

## **Independent Observer's Report November 2013 – June 2014**

### **Status:**

1. For noting.

### **Executive Summary:**

2. This is the Independent Observer's report for November 2013 – June 2014.

### **Recommendations**

3. It is recommended that GRA considers the report, noting the recommendations and management responses (Annex 2) and noting that the report will be published.
4. Subject to any feedback from this meeting, the IO will summarise this six-month report and her previous six-month report into an Annual Report which the GRA Chair will then include as part of GRA's Annual Report to the September Board.

### **Background**

5. The Independent Observer (IO) took up post in May 11. This is her third year in post. GRA have requested six monthly reports of observations. This report covers the period November 2013 to June 2014.

### **Financial implications**

6. PCD have indicated that the recommendations do not have financial implications.

### **Equality Impact Assessment**

7. No equality issues arise from the provision and receipt of this report.
8. Paragraphs 76-84 specifically address equality and diversity matters.

### **Risk implications**

9. The IO's recommendations are designed to mitigate systemic risks identified by the IO.

### **Regulatory objectives**

10. The role of the IO is to provide independent assurance that the BSB's enforcement system is operating in line with its aims and objectives and ultimately the BSB's regulatory objectives.

### **Annexes**

11. Annex 1 – Independent Observer's report November 2013 – June 2014.

**Lead responsibility:** Isobel Leaviss

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

**Independent Observer**

**Interim Report**

**November 2013 – June 2014**

---

## Introduction

1. My role as the Bar Standard Board's (BSB's) lay Independent Observer is to provide assurance to the Governance, Risk & Audit Committee and ultimately the Board that the BSB's enforcement system is operating in line with its aims and objectives (**Annex 1**).
2. This report covers the period from November 2013 to June 2014.

## Executive Summary

3. In 2012, the BSB embarked on a significant and ambitious three year change programme designed to ensure that its regulatory approach reflects current good practice, meets the regulatory objectives set out in the Legal Services Act 2007 and meets the Regulatory Standards Framework set by the Legal Services Board. In short, the BSB, along with the other legal regulators, is in the process of moving to a more outcomes focussed and risk-based approach to regulation.
4. I have observed first hand that the past six months have been a further period of intense activity for the PCC Office Holders and Professional Conduct Department (PCD).
5. The launch of the new Handbook in January this year was preceded by extensive preparations. Under the auspices of its 'Handbook Implementation Project', PCD published the new Enforcement Strategy, undertook a wholesale review of its policy and guidance framework (including reissuing the PCC and Prosecutor Panel Information and Guidance Packs) and delivered training for staff, PCC members, prosecutors and stakeholders. PCD has also adapted its new enforcement database to support the new risk based approach and processing of complaint cases in line with the new Handbook.
6. Simultaneously, PCD has participated in the BSB-wide regulatory improvement programme (TRIP) designed to move the whole organisation to a more risk based and outcomes focussed approach to regulation. This has included producing a learning and development plan, competency framework and revised appraisal system. Also, a new BSB-wide document management system (DMS) has been implemented, requiring a time-consuming migration of historical files and changes to daily working practices.
7. In addition, the COIC Tribunal Service Change Programme has been ongoing. GRA will recall that this was established to implement the recommendations of the Browne Report, operational responsibility for which lies with COIC/BTAS with contractual oversight and ultimate responsibility resting with the BSB. The vast majority of the recommendations have now been completed<sup>1</sup> and there is a formal contract in place between the BSB and COIC/BTAS (signed October 2013) that is managed separately from PCD. Investigations & Hearings Team staff have had the day-to-day working relationships with BTAS during this period of change and embedding of new practices.

---

<sup>1</sup> COIC (BTAS) Contract – update (Report to BSB Board dated 28<sup>th</sup> February 2014)

8. There have been other challenges. Staff turnover at the BSB overall has been high (36% for 2013/14). Whilst PCD has been more stable, particularly for the past six months, there have been five new starters in an overall team of 27 and temporary cover for three staff with long term sickness. The unexpected absence of PCD's Reports and Data Analysis Officer last Autumn (now returned) meant that key performance management reports were not available and this may itself have contributed to the dip in performance against KPIs during Q3.
9. Wide-ranging procedural challenges to BSB prosecutions continue to complicate and prolong certain long-running cases. The resignations from the prosecutors' panel (and PCC) in protest against QASA fortunately do not seem to have caused difficulties in allocating new cases. However, the principle of using pro bono assistance to deliver the BSB's regulatory arrangements is due to be considered at Board level. In the meantime, the PCD is continuing to collect data about the time commitment given by the pro bono prosecution panel in order to provide a more accurate evidence base for determining future costs in the event that a move to remuneration for such services is considered appropriate.
10. Overall, PCD resources have been stretched, particularly at senior management level and particularly in the months running up to the launch of the Handbook in January. PCD was able to absorb some of the additional policy development workload but also called upon a barrister with previous experience from within the department to assist.
11. Given this context, it is commendable that PCD and PCC have substantially delivered the Handbook Implementation Programme to the target timetable (with a handful of policy reviews still ongoing) and have largely sustained turnaround service standards for the day-to-day handling of complaints and prosecutions, albeit suffering a dip in performance in Q3 and to some extent assisted by a reduced case-load (334 active cases by the year end compared to 426 for the first quarter due to the fall off in CPD cases with the flow of external complaints remaining similar to 2012/13).
12. As agreed with GRA on 22<sup>nd</sup> October 2013, since then I have focused on
  - Observing tribunal hearings
  - Consistency of staff decision making
  - Sampling cases e.g. outside KPIs, 'inactive' cases<sup>2</sup>
  - Observing PCC meetings and attending PCC Awayday
  - Observing the Handbook roll out (January onwards)
13. Overall, I have continued to observe good administrative standards in the handling of complaints and prosecution of misconduct cases. I have seen clear evidence of decision makers referring to relevant policies, procedures and guidance to inform their decision-making.

---

<sup>2</sup> 'inactive' is my term for cases that have not had any database activity for the previous 30 days

