

**Diversity Review
Bar Standards Board's complaints system**

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1 Executive Summary

The review finds that the complaints process is clear and balanced, with ample opportunity to seek advice and review decisions. It is easily accessible and straightforward.

Within the Professional Conduct Department (PCD) cases are dealt with carefully, in a way that is transparent, consistent and fair. The staff, who seem experienced and well qualified, state that they operate in an open culture in which concerns and issues are openly discussed.

Documentation within the case files is extremely detailed and thorough.

Although there are no apparent failings within the procedure which would enable us to explain the data which is the focus of this report, there are opportunities to improve existing processes within the PCD and at Committee stage. These are set out in the recommendations section.

User feedback from Barristers subject to the complaints procedure has not highlighted and difference in opinion between BAME (Black Asian Minority Ethnic) Barristers and white Barristers.

The subject of this report is the procedure for handling the complaints however, in order to attempt to explain the data the Bar Standards Board should consider undertaking wider investigations.

2 Background to the Report

The BSB's PCD team has produced a diversity report on a biennial basis since 2007. The first report (2007-2008) showed an overrepresentation of men and BME practitioners. Further internal research by the Professional Conduct Department was undertaken in 2010 however this research did not point to any clear reasons for the overrepresentation but it was apparent that BME barristers practicing outside London and BME sole practitioners featured disproportionately in the numbers of complaints raised for failure to comply with continuing professional development (CPD) requirements.

Recommendations were made that the Education and Training Department consider what further steps could be taken to ensure that sole practitioners, particularly BME sole practitioners and barristers practicing outside London were aware of the expectations in relation to CPD requirements.

The next report (2009-10) showed that the disparity was still there although not any longer in relation to sole practitioners. Further research was conducted and a report was prepared by the Bar Council research team covering the period 2007 – 11.

3 Summary of key issues arising from 2007/2011 data

Data on all barristers subject to external (n=2,019) and internal complaints (n=692) between 2007 and 2011 was extracted from the PCD database and imported into SPSS to allow for statistical analysis.

Overall 2,575 barristers were subject to complaints over this period, some were subject to multiple complaints and some were subject to both internal and external complaints.

An “internal” complaint is a complaint raised by the Bar Standards Board for breaches of the Code of Conduct, even if nobody has made a complaint about the barrister. Complaints raised by the BSB will usually be about matters such as breaches of the practising requirements, criminal convictions or failure to report bankruptcies. However, the BSB can raise complaints about any breach that is discovered

The Legal Ombudsman is the single point of contact for all complaints from clients of legal professionals, even if the complaint includes issues of professional misconduct. The Legal Ombudsman will assess whether the complaint raises any issues of professional misconduct. If it does, they will refer those issues to the BSB who may carry out a formal investigation. Complaints from anyone other than clients are submitted direct to the BSB. These categories of complaints are referred to as “external” complaints.

The complaints procedure is the responsibility of the Bar Standards Board. Once a complaint has passed through this procedure and passes on to the disciplinary hearing stage, a separate procedure is followed the final decisions on which are the responsibility of an independent body (the Council of the Inns of Court).

The conclusions which can be drawn from the results of this data analysis are:

- BME barristers are disproportionately over represented in the complaints process in relation to the outcomes of external complaints;
- BME barristers are more likely to have a complaint referred to disciplinary action,
- white barristers are more likely to have a complaint dismissed without referral to disciplinary action,
- BME barristers are more likely to be subject to a disciplinary action outcome of upheld; even when controlling for differences in the subjects of the complaints.
- BME barristers are disproportionately overrepresented in the complaints process in relation to internal complaints.

- Male barristers were subject to a larger proportion of internal complaints than their proportion of the Bar although this difference on the basis of gender was not as pronounced as the difference on the basis of ethnicity.

This internally conducted research data was presented to the BSB's Equality and Diversity Committee in September 2012, which recommended that an independent review of the complaints system should be undertaken. The research paper together with the recommendation was presented to the BSB Board in December 2012. The Board approved the recommendation and Inclusive Employers were commissioned to undertake the review.

