

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

## **Enforcement**

**Annual Report 2014/15**

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Professional Conduct Committee  
Professional Conduct Department

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## Introduction

- 1.1 The Bar Standards Board publishes a Handbook with which barristers comply. Where there is evidence that the Handbook has been breached, the BSB will consider what action may be necessary by way of enforcement or otherwise. 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 provides an overview of our enforcement work for the year 1 April 2014 to 31 March 2015. 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 period and the outcomes of this work. We then go on to analyse our performance over the year 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 addition to the information contained in this report, all of the key supporting raw data is published in an accompanying Statistical Report for 2014/15.
- 1.4 The BSB became an approved regulator of entities – companies or partnerships that provide advocacy and expert legal services – in the autumn of 2014 and began accepting applications in January 2015. No complaints about entities or employees of entities were received or opened in 2014/15 and, therefore, the casework and performance sections of this report do not include statistics on entity complaints.

## Data sources

- 1.5 We maintain electronic records on our Enforcement Database of all 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 467 questionnaires in 2014/15 covering cases concluded between January and December 2014 and received 169 responses.

## Our approach to cases

- 1.7 We take an outcomes-focused, risk-based approach to our enforcement activities:
- 1.8 Part 2 of the BSB Handbook<sup>1</sup> sets out the Code of Conduct for barristers and the outcomes the provisions of the Code are intended to achieve – such as that “*the proper administration of justice is served*” (oC2). The outcomes are derived from the regulatory objectives defined in the Legal Services Act 2007. The Handbook also sets out our Enforcement Regulations (Part 5) which outline what will happen when concerns are raised about the conduct of a barrister.
- 1.9 Our Enforcement Strategy<sup>2</sup> 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 – focused on achieving the outcomes outlined in the Handbook. This enables us to concentrate our resources on those issues which present

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<sup>1</sup> In January 2014, the 8<sup>th</sup> edition of the Bar’s Code of Conduct was replaced with the BSB Handbook

<sup>2</sup> Our Enforcement Strategy is published on the BSB website on the Complaints and Professional Conduct page.

[https://www.barstandardsboard.org.uk/media/1555518/140105\\_-\\_the\\_enforcement\\_strategy\\_-\\_handbook\\_-\\_final.pdf](https://www.barstandardsboard.org.uk/media/1555518/140105_-_the_enforcement_strategy_-_handbook_-_final.pdf)

the greatest risk to the regulatory objectives. When we first receive a complaint or information that may lead us to raise a complaint<sup>3</sup>, 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 or the wider public. This enables us to make a decision on whether or not to carry out a formal investigation.

- 1.10 Where we investigate a complaint, we will write to the barrister and any other people who we consider might provide information of relevance to 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 £1,000<sup>4</sup>, or, for more serious matters amounting to professional misconduct, disciplinary action.
- 1.11 If we decide that disciplinary action is appropriate we will either refer the case to the Determination by Consent procedure

(paragraph 2.48) or an independent Disciplinary Tribunal.

## Enforcement structure

### Professional Conduct Committee

- 1.12 The Professional Conduct Committee (PCC) has the 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 procedure<sup>5</sup>. The PCC – split into two teams – meets every three weeks to make decisions on cases. Individual members of the Committee, both barrister and lay, also provide expert advice on complaints during the assessment and investigation of complaints.

### Professional Conduct Department

- 1.13 The Professional Conduct Department (PCD) considers complaints under the authority of the Professional Conduct Committee. The staff of the PCD assess and investigate complaints and, where appropriate, take action against barristers who have breached the BSB Handbook. The

## Our aims and objectives

Our main aims are to:

- 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.

Our objectives are to:

- 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.

<sup>3</sup> 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.

<sup>4</sup> From January 2014 when the Handbook came into force. Prior to this, administrative sanctions under paragraph 901.1 of the 8<sup>th</sup> edition of the Code of Conduct were fixed at £300.

<sup>5</sup> The full powers of the Professional Conduct Committee are detailed in Part 5 of the BSB Handbook.

staff also take a lead on drafting policies, managing enforcement projects and the day-to-day work of supporting the PCC and keeping the enforcement system operating efficiently and fairly.

### **BSB representatives (prosecutors)**

- 1.14 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 primarily on a panel of barristers working on a pro-bono basis to represent us at the Tribunals. The panel currently consists of 55 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.

## Casework

2.1 We opened a total of 441 new complaints in 2014/15. As Table 1 illustrates, this represents an 8% increase compared with the previous year. There was no significant difference in the number of complaints being made to the BSB (the “external complaints”); rather the difference was in the number of internal complaints opened on behalf of the BSB. Our overall caseload, having steadily decreased over the previous two years, increased from 223 complaints at the start of the year to 311 at the close of the year.

### New external complaints

2.2 We receive complaints from clients of barristers (via the Legal Ombudsman<sup>6</sup>), 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 Since the Legal Ombudsman started operating in September 2010 we have consistently received around 300 complaints per year from external sources – and 2014/15 was no different as we received 297 complaints. Many of the trends we have

seen in recent years were also repeated in 2014/15:

- Civil litigants were the source of the highest number of individual complaints (25% of external cases) followed by family and criminal law litigants;
- Referrals from the Legal Ombudsman made up 14% [43] of external complaints;
- By far the most common allegations were of discreditable or dishonest conduct (44% of external complaints) and misleading the court (30% of external complaints);
- We immediately put on hold 9% of cases as the litigation underlying the complaint had not concluded;

### Legal Ombudsman

2.4 In 2014/15 we opened 43 complaints following referrals by the Legal Ombudsman. While this was a similar figure to previous years, it should be noted that just three individual barristers accounted for 30 of the referrals made<sup>7</sup>. Given the small number of complaints that the BSB handles on an annual basis, situations like this where individual barristers are subject to multiple complaints can have a significant effect on the caseload and overall complaint figures.

Complaint Source	2010/11	2011/12	2012/13	2013/14	2014/15
External	295	308	316	300	297
Internal	171	320	175	108	144
<b>Total</b>	<b>466</b>	<b>628</b>	<b>491</b>	<b>408</b>	<b>441</b>

<sup>6</sup> The Legal Ombudsman receives complaints from clients of barristers: its jurisdiction extends only to investigating issues relating to the service provided. Where the Legal Ombudsman identifies any potential conduct issues arising from service complaints then those matters are referred to the Bar Standards Board.

<sup>7</sup> All three barristers were already the subjects of ongoing disciplinary proceedings prior to the 2014/15 referrals by the Legal Ombudsman.

2.5 In 2014/15, almost half of referrals from the Legal Ombudsman were for barristers failing to co-operate with the Ombudsman service – an increase compared to previous years purely as a result of the three barristers highlighted above.

**Aspects of external complaints**

2.6 As we have seen in recent years, the most common allegations in the external complaints received in 2014/15 were of discreditable or dishonest conduct (44%) and misleading the court (30%)<sup>8</sup>. Discreditable or dishonest conduct was something of a “catch-all” for general conduct issues as defined by paragraph 301 of the 8<sup>th</sup> edition Code of Conduct, covering a wide range of issues from conduct in the handling of cases to conduct outside of barristers’ professional lives. The BSB Handbook takes a different approach, instead referring to a barrister’s honesty, integrity and independence.

2.7 During 2014/15 we used the Handbook and the data we previously collected on discreditable conduct to set up a new list of aspects that will provide more useful information in line with the Handbook. We started using the new categories in early 2015/16. We will, therefore, be able to provide a more detailed view of the allegations made against barristers and provide the best possible information for identifying and monitoring risks to the regulatory objectives<sup>9</sup>. Of course, the fact that an allegation is made does not mean that the BSB Handbook has been breached and a finding of professional misconduct will be made. Where disciplinary findings are made, we already record those under the new rules and Core Duties of the BSB Handbook (paragraph 2.61).

2.8 Last year we reported a decrease in the number of new complaints with allegations of discrimination, following a significant increase in numbers in 2012/13. The figure decreased again in 2014/15 as we received

Table 2		External complaint statistics in 2014/15																													
Total complaints received	297	Referrals from the Legal Ombudsman	43																												
<p><b>Complaint categories</b></p> <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>38%</td> </tr> <tr> <td>Civil Litigants</td> <td>25%</td> </tr> <tr> <td>Barristers/Solicitors/Judges</td> <td>13%</td> </tr> <tr> <td>Criminal Proceedings</td> <td>12%</td> </tr> <tr> <td>Family Law Litigants</td> <td>12%</td> </tr> </tbody> </table>		Category	Percentage	Other Categories	38%	Civil Litigants	25%	Barristers/Solicitors/Judges	13%	Criminal Proceedings	12%	Family Law Litigants	12%	<p><b>Complaint aspects</b></p> <table border="1"> <thead> <tr> <th>Aspect</th> <th>Complaints</th> </tr> </thead> <tbody> <tr> <td>Discreditable/dishonest conduct</td> <td>130</td> </tr> <tr> <td>Misleading the Court</td> <td>88</td> </tr> <tr> <td>Rudeness/misbehaviour in Court</td> <td>24</td> </tr> <tr> <td>Rudeness/misbehaviour out of Court</td> <td>21</td> </tr> <tr> <td>Failure to co-operate with LeO</td> <td>20</td> </tr> <tr> <td>Discrimination</td> <td>14</td> </tr> <tr> <td>...</td> <td></td> </tr> </tbody> </table>		Aspect	Complaints	Discreditable/dishonest conduct	130	Misleading the Court	88	Rudeness/misbehaviour in Court	24	Rudeness/misbehaviour out of Court	21	Failure to co-operate with LeO	20	Discrimination	14	...	
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<sup>8</sup> Only two charges pertaining to barristers “knowingly or recklessly misleading the court” were proved during 2014/15. This is in common with previous years: the majority of allegations of “misleading the court” are either unsubstantiated or arise from misunderstandings of the role of the barrister and the adversarial nature of court proceedings. Therefore, the high number of allegations of “misleading the court” is not considered to be indicative of a heightened risk to the public or the regulatory objectives.

<sup>9</sup> As set out in Part 1 of the Legal Services Act 2007

fourteen complaints alleging discrimination over the whole year. We take these complaints very seriously and frequently obtain expert advice prior to making any decisions on discrimination complaints. However, in many cases the allegations are unsubstantiated or unclear meaning that we cannot consider taking enforcement action. To date we have closed 11 of the 14 cases without making a referral to disciplinary action.

### Adjournments

2.9 Often we receive complaints about barristers where the parties to the complaint are involved in ongoing litigation and the involvement of the BSB at that stage could be disruptive to the resolution of those proceedings; or where there are other ongoing proceedings which may affect our consideration of a complaint. In these cases (typically 12-15% of external complaints) we contact the parties involved and put our consideration of the complaint on hold. We then regularly review these cases to ensure that it is appropriate that they remain on hold and the parties are kept updated.

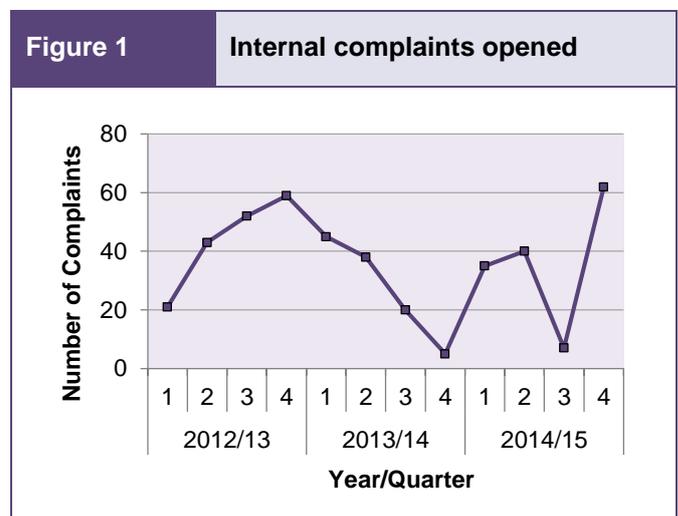
2.10 Of the 297 new external complaints opened in 2014/15, we immediately put 40 (13%) on hold – 26 because of ongoing legal proceedings, 11 because of ongoing BSB complaints and three because of ongoing proceedings with other organisations. On average, cases put initially on hold remained on hold for 8 months.

### New internal complaints

2.11 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 Professional Conduct

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 requirements for the profession.

2.12 In our Enforcement Annual Report 2013/14 we highlighted a significant decrease in the number of internal complaints we were opening – primarily due to changes to the BSB’s CPD regime and our new system of risk assessing cases prior to opening them as complaints. To some extent this trend was reversed in 2014/15. We assessed around 300 reports and pieces of information in 2014/15 and opened 144 internal complaints which were assessed to be medium or high risk or a priority area for the BSB – a 33% increase in complaint numbers compared with the previous year. However, as Figure 1 shows, the number of complaints raised each quarter varied considerably.



2.13 Table 3 shows the nature of the new issues we investigated in 2014/15. Over 40% of the new internal complaints we opened were against barristers who either failed to renew their practising certificate or practised without a practising certificate – an increase in numbers from 43 in the previous year to 64 in 2014/15. Half of these complaints

related to new barristers who completed their pupillage and began practising but did not realise that they needed to apply for a new practising certificate (inadvertently practising while not authorised to do so). We do not normally see such complaints in any such significant numbers and steps have been taken within the BSB’s Education and Training Team to ensure that barristers are well informed of their obligations once they complete pupillage. At the same time, the BSB’s Supervision Team are placing greater emphasis in this area when carrying out supervision visits to chambers – checking that systems are in place within chambers to ensure that all relevant barristers are authorised to practise. As a result of this collaborative approach, we have been able to mitigate the risk of this level of non-compliance occurring again<sup>10</sup>.

