

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.



REGULATING BARRISTERS

Meeting of the Bar Standards Board

Wednesday 25 May 2022, 5.00 pm (Hybrid meeting - in person and online)

**Rooms 1.4-1.7, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ and via MS Teams**

Agenda - Part 1 – Public

				Page
1.	Welcome / announcements (5.00 pm)		Chair	
2.	Apologies		Chair	
3.	Members' interests and hospitality		Chair	
4.	Approval of minutes from the last meeting (31 March 2022)	Annex A	Chair	3-6
5.	a) Matters arising and Action List	Annex B	Chair	7
	b) Forward agenda	Annex C	Chair	9
6.	Enabling the strategy:	BSB 027 (22)	Ewen Macleod	11-13
	a) Draft Enabling Strategy: Equality 2022-25		Shadae Cazeau	15-18
	b) BSB commitment to wellbeing		Ewen Macleod	19-20
	c) Wellbeing scenarios		Ewen Macleod	21-22
	d) Research Strategy 2022-25 (5.05 pm)		Oliver Jackling	23-29
7.	Amendments to the Minimum Terms of Cover for Professional Indemnity Insurance (5.25 pm)	BSB 028 (22)	Ewen Macleod	31-37
8.	Director General's Strategic Update- (including Q4 performance report) (5.30 pm)	BSB 029 (22)	Mark Neale	39-72
9.	Chair's Report on Visits & External Meetings (*)	BSB 030 (22)	Chair	73
10.	Any other business (5.45 pm)		Chair	
11.	Date of next meeting <ul style="list-style-type: none">Thursday 14 July 2022 (5.00 pm), BSB offices			
12.	Private Session			

John Picken
Governance Officer
18 May 2022

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](#) before the meeting.*

BSB 250522

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting****Thursday 31 March 2022 (5.00 pm)****Rooms 1.4-1.7, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ and via MS Teams**

- Present:** Baroness Tessa Blackstone (Chair)
Alison Alden OBE – via MS Teams
Emir Feisal JP – via MS Teams
Andrew Mitchell QC
Elizabeth Prochaska – via MS Teams
Irena Sabic – via MS Teams
Adam Solomon QC
Kathryn Stone OBE – via MS Teams
Stephen Thornton CBE – via MS Teams
- By invitation:** Mark Fenhalls QC (Chair, Bar Council) – via MS Teams
Lorinda Long (LL) (Treasurer, Bar Council) – via MS Teams
Nick Vineall QC (NV) (Vice Chair, Bar Council)
James Wakefield (JW) (Director, COIC)
- BSB Executive in attendance:** David Adams (Corporate Services Manager) – via MS Teams
Oliver Hanmer (Director of Regulatory Operations)
Teresa Haskins (Director of People, BSB) – via MS Teams
Sara Jagger (Director of Legal and Enforcement) – via MS Teams
Tommy Latif (Regulatory Risk Officer) -via MS Teams
Poornima Karunacadacharan (Senior Policy Officer) – via MS Teams – items 1-7
Ewen Macleod (Director of Strategy & Policy)
Rupika Madhura (Head of Policy and Research) – via MS Teams – items 1-7
Mark Neale (Director General)
John Picken (Governance Officer)
Victoria Stec (Head of Authorisation) – via MS Teams
Wilf White (Director of Communications & Public Engagement)
Christopher Young (Policy Manager) – via MS Teams – items 1-7
- Press:** Neil Rose, Legal Futures

Item 1 – Welcome / Announcements

1. The Chair welcomed those present to the meeting.

Item 2 – Apologies

- Steve Haines
- Leslie Thomas QC
- Malcolm Cree (Chief Executive, Bar Council)
- Rebecca Forbes (Head of Governance & Corporate Services)

Item 3 – Members' interests and hospitality

3. None.

Item 4 – Approval of Part 1 (public) minutes (Annex A)

4. The Board approved the Part 1 (public) minutes of the meeting held on 27 January 2022.

Item 5a – Matters arising

5. None.

Item 5b – Forward agenda

6. The Board **noted** the forward agenda.

Item 6 – The BSB’s Strategy and Public Legal Education Strategy and the Business Plan and Budget for 2022-23

BSB 016 (22)

7. Mark Neale introduced the paper and underlined the extensive consultation that had taken place in formulating both the business plan for 2022-23 and the BSB’s longer term strategy and associated strategic objectives (efficiency, standards, equality, access and independence). He also drew attention to the public legal education enabling strategy and the overall budget for 2022-23 which had been slightly revised as described in the report.
8. The Chair gratefully acknowledged the work the Executive and the involvement of both stakeholders and Board Members in developing these documents. Nick Vineall QC also commented positively on the BSB’s collaborative approach. No further questions were raised and the Board approved them for publication.

9. **AGREED**

to approve the content of the following documents for publication:

- the BSB Strategy 2022-25;
- the Public Legal Education (PLE) Enabling Strategy;
- the BSB Business Plan 2022-23; and
- the BSB budget for 2022-23.

Item 7 – Review of the Bar Course Aptitude Test (BCAT)

BSB 017 (22)

10. Chris Young summarised the findings of a recent review of the Bar Course Aptitude Test (BCAT). This suggested that the test was no longer effective as a filter for aptitude given the exceptionally high pass rates (it only filters out 1% of applicants). Moreover, admissions processes used by course providers had become more selective over time which negated the need for a test in the first place. He therefore recommended its withdrawal.
11. Emir Feisal referred to the BCAT candidate survey. He questioned whether the responses from students were fully representative, given the small numbers involved. He also noted the concerns raised by the Bar Council about student performance on the centralised assessments (Winter 2020 and Spring 2021) which might suggest that some students still do not have the requisite aptitude.
12. In response, the Executive commented that:
- an acceptable sample size was used for the student survey but the response rate was lower than hoped. Though this is unfortunate, it is not unusual, and the range of responses received seem nevertheless to be reasonably indicative;
 - there are many factors at play which might explain the overall pass rates for the recent centralised assessments as well as the variance in achievement between providers. These include transition between old and new courses, the health emergency and the variety of different pathways now available to students;
 - the primary justification for the recommendation relates to management of regulatory risk. The review suggests that the original risks around aptitude have been superseded by more stringent admissions policies of providers, hence the test is now unnecessary. In addition, we now have clear indicators of compliance

relating to admissions in our Authorisation Framework, which providers need to comply with in order to be authorised to deliver Bar training courses.

13. On balance, the Board agreed with the recommendation. Members commented that:
- the section in the report about the equality impact assessment is persuasive;
 - for the higher education sector, the key emphasis is on “outcomes”. Providers are very conscious of the need to support students to the successful conclusion of their studies, so whom they admit to courses has, necessarily, come under closer scrutiny;
 - the Bar Council’s concerns about maintaining an aptitude threshold are understood but the BCAT is no longer an appropriate tool to achieve this. We should, though, seek more than just assurances from course providers;
 - once a student liaison group is established, we should seek feedback on its view of student support systems.
14. In response, Oliver Hanmer confirmed that:
- the BSB is arranging a series of visits to course providers which will provide opportunities to scrutinise administrative processes around student support;
 - the first meeting of the pupil group is likely to take place in May 2022 and the student liaison group in June 2022. We shall seek views from the latter group on this topic.
15. **AGREED**
- to seek permission from the LSB to withdraw the Bar Course Aptitude Test as a prerequisite for enrolment on the Bar training course on the grounds that:
- the BCAT is no longer a proportionate regulatory requirement;
 - more stringent course admission processes have superseded the need for the BCAT;
 - the risks that BCAT was originally introduced to mitigate are no longer manifesting.

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Item 8 – Board Nomination Committee – Terms of Reference

BSB 018 (22)

16. The Board **approved** the Terms of Reference for the Nomination Committee. With reference to paragraph 3, and in response to a question raised, the Executive confirmed that once a Member’s term of office has ended on the Board, that person’s membership of the Nomination Committee will automatically end (hence the phrase “coterminous with membership of the Board”).

Item 9 – Director General’s Strategic Update – public session

BSB 019 (22)

17. The Board **noted** the Strategic Update paper. Andrew Mitchell QC referred to the section on sanctions and welcomed the close liaison between the BSB and HM Treasury’s Office for Financial Sanctions. Mark Neale and Nick Vineall QC confirmed that both the BSB and Bar Council have been in communication with the profession on this matter, especially in terms of the need to seek licences to represent sanctioned individuals or businesses.
18. **AGREED**
to note the report.

Item 10 – Chair’s report on visits and external meetings

BSB 020 (22)

19. The Board **noted** the report.

Item 11 – Any Other Business

20. None.

Item 12 – Date of next meeting

21. • Wednesday 25 May 2022

Item 13 – Private Session

22. The Board resolved to consider the following items in private session:
- (1) Approval of Part 2 (private) minutes – 13 January 2022 & 27 January 2022.
 - (2) Ratification of decisions made from papers circulated out of cycle:
 - a) Setting the fee for Certificates of Good Standing (COGS);
 - b) Bar Training Fees – revision to the per capita charge for Authorised Education and Training Organisations (AETOs).
 - (3) Matters arising and action points – Part 2.
 - (4) Consolidated Risk Report.
 - (5) High Court judgment – Eve v BSB.
 - (6) Policy on complaints against Board Members.
 - (7) Recruitment of Chair – nomination of members to the Appointments Panel.
 - (8) Appraisal of Chair and Board members.
 - (9) Director General's Strategic Update – Private Session.
 - (10) Any other private business.
23. The meeting finished at 5.30 pm.

BSB – List of Part 1 Actions
25 May 2022
(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
15 (31/03/22 - BCAT)	<p>to seek permission from the LSB to withdraw the Bar Course Aptitude Test as a prerequisite for enrolment on the Bar training course on the grounds that:</p> <ul style="list-style-type: none"> the BCAT is no longer a proportionate regulatory requirement; more stringent course admission processes have superseded the need for the BCAT; the risks that BCAT was originally introduced to mitigate are no longer manifesting. 	Chris Young	immediate	12/04/22	<p>Draft application submitted to the LSB for comment.</p> <p>Following feedback from the LSB, we anticipate submitting the application on 6 June 2022.</p>

Forward Agenda

Thursday 14 July 2022

- Year-end report of the Strategic Planning & Resource Committee (SPR)
- Governance: amended constitution and new governance manual
- Governance: policies on Declaration of Interest and Gifts and Hospitality
- Review of EU Law as a foundation subject in the academic component of training
- Conduct in non-professional life project
- Public engagement enabling strategy
- Director General's Strategic Update
- Corporate Risk Report – summary
- Policy on complaints against Board member
- Review of Risk Index

Thursday 22 September 2022

- Director General's Strategic Update- (including Q1 performance report)
- Budget proposal – 2022 / 23 financial year
- Consolidated Risk Report
- Review of Risk Index
- Pay and reward policy
- BSB Annual Report

Thursday 1 December 2022

- IDB Annual Report
- Regulatory Decisions Annual Report 2021/22
- Mid-year financial report (2022-23)
- GRA Annual Report
- Annual Report – Bar Training
- Director General's Strategic Update- (including Q2 performance report & BSB six monthly self-assessment against LSB's regulatory performance framework)
- Corporate Risk Report (summary)

Thursday 26 January 2023

- Annual Diversity Data Report
- The Bar Standards Board Equality and Diversity Strategy 2023 to 2025
- Director General's Strategic Update
- Corporate Risk Report – summary

Thursday 30 March 2023

- BSB Business Plan 2023/24
- Director General's Strategic Update- (including Q3 performance report)
- Consolidated Risk Report

Meeting:	Bar Standards Board	Date:	25 May 2022
Title:	Enabling the strategy		
Author:	Ewen Macleod		
Post:	Director of Strategy and Policy		

Paper for:	Decision: <input checked="" type="checkbox"/>	Discussion: <input type="checkbox"/>	Noting: <input type="checkbox"/>	Other: <input type="checkbox"/> (enter text)
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Paper relates to the Regulatory Objective (s) highlighted in bold below
<p>(a) protecting and promoting the public interest</p> <p>(b) supporting the constitutional principle of the rule of law</p> <p>(c) improving access to justice</p> <p>(d) protecting and promoting the interests of consumers</p> <p>(e) promoting competition in the provision of services</p> <p>(f) encouraging an independent, strong, diverse and effective legal profession</p> <p>(g) increasing public understanding of citizens' legal rights and duties</p> <p>(h) promoting and maintaining adherence to the professional principles</p> <p><input type="checkbox"/> Paper does not principally relate to Regulatory Objectives</p>

Purpose of Report

1. This paper asks the Board to approve two further enabling strategies (on Equality and Research) and a statement of policy on wellbeing. These will support the implementation of the strategy that the Board agreed in March.

Recommendations

2. That the Board approves the following:
 - an enabling strategy for the Equality strand of our strategic plan (annex A);
 - a statement of BSB policy on wellbeing issues (annex B);
 - an enabling strategy for research, which will support all strands of the strategic plan (annex D)

Background

3. At its last meeting, the Board approved its new strategy for 2022-25. In doing so, it agreed to produce a number of 'enabling strategies' to support the implementation of the main strategy. The Board can expect to receive a further enabling strategy for supervision at its next meeting. Enabling strategies are also being prepared for stakeholder engagement.

Equality

4. The BSB's former equality strategy came to an end as of April 2022. The Head of Equality and Access to Justice has drafted a new enabling strategy covering 2022-25, replicating the timeline of the BSB's wider strategy and replacing the expired 2020-22 strategy.

5. The new strategy sets out four main objectives with several actions arising from those objectives. These objectives and subsequent actions have been developed in conjunction with our Race Equality, Disability, and Religion and Belief Taskforces and following engagement with internal and external stakeholders and a review of our own research.
6. The overarching objectives are to:
 - a. clarify expectations of the profession on equality, diversity and inclusion and highlight opportunities for meaningful change;
 - b. hold the profession to account for reducing racial and other inequalities across the profession;
 - c. promote a culture of inclusion at the Bar and in legal services more generally; and
 - d. build a diverse and inclusive workforce ensuring that the BSB is an example of the approach we are promoting to the profession.
7. A number of objectives are listed under each of these – see **Annex A**. The enabling strategy seeks primarily to promote the regulatory objective of encouraging an independent, strong, diverse and effective legal profession and to satisfy our duties under the Equality Act. As was foreshadowed in our main strategy document, it seeks to carve out a role for the regulator that identifies where we are best placed to act, whilst seeking to collaborate with others in the profession and beyond who share our objectives.

Wellbeing

8. During the consultation on our new strategy, we received representations from the Criminal Bar Association (CBA) about the impact of wellbeing issues at the Bar (particularly in criminal practice.) During subsequent discussions, the CBA identified a number of scenarios where they claimed that barristers may be pressured into taking on workloads that are damaging to their wellbeing and family life. These are attached at Annex C for information only. The wellbeing statement itself was drafted by the BSB independently of the CBA, although we have shared an earlier draft with them. The draft has been well received by the CBA although it does not go as far as the CBA originally asked (which was to endorse a protocol on case management that they are hoping to agree with the judiciary) and it is of course designed to cover all barristers and not just those at the criminal Bar.
9. The issue of wellbeing has been discussed by the SMT and the Strategic, Planning and resources Committee. An important consideration has been whether this is a representative or a regulatory matter. Although arguably it is the former (and the Bar Council is better placed to promote wellbeing issues in the profession more generally) it does raise important issues about the culture in the profession (which we touch on in the Equality enabling strategy) and the application of our rules. We believe it is important to challenge some of the entrenched cultures and behaviours in the profession around long working hours, in order for it to become more inclusive. We also believe it is reasonable to take wellbeing issues into consideration when exercising our regulatory functions: we should not place unreasonable expectations on barristers and nor should others in the profession. As such, the statement promotes the regulatory objective of encouraging an independent, strong, diverse and effective legal profession and we believe it is also indirectly in consumers' interests by setting an expectation that barrister should not take on more work than they can reasonably manage.
10. The proposed statement does not alter any of our regulatory arrangements: barristers will remain subject to the same Handbook duties. The Handbook already permits barristers to set their own normal working week and to decline instructions that are not compatible with that.

Research

11. The Research enabling strategy seeks to support all of the regulatory objectives and each of the BSB's strategic priorities. It sets out the priorities for research across all BSB activity: it is important that we have a proper evidence base for any policy development and that we can evaluate the impact of our work. It is attached at **Annex D**.

Resource implications / Impacts on other teams / departments or projects

12. These documents aim to assist in the delivery of the BSB Strategy for 2022-25. There are no resource implications beyond what has already been agreed and budgeted. They will assist teams to plan and prioritise as we implement the strategy.

Equality and Diversity

13. Each of these documents contributes to the *Equality* strategic priority, and to the regulatory objective of encouraging an independent, strong, diverse and effective legal profession and our duties under the Equality Act. The Equality enabling strategy in particular draws on extensive equality analysis.

Risk implications

14. The priorities identified in these documents are the product of the risk analysis and prioritisation undertaken as part of the strategy review process.

Publicity

15. We will publish the Equality Strategy and the Wellbeing Statement, which are important statements in their own right, with associated communications. We will additionally make all the enabling strategies available on our website in an easy to access format, which demonstrates how they support the overall strategy.

Annexes

- Annex A: Enabling strategy: Equality
- Annex B: Draft statement on wellbeing
- Annex C: CBA scenarios (for information only)
- Annex D: Enabling strategy: Research

Ewen Macleod

Director of Strategy and Policy

DRAFT Enabling Strategy: Equality 2022-25

Introduction

1. The Bar Standards Board (BSB) regulates barristers of England and Wales in the public interest. The BSB believes that the Bar should be inclusive and reflect the diversity of society across all levels of the profession.
2. This enabling strategy sits under our strategic plan for 2022 – 25 in which we have identified equality, and the promotion of diversity and inclusion at the Bar and the BSB as a priority area. The equality objectives set out in this document align with our obligations under the Legal Services Act 2007 and our Public Sector Equality Duty (PSED) as detailed in the Equality Act 2010. This enabling strategy sets out how we aim to meet those objectives which include: encouraging an independent, strong, diverse and effective legal profession; eliminating discrimination; advancing equality of opportunity; and fostering good relations between people who share a protected characteristic and those who do not.
3. Our strategic aims for 2022 – 25 are:
 - **Efficiency:** delivering our core regulatory operations quickly, economically and to a high standard.
 - **Standards:** ensuring that barristers provide high quality and responsive service throughout their careers.
 - **Equality:** promoting equality, diversity and inclusion at the Bar and at the BSB, and the profession's ability to serve diverse consumers.
 - **Access:** promoting consumer understanding of legal services and choice and good value in using those services (covering both the supply of, and demand for, barrister' services).
 - **Independence:** strengthening the BSB's independence, capability, self-confidence and credibility.
4. This enabling strategy details our plan to promote equality, diversity and inclusion at the Bar. As a risk-based regulator this strategy has been developed in the light of what we know about the current challenges within the profession. There is a continuing need to improve the culture at the Bar, tackling discriminatory practice in all its forms and ensuring a supportive environment for all barristers and pupils.
5. Bullying, discrimination and harassment have been experienced by many at the Bar. Barristers who are female, from a minority ethnic background, LGBT+ or who have a disability are particularly likely to encounter such behaviour. Female barristers and barristers from minority ethnic backgrounds face income disparities compared to male and White barristers. The continuing impact of the pandemic may further affect equality, diversity and inclusion in the profession.
6. Equality, diversity and inclusion issues differ across the Bar. The self-employed Bar has particular challenges associated with the decentralised nature of practice and the ability of chambers to address these issues. Meanwhile, the employed Bar is more diverse and operates in a different context. Indeed, the employed Bar may offer helpful lessons to chambers in how to be more inclusive.

7. We are committed to working with the profession to play our role in challenging those aspects of culture at the Bar that are discriminatory and exclusive. We share a commitment to do so with many stakeholders, in particular the Bar Council and the Inns of Court. Chambers and employers also have a significant role to play in helping us to deliver our vision of a Bar that is diverse, accessible, independent, knowledgeable, skilled and inclusive. Whilst working collaboratively, we will seek to avoid duplication of effort by focusing our attention on those areas where the BSB can make the greatest impact. We will also collaborate with the Legal Services Board and the other frontline legal regulators to promote the equality agenda across the sector.
8. We are committing ourselves to ensure that we continue to build a workforce and working environment that is inclusive and reflective of the diversity of society, exemplifying what we expect of the profession.
9. Through the implementation of this enabling strategy, we aim to reduce the inequalities experienced at the Bar. We will set mandatory requirements of the profession to promote equality, diversity and inclusion. We will communicate our expectations clearly and help the profession to meet them by sharing examples of good practice.

Our previous work

10. To ensure impact and continuity, the following elements of our previous equality strategy will continue into the current strategic period.
 - **The publication of three good practice case studies about the inclusion of different types of disability at the Bar.**

We formed our Disability Taskforce in July 2021 and have been engaging with members to develop practical examples of good practice on disability inclusion. This remains an important area of work and we are continuing to work with the taskforce to publish good practice case studies in a way that supports the profession and provides clarity on our expectations as a regulator.
11. We will continue to develop our work on bullying, discrimination and harassment with the recommendations from our upcoming Bullying, Discrimination and Harassment report feeding into our 2022-25 equality objectives. We will also continue our engagement with our Race Equality, Religion and Belief, and Disability Taskforces.

