

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Enforcement

Statistical Report 2018/19

Professional Conduct Committee
Professional Conduct Department

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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 2018/19 and presents the statistical data collected between 1 April 2018 and 31 March 2019 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 2019. Where possible, figures for 2017/18 are also provided for comparison.

Casework

- 2.1 The following tables provide statistical data for the 1,087 pre-complaints logged in 2018/19, 479 complaints we opened in 2018/19 and the 489 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 2018/19 which is published on the BSB website.

Table 1 New pre-complaints logged

Year	Quarter	Pre-complaint cases	Converted cases
2016/17	1	259	63
2016/17	2	211	45
2016/17	3	199	43
2016/17	4	294	81
Total		963	232
2017/18	1	277	93
2017/18	2	232	55
2017/18	3	245	50
2017/18	4	272	59
Total		1026	257
2018/19	1	276	64
2018/19	2	264	61
2018/19	3	222	53
2018/19	4	325	48
Total		1087	226

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

Category	2017/18	Converted	2018/19	Converted
Bankruptcy(barrister)	22	0	12	0
Fitness to Practise	4	1	5	0
General Enquiry	91	0	93	1
Own Motion	0	0	1	1
Other	134	0	42	0
Potential Complaint	389	103	453	115
Potential Complaint (Internal)	73	29	84	17
Potential Complaint (Referral)	123	67	181	47
Potential Complaint (Self-report of serious misconduct)	57	32	54	27
Potential Complaint (Report of serious misconduct by another)	76	25	46	17
Pretending to be a barrister	1	0	0	0
Refer to LeO	56	0	116	1
Total	1026	257	1087	226

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

Aspect	2017/18	2018/19
Criminal conviction other than drink driving	2	8
Failing to renew practising certificate	8	7
Failure to obtain practising certificate	9	6
Criminal conviction for drink driving	6	2
Failing to preserve client confidentiality	4	2
Breach of confidentiality	2	2
Making misleading/false/unfounded submissions or statements	0	2
Accepting instructions when not authorised to do so	1	1
Disciplinary finding by another body	0	1
Conducting litigation when not authorised to do so	0	1
Inappropriately accepting instructions	0	1
Rudeness/misbehaviour out of court	2	0
Performing reserved legal activities when not authorised to do so	1	0
Other diminishing trust and confidence	1	0
Illegal fee arrangements	1	0
Paying or receiving referral fees	1	0
Misleading clients about the nature/scope/terms of work	1	0
Civil debt (including clerks) or bankruptcy	1	0

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

Aspect	2017/18	2018/19
Rudeness/misbehaviour in court	3	2
Holding out as a barrister when not authorised to do so	1	2
Other diminishing trust and confidence	0	2
Dishonesty in professional or personal life	4	1
Making misleading/false/unfounded submissions or statements	4	1
Conducting litigation when not authorised to do so	1	1
Not acting in the client's best interests	1	1
Breach of confidentiality	0	1
Misleading a person or client	0	1
Criminal conviction other than drink driving	0	1
Inappropriate content on social media	0	1
Wasting the court's time	0	1
Failing to keep proper records	0	1
Criminal conviction for drink driving	0	1
Failing to act appropriately towards a pupil	0	1
Making inappropriate media comments	0	1
Failure to obtain practising certificate	0	1
Performing reserved legal activities when not authorised to do so	1	0
Other misleading the court	1	0
Making serious allegations without proper foundation	1	0
Making unsupported allegations of fraud/false assertions	1	0
Failing to consider if best interests served by other representation	1	0
Failing to report a bankruptcy or other associated proceedings	1	0
Illegal fee arrangements	1	0
Failing to provide or disclose information	1	0
Failing to preserve client confidentiality	1	0
Other breach of regulations on instructions	1	0
Handling client money	1	0

Table 5**New complaints opened**

Year	Quarter	External Complaints	Internal Complaints	Total Complaints
2017/18	1	71	53	124
2017/18	2	85	32	117
2017/18	3	60	40	100
2017/18	4	88	46	134
Total		304	171	475
2018/19	1	81	32	113
2018/19	2	89	34	123
2018/19	3	96	24	120
2018/19	4	93	30	123
Total		359	120	479

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	2017/18	2018/19
Bar Standards Board	139	108
Barrister	73	26
Civil Litigant	103	128
Criminal - defendant	7	11
Criminal - defendant prisoner	5	4
Criminal - non-defendant	7	8
Family - ancillary relief	8	22
Family - child proceedings	40	42
Family - other	14	7
Head of Chambers	1	2
Immigration client	0	1
Judge (or official on his behalf)	1	0
Legal Ombudsman	8	6
Non-Professional	11	23
Other	17	34
Public Access complaint	0	1
Solicitor(s)	9	18
Solicitor(s) - on behalf of lay client	6	4
Tribunal – asylum and immigration	0	1
Tribunal - employment	14	23
Tribunal - other	12	10
Total	475	479

