

## **Independent Observer's Report January 2015 – June 2015**

### **Status:**

1. For noting.

### **Executive Summary:**

2. This is the Independent Observer's report for January 2015 – June 2015.

### **Recommendations**

3. It is recommended that GRA considers the report, noting the recommendations and management responses (Annex 2) and noting that the IO will prepare an Annual Report (summarising the combined findings of this report and the previous interim report considered by GRA in January 2015) for inclusion by the GRA Chair in GRA's Annual Report to the Board for consideration at its September meeting.

### **Background**

4. The Independent Observer took up post in May 11. Her contract finishes Summer 2016.
5. The Independent Observer prepares six monthly reports for GRA and an annual summary report for the Board. This report covers the period January 2015 – June 2015.

### **Financial implications**

6. The Director of Professional Conduct has indicated that there are no direct financial or staff resource implications arising from the recommendations in this report except potentially in relation to capacity to address competing wider BSB priorities – see PCD Management response at Annex 2.

### **Equality Impact Assessment**

7. No equality issues arise from the provision and receipt of this report. Paragraphs 103-104 specifically address equality and diversity matters.

### **Risk implications**

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

### **Regulatory objectives**

9. 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**

10. Annex 1 – Independent Observer's report January 2015 – June 2015.

**Lead responsibility:** Isobel Leaviss



REGULATING BARRISTERS

**Independent Observer**  
**Interim Report**  
**January 2015 – June 2015**

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## Introduction

1. My role as the Bar Standard Board's (BSB's) 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**). This report summarises my observations from January 2015 – June 2015.

## Executive Summary

2. Overall, I have observed that complaints and disciplinary proceedings are handled in line with the BSB's Enforcement Strategy and in accordance with the PCD's policies and procedures. I have not identified any major systemic issues or any individual cases giving rise to serious concerns.
3. Risk is now a much more prominent feature of the BSB's enforcement system. The PCC and PCD are more explicitly addressing risk and proportionality during their discussions and decision-making. The new Case Examiner report templates now include a specific section assessing risk prior to making a disposal recommendation. The PCD Caseload Summary Report includes both KPI status and risk assessment details. Further developments are in hand to incorporate risk assessment results in management information reports and support more risk based caseload management.
4. My file reviews of comebacks, dismissals with advice, warnings and long running cases did not highlight any serious systemic issues or concerns. I have made some recommendations designed to support further improvement.
5. The steps that the BSB has been taking corporately to engage with intermediary consumer organisations are encouraging. The new monthly Regulatory Update e-newsletter to the profession is much improved and could be instrumental in helping barristers better understand the BSB's enforcement role, outcomes and lessons.
6. However, I remain concerned about the transparency of the enforcement system for 'users' (particularly potential complainants and barristers facing complaints) because the information on the BSB's website is poorly organised and difficult to navigate. A project has been underway since last summer to address this but there has been no visible progress on the website itself, resourcing is unclear and until very recently there has been no agreed target delivery date.
7. As previously reported, information sharing and knowledge management within the PCD and with the Office Holders, PCC members and prosecutors remains largely informal. In this context, the poor turnout at the prosecutors' event in May 2015 was particularly disappointing. There are more structured feedback loops than in the past and the former Legal Knowledge Officer made some progress. However, there remains considerable scope for reducing the current reliance on the 'corporate memories' of key individuals. The PCD recognises this and is currently recruiting to a new more senior Professional Support Lawyer role with responsibility for knowledge management.

8. On the basis of my observations, I recommend that

**[14/15 H2R1 High priority] the BSB urgently confirms resourcing and sets a firm target completion date for overhauling the enforcement website pages**

**[14/15 H2R2 Medium priority] a much clearer expectation is placed upon prosecutor panel members to attend events and contribute to knowledge sharing**

**[14/15 H2R4 Medium priority] template wording is developed to clearly and consistently frame all administrative warnings**

**[14/15 H2R5 Medium priority] template wording is developed to clearly and consistently frame formal advice that is given as to future conduct when complaints are dismissed but the barrister's conduct has given cause for concern**

**[14/15 H2R3 Low priority] reports listing 'live' comebacks are regularly monitored by the Assessment and Investigations and Hearings Team Managers**

9. BSB management have reviewed this report and responded to my recommendations (**Annex 2**). I have revisited previous recommendations (**Annex 3**).

### **Summary of activities**

10. As agreed with GRA, during this period, I focused on

- Comebacks from complainants
- Complaints resulting in administrative warnings
- Dismissals with advice
- Long-running cases
- Cases outside KPIs

11. In addition to undertaking these file reviews, I observed

- 6 (out of 7) Professional Conduct Committee meetings
- 7 Disciplinary Tribunals and 1 appeal at the Royal Courts of Justice
- one of the all-staff Service Complaint training sessions (28<sup>th</sup> January)
- the Data Protection and Disqualification training sessions held for PCC members
- an Investigations and Hearings Team meeting (4<sup>th</sup> February)
- a BSB workshop with Legal Consumer Organisations (1-4pm 2<sup>nd</sup> March)
- the Enforcement Prosecutors Event held (4-8pm 5<sup>th</sup> May)

