

REGULATING BARRISTERS

# **Regulatory Decision-making**

**Statistical Report 2022/23** 

Regulatory Operations Department Legal & Enforcement Department

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### Introduction

- 1. This Statistical Report accompanies the Regulatory Decision-Making Annual Report for 2022/23 and presents the statistical data collected between 1 April 2022 and 31 March 2023 concerning the new applications and reports that we received, the caseload that we worked on throughout the year, the outcomes of this work, and the quality assurance work carried out by the Independent Reviewers. This data was extracted from our Case Management System in June/July 2023. Where possible, figures for 2021/22 are also provided for comparison.
- 2. The Bar Standards Board's Authorisation Team is responsible for dealing with applications for waivers and exemptions from our practising requirements. The team also deals with the authorisation of Approved Education and Training Organisations, Alternative Business Structures and Entities.
- 3. 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 Contact and Assessment Team, Investigation and Enforcement Team, and the Independent Decision-making Body of the BSB. We assess reports, investigate allegations and, where appropriate, take action against barristers who have breached their professional obligations as set out in the Handbook.
- 4. Where enforcement is not appropriate the matter may be passed to the Supervision Team to address any regulatory issues identified to prevent recurrence and ensure compliance with the Handbook.

# **Authorisations Team**

KPI	Q1	Q2	Q3	Q4	2022/23
Authorisation, exemptions and waivers					
Applications determined within six weeks of receipt of the complete application (Target 75%)	36.1%	36.5%	33.5%	40.4%	36.7%
Applications determined within eight weeks of receipt of the complete application (Target 80%)	46.2%	48.9%	39.5%	47.5%	45.7%
Applications determined within twelve weeks of receipt of the complete application (Target 98%)	73.4%	86.5%	55.3%	61.0%	69.8%
Entity (including ABS) Authorisation					
Authorisation decisions made within six months of receipt of the application and associated fee (Target 90%)	100.0%	40.0%	33.3%	80.0%	57.1%
Authorisation decisions made within nine months of receipt of the application and associated fee (Target 100%)	100.0%	80.0%	66.7%	100.0%	85.7%

# Table 2 Applications received

Application type	2021/22	2022/23
Transferring Qualified Lawyer	283	498
Certificate of Academic Standing (qualifying degree)	147	136
Pupillage Reduction	79	82
Reactivation of Stale Qualifications	53	62
Litigation Authorisation	81	53
Pupillage Funding and/or Advertising Waiver	58	52
OISC Licensed Access (Renewal)	43	41
Fee Waiver Request	26	35
Pupillage Dispensation	48	33
Waiver of the Qualified Person Requirement	36	33
Licensed Access Amendment/Renewal	28	29

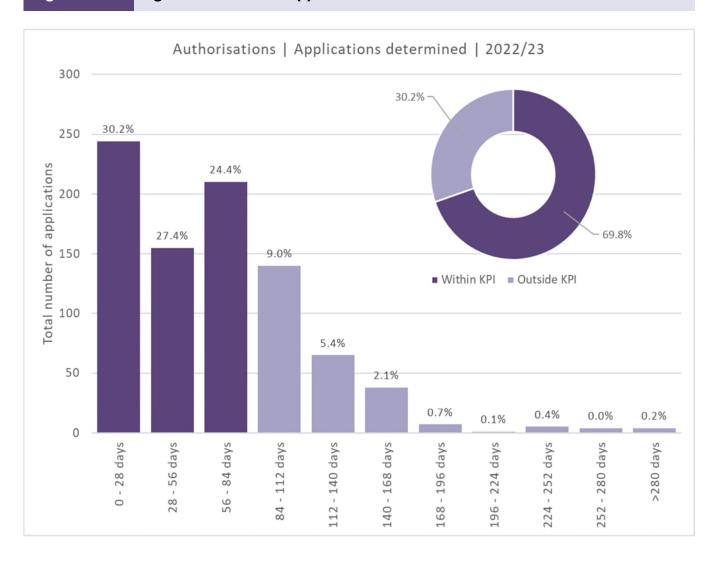
Licensed Access Authorisation	12	18
Under Review	17	15
Pupillage Reduction (barristers also qualified as solicitors)	15	14
Public Access Exemption	16	13
OISC Licensed Access (Registration)	18	12
Non-QLD Provider Exemption	17	9
Early Commencement of the Vocational Component of Bar Training (formerly Rule Q28.1 Waiver)	0	8
QLD Provider Exemption	12	7
General Exemption	7	7
CPD Waiver (NPP)	9	7
Retrospective Registration of Pupillage	8	5
Exercise of Discretion	8	4
Temporary Admission	1	2
Admission to the Bar for Solicitors	4	2
Certificate of Academic Standing (without qualifying degree)	3	2
CPD Extension (NPP)	11	2
Bar Exam Transcript/Letter	7	11
Admission to the Bar as a Qualified Foreign Lawyer	8	1
Early Commencement of the Vocational Component of Bar Training (COVID-19)	4	0
Legal Advice Centre Application	1	0
Admission to the Bar for Registered European Lawyer	2	0
Review of a Decision of the Inns' Conduct Committee	3	0
Professional Qualifications Exemption	1	0
Admission to the Bar as a Qualified European Lawyer	5	0
Admission for Legal Academics	1	0
BTT Extension	5	0
Total	1077	1183

