

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Independent Decision-Making Body

Annual Report 2020/21

Legal & Enforcement Department
Regulatory Operations Department

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Chair's introduction

- 1.1 This is the second Annual Report of the Independent Decision-making Body (IDB) but the first to cover a full year given that last year's Report covered the 6 month period since the IDB's creation in October 2019 to 31 March 2020 in order to align with BSB reporting cycles. Having been Vice-Chair during that period, I took over as Chair from Aidan Christie QC in April 2020, so this report also coincides with my first full year in office.
- 1.2 I should first like to pay tribute to Aidan for his many years of service, both as Vice Chair and Chair of the Professional Conduct Committee (PCC) and as the first Chair of the IDB. Under his leadership the transition from the PCC to IDB, with its very different ways of working, was a smooth one. On behalf of the IDB I express gratitude to Aidan, albeit the dinner in his honour was delayed until this summer because of COVID.
- 1.3 I am pleased to say that the good start reported on in last year's Annual Report has continued this year with a significant increase in activity both in Enforcement and Authorisation decisions made. Full statistics are given later in this Report. Although they do not bear direct comparison because of the different length of reporting period, on a pro rata basis the numbers of cases considered by the IDB has more than doubled in 2020/21 compared to 2019/20 partly as a result of an increase in overall caseload and partly due to more regular scheduling of panel meetings.
- 1.4 Following a scheduling review between August and October 2020 (which included a survey of members), all day meetings were introduced on a regular basis and the length of half day meetings increased from January 2021. This has enabled more complex cases to be given the time and attention they deserve whilst also giving flexibility to consider more cases at each meeting where possible. It has also enabled individual panel members to participate more fully in the IDB decision-making process. Mid-term appraisals carried out at the end of the reporting period in April 2021 indicated that the average number of meetings attended by each panel member over the first 18 months of their appointments was around 10.
- 1.5 Finally, upon my appointment as Chair, Cindy Butts, a lay member of the IDB, was appointed Vice-Chair. Cindy provided support and wise counsel in that role until her resignation in March 2021 in order to take up the position of Chair of the Independent Commission for Equity in Cricket. I'd like to wish her well at what must be a very challenging time for the work of that Commission. The IDB operated without a Vice-Chair until the appointment of Rohan Sivanandan in the latest recruitment round this September. I am delighted to welcome Rohan but as this Annual Report covers the period before his appointment it is submitted in my name only.

The year in review

- 2.1 2020/21 was the first full year of the IDB's operation and its start coincided with the early stages of the pandemic and the move to remote working. Thankfully this transition was relatively seamless for the IDB which was set up with the express intention of encouraging diversity and a greater geographical spread of the membership by allowing for remote attendance at panel meetings. The infrastructure was therefore already in place to support remote working including meeting papers being communicated digitally via the CaseLines platform. That is not to say the move to fully remote meetings was not challenging for members or that there were no technological glitches. Nevertheless, the switch was made without any break in the meeting schedule or a reduction in cases considered. The IDB is indebted to the BSB staff for the support they gave, and the patience they showed, in assisting that transition.
- 2.2 The impact of the pandemic is covered further below and information on the performance statistics are included in a separate section. However, overall, for a new body still establishing itself, the first full year of operation was a success despite the circumstances. Panels continued to make robust decisions that, in the main, stood up to challenge (see table 4.5 below). The steep learning curve experienced by all members in the first six months of operation levelled out during the year with members sitting more frequently on panels and gaining greater proficiency as well as confidence in applying the regulatory framework. Members still turn to, and are grateful for, the guidance provided by BSB managers at meetings but reliance on their support in guiding members through the detail of the decision-making processes has substantially reduced.
- 2.3 There are areas of the IDB's work that remain extremely challenging. The volume of papers to read for each meeting can be high and the evidential issues complex. Indeed, the level of complexity of cases seems to be getting ever greater. Members devote a considerable amount of time in preparation for a meeting and do their best to read to read all the papers in advance. The papers are circulated a week in advance of meetings and in most cases this is sufficient time for members to prepare thoroughly. However, in voluminous cases earlier circulation of papers is being considered by the Executive and/or a reduction in the number of cases listed.
- 2.4 Another challenge is the production of written reasons for decisions at meetings. This is an essential component of the work of IDB panels and takes up a considerable proportion of the meeting time. The process of producing them has speeded up since the IDB's inception and members are constantly working with the Executive to find ways to improve the efficiency of this part of the process while not compromising the quality of the reasons given.

Composition

- 2.5 At the start of this reporting period there were 39 members of the IDB (16 barrister members and 23 lay members). The original appointment terms of members provided for continuation of some previous members of the PCC to ensure an orderly transition to the new system. During the reporting period there were four resignations and the end of terms of office of six other members. It was not necessary to replace any of these members given the planned reduction in membership once the IDB was up and running. The IDB is extremely grateful for the knowledge and experience those previous PCC members brought to the decision-making of the IDB and to all members who have served on the IDB. A formal recruitment process was undertaken in the summer of 2021 upon the retirement of a further seven members whose terms of office expired on 31 August 2021 and will be reported on in the next Annual Report.