## General observations

12. Overall, I have observed that complaints and disciplinary proceedings are handled in line with the BSB's Enforcement Strategy and in accordance with the PCD's policies and procedures. I have not identified any major systemic issues or any individual cases giving rise to serious concerns.
13. I have observed a demonstrable commitment to fairness, including when responding to queries and challenges from complainants and/or barristers.
14. Overall, I have continued to observe good administrative standards in the handling of complaints. I have seen clear evidence of decision makers referring to relevant regulations, policies, procedures and guidance to inform their decision-making. I have observed that the tone and content of letters has been appropriate to the individual and the circumstances including appropriate tailoring of standard letters in order to state decisions and reasons clearly and accurately. Case officers make clear contemporaneous attendance notes to log telephone contact with complaint parties and other relevant contacts. My observation is that careful attention is paid to ensure all relevant email conversations are added to the database and hard copy file.
15. Risk is now a much more prominent feature of the BSB's enforcement system. The PCC and PCD are more explicitly addressing risk and proportionality during their discussions and decision-making and increasingly their caseload management. The new Case Examiner report templates now include a specific section assessing risk prior to making a disposal recommendation. The PCD Caseload Summary Report includes both KPI status and risk assessment details. I understand that the forthcoming 2014-15 Enforcement Annual Report will include more risk information. Over the coming months, the Pending Task List (used by case officers on a day-to-day basis) and the Caseload Monitor Report (used by Team Managers) and the report listing cases with no activity in last 30 days (an exception report) will have risk assessment ratings added for cases for which risk assessments have been completed (i.e. at the conclusion of the assessment stage and post investigation) and KPI status if not already included. The Reports and Data Analysis Officer is also developing an additional database search to enable Managers to review the KPI status and risk assessment of all cases at a certain stage. These measures will support more risk based caseload management.
16. PCC case examiners are now using revised templates for their analysis sheets. These now helpfully include fields for the barrister's practising status; both current and at the time of the conduct in question (often a source of queries in the past). The templates clarify the 'tests' to be applied at different stages of the process. There is clear guidance for the transition period between the previous Code and new Handbook (including for cases involving conduct which straddles both time periods). There is a new section prompting case examiners to address procedural issues (if relevant). For cases where there is sufficient evidence of a Code breach/breaches, the revised template invites the examiner to specifically address risk prior to making recommendation(s) as to disposal.

17. Overall, my observation is that the templates helpfully provide a more consistent logical structure to the case examiners' analysis and hence to the ensuing PCC discussions which helps support robust and consistent decision-making. When general issues surface I have observed that these are recorded in the minutes and followed up.
18. I have observed the PCC and the Secretariat taking particular care in recording reasons for PCC decisions that differ in whole or part from Case Examiner recommendations so that there is a clear audit trail and transparency. However, in three linked own motion cases for which PCC decided not to give the barrister advice (contrary to the case examiner's recommendation) the minutes simply recorded that the PCC had made this decision 'in all the circumstances'. I have drawn this to the PCC Chair's attention and suggested that in future the rationale could be more fully spelt out for the record.
19. Following each PCC meeting, decisions are communicated to complainants (if relevant) and barristers in writing. The current practice is for complainants (if relevant) and barristers to be told that they can 'request a copy' of the report that was considered by the PCC by 'contacting the case officer'. I have queried why in the interests of transparency, the reports are not simply disclosed automatically. Automatic disclosure might result in higher comeback rates (i.e. queries on details contained within the reports) and in particular, further deployment of resources on dismissed cases. I recognise that this might run counter to the BSB's goal of being a proportionate, risk based and outcomes focused regulator. I plan to look into the current request rates and consider this further.
20. I observed a clear, relevant and up-to-date training session for PCC members on Data Protection delivered by a barrister from 11KBW specialising in this area. It drew attention to the responsibilities of the Bar Council/BSB as 'data controller' and PCC members (and indeed prosecutors and the Independent Observer) as 'data processors'. Two specific follow-up points were noted. The Secretariat agreed to look into the progress that has been made with regard to the development of written protocol between the BSB and BSB Committee members; and whether the BSB can arrange for PCC members to receive some IT assistance for encrypting BSB work. I understand that the BSB intends to set up BSB email addresses for all Board and Committee members, for example to simplify responding to Subject Access Requests and assist members in avoiding keeping data for longer than necessary (i.e. to support compliance with the Act). These are all issues to be addressed corporately and are presumably known to GRA. I think they are particularly pertinent to the enforcement system given the sensitive nature of data and information being handled and the likelihood (and growing incidence) of data requests.
21. As previously reported, the Assessment Team has recently experienced significant staff turnover and this has adversely affected turnaround times. My observation is that the management team were very alert to this, took pragmatic steps to address it (including referring additional cases to PCC members), kept the PCC well informed and promptly filled the vacancies.

22. I await the 2014-15 Enforcement Annual Report for more detailed data and analysis.
23. Historically, the BSB has not analysed the costs of enforcement beyond reporting the headline departmental budget in its Annual Report<sup>1</sup>. The PCD needs more detailed information in order to assess value for money and proportionality. Since January, staff have been recording time spent on case handling activities to provide a clearer picture of the resource costs incurred throughout the enforcement process. This exercise is ongoing and an analysis of the results will be undertaken during the autumn.

### **Publically available information**

24. I met the BSB's Communications Manager to discuss external communications about enforcement. As previously reported, I can give assurance that up-to-date and detailed information is available to potential complainants, complainants and barristers facing complaints via the website. However it must be very difficult for anyone unfamiliar with the BSB's role and processes to successfully navigate the site and find the information they need. The webpages have been added to in a piecemeal fashion and lack coherence.
25. There is a reasonably well-advertised telephone helpline (serviced by the PCD Assessment Team) and once a file is opened, complainants and barristers do have a named case officer to contact. However, the "Complaints and professional conduct" web pages urgently need overhauling (simplifying and rationalising) to improve transparency and accessibility.
26. The BSB recognises this and a project is underway (initiated Summer 2014) led by the PCD's Operational Support Team Manager. The charity consultancy Law for Life has undertaken a 'gap analysis', the structure of the new pages has been agreed and there is a Business Case with project plan and delivery timetable. However, as previously reported, I am concerned that progress has been slow. Resourcing has been unclear and there is no clear target date for completion, although I understand (whilst finalising this report) that a broad date of January 2016 has recently been agreed for full completion of the work. The BSB has an ongoing responsibility to ensure that its processes are transparent and that information is accessible.

