principles. The original fee of £870 was reduced to £705 in 2021 when it became clear that enrolment figures had been underestimated and remained buoyant despite the impact of the pandemic. We expect AETOs to pass any saving on to students.
62. AETOs charge different fees for their Bar training courses. Some also have different fees for UK domiciled students and overseas students. BPP and The University of Law also have different fees for students attending their London centres and their regional centres. Fees can all be found on our [AETO information sheet](#).
63. The cost of courses for the three-step pathway for UK domiciled students in the 2022/23 academic year ranges from £12,200 at Nottingham Trent University (NTU), who has the same fee for overseas students, to £18,700 at Cardiff University. For overseas students on the three-step pathway, the course fees ranged from £12,200 (NTU) to £20,700 (Cardiff University) (**see Annex 3**).
64. The four-step pathway was introduced to provide students with the opportunity to take the knowledge-based part of the course first, before committing financially to the skills-based training. As noted above, only three AETOs are now offering offer the four-step pathway. For this, the fees for Part 1 ranged from £1,895 at the Inns of Court College of Advocacy (ICCA) to £3,075 at the University of Northumbria, Newcastle (UNN). The fees for Part 2 ranged from £9,225 at UNN to £12,095 at the ICCA.
65. The data indicates that there is greater affordability in comparison to the fees charged for the old BPTC. The cost of training had been increasing above inflation, with large increases from the latter half of the 1990s all the way up to the first half of the 2010s. Allowing for adjustments in inflation, prices for Bar training courses across AETOs in London are now more in line with those last seen around 2000/01 and are more in line with those seen around 2011/12 outside of London.
66. The implementation of the new courses from 2020/21 onwards saw a drop in the fees charged across the majority of providers, saving students almost £4,000 in tuition fees in 2020/21 compared to 2019/20 after adjusting for inflation (and around £3,000 in tuition fees when not adjusting for inflation).



67. This is a simple average across all course providers, and does not account for what the average student would pay, as some providers have more students than others. When weighting the average tuition fee with regard to the number of students at each provider in the relevant year, the average student in 2019/20 would have paid around £18,700 in tuition fees when adjusting for inflation (to 2022/23 prices), compared to an average of around £13,500 in 2020/21, and around £14,000 in 2021/22 (when not adjusting for inflation, the figures for 2019/20, 2020/21, and 2021/22 are £17,200, £13,100, and £13,500 respectively).

## ROLE OF THE INNS OF COURT DURING THE VOCATIONAL COMPONENT

### HIGH STANDARDS

68. The Inns of Court play several important roles in the education and training of barristers, which are set out in a [Memorandum of Understanding](#) (MoU) and data share agreement that was signed as part of the Bar training reforms.
69. Anyone starting a vocational Bar training course must become a Student Member of an Inn. The Inns are responsible for student conduct prior to Call. The Inns are responsible for conducting “fit and proper person” checks to make sure that only suitable individuals become Student Members and, ultimately, practising barristers. This now includes conducting a criminal records check prior to Call. These checks are conducted through an accredited “umbrella body”. They bring the Bar into line with checks conducted in other legal professions and ensures high standards at point of entry to the profession.
- The Inns provide Qualifying Sessions for those undertaking the vocational component of Bar training.
  - The Inns Call students to the Bar once the vocational component has been successfully completed. Only those Called to the Bar may call themselves “barristers” (although only those who successfully complete the pupillage component may apply to us to become practising barristers).
70. In general, we are looking to build on our constructive and positive relationship with the Inns as an important stakeholder. Regular engagement takes place at both Director and staff levels, and through various policy development projects.
71. As part of our regular cycle of engagement, the Inns provide us with an annual self-evaluation report in which they reflect on how they have met their obligations under the MoU, and any matters for consideration by the BSB. We recently met with them to review particular themes from the last report, which are included below.

72. Under the data share arrangements, the Inns receive data about enrolments (needed to plan for Qualifying Sessions and DBS checks) and results (needed to plan for Call). Providing this data on a timely basis has provided some challenges since the introduction of the new MyBar platform for capturing student data from the vocational AETOs, and the more varied course timetables. Work is in progress to improve these processes for the current year.
73. As part of the reforms, we specified a new framework of Qualifying Sessions, which must cover five themes that better reflect the Professional Statement. The Inns have appointed internal and external observers to support high standards of delivery. We have discussed with the Inns adjusting the frequency of the cycle of external observation to ensure that it is proportionate. We have also sought feedback from students through the student liaison group that we have established. Broadly, the new framework seems to be working well.

### **FLEXIBILITY, ACCESSIBILITY AND AFFORDABILITY**

74. Through the MoU, we sought to ensure that more Qualifying Sessions were made available outside London. This reflected feedback from students about making them more accessible and affordable for students, as well as helping them become integrated in the Circuits. The ability to do this was impacted by the pandemic, as the sessions moved online when they could not be held in person. The Inns and students have reflected on the benefits and disadvantages of including some online sessions. For example, they enabled the Inns to book a more varied selection of speakers than is usually possible, but in-person networking opportunities remain important to students.
75. A number of overseas students did not travel to London during the pandemic because of travel restrictions, and they have not done so subsequently. We worked with Inns to determine where general waivers may be needed in relation to certain country-specific problems. In particular, we needed to be flexible to cater for certain overseas students who were unable to travel to the UK and were not, in local law, permitted to post identity documents from their respective jurisdictions. We have also considered a small number of waivers to reflect individual reasonable adjustments that were needed.
76. The Inns have questioned the proportionality of the DBS checks for so many non-domiciled, unregistered barristers who do not plan to practice in England and Wales. We have committed to evaluating this policy next year.
77. The Inns are responsible for the conduct of Bar students. This includes some students who start pupillage without having attended their Call ceremony (which is permitted). During the pandemic, a number of students were allowed to progress to pupillage whilst awaiting their vocational exam results because of the disruption to exams at that time, which meant that a larger number of pupils were subject to the Inns' conduct regime than the BSB's. This was agreed with the Inns through a [side letter to the MoU](#).

## PUPILLAGE COMPONENT

78. Pupillage numbers have fluctuated over the past two years as a result of the pandemic.

Calendar year	Pupillages
2018	522
2019	504
2020	400
2021	577

We were pleased to see that pupillage numbers bounced back strongly after the dip that was caused by the pandemic. Data for 2022 is not yet available as this is the peak season for registering pupillages but the [Bar Council's latest report on pupillage recruitment](#) supports this.

79. Obtaining a pupillage is very competitive. Of the UK/EU domiciled vocational training graduates, 36% of those who enrolled on the course from 2016/17 to 2019/20 had started pupillage by November 2022 – the relevant figure for those that had passed the course was 45%. There are quite wide differences in the proportion gaining pupillage when disaggregating by first degree classification also – when looking at UK domiciled graduates of the Bar training course only, of those enrolled between 2016/17-2019/20, around 62% of those with a first class degree had gained pupillage as of November 2022, compared to 41% of those with a 2:1 degree, and 13% of those with a 2:2 degree.
80. About 18% of practising barristers are in the employed Bar but only 10% of pupillages are delivered there. Typically around 18 organisations in the employed Bar are delivering pupillage each year and a significant proportion of these pupillages are in the Crown Prosecution Service and the Government Legal Department. We are keen to encourage more employers to consider taking pupils and have recently done some work with BACFI (the specialist Bar association for barristers employed in commerce, finance and industry) to promote more. We recently ran an information evening together with BACFI and have created some tailored guidance on our [website](#) for those in the employed Bar who are considering becoming authorised to deliver pupillage.

## HIGH STANDARDS

### Strengthening standards through the new Authorisation Framework

81. The Authorisation Framework is as crucial a tool in terms of pupillage for the Authorisations and Supervision teams as it is for vocational Bar training. All organisations previously authorised as Pupillage Training Organisations need to go through a process of authorisation to become pupillage AETOs if they wish to continue to deliver pupillage in the future. Despite the size of this project, and the challenges associated with authorising 346 organisations, it is critically important to ensure that all AETOs meet the expected standards consistently at the point of authorisation and are held to account against the requirements through our supervision activity.

82. There have been considerable challenges for the Authorisations team in keeping this project on track given the high and increasing volumes of incoming business as usual and, in common with the rest of the organisation, the adverse impact of the cyber-attack. We have however set out a plan for completion of the project that is on track for the end of 2022 and with follow up activities in 2023.
83. The process of authorisation is currently ongoing but by the end of 2022 we expect to have issued decisions to all organisations who have submitted a complete application. The decision may be to authorise, to conditionally authorise, or, in the rare instances where we have serious concerns about suitability, to continue to engage with them until we are either satisfied that they are suitable to become an AETO, or we decide that they are not suitable to progress to AETO status at this time.
84. There are currently 71 out of a total of 348 existing pupillage training organisations who have not yet submitted an application despite numerous reminders. Any existing pupillage provider who has not yet submitted an AETO application will be sent one final reminder to prompt them to complete an application before 31 December 2022. If they do not do so, a check will be run on the CRM to confirm whether they have any current pupillages. If they do, their Pupillage Training Organisation status will be extended until the end of that pupillage and will then be terminated. They will only be able to continue offering pupillages if they apply for, and are granted, AETO status. Any existing pupillage provider who does not submit an application before 31 December 2022 and does not have current pupillages at that time will have their PTO status terminated from 1 January 2023.
85. Whatever stage of authorisation a pupillage provider is currently at, all are already expected to deliver pupillage in accordance with the Professional Statement and the Curriculum and Assessment Strategy.

### Professional Ethics assessments

86. As part of training reforms, the assessment of Professional Ethics was split between the vocational component and the pupillage component; vocational AETOs provide tuition in, and assessment of, Ethics to a foundation level. The centralised exam in pupillage assesses learning outcomes at the threshold standard (the standard described in the [Professional Statement](#) as required on “day one” of practice). The research published in 2016 by UCL’s Centre for Ethics and Law<sup>7</sup> on the ethical knowledge and skills acquired by new advocates gave a compelling argument for our continued scrutiny of ethics. The report stated that “the reinforcement of [the foundation in Professional Ethics laid during the BPTC/LPC] during pupillage/training contracts and post-qualification training is insufficiently robust or frequent to enable confident ethical practice amongst new advocates.”

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<sup>7</sup> [The Ethical Capabilities of New Advocates](#)

87. The purpose of the Professional Ethics pupillage assessment is to:
- distinguish between pupils who are ready to receive their Full Practising Certificate and those who are not yet ready;
  - safeguard the public by ensuring that those who are authorised to practise (by having received their Full Practising Certificates) have fulfilled the ethical requirements set out in the Professional Statement;
  - ensure a strong, ethical profession.
88. We considered a range of options for the new exam and decided to continue to use the format we had employed for the centralised Ethics exam taken on the old BPTC, albeit with access to the Handbook and a new way of marking. The short answer question (SAQ) format of the exam has proved itself to be a valid and reliable assessment and has thus supported the high standards principle of Future Bar Training.
89. By introducing a centralised exam to be taken during pupillage, we were in effect taking on the role that providers hold in the vocational component; we could not expect chambers and other pupillage providers to deliver the exams, so we sought a delivery partner to enable us to offer the exams through computer-based testing (CBT). We needed to enable pupils a choice as to whether to take exams on their own devices at home or on a computer at a test centre. We also needed a solution that would allow for pen and paper exams where a pupil's needs were best served by that format.
90. When writing our invitation to tender for the contract to supply CBT exams, and in our selection process, we were fully cognisant of the issues which arose in the August 2020 BPTC exams. In May 2021, we published [Professor Huxley-Binns' independent review](#) of those exams, as well as our [Action Plan](#) to ensure that we acted upon the review recommendations.
91. As per the Action Plan, we ensured that time was built into the project planning to allow for a pilot and review period before the new arrangements went live. We undertook a mini-pilot of the marking process in order to better understand how the new mark scheme would work in practice. We also undertook another pilot in November 2021 which allowed test-takers to review and give feedback on the candidate guidance issued to them before sitting an exam, the system check process, the log-in and identification process and experience the exam interface either in a test centre or a remotely proctored environment. We also used the answers submitted by candidates to allow the markers to experience the marking interface and to finetune the marking process. We organised a seminar for pupil supervisors several months before the first exam so they could be fully appraised of the assessment, our quality assurance processes, the materials available for candidates and thus be better able to help their pupils prepare for the exam.
92. We have now had three sittings of the assessment (April, July and October 2022). We have not yet had any candidates who required a third sit (which would entail payment as only the first and second sit fees are covered by the profession). All three assessment sessions have run smoothly and to plan; we have trusted teams of markers and standard setters who were fully trained in the new systems before we went live; direct communications with pupils has been helpful as we have been able to assist with queries and allay any concerns. The numbers taking the assessment will increase next

year (there are about 230 pupils eligible to sit in January) and we are fully prepared for the greater workload.

93. We have a very good working relationship with our CBT supplier and meet weekly. We also gave a presentation at our CBT supplier's conference about the way in which we use the platform and also delivered a webinar to other clients of our supplier.
94. We met with the Pupil Liaison Group in June to hear their thoughts on the assessment. Pupils spoke about the relevance of the subject matter to their pupillages, the open-book nature of the exam being more reflective of practice than a closed-book assessment and agreed that questions of professional ethics arose often in pupillage. Members of the Liaison Group who had not taken the exam commented that they wished there had been more of a focus on professional ethics during vocational training as it was surprising how often they needed to consider ethical issues. After the July and October exams we asked pupils to provide us with specific feedback on the assessment; in July, the overwhelming majority thought that the exam was at the right level of difficulty for a barrister at their level of training and all respondents thought that the scenarios used in the exam were relevant to the experience of early years practitioners.
95. We have ensured that the Ethics assessment has met the parameters that we set out to achieve, namely: validity, reliability and fairness. We publish a [Chair's Report](#) after each sitting of the assessment which details the quality assurance processes undertaken, as well as how the passing standard has been set. The report also sets out the marking processes, the role of the exam board and the operation of the assessment. The independent observer for centralised exams and the independent psychometrician attend each exam board and have approved our processes and methodologies.
96. The setting and marking of the pupillage component of the Professional Ethics assessment is overseen by the CEB, on behalf of the Bar Standards Board. Examinations are normally offered three times per year and there is no limit on the number of attempts by candidates. We expect pupillage providers to specify in their written agreement with pupils what will happen if the pupil has not passed the exam by the time the pupillage is due to finish.
97. The Professional Ethics questions consist of scenarios set within professional practice, each of which requires the candidate to engage with one or more issues, applying ethical principles in order to identify, critically analyse and address the matters raised, and to reach an appropriate resolution of those issues. Candidates are required to provide responses in the form of narrative prose and to apply their knowledge of ethical principles and, using the provisions of the BSB Handbook, guidance, and other syllabus materials, provide comprehensive analysis and sound reasoning in their answers.
98. The BSB does not prescribe any programme of prior study by way of preparation for the examination. A practice assessment that candidates can use for developmental purposes is provided on the BSB website, along with an example mark scheme, and guidance on the grading system. Examination papers are standard set to ensure an appropriate and consistent level of challenge is offered to candidates.

99. To date there have been three sittings of the assessment and the outcomes were as follows (however, we have not yet held the exam board for the October sit):

	<b>Apr-22</b>	<b>Jul-22</b>
Candidates first sitting	112	21
Candidates resitting	0	4
Total Number of Candidates sitting	112	25
First Sitting candidates passing	112	19
Resitting candidates passing	N/A	4
First sit candidates failing	5	2
Resitting candidates failing	N/A	0
Total number of candidates to date	112	132 <sup>8</sup>
<b>Total number of candidates passing to date</b>	<b>107</b>	<b>130</b>

100. The above table shows that four candidates from the April 2022 sit were resitting in August 2022, and each was graded 'Competent'. The result is that there remains one candidate from April 2022 with an unredeemed 'Not Competent' grading and two first sit candidates from the August 200 sitting graded 'Not Competent'. Just under 95% of all attempts at the assessment to date have resulted in a 'Competent' grading.