Equality Objectives

12. We recognise, through research including our diversity and [trends in retention and demographics](#) at the bar reports, other evidence, and stakeholder engagement the challenges the Bar faces particularly in relation to specific protected characteristics (sex, race, disability and sexual orientation) and are determined to support the profession and where necessary use regulatory action to address these inequalities. We also acknowledge that the Bar faces particular challenges around social mobility which will need to be addressed to achieve the truly diverse and inclusive profession we want to see. This is considered under equality objective 3.
13. We will continue to develop an evidence base to further our knowledge and understanding of the precise inequalities that are faced by people at the Bar. We will focus on the ways in which we can address those through regulatory action. In doing so, we will also work to ensure that we exemplify the good practice that we wish the profession to adopt by continually reviewing our internal practices to reduce inequalities and promote equality, diversity and inclusion.

14. We have four equality objectives for 2022 to 2025 focusing both externally on the profession and internally on the BSB. The framework for these objectives focuses on providing the correct regulatory framework, supporting the profession to change by drawing attention to good practice and where necessary taking appropriate enforcement action. These objectives have been developed through ongoing stakeholder engagement, equality impact analysis and research evidence.

Equality objective 1: Clarify expectations of the profession on equality, diversity and inclusion and highlight opportunities for meaningful change
Actions
Review and update the equality rules
Develop statements setting out expectations of chambers on specified protected characteristics
Publish thematic report on the findings of the regulatory returns and the impact of the Anti-racist statement, to highlight good practice, feed into the equality rules review and provide recommendations to the profession on potential next steps to improve outcomes.
Liaise with stakeholders to develop and publish good practice examples including the employed Bar
Equality objective 2: Hold the profession to account for reducing racial and other inequalities across the profession
Actions
Collaborate with the Bar Council and others in implementing the overarching recommendations of the Race at the Bar report, by drafting a race action plan and implementing target setting and evaluation measures
Monitor chambers' compliance with the BSB's expectations through proactive supervision, including of pupillage recruitment practices
Complete our piloting of reverse mentoring scheme and make the learning from it available to the profession
Explore how we can ensure consistency and transparency in work allocation processes
Equality objective 3: Promote a culture of inclusion at the Bar and in legal services more generally
Actions
Review the role of chambers to ensure effective championing of inclusive practices, including strengthening the role of the Equality and Diversity Officer
Work with other legal regulators to identify and promote the role of regulation in reducing counter-inclusive conduct at the bar
Consult with other legal regulators to gather a consensus on the descriptive language and definitions of bullying, discrimination and harassment.
Engage with the Inns to add bullying, discrimination and harassment qualifying sessions
Engage with stakeholders and other legal regulators to consider whether additional specialist intermediary support is to be provided for those who have, witness or are experiencing bullying, discrimination, and harassment within the profession
Review how we monitor and promote socio-economic mobility in the profession

Equality objective 4: Build a diverse and inclusive workforce ensuring that the BSB is an example of the approach we are promoting to the profession
Actions
Review the BSB's recruitment processes and recruitment partners to increase the diversity of the BSB workforce
Develop our culture to ensure that inclusive behaviours are recognised and demonstrated by all our people
Ensure that a diverse workforce can thrive by enhancing practices for developing and rewarding people
Examine the impact of our own authorisation and enforcement processes by monitoring differential outcomes in Bar training and progression at the Bar, and whether certain groups are over-represented in our disciplinary processes: developing action plans to eliminate any disparities identified

BSB commitment to wellbeing

1. The statutory Regulatory Objectives of the Bar Standards Board as prescribed in the Legal Services Act 2007 include:
 - protecting and promoting the public interest;
 - supporting the constitutional principle of the rule of law;
 - improving access to justice;
 - protecting and promoting the interests of consumers;
 - promoting competition in the provision of legal services;
 - encouraging an independent, strong, diverse and effective legal profession;
 - increasing public understanding of the citizen's legal rights and duties; and
 - promoting and maintaining adherence to the professional principles.

2. Consistent with these regulatory objectives, the BSB Handbook sets out the Core Duties of barristers. These include barristers' duty to the court in the administration of justice and duty to act in the best interests of each client and, in doing so, to provide a competent standard of work and service.

3. The Bar Standards Board recognises that the wellbeing of barristers is important if barristers are to meet their own duties and, accordingly, that it also matters to the achievement of the BSB's broader regulatory objectives. In promoting the objective of encouraging an independent, strong, diverse and effective legal profession we believe there should be a sustainable number of suitably qualified and experienced barristers in any given area of law. If that ceases to be the case because experienced practitioners leave, that will also be contrary to the interests of consumers and access to justice. A more inclusive culture in the profession may help to slow or reverse such trends, where they occur.

4. We do not believe that our objective of encouraging an independent, strong, diverse and effective profession can be achieved unless the profession tackles ways of working that have been accepted in the past but which have negative consequences for practitioners' health and wellbeing and for equality and diversity in the profession. As a regulator, we do not expect barristers to sacrifice their own health and wellbeing – and we do not believe that it is in clients' interests to be represented by someone who is unwell or exhausted; nor is it in the interests of justice. The profession will also struggle to be inclusive and to reflect the society it serves if certain groups of barristers disproportionately experience poor wellbeing. We want to ensure that wellbeing issues do not prevent the progression of barristers from a diverse range of backgrounds, the retention of experienced practitioners or the return of experienced barristers to the profession. In an inclusive profession, it is important that barristers can combine working life with family life and caring responsibilities. When exercising our regulatory functions, we will therefore have regard to the wellbeing of the Bar and we will always, in particular, have regard to any childcare or other caring commitments that barristers may have.

5. The Bar Standards Board supports flexible working and accepts that barristers are entitled to take reasonable steps to regulate their working hours, subject to being reasonably available for any continuing hearings. Under rC30 in our Handbook, the "cab-rank" rule, barristers are not therefore obliged to accept instructions "that would require them to do something other than in the course of their ordinary working time". We do not seek to define "ordinary working time" in terms of a set number of hours because we recognise that the hours which individual barristers choose to work may vary and "ordinary working time" must be seen in terms of an individual barrister's normal working patterns.

6. If we receive a report about a barrister's conduct in relation to availability for a hearing or willingness to do work at short notice or outside court hours, we will consider whether the expectations placed on them were fair and reasonable having regard to their individual circumstances and established working patterns.
7. We are also determined to eliminate bullying, discrimination and harassment at the Bar. We regard such behaviour as serious professional misconduct, and we welcome the increase in the possible sanctions for such misconduct in the new Sanctions Guidance from the Bar Tribunals and Adjudication and Service which took effect from 1 January 2022. All barristers, their clients and others with whom they work, are entitled to be treated with courtesy and respect at all times. Making unreasonable demands on others that require them to work outside their normal working hours may be seen as a breach of those standards and may be regarded as potential professional misconduct.
8. Finally, in regulating the Bar in the public interest the Bar Standards Board will always seek to minimise the costs and burdens of regulation. We will seek to deal with our essential regulatory activities (including requests for authorisations, waivers and exemptions and reports of potential misconduct) as efficiently as possible. We will also seek to ensure that all our stakeholders are given the opportunity to contribute to our policy making.

FOR INFORMATION: The Criminal Bar Association has provided the following scenarios to illustrate the types of situation where barristers may have to make decisions relating to wellbeing. These are provided by way of background information – it is NOT intended that these be included in the BSB statement or any BSB guidance

Scenarios

1. It is Friday morning, you are a junior advocate and offered a well-paid brief (which is better than your normal work but you are experienced and qualified to do), however the instructing solicitor tells your clerks that due to how late the case is being returned that anyone accepting it will have to work 'all weekend' to get it up and ready for trial on Monday. Your diary for next week is empty, other advocates may be available. What should you do?

Answer:

In these circumstances a barrister can choose to accept the brief or not. It is a career opportunity and if you wish to exceptionally work the weekend despite this being outside your normal working hours it is permissible to do so. Equally it is acceptable to say that the work required on this brief is outside your normal working hours and therefore decline it on this basis.

2. It is the week before a Murder trial and the senior clerk asks that you take on a case in which you will be leading a Junior advocate. The case will require you to work all day and late into the night all week and on both Saturday and Sunday. The Junior advocate on the case has childcare commitments in the evenings and weekends and has already been working long hours in the week and the previous weekend(s) on other cases according to your clerk. What should you do?

Answer:

In these circumstances a leading barrister can choose whether to accept the brief or not and work longer hours than normal. However, the leading barrister has a responsibility not to overload the Junior advocate when he/she is aware of their workload. The leading barrister should have a frank discussion immediately with the Junior advocate to consider whether there is sufficient time to prepare the case taking into account the childcare commitments of the Junior advocate and proper rest periods. If there is insufficient time to prepare the case the leading barrister can either refuse to accept the brief or contact the court to request further time for the case to be prepared. The leading barrister should not compromise the well-being of the junior advocate, nor look to find another junior advocate who does not have childcare commitments. This would be discrimination and fall below the standards expected of a leading barrister.

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3. You are conducting a trial when the tribunal chair directs that overnight she expects skeleton arguments for a matter of law that has arisen that day. You have other professional commitments that evening including a meeting and if required to complete the skeleton argument would have to do this in the early hours of the morning. What should you do?

Answer:

You should inform the tribunal that it is not going to be possible to prepare the skeleton overnight and that it will have to be completed the following morning. You should assist the court with timetabling which includes realistic timetabling of legal arguments. It is unrealistic to have work scheduled out of court hours and you should advise the court of a more realistic timetable bearing in mind proper rest periods and other work and personal commitments.

Research Strategy 2022-25

Introduction

1. The Bar Standards Board (BSB) regulates barristers of England and Wales in the public interest. The BSB believes that the bar should be inclusive and reflect the diversity of society across all levels of the profession.
2. Our Strategic Plan for 2022-25 sets out our priorities for the three-year period, which have been developed following our analysis of available evidence about the risks to our statutory objectives. Our research work in this period will align with our five strategic aims:
 - Efficiency – delivering our core regulatory operations quickly, economically and to a high standard.
 - Standards – ensuring that barristers provide a high quality and responsive service throughout their careers.
 - Equality – Promoting diversity and inclusion at the Bar and the BSB and the profession’s ability to serve diverse customers.
 - Access – Promoting consumer understanding of legal services and choice and good value for those who use those services.
 - Independence – Strengthening the BSB’s independence, capability, self-confidence and credibility.
3. This strategy sets out the research priorities for the BSB in order to support these overarching strategic aims. This will ensure that the work of the research team provides the necessary support, evidence and evaluation required to meet each of the five aims, and ensure the BSB meets its obligations as an evidence and risk-based regulator.
4. The role of the research function is to provide leadership, support and quality assurance on the scoping, development and deployment of research, monitoring and evaluation activities to ensure BSB’s regulatory interventions are evidence-based and ultimately support the BSB in meeting its regulatory objectives.
5. The focus of research work is broadly split into three key strands:
 - **Evidence Gathering** – proactive and reactive provision of both quantitative and qualitative research evidence in areas chosen in accordance with our risk monitoring and strategic plan priorities
 - **Monitoring** - providing regular updated data on specific subjects identified as essential to inform the work of the BSB or to inform external stakeholders
 - **Evaluation** - Reviewing the performance or impact of projects or programmes to determine how well they achieve their goals and/or to identify improvements
6. These strands of work are delivered through a combination of in-house research expertise¹ and commissioning work externally through independent research providers. The BSB may commission research from external providers for a number of reasons: because an independent perspective is needed; to allay potential conflict of interest or anonymity concerns (e.g. interviewing barristers about our rules); or to supplement inhouse capacity/capability.

¹ From June 2022, the team will consist of three people – a Research and Evaluation Manager, and two Research and Evaluation Officers.

Vision for research

7. We want to continue to expand the evidence base and further our knowledge and understanding of: the market for legal services; the regulated community; the expectations and experiences of consumers; and the risks and opportunities that affect our achievement of the regulatory objectives and our strategic priorities. We aim to ensure that our decisions take account of a sufficiently wide evidence base and that we understand the impact of our work. To increase the uptake and impact of our research, we want to improve its availability and accessibility.
8. We want BSB research to be recognised as a credible and reliable voice within the legal services sector and wider regulatory community. To do this, we need to ensure consistently high standards and provide clarity about the processes we follow in the delivery of research.
9. We want the Research Team to continue to be a centre of expertise within the BSB, with all team members equipped to use that expertise effectively. We also want to support colleagues within the BSB to embed good research practice in their work and to continue to improve awareness of the use and application of research methodology, data and evaluation methods.

Strategy

10. This section details the BSB's five key strategic aims over the next three year period. Under each aim, the strategy explains the key areas where research work or input is currently planned. Note that these are subject to change in response to budget or capacity within the organisation, or in response to new priorities for research, monitoring or evaluation activities which may develop over this period.

Strategic Aim 1 – Efficiency – delivering our core regulatory operations quickly, economically and to a high standard

11. Our top priority is to fulfil our core regulatory responsibilities efficiently and effectively. The work of the research team has a key role in contributing to the operation of the BSB as a risk and evidence based regulator - ensuring our risk work is informed and driven by robust evidence, supporting the organisation to make efficient use of the data we hold on the profession, and ensuring that the decisions we make are based on a detailed consideration of available research evidence.
12. To further support the efficiency of the BSB's regulatory operations, the key areas of activity in 2022-2025 include:
 - Increasing capacity to support our people in developing the skills and capabilities they need both to deliver current and future organisational goals and develop their own careers
 - Reviewing our operations to ensure we are efficiently and effectively meeting service levels
 - Reviewing the effectiveness of our enforcement regime
 - Reviewing the regulatory status of unregistered barristers

13. The research and evaluation activity we plan to undertake in 2022-25 to strengthen the evidence available in these key areas of activities will include (but not be limited to) the following:
- Providing expertise and evidence across a range of projects and workstreams across the BSB. This will support the delivery of projects by providing evidence and other research input to inform project work.
 - Undertaking work to inform the assessment of the changes we made to our approach to enforcement in 2019, including research that analyses the operation of our current enforcement system in relation to gender and ethnicity. This represents a follow up piece of research to the research we published in 2021 that looked into the relationship between gender and ethnicity and complaint likelihood and outcomes under the previous enforcement system.
 - Undertaking a project to improve the quality of the data held by us, the consistency of our use of data in relation to queries and evidence gathering, and understanding the needs of different teams in terms of what data they need and how it should be used by the organisation. This will help us make better use of incoming data relating to competence and professional standards and assist with our overall evidence base across multiple other areas of work.

Strategic Aim 2 – Standards – ensuring that barristers provide a high quality and responsive service throughout their careers

14. There continues to be a need for barristers to be supported in maintaining and developing a range of skills, knowledge and competences to meet consumers' needs. The available evidence indicates that the Bar generally provides a good standard of service and consumer satisfaction with the services they receive remains high. However, there is evidence that barristers occasionally lack the expected level of legal and practical knowledge, mainly in very specific areas of law or activity, such as immigration, youth courts and the coroner's court.
15. To further support standards at the Bar, the key areas of activity in 2022-2025 include:
- Regulating the training of barristers and ensuring continuing high standards
 - Completing our programme of assuring competence, to satisfy ourselves and others that we have appropriate systems in place to ensure that standards are maintained throughout a barrister's career
 - Taking supervision or enforcement action where necessary to promote standards
 - Continuing the review of the BSB Code of Conduct for Barristers, to ensure it remains fit for purpose
 - Strengthening our ability to reach out and to engage with chambers, employers the profession and the public so that we can identify and promote good practice in the way the profession operates to provide effective services, to sustain high professional standards, to develop barristers and to ensure diversity
 - improving and deepen the intelligence we have and our research evidence bearing on professional competence, standards of service and the operation of the market for barristers' services
16. The research and evaluation activity we plan to undertake in 2022-25 to strengthen the evidence available in these key areas of activities will include (but not be limited to) the following:
- Publishing reports from our evaluation programme assessing the reforms to training at the Bar. The evaluation report will give us a strong evidence base on

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the extent to which the implementation of the new training rules have met the objectives of the Future Bar Training programme, including that of maintaining standards of training for the Bar.

- Continuing to monitor the state of training for the Bar by producing an annual Key Statistics report which covers statistics on training and progression for the Bar – this will be updated to a new format to ensure it better meets the needs of key stakeholder groups.
- Supporting the Standards programme by providing supporting evidence and evaluating the programme upon its completion.
- Undertaking research to ensure that we test the views of consumers on our redraft of the Code of Conduct. As part of our work to review the Code of Conduct, we have already been informed by consumer research we undertook and published in 2021. However, further research with consumers will ensure that our reforms to the Code of Conduct are informed by strong research evidence and the views of consumers are addressed.

Strategic Aim 3 – Equality – Promoting diversity and inclusion at the Bar and the BSB and the profession’s ability to serve diverse customers

17. The BSB will continue its work to promote equality, diversity and inclusion at the Bar. The research we undertook in the previous strategic plan period showed that female barristers and barristers from ethnic minority backgrounds face income disparities compared to male and white barristers, that bullying, discrimination and harassment remained an issue in the profession, particularly for those from particular backgrounds, and that retention among female barristers was improving but still lagged behind retention among their male counterparts.
18. To further diversity at the Bar, the key areas of activity in 2022-2025 include:
 - setting out clearly our expectations of the profession and holding it to account
 - continuing to promote equality, diversity and inclusion at the Bar with the support of our Race Equality, Disability and Religion & Belief Taskforces
 - working with chambers and employers to promote good practice, including by completing the review of our Equality Rules, reporting on the regulatory return and implementing changes and undertaking research into pupillage recruitment, to understand how better to promote diversity and inclusion
 - monitoring differential attainment in Bar training and progression at the Bar, and whether certain groups are over-represented in our disciplinary processes: developing [targets and] action plans to eliminate any disparities
 - leading by example, demonstrating that the Bar Standards Board is itself diverse and inclusive and committed to understanding the equality impacts of its policies, services and interventions
19. The research and evaluation activity we plan to undertake in 2022-25 to strengthen the evidence available in these key areas of activities will include (but not limited to) the following:
 - Continuing to monitor the extent to which the Bar is continuing its progress towards increased diversity by publishing annual reports on Diversity at the Bar. We also publish an annual report covering the diversity of the BSB – both the Board and the organisation as a whole – which will monitor our progress in terms of diversity at the BSB.

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- Evaluating the reverse mentoring scheme, as well as providing evidence to support the work of the BSB's E&AJ team and Race, Religion and Disability task forces.
- Providing evidence to inform the review of the Equality Rules, including contributing to the development of Equality Impact Assessments.
- Undertaking research to strengthen our evidence base around equality issues in training for the Bar. We will publish a report looking at differential outcomes in Bar training examinations, as well as continuing to monitor differential outcomes both on the course and obtaining pupillage via our annual statistical reports on training for the Bar. We will also be undertaking research to expand our evidence around vocational providers' approaches to diversity and inclusion.
- Undertaking research into differential outcomes in the BSB's enforcement processes, repeating an analysis we published in 2021. This work will investigate what changes have resulted from the enforcement reforms we introduced in 2019.
- Undertaking a comparative study of the outcome of recruitment processes using traditional vs progressive recruitment techniques, to determine which techniques lead to more diverse outcomes. This will further contribute to our understanding of best practice in recruitment in the legal sector.
- Undertaking research with consumers to investigate potential drivers behind the lower levels of satisfaction from some groups of clients (in particular those from minority ethnic backgrounds) with legal services observed in a range of previous consumer research. This will build on the evidence from our past consumer research activities to inform our work to ensure the Bar is well placed to serve diverse consumers.

Strategic Aim 4 – Access – Promoting consumer understanding of legal services and choice and good value for those who use those services (covering both the supply of, and demand for, barristers' services)

20. There is a continuing need to support improvement in consumer education when navigating legal services. The research we undertook in the previous strategic plan period to understand clients' expectations (including our review of all the evidence gathered to date) suggests that although there is now greater price transparency, individuals and businesses with legal problems usually have a poor understanding of their legal rights and duties and of the full range of services offered by barristers, particularly the scope to access barristers' services directly and the potential to unbundle services. When instructing via a solicitor, clients are often not given a choice of Barrister.
21. To further this aim, the key areas of activities in 2022-25 will include:
 - providing information to the public about barristers in partnership with consumer organisations, the profession and other legal regulators
 - continuing to develop and implement our strategy for public legal education in partnership with other regulators and organisations working directly with those in legal need, in order to improve our understanding of how best to identify those in legal need, the nature of that need and how best to help them
 - ensuring compliance with our transparency rules: considering what additional regulatory action will be needed on transparency in the light of that evaluation
 - enhancing our understanding of consumers' needs and experience when using barristers' services

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- Understanding how solicitors choose barristers on behalf of their clients and reviewing whether regulation is needed to ensure greater transparency or choice
 - examining the role of new technology in promoting access to justice
22. The research and evaluation activity we plan to undertake in 2022-25 to strengthen the evidence available in these key areas of activities will include (but not be limited to) the following:
- The completion of our evaluation of the impact of our transparency rules on consumers. This will provide valuable evidence to compliment the evaluation report published in 2021 covering the impact of the rules on the profession, and will inform our work going forward to ensure compliance with the rules and consider if any further changes are required to the rules we introduced in 2019.
 - The evaluation of pilots for digital comparison tools (DCTs) and unbundling of legal services. This will focus on testing information provision for consumers and improving access through these routes to drive improvements for consumers.
 - Improving our knowledge base around approaches to Public Legal Education (PLE) by partnering with other legal regulators.
 - Addressing evidence gaps around the approach of solicitors when choosing barristers for their clients. Our evidence to date suggests that when individuals and businesses are referred to barristers by solicitors or other legal professionals, they are often offered no choice. We will gather evidence from solicitors as to what factors influence their choice of barrister, and/or the extent to which they offer their clients more than one recommendation, or indeed to what extent they take into account a client's views when choosing a barrister.
 - Addressing evidence gaps around the views of small business clients. Our research work to date has focussed on individual private clients of the Bar. However, small business clients may well have different experiences and priorities to individual clients, so we will undertake research to expand our evidence expanding our understanding of their needs.