2.14 While Table 3 shows that the numbers of complaints involving allegations of “failure to act appropriately towards pupils” and “Discreditable/dishonest conduct” increased,

these included linked complaints, all relating to a pupillage issue in a single Chambers, about 17 separate barristers – another instance where a single issue has a significant impact on our workload and enforcement statistics. We also began nine investigations against barristers with drink driving convictions and opened seven new cases against barristers failing to comply with the BSB’s Supervision Team with regards to CPD. Under the old regime, CPD cases used to dominate the work of the PCD – with more than 50 complaints raised each year. The seven complaints in 2014/15 were the first CPD complaints to be raised since the new system of spot-checking and supervision was introduced. To date, administrative sanctions have been imposed in two CPD cases with one complaint still ongoing<sup>11</sup>.

2.15 The increase in the number of internal complaints opened in 2014/15 can be attributed directly to the practising certificate issues and the 17 linked complaints highlighted above. Both were unusual

<b>Table 3</b>		<b>Aspects opened for internal complaints – annual comparison 2013/14 to 2014/15</b>			
<b>Aspect</b>	<b>2013/14</b>	<b>%</b>	<b>2014/15</b>	<b>%</b>	
Practising without a practising certificate	40	37%	49	34%	
Dishonesty/discreditable conduct	15	14%	38	26%	
Failure to act appropriately towards pupils	3	3%	17	12%	
Failure to renew practising certificate	3	3%	15	10%	
Criminal conviction(s) - drink driving	1	1%	9	6%	
Criminal conviction(s) - other	11	10%	8	6%	
Failure to comply with Supervision - CPD	0	0%	7	5%	
Failure to comply with a sentence of a tribunal/panel	8	7%	6	4%	
...					

<sup>10</sup> A decision was taken in early 2015/16 to deal with the 2014/15 “pupillage” practising certificate complaints by way of issuing administrative warnings. Details will be published in our Interim and Annual Reports for 2015/16.

<sup>11</sup> The remaining four cases were dismissed following investigation: in three cases as there was insufficient evidence of a breach of the Handbook and the remaining case was assessed as low risk.

situations that are not expected to be repeated. So while Figure 1 shows that the numbers of internal complaints opened on a quarterly basis are still quite variable, if we exclude the unusual issues we saw in 2014/15, it is likely that we will be working on around 100 new internal complaints per year going forward.

### Reports of serious misconduct

- 2.16 Under the BSB Handbook, barristers are required 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 another barrister or a registered European lawyer (rc66).
- 2.17 In 2014/15 – the first full year that the requirements have been in place – we received 30 reports from barristers about themselves and a further 35 reports about other barristers. Of these, 26 were assessed as high or medium risk and converted to internal complaints. Issues reported included: practising without a practising certificate [12]; discreditable conduct [6]; criminal convictions [3].
- 2.18 A further 14 reports<sup>12</sup> were assessed but not opened as complaints. These included reports of behaviour assessed to be low risk (such as a barrister accidentally sending a document to the wrong individual) and reports of behaviour that did not constitute a breach of the Handbook (such as a barrister failing to keep their record on an IT system up-to-date). Here there is evidence to suggest that we should expect that some reports will not constitute serious misconduct as defined by the Handbook (gC96). However, it is in the public interest that the BSB is made aware of potential instances of serious misconduct and we encourage barristers to continue making reports.

### 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.*

### Interim Suspension

- 2.19 In certain circumstances – such as where we receive a complaint or information that a barrister has been convicted or charged with a criminal offence<sup>13</sup> – 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.
- 2.20 Two new interim suspension procedures were initiated in 2014/15 in response to information provided to the PCD. An interim suspension hearing took place in one further case during the year. In all three cases the Interim Panels either suspended or placed conditions on the barristers' ability to

<sup>12</sup> 25 reports were still undergoing assessment at the close of 2014/15

<sup>13</sup> The circumstances under which the Interim Suspension regulations come into force are listed in full in the BSB Handbook at Part 5, Section D.

practice, in the interests of protecting the public.

- 2.21 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. The number of suspensions in 2014/15 was unusually high and we do not expect to be using the Interim Suspension procedure as often in 2015/16.

### Fitness to Practise

- 2.22 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.
- 2.23 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.

- 2.24 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.
- 2.25 We began three new Fitness to Practise proceedings in 2014/15, one of which concluded in the same year. Where proceedings were concluded, the Fitness to Practise panel confirmed that the barrister was fit to practice, allowing the barrister in question to continue practising without restriction or conditions. On the basis of an earlier medical report, the panel made clear that the BSB was right to have begun Fitness to Practise proceedings in this case.

### Caseload

- 2.26 In our Enforcement Annual Report 2013/14 we highlighted a decrease in the caseload of the Professional Conduct Department over the previous two years. This trend was reversed in 2014/15. We started the year with 223 active complaints within the department and ended with 311 complaints, albeit 82 complaints were either on hold or

#### Case study

*A litigant-in-person, involved in a property-dispute case, complained to the Professional Conduct Department that the barrister acting for the other side had not fully explained the addition of a costs provision to a requested consent order in an attempt to mislead both the complainant and the Court. The complainant also alleged that the judge made a comment expressing disapproval of the conduct of the barrister.*

*The BSB Handbook states that a barrister has a duty to the court and must not 'knowingly or recklessly mislead or attempt to mislead the court'. Identifying a possible breach of the BSB Handbook, The Professional Conduct Department obtained a transcript of the case and sought advice from a barrister member of the Professional Conduct Committee (PCC).*

*The PCC member reviewed the transcript and found no evidence that the judge had passed comment on the behaviour of the barrister. He further concluded that the litigant-in-person had misunderstood the explanation of a complex legal concept. The complaint was closed without investigation.*

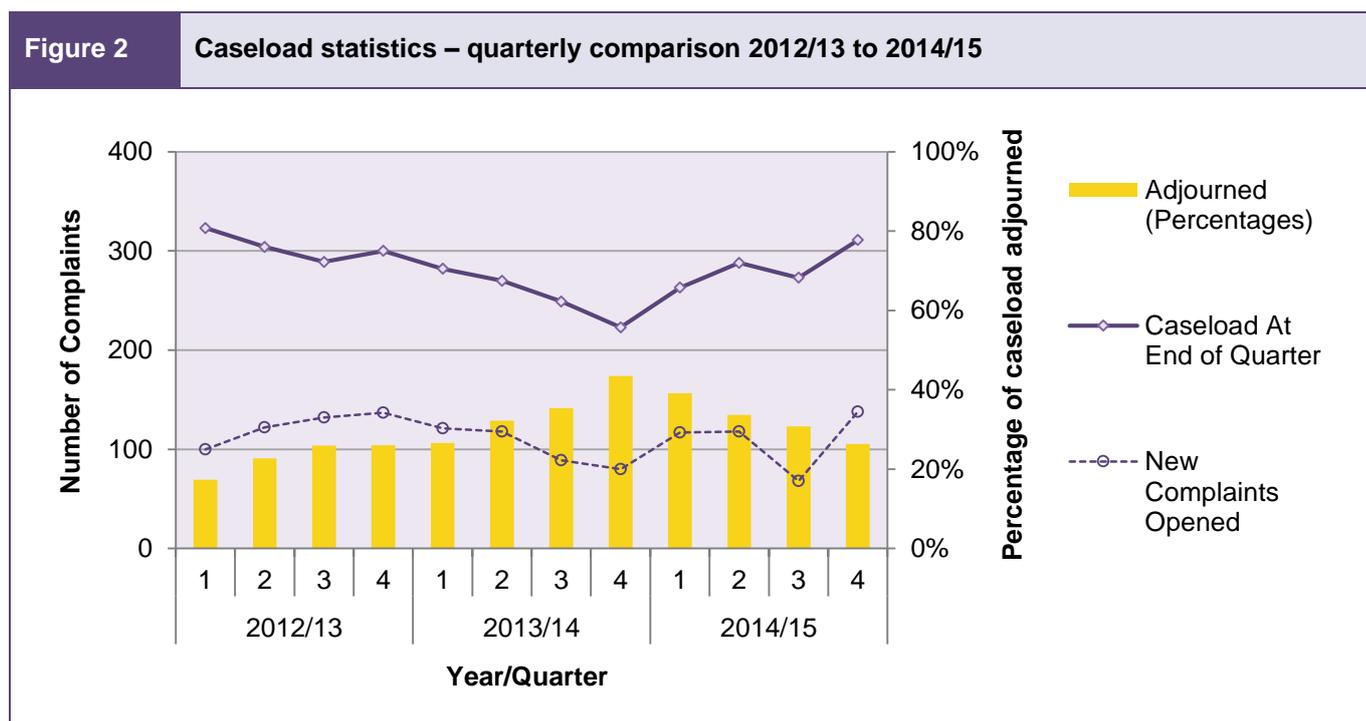
adjourned<sup>14</sup>. Essentially, during 2014/15 we opened more complaints than we closed.

2.27 The factors contributing to the increase in our caseload include:

- An 8% increase in the number of complaints being opened (compared with the previous year);
- A different quarterly pattern in internal complaints. As Figure 2 illustrates, we opened 62 internal complaints in the fourth quarter of 2014/15 compared with five in the fourth quarter of 2013/14. This meant that many more internal complaints remained ongoing at the end of the year.
- An increase in the proportion of external cases being referred for investigation, as opposed to being closed without

investigation, from 22% in 2013/14 to 31% in 2014/15.

2.28 We finished the year with an increased figure of 311 complaints ongoing within the department. There are, however, several unusual elements to this figure as 48 complaints (15%) were about a single barrister<sup>15</sup> and the additional linked and practising certificate cases (paragraphs 2.13-2.14) which we would not expect to see going forward. Indeed, we are anticipating a considerable increase in closures of internal complaints in early 2015/16 which will go some way towards balancing the increase in caseload seen in 2014/15.



<sup>14</sup> In total we worked on 675 active cases in 2014/15. Where complaints were on hold or adjourned at the end of the year, 14 complaints were adjourned by Disciplinary Tribunals. The remainder [68] were on hold at the assessment or investigation stages for the following reasons. Full details are included in our Statistical Report 2014/15:

Ongoing legal proceedings	29	Ongoing BSB proceedings	37 (see paragraph 2.28)
Medical reasons	1	Pending judicial review	1

<sup>15</sup> A single barrister has been the subject of 54 referrals from the Legal Ombudsman over the past three years. Disciplinary proceedings were ongoing at the end of 2014/15 and 31 of the complaints on hold at the end of 2014/15 were pending the outcome of those proceedings.

## Risk

- 2.29 Where we initially identify some evidence of a breach of the Core Duties or an outcome in the Handbook that has been adversely affected or put at risk, we carry out a risk assessment. This assessment establishes the likelihood and impact of a risk to the Regulatory Objectives and informs our decisions on the enforcement action, if any, that we will take.
- 2.30 In total we completed 282 risk assessments in 2014/15, both to determine whether we would raise internal complaints (based on incoming reports and information) and to inform our decision making on external complaints. The outcomes of these were as follows:

Risk Profile		
High risk	34%	[95]
Medium risk	31%	[88]
Low/no risk	35%	[99]

- 2.31 A further 165 assessments were not rated for risk due to a lack of evidence of a breach of the BSB Handbook or an adverse effect on the outcomes in the Handbook. We have no power to take action where there is no evidence of a breach of the Handbook and cases that are assessed as being low or no risk will not proceed to enforcement action as we focus our resources on the areas which are the greatest risk to the regulatory objectives and the public.

Most common aspects assessed as high risk:	
Discreditable/dishonest conduct	35
Failure to co-operate with Legal Ombudsman	15
Criminal conviction(s) – not drink driving	11
Failure to administer chambers properly	5
Discrimination	5

## Complaint decisions

- 2.32 Following the assessment and investigation of complaints we can take enforcement action by imposing administrative sanctions and/or referring complaints to disciplinary action. We came to a decision on 353 complaints during 2014/15, as illustrated by Table 4.
- 2.33 Although the proportion of complaints that we referred to disciplinary action was slightly higher than in 2013/14 (14%), the figures were generally consistent with the trends we have reported in recent years.

Table 4 Complaint outcomes 2014/15		
Outcome	#	%
Closed without investigation	194	55%
Closed after investigation (No enforcement action)	78	22%
Administrative sanction	11	3%
Referred to disciplinary action	70	20%

- 2.34 PCD staff took 66% of decisions – including 21% of decisions to refer cases to disciplinary action – whereas the PCC took 31%. The remainder of cases were either withdrawn or referred to the barristers' Chambers for consideration<sup>16</sup>.
- 2.35 In addition we concluded 81 of the cases that had been referred to disciplinary action, bringing the total number of closures for the year to 364.

<sup>16</sup> The option to refer cases to the Chambers of the barrister in question to be dealt with under the Chambers internal complaints procedure is used in low risk cases where the issues raised by complainants might be better resolved by a remedy available to Chambers – such as an apology. We referred eight complaints to Chambers during 2014/15. In these circumstances, if the complainant is not happy with the way in which their complaint has been dealt with by Chambers, it is open to them to ask the BSB to reopen the original complaint and consider any conduct issues.

## Decisions to close

<b>Risk Profile</b>	<b>No breach</b>	<b>73% [198]</b>
	Low/no risk	18% [50]
	Medium risk	3% [9]
	High risk	5% [15]

2.36 In total we closed 272 complaints without taking enforcement action during the year. Table 5 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.

2.37 Despite the decision not to take enforcement action in relation to these complaints, in some cases there was evidence of a breach of the Handbook or conduct/issues requiring action other than a full dismissal. This usually takes the form of advice, but also included six complaints in 2014/15 which were formally referred to the Supervision Team of the BSB.

<b>Most common aspects closed without enforcement action:</b>	
Discreditable/dishonest conduct	121
Misleading the court	87
Rudeness/misbehaviour in Court	22
Rudeness/misbehaviour out of Court	17
Discrimination	12

### Referrals to Supervision

2.38 Since January 2014 we have been able to refer complaints and information to the Supervision Team of the BSB where we consider that there are wider concerns about a barrister's individual practice that would warrant supervisory intervention. During 2014/15 we made six formal referrals to

Supervision. Three cases (two of which were linked) related to the overall treatment of the complainants by the barristers' chambers. The remaining three cases (two linked) were assessed low risk for enforcement action but there were outstanding chambers issues – in these cases around the advertising of pupillages and chambers administration – which potentially needed to be resolved. In these circumstances, the Supervision Team can assign actions for chambers to complete and follow up to ensure that they are completed.