**I recommend that the BSB urgently confirms resourcing and sets a firm target completion date for overhauling the enforcement website pages [14/15 H2R2 High priority].**

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<sup>1</sup> £1.4million for 2013-14 (excluding premises, pensions and central services i.e. overheads)

## **Consumer engagement**

27. I attended the second consumer intermediary group engagement session in March. The session was well attended, including this time by the Citizens Advice Bureau who recently assumed responsibility for the Witness Service from Victim Support. I observed constructive dialogue and apparent willingness on all sides to better understand and facilitate the 'consumer' experience in the broadest sense. The development of a 'Consumer Guide to using a barrister' by the BSB is a welcome step.
28. I hope that the BSB increases the frequency and interactivity of these meetings in order to cultivate and utilise this network in support of its regulatory objectives.
29. In particular, the BSB could work with these organisations to elicit consumer feedback, identify ways to help 'consumers' of the legal system better understand the role of barristers (identified as a significant issue by the BSB's own relatively recent Litigants in Person review) and improve communication with prospective complainants by raising awareness about the BSB's enforcement role (including vis-a-vis LeO). This will help ensure that legitimate concerns about barristers' conduct are appropriately channelled and effectively addressed. It could also help instil public confidence in the regulator.

## **Communication with the profession**

30. I am very encouraged by the clear format, professional style and informative content of the new monthly BSB Regulatory Update. This e-newsletter is sent to all members of the profession and is now being produced with the support of an interdepartmental staff editorial group, including staff from the PCD.
31. This e-newsletter could be instrumental in improving the profession's understanding of the BSB's enforcement role and supporting the delivery of its regulatory objectives by disseminating information about themes and issues arising, promoting good practice, highlighting lessons and instilling confidence amongst the profession that barristers who breach the Code are dealt with promptly, fairly, thoroughly and proportionately. The BSB has already used it to remind barristers of certain regulatory obligations (e.g. practising certification renewal, direct access training).
32. Ever since I took up post (and I believe for some time prior to that), the BSB has been intending to report disciplinary findings in Counsel magazine. I am told that practical arrangements are finally in hand for this to commence with the September issue (for disbarments and suspensions) and that the profession will be alerted to this in the next Regulatory Update e-newsletter.

## **Prosecutors' event**

33. As previously reported, information sharing and knowledge management within the PCD and with the Office Holders, PCC members and prosecutors remains largely informal.



34. There are more structured feedback loops than in the past and the former Legal Knowledge Officer made progress in establishing a PCD microsite and developing monthly newsletters. But there remains considerable scope for reducing the current reliance on the 'corporate memories' of key individuals. The PCD recognises this and is currently recruiting to a new more senior Professional Support Lawyer role with responsibility for knowledge management.
35. The prosecutors event in May 2015 was very poorly attended by only 9 (at least 1 of whom arrived late) out of 56 panel prosecutors.
36. The PCD's Operational Support Team Manager invited feedback from the ten or so who had confirmed attendance but did not turn up. Three responded saying they were held up in meetings or the timing was not convenient. One remarked that the session was too long and it would be preferable for future sessions to focus only on information directly applicable to prosecutors.
37. To the extent that the PCD continues to rely upon a broad network of pro bono barristers to advise on and prosecute its cases, it must ensure that knowledge sharing is effective and in my view, face-to-face meetings could be of greater benefit if well attended, more regular, perhaps shorter and better focused. My observations are that any high level strategic information that the BSB wants to impart could be conveyed in written form in advance, freeing up meeting time for interactive sessions (Q&A, two-way feedback, lessons learned, discussion of practical challenges). The prosecutors who did attend seemed keen to offer observations and share experiences and knowledge. For example, they expressed interest in participating in a workshop for the current Disciplinary Tribunal Regulations review (rather than simply being invited to produce formal written responses to the formal consultation). I understand that such workshops will be scheduled as part of the consultation process,
38. Upon joining the BSB's panel, prosecutors are provided with a comprehensive information pack. This includes copies of key judgements. As they are issued, new Tribunal Chairman's Reports are currently only sent to the prosecutor involved in the case. A summary of outcomes is circulated to the panel as part of their quarterly newsletter along with details of other recent developments.
39. **I recommend that a much clearer expectation should be placed upon prosecutor panel members to attend prosecutor events and contribute to knowledge sharing [14/15 H2R3 Medium priority].** For example, a letter could be sent by the PCC Chair noting and expressing disappointment at the poor turnout at the recent event and asking for feedback/suggestions for future events and other possible mechanisms for knowledge sharing. Also, by way of example, prosecutors could be asked to prepare 'headnotes' for Chairman's Reports for their cases summarising the key legal points, and highlighting any practical issues or lessons so that these can be circulated internally and to the panel (rather than simply disseminating summary outcomes).

40. To support efficiency and consistency and to reduce the reliance on the 'corporate memory' of key long-serving staff, it is envisaged that the incoming Professional Support Lawyer will proactively highlight cases and issues of interest as part of their knowledge management role. I suggest that consideration should be given to how judgements might be centrally filed to assist the PCD, Case Examiners and prosecutors in identifying comparable cases and/or how certain issues have been dealt with in previous cases.