4 Objectives of the Review

Inclusive Employers have undertaken a review of the complaints process and a sample of up to 100 case files in order to identify:

- From the case files, interviews and review of other relevant documentation any apparent inappropriate or inconsistent actions or treatment relating to BME barristers and white male barristers.
- Any aspects of apparent bias, prejudice or discrimination within the complaints system.

This document sets out the findings, conclusions and recommendations arising from the review.

5 Methodology and Approach

In preparation for the review we studied the Bar Standard Board's website and met the BSB Equality and Diversity Adviser and Operational Support Team Manager on a number of occasions to develop a detailed understanding of the process. These meetings generated supplementary questions which were usually dealt with by telephone or email.

We also sought out best practice approaches to conducting similar reviews from within other sectors.

We made reference to best practice and legal requirements in relation to equality and discrimination and applied our experience of identifying and addressing direct and indirect discrimination, institutionalised discrimination and negative prevailing attitudes.

In order to achieve the objectives, five areas of work were undertaken and these form the structure of this report:

Part One - An analysis of the written policy, procedures and diversity reports.

Part Two - A review of the application of the procedures (interviews)

Part Three - 100 case file review

Each of the first three sections in this report are split into “Method”, “Review Questions” and “Findings”.

Part Four – feedback from Barristers

The BSB conducts a post complaint satisfaction survey and the results of this survey were considered as part of this review.

Part Five – the views of BAME Barrister Groups

These groups were contacted direct and asked to make contributions to this review.

The project was tightly defined and the majority of the review period was allocated to reading and reviewing the case files and the procedures .

6 An analysis of written policy and procedures

Method

Members of the Professional Conduct Department and Inclusive Employers identified documents as relevant to this review. In excess of 70 documents have been subject to review. (Full list at appendix 1)

Review Questions

In order to identify apparent inappropriate, inconsistent actions or treatment, bias, prejudice or discrimination within the complaints system, the reviewer addressed the extent to which the policies/procedures and documentation are:

- Comprehensive
- Transparent
- Easy to understand and apply
- Consistent
- Couched in appropriate language
- Individually balanced and fair
- Collectively balanced and fair, without any systemic or institutionalized bias
- Utilizing all opportunities available to provide a fair and equal process
- In breach any equality legislation

The policies, procedures and documents fall broadly into the following categories:

- Information for the subjects of complaints including information on the website
- Guidance for Complaints Department Staff including decision making protocols
- Job Descriptions for all the posts within the department
- The role profile for the independent observer
- Management reports
- Process charts

Findings

The suite of documents is comprehensive and thorough, leaving no scope for “rogue” decision making or failures due to gaps within the process.

The subjects of complaints should be capable of easily navigating the documentation in order to understand how the complaint will be processed.

The language used is appropriate and clear.

The documentation accords with and is compliant with the Equality Act.

Management reports illustrate that equality issues are treated seriously and any concerns addressed.

There are opportunities to enhance aspects of the documentation/process/ job descriptions which are set out in the recommendations section below.

7 A review of the application of the procedures (interviews)

Method

The following interviews took place:

- Head of Professional Conduct Department, Investigations and Hearings Team Manager, a Casework Supervisor, Assessment Team Manager, an Assessment Officer, Operational Support Team leader, Reports and Data Analysis Officer (face to face interviews).
- One experienced Barrister member of the Committee (telephone interview - chosen at random)
- Chair of the Professional Conduct Committee (telephone interview)
- Equality and Diversity Representative on the Committee (telephone interview)
- One experienced Lay member of the committee (telephone interview – chosen at random)
- The Independent Observer (telephone interview)

There have been ongoing communications and discussions with the Equality and Diversity Adviser and Operational Support Team Manager since December 2012.

