

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Enforcement

Annual Report 2013/14

Professional Conduct Committee
Professional Conduct Department

Table of Contents

Introduction.....	3
Data sources	3
Our approach to cases	3
Enforcement structure	4
Casework.....	6
New external complaints	6
New internal complaints	8
Caseload	9
Enforcement outcomes.....	10
Referrals to disciplinary action.....	10
Decisions to close	11
Comebacks and reconsiderations.....	12
Disciplinary action outcomes	12
Sentences	14
Charges upheld.....	14
Appeals	15
Legal action.....	15
Compliance and revenue arising from the enforcement system	16
Performance.....	18
Timeliness	18
Accessibility.....	25
Staff Performance	27
Transparency and openness	28
Checks and Balances.....	29
Quality of Service	31
Other work streams	32
Bankruptcies/Individual voluntary arrangements (IVA)	32
Disciplinary history checks	32
Fitness to Practise.....	32
Interim Suspension.....	33
Information provided to the public.....	33

Projects	33
Conclusions and action points	35
Action points.....	36
Looking forward.....	37
Entity regulation.....	37
CPD numbers.....	37
Disciplinary Tribunal Regulations review	37
User feedback online.....	37
Mechanisms for enforcing disciplinary fines	37

Introduction

- 1.1 The Bar Standards Board publishes a Handbook that barristers must keep to, and will consider taking action where there is evidence that the Handbook has been breached. The work of enforcing the Handbook is carried out by the Professional Conduct Committee and Professional Conduct Department of the BSB. We investigate complaints and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 1.2 This report takes a detailed look at our enforcement work for the year 1 April 2013 to 31 March 2014. In this report we focus on the key trends in the new complaints that we received or raised, the caseload that we worked on throughout the year and the outcomes of this work. We then go on to analyse our performance over the year, both in terms of the time we took to progress cases and also in areas such as the accessibility of our service, staff performance in handling complaints and the openness and transparency of our enforcement system.
- 1.3 In January 2014, the 8th edition of the Bar's Code of Conduct was replaced with the BSB Handbook (see "Our approach to cases"). While the majority of complaints opened during 2013/14 related to potential breaches of the 8th edition Code, we opened 24 cases under the Handbook. Where the change in Code has made a difference to the statistics or our handling of complaints, this is highlighted in the report.
- 1.4 In addition to the information contained in this report, all of the key supporting raw data is published in an accompanying Statistical Report for 2013/14.

Data sources

- 1.5 We maintain electronic records on our Enforcement Database of all of the cases we

open. This allows us to report on the types of complaints we receive, the outcomes of our investigations and disciplinary action, and performance information in relation to the progression of complaints.

- 1.6 To gain further insight into our handling of complaints, we also carry out a User Feedback Survey. Upon the conclusion of cases, all complainants and barristers are sent a questionnaire and asked to provide feedback on how we did and how we can do better. We sent out 554 questionnaires in 2013/14 covering cases concluded between January and December 2013 and received 199 responses.

Our approach to cases

- 1.7 We spent the autumn of 2013 taking steps towards adopting a fully outcomes-focused, risk-based approach to our enforcement activities. This work came to fruition in January 2014 when the BSB Handbook came into force.
- 1.8 Part 2 of the Handbook sets out the Code of Conduct for barristers and the outcomes the provisions of the Code are intended to achieve – such as "*oC2 The proper administration of justice is served*". The Handbook also sets out our Enforcement Regulations (Part 5) which outline what will happen when a barrister's conduct has an adverse effect on an outcome.
- 1.9 In addition to our existing powers to dismiss complaints, take no further action or refer a case for disciplinary action, the Handbook now gives us the options to:
 - Impose administrative sanctions for all breaches of the Code, whereby we determine that a barrister's conduct did constitute a breach of the Handbook but that a written warning or fine would be more appropriate than taking disciplinary action (and would be sufficient in the public interest).

- Refer any complaint or information to the Supervision Team, where we consider that there are wider concerns about a barrister’s individual practice (such as that they have fallen behind with their CPD obligations) that would warrant supervisory intervention. The purpose of such a referral is to mitigate the risk of further non-compliance with the Handbook.

These new powers ensure that we have the options to allow us to take the most appropriate and proportionate action given the individual circumstances of each case.

- 1.10 Our Enforcement Strategy¹ sets out our approach to taking enforcement action, underpinned by the provisions of Part 5 of the Handbook. We take a risk-based approach to enforcement – focusing on those issues which present the greatest risk to the regulatory objectives set out in the Legal Services Act 2007. When we first receive a complaint or information that may lead us to raise a complaint², our first step is to assess whether there is any evidence of a breach of the Handbook and whether there is a risk to consumers of legal services and the public. This enables us to make a decision on whether or not to carry out a formal investigation.
- 1.11 Where we investigate a complaint, we will write to the barrister and any other people who can provide information on the complaint, asking for comments and relevant documents. Once we have all the information we need we will assess whether there is sufficient evidence that the barrister has failed to comply with the Handbook. Where there is, we will decide the appropriate action to take. This could include the imposition of an administrative sanction

in the form of a written warning or a fine of up to £1,000³, or, for more serious matters amounting to professional misconduct, disciplinary action.

- 1.12 If we decide that disciplinary action is appropriate we will either refer the case to the Determination by Consent procedure (paragraph 2.26) or refer the complaint, or parts of it, to an independent Disciplinary Tribunal.

How do we assess risk?

Each case is rated High, Medium or Low risk based on a combination of two tests:

- Firstly a series of questions covering common areas of risk or possible risk to consumers of legal services and the public (such as whether the information relates to dishonesty on the part of the barrister). The answers are used to calculate a risk level;
- Secondly a Case Officer of the PCD will assess the case in context and determine whether the risk level calculated from the answers to the questionnaire is appropriate.

Enforcement structure

Professional Conduct Committee

- 1.13 The Professional Conduct Committee (PCC) has the full delegated authority of the Bar Standards Board to take decisions on complaints. It has the power to refer complaints to disciplinary action, impose administrative sanctions and resolve complaints with the Determination by Consent procedure⁴. The Committee – split into two teams – meets every three weeks to make decisions on cases.
- 1.14 The Professional Conduct Committee is the largest of the BSB’s Committees, although

¹ Our Enforcement Strategy is published on the BSB website on the Complaints and Professional Conduct page.

² Under the Enforcement Regulations we can consider complaints made by persons other than the Bar Standards Board and also raise complaints on behalf of the Bar Standards Board.

³ From January 2014 when the Handbook came into force. Prior to this, administrative sanctions under paragraph 901.1 of the 8th edition of the Code of Conduct were fixed at £300.

⁴ The full powers of the Committee are detailed in Part 5 of the BSB Handbook.

the number of members in 2013/14 decreased from 55 at the start of the year to 46 at the end. This brought us closer to having parity between the number of barrister (24) and lay members (22). While at present the Committee Terms of Reference require a minimum of 10 barristers to be members, in practice we aim to keep the numbers higher than this to enable the work of the Committee – such as giving advice on cases and preparing cases for Committee meetings – to be carried out expeditiously.

- 1.15 Six new members⁵ joined the Professional Conduct Committee in 2013/14. New members are mentored by existing members of the Committee and attend a Disciplinary Tribunal and a Chambers visit as part of their training.

Professional Conduct Department

- 1.16 The Professional Conduct Department (PCD) works under the authority of the Professional Conduct Committee. The staff of the PCD assess and investigate complaints and, where appropriate, assist the PCC in taking action against barristers who have breached the BSB Handbook. The staff also take a lead on drafting policies, managing enforcement projects and the day-to-day work of supporting the Committee and keeping the enforcement system operating efficiently and fairly.

Prosecutors

- 1.17 When we decide to refer a case to a Disciplinary Tribunal on charges of professional misconduct, it is the BSB’s role to bring charges against the barrister before an independent panel convened by the Bar Tribunal and Adjudication Service (BTAS). We rely on a panel of barristers working on a pro-bono basis to represent us at the Tribunals. The panel currently consists of 57 barristers, one of whom will be instructed immediately after a referral to disciplinary action is made and will remain with the case through to the Tribunal.

Our aims and objectives	
<p>Our main aims are to:</p> <ul style="list-style-type: none"> • Act in the public interest; • Protect the public and other consumers of legal services; • Maintain the high standards of the Bar; • Promote confidence in the complaints and disciplinary process; and • Make sure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. 	<p>Our objectives are to:</p> <ul style="list-style-type: none"> • Deal with complaints made against barristers promptly, thoroughly and fairly; • Ensure appropriate action is taken against barristers who breach the BSB Handbook; and • Be open, fair, transparent and accessible.

⁵ Two barrister members and four lay members

Casework

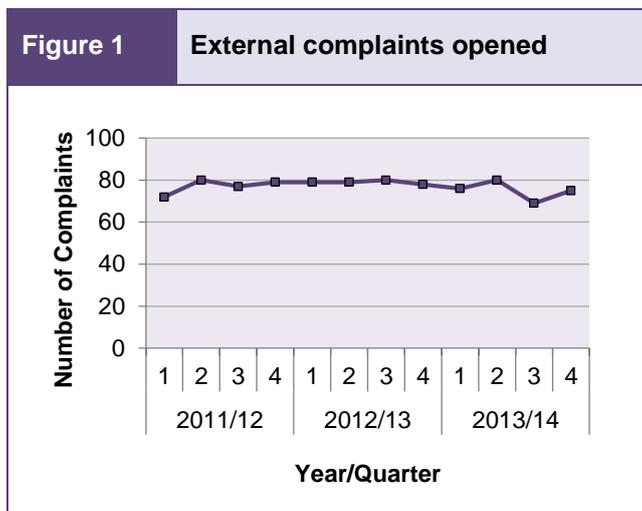
2.1 We opened a total of 408 complaints in 2013/14. As Table 1 illustrates, this represents a 17% decrease compared with the previous year. There was no difference in the number of complaints being made to the BSB (the “external” complaints); rather the decrease was in the number of internal complaints we raised on behalf of the BSB. This was anticipated due to changes introduced in 2013 in the way in which the BSB handles CPD requirements and potential breaches of the Handbook. Our caseload fell throughout the year: we had 426 complaints ongoing at the start of the year and 334 complaints ongoing at the close.

New external complaints

2.2 We receive complaints from clients of barristers (via the Legal Ombudsman), members of the public, solicitors or other professionals and organisations. We refer to these as external complaints, treating the person who made the complaint as the “complainant” and keeping them informed throughout the lifecycle of the case.

2.3 In 2013/14 we received 300 complaints from external sources. This was a similar total to the previous two years. Indeed, since the

Legal Ombudsman opened in October 2010, we have received 70-80 cases per quarter every quarter, as Figure 1 illustrates.



2.4 We have seen little variation in the nature of the complaints we have received across the past two to three years. In common with previous years, civil litigants were the source of the highest number of individual complaints (31% of external cases), followed by family and criminal law litigants. By far the most common allegations were of discreditable or dishonest conduct on the part of the barrister (50% of cases) – something of a “catch-all” for general conduct unbecoming of a barrister – followed by allegations of misleading the court (33% of cases)⁶.

Table 1 Complaints opened – annual comparison 2009/10 to 2013/14

Complaint Source	2009/10	2010/11	2011/12	2012/13	2013/14
External	408	295	308	316	300
Internal	143	171	320	175	108
Total	551	466	628	491	408

⁶ It should be made clear that in 2013/14 only 6% of allegations of “misleading the court” resulted in a disciplinary finding against the barrister in question. Therefore, the high number of complaints received about misleading the court is not considered to be indicative of a risk to the public. Of the 98 cases featuring allegations of misleading the court, only two were made by barristers, solicitors or judges who were witness to the events. In a similar pattern to previous years, litigants in person were the primary source of complaints that a barrister had misled the court (63% of cases from litigants in person). A PCD thematic review in 2012 revealed that litigants in person frequently misunderstand the role of the barrister and their duties to the court and their client in legal proceedings. This results in complaints of “misleading” the court when there is no evidence that the Handbook has been breached.