### **Comebacks**

41. The term 'comeback' is used by PCD to describe when a complainant writes to object to the BSB's decision to close a complaint without a referral for enforcement action and in effect asks for a case to be re-opened and the decision to be reviewed.
42. I previously focused on comebacks in my report to GRA in May 2013. Since then, the new BSB Handbook has come into force. However, the rules and guidance for handling comebacks (and indeed the proportion of comebacks) remain substantially the same.
43. The new Complaints Regulations (A7 rE90 and rE91) mirror the previous provisions of the old Code and allow for the 'Reopening or reconsidering complaints which have been disposed of' in situations where 'new evidence becomes available' or 'for some other good reason' and allow the PCC (or those with delegated authority) to 'take any further or different action it thinks fit'. There are (still) specific provisions for matters that have already been referred to a Disciplinary Tribunal and/or for which charges have been served. Complainant comebacks can be received following initial assessment (PG09 'Initial Assessment of Complaints' Section 7) or following investigation (PG10 'Investigation of complaints' Section 8). Both sets of guidance cross refer to PG12 'Decision Making Criteria' to assist PCD in assessing what might constitute 'new evidence' or 'some other good reason'.
44. Currently, the external facing guidance for complainants wishing to have a complaint reopened is limited. There is some guidance for complainants within the eclectic list of FAQs on the website. The 'How to make a complaint about a barrister' leaflet and 'Enforcement Process' flowcharts are silent on this issue.
45. Having said that, when a complaint is closed without a referral for enforcement action, the complainant is sent a 'dismissal' letter explaining the reasons for the decision. This letter concludes by saying that *'Under the Regulations there is no formal mechanism for you to appeal our decision. In certain circumstances, set out in Regulation 90 of the Complaints Regulations (Part 5 of the Bar Standards Board's Handbook), the BSB can re-open or reconsider your complaint. Please note that disagreement with the PCC's decision alone will not be considered a good reason for it to re-open or reconsider your complaint. A copy of the Complaints Regulations is available on the BSB's website and a paper copy can be supplied on request.'* In other words, at the relevant point in the process, complainants are made aware of the scope for making a comeback.

46. Many complainants do not respond directly to the specific content of dismissal letters. Some write/email/call to express their general dissatisfaction with the outcome. Some identify what they believe to be flaws in the process and/or reasoning. Some make new points and/or say they want to submit new evidence in support of their complaint. Some formulate alternative and/or additional complaints. Some complain about the BSB's handling of their complaint.
47. It is for the case officer to determine whether a complainant is in effect requesting that the BSB reopen the complaint. If so, this is logged on the PCD database as a 'comeback' and a letter is sent to explain the process and say that the BSB 'would usually endeavour to reply substantively within 20 working days' and that 'in the event that a full response cannot be provided by this date, you (*i.e. the complainant*) will be contacted with an explanation and with a date by which you can expect a full response.'
48. For the purposes of this review, I focused on cases for which complainant comebacks had been logged. I did not review all other cases to assess whether comebacks should have been logged for them. However, on the basis of all my file reviews to date, I can assure GRA that anything resembling a substantive objection or challenge to a decision is in practice logged and treated as a comeback.
49. When GRA considered my report in 2013, it expressed some concern that PCD appeared to be devoting 'significant time in managing comebacks even when the complainant involved offers no new evidence'. My observation is that PCD are acting in line with the Regulations and to the extent that they may sometimes be more generous in entertaining comebacks than strictly required, my observation is that this is reasonable and pragmatic attempt to achieve closure for the complainant.
50. Complainant comebacks are considered by the next more senior decision maker based on which decision maker took the original decision. There is clear guidance on this (PG09 and PG10). Firstly, the new decision maker must consider whether the complaint should be re-opened under rE90. (*i.e.* new evidence or any other good reason). If so, they then have authority to proceed to review the matter.
51. The PCD database records information about comebacks and case officers see comebacks on their caseload listings. The PCC receives summary information about the outcome of comebacks (including the turnaround time) in Annex B of its meeting bundle. The PCD analyses and comments on comebacks in its annual performance reports.
52. The 2013/14 Annual Report indicated that of the 295 external complaints closed without a referral for enforcement action, the BSB had received comebacks in relation to 43 complaints (15%) and that this proportion was typical of previous years<sup>2</sup>.
53. I requested a report listing all comebacks received during the two year period from 6/3/2013 – 6/3/2015. The report listed 86 cases.

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<sup>2</sup> Enforcement Annual Report 2013/14

54. As one might expect, of the 86 comebacks, the vast majority (79 or 92%) were in relation to cases closed following initial assessment (rather than post investigation).
55. Of the 86 comebacks,  
77 (90%) have been reviewed and 'dismissed' i.e. the original complaint not reopened  
1 awaits review (long overdue and flagged with Assessment Team Manager)  
1 had been adjourned pending proceedings  
1 had been withdrawn by the complainant  
5 (6%) had been reviewed and the original complaint reopened  
1 was a service complaint and dealt with as such
56. All five re-opened complaints had originally been closed at the initial assessment stage.
57. One case (revolving around a fee dispute) was partially re-opened and referred for investigation by an Office Holder in order to clarify certain matters. However, the complaint was subsequently withdrawn by the complainant and the file closed.
58. One case was re-opened on the basis that the original dismissal had been made because the complaint was 'unclear', lacked substance and there was no evidence of a breach of the Code. Following a comeback, the Assessment Team Manager concluded that further enquiries should be made. Further enquiries were made, the case re-assessed and then dismissed as out of time (the dismissal letter indicating that in any case the allegations were unsubstantiated by the transcripts and other documentary evidence that had been provided).
59. One case was re-opened when the complainant highlighted factual inaccuracies and made further submissions. On the recommendation of a Committee member, the PCC decided to re-open the case and make further enquiries regarding whether the complainant might waive privilege to allow for an investigation. When the client refused to waive privilege, PCC decided to dismiss without investigation.
60. Two complaints that were re-opened were referred for investigation and have since been referred by the PCC to disciplinary tribunals.
61. In one case my observation is that the Office Holder reviewing the file simply took a different view to the barrister PCC member who had previously advised dismissal (on whether the complaint was in fact out of time, whether in any case the regulatory objectives would be served by proceeding and whether the allegations had substance and were sufficiently serious to warrant investigation). Following an investigation, PCC referred this matter to a 5DT.
62. The second case was originally dismissed as the assessment officer had been unable to identify a breach of the Code. In response to a detailed comeback containing further

submissions, a Committee Member recommended re-opening the case and referring it for investigation, primarily on the basis that the original decision had been taken on the wrong factual basis. This case has since been investigated and referred by the PCC to a 3DT (hearing scheduled 30<sup>th</sup> June).