Review Questions

In order to identify apparent inappropriate or inconsistent actions or treatment bias, prejudice or discrimination within the complaints system, the reviewer addressed the following questions/issues:

- the individual's role within the process
- the documentation that applied and their range of decision making
- The extent to which decisions are guided by protocols or rules vs. individual discretion
- The frequency with which opinion or advice was sought
- The extent to which cases are discussed within the office (to enable moderated decision making and professional development)
- The process for dealing with uncertainty about next steps
- The extent to which there was a shared understanding of the process
- The approach of the committee to matters of Equality and Discrimination

Findings

All interviewees were helpful and constructive.

The staff group, collectively, appeared to enjoy their work, giving an impression of a healthy, open and respectful working culture. Although this is out of scope of the review, it is relevant as such a culture is more likely to be capable of addressing any prejudicial attitudes and having a zero tolerance approach to any form of discrimination.

Without exception, staff were well informed, demonstrated a comprehensive knowledge base and could respond to all questions in detail – often giving specific case examples to illustrate their point.

There were no anomalies or contradictions amongst the accounts that staff gave of the complaints process.

Staff discussed the purpose of the review with concern and it was apparent that the team are eager to identify the cause of the disproportionate representation.

Committee members stressed the importance of fairness and their desire to see this disproportionality explained/addressed.

The Equality and diversity infrastructure at the Bar Standards is good, inasmuch as time and resources are committed to treating the issue with the seriousness it deserves (Equality and Diversity Committee, Equality and Diversity adviser, Team, committee member adviser).

The possibility of anonymising the case files was raised with a number of the interviewees. This would not be possible in relation to the work of the Professional Conduct Department. The committee however, do not require personal information in order to make their decision.

Equality and Diversity training for committee members is in place although this does not always occur prior to them joining the committee.

The focus of the Equality and Diversity training is the legal framework.

8 One hundred case file review

Method

Files were randomly selected from the set of closed files for the period 2007 – 2011 on the following basis:

Six lists (strata) of case numbers were created:

- Barristers represented in relation to the outcomes of external complaints (list a - BME and list b white)

- Barristers represented in the internal complaints system (list c - BME and list d white)
- Barristers represented in the internal complaints system (list e- males and list f -females)

Then from each of these case lists, using an online random number generator

List a - 20
List b - 15
List c - 20
List d - 15
List e - 20
List f - 10

The number of files in each list was based on the scale of the disproportionate representation balanced with a justified need to review a greater proportion of complaints files in relation to BME barristers.

The files themselves were then sorted within their comparison pairs i.e. lists a and b were sorted into groups for comparisons e.g. type of complaint and level of outcome.

As direct comparisons were difficult because each case is different, the files were reviewed in concentrated blocks of time and notes made for cross checking.

Review Questions

In order to identify apparent inappropriate or inconsistent actions or treatment bias, prejudice or discrimination within the complaints system, the reviewer addressed the following questions:

- Consistency of outcomes
- Consistency of treatment of the subject of the complaint (tone and nature of correspondence)
- Application of checks and balances, decisions to seek further advice
- Indications of shortcuts to save money/time
- Care and attention to detail

Findings

The triage process was clear and consistent and the efforts to clarify the nature of the complaint rigorous.

Communications with the subject of the complaint were thorough, giving frequent opportunities to resolve matters where appropriate.

Cases are recorded fully and carefully, with reference to evidence and the context of the case in a way that enabled an external reviewer to understand why a decision had been made. This applied to all the stages of the process.

Cross references between similar cases showed an extremely high level of consistency in terms of the manner in which a case was handled, the issues considered at each decision point and the final outcome.

9 Part Four – Feedback from Barristers

The “Reports and Data Analysis Officer” undertook a review of the feedback provided in response to the following Quality of service questions:

2009-2010

“Thinking about the way in which the Bar Standards Board handled the complaint overall, please could you indicate how satisfied you were with the general level of service”

and 2011-2012

“Leaving aside the final outcome, how satisfied were you with the way in which the Bar Standards Board handled the complaint?”