14. I have observed a demonstrable commitment to transparency and fairness when responding to complainants and/or barristers, attention to detail in preparing BSB prosecutions and constructive handling of procedural challenges.
15. I have observed that PCD are now much more in the habit of using the new database features and reports to prioritise their caseload and chase outstanding actions.
16. PCD are beginning to deal with cases under the new Handbook (since January, 76 of the 145 cases opened; of which 49 external and 28 internal) in addition to the pre-existing pipeline of cases to be dealt with under the old Code. The coming months will see the continued embedding of new practices (including risk assessments and staff decision making for administrative sanctions) and the testing and refinement of policies and guidance. PCD are in the process of developing protocols and working relationships with the new Supervision Team in order to share intelligence. BSB-wide preparations for entity regulation are underway and PCD are starting to address the implications for the enforcement system. The Investigations and Hearings Manager is leaving at the end of July and her post has been advertised.
17. The pace of change and scale of challenge persist.
18. PCD are well aware that the BSB's website could be much clearer, easier to navigate and more accessible for barristers, complainants and potential complainants. A project to address this has just been launched. I hope it will be given the priority and resources it deserves and will closely observe progress. I can assure GRA that there is extensive and up-to-date information available via the website (e.g. new Handbook, revised PCC Information pack and Prosecutors pack, updated summary leaflets for barristers and complainants). However, it can be challenging and frustrating to navigate through the material or find specific information, even for those already familiar with the process.
19. There is also still scope to improve the overall coherence, accessibility and transparency of the 52 internal policies and guidance notes. The PCD intranet site that lists all current policies (and highlights new additions), the internal programme of training sessions, the regular PCC and prosecutor newsletters and the 'pack' of cases recently circulated to PCC and prosecutors are all positive steps. Having recently attended a BSB-wide TRIP workshop, my impression is that PCD's knowledge management is ahead of the rest of the BSB. However, my observation is that it in the interests of efficiency and transparency, it could be even more sophisticated and dynamic.
20. Work is in hand to organise the policies in a more user-friendly way on the PCD intranet site (e.g. grouping them into stages of the complaints handling process) and to make more documents available to PCC members and prosecutors (e.g. via a secure portal). I suggest that more could be done to increase overall coherence for staff and prosecutors (rather like the Committee and Prosecutor packs), to improve cross-referencing (between policies and the Handbook and amongst policies and referencing specific paragraphs) and to provide links to relevant decisions and rulings.

21. Currently, I find it challenging to navigate my way around and find the answer to a specific question and I understand that even the most experienced case officers may need to check multiple policies (and open multiple documents) to guide them at a certain stage of the process. PCD have indicated that once the Handbook Implementation Project review of policies and guidance has been completed, they plan to address this in the context of BSB-wide initiatives.
22. Finally, there is still considerable scope for the BSB to improve its engagement with consumer groups and to increase the extent of its feedback to the profession and public about its enforcement role in order to promote understanding of its enforcement role and adherence to professional principles. The BSB has recently taken various positive steps including starting to issue press releases for disbarments generating coverage in the press and holding two workshops to build relationships with key consumer groups (one of which I observed and was introduced by the BSB's Director). However, my observation is that turnover within the Communications Team coupled with the need to address other immediate priorities (e.g. QASA and the Handbook launch) have meant limited overall progress. I am reassured that Strategic Aim 2 (of 5) of the BSB's 2014-15 Business Plan is to 'Promote greater public and professional understanding of, and support for, our (sic) role and mission'. It is also reassuring that the new permanent Communications Manager started recently and the previous interim manager has been retained temporarily to drive forward stakeholder engagement. I will continue to observe activity in this area.
23. In addition to the aforementioned plans to (i) improve the website (ii) integrate policy/guidance/cases for internal reference (iii) improve engagement with consumer groups and (iv) increase feedback to the profession and public on the BSB's enforcement role, **I recommend that;**

**PCD ensures that decisions to withdraw all charges or 'offer no evidence' are formally reported to PCC, including indicating the reasons for those decisions and as appropriate, any lessons learnt [13/14 H2R1 Medium priority]**

**PCD provides additional guidance to barristers about the expected format, content and evidence of 'mitigation/financial information' to be taken into account by the BSB in determining complaints and the imposition of administrative sanctions and considers offering barristers a further opportunity to submit such information once an investigation is near to conclusion and before any final decision on the imposition of a sanction/final disposal of the complaint (rather than only in the initial investigation letter) [13/14 H2R2 Medium Priority]**

**QRSC's remit be extended to include assessing timeliness and also whether the process has been 'open', 'transparent and accessible'. [13/14 H2/R3 Low Priority]**

**systems are put in place to properly identify, record and monitor service complaints made about PCD. [13/14 H2R4 Medium priority]**

24. BSB management have reviewed this report and these recommendations and their responses are summarised at **Annex 2**.
25. As always, I have revisited previous recommendations and summarise their status in **Annex 3**.

**Focus for next report**

26. Subject to GRA Committee's feedback, I propose to focus on the following during the period July 2014 – December 2014 and present my next report in January 2015;
  - Continuing to observe PCC meetings and Tribunal Hearings
  - Monitoring of compliance with regulatory decisions
  - Database files not categorised as complaints
  - Samples of cases outside KPIs

## Summary of activities

27. Since October, I have attended a PCD Quarterly meeting at which I presented the findings and recommendations from my last report. I have observed 6 (out of 11) PCC meetings, the PCC Away Day held on 25<sup>th</sup> November, a PCC Office Holders' Meeting on 26<sup>th</sup> March 2014 and 12 Disciplinary Tribunal Hearings.
28. As recommended by Inclusive Employers in their report to the BSB Board last Autumn, I have observed a BSB Equality and Diversity Committee meeting (28<sup>th</sup> November) and attended Board and Committee member Equality and Diversity training (27<sup>th</sup> February). I have also received training on the BSB's new Document Management System on 11<sup>th</sup> December and I attended one of the BSB's Handbook Launch events on 22<sup>nd</sup> January. I attended a 'TRIP' session for staff held on 4<sup>th</sup> June.
29. On 30<sup>th</sup> January, with the agreement of the GRA Chair, I attended an informal network meeting of 'complaint reviewers' from a range of industries including the Financial Ombudsman Service, the Office for Legal Complaints and the Independent Complaints Reviewer. We discussed issues of common interest (caseloads, publication of reports, scope of roles) but all the other attendees were primarily responsible for independently reviewing individual complaint files which is not within the scope of my role.
30. I observed a BSB Stakeholder Workshop on Friday 28<sup>th</sup> March to discuss consumer complaints against barristers.<sup>3</sup> The BSB has historically relied heavily on external complainants to alert it to instances of breaches of the Handbook/Code although this is expected to change with the introduction of the new risk based approach to regulation, the requirement upon barristers to report serious misconduct and the new supervision function. The purposes of the workshop were to clarify what consumers of legal services can/cannot complain about, to explain how LEO and the BSB's complaints processes work in theory, to share experience of how they work in practice, from the consumer perspective, to review the information available to potential complainants and to explore how that information and access to it might be improved.
31. As agreed with GRA on 22<sup>nd</sup> October 2013, I have focused on
  - Observing tribunal hearings
  - Consistency of staff decision making
  - Sampling cases e.g. outside KPIs, 'dormant' cases
  - Observing PCC meetings and attending PCC Away Day
  - Observing the Handbook roll out (January onwards)

---

<sup>3</sup> Attended by Victim Support, Personal Support Unit, Law for Life, the Bar Pro Bono Unit, the Legal Services Consumer Panel and the Law Centres Network with apologies from Citizens Advice.



32. The remainder of my report summarises my observations in relation to each of these areas of focus and the basis of recommendations designed to further strengthen the BSB's enforcement system.