Strategic aim 5 – Independence – strengthening the BSB's independence, capability self-confidence and credibility.

23. We must undertake a full review of the current governance arrangements, under which we share certain services with the Bar Council, after two years of operation. Incorporating the BSB as a separate legal entity might bring benefits in terms of transparency, accountability and operational freedom that should be explored.
24. To support the independence of the BSB as a regulator, the key areas of activity in 2022-2025 include:
- Keeping our independence under regular review and considering whether our independence would be further enhanced by legal separation from the Bar Council by incorporating a separate corporate entity (albeit wholly owned by the Bar Council)
 - Regularly reviewing our governance and completing our 'Well Led Action Plan', ensuring we comply with the performance standards set by the Legal Services Board
 - Improving our engagement with stakeholders
 - Reviewing the reward and recognition framework, and our learning and development strategy for our people: promoting our values of fairness and respect, independence and integrity, excellence and efficiency
 - Promoting diversity and inclusion at the BSB

25. The activity of the research team is focussed on informing our external policy work, rather than informing the governance structures of the organisation. As such, there is not a requirement for specific research activity in order to inform strategic aim five, either in 2022/23 or in subsequent years. However, the research team will contribute to any internal reviews, or other activities for which input is required relating to the governance of the BSB.

Meeting:	Bar Standards Board	Date:	25 May 2022	
Title:	Amendments to the Minimum Terms of Cover for Professional Indemnity Insurance			
Author:	Christopher Young, Policy Manager			
Paper for:	Decision: X	Discussion X	Noting <input type="checkbox"/>	Other: <input type="checkbox"/>

Paper relates to the Regulatory Objective (s) highlighted in bold below

- (a) **protecting and promoting the public interest**
- (b) supporting the constitutional principle of the rule of law
- (c) improving access to justice
- (d) **protecting and promoting the interests of consumers**
- (e) **promoting competition in the provision of services**
- (f) **encouraging an independent, strong, diverse and effective legal profession**
- (g) increasing public understanding of citizens' legal rights and duties
- (h) promoting and maintaining adherence to the professional principles

Paper does not principally relate to Regulatory Objectives

Purpose of Report

- Following our consultation with stakeholders on amendments to the Minimum Terms of Cover (MTCs), we invite the Board to discuss and consider this report's recommendation.

Recommendations

- The Board is invited to agree to adopt the proposed amendments to the MTCs as drafted in Annex A. These do not represent a substantive change in the level of cover required but seek to provide clarity about what was already expected in relation to cover for cyber incidents.

Impact on the regulatory objectives

- Our work on amending minimum terms of cover particularly impacts on the following regulatory objectives (as defined by the Legal Services Act 2007):

Protecting and promoting the public interest – Our aim is to maintain current levels of protection. We also believe it is in the public interest that barristers, BSB entities and consumers should be aware of the minimum terms of cover required by the regulator.

Protecting and promoting the interests of consumers – Consumer protection is the reason for professional indemnity insurance. Clarifying cover in the event of a cyber-related incident will maintain protection for consumers.

Promote competition in the provision of legal services – Competition in the market for legal services would be diminished without access to adequate and affordable insurance cover.

Encouraging an independent, strong, diverse and effective legal profession –

Greater clarity in cover will enable barristers and BSB entities to decide whether they need further cyber protection for themselves or their entity, via separate insurance. By providing clarity about the risks to which they are exposed, practitioners are better able to take appropriate action, thus promoting sustainability in the sector (which may also indirectly benefit consumer and competition objectives).

Background*Professional Indemnity Insurance*

4. Professional Indemnity Insurance (PII) is compulsory for all practising barristers and entities regulated by the BSB. All self-employed barristers must be covered by the Bar Mutual Indemnity Fund (BMIF). Entities may choose to have PII provided by an alternative insurer but the vast majority are covered by BMIF. The BSB Handbook sets out the rules relating to PII at rC76-78, stating that barristers and entities must have adequate insurance, which takes into account the circumstances of their practice. Furthermore, the BSB sets Minimum Terms of Cover (MTC) for both [self-employed barristers](#) and for [entities](#).

Cyber-related risks in PII policies

5. Over the last few years cyber-related incidents, whether taking the form of intrusive malware or some other form of data theft, interference or blackmail, are becoming increasingly commonplace. Legal professionals and businesses are prone to such attacks because many will handle sensitive corporate or personal data and/or money from clients (although barristers are not permitted to hold client money, cyber-attacks could cause significant harm to barristers' clients).
6. The Prudential Regulation Authority (PRA), the regulator of insurance providers, has asked insurers to identify, quantify and manage cyber insurance underwriting risk. It was concerned that some insurance policies, including those for professional indemnity, were not specific enough about exactly what cyber-related losses were covered and were, therefore, not pricing these risks appropriately. The PRA identified certain actions that insurers could take to manage this risk, such as explicitly confirming cover and adjusting premiums to reflect this or introducing robust wording which sets out what risks are excluded.
7. BMIF has already amended its terms of cover to clarify that cyber risks (to the extent required below) are included. Other legal services regulators, including the SRA and ICAEW have already taken steps to clarify their positions, in a similar way to our approach, outlined below. The commercial insurers who provide cover for entities have similarly adapted their policies as they also operate in the SRA-regulated market. As such, the risks identified by the PRA have been largely mitigated, but in order to ensure continuing consumer protection we need to clarify the requirements in our MTCs. These are not substantive changes but make explicit our expectations in relation to cyber cover.

Proposed amendments

8. Our current MTCs require insurance against civil liability, in connection with the insured practice¹. This is intended to cover consumer ('third party') losses, should the losses arise from a cyber incident in relation to the insured practice. Our rules do not mandate that barristers or BSB entities insure against their own ('first party') losses that may arise from remedying a cyber incident (for example, repairs to a computer system).

¹ 'Insured practice' includes the supply of legal services regulated by the BSB and certain other activities, such as acting as an arbitrator or mediator.

9. To ensure clarity, we propose to amend the definition of *civil liability* in the definitions section of each MTC document by stating that *civil liability* will include “any liability arising from a *Cyber Act* or *Cyber Incident*”. *Cyber Act* and *Cyber Incident* are also defined, which provides context for any claim for civil liability. *Computer System* and *Data* are also now defined.
10. These amendments will satisfy our twin aims of maintaining current levels of protection for consumers and giving clarity to policyholders, insurers and consumers.

Consultation

11. We consulted from 9 February and received five formal, written responses to the consultation from the following:
 - The Bar Mutual Indemnity Fund (BMIF);
 - The Bar Council;
 - The Legal Services Consumer Panel (LSCP);
 - Zurich Insurance plc.; and
 - Luke Ashby, a barrister.
12. In addition, we held two consultation roundtables. Representatives from the BMIF and the Council of the Inns of Court attended a session on 15 March. Another on 17 March was attended by representatives from the Legal Services Consumer Panel and Champion Professional Risks Ltd, a professional indemnity insurance brokerage.

Key issues arising from the consultation

Do the amendments clarify the current MTCs and scope of cover?

13. Respondents to our consultation agreed that the proposed amendments clarify the BSB’s current MTCs and that the scope of cover would not change if the draft amendments were implemented.
14. BMIF stated:

BMIF agrees that the draft amendments clarify the current MTC requirements and do not change the scope of cover. It was also BMIF’s intention when amending our Terms of Cover that the scope of cover is not widened or narrowed, but that the amendments help to provide clarity to BMIF’s Members in relation to cyber cover. It is agreed that barristers would benefit from clearer policy terms. In addition to this, Lloyd’s now require its underwriters (including reinsurers) to be clear on whether cover is provided for losses caused by a cyber-event.
15. The Legal Services Consumer Panel’s response also agreed, stating:

The Panel is pleased to see that the BSB is committed to maintaining current levels of consumer protection and is broadly in support of the changes that are put forth. The Panel understands the amendments mean that the civil liability covered by PII will include “any liability arising from a Cyber Act or Cyber Incident” so that the previously implied coverage for cyber incidents will now be expressly included. Consequently, no consumer detriment is expected.
16. Although Zurich Insurance plc agreed that the proposed amendments clarified cover and that the level of cover would not change, they said that cover should be required for third party civil liability claims arising out of any negligent act, error or omission but not for matters over which a barrister has no direct control, such as a cyber incident. We disagree – it is reasonable to expect barristers, in their professional practice, to take steps to avoid such incidents arising (to protect the interests of their clients). The

approach suggested by Zurich would reduce the overall level of cover and would not be in the interests of clients. In any event (as discussed below) the proposals only address third party losses, not the barrister's own losses.

ICO guidance and data protection agreements

17. Barrister Luke Ashby agreed that the amendments provide greater clarity but raised a separate issue – that solicitors are requesting that barristers enter into an agreement to comply with not just data protection legislation (which they are obliged to do anyway) but also any relevant guidance from the Information Commissioner's Office (ICO). He argued there was a lack of clarity over whether the latter might be excluded by insurers and that an unintended consequence of our amendments may be more solicitors asking barristers to agree to such data protection addendums.
18. We do not believe the issue Mr Ashby has raised is a direct result of our amendments or a matter for the insurance rules. However, BMIF has confirmed to us that if a claim for compensatory damages is made against a barrister or BSB entity for a breach of the GDPR and/or guidance issued by the ICO, they will be covered, provided the notification meets the Terms of Cover.

First-party indemnity insurance

19. As part of the consultation, we did not propose that barristers and entities should be required to hold first-party cover (for their own losses, for example in relation to repairing computer systems or responding to ICO investigations and paying any resulting fines.) We stated that our primary role is to protect consumers from loss and this is the purpose of professional indemnity insurance. Practitioners should assess their own levels of risk and decide whether they need additional insurance to cover their own losses. However, we wanted to use this as an evidence-gathering exercise to explore with respondents whether there was a case for requiring such additional cover.
20. The Bar Council did not think that such a proposal was worthwhile. BMIF said that it was for the BSB to decide. Both agreed that further consultation would be needed before introducing such a requirement and BMIF recommended a market research study first.
21. The LSCP stated that it “strongly supports” the BSB requiring first party cover which could “reduce the risk of business disruption” to barristers and BSB entities and “ensure complete and meaningful protection for consumers in the event of a cyber-related incident.”
22. We will explore these issues further in discussions with the other legal services regulators. In the meantime, we will provide clear guidance to the profession that first party losses are not required to be covered under the MTCs so they can consider getting additional cover.

Sanctions

23. Zurich suggested that we should consider a sanctions clause or a war exclusion in our MTCs. BMIF has also informed us that its Terms of Cover Committee has recently approved such an exclusion in its Terms of Cover. We believe it is reasonable for insurers to exclude liability in these circumstances and have, therefore, provided a clause to this effect in Annex A.
24. This clause is also in line with a similar provision in the SRA's MTCs.

Equality impacts

25. We have not identified any negative impacts to any group of barristers or consumers arising from the proposed amendments. This is because the amendments maintain the current levels of protection and provide greater clarity for all stakeholders.
26. The only concern relating to equalities raised during the consultation was whether there would be an increase in insurance premiums as a result, which may affect some groups more than others. We do not expect any increases in premiums as a direct consequence of the proposed changes. In discussions, a representative from BMIF stated that “cover is not being expanded so BMIF does not think there will be a need to amend premiums.”

Next steps and implementation

27. Should the Board agree the proposed amendments, we will seek approval from the LSB for the changes as soon as is reasonably practicable.
28. As discussed above, BMIF and commercial insurers have already updated their minimum terms.

Communication

29. Following the Board’s decision, we will communicate the decision through the usual channels. We will also provide further guidance to the Bar on what is covered and what is excluded (such as first party cover and claims that would expose an insurer to the sanctions regime).

Resource implications / Impacts on other teams / departments or projects

30. There are no further resource implications arising from this paper. If further discussions on the desirability of requiring cover for first party losses suggests we should explore this further, we will plan and budget for the project in due course.

Annex

Annex A – Schedule of amendments proposed to the MTCs

Proposed amendments to the Minimum Terms of Cover for both Self-employed barristers and BSB entities

Amendments

9. Definitions

Civil Liability For the purposes of these Minimum Terms of Cover, *Civil Liability* includes:

- (i) any liability to pay wasted costs;
- (ii) any liability arising from a Cyber Act or a Cyber Incident.

Additions

3. Exclusions

3.2 No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, Australia or United States of America.

9. Definitions

Computer System Any computer, hardware, software, communication system, electronic device (including but not limited to, any smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, *data* storage device, networking equipment or backup facility, owned or operated by the Insured or any other party.

Cyber Act An unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts regardless of time and place, all the threat or hoax thereof involving access to, processing of, use of or operation of any *Computer System*.

Cyber Incident

- (i) Any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any *Computer System*; or
- (ii) Any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any *Computer System*.

Data Information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a *Computer System*.

Bar Standards Board – Director General’s Strategic Update – 25 May 2022**For publication****Performance**

1. The performance report on the fourth quarter of 2021/22 is attached at annex A. As usual, I shall provide commentary on both performance against our service levels in delivering core regulatory operations and on the delivery of Business Plan programmes and projects.

Service levels

2. As foreseen, we are now meeting or close to meeting the service levels for turning round reports on barristers and applications for authorisation. There has also been a pleasing further reduction over the fourth quarter in the caseload of reports as productivity comfortably exceeded the in-flow of new cases. The only target that is still significantly adrift here is that for the proportion of authorisation requests dealt within six weeks where over the quarter we achieved a figure of just over 50% compared with a target of 75%. However, we were very close to the targets for clearance over eight and twelve weeks, signifying that the Team is now largely on top of work flows.
3. The main continuing challenge, as we have previously reported, is in progressing investigations where performance continues to be affected by the difficulties of recruiting to posts and by the higher number of cases referred for investigation as we have dealt with the backlog of reports. In effect, the bottleneck has now shifted from the initial assessment of reports to the handling of those reports which are assessed as warranting investigation. You will see that investigations opened across the year are up 30% on last year. Productivity is also up – by around 11% - but not by as much. We shall report further at the July Board on our plans to complete investigations more quickly, although I note that an increase in average investigation times is common to other legal service regulators.
4. The cyber attack will inevitably impact on future performance. This is covered in paragraph 8 below.

Business Plan

5. The Business Plan summary shows some amber markers at the end of the year, but this reflects the timing of the completion of projects, rather than any significant risk to delivery. We shall, for example, be coming to the July Board with recommendations for a consultation on conduct in non-professional life and with initial recommendations on the revision of the *Equality Rules*. We also plan a series of thematic reports over coming months which draw on the *Regulatory Return*. In future performance reports, we shall provide an explanation, by exception, of progress with any projects marked as amber or red.

Cyber security

6. As the Board knows, the Bar Council and Bar Standards Board were the subject of a ransomware attack on 13 April. Thanks to the vigilance of our IT team, the attack was detected before the malicious software could be triggered. The price of averting the attack was, however, to take all our systems off-line. Since then the IT Team, supported by external partners, has been working to cleanse systems of any malicious code and to re-connect our systems safely. This has, however, been a protracted process with access to our core information systems – the Customer Relationship Management (CRM) and Case Management System (CMS) - restored only this week.

7. One consequence of the attack has been disruption to our ability to provide a continuing service to both consumers and to barristers. We have, however, sought to ensure that this disruption has not affected barristers' ability to work. Accordingly, we have extended the deadline for renewing practising certificates until the end of June. We have granted waivers for pupils needing a provisional practising certificate in order to make their first Court appearances and have made special arrangements to consider other urgent waivers by e-mail. Similarly, we have put in place an e-mail channel for requesting Certificates of Good Standing. Advice on all these arrangements is prominently displayed on the landing page of our website.
8. Another consequence of the attack and loss of access to our information systems is that we have inevitably built up a backlog of reports on barristers and of authorisation requests. Progress in taking forward some investigations has also been set back. To give us the best chance of maintaining the progress we were making in improving performance against our service levels, I have therefore approved some temporary resource for the Contact and Assessment Team, the Authorisations Team and the Enforcement Team at an estimated cost of £75-£100 000. Despite best efforts, it is very likely we shall nevertheless see some deterioration in the timeliness of handling these core regulatory tasks in at least the first two quarters of 2022/23.
9. Finally, we set in hand action to learn lessons from the attack with a view to enhancing the security and resilience of our IT systems in future. The CEO of the Bar Council and I are jointly commissioning an independent review of our cyber security. I sent the Board the specification for this work on 13 May. We have invited proposals from a number of well-qualified consultancies.

Review of EU Law as a 'Foundation' subject

10. An item had been scheduled for the Board this month on our review of EU Law as 'Foundation' subject in the academic component of Bar training. This item will now be considered by the Executive as there has been strong evidence gathered from stakeholders that EU Law – and Retained EU Law in particular – will continue to be essential knowledge for barristers in the coming years. This means that we do not intend for there to be any substantive changes to be made to the Authorisation Framework or Curriculum and Assessment Strategy at the moment. We will, however, be providing some topic areas for contextualising the module to reflect EU Law's new position in the UK constitution.
11. We are also aware of a Parliamentary Inquiry which is looking into Retained EU Law as a legal concept. The Inquiry is due to report back to Parliament in mid-June with recommendations. The Government's response to this report may be relevant to our longer term response on this issue.

Chair appointment

12. After a competitive tendering exercise, we have decided to work with *Inclusive Boards* on the appointment of a new Chair and subsequent Board and senior management appointments in the next three years. Advertisements for the Chair role appeared last week: <https://www.barstandardsboard.org.uk/resources/press-releases/bsb-seeks-an-outstanding-and-inclusive-chair-to-lead-its-board.html>. We expect the new Chair to be identified by the end of July and have accordingly pushed back the annual Board off-site until October.

Chambers: Speech by DG to Legal Practice Management Association (LPMA)

13. I was very pleased to speak at the annual conference of the LPMA on 12 May. I took the opportunity to brief practice managers on the Bar Standards Board's strategy for the next three years and the important partnership we want to forge with chambers in taking forward our priorities for standards, equality and access. You can find the text of the speech and press notice here: <https://www.barstandardsboard.org.uk/resources/press-releases/bsb-seeks-to-work-with-chambers-to-promote-standards-equality-and-access-at-the-bar.html>

Annex

Annex A: Fourth quarter performance report

Mark Neale

Director General

Business Plan Summary					
Task	Assigned	Size	Priority	Status	Budget
Strategic Aim 1 - Delivering risk-based, effective and targeted regulation					
1. FBT - implementation of new exams	ROD	2	High		
2. Exams review	ROD	3	High		
3. FBT - BCAT review	S&P	2	Medium		
4. FBT - evaluation	ROD	1	Medium		
5. Modernising decision-making	LED/ROD	3	High		N/A
6. Well-Led action plan ¹	G&CS	3	High		
7. Non-professional activities	LED	2	High		
8. Sanctions guidance	LED	3	High		
9. BSB culture and learning & development	HR	1	High		N/A
10. BSB Strategic Plan 2022-2025	S&P	2	High		
11. Code Review	S&P	3	Medium	N/A	N/A
Strategic Aim 2 - Encouraging an independent, strong, diverse and effective legal profession					
12. Pupillage	ROD	TBC	TBC	N/A	N/A
13. Assuring standards at the Bar - CPD	ROD	3	High		
14. Assuring standards at the Bar - Coroners' Courts	ROD	3	High		
15. Assuring standards at the Bar - EYP	ROD	3	High		
16. Equality and Diversity Strategy - Anti-racism	S&P	2	High		
17. Bullying, Discrimination & Harassment at the Bar	S&P	2	High		
18. Regulatory Return	ROD	2	High		N/A
19. Equality and Diversity Strategy - Equality Rules	S&P	2	High		
Strategic Aim 3 - Advancing access to justice in a changing market					
20. Research publications	S&P	2	High		
21. CMA quality indicators - collaboration & pilot	S&P	1	High		N/A
22. CMA quality indicators - consumer feedback	S&P	2	High		N/A
23. CMA evaluation	S&P	2	High		

Note/s

¹ Referred to as 'LSB Governance review' in the published Business Plan.

² Index is a calculation of the actual versus budget, multiplied by 100 - showing how far above or below budget the actuals are. For example, index 120 means 20% above budget and index 80 means 20% below budget.