- 2.5 Allegations of discreditable or dishonest conduct covered a wide range of subjects in 2013/14 from conduct in the handling of cases to conduct outside of barristers' professional lives. Analysis of a sample of complaints shows that the most common allegations were of "failing to disclose information" (14%), "failing to properly advise/misleading their client" (14%) and dishonesty (10%). However, the precise nature of the allegations were usually unique to each case. Often complainants had multiple concerns grouped under the same complaint and in 26% of cases complaints of discreditable conduct were made together with allegations of misleading the court. However, as paragraph 2.20 indicates, in the majority of cases allegations of discreditable or dishonest conduct were not supported by any evidence or, such as in allegations of "failing to assist the court", confused a barrister's responsibilities to their client with discreditable conduct.
- 2.6 The 8th edition of the Code of Conduct explicitly stated at paragraph 301 that a barrister must not engage in conduct which is dishonest or otherwise discreditable to a

barrister. The BSB Handbook takes a different approach, instead referring to a barrister's honesty, integrity and independence. We will therefore be moving away from the definition of discreditable conduct by setting up new aspects for complaints to ensure that our reports in future reflect the Handbook as accurately as possible.

- 2.7 Last year we reported on a threefold increase in allegations of discrimination. This year we received fewer complaints (19) but still significantly more than we were receiving historically. As with last year, race (8) and disability (7) discrimination made up the bulk of the allegations. We take these complaints very seriously and we will not dismiss complaints of discrimination without first seeking advice from the BSB's Equality and Diversity Advisor or a suitably experienced member of the Professional Conduct Committee. As with last year though, in many cases the allegations were unsubstantiated or unclear (even after we had attempted to solicit further information). We cannot consider taking disciplinary action against a barrister in those circumstances and so, to date, we have closed 13 of the 19

External complaint statistics in 2013/14																															
Total complaints received	300	Average complaints received per quarter	75																												
Complaints received from litigants in person	56	Referrals from the Legal Ombudsman	32																												
Complaint categories <table border="1"> <caption>Complaint Categories Data</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Other Categories</td> <td>30%</td> </tr> <tr> <td>Civil Litigants</td> <td>31%</td> </tr> <tr> <td>Family Law Litigants</td> <td>13%</td> </tr> <tr> <td>Criminal Proceedings</td> <td>11%</td> </tr> <tr> <td>Barristers/Solicitors/Judges</td> <td>15%</td> </tr> </tbody> </table>		Category	Percentage	Other Categories	30%	Civil Litigants	31%	Family Law Litigants	13%	Criminal Proceedings	11%	Barristers/Solicitors/Judges	15%	Complaint aspects <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Discreditable/dishonest conduct</td> <td>151</td> </tr> <tr> <td>Misleading the Court</td> <td>98</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>25</td> </tr> <tr> <td>Discrimination</td> <td>19</td> </tr> <tr> <td>Rudeness/misbehaviour in Court</td> <td>13</td> </tr> <tr> <td>Failure to co-operate with LeO</td> <td>10</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Discreditable/dishonest conduct	151	Misleading the Court	98	Rudeness/misbehaviour out of Court	25	Discrimination	19	Rudeness/misbehaviour in Court	13	Failure to co-operate with LeO	10	...	
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cases accordingly. One complaint has been referred to a Disciplinary Tribunal and assessments and investigations are ongoing in the other cases.

New internal complaints

- 2.8 In using the term “internal complaints” we are referring to complaints raised where the BSB itself identifies a potential breach of the Handbook. Where the breach is brought to the attention of the PCD direct – via either a barrister’s reporting obligations under the Code or perhaps an external source such as a press report – a risk assessment is completed and a manager of the PCD or an Office Holder of the Committee may authorise the raising of a formal (internal) complaint for investigation. We also receive referrals from other sections of the BSB and the Bar Council such as barristers who have failed to comply with the Authorisation to Practice or CPD requirements for the profession⁷.
- 2.9 We opened a total of 108 internal complaints in 2013/14 for investigation. This figure was

significantly lower than the previous year’s total of 175, primarily due to changes in our CPD regime. In previous years, the BSB required all barristers to submit a record of their CPD and any failures to comply were referred to the PCD for enforcement action. This somewhat heavy handed approach has been replaced by a system of “spot-checks” and supervisory action, which has greatly reduced the need for enforcement action.

- 2.10 In addition, in January 2014 we introduced formal risk assessments prior to opening complaints. If this risk assessment indicates that a barrister’s conduct represents a low risk to consumers and the public we will not raise a formal complaint⁸.
- 2.11 Table 2 shows the types of internal complaints we raised in 2013/14 compared with the previous year. Along with the decrease in CPD cases (and associated failures to pay administrative fines), we also saw a drop in reports of drink driving cases and disciplinary findings by other bodies (such as the Solicitors Regulation Authority). Criminal conviction cases not relating to drink drive offences remained at a higher

Aspect	2012/13	%	2013/14	%
Practising without a practising certificate	44	25%	40	37%
Dishonesty/discreditable conduct	17	10%	15	14%
Criminal conviction(s) - other	15	9%	11	10%
Failure to comply with a sentence of a tribunal/panel	4	2%	8	7%
Failure to pay administrative fine	32	18%	8	7%
HoC failing to administer chambers properly	1	1%	7	6%
Failure to comply with CPD requirements	52	30%	6	6%
...				

⁷ Prior to January 2014, some CPD or Authorisation to Practice cases were dealt with immediately via the imposition of an administrative warning or fine under paragraph 901.1 of the Code. In the first three quarters of 2013/14 we imposed 19 written warnings under our Warnings & Fines system – all in relation to late compliance with the ATP scheme.

⁸ Referrals from other sections of the BSB or Bar Council such as CPD or Authorisation to Practice breaches are only made where there is evidence of a breach of the Handbook and often some attempt at encouraging compliance has been made. These referrals are judged to be at least medium risk and raised as formal complaints.

level and were the third most common type of internal complaint. However, these did include five linked cases against a single barrister. Criminal convictions ultimately led to six disbarments during the year (see paragraph 2.34).

New ways of working: Serious Misconduct

The BSB Handbook, launched in January 2014, introduced new requirements on barristers to report promptly to the BSB when they have committed serious misconduct (rC65.7) and when they believe that there has been serious misconduct by a barrister or a registered European lawyer (rC66). We began receiving these reports in the fourth quarter of 2013/14 and will report on the numbers in subsequent BSB Enforcement Reports. A definition of what might constitute serious misconduct can be found in the BSB Handbook at gC96.

Caseload

2.12 Over the past two years we have observed a gradual decrease in the number of individual complaints that we have ongoing within the department. Figure 2 illustrates the trend over the last three years and shows that in 2013/14 we went from having 426 active cases in the first quarter to 334 in the fourth quarter. There has been little change in the

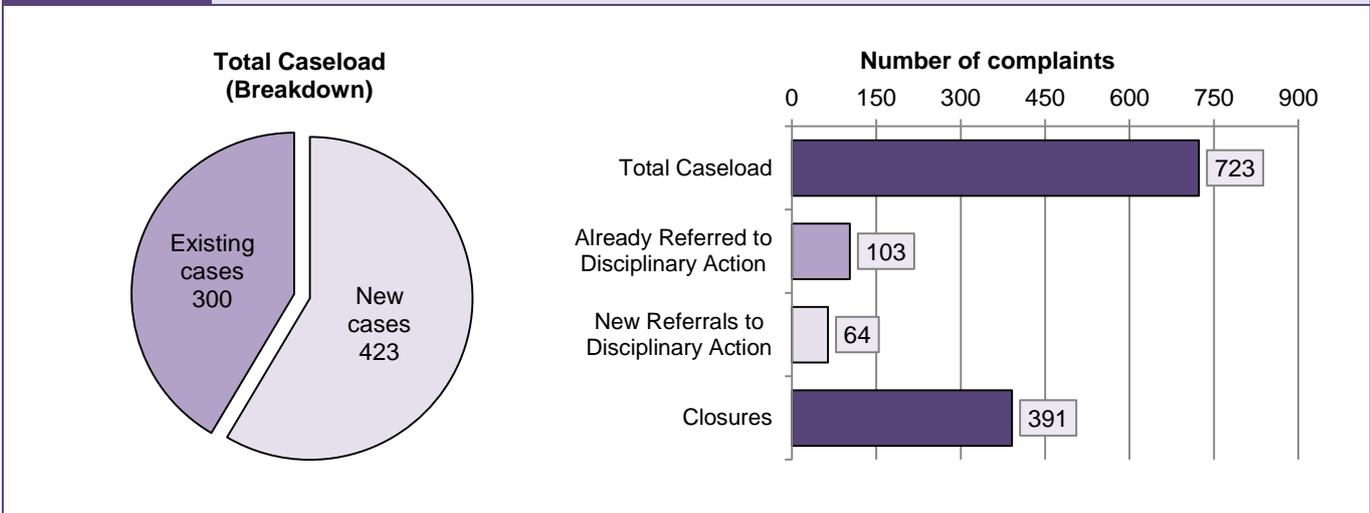
numbers of external complaints, rather the pattern comes from the fact that the numbers of internal complaints that we have been raising has been falling.

2.13 The impact of this decrease in our caseload is two-fold: on the one hand it frees up resources within the PCD – an important factor now that we have the added task of carrying out formal risk assessments. But on the other hand, with fewer new complaints being raised, the internal complaints that we do close tend to be the older, more difficult cases – which inevitably impacts on our performance. This will settle down as we approach a new baseline for the numbers of internal complaints we will be working on.

Figure 2 Active cases within the PCD



Figure 3 Our 2013/14 caseload and how we progressed it



Enforcement outcomes

- 2.14 We started the year with 197 cases at our assessment and investigation stages⁹ and opened (or reopened) a further 423 cases during the year. We came to a decision on 73% of these 620 cases, as illustrated by Table 3.

Table 3		Complaint outcomes 2013/14	
Outcome	#	%	
Closed without investigation	239	53%	
Closed after investigation	152	33%	
Referred to disciplinary action	64	14%	

- 2.15 PCD staff took 58% of decisions – including 30% of decisions to refer cases to disciplinary action – whereas the Committee took 34% (including 8% made by individual members of the Committee¹¹). The remainder of cases were either withdrawn or referred to the barristers' Chambers for consideration.

- 2.16 In addition we concluded 108 of the cases that had been referred to disciplinary action, bringing the total number of closures for the year to 499.

Referrals to disciplinary action

- 2.17 Following investigation of a complaint, either the Professional Conduct Committee or the staff of the PCD will make a decision as to whether or not enforcement action should be taken, either by means of an administrative sanction or a referral to disciplinary action. In line with our Enforcement Strategy since January 2014, the decision will be based on, amongst other factors: the risk posed to, or the impact on, one or more of the regulatory objectives¹²; whether any of the outcomes in the BSB Handbook have been adversely affected and whether there is a realistic prospect of a finding of professional misconduct being made.
- 2.18 Of the complaints we referred to disciplinary action in 2013/14, 28% were made under the new Enforcement Strategy and 72% under the Complaints Rules which were in force up to January 2014. Under the Complaints Rules, the decision was based on whether there was a realistic prospect of a finding of

Professional Conduct Committee statistics in 2013/14			
119	The number of cases on which the PCC took a decision on whether or not to refer for disciplinary action	17	The number of findings of professional conduct made by the PCC under the Determination by Consent procedure
109	The number of cases on which members of the PCC gave expert advice to the PCD	49	The number of Committee members (past and present) who took on case work – either giving advice or preparing cases for Committee meetings
38	The number of cases on which Experienced Members of the PCC took a decision ¹⁰		

⁹ Also 103 cases that had already been referred to disciplinary action (88 at Disciplinary Tribunals and 15 at Determination by Consent)

¹⁰ Experienced Members of the PCC are authorised by the PCC to dismiss complaints and at the same time give advice to the barristers as to their future conduct. In circumstances where advice may need to be given to a barrister, cases will usually be referred to Experienced Members – one barrister and one lay – for a decision.

¹¹ Both Office Holders and Experienced Members of the PCC are authorised by the PCC to make decisions on cases outside of Committee meetings.

¹² As set out in Part 1 of the Legal Services Act 2007.

professional misconduct being made and whether the regulatory objectives would be best served by pursuing disciplinary action.

2.19 Over the course of 2013/14, we referred 49 cases to Disciplinary Tribunals and a further 15 cases to the Determination by Consent (DBC) procedure. In total this equalled 30% of our post-investigation decisions; slightly lower than the 35% figure from 2012/13. The percentage of complaints that we refer to disciplinary action is usually governed by the types of case within our system. In 2013/14 we had an unusually low number of criminal conviction complaints under investigation – cases which are highly likely to result in a referral for disciplinary action – which in turn led to a lower overall referral rate than the previous year.

Decisions to close

2.20 In total we closed 391 complaints without making a referral to disciplinary action during the year. Table 4 illustrates the differences in the decisions we made for external and internal cases. The patterns are similar to previous years: complaints from external sources are more likely to be unsubstantiated or do not disclose a breach and therefore not apt for investigation compared with internal complaints, which are only raised where we have some evidence of

a breach of the Handbook. Even so, 69% of internal complaints were closed without a referral to disciplinary action.