### **Tribunal hearings**

33. Since October, I have observed 12 Tribunal hearings (8 3DT, 4 5DT) dealing with a range of internal and external complaint cases<sup>4</sup>. To put this sample in context, there were 72 tribunal hearings (35 3DT and 37 5DT) held during 2013<sup>5</sup>.
34. Of the 12 Hearings I observed, four convened but were adjourned. In two of these cases the barristers successfully applied for adjournments for personal and medical reasons. My observation is that the other two adjournments could have been avoided.
35. In one case, the barrister, who did not attend, was contacted by telephone at the behest of the Tribunal panel. He told the panel that he was unaware of the hearing date. It transpired that the barrister had been advised of the hearing date by email but an incorrect email address had been provided by PCD to BTAS. Whilst this appears to have been an isolated incident, the Investigations and Hearings Team Manager intends to talk to BTAS about what more can be done to confirm receipt of hearing details when sent by email to help identify any such errors and avoid a recurrence.
36. In the other case, the barrister had not been intending to attend but changed her mind and (because she was then unable to attend) applied for an adjournment two days before the hearing. The panel convened and my understanding is that they granted the adjournment because the BSB had served new evidence upon which it intended to rely just a fortnight before the hearing and had left it until then to indicate that it intended to rely upon a second document, despite it having been available several months before and despite it having sent it to the barrister as 'unused' material several weeks before.
37. I spoke to the case officer and Investigations and Hearings Team Manager who agreed that with hindsight, the second document should have been served as evidence upon which the BSB intended to rely much earlier in the process. Had the prosecution team done so, and/or had it realised that the new evidence was in fact irrelevant and therefore not served it, an adjournment might have been avoided. In the event, the hearing proceeded on a subsequent date and the barrister was disbarred
38. Since then, I understand that internal procedures have been clarified to ensure that 'any further evidence that the BSB intends to rely upon' will be served as soon as practicable rather than by way of the 'Additional Documents' bundle sent 14 days before the hearing which will be limited to service documents only.

---

<sup>4</sup> 18/10 3DT external, 22/11 3DT , 25/11 5DT, 27/11 3DT, 18/12 5DT, 22/1 3DT, 5/2 3DT, 5/2 3DT, 4/4 5DT, 2/5 5DT, 7/5 3DT, 21/5 3DT

<sup>5</sup> BTAS Annual Report

39. Of the remaining 8 hearings, the BSB offered no evidence on one, three proceeded in the barristers' absence (charges for two proved, the third being adjourned until such time as the barrister applied to return to practise) and four were attended by the defendants (charges for three proved, the fourth being part heard and adjourned).
40. One case highlighted to me the need to ensure that lessons are learnt from successful as well as unsuccessful prosecutions. In summary, the barrister admitted non-payment of a personal debt despite being ordered to do so by a Judge but did not admit the charge of professional misconduct under 301.1(ii) as he disputed that his conduct had been 'prejudicial to the administration of justice'. The Tribunal found the charge proven but 'not without some hesitation' and indicated that charging this offence under 301 a (i) discreditable conduct) or 301 a (iii) (diminish confidence in the profession or the administration for justice or bring the profession into disrepute) might have been more straightforward.
41. I have spoken to the Investigations and Hearings Team Manager and to one of the Casework Supervisors about the mechanisms for ensuring that such feedback is shared and any lessons applied to other cases. The established process is for the case officer to prepare a 'Feedback Report' that will include any relevant comments from the prosecutor and is circulated internally, to prosecutors and to PCC. I have observed such reports being considered by PCC. These reports *must* be prepared for all unsuccessful prosecutions but case officers are also encouraged to prepare them to highlight lessons from successful ones or where points of wider interest are made by the Tribunal.
42. Since September 2013, the Investigations and Hearings Team have been holding 'Technical Meetings' every three weeks prior to each PCC meeting. These are used to discuss issues arising from cases, resolve queries and identify any lessons learnt and the feedback I have had is that they are proving very useful. These meetings are not minuted. However, the Legal Knowledge Officer attends and as appropriate, has been identifying items for inclusion in either the monthly PCC newsletters and/or the quarterly Prosecutor Panel Circulars. In addition, the team have recently decided to maintain a 'Lessons Learnt Log'. This will be a useful reference point, particularly for future new starters and/or anyone unable to attend a meeting.
43. In another Tribunal I observed, the panel ruled out suspension as an option because the barrister in question did not have a practising certificate and instead imposed a fine. The Chair commented in passing that he was assuming that if the barrister subsequently applied for a new Practising Certificate, he would have to demonstrate that he had satisfied the original judgement (i.e. remedied the original misconduct). I have since been advised by PCD that there are currently no powers available to the BSB to impose conditions on return to practise that require a barrister to have remedied previous issues of professional misconduct such as satisfying an order by a court to pay a debt. My observation is that the BSB should have been in a position to make it clear to the Chairman that his assumption about return to practise was not accurate.

44. In one own motion case that I observed, the barrister had requested an adjournment on medical grounds. The BSB decided on the advice of its prosecutor on the eve of the Hearing to 'offer no evidence'. Once charges have been served, this is the BSB's mechanism for withdrawing a case. The panel (unusually) decided to convene in any event to ask the BSB about its decision. This case, initiated in 2010, relating to 2008 CPD matters and adjourned since July 2011 due to the barrister's ill health, was an extremely long running one. In response to the panel's questions, the BSB's prosecutor indicated that the decision to offer no evidence had been taken both in light of the barrister's request for an adjournment (on medical grounds) and also on the basis of a further review of the file, particularly in light of the barrister's statement (November 2013) and expected line of defence.
45. I discussed the file with the case officer to understand more fully the reasons behind the decision and to ascertain whether or not the BSB could have brought matters to a head earlier in the process. The case officer provided a very thorough account including explaining the actions she had taken to make colleagues aware of the issues that had arisen. In line with its Archiving and Retention Policy, the BSB's (former) CPD Training and Compliance Team destroyed all 2009 CPD cards, only retaining a note of whether or not they had been satisfactorily completed rather than full details of their content, the latter being significant in this particular case. With the power of hindsight and had the barrister engaged with the substance of the complaint at a much earlier stage, the 2009 CPD Card could have been requested and obtained before destruction of the records and this may have assisted the BSB in arriving at an earlier conclusion and/or different outcome to this case. However, it was not until the barrister submitted a statement outlining his defence just four days before the Hearing that the significance of the 2009 Record Card became apparent and PCD made additional enquiries of the CPD Team.
46. I do not think that PCD could reasonably have been expected to foresee this. And indeed it was only due to careful attention to detail on the part of the case officer and prosecutor that the necessary enquiries were made in advance of the hearing commencing enabling them to reassess their prospects of success. My observation is that this was a highly unusual set of circumstances and that it is extremely unlikely that similar circumstances would arise again given the historical nature of this case, changes in the way charges have been brought for more recent cases and the most recent changes to CPD requirements.
47. In cases for which the BSB decides to offer no evidence, the decision to do so is often taken by the PCC in the light of advice from a prosecutor and/or Case Examiner. However, the authorisations do allow decisions to be taken by Office Holders, the Head of PCD or individual case officers, for example when there is time pressure due to an ongoing or imminent Tribunal Hearing. In many cases, such circumstances would trigger a 'Feedback Report' to PCC informing them of the reasons for the decision and any lessons learnt. However, this is not always the case.