63. On the basis of my review (of all five comebacks that resulted in cases being re-opened and a sample of 15 of the 77 that did not), I can give assurance that the procedures are being followed. In each case, a more senior decision maker reviewed the original decision, there was evidence that a meaningful review had been undertaken and clear reasons for the decisions were provided to the complaint parties.
64. The PCD is aware that the Team Managers often have some involvement in cases. In particular, at the initial 'triage' stage, the Assessment Team Manager allocates cases to his team of assessment officers and often provides them with guidance about lines of enquiry or issues to focus on. His reviews of comebacks may not therefore be entirely independent of the original decision making process.
65. Having said that, my observation is that he conducts a thorough and objective review of his team's decisions. It is perhaps worth noting that in two cases (out of 30 reviews in the last two years) he decided that complaints should be re-opened (compared with 2 out of 47 for Office Holders). I would also note that in general, dismissals of more complex cases will have been informed by advice from Committee Members and hence any comebacks referred to Office Holders. I think it would be disproportionate to refer all comeback reviews to them, or indeed to the PCD Director. I also note that there are other review mechanisms in place i.e. PCC, via QPRSC, regularly reviews samples of staff dismissals and the Independent Observer. On this basis, my observation is that the current arrangements whilst perhaps not ideal, are robust and proportionate.
66. On the face of it, overall turnaround times for reviewing comebacks were disappointing with only half being completed within the 20 working day timeframe indicated to the parties. On a number of files, I noticed considerable avoidable delays that were only occasionally acknowledged, explained or apologised for. I also noticed that the database dates for 'comeback start' and 'comeback concluded' were not always accurate; in some case overstating and in some cases understating the time taken, so I suggest that it is difficult to draw conclusions from the current data. **I recommend that reports listing 'live' comebacks are regularly monitored by the Assessment and Investigations and Hearings Team Managers [14/15 H2R5 Low priority].** More active monitoring should help ensure that accurate dates are logged, cases can be escalated as necessary and undue delays can be avoided.
67. I have focused on complainant comebacks for the purposes of this report. I propose to explore when and how decisions in relation to complaints are reconsidered in response to requests from barristers for my next report.

## Administrative Sanctions

68. When the PCC considers that a barrister's conduct constitutes a breach of the Handbook (on the balance of probabilities) and considers that to impose an administrative sanction is proportionate and sufficient in the public interest, it may do so. In determining the level of administrative sanction, the PCC must have due regard to the enforcement strategy (and 'such other matters as the Bar Standards Board may consider relevant from time to time'). The administrative sanctions available are a formal written warning and/or a fine (of up to £1,000 on a regulated individual or £1,500 on an authorised body).
69. Administrative sanctions are not disciplinary findings but any decision by the PCC to impose an administrative warning or fine will be formally recorded and may, where appropriate, be referred to the supervision team for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with rE92 and rE93. Barristers may appeal administrative sanctions to an independent panel convened by BTAS.
70. In my last report, I noted that I had observed an inaccurate reference to the appropriate appeal mechanism for administrative sanctions and a barrister successfully appealing a warning due (at least in part) to it not having been 'sufficiently well particularised' so I decided to review a sample of cases that had resulted in warnings.
71. Prior to 6 January 2014, only a few breaches could be dealt with by way of administrative sanctions<sup>3</sup>. Under the new Handbook, the scope of this enforcement tool is much wider. Administrative sanctions can be applied, if considered proportionate, to any breach of the Handbook unless it involves a conviction for dishonesty or deception in which case the Regulations require that the complaint should be referred to a Disciplinary Tribunal.
72. There is a comprehensive new PCD Guidance note for Administrative Sanctions (G02). There is also a helpful new public leaflet that clearly explains when administrative sanctions can be applied (only following a formal investigation), the type of factors taken into account (including risk, seriousness, previous findings, impact on clients or others), the standard of proof applied (civil standard i.e. balance of probabilities), who takes decisions, the appeal route and a statement that the BSB does not publish administrative sanctions.
73. As at 24<sup>th</sup> February, there had been 9 cases closed in the previous 12 months that had resulted in administrative warnings as defined by the new Handbook (8) or a warning under paragraph 901.1 of the 8<sup>th</sup> Edition Code of Conduct (1).
74. I reviewed all eight warning letters issued under the new Handbook. Three had been issued following a decision by the PCC, five were staff decisions.

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<sup>3</sup> The following types of administrative sanction are available; formal warnings, fixed penalty fine of £400 subject to 50% reduction for early payment and/or discretionary fine of up to £1,000

75. All of the letters explained that the barrister's conduct constituted a breach of the Handbook. All summarised the nature of the breach, in most (but not all) cases with specific reference to the Handbook and Code provisions and in one case with specific reference to the regulatory objectives. All noted that the BSB had decided that 'taking into account the circumstances of the breach, it should be dealt with by way of an administrative sanction' and referred (to a greater or lesser extent) to the factors taken into account in arriving at this decision. All noted that an administrative sanction was considered proportionate and then stated that a decision had been taken to issue a warning. Two explained why the BSB considered that a fine had not been warranted.
76. Only three then went on to spell out 'the warning' in terms. Half of the letters provided a link to the Complaints Regulations. All but one pre-dated the new leaflet, a copy of which was indeed provided in the remaining letter.
77. All but one of the letters put the barrister on notice that the fact that an administrative warning had been issued could be taken into account if further breaches of the Code/Handbook occurred. Four letters specifically referred to 'further breaches of a similar nature ... within the next two years' and the first administrative warning letter mistakenly included specific references to two similar infringements within two years automatically being treated as professional misconduct (something that applied under the previous Code but no longer under the Handbook). I understand that this error was noticed subsequently and highlighted internally to prevent a recurrence. I suggested to the case officer that they consider writing to the barrister to clarify the position.
78. One letter alluded to the fact that there are circumstances in which the PCC may reopen or reconsider complaints which have been disposed of (Section A7). However, this is not the general practice for dealing with challenges to the imposition of administrative sanctions. The most appropriate mechanism to challenge an administrative sanction is the formal appeal route. Nevertheless, on receipt of an appeal notification, staff are instructed to consider first whether there is clear evidence that the original decision was wrong and if there is, they are advised to employ the power to reopen and reconsider the matter rather than forcing the barrister to pursue an appeal that inevitably would be successful.
79. All of the letters clearly, accurately and consistently explained the appeal route (although for some reason one did so only in very summary terms).
80. Two letters enclosed the 'Appeal against administrative sanctions – Guidance for barristers' produced in March 2014 (all the warnings were issued subsequently). rE85 clearly states that an appeal of a decision to impose an administrative sanction 'is a review of the original decision, not a re-hearing'. At an appeal hearing I attended, the panel Chair thought it necessary to clarify this for all parties and the BSB's barrister representative at the hearing (a prosecution panel member) mentioned to me that he thought this could be more clearly emphasised upfront. I suggest that the PCD gives this consideration (e.g. in letters, leaflet and/or guidance on the website).