2.21 Of the 96 internal complaints closed without referral to disciplinary action, 59 (62%) were closed by members of PCD staff. This indicates that a high proportion of the cases originally raised by PCD staff members were also closed by PCD staff members. Analysis of the cases reveals that 49% related to practising certificate breaches and 20% related to CPD breaches. This goes some way to explaining the relatively high dismissal rate: these cases are always opened to allow us to establish the facts behind the breach but the individual circumstances often mean that disciplinary action is not a proportionate course of action.

New ways of working: Risk

In the fourth quarter of 2013/14 we began formally assessing all cases for risk. We assessed 69 cases in the fourth quarter.

In 41 external cases we found no evidence of a breach and cases were dismissed accordingly. The remaining 28 cases were assessed as follows:

- *High risk: 39%*
- *Medium risk: 29%*
- *Low risk: 32%*

Table 4		External and internal complaint outcomes			
External:			Internal:		
Outcome	#	%	Outcome	#	%
Closed without investigation	225	71%	Closed without investigation	14	10%
Closed after investigation	70	22%	Closed after investigation	82	59%
Referred to disciplinary action	21	7%	Referred to disciplinary action	43	31%

2.22 Despite the decision not to refer these complaints to disciplinary action, in some cases¹³ there was evidence of a breach of the Handbook or conduct requiring action other than a full dismissal. In six cases we issued administrative fines and in a further four cases we issued warnings to the barristers subject to the complaints¹⁴. We gave advice as to their future conduct to the barristers in a further 37 cases.

Comebacks and reconsiderations

- 2.23 Under our “comebacks” policy, if a complainant disagrees with a PCD or PCC decision to close a complaint – either before or after investigation – without a referral for enforcement action, they can ask us to review the decision and submit further evidence if it has come to light. Of the 295 external complaints we closed without a referral, to date we have received comebacks in relation to 43 complaints (15%). This proportion is typical of previous years.
- 2.24 After reviewing the complaints, the original decision was overturned in four cases. In three cases, the original decision not to investigate was reviewed by a PCD manager, an Office Holder of the Committee or, in one case, the full Committee and a decision was taken that an investigation should take place. In the remaining case, new evidence was provided which warranted further investigation. One case was then subsequently withdrawn by the complainant and two went on to be closed without referral for enforcement action for a second time; one case is ongoing.
- 2.25 A further eight cases were reopened during the year: two of which were complainants unhappy with the outcome of cases that we

had originally referred to Chambers for resolution.¹⁵

New ways of working: Supervision

Since January 2014 we have been able to refer complaints and information to the Supervision Team of the BSB (see “Our approach to cases”). While our first formal referrals of complaints to Supervision took place after the timeframe of this report, we did begin the referral of information in the fourth quarter of 2013/14.

Information from five enforcement complaints was referred to Supervision during the fourth quarter; predominantly concerning the administration of Chambers. We will report on the proportion of complaints which we refer to Supervision in future BSB Enforcement Reports.

Disciplinary action outcomes

Determination by Consent

- 2.26 A total of 19 cases were closed after referrals to the Determination by Consent procedure. This is a procedure by which the Professional Conduct Committee can, with the barrister’s agreement, make a finding of professional misconduct. In 17 cases the Committee found the barrister guilty of professional misconduct – in all cases after the barrister had admitted the conduct – and appropriate sanctions were imposed and accepted by the barrister.
- 2.27 The remaining two cases were closed by the Committee without a finding: one was withdrawn on medical grounds and one dismissed with advice following the receipt of further information. In both cases it was deemed disproportionate to continue with disciplinary proceedings in the circumstances.

¹³ 31 internal cases and 16 external cases

¹⁴ These fines and warnings were issued under 901.1 of the 8th Edition of the Code of Conduct. We did not issue any administrative sanctions under the BSB Handbook during the 2013/14 year

¹⁵ The remaining six cases were: three cases where the complainants reconsidered their decision to withdraw their case or withhold information; two cases where the barrister had asked for a reconsideration of the decision against them and one instance of resuming a case against a barrister returning to practice.

Disciplinary Tribunals

- 2.28 Where we have made a decision to refer a complaint to a Disciplinary Tribunal, the case is heard before an independent Disciplinary Tribunal convened by the Bar Tribunal and Adjudication Service (BTAS) with the BSB acting as prosecutor.
- 2.29 A total of 89 cases were concluded at the Disciplinary Tribunal stage in 2013/14: 78 at hearings¹⁶ and a further 11 cases which were withdrawn prior to a Tribunal hearing taking place. In five cases we reconsidered the cases before we served charges on the defendants¹⁷. The remaining six cases were concluded at the directions stage.

Directions

- 2.30 Six of the cases that we referred to Disciplinary Tribunals ended at the directions stage and did not proceed to a Tribunal. One case was struck out. In the remaining five cases we chose to “offer no evidence” –

effectively withdrawing the cases without contest. In three of the five cases, the barristers were subject to simultaneous proceedings and were suspended or disbarred by other Tribunals. The remaining two cases were reconsidered by the Committee following the receipt of new evidence (1) and advice from the prosecutors involved as to the prospects of success (1).

Tribunal Hearings

- 2.31 In 74 cases (95% of cases that were heard before a Disciplinary Tribunal panel), one or more charges against the barrister were upheld. This compares with 82% of cases at hearings in 2012/13. We “offered no evidence” in all four of the cases that were not upheld at hearings¹⁸. This means that every case that we actively prosecuted at Tribunals in 2013/14 was upheld.

Case study:

The husband of one of the defendants in a civil proceedings case complained to the BSB about the opposing barrister's conduct and behaviour during the hearing. The complainant argued that the barrister was representing a fraudster and receiving wages from a 'sham charity'; that the barrister was ill-prepared for the hearing; and that the barrister had been rude to him.

The Assessment Team carried out a preliminary risk assessment on receipt of the complaint. No evidence was found to substantiate the first two of the complainant's three allegations and the risk level in relation to the rudeness allegation was assessed as low. As the complaint presented no significant risk to the regulatory objectives, the decision was taken not to investigate further and the complaint was dismissed.

In the dismissal letter, the BSB drew to the attention of the complainant rule rC29 of the BSB Handbook, also known as the 'Cab-Rank Rule', which states that a barrister must accept instructions from a professional client, irrespective of the identity of the client or nature of the case, if the instructions are appropriate taking into account the experience, seniority and field of practice of that barrister. In this case it was found that the barrister had rightly accepted the instructions from his client in line with the Cab-rank rule.

¹⁶ Technically the charges in one of the 78 cases were dismissed in advance of the hearing. An earlier hearing had been adjourned as the court judgement central to the case had been set aside. The BSB subsequently offered no evidence.

¹⁷ In two cases the barristers took remedial action making further disciplinary action disproportionate, in two cases we reconsidered due to the ill health and personal circumstances of the barristers involved and in one case the prosecutor assigned to the case advised us not to proceed on the grounds that we would not be able to prove the charges to the criminal standard

¹⁸ In three cases we received new evidence – in one case on the day of the hearing – that led us to reconsider. In the fourth case (which had been on hold for over two years on the grounds of ill health) we found that evidence on which we relied was no longer available. This was a learning point for us and we now ensure that, even if a case is adjourned, we seek to obtain as early as possible any documentary evidence that we may require in future.

2.32 From our survey results: 67% of complainants and 88% of barristers felt that the outcome of the hearing was fair.

BTAS

The Bar Tribunals and Adjudication Service was established by the Council of the Inns of Court in the wake of a number of well publicised issues with the appointment of Disciplinary Tribunal and Appeal panels between 2005 and 2012. BTAS appoint and administer Disciplinary Tribunal, Interim Suspension and Fitness to Practice panels, safeguarding the independence of the panels within the enforcement system.

Sentences

- 2.33 In total, 91 cases¹⁹ were upheld in 2013/14 with findings of professional misconduct made against the barristers. In such cases it is open to the Disciplinary Tribunal panel (or the PCC for Determination by Consent cases) to impose sanctions on the barristers in question. Table 5 illustrates the sanctions that were imposed during the year.
- 2.34 The most severe sanction available is disbarment and nineteen barristers²⁰ were disbarred in 2013/14, compared with eleven in the previous year. These were the most serious cases and included charges relating

to criminal convictions, dishonesty and disciplinary findings by other professional bodies.

2.35 This year also saw the first occasion where we appealed the decision of a Disciplinary Tribunal. In a case of dishonesty the Tribunal panel took various mitigating factors into account and, unusually, suspended the barrister from practice rather than disbarring him. After being provided with new evidence, we successfully challenged this decision at an appeal before the Visitors to the Inns of Court in January 2014 and the sentence was increased to disbarment.

Charges upheld

- 2.36 All of the charges upheld in 2013/14 related to the 8th Edition of the Code of Conduct as no BSB Handbook cases had progressed to disciplinary action by the end of the year. Table 6 illustrates the most common charges that were upheld during the year.
- 2.37 Charges under paragraph 301(a)(i) of the Code (dishonest or discreditable conduct) were the most common in 2013/14. Findings of discreditable or dishonest conduct were made in 26 cases, 14 (54%) involving criminal convictions and a further 5 cases where barristers were struck off by the

Sentence	2012/13 (Cases)	%	2013/14 (Cases)	%
Disbarred	13	15%	23	25%
Suspended	8	9%	20	22%
Fined	43	49%	36	40%
Reprimanded	34	39%	27	30%
Advised as to Future Conduct	17	20%	2	2%
Other	15	17%	8	9%

¹⁹ 91 cases is the combined total of cases upheld at Disciplinary Tribunals (74) and cases upheld following the Determination by Consent Procedure (17)

²⁰ The 23 cases where disbarments were imposed related to nineteen individual barristers

Solicitors Disciplinary Tribunal or another professional body. We also upheld charges including threatening behaviour, harassment and falsifying qualifications under 301(a)(i) of the Code. All findings of professional misconduct are published on the BSB and BTAS websites and include details of the charges and sanctions imposed.

Appeals

2.38 Where findings of professional misconduct are made, barristers have the right to appeal against either the finding or the sentence imposed. Historically appeals have been heard before the Visitors to the Inns of Court (“the Visitors”), but the appeal jurisdiction transferred to the High Court on 7 January 2014 for appeals against the findings of Disciplinary Tribunals taking place after that date. From 18 April 2014, any new appeal against a Disciplinary Tribunal decision must be made to the High Court. Existing appeals that had been made to the Visitors will remain with the Visitors until their conclusion.

2.39 We received 15 appeals against Tribunal decisions in 2013/14: twelve to the Visitors and three to the High Court. These were in addition to the 18 ongoing appeals we had at the start of the year. A total of 14 appeals were concluded: three were allowed, eight were dismissed and three were discontinued. Where appeals were allowed, in two cases the original finding was quashed although no costs were awarded against the BSB; while in one case the severity of the sentence was reduced²¹.

2.40 At the close of the year we had 19 appeals ongoing: 16 to the Visitors and 3 to the High Court. The appeals with the Visitors will be the last to be heard by the Visitors to the Inns of Court.

Legal action

2.41 Beyond our appeal and comeback procedures, barristers and complainants have the right to challenge decisions or the way we made decisions through the courts. These may take the form of claims against the BSB or judicial reviews.

Table 6		Charges upheld in 2013/14	
Charge	Cases	%	
301(a)(i) Being dishonest or otherwise discreditable	26	29%	
301(a)(iii) Acting in a manner likely to bring the profession into disrepute	16	18%	
905(d) Failing to respond promptly to a complaint	15	16%	
905(f) Failing to comply with a sentence of a tribunal	10	11%	
202(c) Failure to renew practising certificate	8	9%	
202(b) Failure to complete CPD	7	8%	
901.2 Failing to pay non-disciplinary fine	7	8%	
301(a)(ii) Acting in a manner prejudicial to the administration of justice	5	5%	
...			

²¹ Of the findings that were quashed, one case was overturned due to an issue of potential bias with the Tribunal panel appointed by COIC. One of the panel members was also a Bar Council committee member at the time of sitting. The other finding was quashed on the basis that the offence was not serious enough to justify a finding of professional misconduct. The Tribunal had originally thought the case to be borderline but had considered a disciplinary finding to be appropriate.