Table 7 Aspects of new external complaints

Aspect	2017/18	2018/19
Making misleading/false/unfounded submissions or statements	98	117
Other diminishing trust and confidence	15	59
Dishonesty in professional or personal life	15	43
Inappropriate use of position as a barrister	19	37
Rudeness/misbehaviour out of court	26	35
Rudeness/misbehaviour in court	27	32
Misleading a person or client	10	29
Inappropriate drafting of documents	9	27
Other misleading the court	50	24
Inappropriate communications with clients or others	45	20
Conspiracy/collusion	23	17
Discrimination	18	16
Failing to provide or disclose information	10	15
Inappropriate handling of information or evidence	13	14
Failing to act independently	2	14
Breach of confidentiality	16	14
Failing to take steps to ensure court has all relevant information	4	13
Making unsupported allegations of fraud/false assertions	4	13
Other abuse of role as an advocate	17	13
Making serious allegations without proper foundation	9	13
Wasting the court's time	2	12
Conflict of interest	11	10
Holding out as a barrister when not authorised to do so	8	10
Not acting in the client's best interests	6	8
Failing to submit documents on time	7	8
Failure to comply with the complaints handling regulations	1	8
Making statements designed to insult/annoy/humiliate	11	8
Other	24	7
Handling client money	0	7
Inappropriate content on social media	7	6
Failing to co-operate with the Legal Ombudsman	5	6
Inappropriate cross-examination	2	6
Failing to comply with a court order	8	6
Private dispute	4	5
Inappropriately accepting instructions	1	5
Providing an incompetent standard of work/service	14	4
Failing to properly advise client	6	4

Table 7 Aspects of new external complaints continued

Aspect	2017/18	2018/19
Inappropriate contact with witnesses/making payments to witnesses	1	4
Conducting litigation when not authorised to do so	5	4
Civil debt (including clerks) or bankruptcy	3	4
Failing to preserve client confidentiality	5	3
Calling witnesses to give evidence that is misleading/false	2	3
Failing to acknowledge complaints promptly	2	3
Illegal fee arrangements	0	3
Rehearsing, practising or coaching witnesses	1	3
Harassment	8	2
Fee dispute	4	2
Failing to follow instructions	3	2
Drafting statements/documents not properly arguable	1	2
Encouraging witness to give misleading or untruthful evidence	2	2
Making inappropriate media comments	0	2
Other breach of Public Access Rules	3	2
Paying or receiving referral fees	1	2
Accepting instructions when not authorised to do so	5	1
Failing to administer chambers/entity competently/efficiently	2	1
Failing to keep proper records	1	1
Failing to administer practice properly/efficiently	1	1
Failing to keep proper records	1	1
Inappropriately remaining in or withdrawing from instructions	0	1
Criminal conviction other than drink driving	0	1
Acting outside role as self-employed barrister	0	1
Money laundering	0	1
Providing legal services when not authorised to do so	5	0
Performing reserved legal activities when not authorised to do so	4	0
Failing to consider if best interests served by other representation	3	0
Victimisation	3	0
Undue pressure to accept settlement/plead guilty	2	0
Making allegations not put in cross examination	1	0

Table 7 Aspects of new external complaints continued

Aspect	2017/18	2018/19
Misleading clients about the nature/scope/terms of work	2	0
Other breach of regulations on instructions	1	0
Drafting statements/documents not supported by client or instructions	1	0
Failing to report a bankruptcy or other associated proceedings	1	0
Failing to report disciplinary action by another regulator	1	0
Failing to notify client of required information	0	0
Failing to keep records	1	0
Failing to comply with legal or other non-regulatory obligations	1	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	2017/18	2018/19
Failing to renew practising certificate	43	39
Holding out as a barrister when not authorised to do so	7	38
Failure to obtain practising certificate	30	16
Criminal conviction other than drink driving	6	16
Making misleading/false/unfounded submissions or statements	7	8
Other diminishing trust and confidence	5	8
Performing reserved legal activities when not authorised to do so	9	6
Conducting litigation when not authorised to do so	2	5
Not acting in the client's best interests	5	4
Failing to report criminal charges or convictions	1	4
Dishonesty in professional or personal life	10	3
Disciplinary finding by another body	8	3
Failing to preserve client confidentiality	6	3
Criminal conviction for drink driving	6	3
Failing to report disciplinary action by another regulator	6	3
Providing an incompetent standard of work/service	5	3
Wasting the court's time	1	3
Rudeness/misbehaviour in court	5	2
Breach of confidentiality	4	2
Failing to provide or disclose information	3	2
Other abuse of role as an advocate	2	2
Failing to administer practice properly/efficiently	2	2
Inappropriate content on social media	1	2
Failing to take steps to ensure court has all relevant information	1	2
Failing to comply with a court order	0	2
Accepting instructions when not authorised to do so	1	2
Misleading a person or client	4	1
Rudeness/misbehaviour out of court	3	1
Inappropriately accepting instructions	2	1
Failing to keep proper records	2	1
Failing to keep proper records	2	1
Failing to properly advise client	1	1
Conflict of interest	1	1
Drafting statements/documents not properly arguable	0	1
Failing to act appropriately towards a pupil	0	1
Making inappropriate media comments	0	1
Failing to report own serious misconduct	0	1

