

**Bar Standards Board
Independent Observer's Annual Report
May 2011 - May 2012**

Introduction

My role as the Bar Standard Board's (BSB's) Independent Observer is to provide independent assurance to the Governance, Risk & Audit Committee and ultimately the Board that the BSB's complaints and disciplinary system is operating in line with its aims and objectives (Annex 1).

Scope of Work

During the year I spent 55 days observing the Bar Standards Board's handling of complaints and disciplinary matters.

In summary, my activities included

- reviewing all relevant policy and procedural documentation
- observing the Professional Conduct Department at work including attending an internal management meeting and departmental meeting
- observing the Professional Conduct Committee including reviewing all Committee papers during the period and attending Committee meetings and two Lay Members' meetings
- observing a half day training session for new Committee members
- reviewing samples of cases on the complaints database, with reference to the case files and discussion with PCD staff
- observing four Disciplinary Tribunals
- reviewing Professional Conduct Department quarterly and annual performance reports

Limit on Assurance

My observations are made as a lay independent observer and my opinions are necessarily limited by the sample size of cases reviewed.

The BSB's Professional Conduct Department prepares and publishes detailed quarterly and annual performance reports (available on the BSB's website). I have reviewed these and they have informed my areas of focus but I have not sought to audit or otherwise verify the data.

I have not sought to examine the merit of individual decisions, but rather the application of policies and procedures in the context of the BSB's overarching aims and objectives.

Areas of focus

Over the course of this year, I have focused on the following

- public facing information relating to complaints and disciplinary processes
- internal policies and procedures
- the referral of cases by the Legal Ombudsman (now responsible for 'service' complaints)
- 'inactive' cases i.e. open cases which appeared not to have had any recent activity
- 'long running' cases - in particular, cases which had taken more than a year to dismiss
- so-called 'standard letters' i.e. template letters used by Professional Conduct Department staff at various stages of the complaints and disciplinary process
- the operation of the Professional Conduct Committee
- decisions taken under staff delegations
- issues raised in recent press articles

Observations

Overall, I have been very impressed by the collective dedication of the Professional Conduct Department staff and the Professional Conduct Committee members to ensuring that policies and procedures are robust and that their handling of complaints and disciplinary processes is prompt, thorough and fair. I have consistently observed good practice and encountered a healthy attitude to constructive challenge and a genuine commitment to continuous improvement.

The Professional Conduct Department comprises 25 staff divided into three teams. The Assessment Team is responsible for the initial assessment of all complaints in order to determine whether or not they should be referred for formal investigation. The Investigations and Hearings Team is then responsible for carrying out all investigations of complaints and, where there is sufficient evidence of a breach of the Code of Conduct, taking complaints through to disciplinary action following a referral by the Professional Conduct Committee or, in some cases, by senior staff. The Operational Support Team is responsible for non-casework and department wide functions including administering the Professional Conduct Committee, policy and project work, performance reporting, database management and website updates.

My observations are that the Professional Conduct Department's remit, policies and procedures are clear, comprehensive and well understood by those involved and that they are consistently applied. The BSB's complaints handling approach is predominantly paper based and I have found the files and database to be well-maintained, up-to-date and complete. My review of case files and database records has demonstrated that communication with complainants and barristers is generally prompt, straightforward and clear. The Professional Conduct Department

executives are well qualified, professional in their approach, fair, conscientious and I have been impressed by their knowledge, familiarity with cases and attention to detail. Complaints and disciplinary processes can be challenging and upsetting for the parties involved. I have consistently observed staff dealing courteously, patiently, sensitively and respectfully with both complainants and with the barristers who are the subject of complaints.

The Professional Conduct Committee is one of eight Bar Standards Board Committees. It currently has 57 members (35 barristers and 22 lay members). The Committee is chaired by Simon Lofthouse QC (also a member of the full Board). There are two barrister Vice-Chairs and two lay Vice-Chairs. All five 'Office Holders' attend all Committee meetings which are scheduled at fortnightly intervals (except for August and Christmas). The rest of the Committee members are divided into two 'Teams' which alternate (i.e. attending one meeting each month).

The Professional Conduct Committee has the power to refer complaints to disciplinary action, decide to take no further action or to dismiss a case due to lack of evidence. The Committee's terms of reference are clear and published on the BSB's website, along with a list of the members and any declared interests. Committee meetings are scheduled well in advance. Attendance rates are consistently high and the Committee has, to date, always been quorate. All members are required to attend a comprehensive induction training session before they can participate. Members are required to disqualify themselves from discussion of any complaint where they know the barrister or complainant or there is some conflict of interest. I have observed that they regularly do so and that these 'recusals' are recorded.