#### **Curriculum and Assessment Strategy: competence in advocacy and negotiation skills**

101. We are currently working with academics, the Inns and the Circuits to implement the final reforms to the Curriculum and Assessment Strategy, which are in relation to Advocacy and Negotiation Skills training and assessment during pupillage. This work has been delayed due to the knock-on effects of the pandemic and the cyber-attack. We anticipate that these changes will be implemented from 2024, but will need a focussed project plan in collaboration with the Inns to deliver that, and there is a risk that negotiation skills (which is an entirely new assessment) will not be implemented until 2025. In the meantime, pupils are required to complete the current advocacy course prior to applying for a provisional practising certificate, and competence in negotiation is reflected in the Professional Statement and continues to be assessed by pupil supervisors as part of pupillage. Therefore, the delay should not pose a risk in terms of assurance that standards have been met, as there is an existing process in place for confirmation and sign-off.

#### **Standards of training**

102. The process of authorising all AETOs under the new Authorisation Framework has resulted in a significant amount of engagement with AETOs. The Supervision Team has worked with the Authorisations Team where AETOs have previously been assessed as high risk for delivery of pupillage.

<sup>8</sup> There have been 132 unique candidates to date. One of the five 'Not Competent' candidates in Apr-22 had extenuating circumstances, and so was recorded as a first sitter again in Jul-22.



103. The typical reasons that things go wrong in pupillage are as follows:

- Robust policies and processes are crucial in making sure that pupillages are successful, particularly in relation to having a clear training plan and robust feedback mechanisms. When these are absent, or not working well, it can be very hard for pupils to understand how they are progressing in relation to the competences in the Professional Statement.
- AETOs should have arrangements in place so that both they and their pupils know what to do if a pupillage is not going well. Pupils should have people other than their pupil supervisor to turn to if necessary.
- The pandemic has accelerated the trend towards more remote working, both within AETOs, and with clients and cases. AETOs need to keep under review how effective pupillage training can be sustained, how pupil supervisors engage with pupils and how training may need to be adapted to address different skills that may be needed.

104. The transition to authorisation under the new Authorisation Framework and implementation of the Professional Statement to assess competence (replacing the more task-oriented checklists) have helped to raise standards in these areas and the Supervision Team find that is typically those who not yet completed authorisation that are more likely to fail in these areas.

105. We regularly present at the pupil supervisor training delivered by some of the Inns and Circuits to ensure that pupil supervisors understand the regulatory requirements, and would welcome the opportunity to do so at others. These forums provide an opportunity for us to meet pupil supervisors and share examples of good practice, as well as the common themes seen by the Supervision Team when things go wrong.

106. Based on the numbers of reports that we receive from pupils, pupils seem to be more confident in approaching the BSB when their concerns cannot be resolved internally. The Bar Council encourages pupils that contact their pupillage helpline to contact us so that we can take regulatory action.

## **FLEXIBILITY**

### **Centralised exams**

107. We offer pupils three opportunities to take the Professional Ethics exam. In 2022, these were scheduled for April, July and October. From 2023 onwards we will move to an examination calendar of sittings in January, April and July, thus affording the majority who start their pupillages in the autumn three opportunities to sit during their 12-month pupillage. We expect pupils to have undertaken a minimum of three months' pupillage before first attempting an assessment<sup>9</sup>; this is to allow time for discussions regarding ethical matters with their supervisors, and to review the preparation materials offered by external organisations if pupils so wish.

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<sup>9</sup> However, if a pupil has a reduced pupillage, they can sit at the first opportunity during their pupillage.



## ACCESSIBILITY

### Barriers to diversity in recruitment

108. We have published various research reports since 2017 which show that both ethnicity and socio-economic status are strongly linked with success at obtaining pupillage. Qualitative research with students also shows that students view the Bar as largely the preserve of an elite, privileged group and that a number of barriers disadvantage certain groups. Prior academic attainment was identified as the most common criteria for sifting applicants, which has the potential to favour those from more privileged backgrounds. Our annual Key Statistics reports have also shown that students from minority ethnic backgrounds are less successful than white students at obtaining pupillage.
109. We are currently embarking on new research to identify which approaches to pupillage recruitment are most successful at generating diverse outcomes, and what the experiences of AETOs are at using different approaches to recruitment of pupils.
110. The drivers behind differential outcomes in professional training are likely to be wide-ranging, covering early life experience, primary/secondary education and higher education, as well as the vocational and work-based components of training for the Bar. As such, research into approaches to pupillage recruitment will not be able to provide a complete picture of the reasons for the outcomes observed in previous research. However, it will provide additional evidence to help improve the knowledge of the BSB around factors contributing to the issues highlighted in previous research and statistics and to enable us to share good practice that meets the Equality priority in our strategic plan – promoting diversity and inclusion at the Bar and the BSB and the profession's ability to serve diverse customers.

### Centralised exams

111. All Ethics candidates take their assessments via computer-based testing<sup>10</sup> (either at a test centre or at home). We learnt many lessons from our experience with online testing in August 2020. We took these into account when, in December 2020, we issued an invitation to tender to supply online assessments (amongst other examinations solutions). The invitation clearly set out our requirements, particularly regarding the integrity of the assessments and accessibility for candidates. In writing the invitation, and in our selection process, we put equality and diversity at the forefront of our plans. We ensured that our supplier had an accessibility expert on their team.
112. In writing the EIA for the assessment, we consulted widely, and had input from the BSB's Equality and Access to Justice team, as well as the E&AJ officer network, the APEX member with responsibility for E&D, the Religion and Belief Taskforce, the Disability Taskforce and the Race Equality Taskforce. We sought input from the pupil liaison group. We also engaged with the Thomas Pocklington Trust as we needed to better appreciate any issues for visually impaired candidates.

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<sup>10</sup> Pen and paper exams are available for candidates who require this as a reasonable adjustment.

113. We are committed to providing supportive and fair opportunities to all candidates taking exams, and offer adjustments relating to disability, short- or long-term medical conditions and different arrangements for other reasons (eg someone who covers their head for religious reasons may request that their identity is checked in a separate room or specify the gender of the person checking their identity). We manage the adjustments that pupils need during the exam; we are able to communicate directly with them about their adjustment and other needs. Information about [how to request adjustments is available on our website](#), along with our [adjustments and other arrangements policy](#). We ask pupils to submit documentary evidence supporting their reasonable adjustments; they do not need to re-submit their evidence if they need to take the exam again.
114. We have agreed, and have given, every adjustment that we have been asked for. The majority of these have been additional time and additional breaks for dyslexic candidates; we also had one candidate who used screen reading software.
115. Breaks are permitted for all candidates. Our chosen test delivery system is compatible with screen reading software for candidates with visual impairments sitting in test centres.
116. We continue to ensure that examination dates and times do not clash with important religious dates.
117. As well as adverse impacts on those with protected characteristics, we also considered adverse impacts on candidates from lower socio-economic backgrounds. Pupils from this group could be adversely impacted by travel costs if they choose to sit in person. We ensured, through our invitation to tender, that our CBT supplier had good coverage nationally. We noted that some candidates may struggle to afford a smart mobile device so removed the requirement that one was used as a secondary device for invigilation purposes.

### **Resource implications / Impacts on other teams / departments or projects**

118. Producing this report is an ongoing and considerable commitment from all teams involved each year. It would be helpful for the Board to consider whether this use of resources is something it wishes to continue.

### **Equality and Diversity**

119. Training reforms were subject to Equality Impact Assessments and any changes or developments to Bar training will be subject to further EIAs.

### **Risk implications**

120. Risk is embedded in everything we do and is reflected in this report where relevant.

## **Communications and Stakeholder Engagement**

121. We make considerable efforts to engage with and learn from our stakeholders. The Authorisation Framework was developed through a process of iterative engagement and is the stronger for it. We meet quarterly with all our vocational AETOs; in line with the recommendations of the Huxley-Binns report previously noted, we have established student and pupil liaison groups, and we attend and present at pupil supervisor training sessions.



## Bar training pathways offered across AETOs from 2020/21-2022/23

Provider	2020/21				2021/22				2022/23			
	3-step	4-step	LLM	Part Time	3-step	4-step	LLM	Part Time	3-step	4-step	LLM	Part Time
BPP Birmingham	X	X	X		X	X	X		X		X	
BPP Bristol	X	X	X		X	X	X		X		X	
BPP Leeds	X	X	X		X	X	X		X		X	
BPP London	X	X	X	X	X	X	X	X	X		X	X
BPP Manchester	X	X	X		X	X	X		X		X	
Cardiff	X		X		X		X		X		X	
City Law School	X		X	X	X		X	X	X		X	X
Hertfordshire									X		X	
The Inns of Court College of Advocacy	X	X			X	X			X	X		
Manchester Metropolitan University	X			X	X			X	X		X	X
Nottingham Trent	X				X		X		X		X	
University of Law Birmingham	X	X	X	X	X		X	X	X		X	X
University of Law Bristol	X	X	X		X		X		X		X	
University of Law Leeds	X	X	X	X	X		X	X	X		X	X
University of Law Liverpool	X	X	X		X		X		X		X	
University of Law London	X	X	X	X	X		X	X	X		X	X
University of Law Manchester	X	X	X		X		X		X		X	
University of Law Nottingham	X	X	X		X		X		X		X	
University of Northumbria at Newcastle	X			X	X			X	X	X	X	X
University of the West of England	X	X	X		X	X	X		X	X	X	

The three-step pathway includes the vocational Bar training being taken as a one-part course, and the four-step pathway includes the two-part vocational Bar training course. The number of providers offering the four-step pathway over time has decreased, and this appears to be due to demand. Relatively few students appear to be taking the course in this way, and the number

## Part 1 – Public

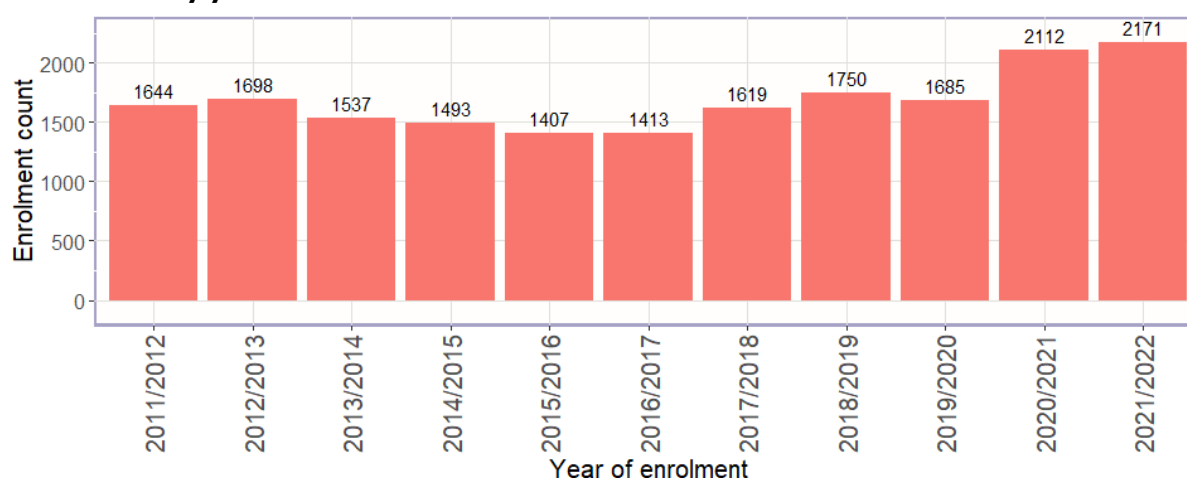
decreased in 2021/22 compared to 2020/21. This was largely caused by City Law School ceasing to offer the course in the four-step format from 2021/22 onwards. The table below gives a summary of enrolment at providers that have offered pathways other than the three step one by year.

**Number of students enrolling by pathway at providers offering pathways other than the three-step one**

Year of enrolment	Training provider	Three-step pathway	Four-step pathway	Integrated academic and vocational pathway	Grand Total
2020/2021	<b>Total - all providers</b>	<b>1921</b>	<b>150</b>	<b>41</b>	<b>2112</b>
	BPP London	487	7		494
	BPP Manchester	138	2		140
	City Law School	332	56		388
	Inns of Court College of Advocacy		85		85
	University of Northumbria	48		41	89
2021/2022	<b>Total - all providers</b>	<b>2026</b>	<b>127</b>	<b>18</b>	<b>2171</b>
	BPP Birmingham	81	1		82
	BPP London	434	3		437
	BPP Manchester	126	2		128
	Inns of Court College of Advocacy		120		120
	University of Northumbria	42	1	18	61
	University of the West of England	115			115

Enrolment figures have increased compared to the numbers enrolled on the former Bar Professional Training Courses (BPTC). In 2021/22 around 400 more students enrolled on Bar training courses than in the year of the BPTC with the greatest number of students (2018/19).

**Enrolments by year**



While students on the new Bar training courses appear to start the course most frequently in and around September, there are many students who have enrolled in and around January, and this number increased in 2022 compared to 2021. This is shown in the chart below.

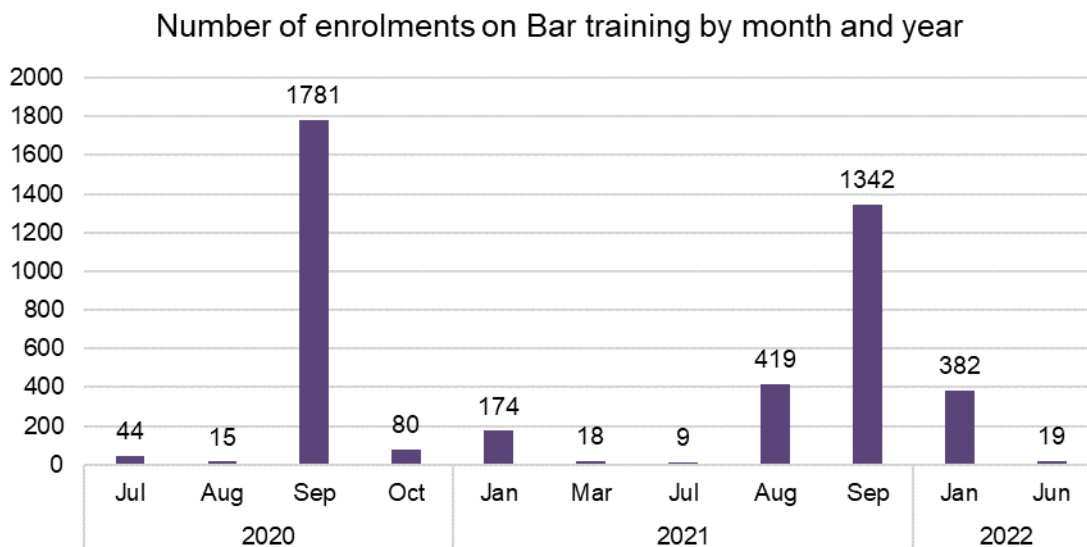
**Enrolments on Bar training by month and year**

Chart 3 shows the number of students enrolling in 2020/21 and 2021/22 by the type of training pathway they were on. The four-step pathway grew in popularity very slightly from 2020/21 to 2021/22 from 5.1% of students to 5.9%.

