

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Enforcement

Statistical Report 2016/17

Professional Conduct Committee
Professional Conduct Department

Table of Contents

Introduction	3
Casework	4
<i>New pre-complaints logged</i>	4
<i>Categories of new pre-complaints</i>	5
<i>Aspects of converted self-reports of serious misconduct</i>	6
<i>Aspects of converted reports of serious misconduct by another</i>	7
<i>New complaints opened</i>	8
<i>Sources of new complaints</i>	9
<i>Aspects of new external complaints</i>	10
<i>Aspects of new external complaints continued</i>	11
<i>Aspects of new internal complaints</i>	12
<i>Aspects of new internal complaints continued</i>	13
<i>Aspects of new internal complaints continued</i>	14
<i>Caseload statistics</i>	15
<i>Decision sources for closed complaints</i>	16
<i>Stages at which external complaints were closed</i>	17
<i>Stages at which internal complaints were closed</i>	17
<i>Final outcomes of external complaints</i>	18
<i>Final outcomes of internal complaints</i>	19
<i>Sentences imposed in complaints upheld at disciplinary action</i>	20
<i>Charges upheld at disciplinary action</i>	21
<i>Charges upheld at disciplinary action continued</i>	22
Performance	23
Key Performance Indicator	23
<i>Key Performance Indicator</i>	23
<i>First OPI: Initial assessment</i>	23
<i>Second OPI: Investigation of external complaints</i>	24
<i>Third OPI: Investigation of internal complaints</i>	24
<i>Information for comparison with other regulators</i>	25

Introduction

- 1.1 The Bar Standards Board publishes a Handbook with which barristers comply. Where there is evidence that the Handbook has been breached, the BSB will consider what action may be necessary by way of enforcement or otherwise. The work of enforcing the Handbook is carried out by the Professional Conduct Committee and Professional Conduct Department of the BSB. We investigate complaints and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 1.2 This Statistical Report accompanies the Enforcement Annual Report for 2016/17 and presents the statistical data collected between 1 April 2016 and 31 March 2017 concerning the new complaints that we received or raised, the caseload that we worked on throughout the year and the outcomes of this work. This data was extracted from our Case Management System (the 'Enforcement database') in April 2017. Where possible, figures for 2015/16 are also provided for comparison.

Casework

- 2.1 The following tables provide statistical data for the 960 pre-complaints logged in 2016/17, 366 complaints we opened in 2016/17 and the 425 complaints we concluded. They also provide information on our overall caseload throughout the year. All figures represent numbers of complaints. For further analysis please refer to the Enforcement Annual Report for 2016/17 which is published on the BSB website.

Table 1 New pre-complaints logged

Year	Quarter	Pre-complaint cases	Converted cases
2014/15	1	233	55
2014/15	2	199	35
2014/15	3	184	38
2014/15	4	298	78
Total		914	206
2015/16	1	226	58
2015/16	2	206	45
2015/16	3	194	52
2015/16	4	256	48
Total		882	203
2016/17	1	259	62
2016/17	2	211	40
2016/17	3	199	38
2016/17	4	291	51
Total		960	191

Table 2**Categories of new pre-complaints**

Category	2015/16	Converted	2016/17	Converted
Bankruptcy(3rd Party)	5	0	0	0
Bankruptcy(barrister)	21	0	18	0
Fitness to Practise	1	0	2	1
General Enquiry	67	1	50	0
Interim suspension	0	0	4	0
Litigation cases	2	0	2	0
Other	87	2	179	8
Potential Complaint	353	72	340	82
Potential Complaint (Internal)	102	53	83	25
Potential Complaint (Referral)	112	34	104	38
Potential Complaint (Self-report of serious misconduct)	30	14	77	25
Potential Complaint (Report of serious misconduct by another)	50	26	33	12
Pretending to be a barrister	1	0	1	0
Refer to LeO	51	1	67	0
Total	882	203	960	191