81. **I recommend that template wording is developed and/or a model letter appended to the internal PCD guidance to ensure that all administrative warnings are clearly and consistently framed and to help ensure that they are all sufficiently particularised [14/15 H2R6 Medium Priority].** I also suggest that when next updated, the Administrative Sanctions leaflet could more fully address disclosure (rE53), note the implications of non-payment of fines (rE54) and clarify that appeals are reviews (of the reasonableness) of the original decision, not re-hearings.

### **Dismissals with advice**

82. When the BSB considers that a barrister's conduct does not constitute a breach of the Handbook, it must dismiss the complaint. However, where the PCC (or a duly authorised staff member) takes the decision to dismiss a complaint following an investigation, but the BSB regulated person's conduct is 'nevertheless such as to give cause for concern' (rE44), the PCC may (i) draw to the BSB regulated person's attention in writing the PCC's concerns and/or (ii) advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the PCC or on some other person nominated by the PCC, to receive such advice. Dismissal decisions (including those where advice is given as to future conduct) are not routinely disclosed. In fact, the Regulations specify (rE45) that any decision by the PCC to dismiss a complaint must only be disclosed in accordance with rE92 and rE93 (which does include in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk).
83. As at 24 February 2015, there had been 10 dismissals with advice during the preceding 12 months. I reviewed the files for all these cases.
84. In most, but not all the advice letters, the barrister was put on notice that 'in the event of any similar breach in the future, it is likely that enforcement action would be taken' or that 'it may well be that a serious view is taken in the light of your conduct on this occasion'. In some cases, barristers were asked to acknowledge receipt of the letter and advice it contained (although this did not appear to be monitored or logged). In only one letter was it explained that there was scope for the barrister to request a reconsideration of the decision. Only two letters referred to rE44. None addressed disclosure.
85. **I recommend that template wording is developed to clearly and consistently frame advice that is given as to future conduct for complaints that are dismissed but when the barrister's conduct is such as to give cause for concern [14/15 H2R7 Medium priority].**
86. In particular, I suggest that the wording should (i) explain the status (and thus underline the gravity) of formal advice with specific reference to rE44 (i.e. that it is given in cases where the regulated person's conduct is such as to give cause for concern) (ii) put the barrister on notice that this outcome will remain on the BSB's records indefinitely and would therefore be taken into account in determining any future complaints but not



disclosed to any third parties except in accordance with rE92 and rE93 (iii) request acknowledgement which the PCD should then monitor and chase up as necessary prior to closing the file and (iv) explain that whilst there is no formal mechanism to appeal this decision, the BSB may be prepared to reconsider it where new evidence becomes available or where there is some other good reason (rE90 and rE91).

### **Long running cases**

87. I reviewed the 20 longest running cases (ranked without excluding periods of adjournment). These involved 16 barristers. Thirteen cases were currently adjourned. Of the seven remaining, six were at the Disciplinary Tribunal stage and 1 was with the PCC.
88. One case awaited action by the case officer following a recent hearing involving the same barrister. Another case had been adjourned pending related appeal proceedings to the SDT with monthly updates to be provided by the barrister to BTAS. I suggested making direct contact with the SRA to establish the status of the proceedings and the case officer said that this was being done following the same suggestion by the Investigations and Hearings Manager.
89. Whilst I did observe spells of avoidable delay or delay on the part of the BSB on some of the files (e.g. due to staff or Case Examiner illness), I observed that for more recent instances, there was evidence on file that these delays had been more actively addressed. For example, asking one of the Office Holders to chase input from the Case Examiner. Having said that, at least two recent unforeseen absences of case officers did not trigger the reallocation of their cases; matters had awaited their return. However, I should emphasise that the instances of avoidable delay that I identified were not by any means the main reason for the cases being long-running. In fact, what I observed were many and persistent attempts by the PCD to expedite matters, for example, in one case dealing with the barrister's Chambers in order to help progress matters and another contacting a barrister's GP directly for medical evidence. Overall, I observed a careful balance on the part of the PCD, for example between affording barristers reasonable extensions to deadlines to enable them to prepare submissions whilst avoiding undue delays and seeking to progress matters.
90. The BSB's longest running cases are typically complex in nature (e.g. complex underlying proceedings, multiple submissions, multiple witnesses), have at some stage been (entirely appropriately) adjourned pending the outcome of related proceedings, may have suffered from poor engagement by the barrister, may have been subject to challenges by the barrister (e.g. strike out applications, appeal of strike out decisions) and/or may have taken time to be listed.
91. Where relevant, it was clear (for example from my discussions with case officers) that appropriate consideration had been given to the ongoing risk to the public and deployment of other measures available to the BSB (i.e. interim suspension).