2.39 As well as making formal referrals, we pass to the Supervision Team any information we obtain while carrying out our enforcement functions that may be relevant to their supervisory functions. In one recent example, where a barrister was suspended by an Interim Suspension panel, the PCD informed the Supervision Team. This triggered a supervision visit to the barrister's chambers to check how his caseload was being covered during his suspension. This collaborative approach has triggered a number of supervisory visits in the past year and is proving highly effective in protecting the public and maintaining high standards.

### Comebacks and reconsiderations

2.40 Under our "comebacks" policy, if a complainant disagrees with a PCD or PCC decision to close a complaint without taking enforcement action – either before or after investigation – they can ask us to review the decision and submit further evidence if it has come to light. Of the 242 external complaints we closed without a referral, to date we have received comebacks in relation to 31 complaints (13%). This proportion is typical of previous years.

2.41 After reviewing the complaints, the original decision was overturned in two cases. In both cases, the original decision not to investigate was reviewed by a member of the Committee and a decision was taken to

reopen the complaints. One complaint was then subsequently referred to a Disciplinary Tribunal while the other – reopened as some evidence had not been taken into account when the complaint was originally closed without investigation – was reassessed and again closed without any enforcement action.

2.42 A further nine cases were reopened during the year: three of which were complainants unhappy with the outcome of cases that we had originally referred to Chambers for resolution<sup>17</sup>.

### Enforcement decisions

2.43 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 objectives; 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.

### Administrative sanctions

<b>Risk Profile</b>	Low risk*	33% [4]
	<b>Medium risk</b>	<b>58% [7]</b>
	High risk	8% [1]

\* All downgraded from Medium risk

<b>Key Stats</b>	Barristers	12
	Total fines	£900

2.44 Where the PCC or staff of the PCD consider that there is evidence that the BSB Handbook has been breached but the breach is not so serious as to amount to professional misconduct, we will consider whether to impose an administrative sanction in the form of a written warning or a fine of up to £1,000.

2.45 We imposed our first administrative sanction in July 2014 and imposed a total of twelve<sup>18</sup> during the year – ten warnings and two fines – on mostly medium to low risk complaints. This number has already been exceeded in the first quarter of 2015/16 so it is anticipated

<b>Table 5</b>		<b>External and internal complaint outcomes 2014/15</b>			
<b>External complaints:</b>			<b>Internal complaints:</b>		
<b>Outcome</b>	<b>#</b>	<b>%</b>	<b>Outcome</b>	<b>#</b>	<b>%</b>
Closed without investigation	194	72%	Closed without investigation	0	0%
Closed after investigation	48	18%	Closed after investigation	41	50%
Referred to disciplinary action	29	11%	Referred to disciplinary action	41	50%

<sup>17</sup> The remaining six cases were reopened for the following reasons: two cases that were remitted to fresh Disciplinary Tribunals following appeals (see “Appeals”); two linked cases that were reconsidered by the Committee following an application for Judicial Review and two cases where there were further developments on closed cases.

<sup>18</sup> In one case, involving multiple allegations, the PCC took the decision to impose an administrative warning in relation to one aspect of the complaint and refer the remainder to a Disciplinary Tribunal.

that administrative sanctions will become more common than the 2014/15 figures suggest, as in many cases they represent a more proportionate form of enforcement action for medium risk complaints.

<b>Most common aspects closed with administrative sanctions imposed:</b>	
Practising without a practising certificate	3
Failure to renew practising certificate	3
Failure to comply with Supervision - CPD	1
Failing to register or have insurance with BMIF	1
Failure to co-operate with the BSB	1

### Referrals to disciplinary action

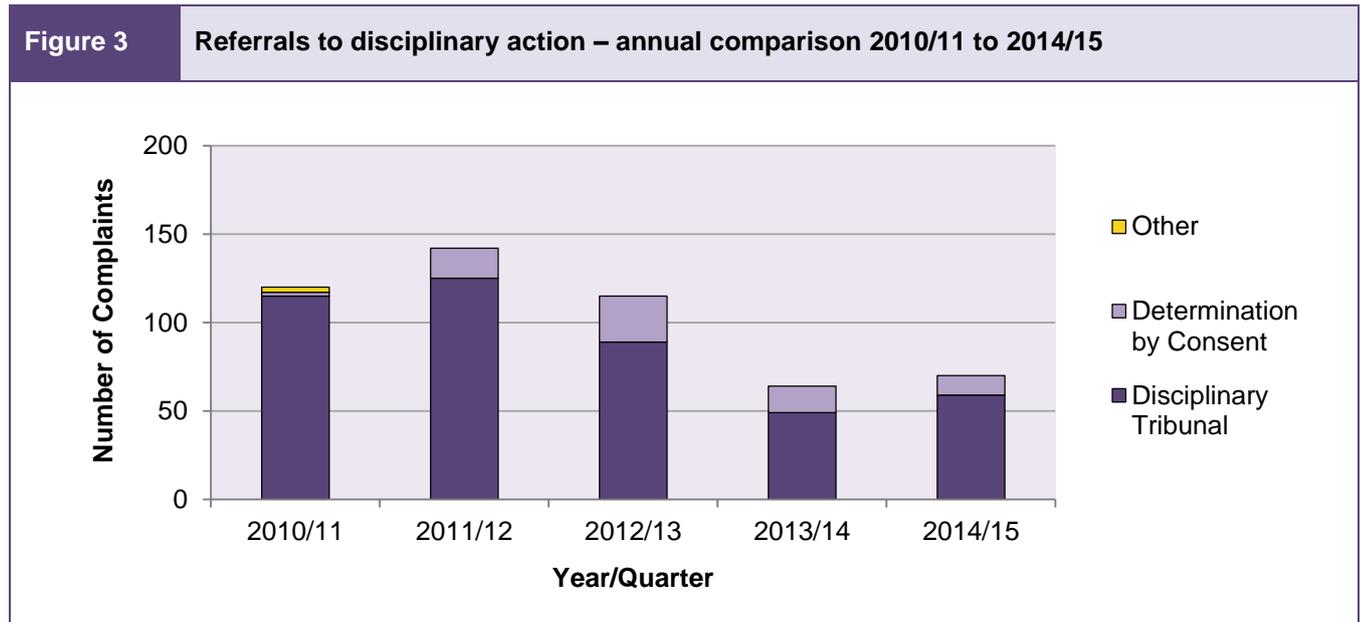
Risk Profile	Percentage	Count
Low risk	0%	[0]
Medium risk	23%	[15]
<b>High risk</b>	<b>77%</b>	<b>[50]</b>

2.46 Over the course of 2014/15, we referred 59 complaints to Disciplinary Tribunals and a further 11 complaints to the Determination by Consent (DBC) procedure. In total this equalled 44% of our post-investigation decisions.

2.47 The number of complaints referred to disciplinary action remained at the lower

level observed in 2013/14 as Figure 3 illustrates. This is directly linked to the lower numbers of internal complaints that we are opening – both because of the changes to the CPD regime and the risk assessment procedures introduced in January 2014. In addition, the 59 complaints referred to Disciplinary Tribunals related to just 38 barristers<sup>19</sup> so the numbers of barristers referred to disciplinary action in 2014/15 is smaller than the complaint figures would suggest.

<b>Most common aspects referred to disciplinary action:</b>	
Discreditable/dishonest conduct	20
Practising without a practising certificate	9
Failure to comply with a sentence of a tribunal	8
Criminal conviction(s) – not drink driving	8
Failure to administer chambers properly	7



<sup>19</sup> One barrister was subject to eight separate complaints and another barrister was subject to seven complaints

## Disciplinary action outcomes

### Determination by Consent

- 2.48 A total of 14 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 11 cases the PCC 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.
- 2.49 The remaining three cases were closed by the PCC without a finding of misconduct: one was withdrawn after the barrister resolved his compliance issues with an earlier fine and two were dismissed following reconsideration of the seriousness of the breaches<sup>20</sup>.

Most common aspects closed at the Determination by Consent stage:	
Discreditable/dishonest conduct	4
Practising without a practising certificate	4
Criminal conviction(s) - drink driving	2
Failure to renew practising certificate	2
Failure to comply with a sentence of a tribunal	1

### Disciplinary Tribunals

- 2.50 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. Disciplinary Tribunals can make findings of professional misconduct where the barrister disputes the charges and have additional powers of sentencing compared with the PCC – including suspension and disbarment.

- 2.51 A total of 67 cases were concluded at the Disciplinary Tribunal stage in 2014/15: 53 at hearings and a further 14 cases which were withdrawn prior to a Tribunal hearing taking place. We reconsidered four cases<sup>21</sup> before serving charges on the defendant. The remaining ten cases were concluded at the directions stage.

### Directions

- 2.52 The directions stage refers to the process for establishing the timetable for submission of evidence and addressing other case management matters in preparation for the Disciplinary Tribunal hearing.
- 2.53 Ten of the cases that we referred to Disciplinary Tribunals ended at the directions stage and did not proceed to a Tribunal. In all of these cases we chose to “offer no evidence” – effectively withdrawing the cases without contest. At the suggestion of the Directions Judge in two linked cases

### Determination by Consent

*The DBC procedure is an alternative way of dealing with cases which would otherwise be referred to a disciplinary tribunal.*

*Under DBC, if the barrister agrees, the case against them will be dealt with on the papers and the PCC decides whether the individual is in breach of their professional obligations as set out in the Handbook and, if so, what sentence to impose. Sanctions can include reprimands or fines, but not suspensions or disbarments which can only be imposed by a Disciplinary Tribunal panel.*

*The barrister is given the opportunity to accept or reject the PCC's finding(s) and sentence.*

*The aim of the DBC procedure is to conclude the disciplinary process more quickly than a referral to a Disciplinary Tribunal hearing.*

<sup>20</sup> In one case the barrister did not hold a valid practising certificate but had not carried out any reserved legal activities during the period in question. The other case – where an unregistered barrister had not complied with the sentence of a Tribunal – was dismissed with advice and will be reconsidered should the barrister return to practice.

<sup>21</sup> On the advice of the prosecutors assigned to the cases, we withdrew four cases on the grounds that there was no realistic prospect of a successful prosecution before a Disciplinary Tribunal panel.

(concerning serious allegations that were made in court), the barristers voluntarily apologised to the complainants. With the apologies accepted by the complainants, the Office Holders of the PCC were content to accept the approach suggested by the Judge and offer no evidence in support of the charges. Three more cases were reconsidered on the basis of the receipt of further evidence, information and advice<sup>22</sup>.

2.54 The remaining five cases involved long running complaints about a single barrister dating from 2004 – 2007. The disciplinary proceedings arising from these complaints had been subject to numerous challenges by the barrister over many years which had prevented the cases progressing in any meaningful way. With a view to the length of time elapsed, associated evidential difficulties and the relatively low level of sanction that might ultimately be imposed, a decision was taken to discontinue the proceedings on the grounds that it was no longer in the public interest to pursue the matters. This concluded by far the longest running complaints within the BSB.

<b>Most common aspects closed at the Disciplinary Tribunal stage:</b>	
Discreditable/dishonest conduct	22
Criminal conviction(s) – not drink driving	10
Failure to comply with a sentence of a tribunal	6
Rudeness/misbehaviour in Court	6
Unregistered barrister holding out	6

2.55 It is clear from our day-to-day work that the overall directions process can be time consuming and susceptible to delays. As part of our review of the Disciplinary Tribunal Regulations, which is currently out for consultation (see paragraph 4.9), we have made proposals for the streamlining and

simplification of the directions processes while not changing the fundamental approach.

### **Tribunal Hearings**

- 2.56 In total 53 complaints were heard before a Disciplinary Tribunal panel in 2014/15. In 46 cases (87%), one or more charges against the barrister were proved<sup>23</sup>. In these cases the barristers were found guilty of professional misconduct and sanctions were imposed. The remaining seven cases were dismissed by the Tribunal panels.
- 2.57 In five of the dismissed cases the Tribunal panels accepted the defendants' evidence over that of the BSB or considered that the conduct issues were not serious enough to warrant a finding of professional misconduct. No costs were awarded, indicating that the panels considered that the BSB was acting properly in bringing the cases before the Tribunals.
- 2.58 In one case the barrister provided new evidence on the day before the hearing which we accepted as making a material difference and "offered no evidence" before the Tribunal – effectively withdrawing the complaint. This brought the total number of complaints where we "offered no evidence" to eleven for the year – or 16% of all cases closed at the Disciplinary Tribunal stage. This is a similar level to previous years where we withdrew 10-12% of complaints in this way.

<sup>22</sup> Two cases were reconsidered on the grounds that medical and personal difficulties for the barristers subject to disciplinary proceedings – one non-practising – meant that there was no public interest in pursuing the matters further. In the third case, new evidence meant that there was no longer a realistic prospect of a finding of professional misconduct being made. In all three cases, the PCC took the final decision to offer no evidence.

<sup>23</sup> 11 out of the 37 barristers facing charges at Disciplinary Tribunals pleaded guilty to one or more charges of professional misconduct (30%).

2.59 In the remaining case the Tribunal panel was critical of the BSB in that some material evidence was not investigated until after charges were served on the barrister and charges were not precisely drafted. On dismissing the case on the grounds that the complaint was not properly investigated, the Tribunal awarded costs to the barrister in the sum of £20,000. Following the hearing, we carried out a post-case review to fully establish the reasons for the failure and the lessons to learn. These identified both improvements that needed to be made to our internal quality monitoring systems and the drafting of charges. The details were reported back to the PCC to ensure that these issues are not repeated.