48. I therefore recommend that for completeness, **PCD ensures that decisions to withdraw all charges or 'offer no evidence' are formally reported to PCC, including indicating the reasons for those decisions and as appropriate, any lessons learnt [13/14 H2R1 Medium priority]**
49. I have observed that PCC and BSB prosecutors take note when a barrister prays in aid a medical condition and/or financial circumstances in order to explain and/or mitigate their conduct and/or reduce the severity of any penalty applied. I have observed both PCC and Tribunal panels requiring evidence to take account of medical circumstances (e.g. a medical report or GP letter). I have also observed PCC taking heed of the advice of the Equality and Diversity Committee Observer *not* to take account of unsubstantiated references to medical conditions for which evidence has been requested but not forthcoming.
50. My observation is that the assessment of a barrister's financial circumstances is less systematic than I would have expected. I have observed Tribunal panels, in the course of sentencing, asking questions (e.g. about annual fee earnings, aged debt and, occasionally, outgoings) and occasionally requesting evidence (e.g. I have observed barristers telephoning their chambers during proceedings and citing headline figures). I note that the new Guidance for PCD and PCC for Administrative Sanctions and Appeals (G02) refers to the barrister being asked to provide 'any mitigation/financial information which they want the Case Officer to rely upon in the initial investigation letter' but it is unclear what format or level of detail is expected.
51. **I recommend that PCD provides additional guidance to barristers about the expected format, content and evidence of 'mitigation/financial information' to be taken into account by the BSB in determining administrative sanctions and considers offering barristers a further opportunity to submit such information once an investigation has been concluded and the decision has been taken to impose a sanction (rather than only in the initial investigation letter) [13/14 H2R2 Medium Priority]**
52. I have observed that PCD case officers are very careful to properly refer matters relating to the Tribunal to BTAS who are responsible for convening and administering Hearings, including, as necessary, liaising with the Chair and panel regarding any submissions from the barrister or his/her defence team.
53. The BSB's BTAS/COIC Contract Manager recently completed her second monitoring visit during and met the newly appointed permanent Registrar. Following her next visit, she will prepare an annual report to the October Board. In advance of her most recent visit, she invited feedback from me (see paragraph 28) and from PCD and will do so going forward. I understand that to date, the only contractual issue identified is that PCD have not been providing BTAS with forecasts of expected tribunal volumes (as required by the Contract) and that this has now been addressed.

## Consistency of staff decision-making

54. Based on my observations, I can assure GRA that there are multiple mechanisms in place to promote consistency of staff decision-making.
55. Each case is assigned to a case officer or senior case officer by the Assessment Team Manager or Investigations and Hearings Team Manager. This gives PCD management a continuous overview of the caseload and enables them to take account of case officer experience and the nature and complexity of the cases when making assignments. It also enables them to identify the key aspects of each case and be alert to likely issues arising. For example, the Assessment Team Manager notes these on the Preliminary Assessment Form as part of the initial 'triage' process.
56. Each case officer and senior case officer in the Investigations and Hearings Team has a Casework Supervisor. Both Assessment Team and Investigations and Hearings Team members sit close to each other in an open plan office. All case officers have access to a wide range of policy and guidance notes to assist them at each stage of the process. Whilst I find it challenging to keep a mental map of all the policy documents and am aware that there is appetite amongst the teams to address this (see par 18), my observation is that PCD staff seem generally familiar with them. I have also observed first hand that case officers do not hesitate to consult each other and their managers. The open plan office facilitates day-to-day informal knowledge sharing. I also regularly see evidence on files of issues being raised with senior colleagues and as necessary, referred to Office Holders or other PCC members for advice.
57. The Assessment Team, Investigations and Hearings Team and Operational Support Teams all have monthly team meetings and all staff have monthly one-to-one meetings with their line managers during which I understand cases (if relevant) are reviewed. In addition, the casework supervisors in the Investigations and Hearings Team undertake periodic spot checking 'file reviews' to review consistency of approach. The Assessment Team Manager reviews case reports on a weekly basis and calls additional ad hoc meetings to discuss any issues arising.
58. In addition to these internal mechanisms, the PCC maintains oversight. The Quality review Sub Committee (QRSC) is a standing subcommittee of PCC and was established in 2013. It comprises three members (a lay chair, a lay member and a barrister member) and is tasked with reviewing closed case files (i.e. where the final outcome is known) and also cases that have been referred by staff to disciplinary action to assess whether staff decisions have been taken 'appropriately, fairly, consistently and in accordance with the agreed procedures and decision making criteria'.<sup>6</sup>

---

<sup>6</sup> See PG 18 issued 6 January 2014.

59. QRSC enables the PCC to maintain oversight of decisions it has delegated to staff and can provide a valuable source of quality assurance and feedback. Previously, all the reviews have concluded that the staff decisions scrutinised were 'handled in accordance with the relevant regulations and procedures'. The most recent review of eight files concluded that one should not in fact be reviewed (staff decision but on advice of a PCC member so out of scope), 'disagreed that one of the remaining seven had been appropriately referred to disciplinary action' and gave feedback on four of the others. I intend to observe what, if any, follow-up action is taken.
60. I note that the guidance for QRSC does not explicitly ask it to address the 'timeliness' of the complaint handling process in the course of its reviews. **I recommend that QRSC's remit is extended to include assessing timeliness** in order to more directly reflect the objectives of the enforcement system, namely to 'deal with complaints made against barristers *promptly*, thoroughly and fairly' **and also whether the process has been 'open', 'transparent and accessible'** rather than simply being asked to check that 'appropriate written reasons were given for decisions'. **[13/14 H2/R3 Low risk]**

### Samples of cases

61. Since October, I have been spending much more time observing Tribunals leaving less time to review sample case files. In addition, in the absence of the Reports and Data Analysis Officer from September to December 2013, I could not readily identify samples of case files during that period.
62. As GRA may be aware, whilst headline quarterly performance data has been available internally and reported to the Board in the Performance Reports, a pragmatic decision was taken to suspend the production and publication of detailed quarterly performance data analysis until the year-end. The 2013/14 annual report is now being prepared in conjunction with a review of the annual Feedback Survey results and will be presented to the September Board.
63. Since February, the Reports and Data Analysis Officer has completed the new database developments required to make a number of key performance reports available for all users to run, including management information at the departmental, team and individual level. KPI-related objectives have now been set for case workers as part of the staff appraisal and objective setting process for 2014/15.
64. I was recently given a very helpful preview of the headline results for 2013/14. Overall the department exceeded its KPI target (concluding or referring to disciplinary action 76.7% of cases within service standards against a target of 75%) but suffered a dip in performance for the third quarter. I have selected a sample of files closed during Q3 and am currently reviewing them.