Impact of COVID-19

- 2.6 The immediate impact of the pandemic that caused all panel meetings to be held remotely from the end of March 2020 is outlined above. While the practical and administrative implications of the transition were minimal, the adaptation in approach for members was somewhat greater.
- 2.7 As a relatively newly-formed body, the relationships between members and the sense of cohesion as a “team” was just starting to form as the pandemic hit. The initial, in person, induction training in 2019 and two pre-pandemic quarterly training sessions that were held face-to-face, helped to start the process of creating belonging and group identity. However, the March 2020 lockdown brought all in-person contact to an abrupt halt and there was no such contact for the rest of the reporting year.
- 2.8 It is important to stress that remote working has not altered the quality of decision-making and indeed some members find it more conducive to full participation given the ease of attendance at meetings and ability to have case-papers accessible on multiple screens. Nevertheless, there has inevitably been a reduction in the sense of community which in-person training events create, and it is to be hoped that some hybrid events in future will allow for some greater sense of connection for those who wish to attend in person.

Anonymisation

- 2.9 At the invitation of the previous Chair, the Board reviewed the practice of anonymising case papers for enforcement decisions and at its meeting on 19 January 2021 approved a recommendation to cease the anonymisation of the gender of the barrister whose case is being considered. This was partly recommended because of the resource intensiveness of ensuring every redaction as to gender had been made (and a high error rate rendering the whole process ineffective) and a consequent increase in time taken to prepare a case for a panel. It was also recommended because there had been no discernible difference in outcome on gender grounds since the practice was introduced in 2016.
- 2.10 Since January 2021, therefore, the IDB has been aware of the sex of the barrister whose case they are considering. It is too early to tell whether this has had any impact on the decision-making process of panels or the outcome of the case; anecdotally, however, members report that knowing the sex of the barrister actually reduces the risk of making a false assumption based on the facts of the case. At the same time as gender anonymisation ceased refresher training on unconscious bias was held in the third quarter of the year.

Performance Statistics

3.1 This section outlines the work carried out by the IDB covering the reporting period 1 April 2020 to 31 March 2021. Table 3.2 provides a breakdown of the number of panel meetings, cases considered and decisions made. Tables 3.3 to 3.6 provide a comparison of the performance statistics for the work carried out by the IDB covering a period of six months from 15 October 2019 (when it started operating) to 31 March 2021) compared with the reporting period 1 April 2020 to 31 March 2021.

3.2 Number of panel meetings and cases considered

Number of meetings	Cases considered	Decisions	Type
Enforcement			
38 meetings Full day - 15 Half day - 23	73	Referred to disciplinary action - 37 DBC* referrals - 3 DBC* proved - 5 Referral to 3-person Tribunal - 12 Referral to 5-person Tribunal - 17 Closed after investigation - 33 Administrative sanctions issued - 10 (Fines - 4) (Warnings - 6) Referred to Supervision - 1 Dismissed - 22 Put back for further enquiries - 3	
Authorisations			
7 meetings Full day - 1 Half day - 6	32	Executive Decisions: Affirm Executive Decision - 24 Substitute another Decision - 5 ICC Hearing Panel Decision: Affirm ICC Decision – 3 Substitute another Decision - 0	Admission to the Bar as a qualified foreign lawyer - 10 General Exemption - 5 Pupillage Reduction - 4 Admission to the Bar as a Solicitor - 3 Certificate of Academic Standing - 2 Reactivation of Stale Qualifications - 2 Admission to the Bar as a Qualified European Lawyer - 1 Authorisation as a Licensed Access Client - 1 Qualified Person Requirement Waiver - 1 Inns' Conduct Committee (ICC) decision - 3

*Determination by Consent

- 3.3 Table showing the number of IDB meetings covering the period 15 October 2019 to 31 March 2020 compared with the reporting period 1 April 2020 to 31 March 2021.

Meeting Type	2019/20	2020/21
Enforcement	10	38
Full Day	0	15
Half Day	10	23
Authorisations	3	7
Full Day	0	1
Half Day	3	6

The figures show a large increase in the number of full day enforcement and/or authorisation meetings for 2020/21 compared with the reporting period for 2019/20. Full day meetings had been arranged on an-hoc basis in 2019 but the arrangement was made permanent in January 2021.

- 3.4 Table showing the breakdown of cases/applications considered covering the period 15 October 2019 to 31 March 2020 compared with the reporting period 1 April 2020 to 31 March 2021.