Table 3**Aspects of converted self-reports of serious misconduct**

Aspect	2015/16	2016/17
Failure to obtain practising certificate	2	7
Criminal conviction other than drink driving	2	5
Criminal conviction for drink driving	3	4
Failing to renew practising certificate	1	4
Other	0	4
Failing to preserve client confidentiality	0	3
Dishonesty in professional or personal life	0	2
Rudeness/misbehaviour out of Court	1	1
Civil debt (including clerks) or bankruptcy	0	1
Disciplinary finding by another body	1	0
Harassment	1	0
Conducting litigation when not authorised to do so	1	0
Performing reserved legal activities when not authorised to do so	1	0
Practising without a practising certificate	0	0
Not acting in the client's best interest	1	0

Table 4**Aspects of converted reports of serious misconduct by another**

Aspect	2015/16	2016/17
Dishonesty in professional or personal life	1	3
Failing to act independently	0	1
Failing to comply with regulations on witnesses	0	1
Failing to provide or disclose information	1	1
Inappropriate communications with clients or others	2	1
Inappropriate drafting of documents	0	1
Inappropriate use of position as a barrister	0	1
Holding out as a barrister when not authorised to do so	0	1
Other breach of Public Access Rules	0	1
Handling client money	0	1
Inappropriately remaining in or withdrawing from instructions	1	1
Making serious allegations without proper foundation	0	1
Criminal conviction other than drink driving	1	0
Dishonesty/discreditable conduct	4	0
False declarations on call/in CVs and other official documents	1	0
Inappropriate handling of information or evidence	2	0
Conducting litigation when not authorised to do so	1	0
Performing reserved legal activities when not authorised to do so	1	0
Practising without a practising certificate	1	0
Failing to report criminal charges or convictions	1	0
Failing to follow instructions	1	0
Incompetence	1	0
Other breach of regulations on instructions	2	0
Making misleading/false/unfounded submissions or statements	1	0
Other misleading the court	2	0
Fee dispute	1	0
Other	1	0

Table 5 New complaints opened

Year	Quarter	External Complaints	Internal Complaints	Total Complaints
2015/16	1	77	49	126
2015/16	2	84	29	113
2015/16	3	62	36	98
2015/16	4	77	20	97
Total		300	134	434
2016/17	1	66	44	110
2016/17	2	55	18	73
2016/17	3	42	21	63
2016/17	4	91	29	120
Total		254	112	366

Notes

External: Complaints received from sources external to the BSB (such as members of the public or solicitors).

Internal: Complaints raised where the BSB itself identifies a potential breach of the Handbook.

Table 6

Sources of new complaints

Complainant Categories	2015/16	2016/17
Bar Standards Board	136	114
Barrister	16	17
Chambers Staff	0	1
Civil Litigant	63	53
Criminal - defendant	24	8
Criminal - defendant prisoner	5	6
Criminal - non-defendant	10	7
Family - ancillary relief	11	10
Family - child proceedings	16	23
Family - other	5	6
Immigration client	2	0
Legal Ombudsman	45	8
Legal Services Commission	0	2
Non-Professional	9	6
Other	45	75
Public Access complaint	1	0
Solicitor(s)	21	9
Solicitor(s) - on behalf of lay client	1	5
Tribunal - asylum and immigration	1	0
Tribunal - employment	7	4
Tribunal - other	7	12
Unknown	9	0
Total	434	366

Table 7**Aspects of new external complaints**

Aspect	2015/16	2016/17
Misleading the Court	51	48
Making misleading/false/unfounded submissions or statements	32	41
Other	13	36
Inappropriate communications with clients or others	12	18
Inappropriate handling of information or evidence	7	17
Dishonesty in professional or personal life	25	15
Rudeness/misbehaviour out of court	23	13
Conflict of interest	6	10
Failing to act independently	4	9
Inappropriate drafting of documents	6	9
Misleading a person or client	7	8
Failing to provide or disclose information	8	7
Other abuse of role as an advocate	2	7
Conducting litigation when not authorised to do so	2	6
Discrimination	15	6
Failing to take steps to ensure court has all relevant information	4	6
Holding out as a barrister when not authorised to do so	6	6
Inappropriate use of position as a barrister	8	6
Other diminishing trust and confidence	5	6
Failing to comply with a court order	5	5
Drafting statements/documents not properly arguable	0	5
Providing an incompetent standard of work/service	3	5
Rudeness/misbehaviour in Court	7	5
Failing to co-operate with the Legal Ombudsman	53	4
Inappropriate content on social media	2	4
Making unsupported allegations of fraud/false assertions	1	4
Wasting the court's time	0	4
Failing to follow instructions	2	3
Not acting in the client's best interests	5	3
Breach of confidentiality	4	3
Conspiracy/Collusion	12	3
Drafting statements/documents not supported by client or instructions	0	3
Private dispute	2	3
Failing to administer practice properly/efficiently	6	2
Failing to comply with regulations on witnesses	0	2
Failing to use own professional judgement	0	2
Fee dispute	4	2
Inappropriate cross-examination	2	2
Making inappropriate media comments	1	2
Making statements designed to insult/annoy/humiliate	13	2