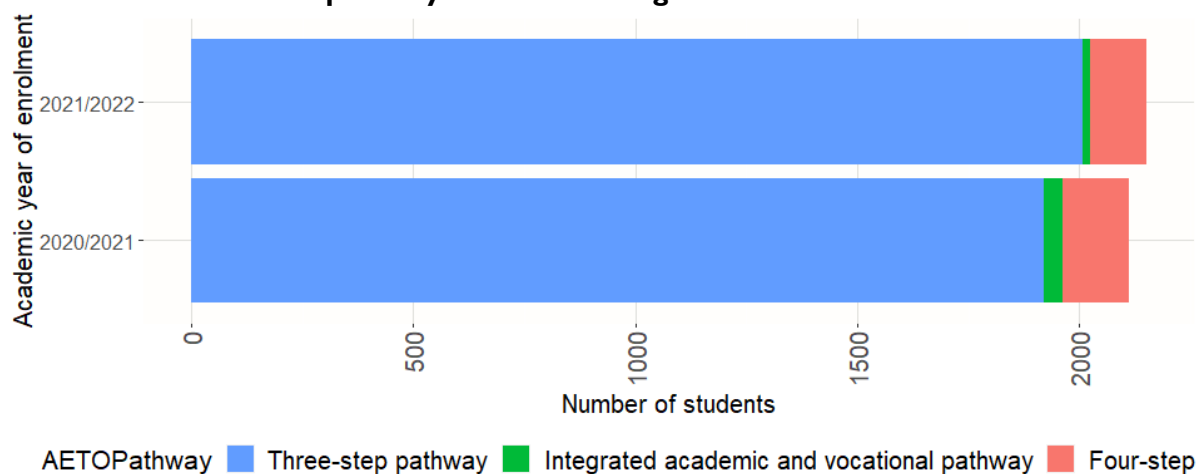
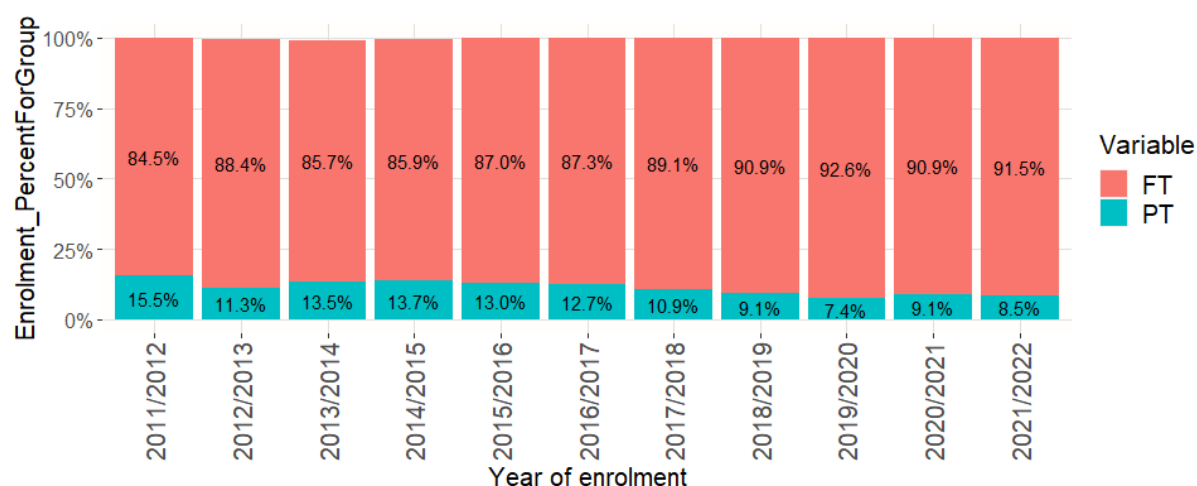
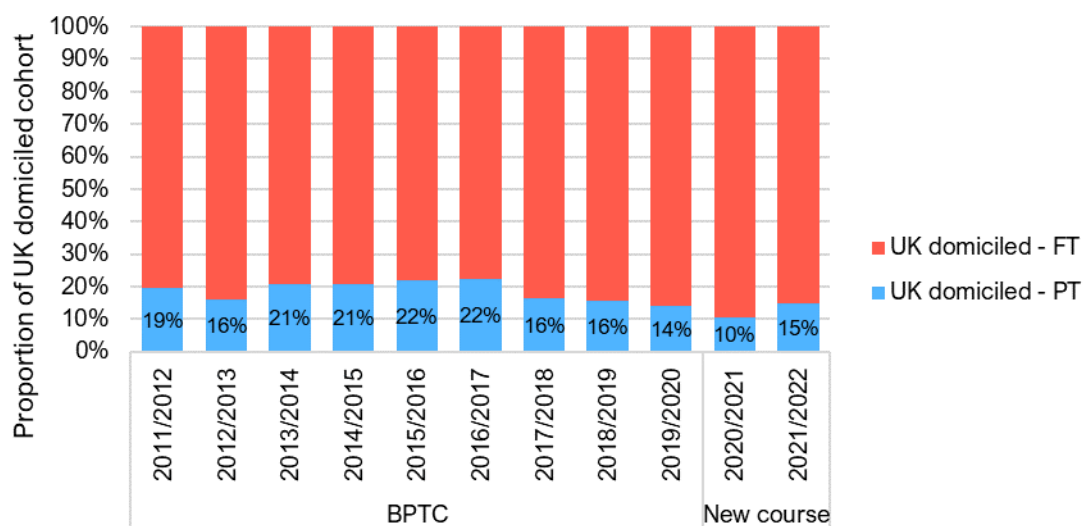
**Enrolment on different pathways on Bar training courses for 2020/21 and 2021/22**

Chart 4 shows enrolments for each academic year by study mode (whether a student was full-time or part-time). The proportion of part-time students has decreased over time from 15.5% in 2011/12 to 8.5% in 2021/22, although the number of part-time students has not changed as markedly (for example, there were 208 part-time students enrolling in 2013/14, 160 in 2018/19, and 183 in 2021/22).

**Proportion of all students by study mode and year of enrolment**

The trend is related to an increase in the number of overseas students, who are more likely to study the course full-time than UK domiciled students.

The proportions of UK-domiciled students studying part-time showed less of a reduction, as can be seen in Chart 5 below.

**Part-time students****Enrolment by study mode for UK domiciled students only**



## Demographic data

1. **Age** – the age profile of those on the new course is similar to that seen on the BPTC. In 2021/22, around 75 per cent of those that enrolled were aged under 25, 19 per cent were age 25-34 and the rest were aged over 35. This is very similar to that seen from 2015/16-2019/20 on the BPTC.
2. **Disability** - Overall, the proportion of those with a declared disability has remained relatively stable over time, fluctuating at around 10% of students.
3. **Domicile** - The proportion students who are ordinarily domiciled overseas prior to enrolment was around 45 per cent in 2020/21 and 2021/22. This is a similar figure to that seen in latter years of the BPTC (around 48% in 2018/19 and 2019/20).
4. **Ethnicity** - The majority of overseas domiciled students who enrolled throughout the BPTC, and on the new course, have been from Asian ethnic backgrounds (around 80-85% of overseas students when excluding those that have not provided information).
5. For UK domiciled students, the new course has seen a consolidation of a trend seen throughout the years of the BPTC, which was an increase in the proportion of students from minority ethnic backgrounds over time. Throughout the years of the BPTC the proportion of UK domiciled students from a minority ethnic background increased from around 25 per cent to around 40 per cent (when excluding those not providing ethnicity information). The proportion of such students seen on the new course has remained at around 40 per cent. Increases were seen on the BPTC across all of the following ethnic groups – Asian/Asian British, Black/Black British, Mixed/Multiple Ethnic Backgrounds, and those from Other minority ethnic backgrounds. This is shown in the table below, which shows a snapshot of years from 2011/12 onwards.

### Ethnicity of UK domiciled Bar training students over time

Course and enrolment year	Percentage of UK domiciled enrolment - excluding those that did not provide information on ethnicity					
	Asian/Asian British	Black/Black British	Mixed/Multiple ethnic groups	Other ethnic group	Minority ethnic background total	White
BPTC_2011/2012	12.1%	7.7%	3.3%	1.4%	24.5%	75.5%
BPTC_2015/2016	20.7%	8.7%	4.9%	2.6%	36.8%	63.2%
BPTC_2019/2020	18.6%	10.3%	5.2%	1.7%	35.7%	64.3%
New course_2020/2021	18.3%	13.4%	6.1%	2.5%	40.4%	59.6%
New course_2021/2022	22.2%	10.3%	6.9%	2.7%	42.0%	58.0%

6. **Gender** – The proportion of students enrolling by gender appears to be in line with that seen in the latter years of the BPTC, with females representing just over half of all students enrolling each year.

## Part 1 – Public

7. **Type of school attended** - The proportions of those attending fee-paying schools does not appear to have changed markedly on the new course compared to the BPTC. The proportions involved are still substantially higher than that seen in the UK population. The underlying rate for undergraduate degree entrants in the UK is around 10 per cent<sup>1</sup>, which compares to around 39 per cent of bar training students enrolling in 2021/22, when excluding those not providing information. A greater proportion of overseas domiciled students have attended a fee-paying school in comparison to UK domiciled students (in 2020/21 around 52% vs 29% when excluding those not providing information).

### Academic history

8. Degree institution attended – The proportion of students who attended Oxbridge, and the proportion who attended a Russell Group university enrolling on the new Bar training courses appears to be broadly in line with that seen on the BPTC. The proportion of both together is around 50 per cent of UK domiciled students.
9. First degree classification - Enrolment by first degree classification on the new Bar training course has shown a continuation of trends seen on the BPTC, with a reduction in the proportion of those with a lower second class degree seen over time (particularly for overseas students), and an increase in the proportion of those enrolling with a first class degree. Both of these trends are seen in the table below. These trends could be suggestive of trends seen in awarding of degrees, student selection by AETOs, or a belief amongst prospective students that having higher degree classifications is necessary to enter into a career at the Bar – it is difficult to infer exactly what the causes of these trends may be.

### Domicile of Bar training students over time

Domicile	Course and enrolment year	A: First class	B: Upper second class	C: Lower second class	D: Other	E: Third
Overseas	BPTC_2011/2012	2%	42%	47%	9%	0%
	BPTC_2019/2020	12%	60%	26%	2%	0%
	New course_2021/2022	14%	54%	32%	0%	0%
UK	BPTC_2011/2012	21%	60%	16%	3%	0%
	BPTC_2019/2020	32%	58%	7%	3%	0%
	New course_2021/2022	38%	55%	8%	0%	0%

<sup>1</sup> Higher Education Statistics Agency: Widening participation summary: UK Performance Indicators. <https://www.hesa.ac.uk/data-and-analysis/performance-indicators/widening-participation-summary> (accessed 16 September 2022)

## Fees

- The table below details the cost of training for the 2022/23 academic year taken from the websites of the AETOs. Part 1 and Part 2 relate to the costs for training where students undertake vocational training in two separate parts, with both parts needing to be passed to complete the course.

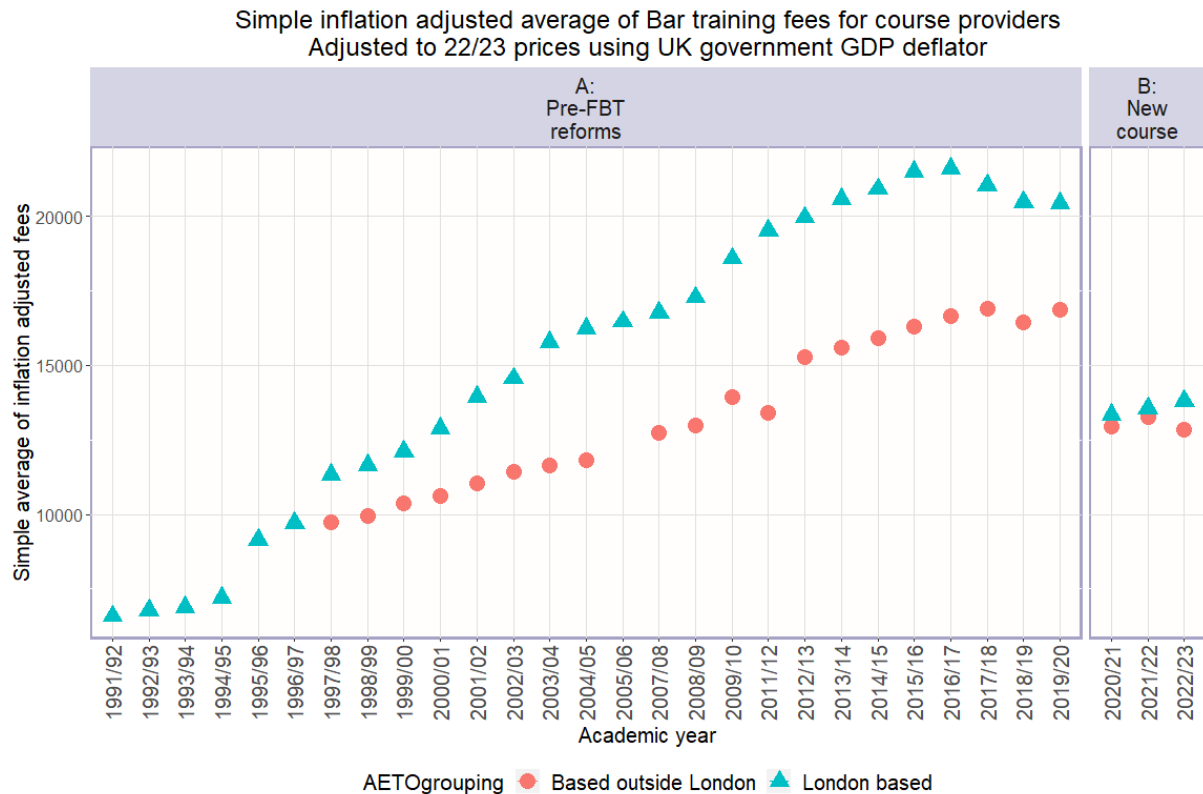
## Cost of Bar training for 2022/23 entry – inclusive of BSB fee

Provider	Domicile	3-step pathway	4-step pathway		Final Year of BPTC (2019/20) – non inflation adjusted
		Bar training	Bar training (part 1)	Bar training (part 2)	
BPP London	Overseas	£16,151			£19,070
BPP London	UK	£15,151			£19,070
BPP Non-London	Overseas	£15,121			£15,680
BPP Non-London	UK	£14,121			£15,680
Cardiff University	Overseas	£20,700			£16,650
Cardiff University	UK	£18,700			£16,650
City Law School	All	£16,340			£18,500
Inns of Court College of Advocacy	All	£13,990	£1,895	£12,095	-
Manchester Metropolitan University	All	£12,870			£15,500
Nottingham Trent University	All	£12,200			£15,200
University of Northumbria	All	£12,300	£3,075	£9,225	£15,000
University of Law London	All	£14,000			£18,735
University of Law Non-London	All	£12,700			£15,485
University of the West of England	All	£13,500	£3,000	£10,500	£15,000

## Part 1 – Public

2. The chart below shows the average fees charged at London vs non-London providers from 1990/91 onwards. It is clear to see that the course from 2020/21 onwards is less expensive than the BPTC was, after adjusting for inflation to 2022/23 prices. Prices for Bar training across AETOs in London are now more in line with those last seen around 2000/01, and are more in line with those seen around 2011/12 for AETOs based outside of London, after adjusting for inflation for both.