65. The Reports and Data Analysis Officer has analysed the 'tail' of cases outside the KPIs and the results indicate that overall, those cases failing to meet the KPIs are failing by less than last year which is encouraging. I understand that further analysis of the pipeline will be undertaken to assess progress of complaints at earlier stages of the process to help forecast likely performance against KPIs in the coming quarters (KPIs being set and measured at the point of closure, referral to investigation and referral for disciplinary action).
66. As before, I have periodically reviewed the list of apparently 'inactive' cases (i.e. cases without database activity for the previous 30 days). Such a report was unavailable between August 2013 and January 2014 following the migration to the new Flosuite database but has since been available for any member of the PCD to run.
67. It is important to note that cases may appear on this report even though no action by the BSB is in fact required; for example, cases that have been adjourned pending the outcome of underlying litigation involving the parties to the complaint. However, I have found that it can be one route to identifying cases that require attention. It is also worth adding that this report will not identify all cases experiencing avoidable delay.
68. When I reviewed this report as at 5th February, there were 134 'inactive' cases falling into the following categories; 23 'Pre-complaint' cases referred by PCD to LeO, 56 'Closed' cases, 59 'Adjourned' cases and 6 'Live' cases.
69. None of the 23 'Pre-complaint' cases that had been referred by PCD to LeO required further action by PCD. The practice is for such cases to remain open for a month (so that if LeO immediately refer them back to the PCD there is no need to re-open them) and then for the system to close them automatically. I understand that the automatic closure had not been working properly so referrals made more than a month previously were showing on the report. The Reports and Data analysis Officer has since addressed this. On the report as at 16<sup>th</sup> June, only one such case appeared which I was subsequently advised had in fact been actioned but the database not updated due to annual leave. This has since been done.
70. Of the 56 'Closed' cases on the report, 28 were at 'COIC Issues' Stage, 24 were at 'Compliance' Stage and 4 were at the 'Disciplinary Tribunal' stage. When I enquired, it was explained that work was already in hand to assess why they were showing on the report. When I looked again on 25<sup>th</sup> February, most had been closed because it had been confirmed that no further action was in fact required. The Investigations and Hearings Team was also in the process of reviewing all cases with outstanding compliance issues (e.g. to confirm or pursue payment of fines imposed). There were 10 'Compliance' cases (8 barristers) on the 16<sup>th</sup> June report. To date, I have not reviewed the systems and process in place for monitoring and ensuring compliance with regulatory decisions and propose to do so.

71. I reviewed a sample of the 59 Adjourned cases and did not identify any requiring action.
72. I reviewed all 6 'Live' cases (4 of which involved one barrister), none of which gave rise to any systemic concerns. On the most recent report I reviewed (as at 16th June), there were 2 'Live' cases listed and on review, my observation is that neither in fact required action by PCD.
73. I reviewed a sample of eight cases 'put back for further enquiries' by the PCC. In each case I was able to identify clear reasons for the further enquiries. In around half the cases I reviewed, the further enquiries did not reveal any additional evidence. Of the concluded cases, as far as I could assess, none of the further enquiries affected the ultimate outcome. On this basis, I could not see that there were any systemic issues.
74. Case workers assign 'tasks' with deadlines on the database to indicate the next step required on each of their cases. Reviewing the 'pending tasks' for all their caseload is one way in which they manage and prioritise their work. There is a separate 'exception' report listing all cases without pending tasks that should be regularly reviewed by caseworkers to prompt them to assign a task to any cases without one. In addition, the system puts any live cases with no pending tasks at the top of each case officer's database 'home screen' when they log on. The Reports and Data Analysis Officer has also recently made the database automatically assign a task to any such cases to trigger immediate review by the case officer.
75. Since February, the Reports and Data Analysis Officer has recommenced the monthly reconciliation with LeO (which lapsed during his absence) to ensure that all cases that LeO records as having been referred to the BSB have in fact been received and all cases that the BSB records as having referred to LeO have in fact been received by them. I understand that the December report from LeO (received on 28<sup>th</sup> January) contained errors and had to be reissued but that the cases were fully reconciled. The review of LeO's April report (received on 29<sup>th</sup> May) highlighted one issue (relating to an old case previously received) and PCD await a response from LeO.

### **PCC meetings**

76. Since October, I have observed 6<sup>7</sup> (of 11) PCC meetings, the PCC Away Day held on 25<sup>th</sup> November and a PCC Office Holders' Meeting on 26<sup>th</sup> March.
77. The PCC meetings that I have observed have been well attended. The number of cases considered at each meeting has in general reduced. It is difficult to quantify but I think I have observed a reduction in the number and intensity of debates about cases over the past say twelve months. There are many possible reasons for this and based on the following observations, I do not think it should be a cause for concern.

---

<sup>7</sup> 6<sup>th</sup> Nov, 27<sup>th</sup> Nov, 5<sup>th</sup> Feb, 26<sup>th</sup> Feb, 9<sup>th</sup> April, 21<sup>st</sup> May



78. I can give GRA assurance that I have continued to observe members appearing well prepared for the meetings. For example, arriving with extensively annotated bundles and asking detailed and in my opinion, insightful questions, demonstrating their knowledge and understanding of the cases on the agenda and issues arising. I have observed new members being proactive in making contributions, raising questions and seeking clarification about procedural points.
79. To the extent that I have had my own queries on the papers, these have always been raised by PCC members and addressed. I have observed at least one case for which the PCC decided not to follow the Case Examiner's recommendation and a number for which the recommendation was followed in part.
80. I continue to observe attention to detail when the PCC approves the drafting of charges and dismissal letters. For example, in one case before the PCC in February 2014, the Case Examiner justified her dismissal recommendation with clear reasons in her Analysis Sheet but these were not fully reflected in the draft dismissal letter. The PCC was quick to rectify this. The same PCC meeting considered a DBC report and specifically agreed to amplify the explanation for their decision to reprimand only (and not impose a fine as recommended by the Case Examiner).
81. The BSB receives increasing media interest in its enforcement function, prompted in part by the BSB's own efforts to publicise disbarments by issuing press releases. I have observed the Chair reminding PCC to focus on the facts of the case for the purposes of their decision-making.
82. For one case comprising seven allegations, the PCC's final decision differed from the recommendation of the Case Examiner. In such (relatively rare) cases, the PCC minutes record the final decision and reasons. The PCC decision sheet (a form completed by the secretary to the meeting and placed on file) has a section which records whether the PCC decision was in line with the Case Examiner's recommendation and, if not, an explanation. Together, these documents provide the documented audit trail. However, my observation is that in this particular case the minutes, decision sheet and dismissal letter were not entirely clear or consistent with each other.
83. I have since reviewed a sample of cases for which the PCC decision differed from the Case Examiner's recommendation and I have very closely observed the summing up, minuting and follow-up of PCC decisions for the meetings I have since attended. On this basis, I have concluded that this was an isolated example but encourage the Chair and the secretary to continue to pay particular close attention to the summing up and recording of decisions and reasons for such cases, particularly those involving multiple charges and different disposals.

84. The PCC has a new system of recusals for PCC meetings that has been implemented in following a recommendation from the Diversity Review of 2013<sup>8</sup>. It is designed to prevent any potential for subconscious bias in decision making arising from assumptions about ethnicity based on the surnames of the barrister subject to the complaint. The barrister's name is replaced with a random initial in the report presented to the PCC. A list of all the barristers' names in the bundle is provided to members and if any of them identify a potential conflict, they contact the PCD and are advised which item they should recuse themselves from. I have observed that the new system is in operation.