Table 7**Aspects of new external complaints continued**

Aspect	2015/16	2016/17
Victimisation	1	2
Failing to preserve client confidentiality	1	1
Accepting instructions when not authorised to do so	2	1
Acting outside role as employed barrister in non-authorised body	0	1
Acting outside role as self-employed barrister	2	1
Failing to acknowledge complaints promptly	2	1
Failing to keep records	0	1
Failing to submit documents on time	5	1
Failure to obtain practising certificate	0	1
Inappropriate contact with witnesses/making payments to witnesses	1	1
Making serious allegations without proper foundation	3	1
Other breach of regulations on instructions	2	1
Performing reserved legal activities when not authorised to do so	1	1
Undue pressure to accept settlement/plead guilty	5	1
Breach of public access rules	2	0
Aspects cannot be discerned	3	0
Calling witnesses to give evidence that is misleading/false	1	0
Civil debt (including clerks) or bankruptcy	2	0
Dishonesty/discreditable conduct	29	0
Encouraging witness to give misleading or untruthful evidence	1	0
Failing to comply with legal or other non-regulatory obligations	1	0
Failing to comply with sentence of a tribunal	2	0
Failing to notify clients of right to complain/Ombudsman	1	0
Failing to properly advise client	2	0
Failure to comply with the complaints handling regulations	2	0
Failure to manage practise competently	1	0
Handling client money	1	0
Harassment	2	0
Holding out as an entity when not authorised to do so	1	0
Inappropriately accepting instructions	1	0
Inappropriately remaining in or withdrawing from instructions	2	0
Late/unnecessary return of brief	1	0
Management of lay client's affairs	1	0
Providing legal services when not authorised to do so	1	0
Rehearsing, practising or coaching witnesses	1	0
Undue delay in dealing with papers	2	0

Notes

“Aspects” describe the allegations made in a complaint. A complaint may have multiple different aspects.

Table 8**Aspects of new internal complaints**

Aspect	2015/16	2016/17
Failing to renew practising certificate	5	28
Failure to obtain practising certificate	5	26
Performing reserved legal activities when not authorised to do so	6	8
Criminal conviction other than drink driving	15	7
Holding out as a barrister when not authorised to do so	3	7
Other	2	6
Dishonesty in professional or personal life	7	5
Inappropriate communications with clients or others	4	5
Criminal conviction for drink driving	5	4
Failing to pay BMIF premiums	0	4
Other diminishing trust and confidence	1	4
Other misleading the court	1	4
Disciplinary finding by another body	3	3
Failing to take steps to ensure court has all relevant information	0	3
Inappropriate use of position as a barrister	2	3
Making misleading/false/unfounded submissions or statements	3	3
Not acting in the client's best interests	1	3
Breach of public access rules	3	2
Accepting instructions when not authorised to do so	1	2
Failing to comply with sentence of a tribunal	1	2
Failing to follow instructions	0	2
Failing to keep proper records	0	2
Failing to preserve client confidentiality	0	2
Failing to provide information promptly to the BSB	15	2
Failing to report criminal charges or convictions	3	2
Failing to report disciplinary action by another regulator	1	2
Failing to report own serious misconduct	1	2
Inappropriate drafting of documents	2	2
Misleading a person or client	2	2
Other failing to comply with authorisation to practise regulations	1	2
Rudeness/misbehaviour in Court	4	2
Rudeness/misbehaviour out of court	2	2
Conducting litigation when not authorised to do so	3	1
Acting outside role as self-employed barrister	1	1
Civil debt (including clerks) or bankruptcy	1	1
Discrimination	1	1
Drafting statements/documents not supported by client or instructions	0	1