2.60 Whenever charges are dismissed at hearings or we offer no evidence, we conduct a review of the case to establish where we could improve and what lessons we can learn. However, we need to ensure that the lessons really are learned and fed back effectively into improvements in our enforcement processes. There is more that we can do in relation to knowledge management and quality assurance and, therefore, a Professional Support Lawyer will shortly be joining the PCD to both support

our existing systems and to drive improvements (see Action points).

### Charges proved and sentencing

Key Stats	Barristers	41
	Disbarments	13
	Total fines	£28,000

- 2.61 In total, 41 barristers had one or more charges against them proved in 2014/15. Table 6 illustrates the most common charges that were proved during the year. While the majority of the charges related to the 8<sup>th</sup> Edition of the Code of Conduct, charges under rules or Core Duties of the BSB Handbook began to be heard towards the end of the year.
- 2.62 All findings of professional misconduct are published on the BSB and BTAS websites and include details of the charges and sanctions imposed.
- 2.63 Where findings of professional misconduct are made against barristers, it is open to the Disciplinary Tribunal panel (or the PCC for Determination by Consent case) to impose sanctions on the barristers in question. Table 7 illustrates the sanctions that were imposed during the year.

Table 6		Charges proved in 2014/15		[Charges under the Handbook in bold]
Charge		Cases	%	
301(a)(i)	Being dishonest or otherwise discreditable	14	25%	
301(a)(iii)	Acting in a manner likely to bring prof into disrepute	11	19%	
905(d)/ <b>rC64.1</b>	Failing to provide information to BSB promptly	10	18%	
905(b)	Failing to report criminal charges or convictions	7	12%	
905(f)/ <b>rC64.2</b>	Failing to comply with a decision or sentence of BSB/BTAS panel	6	11%	
202(c)	Failure to renew practising certificate	5	9%	
	<b>Other Breach of duties</b>	5	9%	
302	Knowingly or recklessly misleading the court	2	4%	
	...			

2.64 The most severe sanction available is disbarment and thirteen barristers were disbarred in 2014/15. These were the most serious cases heard at Disciplinary Tribunals and included charges relating to criminal convictions, dishonesty and barristers repeatedly failing to comply with the practising requirements of the profession. In the past, the most common sanctions imposed by Disciplinary Tribunal panels were always fines, reprimands and suspensions. However, during 2014/15, Disciplinary Tribunal panels were more likely to impose a sanction of disbarment than any other sanction. This is an indication that only the most serious and highest risk cases are being referred to Disciplinary Tribunals now that we have options to take more proportionate enforcement action by way of both the Determination by Consent procedure and administrative sanctions.

## Appeals

2.65 Where administrative sanctions are imposed or findings of professional misconduct are made by a Disciplinary Tribunal, barristers have the right to appeal against either the findings or the sentence imposed. Appeals

against administrative sanctions are heard by an Appeal Panel convened by BTAS whereas appeals against Disciplinary Tribunals are made to the High Court.

2.66 In total we received one new appeal against an administrative sanction and seven barristers appealed to the High Court against Tribunal decisions<sup>24</sup>. To date, five of the 30 barristers sentenced at Disciplinary Tribunals in 2014/15 have appealed. We concluded appeals in relation to eleven cases in 2014/15, with five allowed.

2.67 Two of the allowed appeals were linked with a further appeal which was dismissed: a Disciplinary Tribunal panel had made findings against three joint Heads of Chambers. On appeal, the Visitors to the Inns of Court<sup>25</sup> found that only one of the barristers was responsible for the Pupillage Committee at the heart of the complaint and, therefore, overturned the findings in relation to the other two barristers. A further appeal had been allowed in 2013/14, uncontested by the BSB, but the costs were not settled until the start of 2014/15.

2.68 Another appeal, heard by the High Court in 2014/15, was allowed on the basis that the judge agreed with the appellant that an

**Table 7**

**Sanctions imposed by Disciplinary Tribunal panels or the Professional Conduct Committee (DBC) – annual comparison 2013/14 to 2014/15**

Sentence	2013/14		2014/15	
	Barristers	%	Barristers	%
Disbarred	17	24%	13	32%
Suspended	14	19%	8	20%
Fined	31	43%	18	44%
Reprimanded	27	38%	15	37%
Advised as to Future Conduct	3	4%	4	10%
Other	5	7%	4	10%

<sup>24</sup> Relating to 8 individual cases

<sup>25</sup> The Visitors to the Inns of Court ('the Visitors') heard appeals before jurisdiction passed to the High Court. Appeals that started with the Visitors remained with the Visitors when the jurisdiction changed.

adjournment of the Disciplinary Tribunal at which he was disbarred should have been granted to allow him to attend. The Tribunal hearing had gone ahead in the absence of the appellant. The result of the appeal was that the case was remitted to a new Disciplinary Tribunal. A further appeal against a sentence of disbarment – on an entirely separate case – resulted in the case being remitted to a fresh Disciplinary Tribunal for sentencing on the grounds that the barrister should have had an opportunity to make representations in mitigation prior to sentencing. In both cases the barristers were disbarred by the Disciplinary Tribunal hearings that followed.

- 2.69 At the close of the year, nine barristers had appeals against disciplinary findings, sentences or administrative sanctions pending. However, even though the number of appeals ongoing at any one time is small, these cases often take up a significant amount of PCD and PCC resources.

### Legal action

- 2.70 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 normally take the form of judicial reviews of the decisions taken.

### Judicial reviews

- 2.71 Judicial reviews are a challenge to the way in which enforcement decisions have been made – either by the BSB or by an independent Tribunal or Appeal panel. At the start of 2014/15 we were handling four judicial reviews and six new applications were received during the year (although permission in one case was refused and a further case was discontinued).
- 2.72 One judicial review judgement was handed down in 2014/15 following an application made in 2010. In a challenge to the regulations on cost claims against the BSB, the Court decided that the BSB's regulations were valid and that the wording of the regulations had correctly been construed in the past. A further judicial review application relating to a PCC decision to dismiss complaints about two barristers without investigation was struck out by the Administrative Court.
- 2.73 Two Court of Appeal hearings took place during the year in relation to judicial review applications that had been refused by the

#### Case study:

*The Bar Council Records Team reported to the Professional Conduct Department a barrister who had not properly complied with the 'authorisation to practise' process by practising without a current practising certificate.*

*Practising without a practising certificate is a failure to comply with a regulatory obligation and a breach of the BSB Handbook. Barristers not observing their regulatory obligations are identified as a strategic risk by the BSB and are normally considered to be 'high risk'.*

*During investigation, it came to light that the barrister had failed to renew her practising certificate on time and had practised in a limited capacity for a period of five days. When asked to comment, the barrister was genuinely apologetic for her actions.*

*A risk assessment was carried out and the risk was assessed as medium on the basis that although the BSB Handbook had been breached, (1) the barrister had taken all reasonable steps to remedy the breach; (2) there had been no adverse consequences for the public or the profession; and, (3) the barrister had fully apologised for her oversight. Taking these factors into account, the barrister was issued with an administrative warning in accordance with the Complaints Regulations.*

Administrative Court<sup>26</sup>. In our 2012/13 Annual Report we gave particular focus to a number of issues with Council of the Inns of Court (COIC) disciplinary and appeal panel appointments that came to light in late 2011. In one Court of Appeal case, three applications relating to “time-expired” panel members were refused and as there is no ability for the decision to be appealed further, the matters are concluded.

- 2.74 In the second hearing, the Court of Appeal set aside the decision of the Administrative Court and quashed the Visitors’ decision to dismiss an appeal against a Disciplinary Tribunal finding made in 2010. At the close of the year the case was back with the Visitors to consider whether the quashed findings should be referred to a fresh Tribunal. Early in 2015/16 the decision was taken that the case will be reheard.
- 2.75 The Court of Appeal was highly critical of a failure by the BSB to disclose a draft statement of the principal witness against the defendant before the Disciplinary Tribunal. This failure was first identified, and rectified, prior to the initial appeal to the Visitors in 2011 and we implemented policy changes at the time to try to prevent the situation arising again.

## Compliance and revenue

- 2.76 In 2014/15 we issued administrative fines totalling £900 and disciplinary fines were imposed, either by the PCC or a Disciplinary Tribunal, totalling £28K. We received payments totalling £36K in payment of fines imposed both in 2014/15 and outstanding amounts from previous years.
- 2.77 Currently we have no express powers to reclaim debts, so if a barrister fails to pay a fine, our normal recourse is to raise an internal complaint about the barrister for

failing to comply with a disciplinary finding<sup>27</sup>. 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 2014/15, 81% of barristers have complied to date. We closely monitor compliance with administrative and disciplinary fines: of the four barristers who have not yet complied, two are paying by instalments and payments are expected shortly in relation to the remaining two barristers.

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<sup>26</sup> Both of the decisions by the Administrative Court were highlighted in our Enforcement Annual Report 2013/14 at paragraphs 2.43 and 2.44.

<sup>27</sup> One of the core values of the BSB is “value for money” so while the option to make a debt recovery claim to the courts is available, in practice this process is prohibitively expensive.

## 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, particularly 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. As mentioned above, we will be employing a Professional Support Lawyer in 2015/16 who will contribute to improving our quality assurance systems further.

## 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

<b>Indicator</b>	<b>Description</b>	<b>Performance</b>	<b>Target</b>
<b>KPI</b>	The percentage of complaints concluded or referred to disciplinary action within service standards	68.7%	80%
OPI 1	The percentage of complaints concluded or referred to investigation within 8 weeks	65.0%	80%
OPI 2	The percentage of external complaints concluded or referred to disciplinary action within 8 months following investigation	83.6%	80%
OPI 3	The percentage of internal complaints concluded or referred to disciplinary action within 5 months following investigation	75.3%	80%

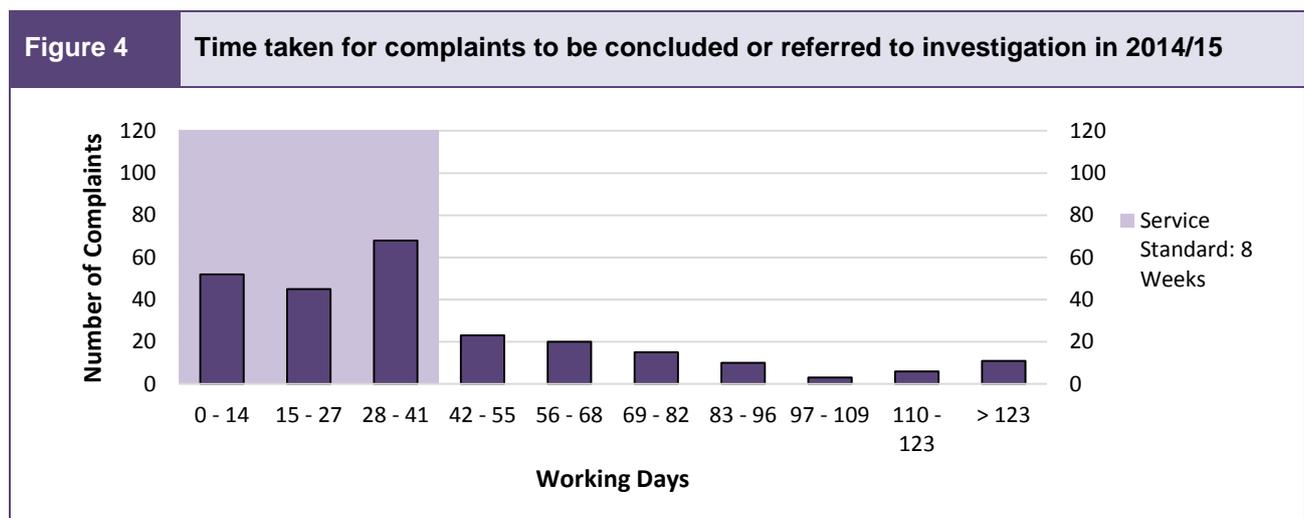
overarching Key Performance Indicator (KPI) which tracks how long it takes us to come to a decision on whether or not to refer complaints for disciplinary action.

- 3.6 Our Performance Indicators for 2014/15 are set out in Table 8 along with our performance figures for the year. Our KPI target for the year was to conclude or refer to disciplinary action 80% of cases within our service standards – increased from a target of 75% in 2013/14<sup>28</sup>.
- 3.7 In our Enforcement Interim Report for 2014/15 we highlighted that we were on course to meet the target for the year but that there were factors affecting our assessment of complaints that could impact on our performance in the second half of the year. Disappointingly, at the close we failed to meet the KPI target for 2014/15, concluding or referring 68.7% of cases within service standards. The operational performance indicators show that, as our forecast suggested, the main reason why the target was missed was an issue at the assessment stage where two key members of our small Assessment Team left the organisation. While we made an effort to spread the assessment work across the other teams within the PCD, the

Investigations and Hearings Team was also carrying staff vacancies at the same time.

**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 met this target in both the first and second quarters and narrowly missed the target in the third quarter. The real impact came from the fourth quarter performance figures where only 27 of the 77 complaints (35%) were assessed within eight weeks.
- 3.10 In our Enforcement Interim Report 2014/15 we indicated that a staff shortage within the PCD’s Assessment Team would likely have a short-term impact on performance as vacancies for both of our two Assessment Officer roles had to be filled and the new staff trained. The effect of these staffing issues can be seen in further analysis of the



<sup>28</sup> In 2013/14 we concluded or referred to disciplinary action 76.7% of complaints within service standards. Our target for that year was 75%. In order to challenge ourselves to improve, we increased the target to 80% for 2014/15.