Responses were broken down into BME barristers and white barristers;

The detailed analysis is at Appendix 2 of this report.

Findings.

The numbers involved in this analysis are small, and there does not appear to be any significant difference between the responses of BME and white barristers. The figures for White barristers plus BME barristers do not add up to all barristers as some barristers declined to answer the monitoring question.

10 Part Five - Consultations with the Society of Asian Lawyers and Society of Black Lawyers

The Society of Asian Lawyers and Society of Black Lawyers were contacted as part of this review. They were asked to contribute their opinion on the complaints data and offer any suggestions as to establishing the cause of the data.

Findings

The Society of Asian Lawyers, which is the largest representative body for Asian lawyers in the UK, has expressed serious concerns about the data which led to the complaints process review. They have considered the diversity review report and are aware of the recommendations contained therein. However, although the Society notes that the BSB has sought to investigate the stark anomalies that have been exposed in relation to BAME barristers, it takes the view that the scope of the current investigation and review is too limited. At the very least, the specific recommendations made in the review should be given serious consideration; more generally, the Society suggests that there should be discussion and collaboration between those responsible for producing the current review and the Bar Council's Equality & Diversity Committee to identify further areas of research and investigation. The Society would wish to assist in the development of the terms of reference for any such further inquiry.

The Society of Black Lawyers did not respond to requests to participate in the review.

11 Summary

Following a very thorough review of case files, policies, procedures and process maps, 1:1 interviews with key parties, analysis of user feedback results and consultation with the Society for Asian Lawyers and Society of Black Lawyers it has been determined that:

1. The complaints process is clear and balanced, with ample opportunity to seek advice and review decisions. It is easily accessible and straightforward.
2. Cases are handled carefully, in a way that is transparent, consistent and fair. The experienced and well qualified staff appear to operate in an open culture in which concerns and issues are aired and discussed.
3. Documentation within the case files is extremely detailed and thorough.
4. The procedure itself is not discriminatory .
5. There are opportunities to improve existing processes which are set out in the recommendations section below.

12 Recommendations

Although the review has not resulted in a range of problems that require urgent attention, opportunities for improvement are available as follows:

1. Equality and Diversity training should take place within three months of joining for all BSB Committee members.
2. The Equality and Diversity Training should be broadened from the legal framework to include training in unconscious bias.
3. The role of the Independent Observer should be broadened to encompass the requirement to maintain a watching brief in relation to Equality and Diversity. This change need not alter the approach currently in place but any matters of concern identified by the IO should be brought to the attention of the Equality Adviser. The Independent Observer should be invited to attend /observe the Equality and Diversity Committee and attend equality and diversity training.
4. The names of the subjects of complaints should not be disclosed to the committee except for the purpose of identifying conflicts of interests. Currently all reports for the Committee are anonymised but the names of the barristers involved along with the reference number of the case, are disclosed to all members at meeting, via a written list, to allow members to establish if there is a conflict. An alternative approach would be to remove the case reference numbers and gender title

assignments from the written list thus removing the ability for members to know which case is associated with which barrister and whether the barrister is male or female. The list would also be presented in random order rather than according to the meeting agenda.

If a Committee member recognises a name and thinks that there may be a conflict they can make enquiries of the administrative support team who will tell them (and only them) the reference number for the case.

5. Certain procedures could be enhanced and the detail is shown at appendix 3.
6. The BSB issue a formal invitation to the Society for Asian Lawyers and the Society of Black Lawyers to meet, in order to discuss the data and the implications of this report in future monitoring.

13 Conclusions

Although there are a series of steps that the Bar Standards Board could take to improve the complaints process from an equality and diversity perspective, our view is that the procedure itself is not at fault. This means that other factors, as yet to be identified, are causing the disproportions shown in the data.