Meeting Type	2019/20	2020/21
Enforcement		
Cases	16	73
Authorisations		
Applications	8	32

- 3.5 Table showing the outcomes of enforcement meetings covering the period 15 October 2019 to 31 March 2020 compared with the reporting period 1 April 2020 to 31 March 2021

Outcome	2019/20	2020/21
Put back for further enquiries	0	3
Closed after Investigation	10	33
Administrative Sanction - Fine	3	4
Administrative Sanction - Warning	2	6
Referred to Supervision	0	1
Dismissed	5	22
Referred to Disciplinary Action	6	37
Referral to 5-person Tribunal	2	17
Referral to 3-person Tribunal	4	12
DBC* – initial referral	0	3
DBC* – proved	0	5

3.6 Table showing the outcomes of authorisation meetings covering the period 15 October 2019 to 31 March 2020 compared with the reporting period 1 April 2020 to 31 March 2021

Outcome	2019/20	2020/21
Executive Decisions	7	29
Affirm Executive Decision	5	24
Substitute Another Decision	2	5
ICC Hearing Panel Decision	1	3
Affirm ICC Decision	1	3
Substitute Another Decision	0	0

Reviews and appeals of IDB panel decisions

4.1 IDB panel decisions can be reviewed or appealed under two mechanisms.

- Decisions to refer cases to disciplinary action or dismiss allegations are not open to appeal. However, the BSB has an internal review mechanism in the form of the Independent Reviewer (IR). The IR has a wide remit in relation to reviewing enforcement decisions that are not subject to a formal appeal mechanism¹. A review by the IR can be requested by the person who made the original report about the barrister or by the barrister subject to the report. The IR has no decision-making powers and can only make recommendations. If the IR recommends that a decision of an IDB panel should be re-considered, the recommendation will be put to a newly constituted IDB panel to decide if the recommendation should be accepted. During the period covered by this report there were four requests for review.
- Where an administrative sanction is imposed by an IDB panel (or indeed staff members), barristers have the right to appeal the decision to an Appeal Panel, convened by the Bar Tribunals and Adjudication Service. During the period covered by this report, there were no such appeals.

4.2 For authorisations IDB decisions, there is a statutory right of appeal to the High Court pertaining to the Bar Qualification Rules (Part 4, B4 of the BSB Handbook). In this period appeals were lodged against three decisions. One of these appeals, which concerned an application for general exemption from the vocational component of the bar training, was successful. Judgment in that case (*Eve v Bar Standards Board* [2021] EWHC 2030 (Admin)), which was handed down in July 2021, received some media attention because of the criticism the judge made of the BSB and the IDB. Full details of the impact of this judgment and the measures taken to address the issues identified by the court will be reported in next year's Annual Report. The other two cases are currently in progress and details of these will also be provided in next year's Annual Report.

4.3 Of the four cases considered by the IR, three decisions were confirmed and only one was referred to the panel to reconsider. In this case there were a total of four allegations which were originally dismissed. The reporter requested this decision be reviewed and the IR recommended that two of the allegations be reconsidered. They were, and a newly constituted panel referred these to a three-person tribunal.

4.4 Finally, while not an internal route of review, IDB decisions can potentially be subject to scrutiny in the courts via an application for judicial review. Two such challenges were received in relation to an IDB decision in the year under review. Both were for enforcement decisions, and both had permission refused. In one of these the Applicant was the reporter in the case which was referred back to the IDB

¹ Formal appeal mechanisms are in place in relation to decisions to impose administrative sanctions and decisions on authorisations.

for re-consideration. In the other it was a challenge by the barrister against the decision to refer to a Tribunal.

4.5 IDB decisions subject to review, Appeal to the High Court and Judicial Review submitted in the reporting period 1 April 2020 to 31 March 2021

IDB decisions subject to:	Number of cases	Outcome
Independent Review	4	Confirmed - 3 Reconsider - 1
Appeal to the High Court	3	All Authorisations Successful - 1 Ongoing - 2
Judicial Review	2	All Enforcement Permission refused in all cases Closed - 1 Ongoing (listed for renewal hearing) – 1

4.6 Table showing the outcomes of completed reviews of IDB decisions covering the period 15 October 2019 to 31 March 2020 compared with the reporting period 1 April 2020 to 31 March 2021

Completed reviews	2019/20	2020/21
Enforcement		
Independent Review	0	4
Appeal	2	0
Judicial Review	0	1
Authorisations		
Independent Review	0	0
Appeal	0	1
Judicial Review	0	0

4.7 Table showing ongoing reviews of IDB decisions covering the period 15 October 2019 to 31 March 2020 compared with the reporting period 1 April 2020 to 31 March 2021

Ongoing reviews	2019/20	2020/21
Enforcement		
Independent Review	0	0
Appeal	0	0
Judicial Review	0	1
Authorisations		
Independent review	0	0
Appeal	0	2
Judicial Review	0	0