³ Pending review by GRA Committee.

Size ↑ 3 Large piece of work
↓ 1 Small piece of work

KPI Summary		C&A - General Enquiries		C&A - Initial Assessment
On target	9	General enquiries addressed (5 days) - 80%	General enquiries referred (3 days) - 80%	Concluded or referred (8 weeks) - 80%
<10% below target	4	85%	72%	71%
>10% below target	3			
I&E - Referral of Cases	I&E - Investigation	I&E - Quality Indicators		
Accepted or referred back (2 weeks) - 80%	Decision on disposal (25 weeks) - 80%	Original decision upheld by IR following review - 95%	Successful appeals against admin. Sanctions - 0%	Successful appeals of DT where BSB is responsible - 0%
11%	16%	100%	100%	0%
Authorisation - Authorisation, Exemptions & Waivers			Authorisation - Entity Authorisation	
Applications determined (6 weeks) - 75%	Applications determined (8 weeks) - 80%	Applications determined (12 weeks) - 98%	Authorisation decisions made (6 months) - 100%	Authorisation decisions made (9 months) - 100%
52%	77%	95%	100%	100%
Supervision - Allocations		Supervision - Reg. Response	Supervision - Visits	
Cases assigned after referral from CAT (2 days) - 80%		Regulatory response agreed (20 days) - 80%	Visit report letters issued (5 days) - 80%	
100%		81%	100%	

Financial Summary				
Category	FY Actual	FY Budget	Variance	Index ²
Income	13,515	12,689	826	107
Expenditure	6,923	6,989	-66	99
Category	FY Actual	FY Forecast	Variance	Index ²
Income	13,515	N/A		
Expenditure	6,923	N/A		

Corporate Risk Summary (Action Priority)				
Period	High	Medium-High	Medium	Low
Q4 21/22 ³	3	4	10	6
Q3 21/22	3	3	10	7

Directorates	% of occupied posts	
CPE	Communications and Public Engagement	75%
G&CS	Governance & Corporate Services	100%
LED	Legal & Enforcement	91.30%
ROD	Regulatory Operations	95.45%
S&P	Strategy & Policy	73.33%

2021-22 Quarter 4 Performance report – Regulatory Operations and Legal and Enforcement Departments

In this report we have included charts which show workload volume as a year-on-year comparison. The intention is to include this in quarter 2 and 4 reports going forward.

Contact & Assessment

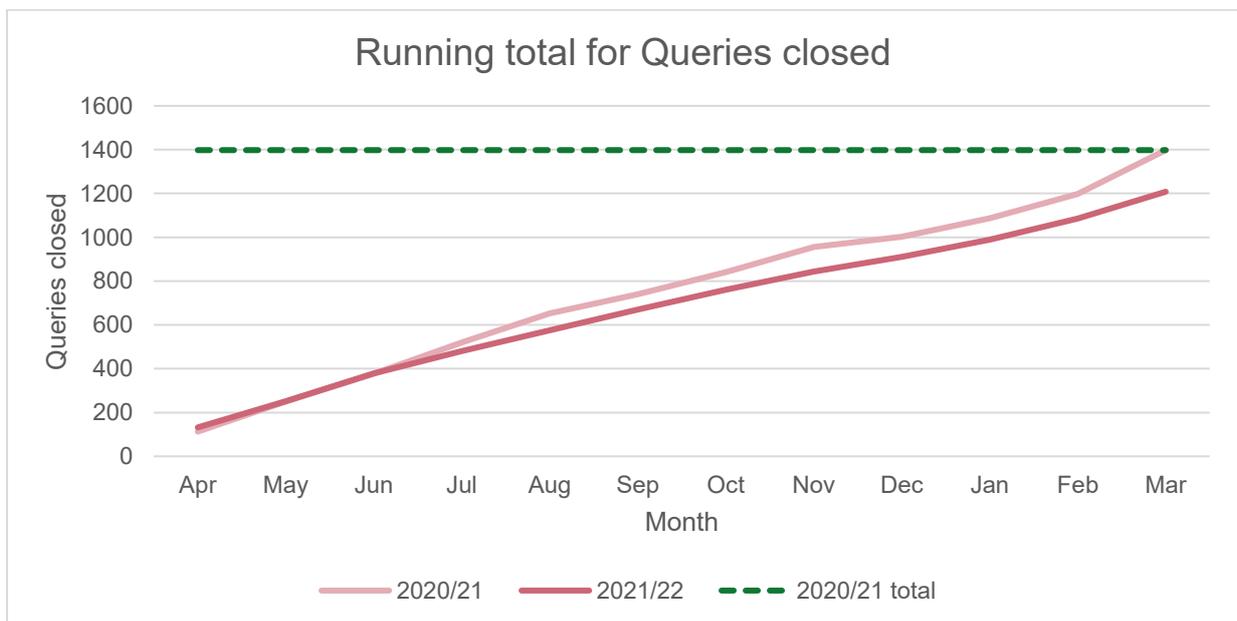
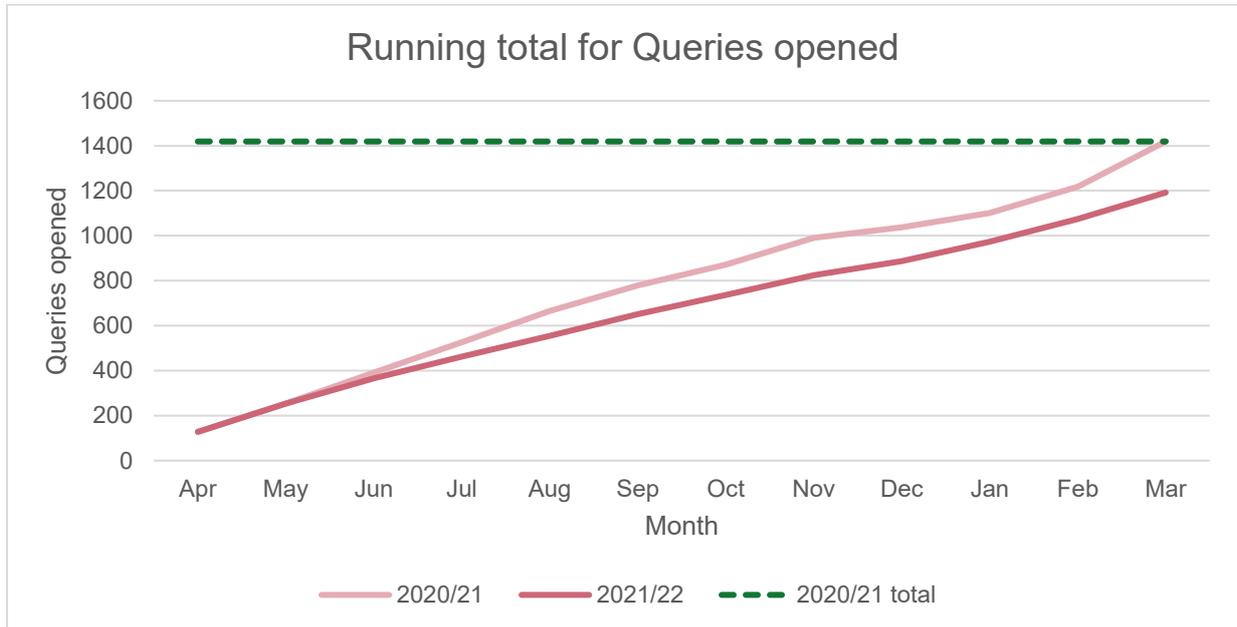
Key points

- The team has exceeded two of the four KPIs this quarter and is close to meeting the remainder.
- Performance against all KPIs is higher in this quarter than at any point over the last year. The figures are also an improvement on quarter 4 of 2020/21.
- Despite the increase in volume of work, quality indicators have remained consistently high over the course of 2021/22.

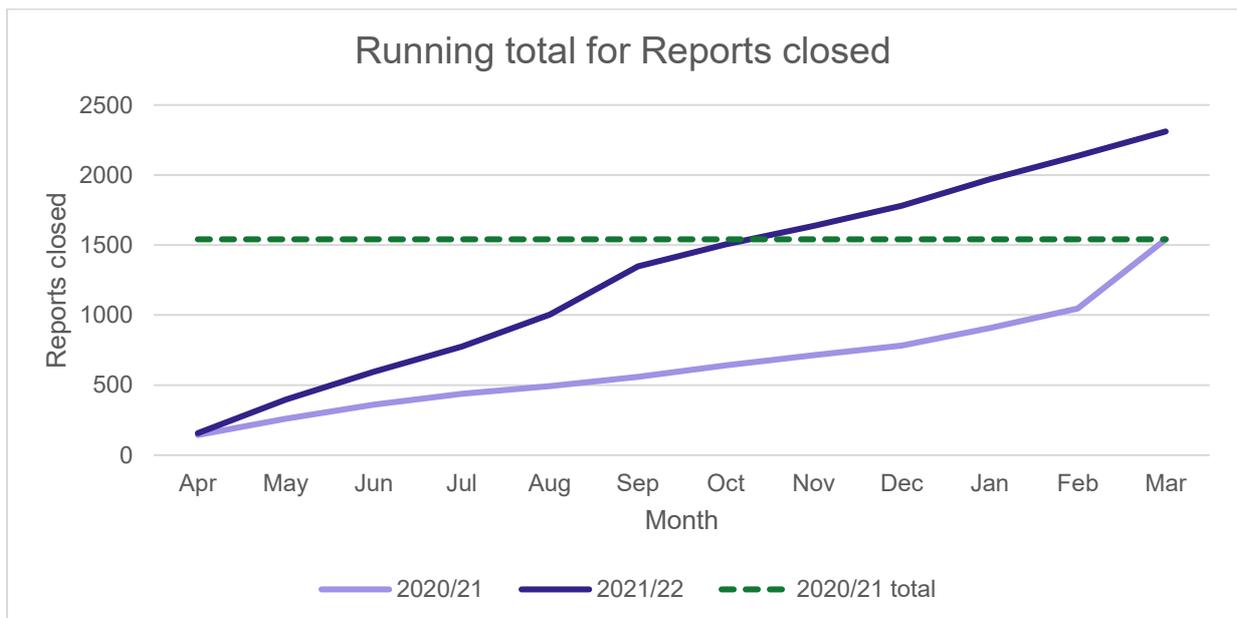
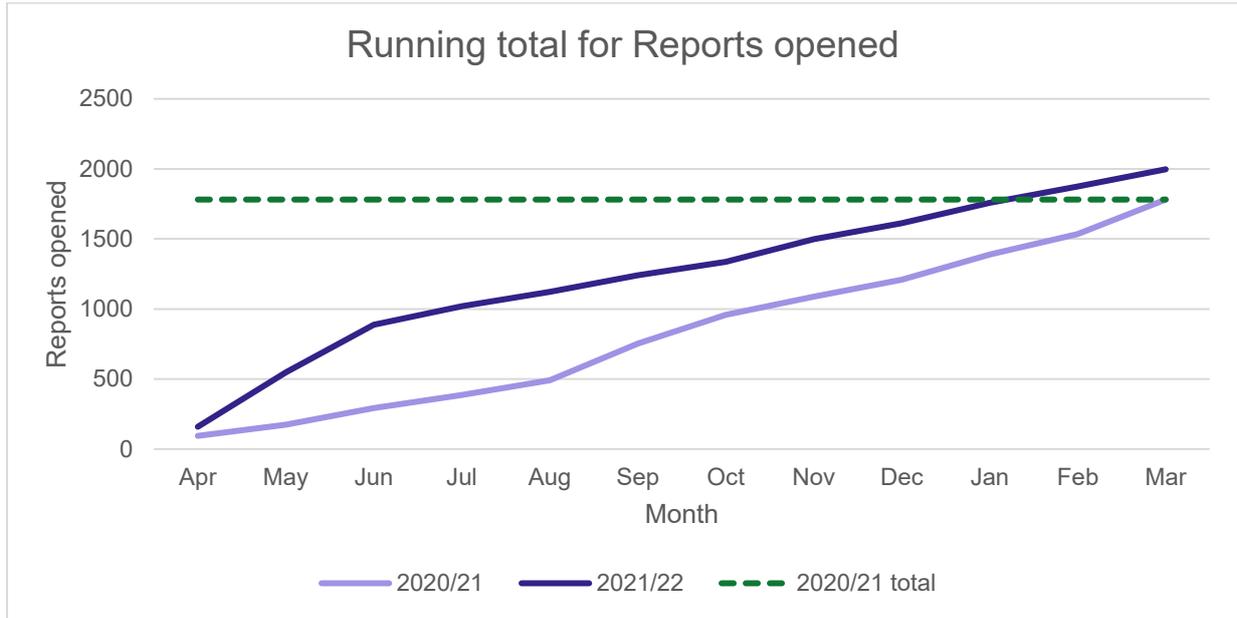
KPIs & performance data

KPI	Target	Performance Q4
General Enquiries		
The percentage of substantive responses to general enquires, that can be addressed by CAT, provided within 5 working days.	80%	85.2%
The percentage of general enquiries, which cannot be answered by CAT, that are referred to another team within 3 working days.	80%	72.3%
Initial Assessment		
The percentage of reports assessed and concluded by CAT, or referred to another team for action, within eight weeks.	80%	71.2%
Quality indicators		
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	100.0%

Workload volume – year-on-year comparison

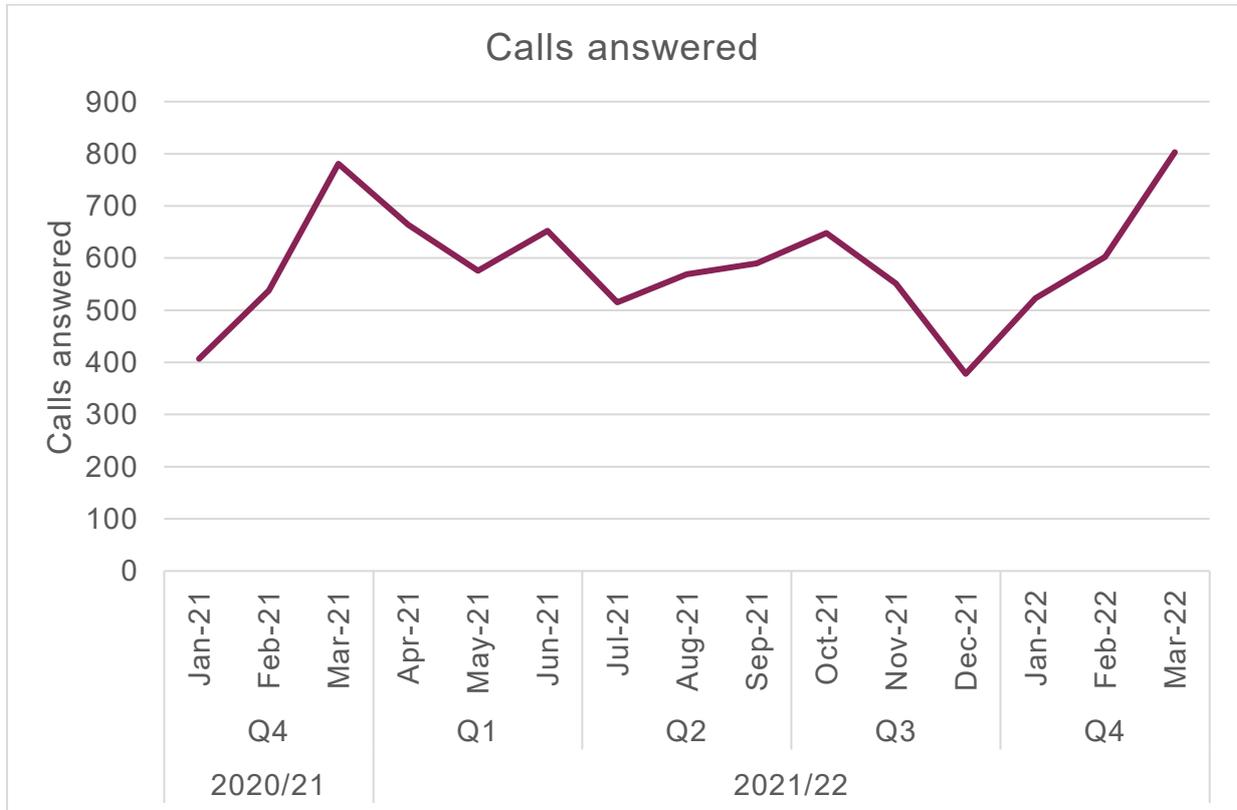


- By the end of quarter 4, 1192 queries had been opened, 84% of the number opened by the end of quarter 4 the previous year. At the end of the quarter, 1208 queries had been closed, 86.4% of the number closed at the end of the same quarter last year.

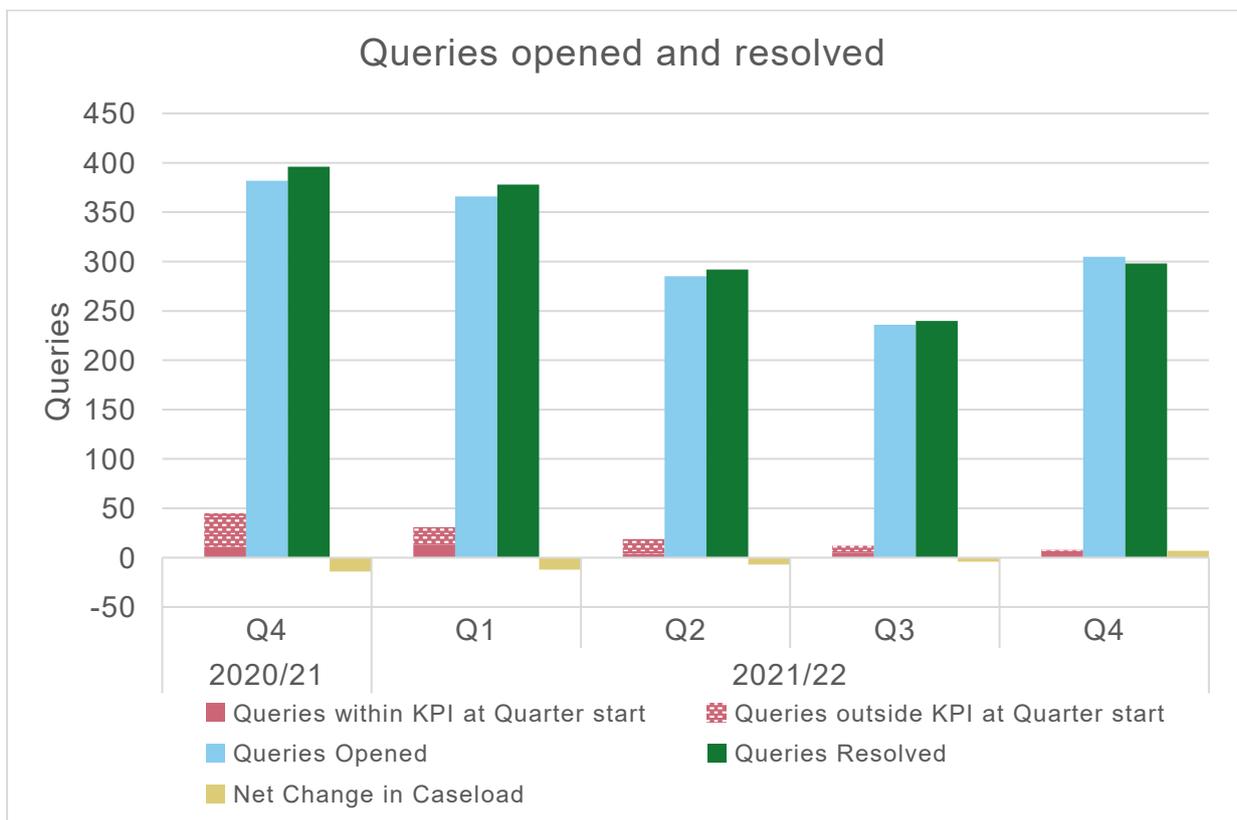


- By the end of quarter 4, 1997 reports had been opened, 112.1% of the number opened by the end of quarter 4 the previous year. At the end of the quarter, 2311 reports had been closed, 150% of the number closed at the end of the same quarter last year.