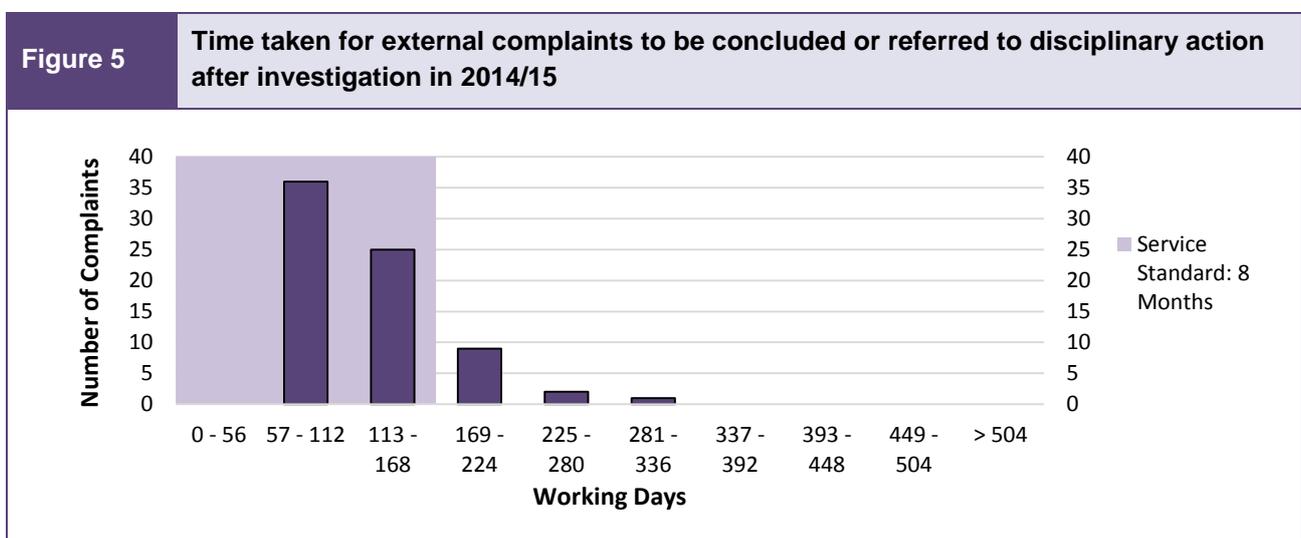
cases worked on in the fourth quarter; showing that the time taken for the Assessment Team to carry out an initial assessment of the information increased from an average of 7 days in the first and second quarters to 20 days in the fourth quarter. The time taken to carry out further enquiries also doubled in the fourth quarter compared with the first half of the year. The eight week timeframe we aim for in the assessment of complaints leaves very little room to make up for any delay, so these factors were enough to prevent more than half of complaints in the fourth quarter being assessed within the time limit.

3.11 In the fourth quarter we also had to seek expert advice from members of the PCC in 38% of cases compared with 21% in the first half of the year. In the main this was, again, related to staffing issues as in order to keep complaints progressing and maintain the quality of our decision making, we asked Committee members to consider some of the cases undergoing assessment. While we do allow some time for seeking advice, and set the target at 80% for circumstances such as where advice might take longer than expected, the assumption is that the majority of complaints will not require advice. We expect the numbers of complaints requiring advice to return to the usual level now that our Assessment Officers are more

experienced, but if we continue to need to seek advice in more than a third of cases, this may have an impact on our ability to complete assessments within eight weeks and may also have an impact on the resources of the PCC.

3.12 The effect of the fourth quarter figures meant we missed our target of 80% for the year, concluding or referring for investigation 65% of complaints within eight weeks. Figure 4 illustrates how long each of our assessments took in 2014/15.

3.13 Of the 102 complaints undergoing assessment at the close of the year, we still had 31 that had already exceeded the eight week limit. These will all contribute negatively to performance figures in early 2015/16 when we are able to make a decision on them, making it unlikely that we will meet our 80% target in the first and potentially second quarter. However, now that we have a full staff complement again, if we allow for a period of training and the clearing of the backlog it is fully anticipated that we will return to performance figures above 80% as the nature of the external caseload has not changed over recent years. We are closely monitoring the situation (see “Forecast of performance” at paragraphs 3.20 – 3.24).

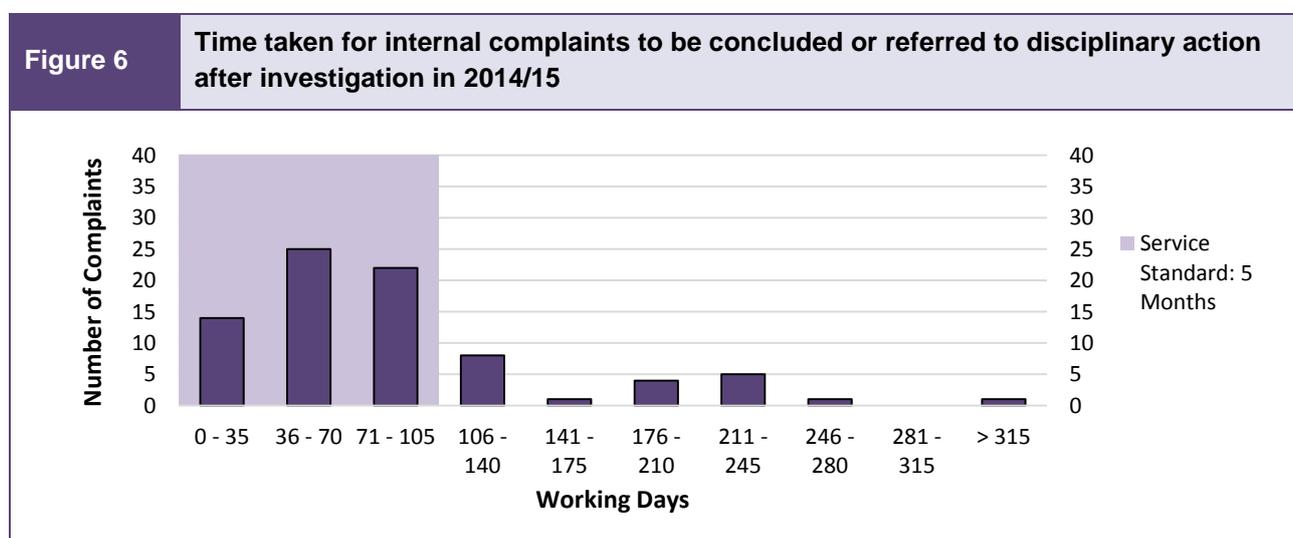


### Second OPI: Investigation of external complaints

- 3.14 For external complaints, we aim to conclude the investigation and 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 is made by the PCC.
- 3.15 Our target for the year was to conclude or refer to disciplinary action 80% of external cases within eight months – increased from a target of 70% in 2013/14. We failed to meet this target in the first quarter of 2014/15 as we cleared a small backlog of complaints that were over-running at the end of the previous year. However, a strong performance in the remaining quarters meant that overall we met the target and matched our performance figures from the previous year in concluding or referring 84% of external complaints within eight months.
- 3.16 Figure 5 illustrates how long it took us to assess and investigate external complaints in 2014/15.

### Third OPI: Investigation of internal complaints

- 3.17 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.
- 3.18 Our target for the year was to conclude or refer to investigation 80% of cases within eight weeks. We narrowly missed this target with an overall performance figure for the year of 75%. The issue – which was highlighted in our Enforcement Interim Report 2014/15 – was our performance in the first quarter (63%). To a large extent the first quarter figures were affected by the nature of the caseload at the end of 2013/14. Normally a small number of over-running complaints would be balanced by the new complaints received. But in the last quarter of 2013/14 we opened only five internal complaints (compared with a typical quarterly figure of 40 complaints). This meant that at the end of the year a



significant proportion of the caseload was over-running the five month service standard – despite numbering just 11 cases. We anticipated at the time that by clearing this backlog we would negatively impact on our performance figures at the start of 2014/15. A similar situation presents itself at the end of 2014/15 (see “Forecast of performance” below) and is likely to happen from time-to-time given the small and irregular nature of our current internal caseload. Still we do not expect to be operating significantly below our 80% target in 2015/16.

- 3.19 Figure 6 illustrates how long it took us to investigate internal complaints in 2014/15.

#### **Forecast of performance for 2015/16**

- 3.20 There will always be some instances where we need to obtain more information from complainants or barristers, seek expert advice or have to deal with other factors which will cause a case to over-run our service standards. To account for some of these instances we set our targets at 80%. In 2014/15 we added additional monitoring tools to our case management system which help us to track our caseload and identify possible issues. These help us both to take action in advance and see where cases are already over-running our service standards – forecasting the impact this will have on our future performance figures.
- 3.21 At the end of 2014/15, 25% of complaints undergoing assessment or investigation were over-running our service standards. These complaints will contribute negatively to future performance figures when we are able to make a decision on them and would suggest that it is likely we will narrowly miss our 80% KPI target in the first and potentially

second quarters of 2015/16. The over-running cases relate to our OPIs as follows:

- OPI 1:** 31 cases outside eight weeks (30%);  
**OPI 2:** 8 cases outside eight months (14%);  
**OPI 3:** 26 cases outside five months (27%);

- 3.22 Our case management system allows us to monitor each stage of the enforcement process in detail and identify the reasons why these complaints came to be over-running at the end of the year. The delays associated with the assessment caseload (OPI 1) can be seen to relate to the staffing issues at the end of 2014/15 – the initial assessment of complaints taking 20 working days on average. This on its own would not normally cause complaints to take more than 8 weeks to assess but combined with the fact that half of the complaints also required further enquiries (average 23 working days) and a third of complaints required expert advice (average 14 working days) this has created a backlog.
- 3.23 The complaints that are over-running our investigation performance indicators reveal different sources of delay. Amongst the 26 internal complaints that were beyond the five month mark at the end of the year were the 17 linked complaints (highlighted at paragraph 2.14)<sup>29</sup>. Considerable delays in obtaining advice – combined with the need to correspond with a complainant at the early stages of the complaint<sup>30</sup> – meant that we could not progress these cases as quickly as we would have liked. All of the complaints were closed shortly after the end of the year, which has immediately put us in a position where – given the numbers of complaints we handle – we will not be able to make up the difference and meet the 80% target for

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<sup>29</sup> The investigations of just eight external complaints were over-running at the close of the year. Here we experienced delays in corresponding with the complainants on the cases and in most cases had to both obtain advice and carry out further enquiries. However, we set the target to 80% to account for such circumstances and we are on course to continue to meet this target. It should be noted that six of the external complaints at the investigation stage at the end of the year had experienced delays of at least two weeks at the assessment stage and may, therefore, not be concluded within the service standards.

<sup>30</sup> The 17 linked complaints started as external complaints but were re-registered as internal complaints. This meant that the performance target level was reduced to five months from eight months – despite the fact that some assessment and correspondence with the complainant had already taken place,

this performance indicator in the first quarter. This is another example of one reported issue (or multiple issues with one individual barrister) having a significant effect on our caseload and performance figures, due to the relatively small numbers of complaints we handle.

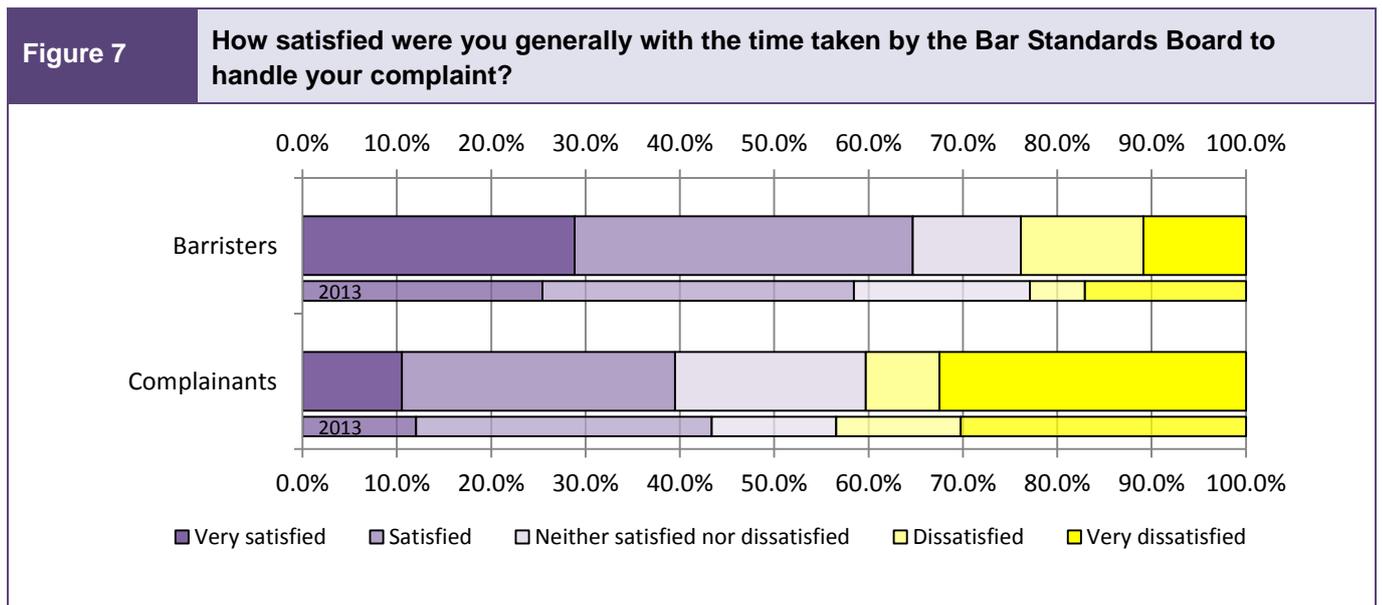
3.24 Once the over-running complaints across the three OPIs have been cleared – which should be in the first half of 2015/16 – we expect to be back to meeting our performance targets. However, as we will miss our targets in the first quarter, it is very unlikely that we will be able to meet the overall KPI target for the year and conclude or refer to disciplinary action 80% of complaints within service standards<sup>31</sup>. Our aim for the end of the year is to be back to regularly meeting the targets for each operational performance indicator on a quarterly basis.

**Feedback survey results**

“ Time limits should not ‘protect’ misconduct.  
Complainant response #12219

3.25 To accompany our performance figures in 2014/15, we asked barristers and complainants how satisfied *they* were generally with the time we took to handle their complaints. There was no significant change compared with the previous year, with 60% of complainants and 76% of barristers either responding that they were satisfied or having no strong opinion. However, this still leaves over a third of complainants dissatisfied with the time we took to handle their complaints.