### **Handbook rollout**

85. The new BSB Handbook came into effect on 7 January 2014. For reference, I have summarised the main changes in **Annex 4**.
86. In anticipation of the launch, PCD established a Handbook Implementation Project in mid 2013 run in parallel and as part of the wider BSB Handbook Implementation Project led by the Regulatory Policy Department (then Professional Practice). The aims of the PCD Handbook Implementation Project included revising departmental policies and processes, providing training (to staff, PCC members, prosecution panel members and linked external bodies), preparing updated information for the public and establishing service level agreements with other departments to ensure effective working and referral of issues for enforcement action. This project was co-ordinated by PCD's Operational Support Team, driven by the PCD senior managers and overseen by a PCC Working Group chaired by one of the PCC Lay Vice-Chairs and comprising a number of PCC members and one of the BSB's prosecutors.
87. The PCC Away Day in November focused on the new Handbook and the implications for the BSB's enforcement system and was well attended. There were a series of briefing sessions from the PCC Chair, BSB staff (PCD, Supervision, Professional Practice and Strategy) and Field Fisher Waterhouse to explain the BSB's new risk framework, introduce the new Handbook, Supervision Strategy and Enforcement Strategy and provide guidance on formulating misconduct charges. PCC members used the opportunity to ask questions and there were several discussions including the new definition of professional misconduct and the different 'tests' to be applied for administrative sanctions (balance of probabilities) and disciplinary sanctions (criminal standard i.e. certain so as to be sure).
88. There was an acknowledgement that a more risk based approach could be expected to result in a larger number of administrative sanctions being applied (and potentially a corresponding decline in the number of referrals to Tribunals) and that given that the

---

<sup>8</sup> Diversity Review - Bar Standards Board's complaints system - Inclusive Employers (January-June 2013)

former were not subject to the same disclosure, this might leave the BSB open to criticism that enforcement was becoming less transparent.

89. PCD ran a training event for the prosecutors' panel on 5th December which gave an overview of the new BSB Handbook and changes to the enforcement process including the new definition of professional conduct, the move to risk based decision making, administrative sanctions, charging under the new Handbook and also addressed procedural challenges. I understand that turnout was disappointing so the PCD organised two further follow-up sessions and overall around 60% of the panel attended. All panel members have been sent the training materials and the revised Prosecution Panel Information and Guidance Pack.
90. My observation is that the PCD Handbook Implementation Project has been substantially completed although a few policy reviews are ongoing. Progress is being closely tracked in a Policy Log maintained by the PCD Operational Support Team Manager. I understand that the intention is to formally close the Handbook Implementation Project once these have all been completed and the changes required for Entity Regulation have been made. I note that the PCD completed an Equality Impact Assessment for the Handbook Implementation Project but that this has yet to be formally finalised.
91. In advance of the Handbook launch, PCD identified two substantive issues arising from the changes. Firstly, Tribunal panels may need to be given new powers to enable them to impose administrative sanctions (as without them, they are restricted under the new Handbook to finding misconduct proven or dismissing the charge). Secondly, there is a technical issue arising from new definitions and circular references that make the imposition of 'No Further Action' (NFA) decisions difficult. NFA decisions have historically been made in cases where the PCC concludes that there are reasonable prospects of proving misconduct charges but for other exceptional reasons (and by implication, low regulatory risk) decides against referral to a Tribunal. The former issue will be addressed as part of a planned review of the Disciplinary Tribunal regulations. The latter will be addressed by an amendment to the Complaints Regulations which will need to be subject to consultation. My understanding is that in any event, in practical terms, the issues would only be relevant to a limited number of cases giving rise to minimal regulatory risk.
92. PCD are just beginning to deal with cases under the new Handbook in addition to the pre-existing pipeline of cases to be dealt with under the old Code. The coming months will see the continued embedding of new practices (including risk assessments and staff decision making for administrative sanctions) and the testing and refinement of policies and guidance.
93. Since January, PCD have been undertaking risk assessments for all new complaints received, even for those relating to conduct under the old Code (which form the vast majority). As at 10<sup>th</sup> June, PCD had completed 79 risk assessments of complaints

resulting in 54% High, 24% Medium and 20% Low Risk assignments. The BSB has recently appointed consultants (Influence Inc) to assist with assessing the maturity of the BSB's approach to risk and the operation of the risk framework.

## **Equality and Diversity**

94. As GRA is aware, an independent review of the BSB's enforcement system was undertaken by Inclusive Employers (IE) during mid 2013 and their report was presented to the BSB Board and published in September 2013. In line with three recommendations relating to my work, my role description was revised last October to include a 'watching brief' on equality and diversity issues and I have since attended equality and diversity training and observed a meeting of the BSB's Equality and Diversity Committee.
95. The training I attended was run for Board and Committee members on 27<sup>th</sup> February. I received clear and comprehensive 'pre-reading materials'. The session was well attended and delivered by a barrister specialising in this area who clearly explained the meaning of 'equality' and 'diversity' in the context of the BSB both as a regulator and an employer, helpfully outlined different types of discrimination (including the distinction between positive discrimination and positive action), highlighted the BSB's general and specific duties, explained the BSB's approach to equality impact assessments and addressed 'sub-conscious bias' (another of the IE report's specific recommendations).
96. The session concluded with facilitated group discussions of several hypothetical case studies, including a complaint case. These discussions were particularly useful because they addressed the practical application of policies and gave insights into the work of other Committees. I understand there are plans to deliver this training 'online' in future and in my view it would be a shame to lose the interactive group discussion element.
97. I observed the meeting of the BSB's Equality and Diversity Committee held on Thursday 28<sup>th</sup> November. The meeting included a discussion with the BSB Equality Champions Group, a discussion of draft guidance and a presentation of the Diversity Data Report by the Research Team. The meeting gave me a helpful introduction to the role and workings of this Committee.
98. I have had a meeting with the BSB's Equality and Diversity Advisor in order to better understand her role and her team's involvement in the enforcement process. She described having regular contact with the Head of PCD, providing advice on discrimination allegations, participating in working groups (e.g. Fitness to Practice Rules) and inputting to major policies (such as the new Handbook). She also outlined the BSB's approach to Equality Impact Assessments. The expectation is for these to be undertaken by staff across the organisation when creating or revising policies and this requirement will be included in the forthcoming corporate Policy Development Framework.
99. When I asked her what if any feedback she had received from PCD following her input and advice on individual cases, she indicated that to date she has not had any feedback.

I note that feedback was envisaged in the PCD's policy document<sup>9</sup>. Having alerted the Head of PCD, she will remind case officers to provide a summary debrief at the closure of such cases and plans to ask the Reports and Data Analysis Officer to provide the Equality and Diversity Advisor with a headline report showing the status of all cases upon which advice as been given, enabling her to follow up with case officers as appropriate.