Quarterly training

- 5.1 During the period 1 April 2020 to 31 March 2021, it was not necessary to recruit further members of the IDB, therefore no induction training for new members has taken place.
- 5.2 All current members are expected to attend quarterly training sessions with a focus on continual improvement, to ensure their knowledge and skills remain up to date. During last year training has continued to take place online via Microsoft Teams. We have maximised the functionality of this software, using breakout rooms and polls to make the sessions as interactive as possible.
- 5.3 The content of the quarterly sessions is based on feedback from IDB members and the Executive's proposals and finalised in collaboration with the Chair and Vice-Chair. Sessions were held in June, September and December 2020 and March 2021.
- 5.4 The quarter one session focussed on technical process-specific content, covering consideration of dishonesty vs. integrity and breaches of the BSB Handbook vs. professional misconduct, the Determination by Consent (DBC) process and Authorisations review decisions. There was also a discussion on the values which IDB members bring to their work. In the second quarter the emphasis was on decision-making with sessions covering case law in decision making, the structure of the BSB Handbook, making meetings efficient (including written reasons) and the role of the Sanctions Guidance in decision-making. There was also an update on the Internal Governance Rules.
- 5.5 In quarter three, there was an update on changes to Authorisations application guidelines. The remainder of the session focussed on chairing skills, addressing time management of meetings and providing guidance on chairing panels remotely. This event resulted in the creation of a guidance document for IDP chairs, which is currently being trialled by members who chair panels. The final training event of the year was devoted to exploring the impact of unconscious bias, following a discussion on the cessation of gender anonymisation in IDB reports and case bundles.

Feedback from members

- 6.1 Over the period of this report, feedback received from panel members which is used as part of the appraisal process has continued to be monitored. Each panel member is sent, within two days of the meeting having taken place, a link to an online feedback form in which they are invited to reflect on their own performance and comment on the performance of other panel members who attended the meeting. The feedback data is collated and sent to panel members. This was originally done every nine months but subsequently changed to every six months to ensure feed-back is more concurrent with meetings attended.
- 6.2 Panel members have been diligent in completing the feedback forms and have offered constructive comments regarding the performance of other panel members as well as the general management of the meetings. Overall, the feedback indicates that members work well together in the meetings, with plenty of opportunity for thorough discussion. Notwithstanding the challenges of conducting IDB meetings remotely, panel members have embraced this new way of working, albeit there is a clear indication that some panel members would like to return to having meetings and training sessions in person.

Conclusions and Chair's comments on overall performance

- 7.1 Reflecting on the first full year of operation of the IDB I am struck by the increase in activity and willingness of members to step up to the challenges of remote decision-making without any noticeable effect on the delivery of service. By the end of the period under review the IDB was working at full capacity with the majority of members being new appointees since the PCC was disbanded and approaching the half way point in their 3-year appointments.
- 7.2 One consequence of the expanding workload of the IDB is an increased number of challenges to its decisions. As reported, there were 9 such challenges in the year under review compared to 2 in the six months previously. Given that the number of cases considered more than doubled in the reporting period, pro rata the level of challenges has actually remained constant (8.3% in 2019/20 and 8.5% in 2020/21). That said, the chances of adverse findings increase with the number of challenges.
- 7.3 Some challenges will inevitably be successful. The attitude which I encourage members of the IDB to adopt is that, where a decision is reviewed and found wanting, that is an opportunity to learn from experience and make any necessary changes to reduce the chance of a similar successful challenge in future, rather than see it as a failure. Similarly, where a challenge has been unsuccessful that can be seen as reassurance that the quality of decision-making is high and the processes in place are being followed correctly.
- 7.4 In that regards, of the 9 challenges to IDB decisions in the period under review, 4 were unsuccessful, 3 are ongoing and 2 were successful in whole or in part, one appeal to the High Court against an authorisations decision and one referral of an enforcement decision to the Independent Reviewer. I regard those as pretty healthy figures indicating a robust system in place and a high quality of decision-making. Nevertheless this is not something that can be taken for granted and the rate and numbers of successful challenges is something to be kept under constant review.
- 7.5 Of course, the success of a body is not solely judged by the quality of its output. Fundamentally, it is only worthwhile working for an organisation if there is a shared sense of purpose and good working relationships between its members. The discussion that was held at the summer 2020 quarterly training session on values was illuminating in that regard. In addition to the BSB values, members identified the importance of teamwork or collaboration and inclusion as principles that should drive our work. When asked why they wanted to work for the IDB members spoke about giving something back and the importance to the administration of justice in maintaining standards in an already highly regarded profession.
- 7.6 With that level of dedication and clear focus I am pleased to report that the IDB is in good shape going forward and I look forward to leading it into another year.

Iain Christie

Chair of the Independent Decision-Making Body

November 2021