3.26 We also asked some specific questions about timeliness which show some improvements in the time we took to acknowledge complaints (or notify barristers of the complaints against them) and both complainants and barristers tended to agree that the time taken to respond to calls, emails and letters was acceptable. The big issue for complainants – and the biggest area of disparity between complainants and barristers – was the time taken to come to a final decision on their complaint. Half of complainants responded that they were either very dissatisfied or dissatisfied, which points to a more general dissatisfaction with the overall timescale of our enforcement



<sup>31</sup> Current projections suggest that we would have to be concluding or referring to disciplinary action 90% or more of complaints within service standards in each of the second, third and fourth quarters to meet the overall target for the year.

procedure. In contrast, two-thirds of barristers were either satisfied or very satisfied with the time we took. This result is consistent with our survey results in previous years, although in contrast to the 2013/14 results for complainants, there was a stronger correlation with the outcome of the complaints. Complainants whose complaints were closed without investigation were the most likely to be very dissatisfied compared with complaints that were investigated or referred to disciplinary action (despite the fact that disciplinary action takes significantly longer than the assessment of complaints)<sup>32</sup>.

“ I rate the timing as dissatisfied only because it seemed to take a long time to end.

*Barrister response #02263*

3.27 The consistency of our survey results across recent years shows that the dissatisfaction amongst complainants is not due to any performance issues specific to 2014/15. Still, it is difficult to know whether the issue is that complainants (and to a lesser extent barristers) are not aware that the process of assessment and investigation could take up to eight months – as per our second Operational Performance Indicator – or whether they consider our service standards

to be too long. 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.

3.28 In our survey report last year, we established that further qualitative research into user experiences should be carried out – looking into issues such as timeliness and the fairness of our procedures. This work is now being considered as part of a wider BSB project into consumer engagement which will begin in 2015/16.

### 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. We also monitor the time taken for the Determination by Consent procedure and Disciplinary Tribunals so that we can give barristers and complainants an indication of how long

Stage	Type	Stages Completed	Service Standard (Days)	Percentage of Stages Within Service Standards
Determination by Consent	Internal	11	93	55%
Three-person Disciplinary Tribunal	Internal	14	86	7%
Three-person Disciplinary Tribunal	External	13	166	54%
Five-person Disciplinary Tribunal	Both	26	197	77%

<sup>32</sup> Notably, in 2013/14 complainants whose complaints were investigated were more likely to be dissatisfied than complainants whose complaints were closed without investigation. This points to the outcome being less important than the time taken – in contrast to the results in 2014/15.

disciplinary proceedings take and also to identify areas where we can improve. Where a referral to a Disciplinary Tribunal 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 Disciplinary Tribunals less suitable for setting key performance indicators but nevertheless it is imperative that we monitor the time taken and set internal standards. In contrast, the Determination by Consent procedure is substantially within our control. Table 9 compares our figures for 2014/15 for the Determination by Consent and Disciplinary Tribunal stages with our service standards for those stages.

- 3.30 Following on from the trend observed in 2013/14, Determination by Consent procedures continued to take longer than the service standard, with only half of cases concluding within the time limit. As with last year, in two of the five cases that took longer, there were 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<sup>33</sup>. However, as we highlighted in our Enforcement Annual Report 2013/14, the DBC process cannot continue without the barristers' involvement and the alternative – should we terminate the DBC process – would be a more costly and time consuming Disciplinary Tribunal. Therefore, we must endeavour to conclude rather than stop the process.
- 3.31 As the Determination by Consent procedure is substantially within our control, there are opportunities for improvement and we must be aiming to conclude more than half of complaints within the service standard. To help us to focus on completing the DBC process as efficiently as possible, we intend to review the service standard and set a

target for 2015/16 (which will apply for the year). We will also adapt our case management system so that complaints at the DBC stage are monitored against targets in the same way as complaints undergoing assessment or investigation. We will report against this target in our Interim Report 2015/16 which will review the first six months of the year.

- 3.32 The time taken for Disciplinary Tribunals to progress from referral to hearing improved compared with 2013/14, with 54% of external three-person Tribunals concluded within our service standard<sup>34</sup> along with 77% of five-person Tribunals. The issue continues to be the service standard for three-person Tribunals in internal cases which we established in our last Enforcement Annual Report is no longer set at an appropriate and realistic level due to changes in the nature of the caseload within the PCD. When the service standard was set, the majority of three-person internal Tribunals were CPD cases where multiple cases could be heard on the same day by the same Tribunal panel. By “block-booking” cases in this way we were able to progress individual complaints significantly faster than we otherwise could. As we have highlighted, CPD cases are now rarely heard at Tribunals and it is not often that we can progress any other complaints within the same timescale. We will be reviewing all of the Disciplinary Tribunal service standards following our current review of the Disciplinary Tribunal Regulations as the procedures (applying to all types of complaints) will be changing.

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<sup>33</sup> The longest running case was unusual in that the PCD had to seek additional advice from a Committee member during the course of the DBC procedure. The service standard does not allow any time for seeking advice. A further two cases fell only a matter of days outside the service standard.

<sup>34</sup> In our Enforcement Annual Report 2013/14 we reported that 27% of external three person Disciplinary Tribunals concluded within the 166 day service standard.

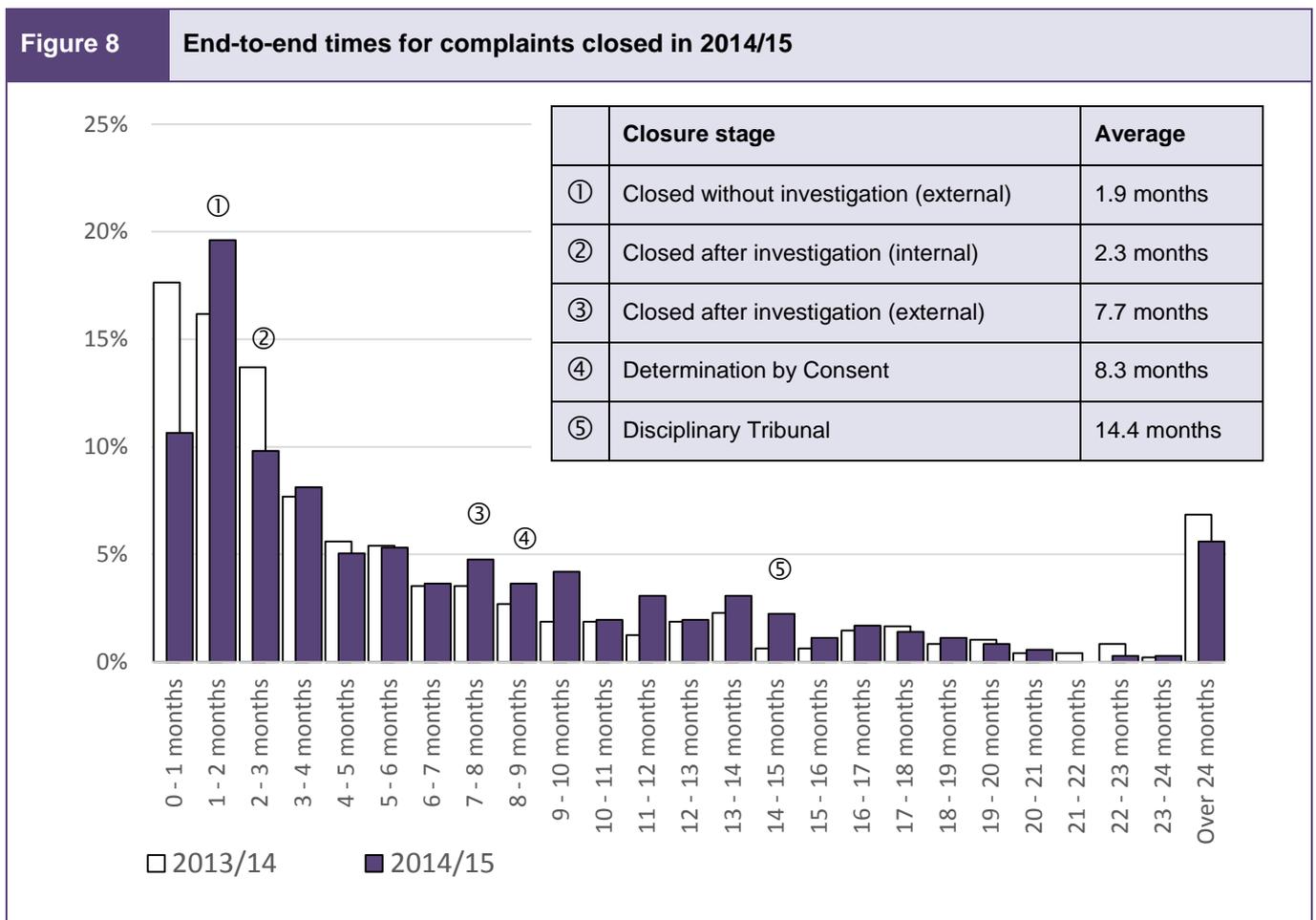
## End-to-end times

3.33 Our performance indicators have been designed to give an accurate indication of the length of time complainants and barristers should expect for complaints to be assessed (eight weeks) and investigated (five or eight months). However, in our reporting we only indicate what proportion of complaints fell inside or outside of these indicators. To provide further information, we also publish end-to-end times for our entire enforcement process. These indicate how long – in real time – complaints took to close in 2014/15<sup>35</sup>.

3.34 Figure 8 illustrates how long each of the complaints closed in 2014/15 took from opening to final closure: whether this be at

assessment, investigation or a Disciplinary Tribunal. Also marked on the chart are the average times taken for different complaint outcomes<sup>36</sup>.

3.35 The general pattern reflects our performance indicators, with an increase in the average time for a complaint to be concluded from 3.2 months in 2013/14 to 4.4 months in 2014/15. However, the average time taken for complaints referred to Disciplinary Tribunals (from first opening to final hearing) came down from 16.7 months in 2013/14 to 14.4 months in 2014/15. This is a significant improvement and can be seen in Figure 8 by the smaller proportion of complaints taking more than 18 months to conclude.



<sup>35</sup> Periods of adjournment are included in the figures, so if, for example, a complaint was on hold for 10 weeks pending the outcome of a court case and then assessed in 6 weeks, the reported figure will be 16 weeks,

<sup>36</sup> As the data is skewed to the right, the figures given are median averages rather than mean averages.

## Accessibility

- 3.36 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.

“ You could teach the SRA a thing or two! Your service is user friendly and accessible, and most importantly fast.

*Complainant response #02321*

- 3.37 We asked our survey respondents a number of questions about how they obtained information about the BSB and their experience of making a complaint.
- 3.38 We asked complainants where they first heard about the BSB's enforcement procedure. In common with last year's result, a third of respondents told us that the internet was where they first heard about us.

However, there remained quite a spread of different sources<sup>37</sup>. The most important thing is that potential 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. Only two respondents commented that they had difficulties in finding out about us – saying we need to do more to get information into courts and prisons.

- 3.39 Just over a third of complainants telephoned the PCD before making their complaint seeking advice or assistance and all but two respondents were able to speak to someone. In rating the advice or assistance they received, satisfaction levels increased compared to the previous year. The number of complainants who were satisfied increased to 65% and only 13% of respondents indicated that they were not satisfied<sup>38</sup>.
- 3.40 We asked complainants whether making a complaint to the BSB was easy and 68% of respondents agreed that it was easy. This was a similar result to the previous year where we saw an improvement in this area.

### Case study:

*A complaint about the conduct of a barrister was referred to the Professional Conduct Department by the Legal Ombudsman. The Legal Ombudsman reported that the barrister had: (1) breached the public access rules by accepting public access instructions when not entitled to do so; and, (2) falsely claimed to have paid a subsequent compensation order.*

*To undertake public access work, a barrister must complete qualifying training and register with the Bar Council.*

*The Professional Conduct Department carried out a full investigation which revealed evidence that the barrister had undertaken public access work despite not being registered to do so and that he had deliberately claimed to have paid the compensation order, knowing that he had not made the payment. Satisfied that the barrister had breached the BSB Handbook the Professional Conduct Department referred the case to the Professional Conduct Committee. The Committee, taking into account the risk posed by the barrister to the public, considered the breaches serious enough to be heard by a five-person Disciplinary Tribunal.*

*Agreeing with the Committee, the Tribunal found the barrister guilty of two charges of professional misconduct. A six month suspension was imposed on the barrister and he was further prohibited from undertaking public access work for three years.*

<sup>37</sup> Other sources include: solicitors [11%], friends/relatives [9%]; the Legal Ombudsman [7%]. Full results are included in the Statistical Report accompanying this report.

<sup>38</sup> In 2013/14, 20% of respondents indicated that they were dissatisfied with the advice they received.

Where complainants disagreed, the main issues were that information was not easy to obtain and the complaints procedures were not made clear. However, on the whole complainants and barristers gave similar responses to previous years: two-thirds of complainants felt that our complaints form was easy to fill in and information was easy to obtain. In addition, 58% of complainants and 67% of barristers felt that the procedures for handling complaints were made clear. There is, however, more that we can do for the 21% of complainants and 15% of barristers who still felt unclear about our procedures and we are addressing this as part of our ongoing Public Information Project (see paragraph 3.44).

“ *It is hard to grasp some legal concepts – possible examples or explanations to back up statements would be useful.*

*Complainant response #12399*

3.41 We use leaflets and our website as our main methods of providing information to complainants and barristers about our procedures for handling complaints.

### Leaflets

3.42 In our Enforcement Annual Report last year we identified that only 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. We made a commitment to ensuring that leaflets are sent out with our first communications to all complainants and barristers regardless of whether they have already accessed our website.

3.43 Our 2014/15 results show that 56% of complainants could recall receiving a leaflet

and 88% found them easy to understand and informative. This is a significant improvement<sup>39</sup>.