100. The Head of PCD has regular meetings to discuss high level issues, including, as appropriate, specific cases in the context of general issues.
101. As part of its ongoing detailed analysis of 2013/14 data and preparation of the Annual Performance Report for the September Board, PCD are reviewing new complaint cases alleging discrimination (19 compared to 26 in 2012/13, slightly down but 2012/13 having been a threefold increase from the previous year so still high in comparison to past years).
102. For my part, I am in the process of reviewing a sample of cases that have been the subject of Equality and Diversity advice and will report any observations in my next report.
103. In conclusion, I can give GRA assurance that in the course of my ongoing work, I have been mindful of equality and diversity considerations and have not seen any general or specific causes for concern in relation to the general approach or handling of individual cases. As reported previously, I have continued to see examples of sensitive handling of complaints alleging discrimination, appropriate steps to seek and take account of specialist equality and diversity advice and consistent efforts to ascertain whether parties require any reasonable adjustments to be made in the handling of their cases in view of any disabilities they may have.
104. I note that one of the BSB's recently published Equality and Diversity Objectives for 2014/15 (approved by the Board in May) is 'to monitor and review the number of received reports of harassment and discrimination at the Bar, and formulate recommendations for further targeted activity, if necessary' and that this will be achieved as follows: 'The Professional Conduct department will monitor the number of reports of serious misconduct received, and extract the statistics relating specifically to reports of harassment and discrimination. The E&D team will review the data and formulate recommendations for action, if necessary (by April 2015).'

### **Previous Recommendations**

105. In preparing this report, I have reviewed the status of all my previous recommendations and updated the summary in **Annex 3**. As relevant I have cross-referenced this report.

---

<sup>9</sup> Guidance on the procedure for dealing with complaints of discrimination and/or victimisation or harassment (Issued 2012 and re-issued January 2013)

106. In relation to a previous recommendation about the accessibility and clarity of the BSB's service complaints policy [12/13 H1R7], whilst the information is more accessible and slightly clearer, there is scope to improve it further.
107. Notwithstanding the apparent delay in addressing this BSB-wide, **I recommend that systems be put in place to properly identify, record and monitor service complaints made about PCD.**  
**[13/14 H2R4 Medium priority]**

#### **Focus for next report**

108. Subject to GRA Committee's feedback, I propose to focus on the following during the period July 2014 – December 2014 and present my next report in January 2015;
- Continuing to observe PCC meetings and Tribunal Hearings
  - Monitoring of compliance with regulatory decisions
  - Database files not categorised as complaints
  - Samples of cases outside KPIs

#### **Conclusion**

109. I would like to thank PCD, Committee members and other BSB staff for responding so thoroughly, promptly and patiently to my enquiries.
110. As always, I welcome GRA Committee feedback on this report.

**Isobel Leaviss**  
**Independent Observer**  
**July 2014**

## **Annex 1: Independent Observer Role Profile**

Key responsibilities include:

- Establishing whether in respect of the BSB's enforcement system
  - Cases are handled in a timely manner in line with service standards;
  - Investigations of complaints are carried out, in accordance with policies and procedures, thoroughly and fairly and with appropriate consideration of equality and diversity issues;
  - Decisions of the Professional Conduct Committee and staff are made consistently and in accordance with agreed criteria;
  - The reasons for decisions are explained fully and clearly to the parties;
  - Cases are transferred effectively, efficiently and correctly between the BSB and the Legal Ombudsman
  - The arrangements made for holding disciplinary hearings are handled effectively by the BSB;
  - The handling of the BSB of the prosecution of disciplinary cases and appeals and the BSB's treatment of all parties is fair, effective and in accordance with laid down procedures; and
  - In all other respects, complaints are being dealt with in accordance with the aims, objectives and service standards set for the enforcement system
  
- Developing an appropriate quality assurance programme; agreeing it with the Governance, Risk and Audit Committee (GRA); and working in accordance with the agreed plan.
  
- At the request of the (GRA) or the Bar Standards Board, conduct enquiries into identified issues of concern and report on such enquiries.
  
- To prepare and submit to the (GRA) six monthly reports containing
  - A summary of activities
  - Evidence based rational, robust observations and conclusions
  - Recommendations to address any systemic weaknesses identified or areas for improvement
  - An annual general assessment of performance in relation to the relevant aspects of the enforcement system for publication on the BSB's website.

The Independent Observer does not act as an independent adjudicator and is not tasked with reviewing the merits of individual decisions but rather the application of policies and procedures.

The Independent Observer has no powers to review the progress or outcome of individual complaints and cannot respond to individual parties about complaints.

## **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 new recommendations and management responses

Ref	Priority	Recommendation	Management Response
13/14 H2/R1	Medium	PCD ensures that decisions to withdraw all charges or 'offer no evidence' are formally reported to PCC, including indicating the reasons for those decisions and as appropriate, any lessons learnt	Accepted
13/14 H2R2	Medium	PCD provides additional guidance to barristers about the expected format, content and evidence of 'mitigation/financial information' to be taken into account by the BSB in determining complaints and the imposition of administrative sanctions and considers offering barristers a further opportunity to submit such information once an investigation is near to conclusion and before any final decision on the imposition of a sanction/final disposal of the complaint (rather than only in the initial investigation letter)	Accepted
13/14 H2R3	Low	QRSC's remit be extended to include assessing timeliness and also whether the process has been 'open', 'transparent and accessible'.	Accepted

Contd.

Ref	Priority	Recommendation	Management Response
13/14 H2/R4	Medium	systems be put in place to properly identify, record and monitor service complaints made about PCD.	<p>Accepted in principle. However, the PCD would like this recommendation to have an identified “owner” to ensure effective tracking and accountability for compliance. .</p> <p>The system for dealing with “services complaints” i.e. complaints about the behaviour of staff, is a BSB wide issue as it applies to all staff and not just those in the PCD. It is accepted that the public facing nature of PCD work means that such complaints are more often raised about PCD staff. Nevertheless, any system must apply equally to all staff in the BSB and the PCD does not necessarily see this as being something that applies only to it or for which it should have specific responsibility.</p> <p>It is acknowledged that progress on refining the “service complaint” process has been slow and the issue may have got lost in the midst of other work priorities. However, while the PCD is happy to be involved (as has previously been the case) with further developing the policy and underpinning procedures for the “service complaint” process, the view is that this should remain a central responsibility with the lead being taken by appropriate staff in probably the Strategy and Communications Department.</p>