Judicial Reviews

- 2.42 Judicial reviews are a challenge to the way in which our enforcement decisions have been made – either by the BSB or by an independent Tribunal or Appeal panel.
- 2.43 Judgements in two judicial reviews were handed down in 2013/14. The first of these was important in that it challenged the validity of the Disciplinary Tribunal and Appeal panels appointed by the Council of the Inns of Court. This stems from the well-publicised issues that were uncovered in 2011 with the appointment of panels between 2005 and 2012. The specific issues in these cases concerned panel members who had not been officially reappointed after their initial appointments had expired – the “time expiry” issue highlighted in the Browne Report²². Based on a previous appeal judgement, we had argued that while the appointments had technically expired, this issue did not invalidate the decisions of the numerous panels which were affected. At the judicial review hearing in July 2013, the court refused permission on part of the applications of three barristers seeking to challenge the disciplinary findings and dismissed the other parts on their merits.

- 2.44 The second judicial review related to a case where the Visitors observed that the BSB had failed to follow due process when serving evidence during the course of taking disciplinary action. However, the Visitors did not consider this to have had an impact on the outcome of the hearing. After summing up the evidence against the claimant, the Judge reviewing the case at a hearing in July 2013 refused to quash the Visitor’s decision. The original finding stands – subject to an appeal to the Court of Appeal – but this is a learning point for us in our future prosecutions nonetheless.

Compliance and revenue arising from the enforcement system

- 2.45 In 2013/14 we issued administrative fines totalling £3.6K and disciplinary fines were imposed, either by the PCC or a Disciplinary Tribunal, totalling £41.7K. This represented a significant decrease in administrative fines as compared to 2012/13 when a total of £55.8K were issued. The reduction was due to the phasing out of our Warnings & Fines system as a method of dealing with CPD cases. We received payment of administrative fines totalling £11.9K and disciplinary fines totalling £30.7K.

Case study:

A barrister who had failed to renew her Practising Certificate was referred to the Professional Conduct Department by the Bar Council’s Records department because she had failed to respond to a reminder letter.

Barristers are in breach of the Code if they undertake reserved legal activities without a valid practising certificate. Having identified a possible breach of the Code, the Assessment Team opened an internal complaint about the barrister and passed it to the Investigation and Hearings Team for formal investigation.

Further enquiries were made of the barrister who accepted that she had carried out reserved legal activities without a practising certificate. She explained that she had suffered from a serious illness during part of the period in question and, as a result of this, had been unaware that her practising certificate had not been renewed.

Despite there being reasonable prospects of establishing professional misconduct, the PCD took into account the regulatory objectives and decided that it was not in the public interest to take the matter further. However, the barrister was issued with written advice in relation to the breach.

²² Council of the Inns of Court (2012): “Final Report From The Council Of The Inns Of Court (COIC) Disciplinary Tribunals And Hearings Review Group”

2.46 Compliance with disciplinary fines is an area that we will be attempting to address in the coming year. Currently we have no powers to reclaim debts, so if a barrister fails to pay a fine, our only recourse is to raise an internal complaint against the barrister for failing to comply with a disciplinary finding. While in many cases this will be the right course of action, in some it is disproportionate. Further, disciplinary proceedings do not provide a means to enforce payment. Thankfully, such events are the exception rather than the rule. Of the fines that were due in 2013/14, 80% of barristers have complied to date, although only 34% of barristers paid by the due date.

Performance

3.1 We are committed to providing a high-quality service. In particular, we are committed to:

- Dealing with complaints and disciplinary action as promptly as we can, taking into account the need for a thorough investigation and fairness;
- Making sure the action we take fits the circumstances of the case and is necessary to protect the public, by acting proportionately and taking an outcome focused and risk based approach to maintaining the standards of the profession;
- Working in an open way which takes account of the need to protect, as far as possible, the confidentiality of clients, complainants and barristers;
- Giving clear and well-reasoned explanations for decisions; and
- Being polite and professional in all our dealings with people.

3.2 We make every effort to track our performance, specifically by tracking the timeliness of our casework using our Enforcement Database and by surveying both barristers and complainants with recent experience of our service. In our User

Feedback Survey we ask questions in five key areas: accessibility; staff performance; timeliness and efficiency; transparency and openness; and quality of service.

3.3 There are also checks and balances in place in the form of an Independent Observer – whose role is to check that the enforcement system is operating in line with its aims and objectives; and the Quality Review Sub-Committee – a sub-Committee of the PCC tasked with checking the quality of the decision making within the Professional Conduct Department.

3.4 The combined approach of database monitoring, surveying and the checks and balances we have in place ensures that we identify both areas where we are performing well and areas where we need to improve.

Timeliness

Key Performance Indicator

3.5 One of our main aims is to ensure that complaints about conduct are dealt with fairly, consistently and with reasonable speed. We have three “operational” performance indicators (OPIs) against which we track how long it takes us to assess and investigate complaints. We then have an overarching Key Performance Indicator (KPI) which tracks how long it takes us to come to

Indicator	Description	Performance	Target
KPI	The percentage of complaints concluded or referred to disciplinary action within service standards	76.7%	75%
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	73.8%	80%
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	83.3%	70%
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	83.3%	80%

a decision on whether or not to refer complaints for disciplinary action.

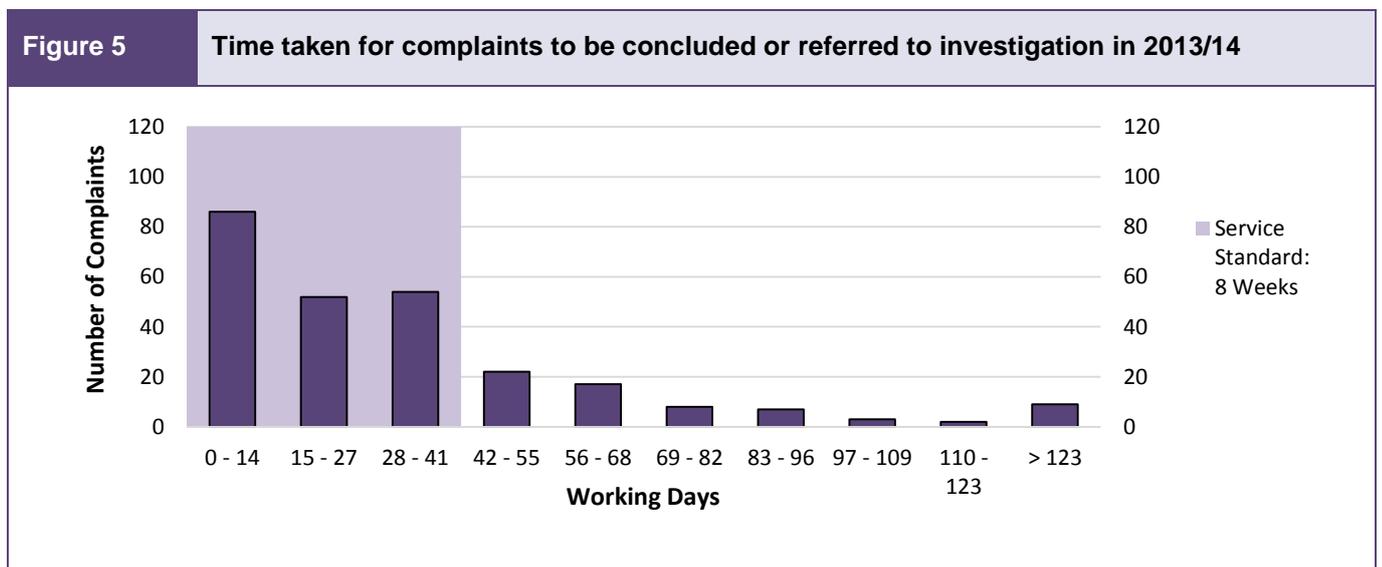
- 3.6 Our Performance Indicators for 2013/14 are set out in Table 7. Our KPI target for the year was to conclude or refer to disciplinary action 75% of cases within our service standards.
- 3.7 We met the KPI target for 2013/14, concluding or referring 76.7% of cases within service standards. This is a considerable improvement compared with the previous year when our equivalent performance was 64%. Only in the third quarter did we dip below the 75% mark – when the lowest quarterly figures for all three operational performance indicators coincided. This was mainly attributable to our work in the third quarter on implementing the new BSB Handbook and a lack of available performance reports while we transitioned from our old database to our new Enforcement database. Our performance bounced back immediately in the next quarter. In order to challenge ourselves to improve, we are increasing our target to 80% for 2014/15.

First OPI: Assessment

- 3.8 When we receive an external complaint, we aim to make a decision as to whether or not to investigate the complaint within eight weeks. We measure how long it takes from

the point at which we receive a complaint until the point at which the complaint is either accepted for investigation or the complainant is provided with the reasons why we do not intend to carry out a formal investigation.

- 3.9 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We either met or were close to this target in all but the third quarter where performance dipped, bringing our overall performance down to 73.8%. The third quarter performance can in part be attributed (as above) to the Handbook project and performance reporting but in that quarter we also closed six cases which took over 100 working days to conclude – all of which had required us to carry out extensive further enquiries – so the conclusions of some of the oldest cases happened to coincide in the third quarter.
- 3.10 Figure 5 illustrates how long each of our assessments took in 2013/14 and shows that a further 8% of cases concluded just outside of the 8 week limit. As we continue to improve our reporting and case monitoring we should be able to improve our performance for cases like those and get our performance above the 80% target on a regular basis. However, there will always be some instances where we need to obtain more information from complainants or other



parties before being able to make a proper assessment and in some cases this will take longer than our service standard allows.

- 3.11 Amongst our outstanding cases at the end of the year, 15% (12) of assessment complaints were outside the eight week mark²³. These cases will contribute negatively to future performance figures when we are able to make a decision on them, but the small number of cases shows that there is no significant backlog of work and that this OPI is a true indicator of our performance.

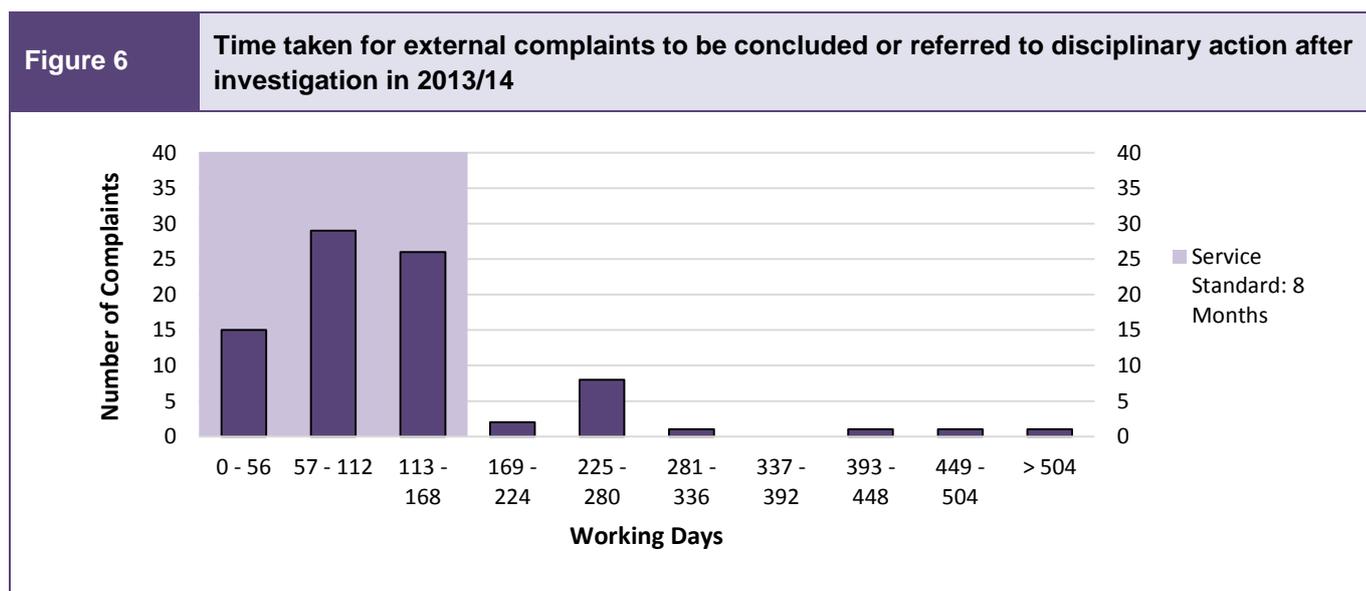
Second OPI: Investigation of external complaints

- 3.12 For external complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within eight months. We measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation. This includes the Professional Conduct Committee stage of the process if the decision was made by the Committee.
- 3.13 Our target for the year was to conclude or refer to disciplinary action 70% of cases

within eight months. We met this target in every quarter and overall concluded or referred 83.3% of cases within eight months. This is a significant increase compared with the previous year where our performance was 53.9%. We are increasing our target to 80% for 2014/15.