Table 8**Aspects of new internal complaints continued**

Aspect	2015/16	2016/17
Failing to act independently	1	1
Failing to administer practice properly/efficiently	0	1
Failing to comply with a court order	1	1
Failing to comply with regulations on witnesses	0	1
Failing to define the terms on which instructions are accepted	0	1
Failing to inform client that cannot carry out instructions	0	1
Failing to keep records	0	1
Failing to notify client of required information	0	1
Failing to notify clients of right to complain/Ombudsman	0	1
Failing to provide or disclose information	2	1
Fee dispute	0	1
Handling client money	0	1
Harassment	2	1
Inappropriately remaining in or withdrawing from instructions	1	1
Late compliance with CPD requirements	4	1
Making statements designed to insult/annoy/humiliate	0	1
Making unsupported allegations of fraud/false assertions	0	1
Other abuse of role as an advocate	0	1
Practising without 'qualified person(s)'	0	1
Wasting the court's time	0	1
Acting outside role as employed barrister	1	0
Acting uninstructed	2	0
Breach of confidentiality	4	0
Breach of practice rules	4	0
Conflict of interest	1	0
Dishonesty/discreditable conduct	8	0
Failing to administer chambers/entity competently/efficiently	1	0
Failing to comply with legal or other non-regulatory obligations	1	0
Failing to report a bankruptcy or other associated proceedings	1	0
Failing to submit documents on time	1	0
Failure to complete Authorisation to Practice	14	0
Failure to comply with a Court Order	1	0
Failure to comply with a sentence of a tribunal/panel	2	0
Failure to report criminal charges or convictions	6	0
False declarations on call/in CVs and other official documents	2	0
Holding out as an entity when not authorised to do so	2	0
Inappropriate content on social media	1	0

Table 8**Aspects of new internal complaints continued**

Aspect	2015/16	2016/17
Inappropriate handling of information or evidence	2	0
Inappropriately accepting instructions	1	0
Incompetence	3	0
Making inappropriate media comments	1	0
Misleading the Court	3	0
Not acting in the client's best interest	1	0
Other breach of regulations on instructions	3	0
Practising without a practising certificate	15	0
Providing an incompetent standard of work/service	3	0
Undue pressure to accept settlement/plead guilty	1	0

Notes

"Aspects" describe the allegations made in a complaint. A complaint may have multiple different aspects.

Table 9**Caseload statistics**

Year	Quarter	Caseload at End of Quarter	Live Complaints	On Hold or Adjudged Complaints
2015/16	1	270	185	85
2015/16	2	289	206	83
2015/16	3	262	207	55
2015/16	4	245	200	45
2016/17	1	253	200	53
2016/17	2	218	162	56
2016/17	3	201	132	69
2016/17	4	198	167	31

Notes

Caseload at End of Quarter: The total number of cases that were either live or on hold/adjudged at the end of each quarter.

Live Complaints: The number of complaints that were live at the end of each quarter.

On Hold or Adjudged Complaints: The number of complaints that were on hold or adjudged at the end of each quarter.

Table 10 Decision sources for closed complaints

Decision Source	2015/16	2016/17
Chambers Referral	6	0
Determination by Consent	11	8
Directions Judge	2	1
Disciplinary Tribunal	43	94
Experienced Members	5	2
Office Holders	6	5
Other	19	11
PCD Staff	336	270
Professional Conduct Committee	87	34
Total	515	425

Table 11 Stages at which external complaints were closed

Closure Stage	2015/16	2016/17
LeO Pre-investigation	3	7
Referred to Chambers	0	0
Preliminary Assessment	199	185
Pre-Investigation	1	0
Closed without investigation	203	192
Investigation	49	14
Professional Conduct Committee	49	24
Closed after investigation	98	38
Determination by Consent	1	1
Disciplinary Tribunal	28	60
Closed after referral to disciplinary action	29	61