Number of calls received per month

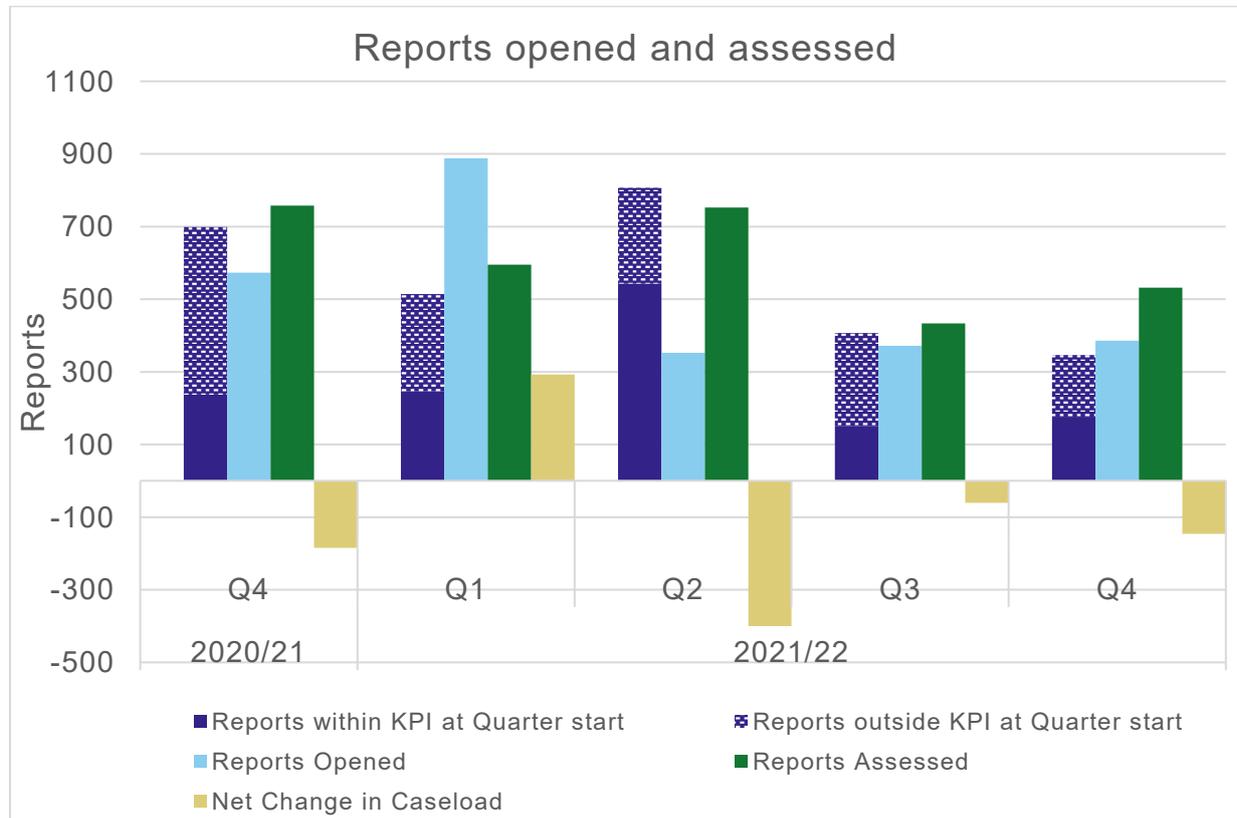


General Enquiries



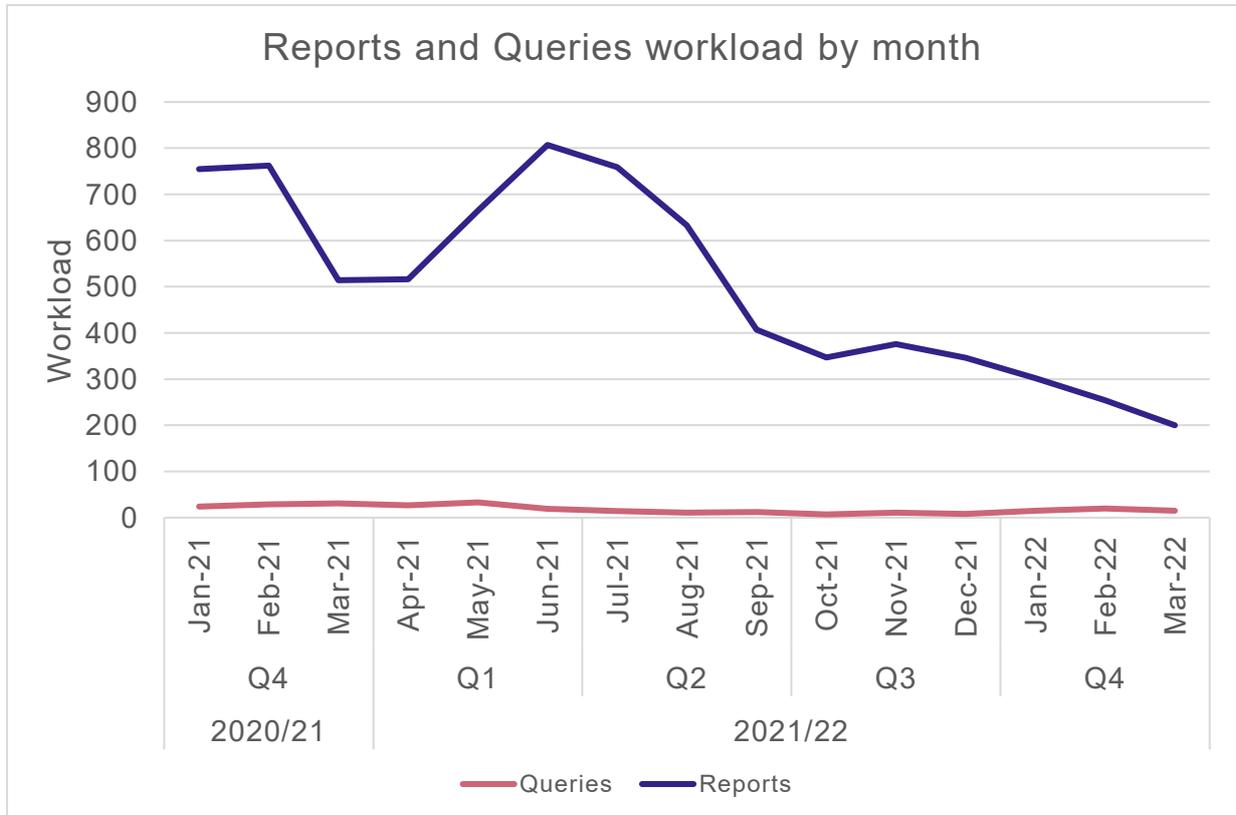
- General enquiries have been higher this quarter than over the previous two quarters. Nonetheless, there has been a gradual reduction in queries outside KPI at the start of the quarter since the same period last year.

Reports opened vs Reports resolved



- Almost 100 more reports have been assessed this quarter than last, in the context of a relatively stable number of reports opened, meaning that the team has managed to reduce overall caseload for the third quarter in a row.

Total caseload by month



5. Caseload has reduced gradually over the last two quarters as the backlog has been cleared and no bulk reports have been received.

Cases closed

(% of this total that were within service standard)

KPI	2020/21	2021/22			
	Q4	Q1	Q2	Q3	Q4
General Enquiries					
General enquiries addressed (5 days)	314 (74.8%)	305 (76.7%)	250 (80.4%)	202 (79.7%)	250 (85.2%)
General enquiries referred (3 days)	81 (66.7%)	73 (56.2%)	42 (50.0%)	36 (47.2%)	47 (72.3%)
Initial Assessment					
Concluded or referred (8 weeks)	758 (44.3%)	595 (55.5%)	752 (28.3%)	433 (49.2%)	532 (71.2%)

Live cases

Snapshot at the close of Q4 of 2021-22

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
General Enquiries			
General enquiries addressed (5 days)	13	3	23%
General enquiries referred (3 days)	1	0	0%
Initial Assessment			
Concluded or referred (8 weeks)	208	99	48%
Total	222	102	46%

6. The percentage of general enquiries over-running has reduced from 40% last quarter. Initial assessments over-running has remained broadly static.

Commentary

7. The team has not received as many cases over the last quarter as in previous quarters, which means that overall caseload has reduced. However bulk cases have had a significant impact on the work of the team over the last year, due to the work generated by their complexity, volume of correspondence and parties.
8. We will continue to monitor the impact of covid-19 over the next quarter however caseload numbers would need to continue drop to return to previous levels. The positive aspect of this increase in workload is that consumers seem to be more aware of the role of the regulator, and that we are capturing more of the issues where barristers are not performing in line with their obligations.
9. During this quarter there were 6 responses to the Service Standard Survey. Two related to queries and four related to reports made
10. Of the two general enquiry responses, one had provided negative responses to all areas of measure – Ease of Access, Communication and Timeliness. The other provided very positive responses to all questions but a negative response relating to the ease of finding information on the BSB website.
11. As for the surveys relating to reports, two respondents provided positive responses to all areas of measure. The other two respondents provided mixed feedback. Overall, regarding Ease of Access, 6 of 8 (75%) responses were positive. As for Communication 12 out of 16 (75%) responses were positive. It is of note that all respondents considered that staff were courteous, and correspondence was clear. As for Timeliness out of 7 responses, 3 were positive (43%).

Authorisations

Key points

- Performance this quarter is a significant improvement on the same quarter of last year.
- Almost all applications are now determined within 12 weeks, and this has been the case over the last three quarters, reducing the backlog of applications waiting to be assessed.
- More applications have been closed this year than last, and more than have been opened.

KPIs and performance data

KPI	Target	Performance Q4
Authorisation, Exemptions and Waivers		
The percentage of applications determined within six weeks of receipt of the complete application	75%	51.7%
The percentage of applications determined within eight weeks of receipt of the complete application	80%	77.3%
The percentage of applications determined within twelve weeks of receipt of the complete application	98%	95.1%
Entity (including ABS) Authorisation		
The percentage of authorisation decisions made within six months of receipt of the application and associated fee	90%	100%
The percentage of authorisation decisions made within nine months of receipt of the application and associated fee	100%	100%

Cases closed

(as a % of the total number of applications determined)

KPI	2020/21	2021/22			
	Q4	Q1	Q2	Q3	Q4
Authorisation, exemptions and waivers					
Applications determined within six weeks of receipt of the complete application	59 (19%)	59 (17%)	178 (48%)	190 (65%)	105 (52%)
Applications determined within eight weeks of receipt of the complete application	86 (28%)	83 (24%)	216 (58%)	242 (83%)	157 (77%)
Applications determined within twelve weeks of receipt of the complete application	149 (48%)	181 (52%)	343 (93%)	277 (95%)	193 (95%)
Entity (including ABS) Authorisation					
Authorisation decisions made within six months of receipt of the application and associated fee	5 (100%)	2 (100%)	4 (80%)	3 (100%)	3 (100%)
Authorisation decisions made within nine months of receipt of the application and associated fee	5 (100%)	2 (100%)	5 (100%)	3 (100%)	3 (100%)

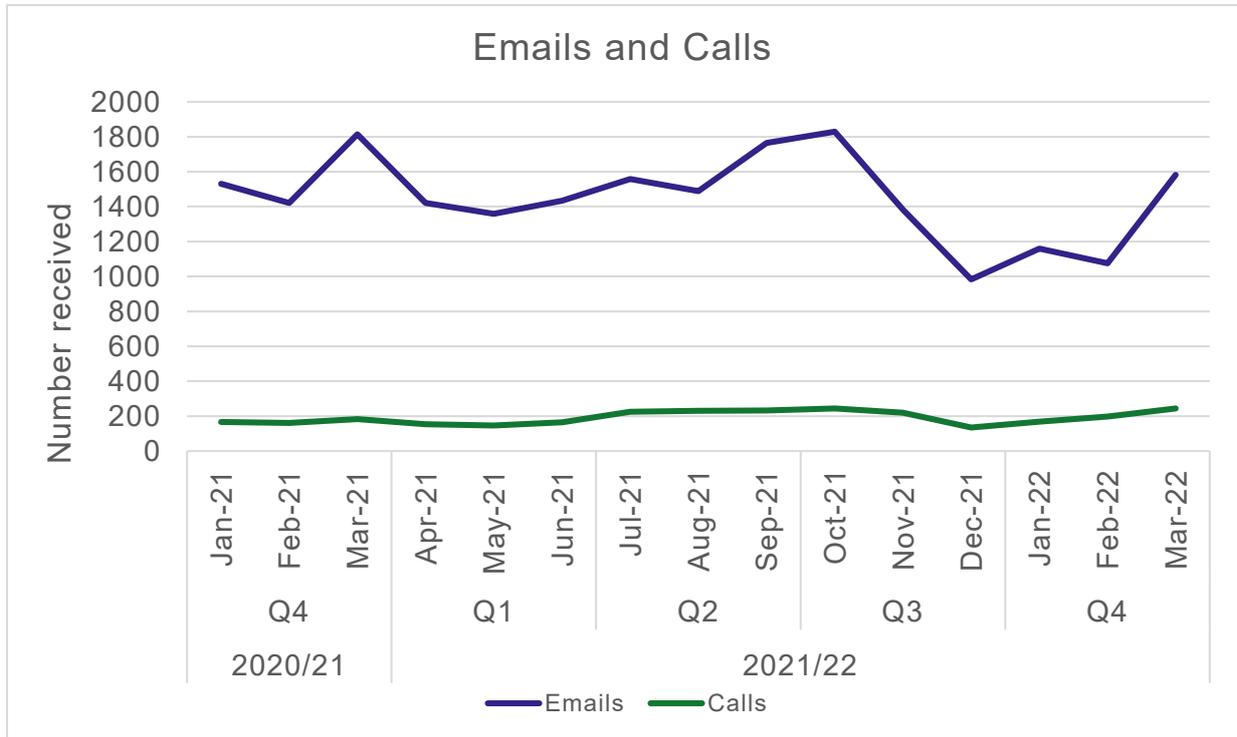
Live cases

Snapshot at the close of Q4 of 2021-22

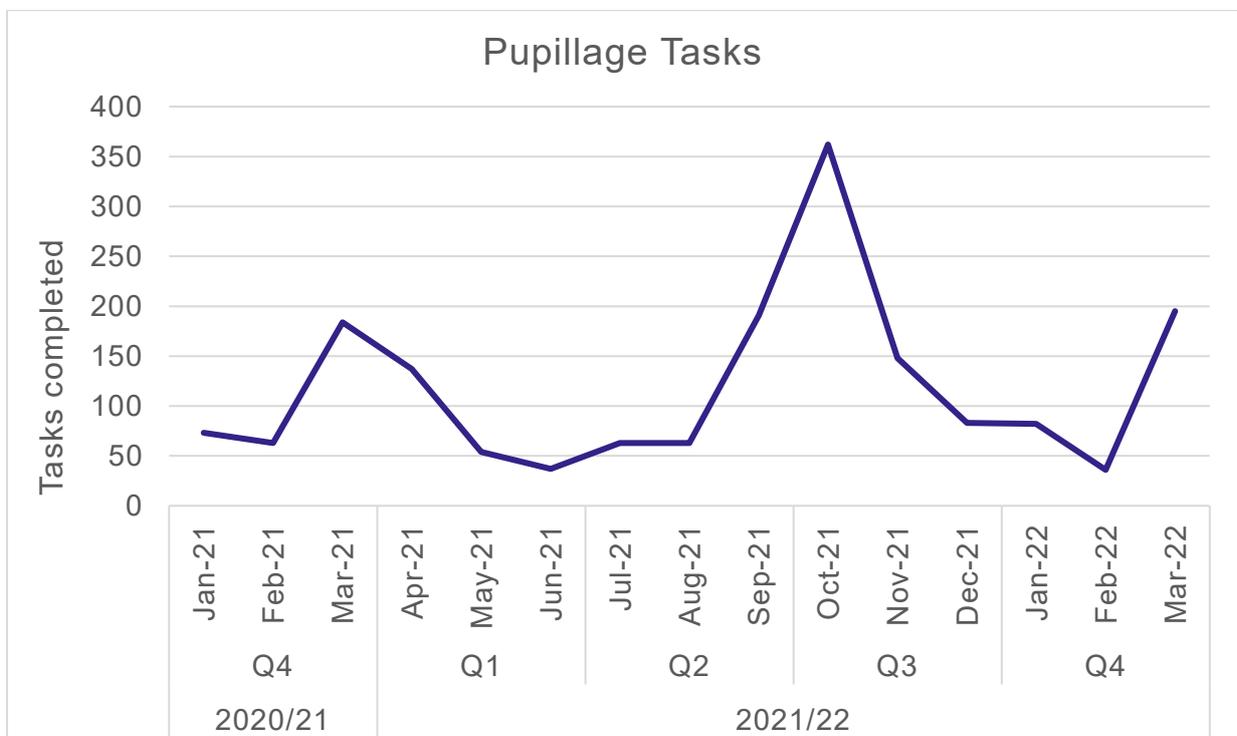
Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Waiver applications			
Decisions made (12 weeks)	174	7	4%
Total	174	7	4%

12. The percentage of cases over-running is looking healthy and is only just over the 2% margin.

Emails and calls

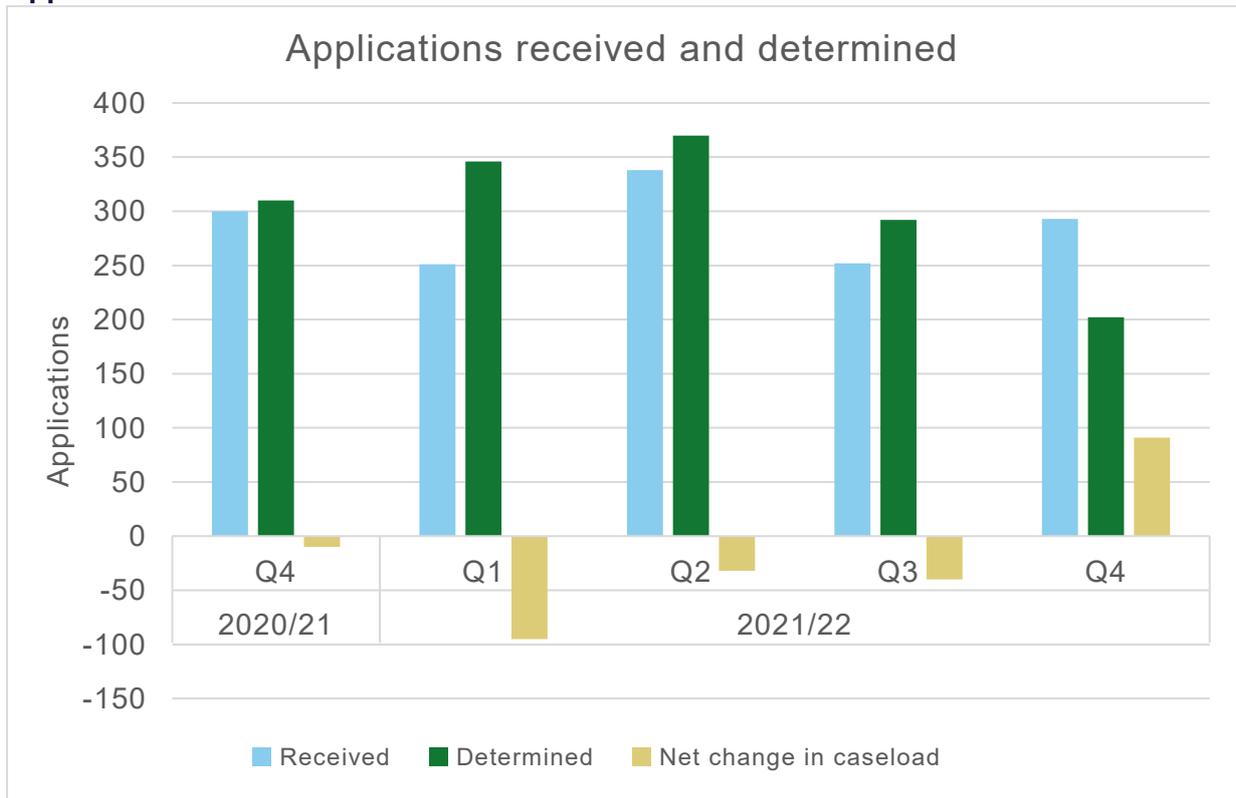


Pupillage Tasks



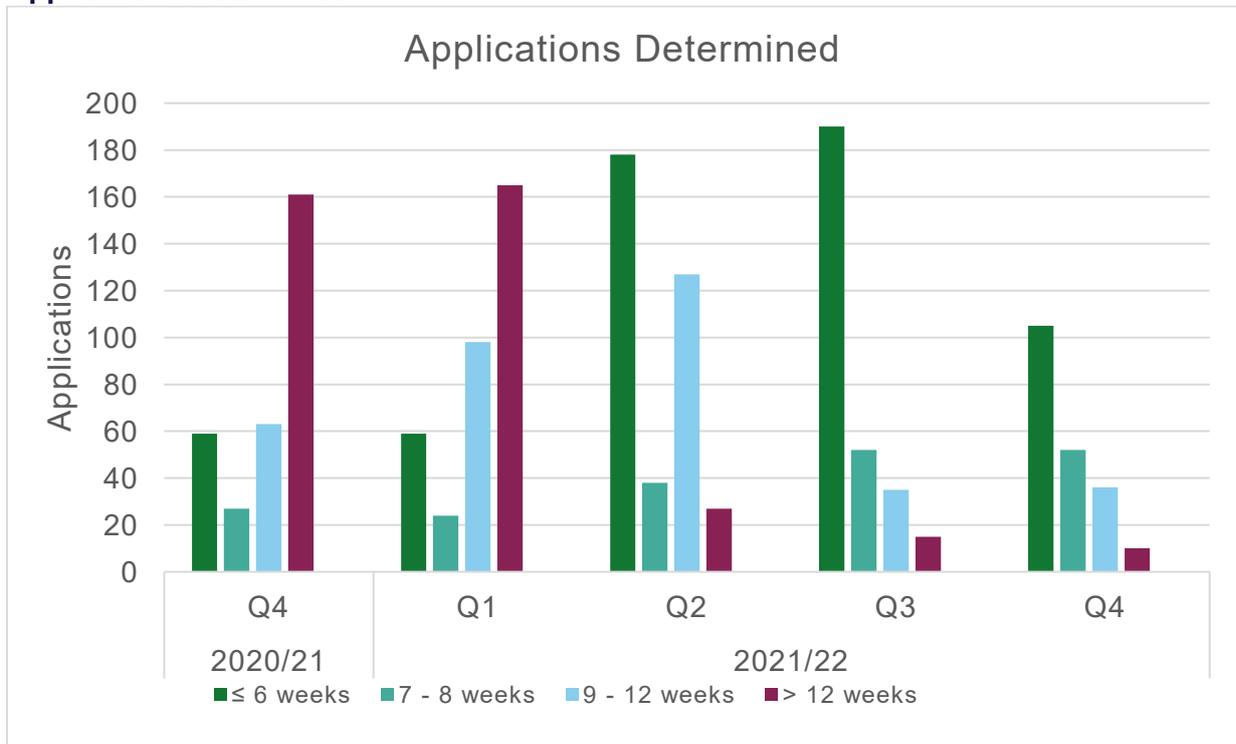
- In the final month of this quarter, the team has experienced a substantial increase in emails, calls and corresponding pupillage tasks.