### Inflation adjusted cost of vocational Bar training courses over time – average for London and non-London training providers



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	1 December 2022
<b>Title:</b>	BSB review of governance documents – Governance Manual		
<b>Author:</b>	Rebecca Forbes		
<b>Post:</b>	Head of Governance and Corporate Services		

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion:</b> <input type="checkbox"/>	<b>Noting:</b> <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Paper relates to the Regulatory Objective (s) highlighted in bold below	
<p>(a) <b>protecting and promoting the public interest</b></p> <p>(b) supporting the constitutional principle of the rule of law</p> <p>(c) improving access to justice</p> <p>(d) protecting and promoting the interests of consumers</p> <p>(e) promoting competition in the provision of services</p> <p>(f) encouraging an independent, strong, diverse and effective legal profession</p> <p>(g) increasing public understanding of citizens' legal rights and duties</p> <p>(h) promoting and maintaining adherence to the professional principles</p> <p><input type="checkbox"/> Paper does not principally relate to Regulatory Objectives</p>	

### Purpose of Report

1. This report details our review of our governance documentation and presents the Board with a proposed Governance Manual to replace its existing Standing Orders and to consolidate our governance documentation. The Manual is intended to address criticisms of the Legal Services Board in its review of our performance under the well-led standard, and to implement some of the recommendations of the independent Board evaluation last year.
2. The Manual has Terms of Reference for the Board's Committees and other decision-making bodies as appendices and these are also attached for approval. Each Committee has scrutinised its own Terms of Reference and recommends these to the Board for approval. This will also give effect to the Board's decision to establish a committee with responsibility for scrutiny of performance.

### Recommendations

3. The Board is invited to
  - a. **approve** the Governance Manual and appendices (including redrafted Terms of Reference for its Committees and other decision-making bodies), and in particular to consider whether the list of matters reserved to the Board is complete and accurate including by consideration of the specific questions posed in paragraph 22. This includes consideration and approval of the Terms of Reference for the proposed Performance and Strategic Planning Committee (which will replace the Strategic Planning and Resources Committee (SPR)).
  - b. should the Board approve the Governance Manual including appendices, it is invited to **rescind** its previous Standing Orders (last edition approved on 27 May 2021).
  - c. consider and **agree** the optimum membership for the newly constituted Performance and Strategic Planning Committee.
  - d. consider and **agree** the eligibility requirements for barrister members of the Independent Decision-making Body (whether the eligibility requirements should remain unchanged, or are amended so that barrister members must be practising, or must be eligible for a practising certificate and have practiced within the last two years).

- e. review its *Statement of Governance Principles*, and *Statement on the Role of the Board* and confirm whether these published statements remain current and accurate or whether one or both should be rescinded and/or amended.
- f. **confirm** that inclusion of approved minutes of Committees in the Board reading room achieves the stated intention of circulation to all other members of the Board and the Director General or **clarify** whether a more active circulation is desired.

## Background

4. The Board will recall the criticisms made of our governance documentation by the Legal Services Board (LSB) in its report following its review of the BSB's performance under the well-led standard. Specifically the LSB stated that our governance documentation was "fragmented and accessibility could be improved in some areas" and set out what it considered the benefits of a comprehensive Governance Manual.
5. There is also the recommendation of *Independent Audit* following its evaluation of Board performance last summer: "Now that you have implemented the Internal Governance Rules, adjusted the roles of the committees and introduced the Remuneration Panel, it would be a good time to stand back and review the various governance documents with a view to simplifying and harmonising them where you can. You could accompany this exercise with a mapping of responsibilities between the various BSB governance bodies (and those shared with the GCB) to clarify how your overall governance framework operates in practice. The output of these two exercises could result in a refreshed governance manual."
6. Partly in response to these two recommendations, one of the commitments the Board made in its well-led action plan is that: "BSB's internal delegations, including the matters reserved to the Board and its Committees, will be reviewed and associated governance documents refreshed to meet the requirements of the UK Corporate Governance Code." We contracted an external corporate governance consultancy, *Indigo Governance*, to support us in this work.
7. *Indigo Governance* produced first drafts of a restructured Constitution and Governance Manual including the Appointments Policy and Terms of Reference, which we have then refined to be fit for our context. The new suite of documents includes the Constitution as the pre-eminent governance document and that was approved by the Board in July. The Governance Manual has appendices including the Appointments Policy (approved by the Board in July) and Terms of Reference for the BSB's Committees and other Decision-making Bodies.
8. The UK Corporate Governance Code is applicable to companies with a premium listing, regardless of where they are incorporated. The Financial Reporting Council states: *Under the Financial Conduct Authority (FCA) Listing Rules, listed companies are expected to align their business with the Principles of the Code but may choose whether or not to comply with its Provisions.*
9. Given that the BSB is not incorporated and does not have a standard listing, we are not required to comply with the provisions of the UK Corporate Governance Code. However, whilst some Principles and/or provisions of the Code are clearly not applicable in our context, we consider that it represents best practice and that we should endeavour to comply where that is appropriate. *Indigo Consultants* reported on those Principles and provisions of the Code which they deemed relevant in our context and made recommendations on how we could more explicitly meet those Principles and provisions. Those recommendations have been incorporated into the Governance Manual.

## Governance Manual

10. *Indigo Governance* reported its “overall recommendation would be to implement and maintain a Board Governance Manual with appropriate appendices, ensuring updates can be easily implemented. Such a manual should be written in accordance with and to support the provisions of your Constitution. It should be noted that a significant amount of the content within the existing documentation remains relevant, well written and of use to the intended reader and therefore we are not proposing a full re-write.”
11. *Indigo Governance* produced a first draft of the Governance Manual, which we have refined to be appropriate for our context and unique governance arrangements. The Governance Manual repeats some parts of the Constitution (so that it can be read as a stand alone document) and otherwise contains rules that were within our previous Standing Orders – in effect, the Governance Manual replaces the Standing Orders but is more comprehensive.
12. The Governance Manual has a number of appendices, and the intent is that any separate appendix can be more easily updated without requiring the Board to reconsider the Manual in entirety.
13. Paragraphs 3 – 7 are taken from the previous Standing Orders and have not been amended in any way. Paragraph 8 – 12 then reiterate parts of the Constitution which relate to membership of the Board.
14. The section on “Attendees” in the previous Standing Orders stated that “the Chair of the Bar Council and a person nominated by the President of the Council of the Inns of Court are entitled to attend and speak (but not vote) at any public session of a meeting of the Board”, and that the Chair of the BSB may decide that any other person attending any public session of a meeting of the Board be permitted to speak. It also set out that the BSB may invite the Chair of the Bar Council and a person nominated by the President of the Council of the Inns of Court, to attend all or part of the Board’s private sessions (in accordance with the protocol for ensuring regulatory independence).
15. We have not included those provisions in the Governance Manual or elsewhere in our governance documents. The new Chair of the Board has made explicit that meetings of the Board in public session are not an open forum but are meetings held in public for transparency. No observers have an entitlement to speak but it remains at the Chair’s discretion to invite any observer present to comment on a matter being debated by the Board.
16. We will continue our usual practice of extending invitations to attend and observe to the Office Holders and Chief Executive of the Bar Council, the nominee of the Council of the Inns of Court, the legal press and other interested persons (for example, the Chair of the Board’s Independent Decision-making Body who attends when that body’s annual report is listed for discussion).
17. We have not included the paragraph from the previous Standing Orders stating that the Board may decide which of the papers considered at its meetings should be made public after each Board meeting and that it may also publish its agenda and minutes of its meetings. That does not reflect our usual practice, where we routinely publish the agenda and papers and minutes of the public session of a meeting of the Board. The Board may still choose to publish papers considered in private session and removal of this paragraph does not hamper its discretion to do so.

18. In paragraph 25 and elsewhere, we have referred to what has been known as the Remuneration Panel as the Remuneration Committee. We had named it a Panel as the initial concept had been that it would be a Panel (or sub-committee) of the Strategic Planning and Resources Committee. Once it was established and we had refined the Terms of Reference, it was clearly another standing committee of the Board (albeit with membership drawn from the Strategic Planning and Resources Committee).
19. We have amended paragraphs 28 and 29 on delegation so that it is explicit that the Board delegates the day-to-day operation of the BSB to the Director General and so that it is clearer that where the Board has delegated any of its regulatory functions to the Director General (such as the powers given to the Board in the BSB Handbook), it is for the Director General to determine sub-delegations within the executive. That accords with the Board's resolution of March 2020, that the Director General can make and amend his sub-delegations without reference to the Board.
20. The list of matters reserved for the Board includes those that were listed in our previous Standing Orders, those the Board agreed should remain non-delegable Board powers when it undertook a major review of its delegations in November 2017, and some proposed by *Indigo Governance* which were taken from the Chartered Governance Institute (CGI – formerly the Institute of Chartered Secretaries and Administrators, ICSA) Guidance note.
21. In November 2017, the Board agreed that the powers to set fees for various applications ought to remain non-delegable Board powers, as should the powers to approve the Inns Conduct Committee Rules, approve fees to be charged by the Inns, and to amend and make additions to the BSB Handbook (except for exempt changes).
22. The Director General takes the view that the Board should approve the policy on setting of fees (ie that it should be Full Economic Cost Recovery) but not the actual fees. We have therefore not included either the approval of fees for applications made to the BSB, nor the approval of fees to be charged by the Inns, in the list of matters reserved to the Board. We have instead inserted paragraph 30 II. (c) which states that the approval of **policy on the** setting of fees (for applications made to the BSB and for fees to be charged by the Inns) is reserved to the Board. We seek the Board's particular consideration of its comfort with delegating the approval of these fees, consistent with the Board approved policy, to the executive. We would expect our Internal Auditors to provide assurance to the Governance, Risk and Audit Committee from time to time that fees are indeed set in conformity with the policies approved by the Board.
23. There were other powers relating to CPD that it was agreed in November 2017 should remain non-delegable Board powers (the power to specify CPD activities and to vary the minimum number of hours of CPD) but we have not included these in this list. Even in November 2017, the Board commented that the delegation on CPD hours was obsolete given how CPD is now administered.
24. We have inserted the appointment and removal of the Director General in the list of matters reserved for the Board.
25. The list of appendices to the Governance Manual includes the Board's *Statement of Governance Principles*, and its *Statement on the Role of the Board*. These statements were approved by the Board in January 2017. *Indigo Governance* queried the necessity of retaining the statement on the role of the Board, given the greater clarity on its role that we intend is achieved through this Governance Manual. Given the number of years since these statements were approved, we also ask that the Board consider whether one or both remain current and whether one or both should now be rescinded or should be amended.



## Terms of Reference for Committees

26. Terms of Reference for the BSB's Committees and other Decision-making Bodies are based on the template from the Chartered Governance Institute (CGI – formerly the Institute of Chartered Secretaries and Administrators, ICSA) and have been structured so that each stands alone. These CGI templates are designed for a listed PLC fully compliant with the UK Corporate Governance Code so we have adapted as necessary to fit our current status and context.
27. Committee terms of reference are drafted so that they stand alone. For example, the clause stating that members cannot also be members of the Bar Council or any of its representative committees now appears in every Committee's terms of reference (rather than in another set of rules as previously when it was within our Standing Orders).
28. The Board approved Terms of Reference for the Nomination Committee at its meeting in March 2022. These had been drafted by us using the CGI template which *Indigo Governance* had recommended and which they also used as the basis for the proposed revised terms of reference for our other committees. There were some minor differences between the terms of reference drafted by us and those drafted by *Indigo Governance*, and we have made amendments to ensure consistency. Where we are proposing any changes to the substantive terms of reference, we are explicitly seeking Board approval of that.
29. Every amendment to the Terms of Reference for the Nomination Committee that were approved by the Board in March has been made in track changes (see Annex 5), including those very minor changes made only for consistency with the drafting of the other terms of reference or insertions that set out rules that were previously in Standing Orders (such as that members cannot also be members of the Bar Council or any of its representative committees). For the other committees, we have generally used track changes only for amendments to the substantive role or purpose of that committee. Board Members can refer to the track changes in the Nomination Committee terms of reference to have sight of the refinements of generic wording.
30. All Committee terms of reference include a clause that approved minutes should be circulated to all other members of the Board and the Director General unless, exceptionally, it would be inappropriate to do so. We intend to achieve that circulation by including approved minutes in the Board reading room (rather than a more active circulation).
31. Under the heading "membership", those Committees which include members who are not Board Members have the caveat (in italics) that in the absence of the Committee Chair the remaining members present shall elect one of themselves to chair the meeting or item *who would qualify under these terms of reference to be appointed to that position*. This is because the Appointments Policy sets out that Board Members are appointed as Committee Chairs and we generally require the non Board members of GRA and the Remuneration Panel to make their individual specialist contribution to debate rather than facilitating debate.
32. We propose deleting the paragraph stating that the Nomination Committee may (at the invitation of the Chair) also make recommendations concerning membership of the Board's other standing Committees, in consultation with the Chairs of those Committees. The Appointments Policy is clear that this is for the Chair of the BSB, either in consultation with the Vice Chair and the Director General for appointment of Board Members to Committees, or on the recommendation of a selection panel for non-Board members.

33. We propose amending the reporting obligations of the Nomination Committee to report to the Board at least annually, rather than after every meeting. That is consistent with the terms of reference for the other Committees and is our usual practice.
34. The terms of reference for both the Nomination Committee and GRA include this clause: to facilitate the Committee's discharge of its responsibilities in relation to particular items of business, if necessary, procure specialist ad-hoc advice at the expense of the BSB. We have proposed deleting the words "subject to that expense being agreed by the Board", as we would not expect to seek a resolution of the Board to that effect nor do we consider that the Board should revisit a matter where one of its Committees has deemed specialist advice to be necessary. We expect that if the Committee and its Chair deemed such advice to be necessary, the executive would take the necessary steps to procure cost-effective advice. This is a clause that we have not yet had occasion to utilise and do not generally expect to.
35. The Terms of Reference for the Nomination Committee were considered by that Committee at its meeting in July 2002 and it was agreed to recommend these to the Board without amendment. The track changes in the version annexed as are proposed to the Committee in July.
36. The Terms of Reference for the Governance, Risk and Audit Committee were considered by that Committee at its meeting in July 2002 and it was agreed to recommend these to the Board subject to a minor amendment (change of wording in one clause from "periodically review" to "receive assurance on"). The track changes in the version annexed as are proposed to the Committee in July with that one further amendment requested by the Committee.
37. The Terms of Reference for the Remuneration Committee were considered by that Committee at its meeting in July 2022 and it was agreed to recommend these to the Board subject to a check for any gaps or overlap with the Strategic Planning and Resources Committee. The track changes in the version annexed are as proposed to the Committee in July with the only later change being amendment of the reference to the Performance and Strategic Planning Committee in advance of the Board's confirmation of the establishment of that Committee.

#### **Terms of Reference for the proposed Performance and Strategic Planning Committee**

38. The Board agreed at its Away Day in October to establish a Committee with responsibility for scrutiny of performance but without dilution of the Board's primary responsibility for oversight and monitoring of performance. To give effect to that, we propose establishment of a Committee named the Performance and Strategic Planning Committee which will replace the existing Strategic Planning and Resources Committee (SPR). We put proposed Terms of Reference to SPR at its last meeting in November 2022.
39. Performance was within the remit of SPR until 2021 (when the Committee was named the Planning, Resources and Performance Committee), but the cursory time given by the Board to performance issues as a result led us to introduce much enhanced performance reporting to the Board itself (as part of the Director General's Strategic Update) and a commensurate narrowing of the Committee's remit.