Table 12 Stages at which internal complaints were closed

Closure Stage	2015/16	2016/17
Preliminary Assessment	2	1
Pre-Investigation	1	1
Closed without investigation	1	1
Investigation	79	61
Professional Conduct Committee	58	12
Closed after investigation	137	73
Determination by Consent	10	8
Disciplinary Tribunal	28	41
Closed after referral to disciplinary action	38	49

Table 13 Final outcomes of external complaints

Decision Source	2015/16	2016/17
Closed without investigation	205	189
Closed/Rejected	3	5
Withdrawn	5	0
Dismissed	187	163
Other	5	17
Ongoing	5	4
Closed after investigation	98	36
Withdrawn	23	0
Dismissed	68	32
Administrative Warning/Fine	7	2
Other	0	2
Determination by Consent	1	1
Dismissed	0	1
Proved/Upheld	1	0
Disciplinary Tribunal	28	60
Closed/Rejected	2	0
Withdrawn/Struck Out/No Evidence Offered	4	46
Dismissed	3	3
Proved/Upheld	14	11
Other	4	0
Ongoing	1	0
Other	0	3
Proved/Upheld	0	3
Total	332	289

Notes

The outcomes listed are the final outcomes of complaints. Where complaints were reopened, only the final outcome is listed, not any interim decisions.

Table 14 Final outcomes of internal complaints

Decision Source	2015/16	2016/17
Closed without investigation	3	2
Withdrawn	3	1
Other	0	1
Closed after investigation	131	72
Closed/Rejected	1	0
Withdrawn	11	3
Dismissed	49	33
Administrative Warning/Fine	70	36
Determination by Consent	10	8
Proved/Upheld	9	8
Ongoing	1	0
Disciplinary Tribunal	28	41
Withdrawn/Struck Out/No Evidence Offered	3	6
Dismissed	0	2
Proved/Upheld	21	33
Other	3	0
Ongoing	1	0
Total	172	123

Notes

The outcomes listed are the final outcomes of complaints. Where complaints were reopened, only the final outcome is listed, not any interim decisions.

Table 15**Sentences imposed in complaints upheld at disciplinary action**

Sentence	2015/16	2016/17
Advised as to Future Conduct	1	1
Attend on nominated person for advice	0	1
Complete CPD	1	0
Disbarred	8	20
Fined	19	25
No Further Action	1	0
No separate penalty	1	9
Prohibited from Accepting Public Access Instructions	4	1
Reprimanded	10	16
Suspended	11	5
Total Complaints Upheld	40	49

Notes

The figures listed are numbers of complaints rather than the number of barristers who were subject to these sanctions. Individual barristers may have had multiple complaints against them.

Nineteen individual barristers were disbarred in 2016/17.

Seven individual barristers were disbarred in 2015/16.

Table 16

Charges upheld at disciplinary action

Charge	2015/16	2016/17
Other Breach of duties	12	26
301(a)(i) Being dishonest or otherwise discreditable	6	9
rC64.1 Failing to provide information to BSB promptly	5	7
rC8 Undermining honesty, integrity or independence in public eyes	2	7
301(a)(iii) Acting in a manner likely to bring prof into disrepute	6	6
rC65.2 Failing to report a criminal conviction/caution	2	5
401(a)(iii) Failure to comply with the Public Access Rules	1	3
701(a) Failing to act courteously/competently or wasting court	0	3
905(b) Failing to report criminal charges or convictions	2	3
403 Failing to administer practice properly	0	2
rC120 Public Access - failure to comply with requirements	0	2
rC65.1 Failing to report a criminal charge	0	2
rC65.7 Failing to report serious misconduct	0	2
rC9.1 Misleading or attempting to mislead anyone	1	2
301 General	1	1
301(a)(ii) Acting in a manner prejudicial to admin of justice	0	1
401(a) Acting uninstructed	2	1
404 HoC - failing to administer chambers properly	5	1
701(f) Failing to keep adeq records to support fees charged	0	1
905(d) Failing to respond promptly to a complaint	0	1
905(f) Failing to comply with a sentence of a tribunal	0	1
Other Failure to comply with other provision of Code	1	1
rC125 Public Access - failing to provide proper notification of terms of engagement	0	1
rC15.5 Failing to protect client confidentiality	0	1
rC25 Failing to return instructions in line with requirements	0	1