Applications received and determined



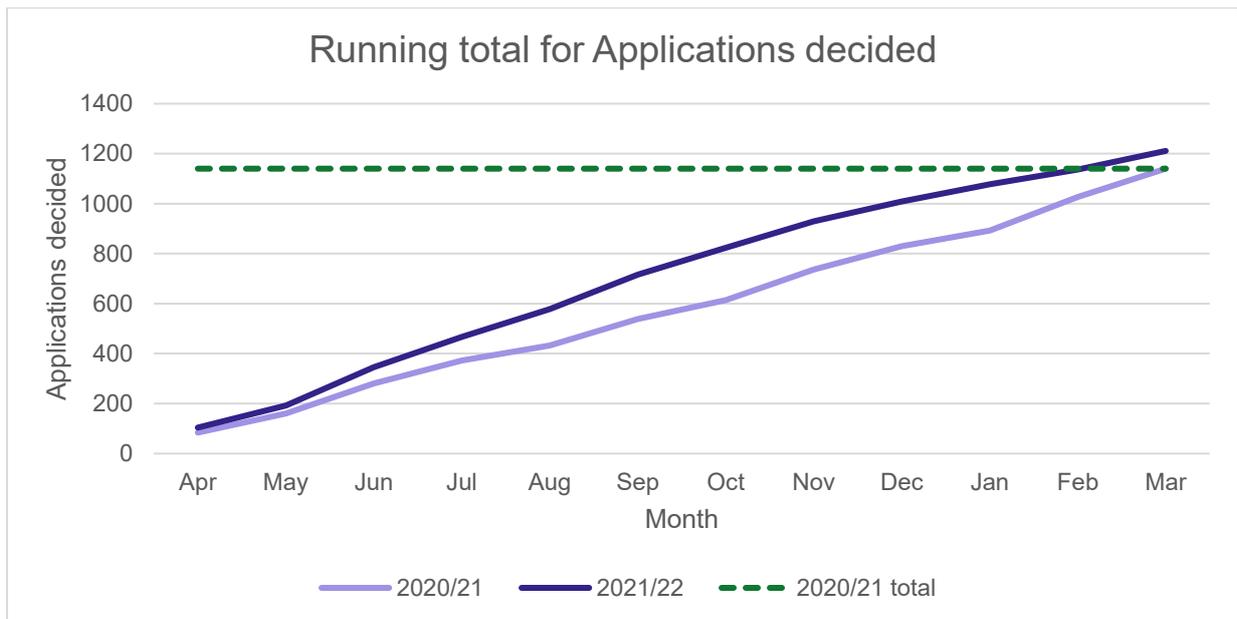
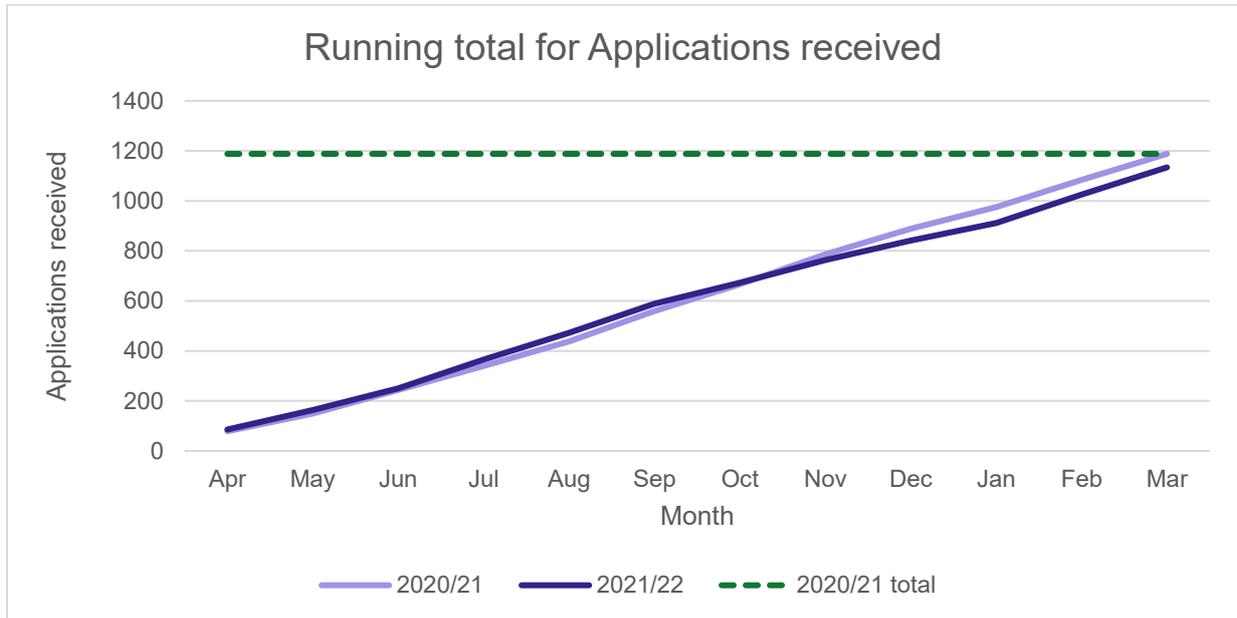
14. As a result, there has been an increase in outstanding applications which has impacted performance against KPI.

Applications determined



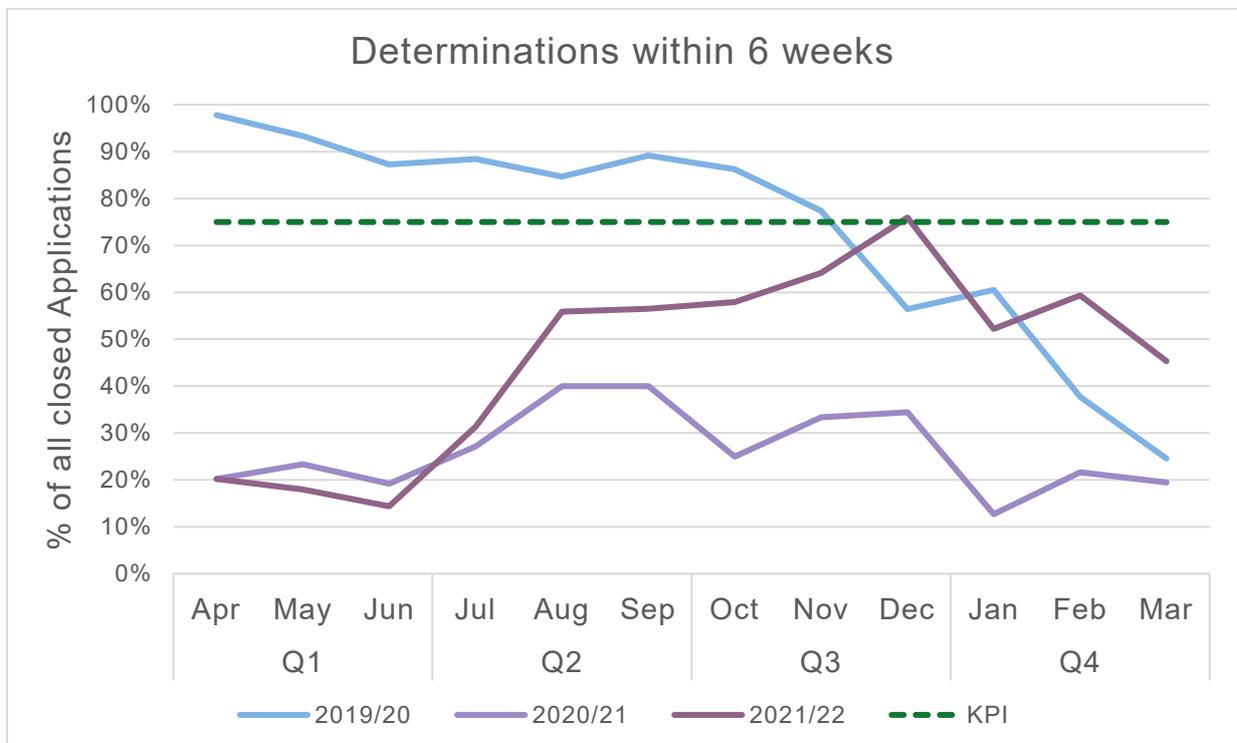
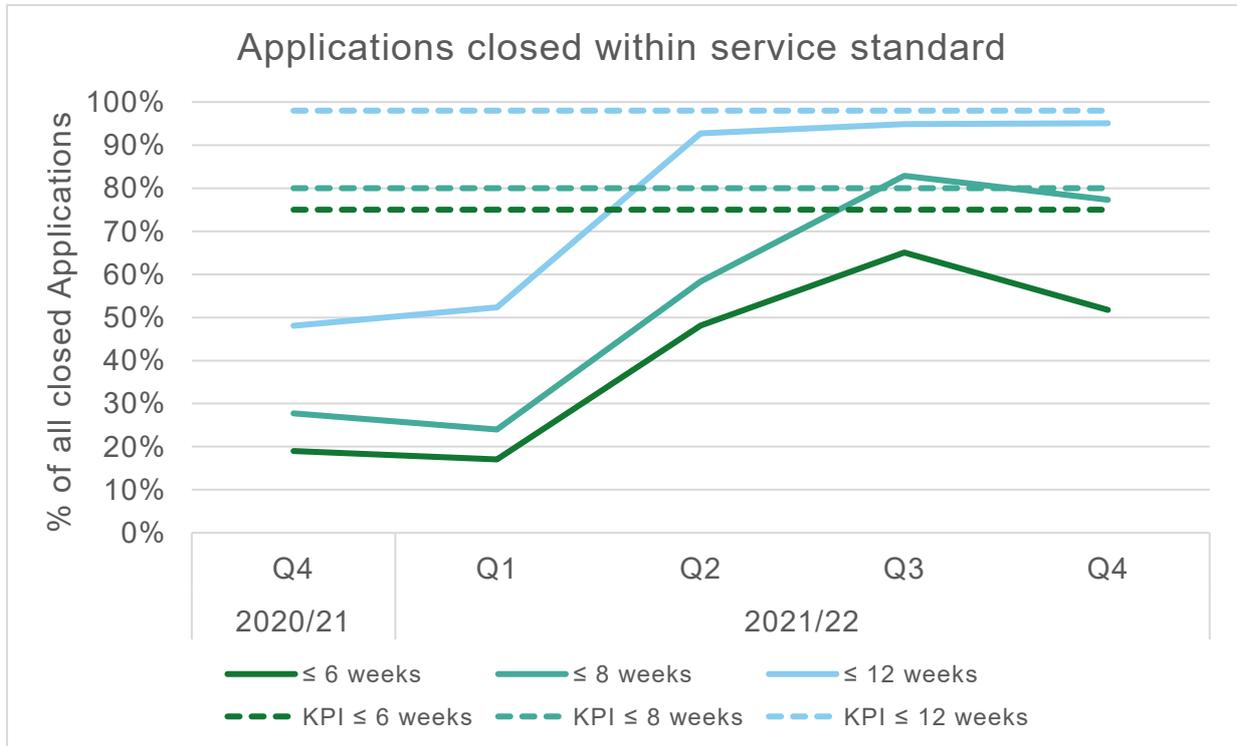
15. However, the number of aged applications (those outside 12 weeks) has decreased substantially since the same quarter last year.

Workload volume – year-on-year comparison



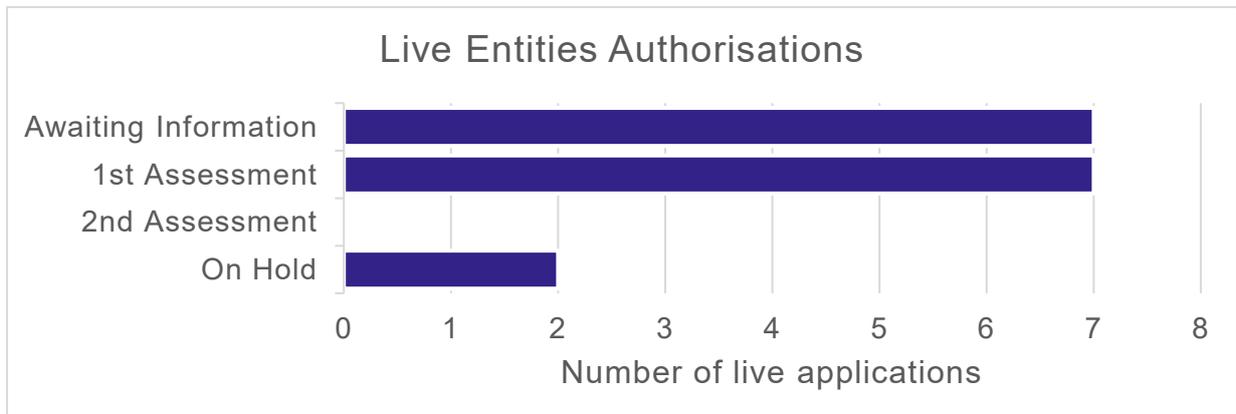
- By the end of quarter 4, 1134 applications had been opened, 95.5% of the number opened by the end of quarter 4 the previous year. At the end of the quarter, 1211 applications had been decided, 106.2% of the number closed at the end of the same quarter last year.

Quarterly improvement



17. This chart demonstrates the increase in performance this year as compared to 2020/21 against the 6-week indicator.

Live Entities Authorisations



18. Entity renewals have been an area of focus this quarter, with renewals required for some organisations.

Commentary

19. The team has continued to focus on Authorised Education and Training Organisations (AETOs) for most of this quarter, to ensure that assessments were completed, and decisions issued within time for those applications received. Having identified a number of organisations for which either an application or requested information was outstanding, there was a need to create a contingency plan for those particular organisations. The contingency will allow for applications to be submitted throughout April, for decision by 31 July 2022.
20. As a result of some internal staffing moves and resultant training, the team is currently recruiting to replace officer and administrative posts. However, the fixed term contract post to support with pupillage is now in post and it is anticipated that this will assist with workload once the required training has been completed.
21. The Entity Renewal process is underway and stakeholder engagement has been good.
22. Increased stakeholder communications via the [Service Update Page](#) continues to support the Team and resulted in fewer calls and emails in relation to processing times.

Investigations and Enforcement

Key points

- Almost twice the number of referrals were received and almost 30% more investigations opened over the course of this year compared to 2020/21.
- Despite closing over 25% more referrals and 10% more investigations being decided, the team has been unable to keep pace with this increase in volume of work.
- This has had a corresponding impact on performance against KPI, other than for quality indicators.

KPIs and performance data

KPI	Target	Performance Q4
Referral of cases		
The percentage of cases referred by CAT to another team for regulatory action that are accepted or referred back to CAT within 2 weeks.	80%	10.9%
Investigation of allegations		
The percentage of investigations of allegations of breaches of the Handbook completed, and a decision taken on disposal, within 25 weeks of acceptance.	80%	15.8%
Quality indicators		
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	100.0%
Number successful appeals against the imposition of administrative sanctions.	0%	100.0%
Number successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process.	0%	0.0%

Cases closed

(% of this total that were within service standard)

KPI	2020/21	2021/22			
	Q4	Q1	Q2	Q3	Q4
Referral of cases					
Accepted or referred back (2 weeks)	35 (65.7%)	73 (89.0%)	37 (62.2%)	28 (21.4%)	46 (10.9%)
Investigation					
Decision on disposal (25 weeks)	31 (29.0%)	24 (33.3%)	41 (53.7%)	32 (31.3%)	38 (15.8%)

Service Standard	2020/21	2021/22			
	Q4	Q1	Q2	Q3	Q4
Determination by Consent					
Process completed (93 working days)	1 (100.0%)	1 (100.0%)	2 (50.0%)	1 (100.0%)	1 (0.0%)
Disciplinary Tribunal					
Cases concluded (197 working days)	9 (55.6%)	9 (33.3%)	7 (85.7%)	8 (25.0%)	6 (33.3%)

23. Performance against the KPI has continued to decline over the course of the year as the volume of referrals and investigations increased.

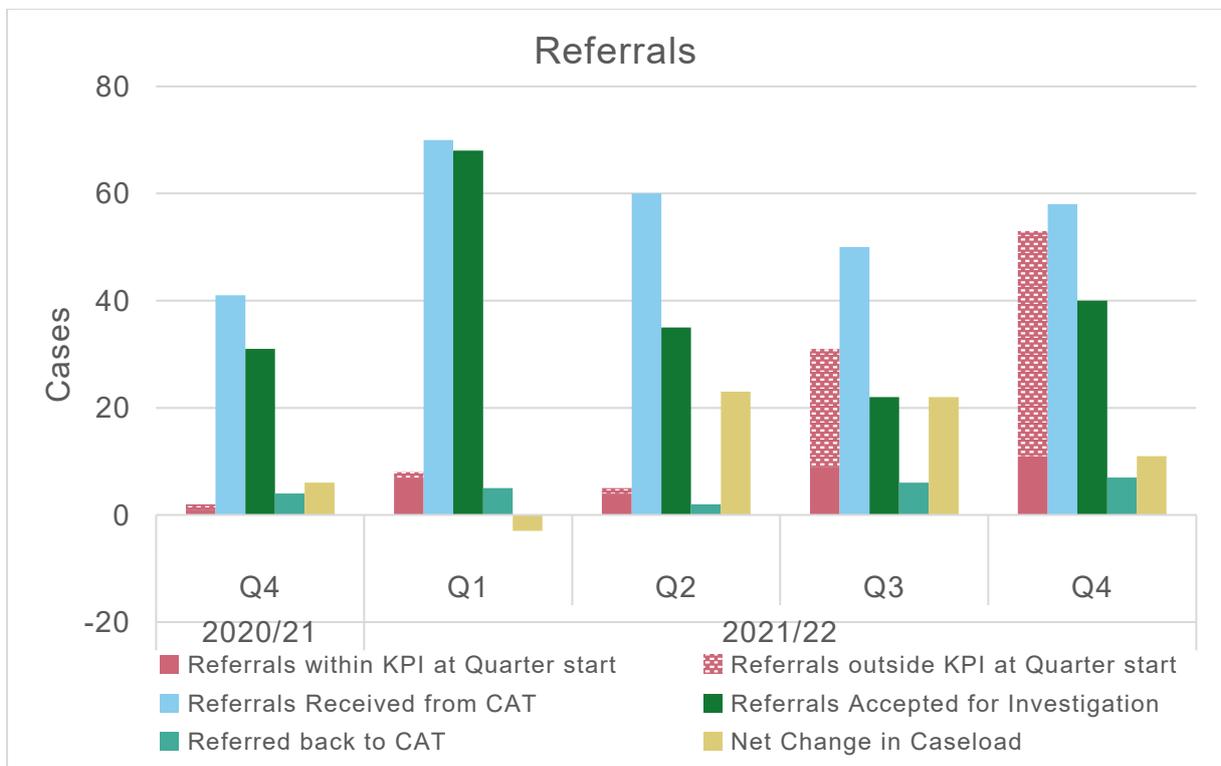
Live cases

Snapshot at the close of Q4 of 2021-22

Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Referral of cases			
Accepted or referred back (2 weeks)	63	48	76%
Investigation			
Decision on disposal (25 weeks)	136	65	48%
Total	199	113	57%