Table 8 Aspects of new internal complaints continued

Aspect	2017/18	2018/19
Inappropriate reports of serious misconduct	0	1
Practising without 'qualified person(s)'	0	1
Failing to notify a change of practising address	0	1
Other failing to comply with authorisation to practise regulations	9	0
Failing to pay BMIF premiums	6	0
Providing legal services when not authorised to do so	5	0
Failing to consider if best interests served by other representation	4	0
Misleading clients about the nature/scope/terms of work	3	0
Illegal fee arrangements	3	0
Inappropriate communications with clients or others	2	0
Failing to comply with sentence of a tribunal	3	0
Failing to provide information promptly to the BSB	3	0
Failing to report a bankruptcy or other associated proceedings	3	0
Other	0	0
Other misleading the court	2	0
Civil debt (including clerks) or bankruptcy	2	0
Failing to comply with legal or other non-regulatory obligations	2	0
Making unsupported allegations of fraud/false assertions	2	0
Paying or receiving referral fees	2	0
Making serious allegations without proper foundation	1	0
Making statements designed to insult/annoy/humiliate	1	0
Failing to use own professional judgement	1	0
Other breach of regulations on instructions	1	0
Inappropriate contact with witnesses/making payments to witnesses	1	0
Inappropriate handling of information or evidence	1	0
Inappropriate use of position as a barrister	1	0

Table 8 Aspects of new internal complaints continued

Aspect	2017/18	2018/19
Failing to comply with FTP/Interim Suspension	1	0
Holding out as an entity when not authorised to do so	1	0
Other breach of Public Access Rules	1	0
Handling client money	1	0
Unregistered barrister failing to provide information to client	1	0
Undertaking reserved legal activities when not authorised to do so	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
2017/18	1	199	173	26
2017/18	2	176	132	44
2017/18	3	175	134	41
2017/18	4	203	171	32
2018/19	1	193	158	35
2018/19	2	189	154	35
2018/19	3	205	163	42
2018/19	4	197	161	36

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	2017/18	2018/19
Determination by Consent	8	9
Directions Judge	2	1
Disciplinary Tribunal	36	25
Experienced Members	1	3
Office Holders	0	4
Other	19	11
PCD Staff	378	397
Professional Conduct Committee	31	39
Total	475	489

Table 11**Stages at which external complaints were closed**

Closure Stage	2017/18	2018/19
LeO Pre-investigation	1	1
Referred to Chambers	0	0
Preliminary Assessment	259	316
Pre-Investigation	2	2
Closed without investigation	262	319
Investigation	24	14
Professional Conduct Committee	17	27
Closed after investigation	41	41
Disciplinary Tribunal	13	14
Closed after referral to disciplinary action	13	14

Table 12 Stages at which internal complaints were closed

Closure Stage	2017/18	2018/19
Preliminary Assessment	3	0
Pre-Investigation	7	3
Closed without investigation	10	3
Investigation	104	77
Professional Conduct Committee	10	15
Closed after investigation	114	92
Determination by Consent	8	9
Disciplinary Tribunal	26	13
Closed after referral to disciplinary action	34	22

Table 13**Final outcomes of external complaints**

Decision Source	2017/18	2018/19
Closed without investigation	257	315
Closed/Rejected	4	13
Withdrawn	1	0
Dismissed	248	300
Other	2	2
Ongoing	2	0
Closed after investigation	40	40
Withdrawn	0	0
Dismissed	33	30
Administrative Warning/Fine	6	10
Other	1	0
Determination by Consent	0	0
Disciplinary Tribunal	13	14
Closed/Rejected	0	0
Withdrawn/Struck Out/No Evidence Offered	1	2
Dismissed	3	3
Proved/Upheld	9	9
Other	1	0
Closed/Rejected	1	0
Proved/Upheld	0	0
Total	312	369