### Website

3.44 Almost 70% of complainants and 40% of barristers recalled looking for information on our enforcement procedure on the BSB website. The survey results show a slight improvement in the percentage of complainants who were able to find the information they were looking for without too much trouble (72%), but still 21% of complainants and 26% of barristers could not easily find the information and 7% of complainants could not find the information they needed at all. Overall, this indicates that the information is there but we could do more to make it more accessible. Clearly the BSB website is a vital resource and information needs to be easy to find. To this end we worked on a project during 2014/15 to overhaul the publically available information about the enforcement process on the website – taking expert advice with the aim of improving the accessibility, layout and clarity of the information on the enforcement webpages. In 2015/16 we will move onto the implementation of the required changes with a view to having new webpages for our enforcement work online in January/February 2016.

“ *Just have a simple section on the BSB website with a few links to the guidance, and people who can help. The site is too ‘busy’ and not easy to use.*

*Barrister response #12513*

### Staff Performance

3.45 We asked barristers and complainants how they would rate their overall experience of the Bar Standards Board’s staff. Overall,

<sup>39</sup> The figures for barristers did not improve and while in the majority of cases this was because the complaints were closed without investigation – and in those circumstances we would only contact the barrister to say the complaint was dismissed – we will ensure that in 2015/16 the barrister receives a leaflet whenever a complaint about them is investigated.

82% of barristers rated their experience as good or excellent. Complainants' ratings were lower with 43% giving our staff a positive rating but 29% rating staff as poor or very poor. Essentially this is the pattern we have seen in the previous three years. Further analysis reveals a correlation with the outcomes of complaints – where complaints were referred to disciplinary action, all of the complainants responding in 2014/15 rated the staff as excellent, good or average.

“ I would like to thank the staff of the BSB for handling my complaint, particularly the people involved on the day of the hearing. They were all very respectful and supportive, making a very stressful situation (I had to be cross-examined) more endurable.

Complainant response #02376

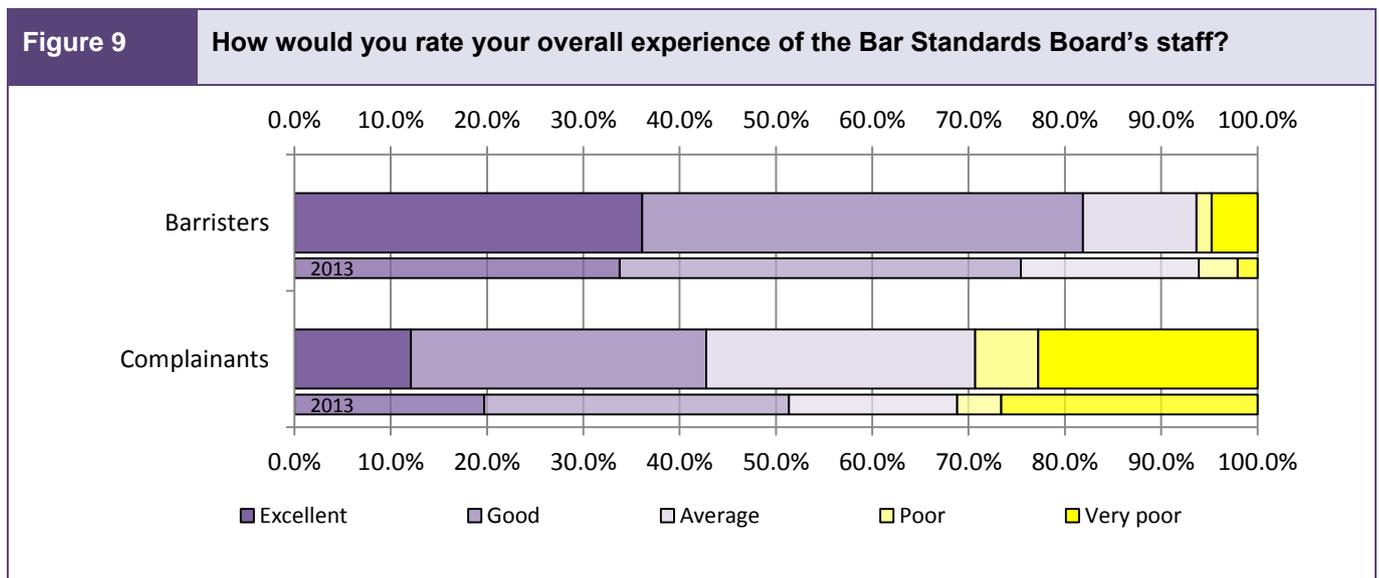
3.46 We also asked some specific questions about staff performance. The majority of complainants and barristers rated our staff as good or excellent at being polite and professional and handling calls. Barristers were similarly positive about our performance in being helpful and answering queries while complainants were more likely to rate staff as average in these areas.

3.47 We also asked how we performed in providing information about the progress of cases (without the parties having to ask). This was the area, as with previous years, where our staff received their lowest ratings. Although 85% of barristers rated the staff average or above average, only 61% of complainants agreed.

“ It is fair to say the pace at which the process moves by the BSB is impressive, and many statutory regulators cannot currently hope to achieve similar service levels. However, in my view, work remains to be done to bring the investigatory processes of the BSB up to the same standard of other regulators.

Barrister response #02327

3.48 So where complainants have issues they tend to be around our performance in providing updates and, to some extent answering queries; 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, has been an issue of concern in recent years. Nonetheless, we want complainants to feel that they can come to us with issues and we



continue to train our staff to help us to achieve this.

### In-house training

3.49 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 legal training for members of staff without legal qualifications. In addition, we run our own training programme, specific to the knowledge and skills required by the staff of the PCD. Throughout 2014/15 we ran nine training sessions on topics such as:

- Legal Aid;
- Judicial reviews;
- Disclosure in regulatory proceedings.

3.50 We intend for our in-house training programme to continue in this forthcoming year with a particular emphasis on casework and casework administration skills.

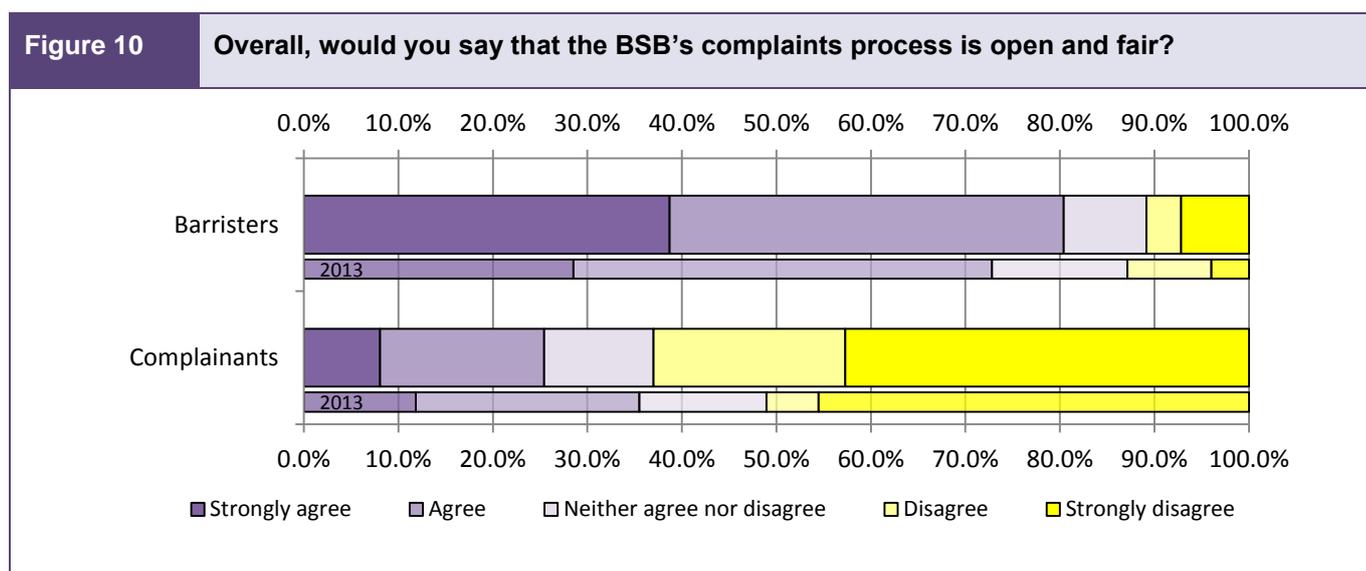
### Transparency and openness

3.51 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 responses<sup>40</sup>.

3.52 Figure 10 shows that this year 80% of barristers agreed that our enforcement process is open and fair and only 11% disagreed. For complainants, 26% agreed and 63% disagreed. Last year we saw an improvement in the responses of complainants but in 2014/15 the responses have been less positive – returning to close to the level observed in 2012/13. So the disparity between the views of complainants and barristers is still there and the gap between them has increased. For complainants, there is a strong correlation with the decision we took on their complaints. Where we referred cases to disciplinary action, 75% of complainants agreed that we were open and fair.

3.53 We also asked the survey recipients to indicate how strongly they agreed or disagreed with a series of statements relating to the openness and transparency of the enforcement system. The big issues for complainants remain the same: 56% of



<sup>40</sup> Bar Standards Board (2011): "Understanding Complaints Data"

complainants felt that we did not consider all of the evidence relating to their complaint and 59% of complainants disagreed that the reasons for the final outcome were clear<sup>41</sup>. 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 say that we did not take their concerns seriously or suspect that we are siding with the barristers.

“ *In general I felt as with all other organisations dealing with complaints by whistle blowers that there was always a reason why nothing could be achieved. I do still feel they should have been able to help.*

*Complainant response #12456*

- 3.54 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 recent years – particularly at the initial assessment stage. Despite our ongoing commitment and work towards improvements, the survey results show that more complainants than last year felt that the complaints process is not open and fair. 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. It may be no coincidence that our move towards taking a risk-based and outcomes-focussed approach has come at the same time as an increase in the dissatisfaction of individual complainants.
- 3.55 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 issues of concern to the attention of the BSB in the future. But we have to recognise that the purpose of the enforcement system is not to provide a personalised resolution service that is characteristic of complaints handling bodies. Our role is in maintaining the high standards of the profession rather than working with complainants to provide the outcomes they want. As part of our work in 2015/16 on public information and in developing our approach to risk, we will look at the terminology we use and the way we communicate to manage the expectations of complainants better and ensure our role is clear. In this way we can keep complainants involved with our processes but may be able to reduce the perception that we should be working in their best interests rather than the public interest.

“ *[The] BSB conducted a very fair and thorough examination of a complaint brought against me by my former employer and reached a conclusion that I believe reflected the underlying truth in the case. I am grateful for the time and care taken.*

*Barrister response #02409*

## Checks and balances

- 3.56 Our PCD staff carry out regular checks on our caseload (including spot-checking and case review meetings to ensure cases are progressing as they should), but often a review from outside the PCD is the most effective means of identifying potential issues and driving improvements. To this end we have an Independent Observer

<sup>41</sup> In addition, 45% of complainants disagreed that they were given adequate opportunity to put forward their case.

taking an overview of our enforcement system and a sub-committee of the PCC reviewing staff decisions.

### **Independent Observer**

- 3.57 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.
- 3.58 The latest IO report to the Governance, Risk and Audit Committee (covering the period July 2014 to December 2014) spanned six months of 2014/15. In it 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, clear evidence of decision makers referring to relevant policies, procedures and guidance to inform their decision making and a demonstrable commitment to fairness when responding to queries and challenges from complainants and/or barristers.”
- 3.59 All reports by the Independent Observer are published on the Bar Standards Board website.
- 3.60 Based on her observations, the IO made four new recommendations which were accepted by the PCD. These included:
- Carrying out a review of our handling and monitoring of “pre-complaints” – information that could potentially result in a complaint being opened or raised;
  - Developing reports to better enable monitoring of compliance with disciplinary fines;
  - Formalising the principles that should be applied when handling complaints about barristers undertaking work on behalf of the BSB.

- 3.61 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**

- 3.62 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 twice a year. The QRSC assess the timeliness, thoroughness, transparency and accessibility of PCD decision-making along with the decision itself.
- 3.63 The QRSC reviewed 10% of dismissed cases and referrals to disciplinary action made during 2014/15. The QRSC also reviewed all five administrative sanctions imposed by PCD staff (without Committee involvement) throughout the year, as this was the first time that these sanctions had been imposed since their introduction with the BSB Handbook in January 2014.
- 3.64 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 also agreed that the decisions to refer cases to disciplinary action were appropriate given the circumstances of the cases.
- 3.65 In reviewing the administrative sanctions, the QRSC agreed that four of the five sanctions imposed were appropriate and that the handling of the cases was open, honest and accessible. However, in one case – relating to a criminal conviction for drink driving – the sub-committee disagreed that a written warning was an appropriate sanction in this

particular case. There were some concerns that a warning (although it could be appropriate in some cases) as the first administrative sanction to be applied in this type of case, might result in the benchmark for action in relation to a drink driving conviction being reset too low. Since this case, all drink driving convictions have been referred to the PCC for consideration and the Committee have agreed that normally drink driving convictions are not suitable for administrative sanctions. To support this, we made amendments to our case management system to provide guidance when PCD staff are processing drink driving complaints.

3.66 This shows the value of the QRSC and more generally the effectiveness of the checks and balances which we have in place – not only in providing quality checks but also in driving improvement.