40. It is worth reminding the Board of one of the main recommendations from the external independent Board evaluation conducted by *Independent Audit* last year, that we should prioritise the Board's work more effectively and ensure it is spending adequate time on priority issues. Committees largely exist to support the Board by extending its attention span so that important issues can be scrutinised by Board members, and assurance gained, in advance of Board discussions. They are not a substitute for continuing Board accountability and oversight. This is certainly true of performance and delivery.
41. We have retained "review of performance in light of the BSB's strategic aims and objectives, and ensuring that any necessary corrective action is taken" in the list of matters reserved to the Board in the Governance Manual. The role of the newly established Performance and Strategic Planning Committee will be to undertake a closer scrutiny and analysis of performance trends and any systemic causes for those, and to make recommendations to the Board. The corresponding clause in the proposed Terms of Reference for that Committee is as follows, and we consider that delegation to the Committee to agree corrective action is compatible with the Board reserving authority to ensure corrective action is taken: "to oversee performance against relevant service levels and financial performance against the objectives and targets set out in the Business Plan and to consider and agree any necessary corrective actions, including to the allocation of resources across the BSB, and, where relevant, make recommendations to the Board".
42. When SPR considered the draft Terms of Reference for the proposed new Committee in November 2022, it agreed to recommend that the newly constituted Committee be named the Performance and Strategic Planning Committee. It asked for clarity on the Committee's delegated powers and so we have clarified in paragraph 17 (g) that it is for the Committee to decide (rather than scrutinise) the annual budget and revenue for recommendation to the Board, and approval of additional members of staff where that is within the approved budget.
43. SPR asked that the Board reconsider the membership of the Committee to ensure that it remains a reasonable size and does not include such a majority of the Board that it is in effect meeting as the Board. That was a response to the SPR being asked to give consideration to inviting members of the ad hoc Board Task and Completion Group on Performance who are not currently members of the Committee to join the newly constituted Committee. That would increase the membership to eight (from a total of eleven Board Members). However, the Chair of the Board was one of the three members of the Task and Completion Group who were not also members of SPR and she is entitled to attend any meeting of any Board Committee. Further the Chair of the Governance, Risk and Audit Committee was another of those three members. It would be a heavy and unusual load, to sit on another standing Committee when he is chair of one BSB Committee and therefore also sits on the corresponding joint Committee of the BSB and the Bar Council.
44. One option is to invite the third member of the Task and Completion Group (who was not also a member of SPR) to join the newly constituted Performance and Strategic Planning Committee. That would increase the membership to six.

### **Terms of Reference for the Board's other Decision-making Bodies**

45. Terms of Reference for the IDB and CEB have been created in the same format as those for standing committees of the Board. As these decision-making bodies function quite differently from a committee, much of the standard template was not applicable. The track changes within the annexes are where we have made substantive changes from the versions that were approved by the Board and were published within the previous Standing Orders.

46. We have consulted with the Chair and Vice Chair of the IDB and the Chair of the CEB to confirm the proposals for their Terms of Reference. As they do not operate in the same way as standing Committees, it was not deemed practicable or necessary to consult with the entirety of their membership.
47. We have corrected references to the Handbook within the IDB Terms of Reference. We have also inserted a cross-reference to Schedule 1 to Part 5A of the BSB Handbook (the Enforcement Decision Regulations) where the proceedings and composition of Independent Decision-making Panels are prescribed.
48. Longer-standing Board Members may recall that the LSB required that we not also include detail on the proceedings and composition of Independent Decision-making Panels in our governance documents. The LSB took the view that these rules are part of the regulatory arrangements and therefore require its approval and it did not want to have to approve our governance documents or any part thereof. However, we think a cross-reference adds transparency and clarity on the functioning of these panels.
49. For the IDB, we note that the existing wording on membership allows only for “barrister members”, meaning that unregistered barristers (including those who have never practiced or been eligible for a practising certificate) are technically eligible. This was an inadvertent omission when the IDB was established – our rules at that time allowed barristers who were not practising to be members of the Board’s other committees but we had retained the requirement that barrister members of the previous Professional Conduct Committee be practising.
50. It is our view that as a matter of principle, barristers appointed to the IDB should have current knowledge and experience of practising at the Bar. That would also be consistent with the requirements for membership of the Board (and as all barrister members of our committees are now Board members, they are necessarily practising). One of the fundamental aims of this review of our governance documents was to achieve greater consistency in our rules.
51. We have proposed reinstating the requirement that barrister members of the IDB must be practising barristers. We do not want unregistered barristers who have never practiced or ever been eligible for a practising certificate to be eligible for membership as barrister members. Barrister members of the IDB must bring knowledge of the operation of the Bar and the regulatory requirements of those in practice. As an alternative to the blunt requirement that only practising barristers are eligible, the Board could instead agree that the eligibility requirement be for barristers who are eligible for a practising certificate and who have practiced within the last two years. That would ensure sufficient recency of practice to achieve the contribution we require.
52. The Chair of the IDB has asked that some additional points be put to the Board to inform its consideration of the issue of eligibility for barrister members and I have summarised those as follows:
  - a. That a significant minority of cases (about 1 in 6) considered by the IDB concern unregistered barristers. A similar number concern employed barristers. Inclusion of these categories therefore makes the membership more broadly representative of the types of cases it considers;
  - b. The diversity of experience of some unregistered (and employed) barristers, especially those who have been in self-employed practice at some stage in their career, is of benefit to the IDB and could conceivably be more relevant to a case before them than that of someone who has spent their entire career as a practising barrister;

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- c. There are other relevant factors and if the intention is to ensure understanding of the operation of a modern chambers, then perhaps recency of membership of chambers should be considered; and
  - d. We can continue (as we have done in the most recent campaign) to be more prescriptive in the agreed selection criteria for any recruitment to redress any perceived imbalance in the membership.
53. The Chair of the IDB has therefore requested that no change be made to the eligibility of barrister members. We are seeking the Board's specific consideration of this question of eligibility and our proposals that barrister members must be practising or be eligible for a practising certificate and have practiced within the last two years.
54. The CEB is convened according to the cycle of assessments to consider examination results. The CEB can be considered as the "committee" with oversight of the centralised examinations that, from time to time, convenes itself as a final examination board to confirm examination outcomes. This is now very much the case, for example, in respect of the assessment of professional ethics during pupillage, where the CEB is not just confirming that an assessment process has been properly conducted, but is conferring a status on individual examination candidates.
55. We have removed the Independent Psychometrician from membership of the CEB. Although the Independent Psychometrician attends all the Subject and Final Examination Board meetings (as does the Independent Observer), they do so as independent consultants and as advisers to, rather than members of, the CEB.
56. We have removed the requirement for a specified number of members to achieve a quorum because that number varies depending on the subject area for which the CEB is convening as the Final Examination Board. We have instead stated that the quorum is the CEB Chair, the relevant Chief Examiner(s), and the Director of Regulatory Operations (or alternate).
57. To manage any instance where the CEB Chair is not available we have inserted a clause stating that in their absence, or where the CEB Chair has declared an interest for a specific item, the Director General has the discretion to nominate a Chief Examiner to chair the meeting or item where that Chief Examiner's subject area is not under consideration.
58. We have stated reporting requirements for the CEB to be to report to the Board at least annually. From December 2022, the CEB annual report will form part of the annual report to the Board on Bar Training and that will now be submitted to the Board each December.

**Equality and Diversity**

59. The review of governance documentation does not give rise to any equality considerations (because we are not reviewing the underlying governance arrangements).

**Risk implications**

60. The risks of not completing this review have already been identified by the LSB in its review of the BSB's performance under the well-led standard and by the report of *Independent Audit* last summer. Achieving greater clarity and transparency in our articulation of our governance arrangements (including on those matters which are reserved to the Board) mitigates any risk of failure to comply with those arrangements, and importantly mitigates against the risk of undue influence from the representative body.

## **Communications and Stakeholder Engagement**

61. We have circulated this paper and annexes to the non-Board members of the Governance, Risk and Audit Committee for their review. If any substantive comments are received, we will relay those at the meeting.
62. Approved documents will be published on the BSB's website and staff intranet.

## **Annexes**

63. We have not annexed all of the appendices to the proposed Governance Manual. Appendix 1 is the Seven Principles of Public Life which do not need to be considered by the Board (but will be appended to the published Manual). Appendix 11 is the Board Appointments Policy which was approved by the Board in July and does not need reconsideration.
64. Appendices 10 (Board Code of Conduct), 11 (Declaration of Interests Policy), and 12 (Gifts and Hospitality Policy) are due for review but we could not achieve that review in time for this meeting. The existing versions are published on our website and we intend to present the Board with proposed revisions at its next meeting.
65. Annex 1 – Governance Manual  
Annex 2 – Board's Statement of Governance Principles  
Annex 3 - Statement of the Role of the Board  
Annex 4 - Governance, Risk and Audit Committee Terms of Reference  
Annex 5 - Nomination Committee Terms of Reference  
Annex 6 - Performance and Strategic Planning and Committee Terms of Reference  
Annex 7 - Remuneration Committee Terms of Reference  
Annex 8 - Independent Decision-making Body Terms of Reference  
Annex 9 - Centralised Examinations Board Terms of Reference

**BAR STANDARDS BOARD**

**Board Governance Manual**

**In accordance with paragraph 17 of the Constitution of the Bar Standards Board, the Board Governance Manual was approved and adopted by a resolution of the Board dated: 1 December 2022**

**Defined terms**

1. In this Board Governance Manual, including all appendices, unless context requires otherwise:

“The Bar Council” means the Council of the General Council of the Bar of England and Wales;

“The Bar Standards Board” and “BSB” means the Board, any committees established under this Board Governance Manual, and any individual or group exercising the delegated powers of the Board;

“Board” means the Board of the BSB established under the BSB's Constitution;

“Board Member” means a member of the Board, and includes any person occupying the position of Board Member, by whatever name called;

“BSB staff” means the employees of the General Council of the Bar of England and Wales appointed by the BSB;

“BTAS” means the Bar Tribunal and Adjudication Services, an independent body set up by the Council of the Inns of Court to appoint and administer Disciplinary Tribunals and other relevant panels on behalf of the BSB;

“CEB” means the Centralised Examinations Board which is collectively those appointed by the BSB pursuant to the CEB's terms of reference;

“CEB Chair” means the Chair of the CEB;

“Centralised Examinations” means the assessments undertaken during Bar Training which are set on our behalf by the CEB and marked centrally;

“Chair” means the Chair of the Board;

“Code” means the UK Corporate Governance Code;

“Committee” means a committee established by the BSB;

“General Council of the Bar” and “GCB” means the General Council of the Bar of England and Wales and refers to the legal entity in entirety;

“IDB” means the Independent Decision-making Body which is collectively those appointed by the BSB pursuant to the IDB's terms of reference;

“IDB Chair” means the Chair of the IDB;

“IDP” means an Independent Decision-making Panel, a panel consisting of a minimum of three members of the Independent Decision-making Body to take relevant decisions as provided in the BSB Handbook;

“Internal Governance Rules” means the Internal Governance Rules made by the Legal Services Board;

“lay person” is as defined in paragraph 2(4) of Schedule 1 to the Legal Services Act 2007 and “lay Board Member” has a corresponding meaning;

“practising barrister” means a barrister holding a current practising certificate issued in accordance with the Practising Certificate Rules of the Bar Standards Board Handbook;

“regulatory arrangements” has the meaning given in section 21 of the Legal Services Act 2007;

“regulatory functions” has the meaning given in section 27(1) of the Legal Services Act 2007;

“representative functions” has the meaning given in section 27(2) of the Legal Services Act 2007;

“Secretary” means the secretary to the BSB with the duties performed by the Head of Governance and Corporate Services, or their nominee;

“Seven Principles of Public Life” means the principles, also known as the “Nolan Principles”, set out in the First Report of the Committee on Standards in Public Life (1995) and amended thereafter (2015) and referred to in Appendix 1;

“Task Completion Group” means an ad hoc group established by the BSB to complete a specific task or tasks; and

“Vice Chair” means the Vice Chair of the Board.

## Purpose

2. This Board Governance Manual, which outlines the Board’s responsibilities, authority, organisation and composition is aligned to UK best practice, the BSB Constitution and other relevant statutory and regulatory requirements.

## General

3. The BSB is committed to:
  - a. providing regulation of advocacy and expert legal advice in the public interest;
  - b. acting in a way that is compatible with the regulatory objectives, having regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principle appearing to it to represent best regulatory practice, as required by section 28 of the Legal Services Act 2007;
  - c. providing sufficient information to the GCB as is reasonably required for it to be assured of the BSB’s compliance with section 28 of the Legal Services Act 2007;
  - d. conducting its business in harmony with the Seven Principles of Public Life;
  - e. exercising its regulatory functions independently of the GCB as required by the Internal Governance Rules;
  - f. undertaking regulatory functions only and not undertaking any representative functions;
  - g. working cooperatively with the Inns of Court, the Council of the Inns of Court and BTAS; and conducting its business in accordance with its Statement of Governance Principles as published by the BSB and found in Appendix 2.



**Consultation on exercise of regulatory functions**

4. When proposing to make or alter the regulatory arrangements, and in other cases where it considers it appropriate, the BSB will normally consult, in the way it considers appropriate:
  - a. the regulated community (including its representative body and sections of the Bar); and
  - b. other interested parties (including for example, the public, other approved regulators, the judiciary, barristers' clerks, academic providers and other education providers) as it considers appropriate.
5. In relation to proposals to make or alter the regulatory arrangements, the BSB will normally allow a period of three months for consultation before a decision is taken.

**Saving for defects**

6. All acts done in good faith by the BSB shall (so far as is lawful), notwithstanding any defect, be as valid as if there were no such defect or error.

**Obligations to the GCB**

7. The BSB shall provide sufficient information to the GCB as is reasonably required for the GCB to be assured of the BSB's compliance with section 28 of the Legal Services Act 2007 and its obligations under the Internal Governance Rules as made by them from time to time.

**Board membership**

8. The Board shall consist of between eleven and fifteen Board Members (including a Chair and a Vice Chair) who shall be appointed to hold office in accordance with the Constitution and this Board Governance Manual, including the Appointments Policy.
9. The members of the Board shall consist of:
  - a. no fewer than five, and no more than seven, practising barristers who are not members of the Bar Council; and
  - b. no fewer than six, and no more than eight, lay persons.
10. The number of lay Board Members shall generally (other than when there is a casual vacancy) be one more than the number of barrister Board Members.
11. A member of the Bar Council or any of its representative committees may not hold office as Chair, Vice Chair or as a member of the Board.
12. The Chair shall be a lay person.

**Attendees**

13. The Board may at any time invite any person to attend its meetings in an advisory or consultative capacity.

**Quorum and Voting**

14. The quorum for a Board meeting is five Board Members of whom at least three must be lay Board Members and at least two must be barrister Board Members.
15. Either the Chair or the Vice Chair must be present at each meeting of the Board unless the Board resolves to dispense with that requirement for a particular meeting.

16. As required by the Internal Governance Rules, if a decision on regulatory functions is taken at a meeting of the Board where there is either not a lay majority or not a lay Chair (or both), this decision must be ratified at the next meeting when there is both a lay majority and a lay Chair.
17. If a vote is required by the Board, decisions must be made by simple majority. The Chair will have a casting vote in the event of a tie.
18. Board Members unable to attend a meeting of the Board may submit comments on a matter in advance of the meeting to be shared during discussion. A vote does not count in absentia. A vote will be counted from a Board Member attending remotely.

### Frequency

19. The Board should meet at least six times in a 12-month period and as otherwise required. A timetable of meetings and scheduled items for consideration will be agreed each year.
20. If the need arises, the Chair or Vice Chair may convene additional meetings, which may take place by telephone, videoconference or email if necessary.
21. Each Board meeting may be separated into public and private sessions.

### Notice and papers

22. Board meetings will be called by the Secretary at the request of any of its Board Members. The Secretary will ensure Members receive information and any papers in a timely manner to enable full and proper consideration to be given to the issues, and in any case at least four working days before a meeting. With the consent of the Chair or Vice Chair, shorter notice may be given.

### Minutes of meetings

23. The Secretary shall minute the proceedings and decisions of all Board meetings, including recording the names of those present and in attendance.

### Written resolutions

24. The Board may pass a resolution in writing provided that the written resolution has the consent of at least two-thirds of Board Members who would have been eligible to vote on the matter at a meeting. Consent may be given in any written form, including electronically, for example by email. The resolution must then be ratified at the next Board meeting and minuted as such.