I have attended ten Committee meetings over the course of the year and observed that the Committee draws enormous strength from its collective knowledge and experience, amongst both the barrister and lay members. I have observed that members are clearly well-prepared for the meetings which are effectively chaired. The quality of debate is consistently high and I have observed that all cases before the Committee are given due and fair consideration. Matters of principle are robustly debated and fine administrative details are also addressed. Careful attention is paid to the relevant provisions of the Code, Complaints Rules and Sentencing Guidance to guide and inform decision making. The Committee bases its discussion on the facts of the case as presented to them (i.e. the 'Fact Sheet' which is subsequently available to the complainant and barrister), as supplemented where necessary by reference to documents on file, and scrupulously avoids speculation or introducing extraneous information.

The views of lay members are both forthcoming in general and specifically invited by the Chair on particular issues. Many cases involve highly technical issues and detailed points of law. The Chair and Vice Chairs are proactive in ensuring that all Committee members fully understand what is being discussed. In the event that any member has a query, I have observed that they do not hesitate in raising them.

Overall, I have observed that both staff and Committee members have high regard to BSB aims, objectives, policies and procedures whilst being sensitive to the particular circumstances of the case or parties involved. I have observed healthy differences of opinion and can give assurance that these are appropriately handled to ensure that final decisions to refer cases for investigation and to Disciplinary Tribunals, are well-reasoned and fair.

Whilst the BSB does not yet have a published set of service standards and targets for the handling of complaints and disciplinary processes, it is clearly making progress towards this. Quantitative performance data (i.e. 'turnaround' times) is already collected, monitored and reported on a quarterly basis. The BSB's intention is to publish targets for certain aspects of complaints handling for 2013/14 onwards and are currently well placed to achieve this timetable.

The BSB recognises that further steps could be taken to increase transparency and provide complainants, barristers and the general public with greater insights into the complaints and disciplinary processes, for example by publishing case studies and significant judgements. Greater transparency would benefit both complainants (and potential complainants) and barristers facing complaints. It could also help promote public and professional confidence and influence general standards of behaviour and performance of the Bar. I am encouraged that the BSB is seeking to identify resources to take this forward.

Assurance

In my opinion and based on my observations as summarised above, I am able to provide the BSB Board with a substantial level of assurance that during the period covered in my review the Complaints system has worked well and in accordance with its aims and objectives.

Specifically, I can assure the Board that

- potential breaches of the Code are being identified and appropriately pursued
- decisions are fair and consistent
- communications are clear
- decisions are well reasoned
- staff are polite and professional in their written contacts

In the course of my work I highlighted a handful of cases which required attention. All were promptly addressed and none gave rise to serious or wider concerns. Based on my observations, I have made a number of recommendations designed to further enhance the BSB's handling of complaints and disciplinary processes. These are summarised in Annex 2, along with an indication of their current status.

Finally, I would like to thank the Professional Conduct Department, the Professional Conduct Committee and all the other BSB staff for responding so thoroughly, promptly and patiently to my enquiries.

Isobel Leaviss

INDEPENDENT OBSERVER

June 2012

Annex 1: Aims and Objectives of the BSB's complaints and disciplinary system

Aims

To

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

Objectives

To

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

Annex 2: Summary of recommendations and status as at June 2012

Ref

Priority

Recommendation

Status

Q1R4

High

The BSB agrees an action plan for establishing performance indicators and targets for the complaints and disciplinary processes.

Implemented. Action plan in place for targets to be set for 2013/14 onwards.

Q1R4

High

The BSB provides an up-to-date user-friendly summary of headline quarterly and annual performance information for complaints and professional conduct proceedings on its website

Agreed. Next quarterly report will include summary.

Q1R8

High

The BSB works with the Legal Ombudsman (LeO), which is responsible for 'service' complaints, to ensure that the BSB receives prompt notifications regarding the outcome of referred cases and the prompt and full transfer of all relevant case papers.

Implemented.

Q1R9

High

The BSB systematically compares its list of 'referred cases' from LeO with LeO and addresses any discrepancies.

Implemented.

Q1R11

High

The BSB continues to monitor case officer workloads, resourcing levels and particularly staff absences in order to make arrangements to minimise avoidable delays in complaint handling

Implemented. Departmental resourcing kept under ongoing review.