- 3.14 Figure 6 illustrates how long each of our external complaint investigations took in 2013/14 and shows that the cases that fell outside of the performance indicator tended to have taken quite significantly longer than eight months to conclude. Half of the cases were affected by our need to seek advice or make further enquiries. While we allow some time for further enquiries within the service standard, on these occasions they took longer than the 25 days allowed. The longest running complaints were three linked cases which suffered because of ongoing litigation which continually delayed our ability to investigate the complaints as well as the need to obtain transcripts and carry out necessary enquiries.

- 3.15 Amongst our outstanding cases at the end of the year, 10% (5) of external investigation complaints were outside the eight month mark. These cases will contribute negatively



²³ Three quarters of the cases had involved further enquiries and/or advice which took longer than the 20 days allowed within the eight week service standard. Five of these cases had been sent to us while the litigation at the heart of the complaints was still ongoing.

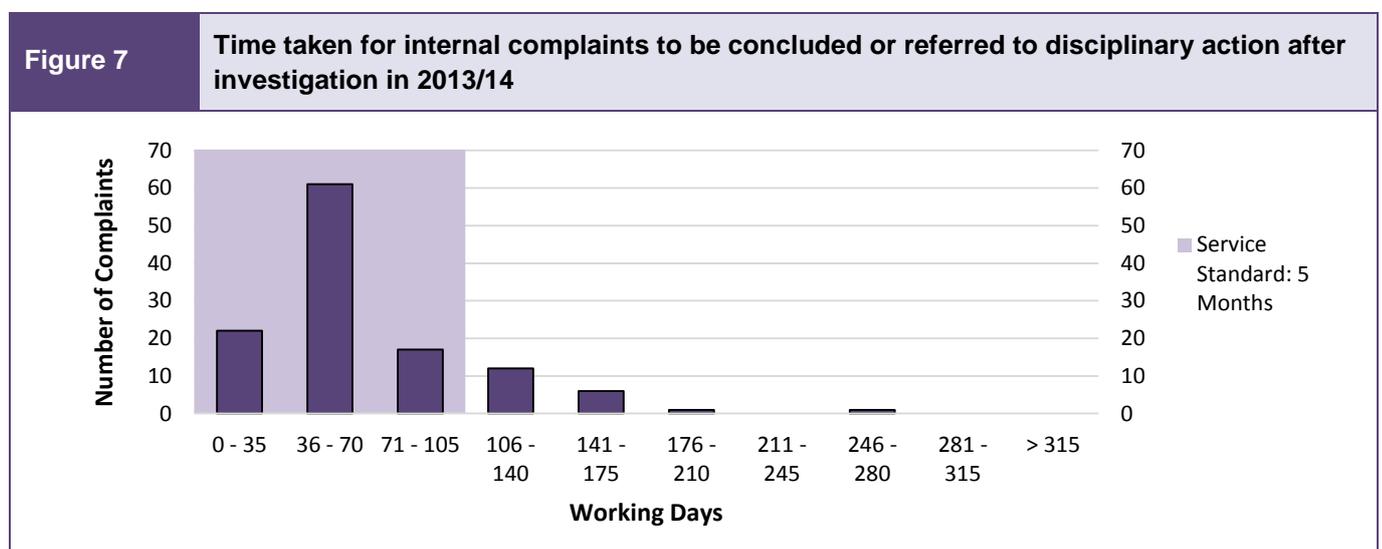
to future performance figures when we are able to make a decision on them, but the small number of cases shows that there is no significant backlog of work and that this OPI is a true indicator of our performance.

Third OPI: Investigation of internal complaints

- 3.16 For internal complaints, we aim to make a decision as to whether or not to refer the complaint to disciplinary action within five months. We reason internal complaints should take less time than external complaints as we do not need to take the time to clarify the complaint and correspond with a complainant. As with external complaints, we measure how long it takes from the point at which we open a complaint until the point at which the complaint is referred to disciplinary action or dismissed following an investigation.
- 3.17 Our target for the year was to conclude or refer to disciplinary action 80% of cases within five months. We met this target in the first and second quarters but our performance dipped in the second half of the year. Nonetheless, overall we concluded or referred 83.3% of cases within five months.
- 3.18 Figure 7 illustrates how long each of our internal complaint investigations took in 2013/14 and shows that a further 10% of cases were only just outside the five month

period. However, this masks our performance in the second half of the year. We concluded or referred 36 cases in the second half of the year compared with 84 in the first half. Twelve of these cases were outside the KPI. In part this is a consequence of the fact that we were opening considerably fewer internal complaints around that time. This meant that we had very few “young” cases that we could close quickly and therefore the older cases that we were concluding were dominating the statistics. Nonetheless, the fact is that those twelve cases (bringing the total for the year to twenty) were closed outside of five months. Again these cases were characterised by our need to carry out further enquiries to enable us to make an informed and fair decision. These took longer than the 15 days we allow within our five month service standard.

- 3.19 The number of cases (both internal and external) affected by further enquiries taking longer than we anticipate is small, but is indicative of a wider issue of barristers and complainants exceeding our deadlines in responding to our enquiries and providing further information. This is an area we are targeting for improvement in 2014/15.
- 3.20 Amongst our outstanding cases at the end of the year, 31% (11) of internal investigation



complaints were outside the five month mark²⁴. Inevitably we will have some cases which are complicated or challenged by the barrister or their representatives but, in the past, eleven cases would not have made up such a significant proportion of our caseload. Again, with relatively few new cases being raised, the older internal cases within our system are beginning to stand out. We were able to make a decision on five of the eleven cases within weeks of the end of the year – referring three of the cases to Disciplinary Tribunals.

Stage breakdowns

- 3.21 To gain further insight into where delays are occurring in our day-to-day handling of cases, our system allows us to monitor in detail each stage of the enforcement process. Table 8 sets out how long the stages of our process took compared with our standards.
- 3.22 Where assessment or investigation stages fall outside of the time allowed, the delays tend to come where we are seeking barrister comments or from our carrying out further

enquiries or seeking advice. While we allow time for these to take place, there is a tendency for only half of cases to be completed within the allowed time. We have taken steps in recent years to address the time taken in these areas – such as sending reminders before the deadlines have passed – but, if no response is forthcoming, often we cannot simply carry on with cases without compromising the fairness of the system.

- 3.23 Although the shortest stage of the process, one area where we can improve is in the pre-investigation stage²⁵. Due to the short timeframes involved it is inevitable that in some instances a Case Officer may not be immediately available to review new complaints, but the statistics show that half of cases were delayed at this stage. As the pre-investigation and investigation stages are so closely linked, in most cases in 2013/14 we recovered the time at investigation and the KPI was met. However, by better management of caseloads using the tools available to us on our Enforcement Database we aim to increase our performance in this area and keep

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
Preliminary Assessment	External	207	41	74%
Pre-Investigation	External	41	8	54%
Investigation	External	59	85	78%
Professional Conduct Committee	External	78	34	37%
Pre-Investigation	Internal	109	3	48%
Investigation	Internal	118	50	74%
Professional Conduct Committee	Internal	35	34	54%

²⁴ Four of the eleven cases are linked complaints relating to a single Chambers

²⁵ In order to handle high volumes of new complaints as efficiently as possible, the initial assessment of complaints (as described in the section “Our approach to cases”) is carried out by a separate team within the PCD to the investigation of complaints. The pre-investigation stage marks the transition between the two teams: allowing a short timeframe for the allocation of each complaint to a new Case Officer within the Investigations and Hearings Team and a review of the complaint to be carried out. Following review the Case Officer will either formally accept the case for investigation or – less frequently – query the need for an investigation.

complaints moving smoothly through the enforcement process.

3.24 The Committee stage often takes three to four weeks longer than the time allowed, in part due to the need for Case Examiners of the Committee to review files, prepare a Committee note and then be available to present the note to the next Committee meeting all within a tight timescale. In addition, in 16% of cases the Case Examiner required some further information before they could form a recommendation for the Committee. No time is currently allowed for further enquiries at the Committee stage. Fortunately, in 2013/14 any delays at the Committee stage did not have a significant impact on our performance against the KPIs.

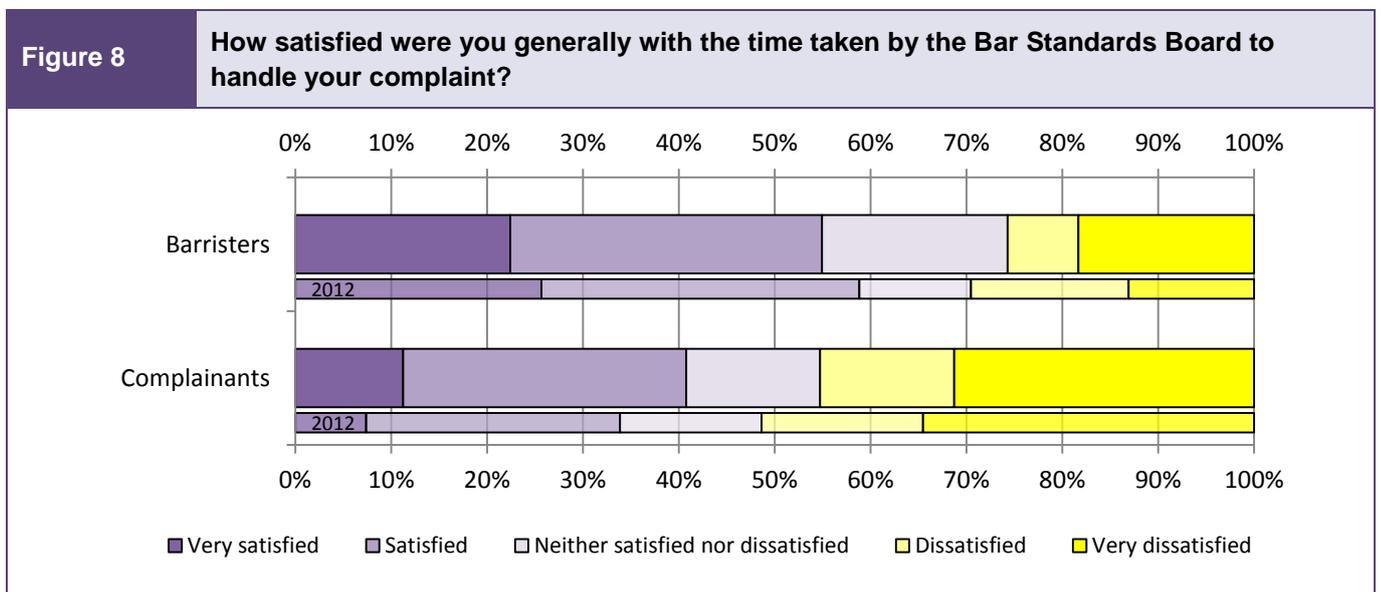
Survey Results

“ At the same time as the complaint against me [was made] to the BSB, a very similar complaint was made against my instructing solicitor to the Solicitors Regulation Authority. This almost identical complaint is nowhere near resolution and in this instance the BSB compares most favourably
Barrister response #01901

3.25 While we performed well against our performance indicators in 2013/14, we asked barristers and complainants how satisfied

they were generally with the time we took to handle their complaints. Despite our improved performance against the KPI, Figure 8 shows that many complainants were not satisfied – with only 41% responding that they were satisfied or very satisfied. This is, however, an improvement compared with last year’s figure of 34%. Barristers gave more positive ratings than complainants with 55% of barristers responding that they were satisfied and a further 19% had no strong opinion.

3.26 We also asked some specific questions about timeliness which show that, as with previous years, complainants and barristers tend to agree that the time taken to acknowledge their complaint (or notify them of the complaint against them) and the time taken to respond to calls, emails and letters was acceptable. The big issue for both complainants and barristers was the time taken to come to a final decision on their complaint with 25% of barristers and 51% of complainants responding that they were dissatisfied. This points to a more general dissatisfaction with the overall timescale of our enforcement procedure. Detailed analysis shows that this is particularly true for complaints that were investigated but not referred for disciplinary action.