### Delegation

25. The Board establishes the following committees:
  - a. The Governance, Risk and Audit Committee;
  - b. The Nomination Committee;
  - c. The Performance and Strategic Planning Committee; and
  - d. The Remuneration Committee.
26. Specific areas of delegation are set out in the terms of reference of such committees, although the ultimate responsibility for any decision on these matters will be held by the Board.

27. The Board establishes the IDB and the CEB (“Decision Making Bodies”) whose terms of reference are set out in the Appendices 8 and 9.
28. The Board shall delegate the day-to-day operation of the Bar Standards Board to the Director General. Subject to those matters reserved for the Board set out below, the Board may delegate in writing other functions to the Chair of the BSB, a committee, the Chair of a committee, the IDB, the CEB, the Director General, or any other body or person.
29. The Board shall establish and maintain a scheme of delegations setting out the terms of its delegation to the Director General and identifying other functions so delegated including details of the body or person (designated by office or name) to whom it is delegated, and the conditions (if any) on which it is delegated.

### **Matters reserved for the Board**

30. This section sets out the matters reserved for the Board and that should not be delegated. Matters outside of those set out in this section may be delegated for decision as detailed under paragraphs 25 - 29.
  - I. **Strategy and management**
    - a. Responsibility for the overall leadership of the BSB and setting the BSB’s values and standards.
    - b. Approval of the BSB’s strategic aims and objectives.
    - c. Approval of the annual operating and capital expenditure budgets and any material changes to them.
    - d. Review of performance in light of the BSB’s strategic aims and objectives, and ensuring that any necessary corrective action is taken.
  - II. **Financial items**
    - a. Approval of the annual business plan and budget.
    - b. Approval of unbudgeted capital or operating expenditures amounting to more than 10% of total annual budgeted expenditure.
    - c. Approval of policy on the setting of fees for applications made to the BSB and for fees to be charged by the Inns.
    - d. Decisions about policy on payment of fees or expenses to members of the Board or any BSB committee, sub-committee, panel, or other body.
  - III. **Internal controls**  
Ensuring maintenance of a sound system of internal controls and risk management.
  - IV. **Communication**  
Ensuring a satisfactory dialogue with key stakeholders.
  - V. **Board membership and other appointments**
    - a. Changes to the structure, size and composition of the Board.
    - b. Appointment and re-appointment of all Board Members in accordance with the Appointments Policy.
    - c. Removal from office of any Board Member at any time, subject to the law, the BSB Constitution and their service contract.
    - d. Appointment or removal of the Director General.
  - VI. **Remuneration**
    - a. Approving the remuneration and terms of engagement for:
      - i. the Director General;
      - ii. any other senior staff who are members of the Senior Management Team;

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- iii. the Chair, Vice Chair and other Board Members. No Board Member shall be involved in any decision as to their own remuneration outcome except that the Board will collectively approve standard remuneration and terms of engagement for Board Members; and
  - iv. all members of any BSB committee, sub-committee, panel, or other body.
- b. Approving the annual salary review for the BSB.
- VII. **Delegation of authority**  
Establishing committees, including their membership and chairs, and approving their terms of reference, and approving material changes thereto.
- VIII. **Corporate governance matters**
  - a. Annual review of its own performance, that of its committees and individual Board Members, and the division of responsibilities.
  - b. Review of the BSB's overall corporate governance arrangements.
  - c. Establish and maintain policies on declarations of interest and on offers and receipt of gifts or hospitality by Board Members and members of any BSB committee, sub-committee, or other decision-making body.
- IX. **Other**
  - a. Adoption and amendment of the Constitution and this Board Governance Manual;
  - b. Approval of policies as identified in the list of appendices below;
  - c. Making of rules forming part of the regulatory arrangements;
  - d. Making amendments or additions to the BSB Handbook (except for exempt changes);
  - e. Approval of the Inns Conduct Committee Rules;
  - f. This schedule of matters reserved for Board decisions.

**Resources**

- 31. The BSB will prepare an annual budget in accordance with the procedures agreed by the joint Finance Committee. The Performance and Strategic Planning Committee will scrutinise the BSB budget proposals before the Board considers and approves its budget.
- 32. The Board appoints its own people in accordance with BSB recruitment policies. Responsibility for appointment of people other than the Director General will be delegated by the Board to the Director General.

**Advisory Bodies**

- 33. The BSB may appoint a Task Completion Group on such terms as it considers appropriate. Task Completion Groups may act only in matters within their terms of reference, within the agreed budget and in accordance with the Statement of Governance Principles.
- 34. The BSB may establish an Advisory Pool of Experts (APEX) on such terms and conditions as it considers appropriate, which may include terms relating to performance, appointment and removal as a member.
- 35. A member of the Bar Council or any of its representative committees may not be appointed as a member of any advisory body. That includes but is not limited to Task Completion Groups or the Advisory Pool of Experts.
- 36. A Board Member or member of one of its committees or one of its other decision-making Bodies may not be appointed as a member of the Advisory Pool of Experts.

**Board Evaluation**

37. The Board will arrange a triennial evaluation of its own performance.

**Appendices**

Number	Document
1	Seven Principles of Public Life
2	Statement of Governance Principles
3	Statement of the Role of the Board
4	Governance, Risk and Audit Committee Terms of Reference
5	Nomination Committee Terms of Reference
6	Performance and Strategic Planning and Committee Terms of Reference
7	Remuneration Committee Terms of Reference
8	Independent Decision-making Body Terms of Reference
9	Centralised Examinations Board Terms of Reference
10	Board Code of Conduct (dated March 2019, to be reviewed)
11	Board Appointments Policy
12	Declaration of Interests Policy (to be reviewed January 2023)
13	Gifts and Hospitality Policy (to be reviewed January 2023)
14	Delegations of Authority

**Version control**

Version	Review type	Nature of changes	Board approval
1	First adoption	Manual and appendices adopted by the Board	1 December 2022



**Statement of the governance principles to be followed by the BSB**

**Decision-making**

- Decisions should be delegated to the lowest appropriate level, whilst also ensuring an appropriate quality of decision-making and management of risk;
- The Board must provide appropriate oversight and expects the executive to manage operations effectively and will hold the executive to account for its performance;
- Responsibility and accountability for decisions as well as operational implementation should be clearly recorded for everyone to see;
- Decisions must be made consistently (and to high standards based on relevant, up to date information) and must be transparent and justified by objective assessment of relevant facts, risks and criteria, and appropriately recorded.

**Structures and input**

- Committees exist either to provide independence in regulatory case work decision-making or to provide oversight of the BSB's work;
- All committee structures should be of the minimum size possible to maintain quality;
- We will seek expert input from a wide range of stakeholders into our work and particularly from consumers;
- We will consult widely whenever it is needed using business-appropriate, professional mechanisms.

**Independence and openness**

- All structures and processes must protect our regulatory independence, and comply with the Legal Services Board's Internal Governance Rules;
- Lay majority in decision-making underlines the BSB's independence. Where decisions are made at Board or Committee level, they should have both lay and barrister input;
- We shall operate in a transparent manner and with integrity;
- Our governance structure shall be established and then operate in such a way that we maintain integrity and legitimacy with the public and the profession.

**Effectiveness**

- Consideration of regulatory risk and the regulatory principles (that activity should be transparent, accountable, proportionate, consistent and targeted) must be reflected throughout our governance arrangements;
- Our governance structures should assist us to focus on the results we really want and ensure that we are proportionate in what we do;
- We seek to provide value for money to all those who pay for our activities;
- We seek to be as efficient and responsive as we can be, and to be adaptable to future change.

**Equality and Diversity**

- We observe our Equality Act 2010 obligations and we are committed to anti-discriminatory approaches in all that we do.





## **The role of the Board**

The Bar Standards Board regulates barristers called to the Bar in England and Wales in the public interest. It is led and governed by a Board made up of 15 people, some of whom are barristers and some of whom are non-barristers. It has a non-barrister majority and a non-barrister Chair. This statement sets out the Board's primary responsibilities.

### **Leadership**

The Board is responsible for leading the organisation. It sets the direction of the organisation, and approves policy and strategy aligned with the direction. It expects the Executive to contribute to the development of direction, strategy and policy but is ultimately responsible for the direction of the organisation. The Board provides support to the executive team at the BSB and leads through the application of its collective wisdom, experience and judgement. The Board represents the BSB with external stakeholders and accepts collective accountability for the organisation's work in regulating barristers in the public interest.

### **Culture**

The Board is responsible for shaping the BSB's organisational culture and values. It will lead by example and ensure that the culture and values are developed and adopted appropriately.

### **Oversight**

The Board monitors the work and performance of the organisation and holds the executive to account for its delegated responsibilities. Where necessary it will constructively challenge the executive. It aims to be sufficiently knowledgeable about the workings of the BSB to be answerable for its actions, yet able to stand back from the day-to-day management of the BSB in order to retain an objective, longer-term view.

### **Strategy**

The Board will ensure that strategy is designed to achieve the aims, objectives and mission it has agreed upon. The Board sets and approves the strategy for the organisation, taking account of the wider regulatory and risk landscape. When approving its strategy, it takes account of short-term pressures but also maintains sight of broader long-term trends.

### **Good Governance**

The Board is responsible for ensuring that sound and effective governance arrangements are in place so that the organisation can operate in accordance with the good governance principles and organisational values agreed by the Board.

Each Board member is expected to contribute personally to the successful implementation of the governance principles and the achievement of the BSB's aims, objectives and mission, and to accept collective responsibility for the Board operating in accordance with this role statement.



**Appendix [4]: Governance, Risk and Audit Committee Terms of Reference**

**Role**

1. The Governance, Risk and Audit Committee (the “Committee”) is a committee of the Board, from which it derives its authority and to which it reports on matters related to governance, risk management and internal control.

**Membership**

2. The Committee shall comprise of at least five members, which should include both lay persons and practising barristers. There must be a lay majority. Three Committee members must be Board Members, and there must be no fewer than two, but no more than three, members who are not Board Members.
3. A member of the Bar Council or any of its representative committees may not be a member of the Committee.
4. Appointments to the Committee are made by the Chair of the BSB in consultation with the Chair of the Committee (the “Committee Chair”). Appointments shall usually be coterminous with membership of the Board for members who are Board Members. For new members, who are not also Board Members, appointments shall be for a period of up to three years which may be extended for a further fixed period of up to three years.
5. The Chair of the BSB shall appoint the Committee Chair who shall be a lay person and Board Member. The Chair of the BSB shall not be the Committee Chair.
6. In the absence of the Committee Chair, or where the Committee Chair has declared an interest for a specific item, the remaining members present shall elect one of themselves to chair the meeting or item who would qualify under these terms of reference to be appointed to that position. If there is no such member present, the Committee shall not convene until such time as it can be constituted in accordance with these terms of reference.

**Secretary**

7. The Head of Governance and Corporate Services, or their nominee, shall act as the secretary to the Committee and will ensure that the Committee receives information and papers in a timely manner to enable full and proper consideration to be given to issues.

**Attendees**

8. Only members of the Committee have the right to attend Committee meetings. However, other individuals such as the Director General, senior management and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.
9. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of the Committee.

**Quorum**

10. The quorum for meetings of the Committee is three members.

### Frequency

11. The Committee shall normally meet at least four times a year at appropriate times in the annual cycle and otherwise as required. A timetable of meetings and scheduled items for consideration will be agreed each year.
12. Outside of the formal meeting programme, the Committee Chair will maintain a dialogue with key individuals involved in the BSB's governance.

### Notice of meetings

13. Meetings of the Committee shall be called by the secretary of the Committee at the request of the Committee Chair or any of its members.
14. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend at least four working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees, as appropriate, at the same time. With the consent of the Committee Chair, shorter notice may be given.

### Minutes of meetings

15. The secretary shall minute the proceedings and decisions of all Committee meetings, including recording the names of those present and in attendance.
16. Draft minutes of Committee meetings shall be circulated to all members of the Committee. Once approved, minutes should be circulated to all other Board Members and the Director General unless, exceptionally, it would be inappropriate to do so.

### Written resolutions

17. The Committee may pass a resolution in writing provided that the written resolution has the consent of at least two-thirds of members of the Committee who would have been eligible to vote on the matter at a meeting. Consent may be given in any written form, including electronically, for example by email. The resolution must then be ratified at the next Committee meeting and minuted as such.

### Responsibilities

18. Paying due regard to all relevant statutory, regulatory and best practice requirements, the Committee will carry out the following duties below for the BSB:
  - a) support the Board in achieving its strategic objectives by providing assurance on the effectiveness of governance structures, risk management processes and internal controls;
  - b) monitor and recommend to the Board action in respect of the effectiveness of the strategic arrangements for governance, risk management and internal audit;

### Governance and Assurance

- c) consider how governance structures and arrangements maintain the independence of the BSB's regulatory functions and support achievement of the BSB's strategic aims and regulatory objectives, and to make recommendations to the Board;

- d) recommend the BSB's Assurance Framework to the Board and to ensure its continued effectiveness through periodic review; and

### Risk

- e) advise the Board on overall risk tolerance and strategy and the principal and emerging risks the BSB is willing to take in order to achieve its long-term strategic objectives;
- f) make recommendations to the Board on its risk management strategy and processes, ~~including its Risk Framework, Risk Index and Risk Outlook;~~
- g) provide oversight and seek suitable assurance of the adequacy and effectiveness of risk management processes and procedures, monitoring compliance and challenging management on the adequacy of actions taken and planned;
- h) ~~provide assurance to the Board and advising on risks where it considers further action is required~~ advise the Board on the likelihood and the impact of principal risks materialising, and the management and mitigation of principal risks to reduce the likelihood of their incidence or their impact;
- i) provide assurance to the joint Audit Committee of the Bar Council and the BSB on the effective operation of the processes to manage risk;

### Controls and Internal Audit

- j) consider the effectiveness of the BSB's control systems and internal business processes;
  - k) periodically review the Business Continuity Plan;
  - l) ~~provide oversight of the internal audit function~~ approve the role and mandate of internal audit, monitor and review the effectiveness of its work;
  - m) appoint the Board's Internal Auditors and ~~agree~~ review and approve the annual internal audit plan to ensure it is aligned to the key risks of the business, including any audit reviews that the Board wishes to be conducted and any audit reviews of shared services that are jointly commissioned with the GCB and receive regular reports on work carried out;
  - n) ensure the internal auditor has direct access to the Chair of the BSB and to the Committee Chair, providing independence from the executive and accountability to the Committee;
  - o) monitor and provide assurance to the Board on the effectiveness of the management response to issues identified by audit activity;
- monitor the performance of the Internal Auditors;

### Compliance

- p) ~~periodically review BSB~~ receive assurance on the BSB's compliance with its statutory and regulatory obligations including Data Protection and Anti-Money Laundering Regulations;
- q) ~~to monitor the GCB's whistleblowing processes and the arrangements for investigating fraud, corruption and error to ensure they remain appropriate for the BSB~~ review the adequacy and security of the BSB's arrangements for its employees, contractors and external parties to raise concerns, in confidence, about possible wrongdoing. The Committee shall ensure that these arrangements allow proportionate and independent investigations of such matters and appropriate follow up action; and
- r) review the BSB's procedures for detecting fraud.