Q2R5

High

The BSB regularly reviews all 'inactive' cases to highlight potential issues and ensure that all cases are being actively progressed.

Implemented.

Q1R4

Medium

The BSB publishes its most recent performance reports

Implemented. Next report for quarter ending 30/6/12.

Q1R3

Medium

The BSB expands the information on complaints handling on its website to include more detail about the steps that it take in dealing with complaints, examples of what constitutes misconduct, the standard of proof required and guidance/examples of the type of supporting documents or other evidence that a complainant needs to submit in order to substantiate their complaint

Implemented.

Q1R1

Medium

The BSB updates the pdf version of the Code of Conduct on its website to reflect all approved amendments and adds a link to the Code in the Complaints section of the website

Agreed.

Q1R6

Medium

The BSB considered providing more regular feedback to the industry and the wider public regarding complaint volumes, the nature of misconduct findings and wider lessons

Agreed. Resources to be identified.

Q1R10

Medium

The BSB spells out its role and approach to complaint handling upfront when first acknowledging complaints, particularly LeO referrals and spells out the reasons for its approach at each stage, next steps and likely timescales

Implemented.

Q2R9

Medium

That in cases where the Professional Conduct Committee decision differed from the Sponsors recommendation to dismiss, the rationale for the Committee decision is summarised by the Chair and formally recorded to provide a clear audit trail.

Implemented.

Q2R8

Medium

That a summary of any advice given to barristers whose behaviour has given cause for concern should be disclosed to the complainant as a matter of course

Implemented.

Q2R3

Medium

That a specific box be introduced to the complaint form explicitly prompting complainants to list evidence to substantiate their complaint and that the guidance accompanying the form explain the importance of evidence and provide examples

Implemented.

Q2R1

Medium

That the review of BSB letter templates should be completed.

Implemented.

Q2R7

Medium

That prior to adjourning consideration of complaints, the BSB should actively consider what, if any, contemporaneous enquiries should be made in order to capture evidence before memories fade/documents become difficult or impossible to obtain and that guidance to this effect should be incorporated into departmental guidance.

Agreed. Guidance to be reviewed as part of current Restructure Review.

Q2R6

Medium

That time taken for Sponsors to accept a case, as well as actually deal with a case, should be monitored so that as far as possible delays can be addressed and minimised

Implemented.

Q2R4

Medium

That in line with existing guidance, case officers should be reminded to indicate specific issues about which information, clarification and/or evidence is needed (rather than a general invitation for comments) in order to focus (and potentially expedite) the investigation process.

Implemented.

Q2R2

Medium

The BSB consider developing a simple 'checklist' for all letters in order to help embed best practice

Implemented.

Q3R1

Medium

The BSB formalise and publish its policy for commenting publically on complaints and disciplinary proceedings

Accepted.

Q3R2

Medium

The BSB remind staff that in the event of a 'comeback' (i.e. new evidence from the complainant or other grounds for re-opening a case file), the complaints database should be updated immediately to help trigger prompt follow-up

Accepted.

Q3R7

Medium

The BSB identifies additional resources to more systematically keep Committee members and its prosecutors updated about developments on significant cases, rulings and judgements in order to inform decision making and, in the interests of transparency, considers what aspects of this could be made publically available.

Accepted.

Q1R7

Low

The BSB flag and explain material changes to the Complaints Committee Information and Guidance Pack when circulating updates.

Implemented.

Q1R5

Low

The BSB convey more of the experience of the Professional Conduct Department staff and Committee members on its website.

Agreed. Biographies for all Committees being collated.

Q1R2

Low

The BSB records the nature of enquiries made on the Complaints Information Line.

Implemented.

Q3R3

Low

The BSB considers renaming the 'sponsor' role in order to avoid any possible misimpression that the member advising on individual cases 'vouches' for either the complaint or the barrister.

Accepted.

Q3R4

Low

The guidance on preparing Sponsor Reports be more fully spelt out to explain the type of analysis required, including explicit cross reference to the current policy document on decision making.

Accepted.

Q3R5

Low

The guidance for Committee members be clarified so that its meaning is clearer in relation to referral of matters not previously presented to the barrister.

Accepted.

Q3R6

Low

Prior to communicating Committee decisions to the parties involved, a review of the case chronology be undertaken so that, as appropriate, the reason(s) for lengthy timelines (and in particular avoidable delays) can be acknowledged, and if necessary apologised for.

Accepted.