- 3.27 From our survey results it is difficult to know whether the issue is that complainants (and to a lesser extent barristers) are not aware that the process of investigation could take up to eight months – as per our second Operational Performance Indicator – or whether they consider five or eight months to be too long. This is an area where further research would be beneficial. We took considerable care in setting our performance indicators at a realistic level; taking into account all of the relevant factors that impact on our consideration of a complaint. These include the need to operate a fair and transparent system (obtaining responses from both barristers and complainants and keeping all parties updated), the high proportion of cases which require further enquiries to be carried out or require expert advice and the need to refer many cases to the Committee for a decision to be made. While we are committed to making improvements and have demonstrated this in our performance against our KPI in 2013/14, reducing the time it takes us to assess and investigate complaints by any considerable amount would require fundamental changes to our procedures and may not be in keeping with our aims and objectives.
- 3.28 In our survey report last year, we considered that further qualitative research into user experiences should be carried out depending on the results of our 2013/14 survey. Considering timeliness (and other areas to be discussed) remains an issue for both

complainants and barristers, a research project will go ahead.

Disciplinary action service standards

- 3.29 Our KPI provides a measure of the time it takes us to come to a decision on whether to refer a case to disciplinary action. Once that referral has been made, the BSB acts as the prosecutor in each case and the timely progress of the cases becomes less under our control. This makes the later stages of a complaint less suitable for setting Key Performance Indicators. Nonetheless, it remains important that we monitor the time taken for the Determination by Consent procedure – which is within our control – and Disciplinary Tribunals and make improvements where possible. Table 9 compares our 2013/14 figures for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.
- 3.30 Determination by Consent cases have generally been completed within the service standard in the past as these are, for the most part, within our direct control and the barristers are engaged with the process. In 2013/14 we completed 60% of cases within our service standard. In two-thirds of the cases that took longer, there were long delays in the barristers agreeing to the charges and facts of the cases which made it impossible to complete the cases within the time limit. While there is potential for us to be more robust in our application of time limits for responses, the DBC process cannot

Table 9 Disciplinary action stages completed within service standards 2013/14

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
Determination by Consent	Internal	15	93	60%
Three-person Disciplinary Tribunal	Internal	21	86	0%
Three-person Disciplinary Tribunal	External	11	166	27%
Five-person Disciplinary Tribunal	Both	45	197	60%

continue without the barristers' involvement. If we have to terminate the DBC process, the alternative is to take cases to a more costly and time consuming Disciplinary Tribunal. So we have to balance our performance against costs, and in some cases it is worth allowing barristers an extension of time to ensure that the DBC process can conclude successfully.

- 3.31 Disciplinary Tribunals in general continue to take longer than our service standards allow. As we have strict timescales governing the service of charges, our analysis shows that most of the time is spent in obtaining the availability of parties – especially difficult where barristers have representation – and in BTAS convening Directions Hearings and Tribunals. The fundamental changes in the numbers and types of internal complaints that we are raising also means that the service standard for three-person Tribunals may no longer be appropriate as that service standard was set on the basis that we could block-book a large number of cases into Tribunals at the same time. We will therefore be carrying out a review of the service standards to ensure they remain robust and realistic. In addition, as a result of the establishment of BTAS, a number of

improvements have been made to streamline the process of convening hearings. We anticipate that the ongoing work of BTAS will also contribute to an improved performance in future reports.

Accessibility

- 3.32 We aim to make it as easy as possible for someone to make a complaint to the Bar Standards Board. We also aim to ensure that barristers are able to access everything they need when they are facing a complaint against them. Our approach is to try to ensure everyone knows how our enforcement system works, thereby allowing complaints to be progressed efficiently and managing expectations.
- 3.33 We asked our survey respondents a number of questions about how they obtained information about the BSB and their experience of making a complaint.
- 3.34 We asked complainants where they first heard about the BSB's enforcement procedure. While almost a third of respondents told us that the internet was where they first heard about us, there remained quite a spread of different sources. The most important thing is that potential

Case study:

A complaint, made by a defendant against a barrister acting for a close family member in a property dispute, was investigated by the Professional Conduct Department.

Following investigation, the Investigation and Hearings Team was satisfied that sufficient evidence existed to prove that the barrister had breached the Code of Conduct. The Professional Conduct Committee agreed that the barrister was professionally embarrassed because the case was one in which he was likely to be a witness and because he had a direct financial interest in the outcome of the case. The Committee further considered that the barrister lacked sufficient experience or competence to handle a property dispute matter and referred the case to a 3 person disciplinary tribunal.

Significant delays, caused mainly by the lack of availability of the barrister's representative, slowed the progression of the disciplinary proceedings. As a result, the case fell outside of the BSB's key performance indicator.

The barrister was charged with three counts of professional misconduct, all of which he admitted. The panel took into account the previous unblemished record of the barrister and agreed that the barrister's misconduct presented no future risk to the public. The barrister was reprimanded for each of the three charges.

complainants find out about the BSB and that they can complain to the regulator. In that respect it is positive that complainants hear about us in a variety of ways. Still, a number of respondents commented that we need to do more to get information into Courts and prisons.

“ *The [complainant] should be advised by the Court of any complaint system. I would not have known about you if it were not for the outrage of Trading Standards at the judgement*

Complainant response #01943

- 3.35 Just over a third of complainants telephoned the PCD before making their complaint seeking advice or assistance and all but one respondent was able to speak to someone. In rating the advice or assistance they received, satisfaction levels remained similar to the previous year. Although the number of complainants who were very satisfied increased to 36% and a further 25% were satisfied, still 20% of respondents indicated that they were not satisfied.
- 3.36 We asked complainants whether making a complaint to the BSB was easy and 63% of respondents agreed that it was easy. We improved overall as only 14% of respondents disagreed that making a complaint was easy compared with 25% disagreeing last year. There were two clear areas of improvement: 68% of complainants (up from 56%) and 71% of barristers agreed that information about our procedures was easy to obtain; and 55% of complainants (up from 42%) and 76% of barristers felt that the procedures for handling complaints were made clear. Although 19% of complainants still felt unclear about our procedures, the figure was 35% last year so we are moving in the right direction.
- 3.37 We use leaflets and our website as our main methods of providing information to complainants and barristers about our procedures for handling complaints.

Leaflets

- 3.38 Around a third of complainants and barristers recalled receiving leaflets on the BSB's enforcement procedures. A further third could not recall whether or not they received anything. Of those that did, however, 95% of respondents found them easy to understand and informative. This is very positive feedback, and shows that our leaflets are a good way of getting information across, but the fact that it only applies to a third of respondents means that the scope is limited. We are, therefore, committing to sending leaflets with our first communications to all complainants and barristers regardless of whether they have already accessed our website. This would also address the comments of some barrister respondents who would have liked more information about our processes up-front.

Website

“ *I found the staff approachable and clear in their directions. The website is quite clear though finding the code of conduct on the site seems overly complicated*

Barrister response #11767

- 3.39 Over two thirds of complainants and almost half of barristers recalled looking for information on our enforcement procedure on the BSB website. While 81% of barristers were able to find the information they were looking for without too much trouble, only 60% of complainants agreed. A further 37% of complainants and 17% of barristers could find the information but not easily. This means that only a tiny minority of respondents were unable to find what they were looking for; so the information is there but we could do more to make it more accessible. To this end a project has already begun to overhaul the Enforcement sections of the website. We are taking expert advice with the aim of improving the accessibility,

layout and clarity of the information on the website and also our hard copy leaflets.

Staff Performance

3.40 We asked barristers and complainants how they would rate their overall experience of the Bar Standards Board’s staff. Overall, 76% of barristers rated their experience as good or excellent. Complainants’ ratings were lower with 50% giving our staff a positive rating but 32% rating staff as poor or very poor. Essentially this is the pattern we have seen in the previous two years. Further analysis reveals that where complaints were referred to disciplinary action, the complainants involved were almost twice as likely to rate the staff as good or excellent (85%).

“ I am satisfied that I was kept properly informed of the progress of this enquiry and of the result. That does not, however, mean that a single complaint procedure is right for all situations.

Complainant response #02114

3.41 We also asked some specific questions about staff performance which show that we made some small improvements in all areas. Two thirds of complainants and 80% of barristers rated our staff as good or excellent at being polite and professional and handling

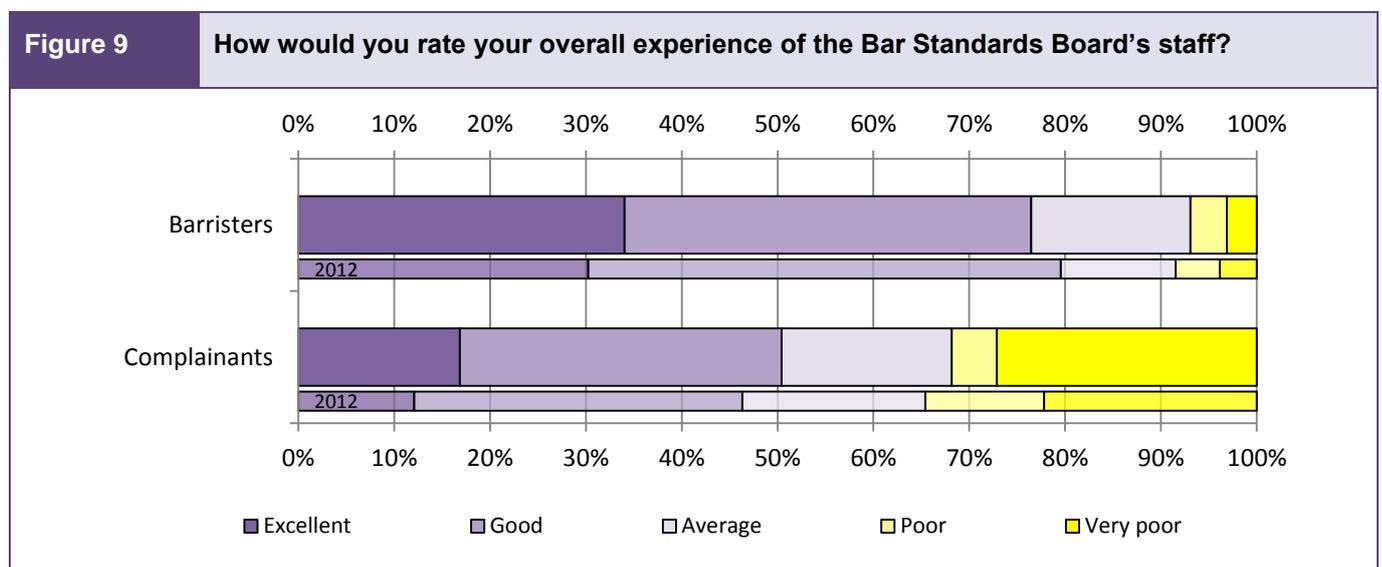
calls. Barristers were similarly positive about our performance in being helpful and answering queries while complainants were more likely to rate staff as average in these areas.

“ I cannot stress how impressed I was with the incisive, intelligent and thoughtful response to the complaint against me, as well as relieved that the BSB grasped immediately the issues and what lay at the heart of the complaint

Barrister response #01667

3.42 We also asked how we performed in providing information about the progress of cases (without the parties having to ask). Again we improved slightly but, as with previous years, this was the area where our staff received their lowest ratings. Although 83% of barristers rated the staff average or above average, only 61% of complainants agreed.

3.43 So where complainants have issues they tend to be around our performance in answering queries (which ties in with the “accessibility” results) and providing updates, both of which suggests that complainants may be looking for a more personalised service than we currently provide. Whether or not this is appropriate in the context of our



role as a regulator, as opposed to a complaints handling body, is an issue we will be considering in 2014/15 as part of a review into the role of the complainant within our enforcement system.