### Reporting responsibilities

19. The Committee Chair shall report to the Board on its proceedings at least annually on all matters within its duties and responsibilities, but more often if required.
20. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

### Other matters

21. The Committee shall:
  - a) ensure the periodic evaluation of the Committee's own performance is carried out;
  - b) have access to sufficient resources in order to carry out its duties;
  - c) oversee any investigation of activities which are within its terms of reference; and
  - d) at least annually, review these terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Board for approval.
22. To facilitate the Committee's discharge of its responsibilities in relation to particular items of business, if necessary, procure specialist ad-hoc advice at the expense of the BSB, ~~subject to that expense being agreed by the Board.~~

**Appendix [5]: Nomination Committee Terms of Reference****Purpose and role**

1. The Nominations Committee is established to advise the Board on fair, inclusive and transparent approaches to recruitment to the Board and senior executive roles and to oversee on behalf of the Board some aspects of the recruitment process. Specifically, the Committee will:
  - a) advise the Board on succession planning, including the range of experience on both the Board and the Senior Management Team (SMT);
  - b) ensure inclusivity and equality in the BSB's approach to filling senior appointments;
  - c) oversee, where relevant, the appointment of recruitment agencies in support of Board and SMT appointments;
  - d) advise on the composition of selection panels to undertake appointments.

**Membership of the Nomination Committee**

2. The Committee shall comprise between four and seven Board members, which should include both lay persons and practising barristers. ~~and there must be a lay majority.~~
3. A member of the Bar Council or any of its representative committees may not be a member of the Committee.
4. Appointments to the Committee are made by the Board on the recommendation of the Nomination Committee and shall usually be coterminous with membership of the Board.
5. The Board shall appoint the ~~Chair of the Committee~~ Chair, who is usually the Chair of the Board. The Chair of the Board shall not chair the Committee or take part in any discussion or decision relating to succession planning or to any appointment to that office. ~~In the absence of the Chair of the Committee, the remaining members present shall elect one of themselves to chair the meeting.~~
6. In the absence of the Committee Chair or where the Committee Chair has declared an interest for a specific item, the remaining members present shall elect one of themselves to chair the meeting or item.

**Secretary**

7. The Head of Governance and Corporate Services, or their nominee, shall act as the secretary to the Committee and will ensure that the Committee receives information and papers in a timely manner to enable full and proper consideration to be given to issues.

**Attendees**

8. Only members of the Committee have the right to attend Committee meetings. However, other individuals such as the Director General, ~~Director of People, Head of Equality and Access to Justice, and Head of Governance and Corporate Services~~ senior management and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.

9. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of the Committee.

#### Quorum

10. The quorum for meetings of the Committee is three members.

#### Frequency ~~of meetings~~

11. The Committee shall meet at least twice a year and otherwise as required.

#### Notice of meetings

12. Meetings of the Committee shall be called by the secretary of the Committee at the request of the Committee Chair or any of its members.
13. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend at least four working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees, as appropriate, at the same time. With the consent of the Committee Chair, shorter notice may be given.

#### Minutes of meetings

14. The secretary shall minute the proceedings and decisions of all Committee meetings, including recording the names of those present and in attendance.
15. Draft minutes of Committee meetings shall be circulated to all members of the Committee. Once approved, minutes should be circulated to all other Board Members and the Director General unless, exceptionally, it would be inappropriate to do so.

#### Written resolutions

16. The Committee may pass a resolution in writing provided that the written resolution has the consent of at least two-thirds of members of the Committee who would have been eligible to vote on the matter at a meeting. Consent may be given in any written form, including electronically, for example by email. The resolution must then be ratified at the next Committee meeting and minuted as such.

#### ~~Duties~~Responsibilities

17. Paying due regard to all relevant statutory, regulatory and best practice requirements, ~~The the~~ Committee ~~should will~~ carry out the duties below for the ~~Bar Standards Board~~BSB.

To make recommendations to the Board in the following:

- a) Regularly review the structure, size, diversity and composition (including the skills, knowledge, experience and diversity) of the Board and make recommendations to the Board with regard to any changes;
- b) Keep under review the leadership needs of the organisation, both executive and non-executive, with a view to ensuring the continued ability of the BSB to



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independently discharge its regulatory functions in the public interest;

- c) Review the results of the Board evaluation process that relate to the composition of the Board and succession planning;
- d) Recommend appointment of members to Appointments Panels for each recruitment as and when required;

To take decisions with the delegated authority of the Board in the following:

- e) Oversee the appointment of any external recruitment agency to support appointments to the Board and SMT, and with regard to an agencies approach to achieving inclusivity and equality;
- f) Ensure plans are in place for orderly succession to Board and senior management positions, taking into account the challenges and opportunities facing the BSB, and the skills and expertise needed on the Board in the future; and
- g) Before any appointment is made by an Appointments Panel, evaluate the balance of skills, knowledge, experience and diversity on the Board, and in the light of this evaluation, endorse a description of the role and capabilities required for a particular appointment and the time commitment expected.

At the invitation of the Chair, the Committee may also make recommendations concerning:

~~h) — Membership of the Governance, Risk and Audit Committee, the Strategic Planning and Resources Committee and the Remuneration Panel, in consultation with the Chairs of those Committees; and~~

~~i)h)~~ The reappointment of Board members for a second or further term, where the member has performed to the standard to be expected of the office held and it is in the interest of the BSB to renew the appointment.

### Reporting responsibilities

- 18. The ~~Chair of the Committee~~ Chair shall report to the Board ~~after each meeting on the nature and content of its discussion, recommendations and action to be taken on its proceedings at least annually on all matters within its duties and responsibilities, but more often if required.~~
- 19. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed, ~~and adequate time should be made available for Board discussion when necessary.~~

### Other matters

- 20. The Committee shall:
  - a) ensure the periodic evaluation of the Committee's own performance is carried out;
  - b) have access to sufficient resources in order to carry out its duties;

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- c) oversee any investigation of activities which are within its terms of reference; and
  - d) at least annually, review the ~~se Committee's T~~erms of ~~R~~reference to ensure it is operating effectively and to recommend any changes it considers necessary to the Board for approval.
21. To facilitate the Committee's discharge of its responsibilities in relation to particular items of business, if necessary, procure specialist ad-hoc advice at the expense of the BSB, ~~subject to that expense being agreed by the Board.~~

## **Appendix [6]: Performance and Strategic Planning Committee Terms of Reference**

### **Role**

1. The Performance and Strategic Planning Committee (the “Committee”) is a committee of the Board, from which it derives its authority and to which it reports on matters related to performance, resources and strategic planning.

### **Membership**

2. The Committee shall comprise of at least five Board Members, at least three of whom shall be lay persons.
3. A member of the Bar Council or any of its representative committees may not be a member of the Committee.
4. Appointments to the Committee are made by the Chair of the BSB in consultation with the Chair of the Committee (the “Committee Chair”). Appointments shall usually be coterminous with membership of the Board.
5. The Chair of the BSB shall appoint the Committee Chair who shall be a lay person and Board Member. The Chair of the BSB shall not be the Committee Chair.
6. In the absence of the Committee Chair, or where the Committee Chair has declared an interest for a specific item, the remaining members present shall elect one of themselves to chair the meeting or item.

### **Secretary**

7. The Head of Governance and Corporate Services, or their nominee, shall act as the secretary to the Committee and will ensure that the Committee receives information and papers in a timely manner to enable full and proper consideration to be given to issues.

### **Attendees**

8. Only members of the Committee have the right to attend Committee meetings. However, other individuals such as the Director General, senior management and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.
9. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of the Committee.

### **Quorum**

10. The quorum for meetings of the Committee is three members.

### **Frequency**

11. The Committee will normally meet at least four times a year at appropriate times in the annual cycle and otherwise as required. A timetable of meetings and scheduled items for consideration will be agreed each year.

### Notice of meetings

12. Meetings of the Committee shall be called by the secretary of the Committee at the request of the Chair of the Committee or any of its members.
13. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend at least four working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees, as appropriate, at the same time. With the consent of the Committee Chair, shorter notice may be given.

### Minutes of meetings

14. The secretary shall minute the proceedings and decisions of all committee meetings, including recording the names of those present and in attendance.
15. Draft minutes of Committee meetings shall be circulated to all members of the Committee. Once approved, minutes should be circulated to all other Board Members and the Director General unless, exceptionally, it would be inappropriate to do so.

### Written resolutions

16. The Committee may pass a resolution in writing provided that the written resolution has the consent of at least two-thirds of members of the Committee who would have been eligible to vote on the matter at a meeting. Consent may be given in any written form, including electronically, for example by email. The resolution must then be ratified at the next Committee meeting and minuted as such.

### Responsibilities

17. Paying due regard to all relevant statutory, regulatory and best practice requirements, the Committee will carry out the following duties below for the BSB:
  - a) to support the Board and the executive in delivering high performance and in formulating the overall strategy for the BSB, ~~with particular emphasis on horizon scanning, priorities, activities and outcomes, and, to these ends~~ scrutinise the BSB's three-year Strategic Plan and annual Business Plan before the Board's approval is sought;
  - b) to oversee performance against relevant service levels and financial performance against the objectives and targets set out in the Business Plan and to consider and agree any necessary corrective actions, including to the allocation of resources across the BSB, and, where relevant, make recommendations to the Board. ~~To consider whether proposed funding is adequate and properly and effectively allocated across the BSB;~~

### Performance

- c) to advise the Board on a balanced scorecard of measures to assess performance in the delivery of core regulatory operations and to oversee performance against those measures;
- d) to advise the Board on the resources, system investments and process improvements needed to deliver and maintain high performance;

**Strategy**

- e) to undertake horizon-scanning to identify opportunities for, and risks to, the Regulatory Objectives which should inform the BSB's future strategy;
- f) to oversee on behalf of the Board the development of the BSB's strategy to deliver the Regulatory Objectives and the annual Business Plans which deliver that strategy;

**Resources and budgets**

- g) to keep under review the resources and investments needed to deliver high performance and to implement the Board's agreed strategy and, to those ends, to scrutinise/decide:
  - g.1. the annual budget and revenue for recommendation to the Board, ~~in the context of the Strategic and Business Plans;~~
  - g.2. ~~requests of expenditure or virement between directorates of more than 10% of the BSB's annual budget;~~
  - g.3. approval of additional members of staff where that is within the approved budget;
- h) to agree how the BSB presents financial information to best effect and with appropriate transparency and comprehensiveness;
- i) to consider and agree the recommendations of the executive on the provision of corporate services, including where the executives proposes sharing any service with the GCB and that such sharing is in compliance with Rule 11 of the Internal Governance Rules on the basis that:
  - i.1. this will not undermine, and could not reasonably be seen to undermine, the separation of regulatory and representative functions;
  - i.2. this is effective and appropriate for the BSB to discharge its regulatory functions; and
  - i.3. this is necessary to be efficient and reasonably cost-effective.
- j) to ensure that the BSB undertakes planning activity to best effect and in a timely and consistent manner, as well as to provide assurance to the Board on the robustness of programme and project management processes. To support the Board and executive with finalising the BSB's Annual Report publications.

**Reporting responsibilities**

- 18. The Committee Chair shall report to the Board on its proceedings at least annually on all matters within its duties and responsibilities, but more often if required.
- 19. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

**Other matters**

- 20. The Committee shall:
  - a) ensure the periodic evaluation of the Committee's own performance is carried out;
  - b) have access to sufficient resources in order to carry out its duties;
  - c) oversee any investigation of activities which are within its terms of reference; and
  - d) at least annually, review these terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Board for approval.



## Appendix [7]: Remuneration Committee Terms of Reference

### Role

1. The Remuneration Committee (the “Committee”) is a committee of the Board, from which it derives its authority and to which it reports on matters related to remuneration policy.

### Membership

2. The Committee shall comprise of at least three members, two of whom must be lay persons and one of whom must be a practising barrister. There must be a lay majority. One lay person must not be a Board Member and must have knowledge of the Governance Code on Public Appointments, or similar skills and experience in recruitment to and remuneration for roles in public bodies, and this will usually be the Chair or Vice Chair of the Joint Finance Committee of the General Council of the Bar and the BSB. The Chair and one other member of the ~~Strategic Planning and Resources~~ Performance and Strategic Planning Committee shall be members of the Committee, providing that one of those members is a lay member and one of those members is a practising barrister.
3. A member of the Bar Council or any of its representative committees may not be a member of the Committee.
4. Appointments to the Committee are made by the Chair of the BSB in consultation with the Chair of the Committee (the “Committee Chair”). Appointments shall usually be coterminous with membership of the Board for members who are Board Members. For the member who is not also a Board Member, appointments shall be for a period of up to three years which may be extended for a further fixed period of up to three years.
5. The Chair of the ~~Strategic Planning and Resources~~ Performance and Strategic Planning Committee shall be the Committee Chair. The Chair of the BSB shall not be the Committee Chair.
6. Members may nominate an alternate who is entitled to take their place at any meeting which the member is unable to attend.
7. In the absence of the Committee Chair, or where the Committee Chair has declared an interest for a specific item, the remaining members present shall elect one of themselves to chair the meeting or item.

### Secretary

8. The Head of Governance and Corporate Services, or their nominee, shall act as the secretary to the Committee and will ensure that the Committee receives information and papers in a timely manner to enable full and proper consideration to be given to issues.

### Attendees

9. Only members of the Committee have the right to attend Committee meetings. However, other individuals such as the Director General, senior management and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.
10. The Chair and Vice Chair of the Board have the right to receive papers and to attend meetings of the Committee.

**Quorum**

11. The quorum for meetings of the Committee is three members, which may include alternates.

**Frequency**

12. The Committee will normally meet twice a year at an appropriate time in the annual cycle and otherwise as required. A timetable of meetings and scheduled items for consideration will be agreed each year.

**Notice of meetings**

13. Meetings of the Committee shall be called by the secretary of the Committee at the request of the Committee Chair or any of its members.
14. Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend at least four working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees, as appropriate, at the same time. With the consent of the Committee Chair, shorter notice may be given.

**Minutes of meetings**

15. The secretary shall minute the proceedings and decisions of all Committee meetings, including recording the names of those present and in attendance.
16. Draft minutes of Committee meetings shall be circulated to all members of the Committee. Once approved, minutes should be circulated to all other Board Members and the Director General unless, exceptionally, it would be inappropriate to do so.

**Written resolutions**

17. The Committee may pass a resolution in writing provided that the written resolution has the consent of at least two-thirds of members of the Committee who would have been eligible to vote on the matter at a meeting. Consent may be given in any written form, including electronically, for example by email. The resolution must then be ratified at the next Committee meeting and minuted as such.

**Responsibilities**

18. Paying due regard to all relevant statutory, regulatory and best practice requirements, the Committee will carry out the following duties below for the BSB:
- a) set parameters for and make recommendations to the Board on the remuneration and terms of engagement of:
    - i. the Director General;
    - ii. any other senior staff who are members of the Senior Management Teams outside the general staff banding structure;
    - iii. the Chair, Vice Chair and ~~members of the BSB~~ other Board Members;
    - iv. all members of any BSB committee, sub-committee, panel, or other body;
  - b) advise the Board on its policies impacting on pay and benefits;



- c) consider workforce remuneration and related policies, to support the BSB in attracting and retaining an appropriately skilled and experienced executive staff;
- d) ~~advise the Board Chair on the recruitment of the Director General of the BSB;~~
- e) advise the Board on the annual ~~performance related~~ salary review for the BSB, having regard to any advice on affordability;
- f) consider appeals by the Director General and staff who report directly to the Director General against decisions relating to dismissal, disciplinary sanction, grievance, promotion or demotion. Appeals will be heard by the independent lay member of the Panel;
- g) ensure remuneration policies and practices support strategy and promote long term sustainable success, with Senior Management Team remuneration aligned to the BSB's purpose and values, clearly linked to the successful delivery of the BSB's long term strategy and that enable the use of discretion to override formulaic outcomes and to recover and/or withhold sums under appropriate specified circumstances;
- h) consider performance reports for the Director General and members of the Senior Management Team on an annual basis to ensure that contribution to strategic delivery is in line with requirements;
- i) when determining remuneration policy and practices, consider the UK Corporate Governance Code requirements for clarity, simplicity, risk mitigation, predictability, proportionality and alignment to culture;
- j) in determining remuneration policy, the Committee should take into account all other factors which it deems necessary, including relevant legal and regulatory requirements, the provisions and recommendations of the UK Corporate Governance Code and associated guidance. The objective of such policy shall be to attract, retain and motivate people of the quality required to run the BSB successfully without paying more than is necessary;
- k) review the ongoing appropriateness and relevance of the remuneration policy; and
- l) approve the design of any performance related pay schemes.