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	2017/18	2018/19
Closed without investigation	10	3
Withdrawn	8	3
Dismissed	2	0
Other	0	0
Closed after investigation	112	92
Closed/Rejected	0	1
Withdrawn	8	5
Dismissed	39	39
Administrative Warning/Fine	65	47
Determination by Consent	8	9
Proved/Upheld	8	9
Disciplinary Tribunal	25	13
Withdrawn/Struck Out/No Evidence Offered	3	0
Dismissed	1	1
Proved/Upheld	21	12
Total	155	117

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	2017/18	2018/19
Advised as to Future Conduct	0	1
Attend on nominated person for advice	0	0
Disbarred	7	5
Fined	18	20
No Further Action	2	0
No separate penalty	3	1
Other	1	1
Prohibited from Accepting Public Access Instructions	1	2
Reprimanded	16	16
Suspended	9	4
Total Complaints Upheld	39	30

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.

Four individual barristers were disbarred in 2018/19.

Six individual barristers were disbarred in 2017/18.

Table 16

Charges upheld at disciplinary action

Charge	2017/18	2018/19
Other Breach of duties	12	11
rC8 Undermining honesty, integrity or independence in public eyes	11	9
rC64.1 Failing to provide information to BSB promptly	5	4
301(a)(iii) Acting in a manner likely to bring prof into disrepute		3
rC65.2 Failing to report a criminal conviction/caution	2	2
rC3.1 Misleading or attempting to mislead the court	1	2
rS8 Practising without a practising certificate	2	2
301(a)(i) Being dishonest or otherwise discreditable	2	2
rS24 Inappropriate supply of legal services	2	2
rC120 Public Access - failure to comply with requirements	2	2
rC15.1 Failing to promote best interests of client	2	2
rC88 Failure to keep adequate records of fees	0	1
rC73 Handling client money	0	1
rS6 Carrying out reserved legal activity without authorisation	2	1
rC3.3 Wasting court time	0	1
rC125 Public Access - failing to provide proper notification of terms of engagement	1	1
rC10 Payment or receipt of referral fees	0	1
701(a) Failing to act courteously/competently or wasting court	0	1
401(a)(iii) Failure to comply with the Public Access Rules	0	1
307 Giving/receipt of gifts/payments/handling client money	1	1
rC65.3 Failure to report regulatory or disciplinary action by another regulator	0	1
rC17 Failing to advise client re different representation	0	1
301 General	3	0
rS20 Inappropriate practise by a barrister of less than three years standing	1	0
rC71 Failing to provide reasonable assistance to LeO	1	0

Table 16**Charges upheld at disciplinary action continued**

Charge	2017/18	2018/19
rC121.1 Public Access Rules - non-compliance with requirements for under three years' standing	1	0
rC15.5 Failing to protect client confidentiality	1	0
403 Failing to administer practice properly	1	0
rC65.7 Failing to report serious misconduct	1	0
rC87 Failure to ensure proper administration of practice	1	0
404 HoC - failing to administer chambers properly	1	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 2018/19 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>	2017/18	2018/19	Target
Annual Performance	84.1%	81.6%	80%
First Quarter	76.7%	83.2%	80%
Second Quarter	85.0%	85.1%	80%
Third Quarter	84.0%	81.5%	80%
Fourth Quarter	91.2%	76.8%	80%

Table 18 First OPI: Initial assessment

<i>The percentage of complaints concluded or referred to investigation within 8 weeks</i>	2017/18	2018/19	Target
Annual Performance	83.9%	89.6%	80%
First Quarter	77.9%	92.8%	80%
Second Quarter	78.6%	94.4%	80%
Third Quarter	89.4%	95.5%	80%
Fourth Quarter	92.9%	80.0%	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>	2017/18	2018/19	Target
Annual Performance	70.0%	49.1%	80%
First Quarter	66.7%	40.0%	80%
Second Quarter	80.0%	60.0%	80%
Third Quarter	66.7%	44.4%	80%
Fourth Quarter	62.5%	54.5%	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>	2017/18	2018/19	Target
Annual Performance	85.9%	72.3%	80%
First Quarter	88.6%	82.9%	80%
Second Quarter	88.1%	67.9%	80%
Third Quarter	76.2%	68.4%	80%
Fourth Quarter	86.7%	66.7%	80%

3.2 Table 21 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>	2017/18	2018/19	Target
Annual Performance	87.6%	84.6%	N/A
First Quarter	90.3%	82.4%	N/A
Second Quarter	88.0%	82.6%	N/A
Third Quarter	83.0%	83.3%	N/A
Fourth Quarter	89.0%	89.6%	N/A

Notes

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