In-house training

3.44 We are always looking for ways to improve our staff performance. The BSB has a training programme for all staff members, which this year included customer service training; particularly relevant to Enforcement. In addition, we run our own training programme, specific to the knowledge and skills required by the staff of the PCD. Throughout 2013/14 we ran eight training sessions on topics such as:

- Regulatory case law updates;
- Investigation skills;
- Bankruptcy;
- Data protection, and
- How other regulators operate

3.45 We intend for our in-house training programme to continue in forthcoming years.

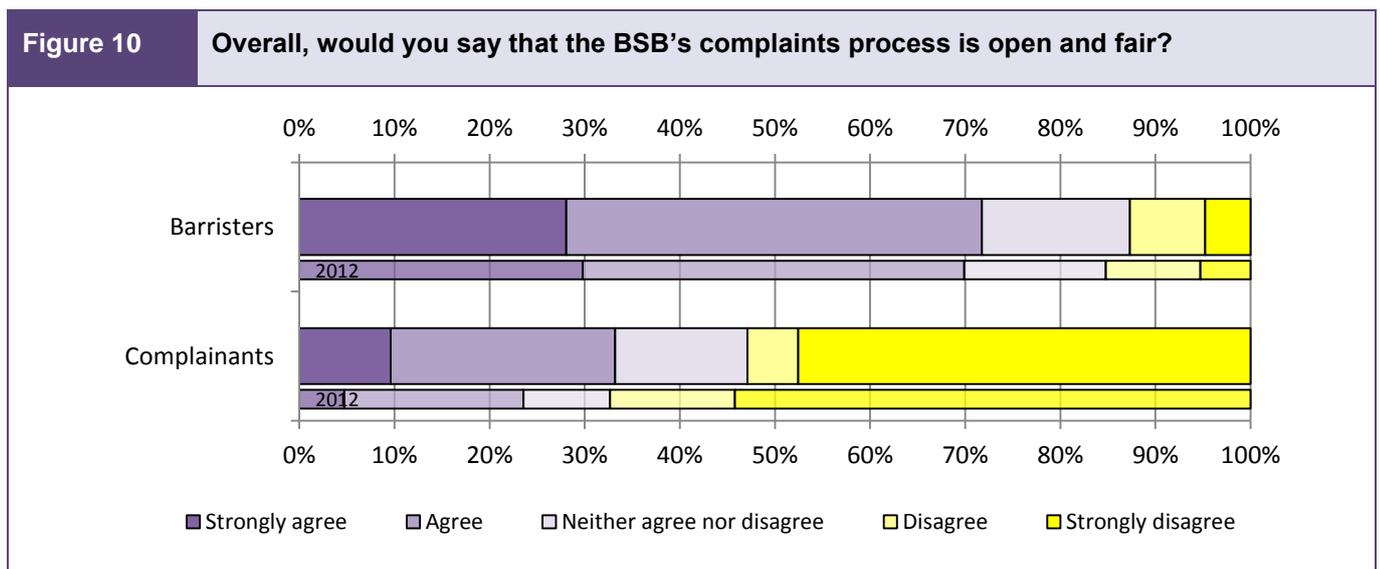
Transparency and openness

3.46 Openness, fairness and transparency are of critical importance to our enforcement work. A legal regulator cannot operate any other way. We asked barristers and complainants whether they would agree that the BSB’s complaints process is open and fair. In past surveys this question has revealed a marked difference between the views of barristers and complainants and our past research has shown that the outcome of a case often has a considerable impact on responses²⁶.

“The process appears to work only where the behaviour complained about is obviously awful and wrong. Where the behaviour treads a fine line between sharp practice and dishonesty and matters complained of are seemingly trivial (but affect the mind of the court in subtle ways) the process appears unable to cope.

Complainant response #02115

3.47 Figure 10 shows that this year 72% of barristers agreed that our enforcement process is open and fair and only 13% disagreed. For complainants, 33% agreed and 53% disagreed, which does represent an improvement as last year 67% disagreed.



²⁶ Bar Standards Board (2011): “Understanding Complaints Data”

So although the gap between barristers and complainants has closed, there is still a disparity between the two. For both barristers and complainants, there is a strong correlation with the decision we took on their complaints. Where we referred cases to disciplinary action, 71% of complainants agreed that we were open and fair, while for barristers the figure fell to 53%.

- 3.48 We also asked the survey recipients to indicate how strongly they agreed or disagreed with a series of statements relating to the openness and fairness of the enforcement system. The results show a significant improvement compared with the previous year, but still the big issues for complainants remain the same: 52% of complainants felt that we did not consider all of the evidence relating to their complaint and 55% of complainants disagreed that the reasons for the final outcome were clear. We also saw a familiar pattern in the comments left by complainants, whereby upon receiving a decision that we do not intend to refer a complaint to disciplinary action, some complainants suspect we are siding with the barristers or question the extent to which the BSB is regulating in the public interest.

“ You need to overcome the perception that the BSB exist for the benefit of barristers not the public. Overall, I feel my complaint was a waste of time and effort

Complainant response #01931

- 3.49 When we close a case without a referral to disciplinary action we inform the complainant of the precise reasons why we took that decision. This is an area where we have completed a considerable amount of work over the past three years – particularly at the initial assessment stage. So while it is encouraging that our performance has improved, it is disappointing that we have not been able to address complainants concerns more fully. The work of the Independent Observer (see below) assures us that the

issue is one of perception rather than a systemic problem but it remains an issue nonetheless.

- 3.50 Understandably, dissatisfaction levels are highest amongst those complainants whose complaints we deemed unsuitable for disciplinary action, but a large proportion of external complaints we receive are unsubstantiated, do not represent a breach of the Handbook or represent very little, if any, risk to the public or the regulatory objectives. We cannot take action in these cases but we must endeavour to demonstrate clearly that our processes are open and fair. To not do so would run the risk of dissuading members of the public from bringing to the attention of the BSB issues of concern in the future. We will continue to work in this area and it may be that the further research that we carry out into our survey results will reveal ideas for a fresh approach.

“ *The complaint against me was plain vexatious. The time spent handling it was excessive, and caused stress. More protection should be afforded to barristers against vexatious complainants.*

Barrister response #01965

Checks and Balances

- 3.51 Our PCD staff carry out regular checks on our caseload (including spot-checking cases to ensure they are progressing as they should), but often an impartial view is the most effective means of identifying potential issues and driving improvements. To this end we have an Independent Observer taking an overview of our enforcement system and a sub-committee of the PCC reviewing staff decisions.

Independent Observer

- 3.52 The BSB appoints a lay Independent Observer (IO) to ensure that the enforcement system is operating in line with

- its aims and objectives. The second IO, Isobel Leaviss, was appointed in May 2011.
- 3.53 In her latest report to the Governance, Risk and Audit Committee of the BSB (covering the period November 2013 to June 2014)²⁷ she gave the work of the PCD and PCC a positive assessment commenting that:
- “I have continued to observe good administrative standards in the handling of complaints and prosecution of misconduct cases.”
 - “I have seen clear evidence of decision makers referring to relevant policies, procedures and guidance to inform their decision-making.”
 - “I have observed a demonstrable commitment to transparency and fairness when responding to complainants and/or barristers.”
- 3.54 Based on her observations the IO made nine new recommendations in her two reports covering the period June 2013 to June 2014. These included:
- Extending the remit of the Quality Review Sub-Committee to include assessing timeliness, thoroughness and whether the process has been open, transparent and accessible;
 - Providing additional guidance to barristers about the format, content and evidence of mitigation or financial information they would like to be taken into account during the enforcement decision making process;
 - Engaging with intermediary consumer groups to promote understanding of the BSB’s enforcement role and improve signposting to assist legal consumers.
- 3.55 The PCD has accepted all nine recommendations and four have been implemented already.
- 3.56 The work of the Independent Observer is highly beneficial in ensuring the enforcement system is operating effectively and the recommendations made to date have resulted in many improvements to the enforcement processes and the public facing work of the PCD.
- QRSC**
- 3.57 Members of the PCD staff are authorised by the Professional Conduct Committee to make certain decisions to dismiss complaints, impose administrative sanctions and refer complaints to disciplinary action. In order to ensure that the quality of the decision making remains high, the Quality Review Sub-Committee (QRSC) of the PCC – a three member panel with a lay chair – spot-checks these staff decisions on a quarterly basis.
- 3.58 The QRSC was formerly the Dismissal Review Sub-Committee (DRSC) and it was in this form that the sub-committee reviewed 10% of complaints dismissed by members of PCD staff in each of the first, second and third quarters. In all cases the DRSC considered the complaints to have been fairly dismissed.
- 3.59 The remit of the sub-committee was extended for the fourth quarter to include staff decisions to refer cases to disciplinary action and impose administrative sanctions. The QRSC reviewed 10% of dismissed cases and all referrals to disciplinary action. While the QRSC agreed that all of the dismissal cases had been handled in accordance with the relevant regulations and procedures and were fairly dismissed, they disagreed with the decision on one of the referrals to disciplinary action.
- 3.60 The QRSC considered that the seriousness of the breach was not sufficient for a referral to disciplinary action and therefore the action was withdrawn. This is a key learning point for us and, as the case was still ongoing, we

²⁷ Reports by the Independent Observer are published on the Bar Standards Board website

were in a position to rectify the situation. This shows the value of the QRSC and more generally the effectiveness of the checks and balances which we have in place.

Quality of Service

3.61 As an overall measure, we asked complainants and barristers to leave aside the final outcome²⁸ and say how satisfied they were with the way in which we handled their complaint. Figure 11 shows that 64% of barristers were satisfied with our handling of the complaints against them compared with 40% of complainants. For complainants this was an improvement compared with the previous year, while barristers' views fell back to a similar level to two years ago after a significant increase in performance last year.

“ I have been very satisfied with the way my complaint has been dealt with. My case was handled properly

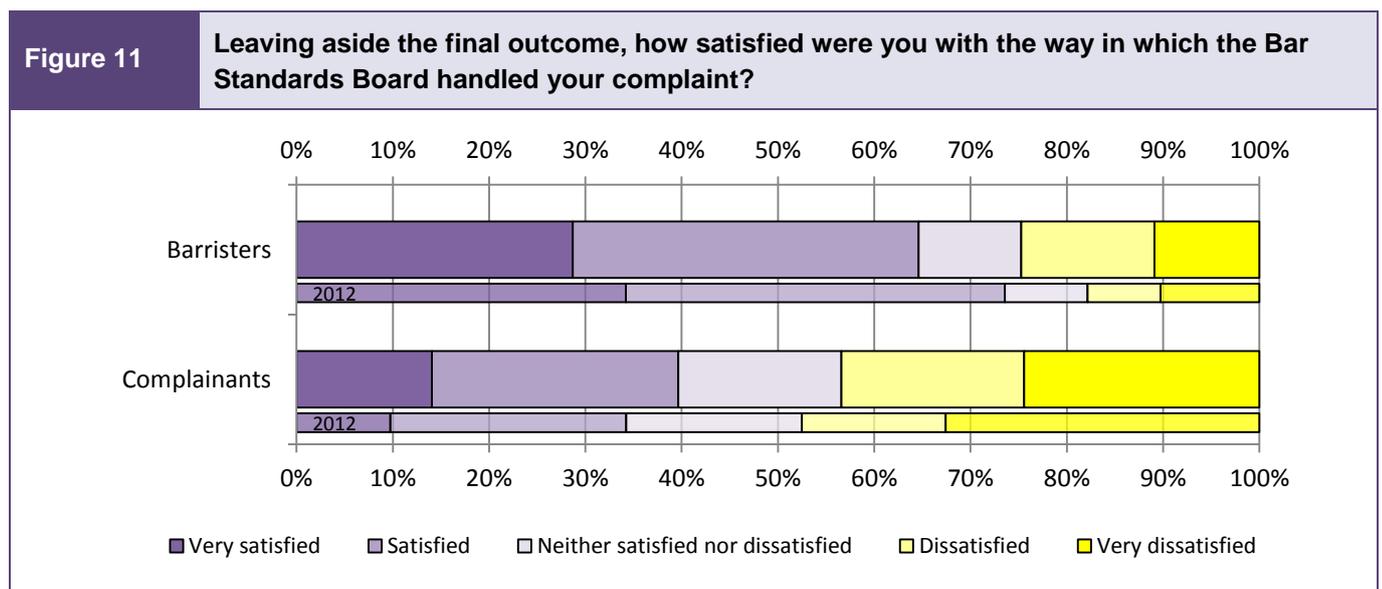
Complainant response #02029

3.62 So the gap between the views of barristers and complainants has closed and the increase in complainants' satisfaction is a positive sign. Our 2011 research indicated

that it is reasonably common for there to be a difference between the satisfaction levels of complainants and the professional/commercial object of their complaints. Realistically, the high proportion of external complaints which we close without a referral to disciplinary action and the impact this has on the perceived fairness of the system makes it impossible to achieve parity in this area. However, we are committed to improving and if year-on-year we can improve on our staff performance, timeliness and better demonstrate the openness and fairness of our system – as we have this past year – then this will hopefully contribute to more positive feedback on our quality of service in future.

“ On the whole I was satisfied with the service even though I'm unsure if I agree with the outcome of my case. Initially I found it difficult to get an answer by telephone in advance of my complaint, but once it was submitted communication was very good.