### Reporting responsibilities

- 19. The Committee Chair shall report to the Board on its proceedings at least annually on all matters within its duties and responsibilities, but more often if required.
- 20. The Committee shall make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

### Other matters

- 21. The Committee shall:
  - a) ensure the periodic evaluation of the Committee's own performance is carried out;
  - b) have access to sufficient resources in order to carry out its duties;
  - c) oversee any investigation of activities which are within its terms of reference; and
  - d) at least annually, review these terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Board for approval.



**Appendix [8]: Independent Decision-making Body Terms of Reference****Role**

1. The Independent Decision-making Body (the “IDB”) is a decision-making body of the Board, from which it derives its authority to provide members for Independent Decision-making Panels (IDPs) which carry out the functions and exercise the powers given to IDPs pursuant to the Enforcement Decision Regulations under Part 5, ~~Section A~~ of the BSB Handbook, and to consider applications for review made under Part 3 C6, Part 3 E11, or Part 4 ~~B10B4~~, or reviews of decisions taken under Part 1 A4, of the BSB Handbook, ~~reporting to the Board on its work as and when required~~

**Membership**

2. The IDB shall be comprised of a Chair and at least one Vice Chair, and sufficient numbers of lay persons and practising barrister members to enable it to carry out its duties expeditiously. The IDB Chair can be either a lay or practising barrister member.
3. A member of the Board, or the Bar Council or any of its representative committees, may not be a member of the IDB.
4. The IDB Chair may carry out the functions and exercise the powers given to the IDB Chair under Part 5 of the BSB Handbook.
5. Appointments to the IDB shall be made in accordance with the Appointments Policy.

**Proceedings and composition**

6. The proceedings and composition of IDPs are as prescribed in Schedule 1 to Part 5A of the BSB Handbook (the Enforcement Decision Regulations).

**Reporting responsibilities**

7. The IDB Chair will report to the Board on its proceedings at least annually on all matters within its duties and responsibilities, but more often if required.



## Appendix [9]: Centralised Examinations Board Terms of Reference

### Role

1. The Centralised Examinations Board (the “CEB”) is a decision-making body of the Board, from which it derives its authority and to which it reports on matters related to the centralised examinations.

### Membership

2. The CEB shall comprise of at least five members, including:
  - a. The CEB Chair;
  - b. for each subject area, a Chief Examiner and sufficient numbers of Assistant Chief Examiners to enable the CEB to carry out its functions expeditiously; and
  - c. the BSB’s Director of Regulatory Operations; and
  - d. an Independent Psychometrician appointed by the Board.
3. The Chief Examiners for each subject area and the BSB’s Director of Regulatory Operations may nominate an alternate to take their place at any meeting which that member is unable to attend.
4. A member of the Board, or the Bar Council or any of its representative committees, may not be a member of the CEB.
5. Appointments to the CEB shall be made in accordance with the Appointments Policy.
6. In the absence of the CEB Chair, or where the CEB Chair has declared an interest for a specific item, the Director General has the discretion to nominate a Chief Examiner to chair the meeting or item where that Chief Examiner’s subject area is not under consideration.

### Attendees

7. Only members of the CEB have the right to attend CEB meetings. However, other individuals such as the Director General, senior management and external advisers may be invited to attend for all or part of any meeting, as and when appropriate.

### Quorum

8. ~~Five members of the CEB will constitute a~~ A quorum, ~~which~~ must include the CEB Chair, a Chief Examiner for each relevant subject area (or alternates), and the BSB’s Director of Regulatory Operations (or alternate).

### Frequency

9. The CEB will meet to form a Final Examination Board after each sitting of the centralised examinations taken during the vocational and pupillage components of Bar Training. The CEB meets at least six times each year for this purpose. Other meetings are scheduled as required.

### Notice of meetings

10. Meetings of the CEB will be scheduled by the BSB to ensure the timely exercise of the functions of the CEB. CEB members will receive information and any papers in a timely manner to enable full and proper consideration to be given to the issues.

### Minutes of meetings

11. Minutes shall be recorded for the proceedings and decisions of all CEB meetings, including recording the names of those present and in attendance.

### Responsibilities

12. Paying due regard to all relevant statutory, regulatory and best practice requirements, the CEB will carry out the following duties below for the BSB:
  - a. to oversee all aspects of testing by assessment, examination or otherwise of students, transferring qualified lawyers and pupil barristers in the subject areas centrally assessed by the BSB ([Professional](#) Ethics, Civil Litigation, and Criminal Litigation); and
  - b. to convene, and regulate the procedure of, the Final Examination Board and Subject Examination Boards, as the CEB considers necessary to enable it to discharge any of its functions.

### Reporting responsibilities

13. The CEB Chair will report to the Board on its proceedings at least annually on all matters within its duties and responsibilities, but more often if required.
14. The CEB will make whatever recommendations to the Board it deems appropriate on any area within its remit where action or improvement is needed.

## Governance, Risk and Audit Committee (GRA) - Annual Report 2022

### Introduction

1. The Governance, Risk and Audit Committee (GRA) is a standing committee of the Board with oversight of governance; risk management; risk strategies; key organisational controls; internal business processes; the Assurance Framework; and the work of the Internal Auditors.
2. The Committee meets regularly throughout the year and has convened five times since the last report.
3. The Committee currently has a membership of four, comprising two Board members: Stephen Thornton (Chair) and Andrew Mitchell KC; and two independent members: Liz Butler and Stephen Hickey. Elizabeth Prochaska was also a member until she stood down from the Board and Committee in June 2022. A vacancy for a third Board member remains and following appointments to the Board in December 2022 will be occupied.

### Executive Summary

4. This report summarises the key aspects of the Committee's work over the past year. The report also provides the Board and public with assurance that the risk, governance, audit, and control processes within the organisation are robust and appropriate.
5. GRA publishes an annual report on its activities during the previous year. GRA has continued to focus on processes to identify, evaluate and mitigate corporate and regulatory risks and the iterative development of an integrated approach to reporting of corporate and regulatory risks. It has challenged the Executive on its evaluation of those risks which pose the greatest threat to the regulatory objectives or to delivery of the BSB's core regulatory functions.
6. Our internal auditors, Crowe U.K. LLP, remain under contract until March 2023. This term of appointment was to continue alignment with the business and reporting year. Crowe continue to be invaluable in providing independent assurance of core BSB processes and in identifying areas for development and improvement, with a focus on four specific areas during the last 12 months.

### Risk Management

7. Risk is a fundamental element of the BSB's approach to regulation. At a strategic level, understanding regulatory risks assists the Board to identify emerging risks within the legal services market and helps the BSB to support the profession to respond positively to mitigate those risks, ensure that the public interest is protected, and the needs of consumers are met. At an operational level, the Committee applies risk to determine the best deployment of resources and to identify challenges to the delivery of our core regulatory functions and continuing projects.
8. A core function of GRA is to provide the Board with assurance on the oversight of risk. This includes the identification, management, and control of both regulatory and corporate risks. It does this through holding the Executive to account for its risk management strategies and in challenging the evidence and rationale for regulatory risks that are identified. The Committee oversaw a programme of regulatory deep dives previously agreed in 2021. Over the last year, the Committee has focussed on the following regulatory risks:
  - i. Assuring professional competence and standards of service
  - ii. Practice Management in Chambers
  - iii. Failure in training
  - iv. Diversity of the Profession
  - v. Access to Justice.

9. The Committee scrutinised and approved comprehensive updates to the corporate risk register with new, revised, and restructured risks. An area of focus has been on the management of the organisation's cyber security framework, following the two cyber-attacks and given the impact of the April 2022 attack. In addition, there has been a continued focus on the need for the organisation to prioritise the well-being of its people. It is worth noting that, organisational resourcing, resilience and service standards have also all been key priorities since the last report.
10. The Committee scrutinised consolidated risk reports which included any risks that might arise when implementing and delivering BSB Programmes. The committee received assurance that adequate measures were in place to mitigate the risk regarding people resources threatening delivery of BSB programmes.

### Assurance and Internal Audit

11. The BSB continues to follow the [four lines of defence model of assurance](#)<sup>1</sup> which ensures a holistic approach to risk management with controls at various levels of a process. The Committee oversaw and approved a revised risk assurance framework.
12. Crowe U.K. LLP completed the following audits since the last report:
  - (a) Core Regulatory Work
  - (b) MyBar
  - (c) Examinations (follow-up based on August 2020 centralised examinations)
  - (d) Human Resources
13. The Committee monitors the progress and impact of agreed management actions arising from audits at every meeting. In addition, there is an agreed schedule of independent reviews by the Internal Auditors to ensure that management actions have been completed.

### Independent Review of the Bar Council and Bar Standards Board's cyber security – Grant Thornton

14. The Committee received the review of cyber security provided by Grant Thornton, initiated by the Executive following the April 2022 cyber-attack. The report highlighted the need for a dedicated resource for security and continuous monitoring to mitigate consequences.
15. The Committee was advised of selected recommendations in the report which were to be immediately actioned. The key findings were scrutinised by the Committee, and a detailed plan of action has been implemented to provide assurance that our response is effective, proportionate and on track.

### Eve v Bar Standards Board – Lessons learned exercise.

16. Following the outcome of the appeal<sup>2</sup> to the High Court made by Mr Eve against the BSB the Committee conducted a 'lessons learned' exercise. The High Court upheld Mr Eve's appeal and the Judge was critical of the BSB's handling of his case.

<sup>1</sup> ICAEW - <https://www.icaew.com/technical/audit-and-assurance/assurance/what-is-assurance/assurance-glossary/four-lines-of-defence>

<sup>2</sup> <https://www.casemine.com/judgement/uk/60fe47292c94e01c40ac7fcc>



17. The Committee engaged with the Executive to focus on the three main areas of criticism:
  - I. The absence of clear reasons by the BSB Executive for refusing Mr Eve's application in July 2019
  - II. The absence for clear reasons by the BSB's Independent Decision-making Body (IDB) for refusing Mr Eve's application for review and for upholding therefore the BSB Executive's decision
  - III. The approach the BSB took to the handling of the legal claim brought by Mr Eve to the High Court.
18. The Committee endorsed an action plan to address the areas of criticism, including a comprehensive review of the authorisation decision making framework, and an external expert has since been engaged to collaborate with the Executive on this project.

### Other Business

19. The Committee oversees the BSB's compliance with its obligations under the Money Laundering Regulations. It reviewed the annual report which provided the Committee with the required assurance that measures were in place to reduce the risk of money laundering and terrorist funding occurring at the Bar.
20. The Committee reviewed the annual report on complaints about service provided by the BSB itself (as distinct from complaints about the regulated profession). The report illustrated there was an increased number in the previous year, and the substantial majority of these were related to the online examinations. There was a decrease in the number of service complaints in 2021, with a reversion to usual patterns. The Committee was assured that 80% of these were resolved within the agreed timeframe.
21. The Committee received its annual report from the [Independent Reviewer](#)<sup>3</sup>, to provide assurance that BSB processes and procedures are being properly followed. The Independent Reviewer found that cases and authorisations continue to be well handled in accordance with the prescribed criteria and guidelines.
22. The report concluded that cases are being assessed and investigated in line with relevant regulations and policies. The Independent reviewer did not identify any problems with the structure or operation of the relevant systems nor any individual cases that raise fundamental concerns.

### Forward View

23. As well as the routine business defined by its terms of reference, over the coming year the Committee will continue work refining processes for its oversight of risk and mechanisms for considering the interdependencies between risks to the regulatory objectives and those to the organisation. A cycle of deep dives is planned once again, enabling GRA to fulfil its function as part of the fourth line of defence in our Assurance Framework, and to give assurance to the Board.
24. The next GRA Annual Report will be presented to the Board in November 2023.

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<sup>3</sup> The role of the [Independent Reviewers](https://www.barstandardsboard.org.uk/for-the-public/reporting-concerns/our-independent-reviewer.html) is to assist us in ensuring that our regulatory decisions remain of a high quality, that we are effective and fair, and that all the correct processes and procedures have been followed properly (<https://www.barstandardsboard.org.uk/for-the-public/reporting-concerns/our-independent-reviewer.html>)



**Chair's Report on Visits and External Meetings from late September – November 2022****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:****Introductory meetings**

5 October	Attended the BSB Townhall meeting
7 October	Lunch with Sir Peter Gross, Gray's Inn
18 October	Lunch with Mark Fenhalls KC
18 October	Meeting with Nick Vineall KC
14 November	Meeting with Anna Bradley, Paul Philip (SRA)
18 November	Meeting with Iain Christie, Chair IDB
28 November	Lunch & meeting with Bar Mutual
29 November	Meeting with Matthew Coffey (Ofsted) – Regulators Network
1 December	Lunch With Christa Richmond – Middle Temple
1 December	Meeting with Rohan Sivanandan, Vice-Chair IDB
1 December	Attended BSB Board meeting

**1-2-1 Meetings**

4 October	Meeting with Gisela Abbam
5 October	Meeting re ICLR Panel preparation – KS/MN
17 November	Meeting with Irena Sabic

**Meetings**

27 September	Meeting with Stephen Thornton, Emir Feisal and Steven Haines
4 October	Attended first Roundtable – Good Practice - meeting in London
11 October	Attended Board away-day
12 October	Attended Roundtable – Good Practice - meeting in Manchester
19 October	Shortlisting for BSB Barrister Board member
31 October	Planning Meeting with LSB with Emir Feisal, Dr H Phillips, M Hill, M Neale for BSB/LSB B2B
3 November	Attended SPR Committee
12 November	Attended Bar Council AGM
14 November	Attended Information meeting with Director General
15 November	Attended second Roundtable – Good Practice – in London
17 November	Attended Information meeting with Director General
17 November	BSB/LSB Board to Board meeting
21 November	Meeting with Director General and Vice-Chair
22 November	Attended Remuneration Panel meeting as an observer
23 November	Interviews for BSB Barrister Board member
25 November	Attended Board briefing meeting
28 November	Attended ISAG SAB meeting
29 November	Attended Roundtable – Good Practice – Bristol
30 November	Pre-Board meeting with Bar Council

**Events**

19 October	Criminal Case Review Commission Event
24 November	Attended Gray's Inn Call Ceremony and Dinner

## Schedule of Board Meetings Jan 2023 – Mar 2024

### Status

1. For noting and approval.

### Executive Summary

2. The paper sets out proposals for the 2023/24 cycle of Board meetings. This increases the number of Board meetings to six with one Away Day. We previously held just five main meetings per annum but by adopting this pattern we should be able to spread the workload more evenly throughout the year.

### Recommendation

3. The Board is asked to **agree** the schedule.

### Detail

4. The proposed dates for Bar Standards Board meetings (Jan 2023 – Mar 2024) are:
  - Thurs 26 January 2023 – already diarised
  - Thurs 30 March 2023 – already diarised. *Note: this will now be preceded at 3pm by a Board to Board meeting with the Office of Legal Complaints (OLC)*
  - Thurs 25 May 2023
  - Thurs 6 July 2023 (Board Away Day)
  - Thurs 27 July 2023
  - Thurs 5 October 2023
  - Thurs 30 November 2023
  - Thurs 25 January 2024
  - Thurs 21 March 2024
5. We hope to continue providing a programme of seminars for Board Members throughout the year and will typically hold these immediately prior to the main meeting. March 2023 will be an exception, however, given the Board to Board meeting with the OLC.

**Rebecca Forbes**  
**Head of Governance and Corporate Services**

**November 2022**