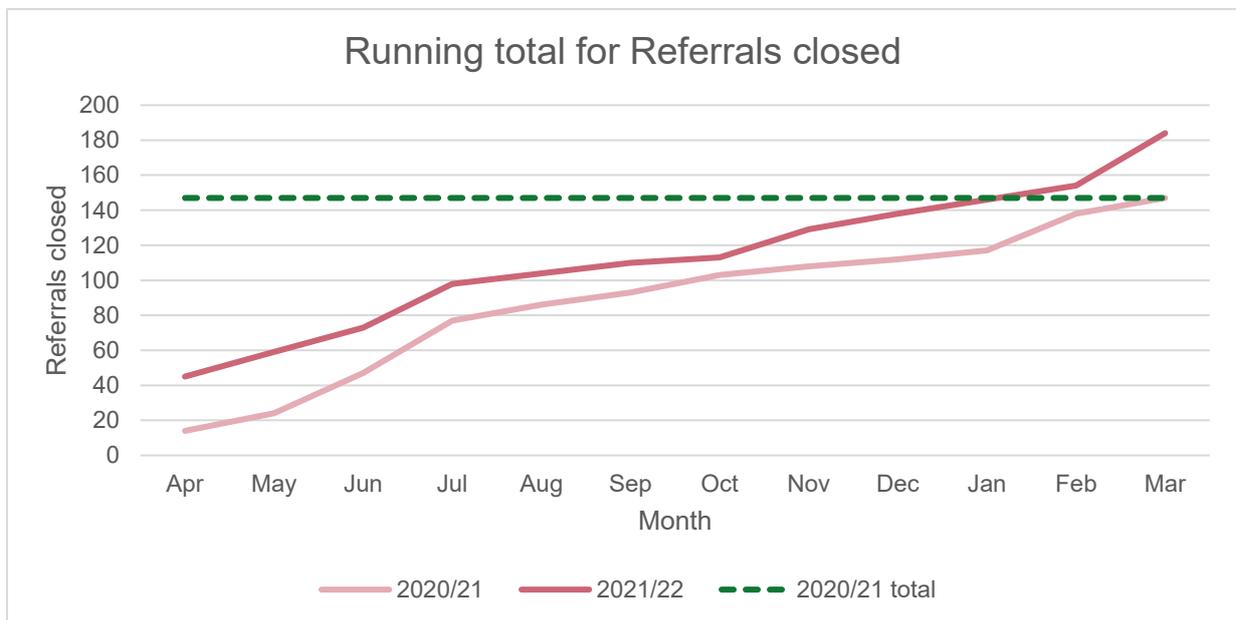
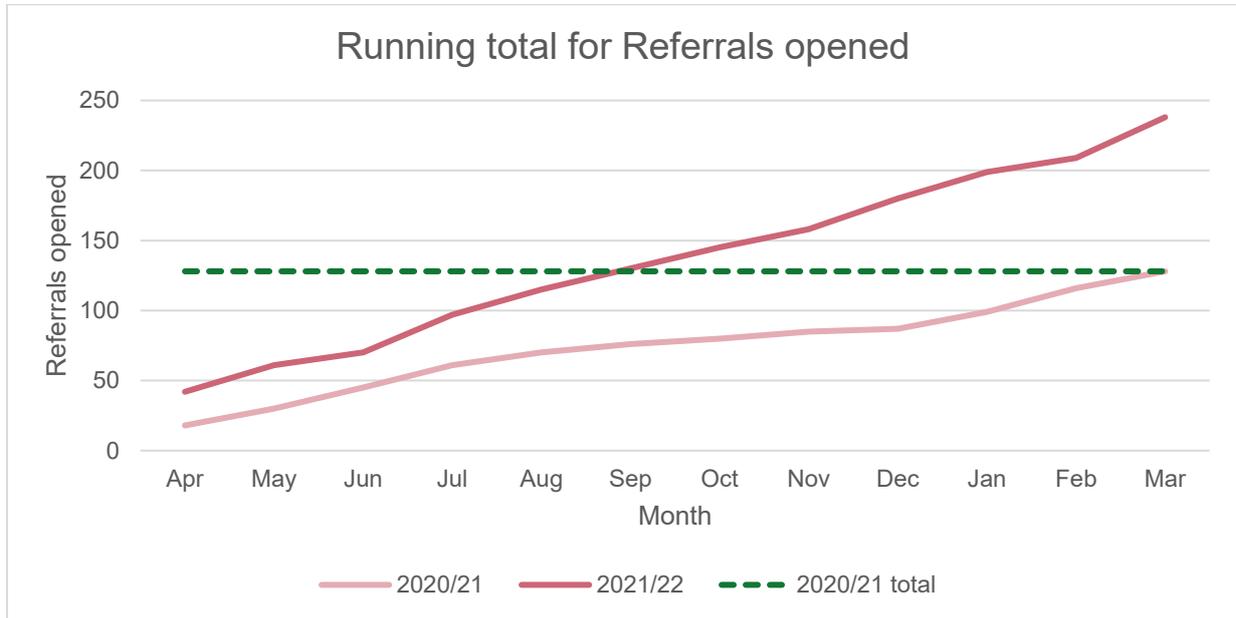
Operational Indicator	Total Open Cases	Over-running Cases	Percentage Over-running
Determination by Consent			
Process completed (93 working days)	2	1	50%
Disciplinary Tribunal			
Cases concluded (197 working days)	28	4	14%
Total	30	5	17%

Referrals (Pre-investigation)



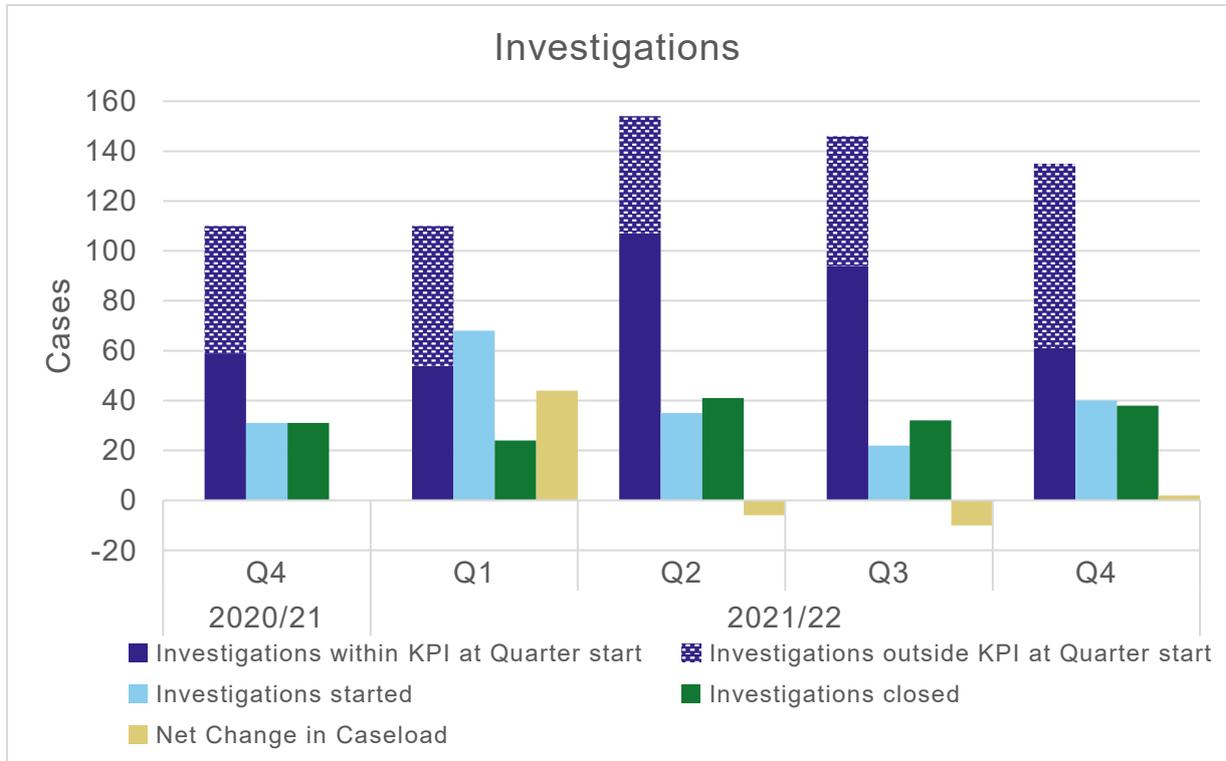
24. As the team has not been able to absorb the increase in referrals with existing staffing complement, the volume of cases outside KPI has increased over the course of the year.

Workload volume – year-on-year comparison



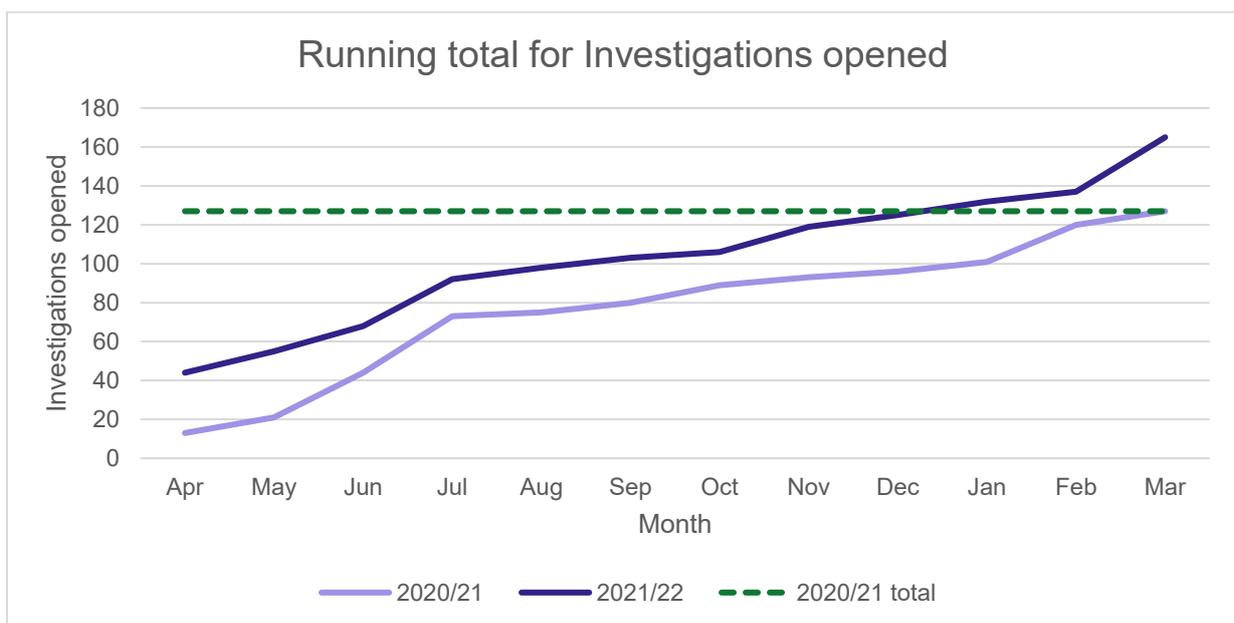
- 25. By the end of quarter 4, 238 referrals had been opened, 185.9% of the number opened by the end of quarter 4 the previous year. At the end of the quarter, 184 referrals had been closed, 125.2% of the number closed at the end of the same quarter last year.

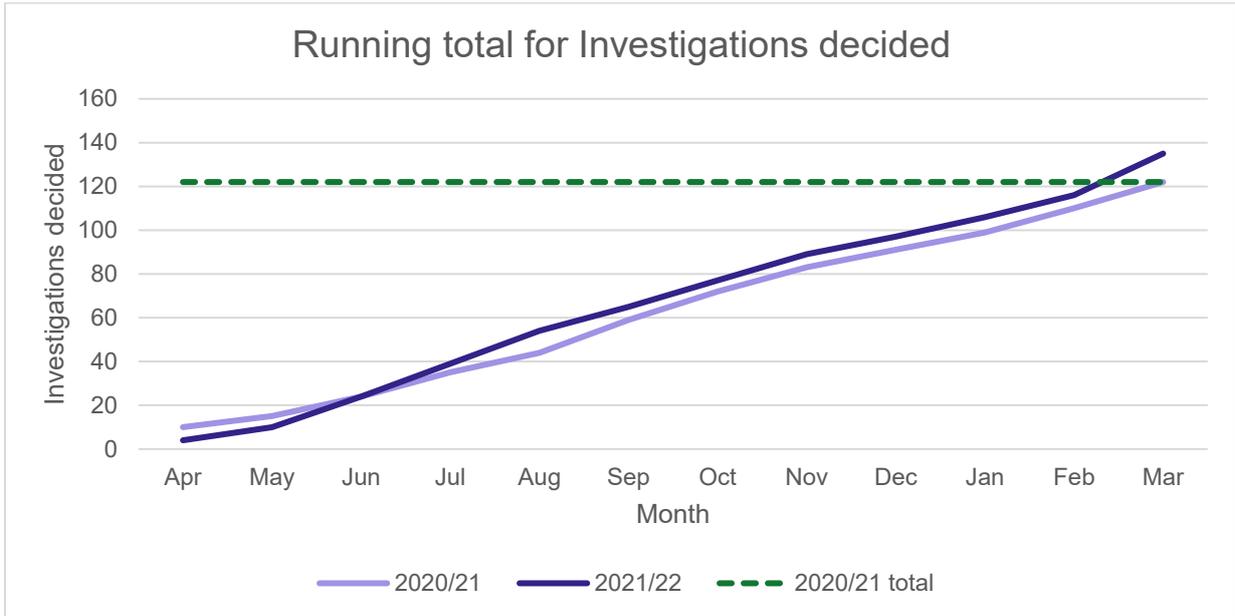
Investigation cases



26. Despite the increase in investigations outside KPI, a broadly consistent work rate has been maintained over the course of the year.

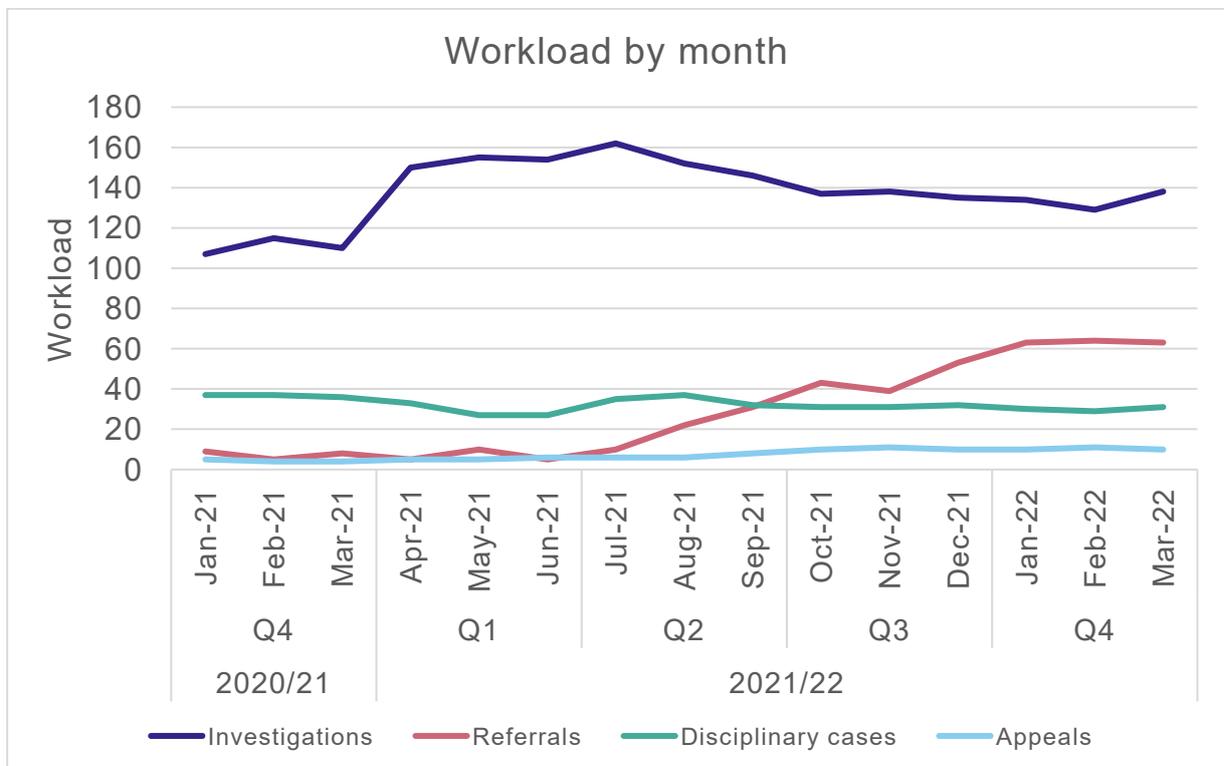
Workload volume – year-on-year comparison

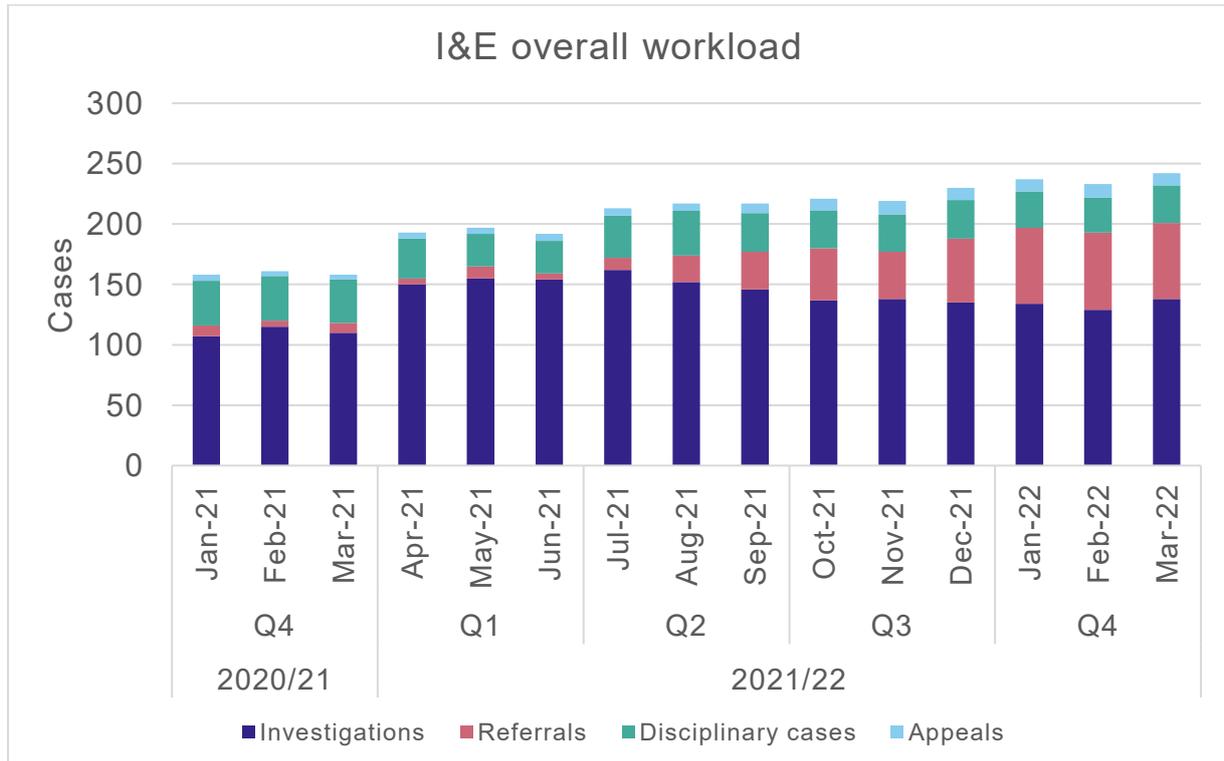




27. By the end of quarter 4, 165 investigations had been opened, 129.9% of the number opened by the end of quarter 4 the previous year. At the end of the quarter, 135 investigations had been decided, 110.7% of the number decided at the end of the same quarter last year.

Investigations and enforcement workload





28. This chart shows that workload has increased steadily over the course of the year, by almost 100 cases.

Commentary

29. While the team are maintaining throughput and operating at a similar level to last year, the substantial increase in workload means that the performance against the KPIs continues to decline. Numbers of referrals have broadly stabilized but the buildup of cases waiting to be referred remains, with most of these cases being outside KPI due to capacity within the team to accept further cases.
30. An additional Paralegal and Senior Case Officer have been recruited and commenced in post in late March and early April. It is hoped that this will have a positive impact on the workload once the required training has been completed. However, whilst we should see an improvement in throughput, performance against the KPIs is unlikely to improve substantially over the next few quarters while older cases are being closed.
31. There was only one appeal against an administrative sanction heard in the quarter. This related to a barrister's comments on social media. The appeal was successful (hence the performance against the KPI was 100% as compared to a target of 0%). The decision has, at the barrister's request been published.
32. There were no appeals against Disciplinary Tribunal decisions heard in the period.