**Annex 3: Summary of recommendations made since May 2011 and status as at June 2014**

<b>Ref</b>	<b>Priority</b>	<b>Recommendation</b>	<b>Status</b>
11/12 Q1R4	High	The BSB agrees an action plan for establishing performance indicators and targets for the complaints and disciplinary processes.	<b>Implemented.</b>
11/12 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	<b>Implemented.</b> <b>cf. para 62</b>
11/12 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.	<b>Implemented.</b>
11/12 Q1R9	High	The BSB systematically compares its list of 'referred cases' from LeO with LeO and addresses any discrepancies.	<b>Implemented.</b> <b>cf. para 75</b>
11/12 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	<b>Implemented.</b>
11/12 Q2R5	High	The BSB regularly reviews all 'inactive' cases to highlight potential issues and ensure that all cases are being actively progressed.	<b>Implemented.</b>
11/12 Q1R4	Medium	The BSB publishes its most recent performance reports	<b>Implemented.</b>
13/14 H1R2	High	Upon completing its review of progress in implementing the Browne Report recommendations, the BSB ensures that there is appropriate feedback to the profession and the wider public (paras 40-51).	<b>Implemented.</b> <b>Update on website 3/3/14</b>
12/13 H1R7	High	The BSB improves the accessibility and clarity of its service complaint policy on its website.	<b>Implemented.</b> <b>cf. para 107</b>
11/12 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	<b>Implemented.</b> <b>cf. para 18</b>
11/12 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	<b>Implemented.</b>
11/12 Q1R6	Medium	The BSB considers providing more regular feedback to the industry and the wider public regarding complaint volumes, the nature of misconduct findings and wider lessons	<b>Implemented.</b> <b>cf. para 22</b>

Ref	Priority	Recommendation	Status
11/12 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	<b>Implemented.</b>
11/12 Q2R9	Medium	That in cases where the Professional Conduct Committee decision differed from the Case Examiner's recommendation to dismiss, the rationale for the Committee decision is summarised by the Chair and formally recorded to provide a clear audit trail.	<b>Implemented. cf. para 82</b>
11/12 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	<b>Implemented.</b>
11/12 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	<b>Implemented.</b>
11/12 Q2R1	Medium	That the review of BSB letter templates should be completed and that the specific comments I have made in relation to a number of letters are considered	<b>Implemented.</b>
11/12 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.	<b>Implemented. PG09 now refers.</b>
11/12 Q2R6	Medium	That time taken for Case Examiners 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	<b>Implemented.</b>
11/12 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.	<b>Implemented.</b>
11/12 Q2R2	Medium	The BSB consider developing a simple 'checklist' for all letters in order to help embed best practice	<b>Implemented.</b>
11/12 Q3R1	Medium	The BSB formalise and publish its policy for commenting publically on complaints and disciplinary proceedings	<b>Implemented.</b>
11/12 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	<b>Implemented.</b>

<b>Ref</b>	<b>Priority</b>	<b>Recommendation</b>	<b>Status</b>
11/12 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.	<b>Implemented.</b> <b>cf. paras 19-20</b>
12/13 R1	Medium	The BSB publishes a summary of the appointment process for its prosecutors, including spelling out the criteria for deciding to approve a barrister for addition to the panel; that the BSB formalises appointments to the panel with an appointment letter and that the BSB assigns an experienced 'mentor' to each of its new prosecutors	<b>Pending prosecutor remuneration review cf para 9</b>
12/13 R2	Medium	The PCD captures lessons from 'dismissal reports' centrally, agrees an appropriate action plan and monitors implementation	<b>Implemented.</b>
12/13 H2R3	Medium	the PCD extends its recently finalised Disclosure Policy to include Committee minutes and publishes it.	<b>Implemented.</b>
12/13 R3	Low	The instructing letter for prosecutors prompts them to given active consideration to preparing a case chronology to assist the Tribunal.	<b>Implemented.</b>
13/14 H1R5	Medium	the BSB gives early priority to engaging with intermediary consumer groups to promote understanding of its enforcement role and, where appropriate, improve signposting to assist legal consumers	<b>Implemented.</b> <b>cf. para 22</b>
11/12 Q1R7	Low	The BSB flag and explain material changes to the Complaints Committee Information and Guidance Pack when circulating updates.	<b>Implemented.</b>
11/12 Q1R5	Low	The BSB convey more of the experience of the Professional Conduct Department staff and Committee members on its website.	<b>Implemented.</b>
11/12 Q1R2	Low	The BSB records the nature of enquiries made on the Complaints Information Line.	<b>Implemented.</b>
11/12 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.	<b>Implemented.</b> <b>Renamed 'case examiner'</b>
11/12 Q3R4	Low	The guidance on preparing Case Examiner 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.	<b>Implemented.</b>
11/12 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.	<b>Implemented.</b>

<b>Ref</b>	<b>Priority</b>	<b>Recommendation</b>	<b>Status</b>
11/12 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.	<b>Implemented.</b>
12/13 H2R1	Low	following the organisation-wide review of the 'Unacceptable Behaviour by Members of the Public – Guidance to Staff', the BSB publishes an external facing statement or version of this policy.	<b>Accepted.</b>
12/13 H2R2	Low	when the Committee discusses 'lessons' from cases, the Chair draws out any conclusions or actions for the minutes so that they can be recorded and more systematically followed up as appropriate.	<b>Implemented.</b>
12/13 H1R6	Low	the PCD clarifies, on the BSB website, the options for complainants and/or barristers seeking to challenge enforcement decisions	<b>Implemented. cf. para 18</b>
13/14 H1R1	Low	the PCD considers my suggestions to help expedite transcript requests (paras 31-40).	<b>Implemented.</b>
13/14 H1R4	Low	the BSB uses the Handbook rollout as an opportunity to provide feedback to the profession about its enforcement caseload, the outcomes of complaints and 'lessons' for practitioners (paras 67-72).	<b>Accepted.</b>
13/14 H1R3	Low	the PCD considers my suggestions to further improve communication with complaint parties (paras 58-66).	<b>Implemented.</b>

#### Annex 4: Summary of main changes under the BSB Handbook affecting the enforcement system

- A **new definition of professional misconduct** which provides that no breach of the Handbook can be treated as professional misconduct unless it is not appropriate for the imposition of administrative sanctions.
- A **new Enforcement Strategy** requiring a risk based, outcomes focussed and proportionate approach to enforcement action, which should be read in conjunction with the new Supervision Strategy and must be taken into account in all decisions on what enforcement action to take
- **Updated Disciplinary Tribunal Regulations**, particularly regarding Directions.
- Extension of the scope of the Code to encompass **unregistered barristers** where the provision of legal services is involved.
- **Extension in scope of administrative sanctions** (formal warning or fine of up to £1,000) to cover all breaches of professional obligations occurring post 6 January 2014
- Requirement to **self-report and report others**, in relation to 'serious misconduct'
- New **disqualification power** to cover non-regulated persons directly or indirectly employed by a regulated person (e.g. employees of barristers/chambers).
- **New Interim Suspension power** for the Chair of the PCC to suspend barristers immediately prior to formal referral to an Interim Panel pending the outcome of such a referral.
- Updated and new format for **Fitness to Practise Regulations** applicable where information has been received against a barrister holding a practising certificate, which indicates that the barrister might be unfit to practise for health reasons.
- **Transfer of the appeal jurisdiction** for decisions of Disciplinary Tribunals post 6 January 2014 from the Visitors to the Inns of Court to the High Court.
- **New Sentencing Guidance** produced by the Bar Tribunal and Adjudication Service in relation to misconduct charged under the new Handbook