92. Casework Supervisors in the Investigations and Hearings Team meet their case officers and review progress and issues arising from individual cases at their regular 1-2-1 meetings. Team managers also use their 1-2-1 meetings to do the same. I understand that the Investigations & Hearings Manager aims to carry out a review of cases on a bi-monthly basis across the team, including long running cases. In the Assessment Team, there are regular 1-2-1 meetings (at least fortnightly) to review all cases.
93. In their discussions with me, the case officers demonstrated detailed and up-to-date knowledge of the status of the cases and the issues.
94. 'Cases of interest' are brought to the attention of the Office Holders at their regular meetings with the PCD management team and these can include high risk and long running cases.
95. Following the settlement in December 2014 of one of the BSB's longest running cases, in addition to inviting feedback from the solicitors handling the case on its behalf, the Office Holders agreed that one of the Vice Chairs should undertake a review to identify lessons for the future. I await the outcome with interest.
96. In the meantime, during the Investigations and Hearings Team Meeting I attended in March, I observed that three specific learning points were discussed. Firstly the importance of maintaining schedules of unused material, disclosure logs and service logs. Secondly the need to obtain documentary evidence to support adjournments of cases on health grounds. And thirdly, the need to be alert to the risk of contamination of evidence in associated proceedings involving the same barrister. There was a constructive discussion during which the team addressed the practicalities and case officers raised queries in relation to specific cases. It was agreed that going forward, all cases will have logs and that in the meantime, case officers should prioritise preparing logs for their large cases.
97. Three of the longest running cases were opened in 2011 and then adjourned on the advice of an Experienced PCC Member pending ongoing connected proceedings (and subsequently the adjournment maintained pending appeals).
98. There was evidence on the files of regular chasing by the PCD to ascertain the status of the proceedings. I note that the PCC member observed that the complaints 'appear to be an attempt to argue issues that were all part and parcel of the criminal trail and should be raised in court' although the letter to the complainant was less explicit.
99. Such cases are not uncommon. The starting point for consideration of an adjournment at the initial assessment stage is for the Assessment Team to consider whether there is the possibility that there has been a breach of the Handbook/Code. If there is no evidence at all, even if the allegation were true, that it could not amount to a breach (or would only amount to a breach which is no more than low risk), or where it is clear that the complaint is for some reason not apt for consideration, then the complaint is dismissed.

100. If none of these apply, the Assessment Team then ascertains the nature and status of any ongoing connected proceedings. The 'default' position is to progress the complaint but they must consider whether there is a real risk of 'muddying the waters' or prejudicing the legal position of any of the parties or whether there is a real risk that the outcome of the proceedings will have a bearing on the PCD's consideration of the complaint. If any of these factors apply, the PCD will normally adjourn its consideration of the complaint pending the outcome of the associated court proceedings.

### **Cases outside KPIs**

101. I have observed that in addition to post hoc quarterly KPI monitoring and year-end analysis, the PCD is increasingly using management information to forecast, anticipate and as far as possible proactively address turnaround performance issues. The Reports and Data Analysis Officer now has a specific objective to work with the Assessment and Investigations & Hearings Managers to embed/develop management information reports to assist them in their management of their teams' caseloads. Where possible (primarily for the Investigations and Hearings stage) this performance management should become more risk based (e.g. by including risk assessment results on management reports to assist with prioritisation) rather than be simply focused on turnaround times.
102. As previously reported, the Assessment Team has experienced significant staff turnover in recent months (both Assessment Officers left and one of the two Assistants went on maternity leave) and this has adversely affected turnaround times. My observation is that the management team were very alert to this, took pragmatic steps to address it (including referring additional cases to PCC members), kept the PCC well informed and promptly filled the vacancies. I await the Enforcement Annual Report for detailed analysis of turnaround times.

### **Equality and Diversity**

103. On the basis of my observations, I can give general assurance that investigations of complaints are being carried out with appropriate consideration of equality and diversity issues. In particular, I have observed the PCC carefully taking account of comments made by the observing member of the Equality and Diversity Committee.
104. I do not have any specific issues or concerns to highlight in relation to equality and diversity.

### **Previous Recommendations**

105. The current status of my past recommendations is summarised in [Annex 3](#).
106. Whilst I recognise that the BSB has many other competing priorities, it is disappointing that there has been no publically visible progress to overhaul the 'Enforcement' content on the website hence my new recommendation.

### **Focus for next report**

107. I propose to focus on the following for my next report (July – December 2015)

- Judicial Reviews – issues raised and lessons learnt
- Appeals
- Reconsideration of decisions in response to requests from barristers

### **Conclusion**

108. I would like to thank the PCD, Committee members and other BSB staff for responding so thoroughly, promptly and patiently to my enquiries.

109. As always, I welcome GRA Committee feedback on this report.

**Isobel Leaviss**  
**Independent Observer**  
**June 2015**

## 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 intended outcomes and hallmarks of the BSB's Enforcement Strategy*<sup>4</sup>(see below)
  
- 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 IO should report findings and/or seek advice from the GRA Chair or Vice-Chair as necessary between formal reporting, for example in relation to urgent matters. In circumstances where it would be inappropriate to seek advice from the Committee Chair or one of its members, the IO should approach the Chair or a Vice-Chair of the Board.

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.

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<sup>4</sup> previously referred to 'aims and objectives of complaints and disciplinary system'

## The BSB's Enforcement Strategy (published January 2014)

### Intended Outcomes

The main objective is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions.

Enforcement action is intended to meet the objectives of:

- a) promoting adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2009 (the Act) and to our regulatory arrangements as set out in our Handbook;
- b) providing a credible deterrence to non-compliance with the BSB's regulatory arrangements;
- c) preventing further breaches; and
- d) preventing those who represent a serious risk to the public from practising.