Supervision

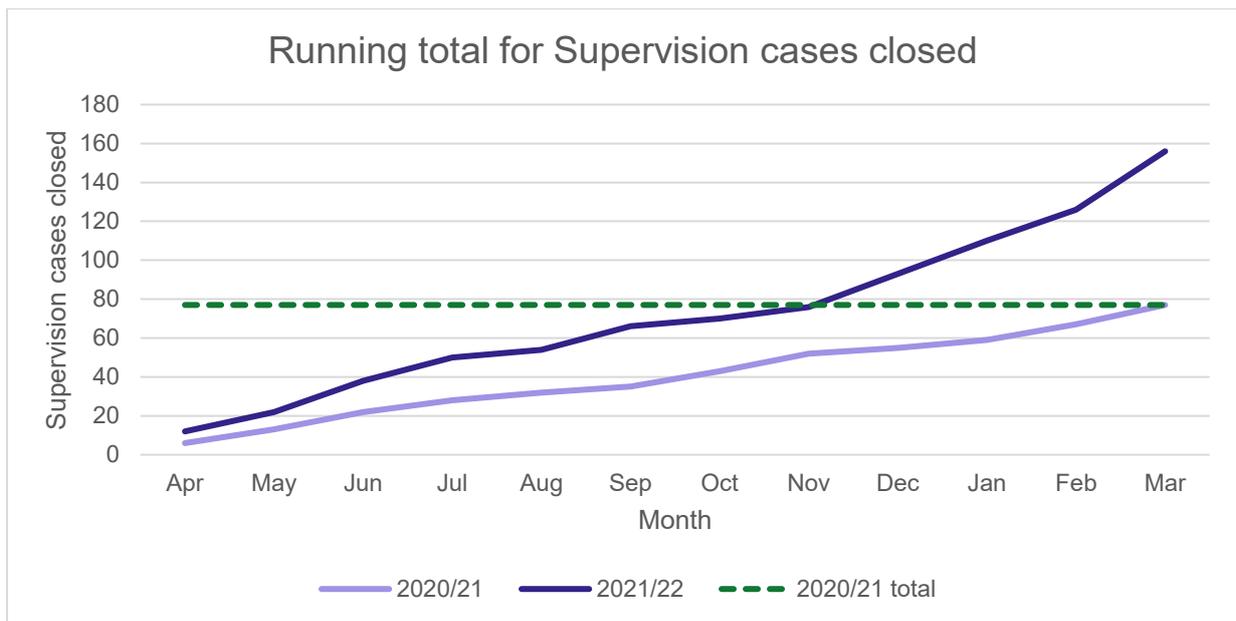
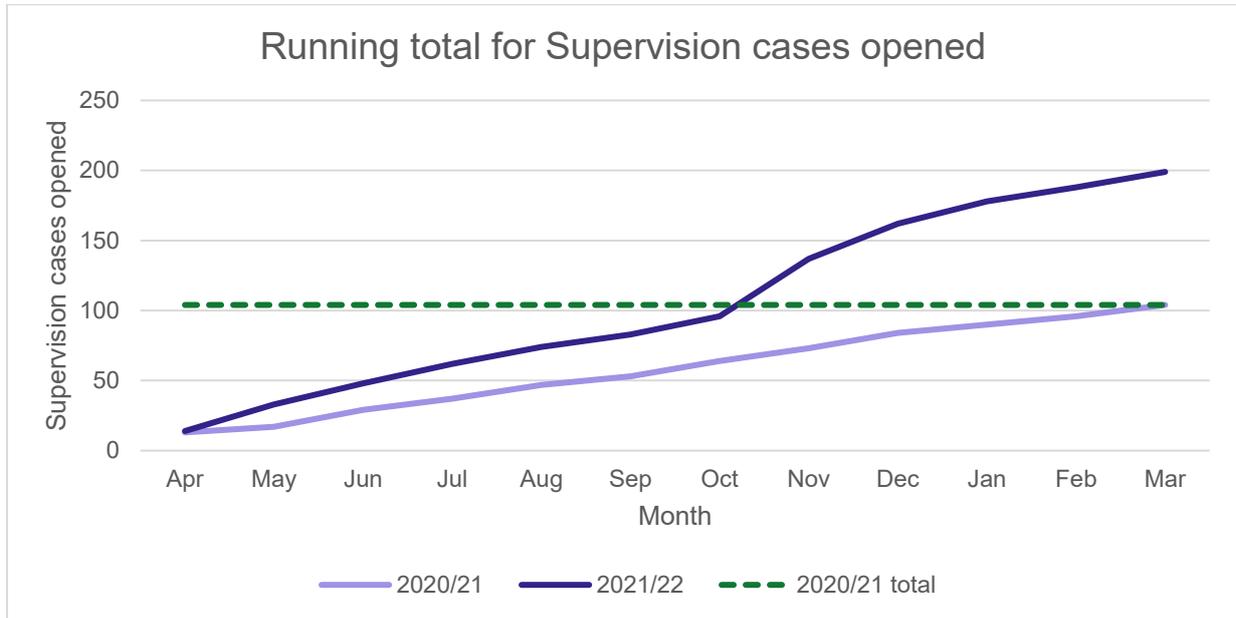
Key points

- All three of the KPIs have been exceeded this quarter.
- Almost double the number of cases has been opened this year compared to last, most due to the Regulatory Return and transparency spot-check work undertaken over the course of the year.
- Nonetheless, the team has kept pace with the increase in volume, closing over double the number in 2020/21.

KPIs and performance data

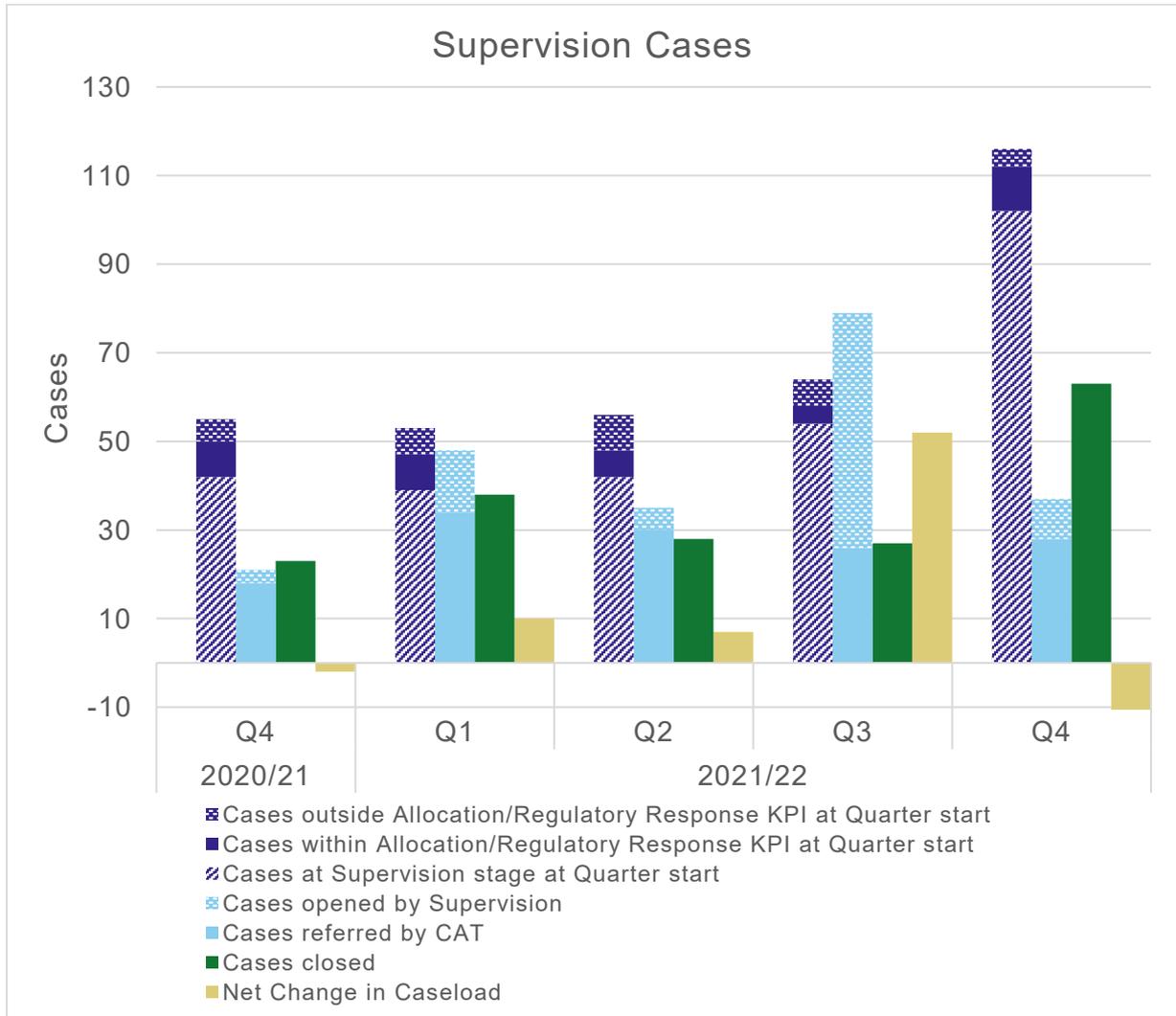
KPI	Target	Performance Q4
Allocations		
Cases assigned within 3 working days of the team receiving the referral from CAT.	80%	100.0%
Regulatory Response		
Cases for which a regulatory response was agreed within 20 working days of the case being assigned.	80%	81.4%
Visits		
Visit report letters issued within 5 working days of a visit to an organisation.	80%	100.0%

Workload volume – year-on-year comparison



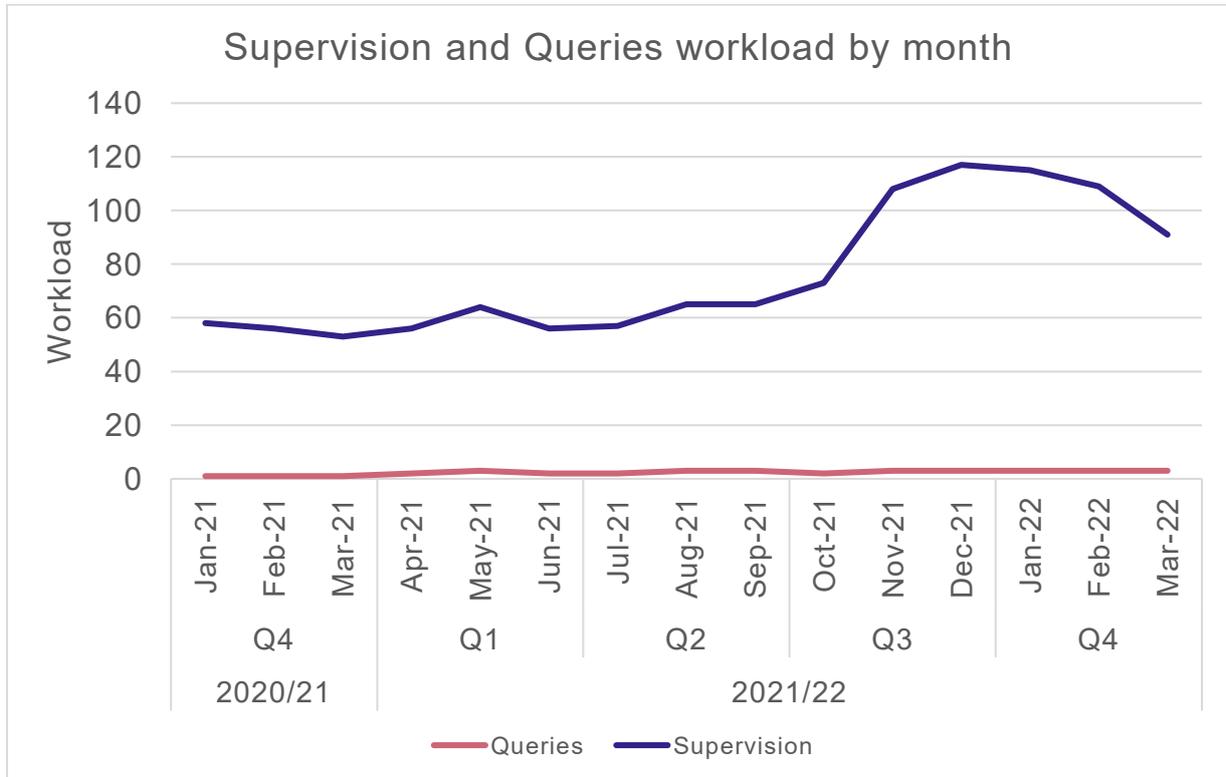
- 33. By the end of quarter 4, 199 cases had been opened, 191.3% of the number opened by the end of quarter 4 the previous year. At the end of the quarter, 156 cases had been closed, 202.6% of the number closed at the end of the same quarter last year.

Supervision open case volumes excluding Regulatory Returns



34. The team has closed the highest number of cases in quarter 4 than at any point over the last year, with a corresponding reduction in caseload. Numbers of cases referred by CAT have been fairly consistent over the course of the year.

Total caseload by month excluding Regulatory Returns



35. The team were experiencing higher workload levels at the start of the quarter, but it appears that this has begun to stabilise over the last month. This reflects the large number of cases opened last quarter in relation to the transparency spot check cases and the focus on closing off other cases as the team completed the Regulatory Return assessments and switched their attention to reviewing and closing actions agreed with chambers, etc., on other cases, as well as actions set in relation to Regulatory Returns, which are now being reviewed for closure. This is reflected in the charts below on “throughput of actions” and “Regulatory Return actions”.

Cases actioned

(% of this total that were within service standard)

KPI	2021/22			
	Q1	Q2	Q3	Q4
Allocations				
Cases assigned (3 days)	32 (96.9%)	32 (100.0%)	24 (87.5%)	30 (100.0%)
Regulatory Response				
Response agreed (20 days)	44 (93.2%)	39 (84.6%)	74 (95.9%)	43 (81.4%)
Visits				
Letters issued (5 days)	3 (100.0%)	1 (100.0%)	1 (100.0%)	1 (100.0%)

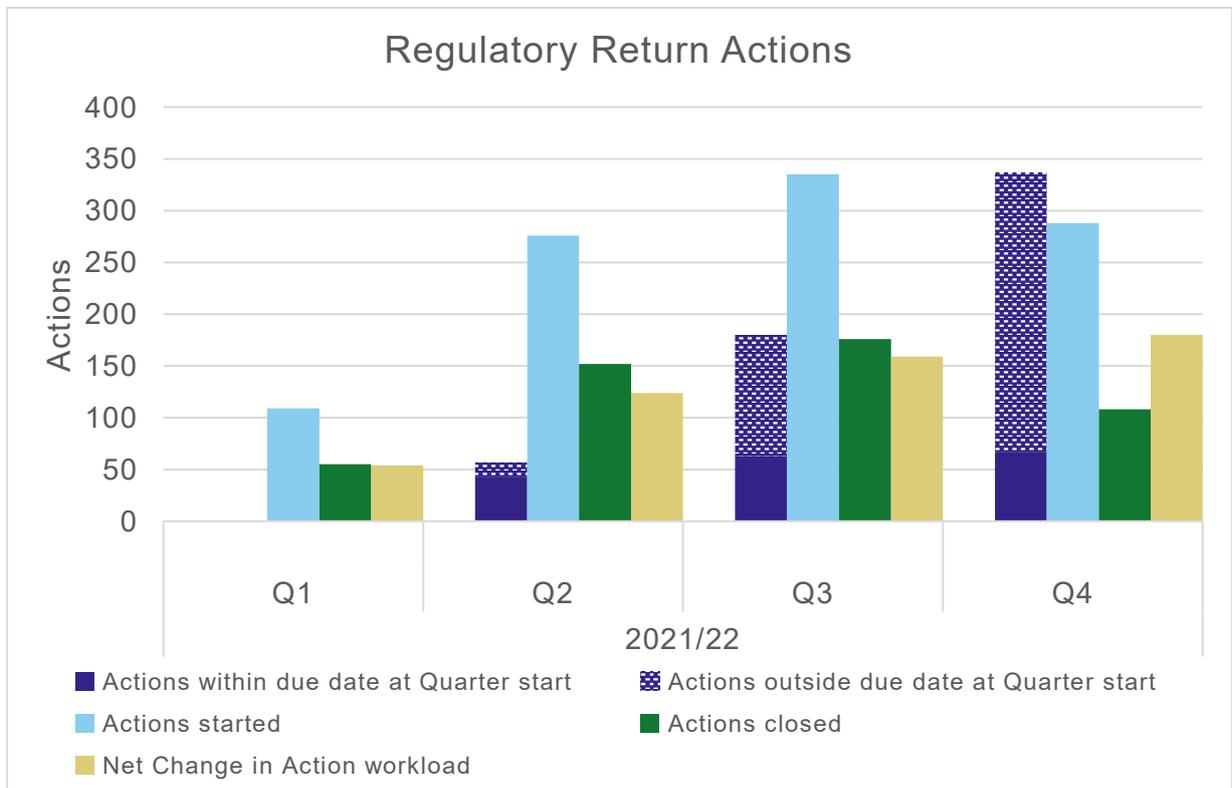
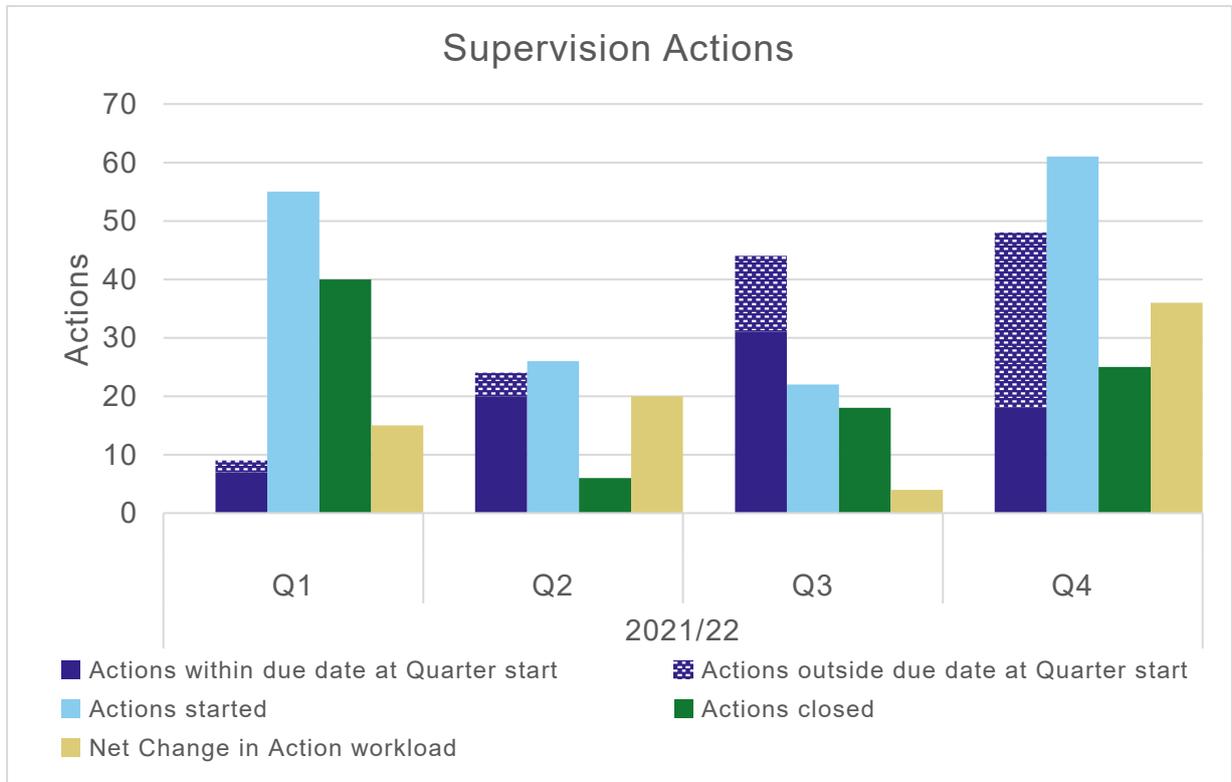
Live cases

Snapshot at the close of Q4 of 2021-22

Case Type	Total Open
All Excluding Regulatory Reports	
All cases	94
Of which have 'Hold – I&E' status	20
Regulatory Returns	
All cases	265

36. It has been agreed that cases with 'Hold I&E status' will now be adjourned in the same way as CAT and I&E cases. This will allow us to report more accurately on performance against KPI. Monthly meetings are being arranged with CAT and I&E to ensure there is more prompt agreement about when Supervision action should be put on hold or taken where CAT has referred cases to both Supervision and I&E.

Throughput of actions agreed with barristers, chambers, entities and AETOs



Snapshot of open actions agreed with barristers, chambers, entities and AETOs

Year	Quarter	Actions open at close of quarter	Actions Outside Due Date	Actions where due dates were revised	Total cases with open actions
Cases opened by Supervision or referred from CAT					
2021/22	Q4	84	74	19 (22.6%)	24
Regulatory Returns					
2021/22	Q4	517	471	53 (10.3%)	114

Commentary

37. Around half of transparency spot-check cases have been closed, with the remainder being chambers, entities or sole practitioners who are partially compliant; outstanding actions are being followed up by the team. A report together covering all the work done on compliance with the transparency rules has been prepared for consideration by the CMA Programme Board, together with other evaluation conducted by the Research team, with recommendations for next steps for the BSB.
38. Supervision workload in relation to cases remains manageable, as evidenced by their performance against KPIs.

Chair’s Report on Visits and External Meetings from March - May 2022

Status:

1. For noting

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair’s visits and meetings since the last Board meeting.

List of Visits and Meetings:

5 April	Introductory meeting with Rohan Sivanandan, Vice-Chair of IDB
5 May	Attended the Grand Reopening of The Inner Temple Treasury Building and Reception
17 May	Attended SRA afternoon tea reception
24 May	Attended Board briefing meeting