### Quality of Service

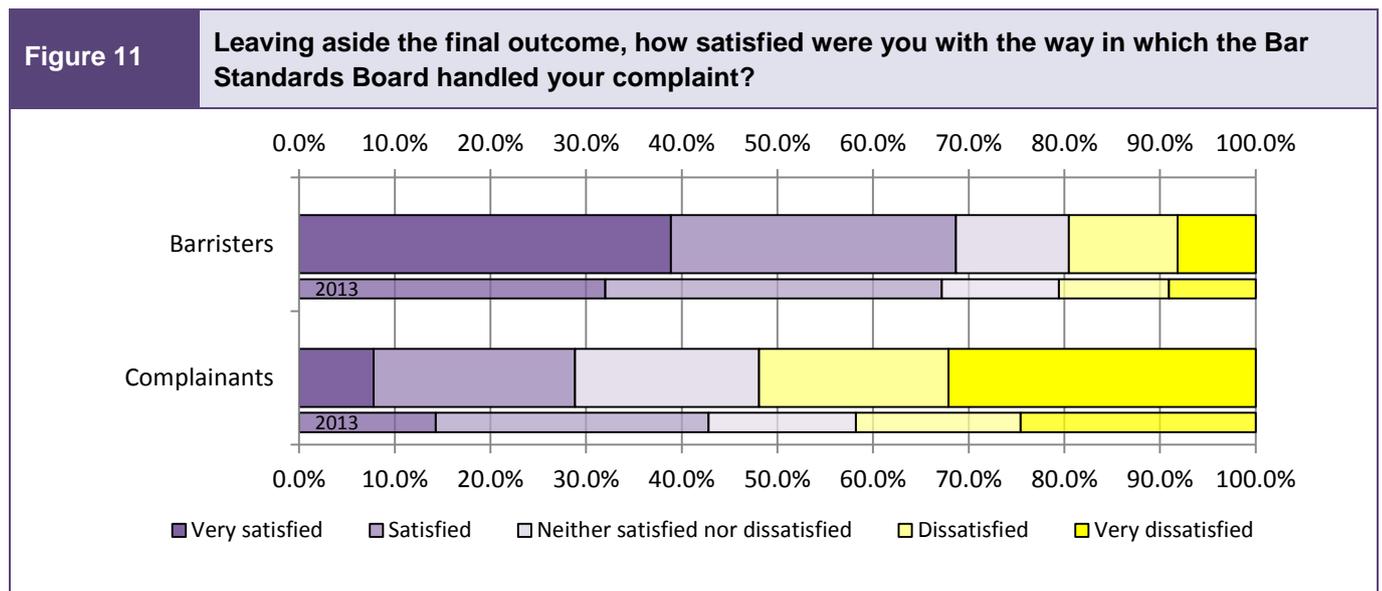
3.67 As an overall measure, we asked complainants and barristers to leave aside the final outcome<sup>42</sup> and say how satisfied they were with the way in which we handled their complaint. Figure 11 shows that 69% of barristers were satisfied with our handling of

the complaints against them compared with 29% of complainants. While this was a slight improvement for barristers, the views of complainants fell back to a similar level to two years ago after an increase in performance last year.

“ *Whilst I was dissatisfied with the outcome of my complaint against [...], the complaint was handled in an efficient and thorough manner.*

*Complainant response #02533*

3.68 So in two fundamental areas – the openness and fairness of the complaints process and the overall quality of service – complainants responding to our survey were less satisfied than in the previous year and the gap between the views of barristers and complainants increased. 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. In addition, our 2011 research indicated that it is reasonably common for there to be a difference between the satisfaction levels of complainants and the



<sup>42</sup> 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

professional/commercial object of their complaints. However, we are committed to improving and it is disappointing that despite the work that has been carried out in recent years, the views of complainants have only really improved in the area of the accessibility of our service.

“ *The decision regarding my complaint, whilst disappointing, wasn't unexpected. Professional standards bodies have a public perception of acting harshly on infractions of their rules but taking no action on matters of public abuse and misusing their profession, as was shown in the decision on my complaint.*

*Complainant response #02458*

3.69 There is no doubt that the information provided by complainants is extremely valuable and we need potential complainants to feel confident in bringing potential issues of misconduct to our attention. However, we are no longer the same complaints handling body that we were in 2010 when we dealt with complaints about poor service and made findings in support of the complainants. Our role now is in taking action for breaches of the Handbook where there is a real risk to the regulatory objectives and maintaining the high standards of the profession. If anything, though, our connection with complainants is now stronger than it was in 2010 as we have made considerable efforts to engage with complainants and develop the detailed reasons we give for the decisions we make. At the same time, the introduction of outcomes-focused and risk-based regulations is taking us in a direction that may be perceived by complainants as dismissive of their concerns. Dismissing a complaint where there is evidence of a breach but the risk is too low to warrant enforcement action may be a hard concept for complainants to understand and lead to greater levels of dissatisfaction.

3.70 The issue is one of managing expectations: inviting complainants to provide information and still keeping them up to date and informed, but making it very clear that we operate in the public interest, that we may not be taking action in relation to their individual issues and not using terminology that encourages complainants to think that we act for them. We may still not see the improvements in the feedback we receive, but the enforcement system will be more transparent and stronger. As we work in 2015/16 on our approach to risk, making changes to our webpages and collaborating more closely with the BSB's Supervision Team, we will be keeping the role of the complainant in mind and the need to manage expectations in relation to the public function that we provide.

“ *It seems you got a right balance between doing something to make the complainant feel listened to, while sensibly pressing your own reasons and saving me time and anxiety by dealing with it quickly and without requiring my active input.*

*Barrister response #02577*

## 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:

### Disciplinary history checks

- 4.2 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 (for use in handling applications for judicial office) and the Inns of Court (pupil supervisors).
- 4.3 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.
- 4.4 We completed 573 disciplinary history checks in 2014/15, including checks on 215 QC applicants.

### Information provided to the public

- 4.5 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.
- 4.6 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

- 4.7 In our Enforcement Annual Report for 2013/14 we highlighted two projects that we would be focussing on in 2014/15: entity regulation and the Disciplinary Tribunal Regulations review.
- 4.8 The BSB became an approved regulator of entities – companies or partnerships that provide advocacy, litigation and expert legal services – in the autumn of 2014 and began accepting applications in January 2015. The PCC and PCD spent the year working towards being able to take enforcement action once the first complaints about entities or employees of entities are received by the BSB. This took the form of a Working Group to establish the procedures for handling complaints about entities, their owners and managers and employees of entities; and then project strands including making changes to policy documents and amending our Enforcement Database so that we are ready to open and begin processing a complaint as soon as one is received.
- 4.9 Our Disciplinary Tribunal Regulations are published in the BSB Handbook and detail the procedures that are followed when we refer complaints to Disciplinary Tribunals. We began undertaking a review of the Regulations in 2014/15 to ensure that they remain fit for purpose and to address specific points including: amendments proposed by the COIC DTR Working Group in 2013/14 and giving Tribunals the power to impose administrative sanctions. The Working Group for the project began meeting in early 2014/15, supported by staff within the PCD, and throughout the year worked on a proposed set of issues that might require

amendments. The proposed revised Disciplinary Tribunal Regulations were completed in early 2015/16 and are currently published on the BSB website as part of an open consultation. Some of the proposed revisions include:

- Modernising terminology;
- Setting out more clearly the procedure to be followed at hearings and including robust rules for the treatment of witnesses and vulnerable witnesses;
- Addressing potential gaps in the Disciplinary Tribunal powers.

4.10 Amongst our other project work throughout the year both within the PCD and across the BSB, we made upgrades to our Enforcement Database to allow for more flexibility in risk assessing complaints and more efficient handling of complaints, updates to policies and procedures and also began time recording within the department – recording the actual time spent on casework which will feed accurate information into other projects. One of the core values of the Bar Standards Board is “value for money” so one of the uses of this time-recording information will be to allow us to calculate the cost per complaint that we handle. This is useful information for budgeting and driving improvements but also feeds into a bigger project on the cost of regulation as a whole.

## Conclusions and action points

- 5.1 The first edition of the BSB Handbook was introduced towards the end of 2013/14 and brought with it many changes to the way in which we handle information and complaints about barristers – risk assessments, administrative sanctions and a more outcomes focussed approach to regulation. As the first full year since the introduction of the Handbook, 2014/15 was a chance to consolidate and refine the new policies and procedures and determine the nature of our caseload going forward. At the same time we undertook a wide ranging review of our Disciplinary Tribunal regulations and prepared for a whole new area of work as the BSB successfully applied to become a regulator of entities (see “Looking forward”). As a whole, the enforcement system has been working well but we are committed to improving and will be focusing on quality assurance and knowledge management – both in casework and the administration of casework – in the coming year.
- 5.2 Our caseload, which had steadily decreased over the previous two years increased considerably and we ended the year with 39% more active cases than we started the year with. The difference came less from the numbers of external complaints – our external caseload has varied very little over the past four years – but from an increase in the numbers of internal complaints we opened and the pattern of complaints throughout the year. However, there were some unusual factors: multiple complaints about one barrister, complaints about multiple barristers from a single source and a batch of practising certificate cases that we are unlikely to see again. Given the relatively small number of complaints we handle, these had an impact on both our caseload and performance figures, especially towards the end of the year. In concluding complaints we issued our first administrative sanctions under the new Handbook as a means of taking enforcement action. We also saw evidence that only the most serious complaints are being heard at Disciplinary Tribunals – the costliest and most time consuming form of enforcement action – as, for the first time, disbarment was the most common sanction imposed by Tribunal panels.
- 5.3 In the third and fourth quarters, the increased caseload and a number of staff vacancies within our small casework team hit our performance figures for the year. We concluded or referred to disciplinary action 69% of complaints within service standards, missing our 80% target. We ended the year with a high proportion of complaints already over-running our service standards that we will need to clear at the start of 2015/16 before we can get back on track – but evidence from our caseload monitoring tools suggest that we will return to the position in 2013/14 and early 2014/15 where we were regularly meeting our performance targets.
- 5.4 Our User Feedback Survey continues to be a useful tool for gaining feedback on where we are performing well and where we can improve. For complainants, many of the improvements we saw in our survey results last year were not maintained into 2014/15 and it appears that only in the area of the accessibility of our service has our improvement work made a genuine difference. We still have issues around the perceived openness and fairness of our enforcement procedures and while it is clear that the decisions that we take on external complaints has a significant bearing in this area, we need to continue to try to address these concerns. We hope that the BSB’s upcoming work on consumer engagement will reveal ideas for a fresh approach, but in the meantime we will concentrate on managing the expectations of complainants – ensuring that they understand our role as a regulator.

5.5 While this report looks back on our casework and performance across the past year it also looks forward. We have identified areas where we can improve and we are already working hard towards clearing the longer-running cases, stabilising our caseload where we can, training and developing new and existing staff and looking towards the point where we start receiving complaints about entities. This was a year of considerable change and work for the PCD and PCC but all focussed towards improvement and embedding our risk-based and outcomes-focused approach to enforcement.

### Action points

5.6 Based on the findings of this report, we intend to carry out the following actions during the course of the next twelve months. The focus of these action points is maturing in our approach to enforcement rather than significant change. However, ongoing wider BSB work to continue raising our regulatory standards may lead to more fundamental change, the need for which will be determined later in the year.

- Implement improvements to the enforcement web pages to improve the accessibility of information and to ensure that we properly manage the expectations of complainants (providing the service standards for handling complaints and clarifying the role of the BSB);
- Improve our knowledge management systems, ensuring that the outcomes of cases and lessons learnt are fed back into all aspects of our work in the best possible way. The new Professional Support Lawyer role will support this action point;
- Review and strengthen our current quality assurance systems. Again, the new Professional Support Lawyer role will support this action point;

- Continue to develop our approach to risk – ensuring the consistent approach to risk taken by the BSB (with the risk framework and risk index) is reflected in our enforcement work. We are currently working with the Supervision Team and other departments to ensure that we have a common understanding of risk and that our systems support each other. This work will continue throughout 2015/16;
- Continue our KPI monitoring programme to ensure that we can deal with the over-running complaints in an efficient way and to explore areas where we can eliminate delays in the enforcements processes;
- Review and reset the Disciplinary Tribunal service standards at the conclusion of the Disciplinary Tribunal Regulations review;
- Review the current service standard for the Determination by Consent procedure and set a target for 2015/16.
- Contribute our survey results and experience to the wider BSB's consumer engagement project;

## Looking forward

- 6.1 In this section we look ahead to some of the projects that we will be working on in 2015/16 and some of the background to the enforcement work we will be carrying out in the near future.

### Entity regulation

- 6.2 The BSB is now an approved regulator of entities. Although we would hope that no complaints will be made about entities in their first year of operation, we may receive our first complaints in 2015/16. Going forward we will be addressing new areas of work and new challenges and we must be prepared for new ways of working. In the meantime, the BSB will be making a proposal to regulate Alternative Business Structures (ABS) – organisations that may not be owned by a barrister – which again would require a review of our policies and procedures to ensure that where we need to take enforcement action we can continue to take a risk based and outcomes focussed approach.

### Caseload

- 6.3 To some extent the increase in our caseload that we saw in 2014/15 will be balanced by a significant increase in case closures in early 2015/16. We expect to close more than 150 complaints in the first quarter which will bring the overall caseload down to a more manageable level and go some way towards clearing the backlog of complaints. But given the slightly unpredictable nature of our internal caseload since the introduction of the BSB Handbook and its associated new ways of working, we cannot predict with any great accuracy how many complaints we should expect to open in 2015/16. However, we have tools on our Enforcement Database to monitor the situation and we have shown in 2014/15 that we can handle an increase in complaints with only a short term impact on performance.

## Regulatory Risk

- 6.4 The BSB has undertaken a considerable amount of work during 2014/15 in developing a Regulatory Risk Index, providing a catalogue of risks that could impact on us meeting the regulatory objectives. In our enforcement work we have been risk assessing complaints since the BSB Handbook came into force into January 2014, before this wider work took place, and there is now work to do to develop our approach and ensure that a consistent approach is being used throughout the organisation. We will be working closely with other departments of the BSB, particularly the Supervision Team, in 2015/16 in developing our common understanding of risk and a shared approach to assessing risk in incoming information to the BSB. We have already begun work in this area and anticipate that a number of improvements to the collaborative approach taken to enforcement and supervision can be made during 2015/16. This report has highlighted that this approach is extremely useful to the functioning of the whole organisation and we look forward to continuing to develop a shared approach to risk throughout the BSB.

**Sara Jagger**

**Director of Professional Conduct**

**Simon Lofthouse QC**

**Chair of the Professional Conduct Committee**

**July 2015**