Complainant response #02059



²⁸ Our 2011 study: “Understanding Complaints Data” by IFF Research highlighted that, as the outcome of a complaint may have a significant bearing on the response to the question, any general question relating to “quality of service” should be clearly separated into satisfaction with the outcome of the complaint and satisfaction with the level of service

Other work streams

- 4.1 While our primary function is in taking action where the BSB handbook has been breached, our work throughout the year encompasses a number of other work streams:

Bankruptcies/Individual voluntary arrangements (IVA)

- 4.2 While becoming bankrupt or entering into an IVA is not a breach of the Handbook on its own, barristers are required to report these events to the BSB. In the PCD we monitor bankruptcies and IVAs and ensure that barristers are complying with their obligations. This function will be transferring to the Supervision Department in 2014/15.
- 4.3 In 2013/14 we received 47 reports of or by barristers filing for bankruptcy or entering into an IVA. We typically receive 45-50 reports per year.
- 4.4 Over the course of the year we raised formal complaints relating to three bankruptcy cases: two where the barristers involved accepted bankruptcy restrictions undertakings – which can be indicative of discreditable behaviour – and a further barrister who failed to respond to our communications. Following investigation we decided not to take disciplinary action in any of these cases.

Disciplinary history checks

- 4.5 A disciplinary history check is where we cross reference a barrister against our Enforcement Database and report on any disciplinary findings made against the barrister. This is usually for the purpose of issuing a Certificate of Good Standing but we also respond to requests from the Judicial Appointments Commission and the Inns of Court.
- 4.6 In addition we have a memorandum of understanding with the Queen's Counsel Appointments body in which we agree to

report on any disciplinary findings or ongoing disciplinary proceedings for each Queen's Counsel applicant. These are then taken into consideration when QCA are assessing applications.

- 4.7 We completed 546 disciplinary history checks in 2013/14, including checks on 226 QC applicants.

Fitness to Practise

- 4.8 In the context of barristers, Fitness to Practise refers only to whether a barrister's health impacts on their ability to practise. A barrister's fitness to practise is brought into question if it appears that they have an incapacity due to a medical condition (including an addiction to drugs or alcohol), and as a result, the barrister's ability to practice is impaired to such an extent that restrictions on practice are necessary to protect the public.
- 4.9 When the PCC receives information which raises genuine concerns as to a barrister's fitness to practise, the matter will be referred to a Fitness to Practise panel convened by BTAS. The panel – which will include a medically qualified member – must consider all of the available evidence and act to protect the public.
- 4.10 Where a Fitness to Practise panel has decided that an individual is unfit to practise it may decide to place a restriction on the barrister or place a condition on the individual such as submitting to a regular medical examination.
- 4.11 We began one new Fitness to Practise proceeding in 2013/14 which concluded in the same year without a hearing taking place. A Fitness to Practise panel in one further case took the decision to take no further action, allowing the barrister in question to continue practising without restriction or conditions.

Interim Suspension

- 4.12 In certain circumstances – such as where we receive a complaint or information that a barrister has been convicted or charged with a criminal offence²⁹ – the PCC will consider whether the barrister should be suspended from practice pending a Disciplinary Tribunal hearing. Where the PCC considers that such a course of action is justified for the protection of the public, the Committee will refer the matter to an Interim Panel convened by BTAS. The PCC (or the Chair on its behalf) may also, in exceptionally high risk situations, impose an immediate interim suspension which will remain in force until the matter can be considered by an Interim Panel.
- 4.13 In the majority of cases, barristers finding themselves facing potential Interim Suspension will voluntarily undertake not to practise or to place restrictions on their practice until disciplinary proceedings have concluded; meaning that the Interim Suspension procedure does not need to be invoked. In 2013/14 we did not begin any Interim Suspension proceedings as two barristers undertook to place restrictions on their practice under the circumstances. However, shortly after the end of the year, the PCC referred a barrister to an Interim Panel, feeling that it was necessary to protect the interests of the barrister's clients and a voluntary undertaking was not forthcoming.

Information provided to the public

- 4.14 Although we are not currently subject to the Freedom of Information Act, we work in the spirit of the Act when we receive requests for enforcement data. We regularly receive requests from researchers, reporters, complainants and other members of the public, typically asking for numbers for different types of complaints or outcomes

and sanctions we have imposed. Where the information is available we always comply with the request and provide anonymised data.

- 4.15 We want our enforcement data to be as transparent as possible and so accompanying this Annual Report is a Statistical Report of data that will address many of the data requests that we anticipate receiving. This will allow for fast access to information for the public without us having to generate custom reports each time.

Projects

- 4.16 In our Annual Report for 2012/13 we highlighted two projects that we would be focussing on in 2013/14. Our new Enforcement Database – a customised Case Management System – went live in August 2013, fully functional and on schedule. This gave us immediate benefits in terms of streamlining the administrative handling of cases and, as we added functionality throughout the remainder of the year, it also gave us far superior performance monitoring and reporting abilities.
- 4.17 The other major project for us concerned the implementation of the new Handbook and the BSB change programme – designed to ensure that our regulatory approach is outcomes focussed and risk-based in line with the Regulatory Standards Framework set out by the Legal Services Board. To be ready for the new Handbook, which came into force on 6th January 2014, we completed extensive preparations: the development of a new Enforcement Strategy, a review of our policy and guidance framework, amends to our Enforcement Database and training for staff, PCC members and prosecutors. A big change for us in Enforcement was the application of the BSB wide risk framework to our decision making process as well as the development of mechanisms to support

²⁹ The circumstances under which the Interim Suspension regulations come into force are listed in full in the BSB Handbook at Part 5, Section D.

risk-based decision making. As described earlier, we implemented this using our Enforcement Database, creating assessment forms to be completed at the assessment and investigation stages before any decision is taken. When we received our first complaint under the new Handbook on 14 January 2014 we had everything in place to progress the complaint within the new regime.

- 4.18 In our Annual Report for 2012/13 we also gave particular focus to a number of issues with Council of the Inns of Court (COIC) panel appointments that came to light in late 2011. These had the potential to affect the validity of a large number of Tribunal decisions, but in the event, less than 20 barristers raised challenges. The issues led to the Browne Report of 2012 which contained 82 recommendations for improvements to the management of Disciplinary Tribunals and Appeals and led directly to the formation of the Bar Tribunals and Adjudication Service (BTAS).
- 4.19 Towards the end of 2013/14 the BSB published an update on the contractual arrangements between the BSB and COIC/BTAS and a progress report on the recommendations. As of 26 February 2014, 75% of the recommendations had been completed with a further 22% ongoing. The BSB have a Contract Management Officer in post to ensure that the new contract for services with COIC, including ongoing monitoring requirements, is adhered to.
- 4.20 In terms of the legal challenges, one of the appeal hearings and one of the judicial review proceedings that concluded in 2013/14 related to panel anomalies. The appeal was not contested, but the judicial review was found in favour of the Visitors to the Inns of Court. This supports our position whereby we indicated that the “time expiry” issues highlighted in the Browne Report did not invalidate the Tribunal or Appeal findings.

Conclusions and action points

- 5.1 This was another year of change for both the Professional Conduct Department and the Committee. The drive to implement the new BSB Handbook took considerable time and resources and led to new ways of working: risk assessments, administrative sanctions and a closer relationship with Supervision; while the nature of our caseload changed from previous years with the decrease in internal complaints. Despite these changes, we increased our performance: achieving our KPI target to conclude or refer to disciplinary action 75% of complaints within our service standards.
- 5.2 In terms of new complaints it was very much business as usual with regards to external complaints, but the number of internal complaints we opened fell dramatically. This was due in the main to changes in the BSB's approach to CPD and changes in our handling of internal cases. It remains to be seen how many internal complaints we will be investigating in the coming years but we anticipate that the numbers will be lower than we have seen in the past. The decrease in the numbers of new internal complaints being opened led to a steady decrease in our caseload throughout the year and also had an impact on our KPI performance in handling internal cases.
- 5.3 We continued to closely monitor the time it takes us to come to a decision on whether or not to refer complaints for disciplinary action. While our performance against our KPI increased significantly compared with 2012/13 and we met our target, we can still identify areas where we can improve – particularly in setting and enforcing deadlines for responses from barristers and complainants and in reviewing files prior to investigation. Our survey results show that some barristers and complainants still have concerns about the time we take to come to a final decision on their complaints. We intend to carry out further qualitative research to ascertain how we can best address these concerns without making fundamental changes to our enforcement procedures and compromising the fairness of the system.
- 5.4 Our User Feedback Survey continues to be a hugely valuable tool for gaining feedback on where we are performing well and where we can improve. Our survey results in 2013/14 showed a general improvement in all areas and particularly in the accessibility and the “openness and fairness” of our enforcement system. However, there are still some issues which we need to address.
- 5.5 While barristers and complainants agree that our leaflets and website are a good source of information, not enough can recall receiving leaflets and too many find the information on our website difficult to find. We intend to overhaul the Enforcement section of the BSB website in 2014/15 and will be ensuring that leaflets are sent out to all parties with our first communications. The issues that we have seen in previous years around complainants' perception of the transparency and the openness of our enforcement work remain to a large extent. We hope that further research will help us to bridge the gap between barristers and complainants in this area and reveal ideas for a fresh approach.
- 5.6 There will always be room for improvement, but the overall picture of 2013/14 was a positive one. The changes we have driven through in recent years helped our performance figures for 2013/14 improve on what was already a solid foundation. We met our KPI target and have set a higher target for 2014/15 in order to push ourselves further. In addition we are now taking the risk-based and outcomes-focused approach to cases that is required of a modern regulator. There is still work to be done though and the coming year will provide more challenges and more opportunities to improve.

Action points

- 5.7 Based on the findings of this report, we intend to carry out the following actions during the course of the next twelve months:
- Commissioning qualitative research into the experiences of barristers and complainants. This will enable us to take an evidence based approach to making improvements to the way in which we communicate with the parties to complaints;
 - Amending the aspects which we use to record the nature of the complaints we receive. This will ensure that they properly reflect the terminology used in the BSB Handbook;
 - Overhauling the Enforcement section of the BSB website to ensure that information on our procedures can be found quickly and easily;
 - Ensuring that leaflets are sent to all barristers and complainants with our first communications;
 - Continuing our KPI monitoring programme, exploring areas where we can eliminate delays in the enforcement processes. This will include a review of the Disciplinary Tribunal service standards.

Looking forward

- 6.1 In this section we look ahead to some of the projects that we will be working on in 2014/15 and some of the background to the enforcement work we are likely to be carrying out in the near future.

Entity regulation

- 6.2 The BSB is aiming to become an approved regulator of entities – companies or partnerships that provide advocacy, litigation and expert legal advice services – in the autumn of 2014. Similarly to the Handbook implementation of 2013/14, we need to be ready for when the first complaint about an entity or an employee of an entity is received. Again this will involve a comprehensive review of our policies and procedures, amends to our Enforcement Database to enable it to handle complaints about organisations and its employees as opposed to individual barristers and training for staff, PCC members and prosecutors.

CPD numbers

- 6.3 In previous years, CPD complaints made up 10% of our caseload and a significant number of “Warnings & Fines” cases (paragraph 2.9). The BSB no longer takes the heavy-handed approach of taking enforcement action in every case, but is instead focusing its resources on assisting barristers to achieve compliance. Where barristers still fail to comply, we will consider enforcement action; but the numbers will certainly be much smaller going forward so CPD cases will not form such a high proportion of our work.

Disciplinary Tribunal Regulations review

- 6.4 Our Disciplinary Tribunal Regulations are published in the BSB Handbook. We will be addressing comments made in recent judgements by undertaking a review of the

Regulations in 2014/15 to ensure that they remain fit for purpose. Specific points that the Working Group will be considering include: amendments proposed by the COIC DTR Working Group in 2013/14; giving Tribunals the power to impose administrative sanctions where they consider that a breach of the Code does not justify a finding of professional misconduct; and adjusting the Regulations to better match the new definition of professional misconduct.

User feedback online

- 6.5 Our User Feedback Survey is currently a postal survey, with paper questionnaires sent out to barristers and complainants with recent experience of our enforcement work and responses scanned in and collated electronically.
- 6.6 While this methodology gives us a good response rate, many complainants and barristers would prefer to give their feedback online if the option were available. We will be working on providing a secure online platform for carrying out our ongoing survey during the course of 2014/15.

Mechanisms for enforcing disciplinary fines

- 6.7 As we described in our section on compliance, currently our only option when a barrister fails to pay a disciplinary fine is to raise a new complaint against the barrister. We will be looking into other mechanisms for enforcing disciplinary fines in 2014/15.

Sara Jagger

Director of Professional Conduct

Simon Lofthouse QC

Chair of the Professional Conduct Committee

September 2014