Appendix 1

The following policy documents have been reviewed:

- Guidance on Dealing with complaints of discrimination and/or victimisation or harassment
- Independent Observer Role Profile
- Job descriptions:
- Administration Team Supervisor
- Assessment Officer PCD
- Assessment Team Manager PCD
- Casework Supervisor
- Professional Conduct Assistant – Investigations and Hearings
- Head of Professional Conduct
- Investigations and Hearings Team Manager
- Legal Knowledge Officer
- Operational Support Officer – Report and Data Analysis
- Operational Support Team Manager
- PC Case Officer
- Policy and Projects Officer
- Professional Conduct Assistant – Assessment Team
- Professional Conduct Assistant - Investigations and Hearings
- Professional Conduct Assistant – Operational Support Team
- Senior Case Officer
- Case Examiners Report (analysis) TEMPLATE
- Case Examiners Report (facts) TEMPLATE
- Standard of Proof Review
- Performance Report 2011
- Performance Report 2012-13
- Independent Observer Reports One Year Business Plan
- Administration of Complaints Files – a step by step guide to who does what
- Standard of Proof review
- Investigation of Complaints
- Complaints Team Procedure and Policy explanatory document
- Information Pack
- PCC Minutes (as sample)
- PCC Chairman’s brief
- New Member Training
- BSB Equality Strategy

The following process maps have been reviewed:

- PCD1 (Ad hoc data Requests)
- PCD2 (Allocation of files to CE or EM)

- PCD3 (Appeals from Warning or Fine Process)
- PCD 4 (Bankruptcy and IVA Processes)
- PCD5 (Barrister Checks)
- PCD6 (Budget Monitoring)
- PCD7 (Fitness to Practice)
- PCD8 (Committee Meetings Administration)
- PCD9 (Complaints Database Maintenance)
- PCD10 Disciplinary Tribunal Decisions)
- PCD11 (Entering Information on Sentencing Database)
- PCD12 (Expenses Claims)
- PCD13 (Client Complaints)
- PCD14 (Forthcoming Hearings)
- PCD15 (Information Line Process)
- PCD16 (Office Holders Meetings)
- PCD17 (Own Motion Complaints)
- PCD18 (PCD Managers Meetings)
- PCD 19 (PCD Staff Meetings)
- PCD20 (Performance Reporting)
- PCD21 (Subject Access Requests)
- PCD22 (Third Party Complaints)
- PCD 23 (User Feedback Survey)
- PCD24 (Warnings and Fines)
- PCD25 (Interim Suspension Orders)
- PCD26 (Appeals)
- PCD27 (Chambers Inspection) OUT OF SCOPE
- PCD 28 (Disciplinary Tribunal)
- PCD 29 (Determination by Consent)
- PCD 30 (Investigation Process)
- PCD 31 (Website updates) OUT OF SCOPE
- PCD32 (Policy work)

Appendix 3

Documents identified as requiring alterations as part of this review.

- Guidance on dealing with complaints of discrimination and/or victimisation or harassment - this procedure places the responsibility of whether to seek specialist advice on the case officer and in such cases, there should be an automatic referral for advice.
- Independent Observer Role Profile – expand to include Equality and Diversity brief thus offering a further layer of scrutiny and awareness in relation to Equality and Diversity.
- Independent Observer Reports – include a Equality and Diversity Assessment which would simply be a standard reference to whether any equality or diversity concerns became apparent during the course of the report preparation.
- Investigation of Complaints – make reference to reasonable adjustments
- New Member Training – because the current induction course does not cover Equality and Diversity, notification of the course should alert members to the fact that they will be invited to an additional event – thus stressing the importance of Equality and Diversity at the BSB.
- PCD7 (Fitness to Practice) – anonymise files when presented to the committee, in line with recommendation 4
- PCD8 (Committee Meetings Administration) anonymise files in line with recommendation 4.
- PCD 23 (User Feedback Survey) – the survey should include a question about transparency
- PCD32 (Policy work) – Include the requirement for an Equality Impact Assessment as part of the standard policy development process.