Table 16

Charges upheld at disciplinary action continued

Charge	2015/16	2016/17
rC3.1 Misleading or attempting to mislead the court	1	1
rC6.1 Making untrue or misleading submissions, representations or suggesting facts to witnesses	0	1
rC87 Failure to ensure proper administration of practice	0	1
rC89 Failure to ensure proper administration of chambers	4	1
rS24 Inappropriate supply of legal services	2	1
rS6 Carrying out reserved legal activity without authorisation	2	1
202(b) Failure to complete CPD	1	0
202(c) Failure to renew practising certificate	2	0
302 Knowingly or recklessly misleading the court	1	0
307 Giving/receipt of gifts/payments/handling client money	1	0
902 False declarations on Call or subsequently	1	0
905(c) Failing to report promptly bankruptcy proceedings	1	0
rC64.2 Failing to comply with a decision or sentence of BSB/BTAS panel	2	0
rC65 Failing to report (general)	2	0
rC71 Failing to provide reasonable assistance to LeO	2	0
rC73 Handling client money	1	0
rS8 Practising without a practising certificate	2	0

Notes

The figures listed are numbers of cases upheld following a Disciplinary Tribunal or the Determination by Consent procedure. Within a case the barrister may have breached the same paragraph of the Code of Conduct multiple times.

Performance

Key Performance Indicator

- 3.1 Our Key Performance Indicator (KPI) tracks how long it takes us to come to a decision on whether or not to refer complaints for disciplinary action. Here the results are accompanied by our three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. For further analysis please refer to the Enforcement Annual Report for 2016/17 published on the BSB website.

Table 17 Key Performance Indicator

<i>The percentage of complaints concluded or referred to disciplinary action within service standards</i>	2015/16	2016/17	Target
Annual Performance	75.8%	80.1%	80%
First Quarter	64.5%	89.5%	80%
Second Quarter	84.5%	77.8%	80%
Third Quarter	72.8%	78.4%	80%
Fourth Quarter	88.8%	73.4%	80%

Table 18 First OPI: Initial assessment

<i>The percentage of complaints concluded or referred to investigation within 8 weeks</i>	2015/16	2016/17	Target
Annual Performance	72.8%	84.6%	80%
First Quarter	56.4%	89.3%	80%
Second Quarter	85.7%	79.2%	80%
Third Quarter	61.8%	96.2%	80%
Fourth Quarter	87.7%	72.3%	80%

Table 19 Second OPI: Investigation of external complaints

<i>The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation</i>	2015/16	2016/17	Target
Annual Performance	81.5%	70.4%	80%
First Quarter	72.2%	91.3%	80%
Second Quarter	68.8%	68.8%	80%
Third Quarter	82.9%	25.0%	80%
Fourth Quarter	94.9%	100.0%	80%

Table 20 Third OPI: Investigation of internal complaints

<i>The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation</i>	2015/16	2016/17	Target
Annual Performance	79.2%	76.4%	80%
First Quarter	70.1%	76.5%	80%
Second Quarter	93.9%	78.0%	80%
Third Quarter	75.0%	71.4%	80%
Fourth Quarter	100.0%	77.3%	80%

3.2 Table 17 provides figures for the percentage of complaints concluded or referred to disciplinary action within 6 months. We monitor this figure to enable us to benchmark ourselves against other regulators – many of which publish figures at the 6 month mark.

Table 21 Information for comparison with other regulators

<i>The percentage of complaints concluded or referred to disciplinary action within 6 months</i>	2015/16	2016/17	Target
Annual Performance	80.4%	84.3%	N/A
First Quarter	76.5%	87.2%	N/A
Second Quarter	70.1%	81.5%	N/A
Third Quarter	85.1%	82.4%	N/A
Fourth Quarter	90.7%	87.5%	N/A

Notes

Targets are not set as the six month limit does not reflect our complaints processes.