### Hallmarks

The hallmarks of the BSB's Enforcement Strategy are as follows:

- a) **Risk-based** – We will focus our enforcement action on the issues that pose the greatest risk to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what enforcement action we should take.
- b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.
- c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
- d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime. Typically, we will take action against an individual but action will be targeted at an entity alone or at an entity and individuals as appropriate.
- e) **Flexibility** – We will use a range of enforcement tools to promote compliance with our regulatory arrangements.
- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated persons a reasonable opportunity to respond.

## Annex 2: Summary of new recommendations and management responses

Ref	Priority	Recommendation	Management Response
14/15 H2R1	<b>High</b>	the BSB urgently confirms resourcing and sets a target completion date for overhauling the enforcement website pages	Accepted and to a large degree already implemented. Resources and finances for completion of the work have been identified and the completion date has, in principle, been agreed for January 2016. However, this is subject to formal confirmation of the timetable with the external company and confirmation of available staff resources taking into account other high priority work such as ASPIRE.
14/15 H2R2	<b>Medium</b>	a much clearer expectation is placed upon prosecutor panel members to attend events and contribute to knowledge sharing	Accepted. It is likely that PCD will await the scheduling of the next "prosecution panel event to emphasise the attendance expectations. In this regard, the recommendation may not be completed within the three month priority level assigned to it as the next event is not due until November 2015 or later. Consideration will be given to the PCC Chair sending a communication about the low attendance at the last event in May but given the lapse of time since the last event and the fact that no prior expectations were set such a communication may not be pertinent and may not have the desired impact.
14/15 H2R4	<b>Medium</b>	template wording is developed to clearly and consistently frame all administrative warnings	Accepted and will be implemented within the timescale
14/15 H2R5	<b>Medium</b>	template wording is developed to clearly and consistently frame formal advice that is given as to future conduct when complaints are dismissed but the barrister's conduct has given cause for concern	Accepted and will be implemented within the timescale
14/15 H2R3	<b>Low</b>	reports listing 'live' comebacks are regularly monitored by the Assessment and Investigations and Hearings Team Managers	Accepted and will be implemented within the timescale

### Annex 3: Summary of recommendations made since May 2011 and status as at June 2015

Ref	Priority	Recommendation	Status
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> Six monthly
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>
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>
12/13 H1R7	High	The BSB improves the accessibility and clarity of its service complaint policy on its website.	<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.	<b>Implemented</b>
11/12 Q1R4	Medium	The BSB publishes its most recent performance reports.	<b>Implemented</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 but awaiting overhaul to improve transparency</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 (e-newsletter, Counsel mag)</b>
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>



Ref	Priority	Recommendation	Status
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.	Implemented
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.	Implemented
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.	Implemented
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.	Implemented
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.	Implemented PG09 now refers
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.	Implemented
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.	Implemented
11/12 Q2R2	Medium	The BSB consider developing a simple 'checklist' for all letters in order to help embed best practice.	Implemented
11/12 Q3R1	Medium	The BSB formalise and publish its policy for commenting publically on complaints and disciplinary proceedings.	Implemented
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 trigger prompt follow-up.	Implemented
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.	Implemented but see paras 32-38
12/13 H1/R1	Medium	The BSB publishes a summary of the appointment process for its prosecutors, that the BSB formalises appointments with an appointment letter and that assigns an experienced 'mentor' to each of its new prosecutors.	Implemented

<b>Ref</b>	<b>Priority</b>	<b>Recommendation</b>	<b>Status</b>
12/13 H1/R2	Medium	The PCD captures lessons from 'dismissal reports' centrally, agrees an appropriate action plan and monitors implementation.	<b>Implemented</b>
12/13 H2/R3	Medium	The PCD extends its Disclosure Policy to include Committee minutes and publishes it.	<b>Implemented</b>
13/14 H1/R5	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 see paras 26-28</b>
13/14 H2/R4	Medium	Systems be put in place to properly identify, record and monitor service complaints made about PCD.	<b>Implemented</b>
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.	<b>Implemented</b>
13/14 H2/R2	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 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).	<b>Implemented</b>
14/15 H1/R2	Medium	PCD review the handling and monitoring of pre-complaint cases to ensure that (i) information provided at the initial enquiry stage is systematically logged on Flosuite; (ii) pre-complaint cases should be added to the case listings for all staff in the Assessment Team and the weekly complaint report for the team should include listings for the Officers as well as the administration staff to prompt regular review and follow-up as required; and (iii) management has a more detailed picture of the nature and status of pre-complaint files to inform its approach.	<b>Accepted</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>
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>Implemented</b> 'Complaints about our service'
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 but see R1</b>
12/13 H1/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 H2R3	Low	QRSC's remit be extended to include assessing timeliness and also whether the process has been 'open', 'transparent and accessible'.	<b>Implemented</b>
13/14 H1R1	Low	The PCD considers my suggestions to help expedite transcript requests.	<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.	<b>Accepted but not implemented</b>
13/14 H1R3	Low	The PCD considers my suggestions to further improve communication with complaint parties.	<b>Implemented</b>
13/14 H2R3	Low	QRSC's remit be extended to include assessing timeliness and also whether the process has been 'open', 'transparent and accessible'.	<b>Implemented</b>
14/15 H1R1	Low	All files showing outstanding fines/costs should be reviewed to ensure that the database accurately reflects the latest overall position and a report should be developed to enable monitoring of overall progress with compliance.	<b>Accepted</b>
14/15 H1R3	Low	The BSB formalises the principles it expects the PCC to apply when handling regulatory complaints involving barristers who undertake work on its behalf and draws these to the attention of barristers undertaking BSB enforcement roles (i.e. PCC, staff, prosecutors) and to complainants where relevant.	<b>Accepted</b>
14/15 H1R4	Low	Following the conclusion of any regulatory complaint about PCD staff, PCC members or BSB prosecutors, a review is undertaken to identify any lessons.	<b>Accepted</b>