# **Applications determined**

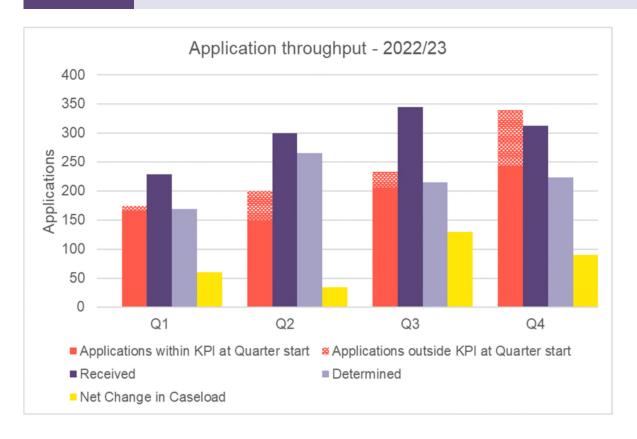
Application type	2021/22	2022/23
Transferring Qualified Lawyer	282	300
Certificate of Academic Standing (qualifying degree)	164	128
Pupillage Reduction	100	54
Pupillage Funding and/or Advertising Waiver	59	51
Reactivation of Stale Qualifications	57	45
OISC Licensed Access (Renewal)	51	44
Litigation Authorisation	96	40
Licensed Access Amendment/Renewal	28	29
Pupillage Dispensation	58	28
Waiver of the Qualified Person Requirement	36	25
Fee Waiver Request	30	18
Under Review	17	14
OISC Licensed Access (Registration)	20	14
Public Access Exemption	20	14
Pupillage Reduction (barristers also qualified as solicitors)	24	12
Non-QLD Provider Exemption	18	8
Licensed Access Authorisation	18	8
Early Commencement of the Vocational Component of Bar Training (formerly Rule Q28.1 Waiver)	0	7
CPD Waiver (NPP)	6	7
Retrospective Registration of Pupillage	7	6
QLD Provider Exemption	12	4
CPD Extension (NPP)	11	4
Exercise of Discretion	9	3
General Exemption	8	3
Certificate of Academic Standing (without qualifying degree)	4	2
Admission to the Bar for Solicitors	6	2
Review of a Decision of the Inns' Conduct Committee	3	1
Uncommon Waiver	1	1
Temporary Admission	1	1
Professional Qualifications Exemption	1	0
Admission to the Bar for Registered European Lawyer	4	0
Admission to the Bar as a Qualified European Lawyer	8	0
Admission to the Bar as a Qualified Foreign Lawyer	24	0
Bar Exam Transcript/Letter	3	0
Admission for Legal Academics	1	0
Legal Advice Centre Application	2	0
BTT Extension	17	0
Early Commencement of the Vocational Component of Bar Training (COVID-19)	5	0
Total	1211	873

# Figure 1

# Age distribution of applications determined in 2022/23



# Throughput of applications in 2022/23



### **Contact and Assessment Team**

# Table 4 Quarterly KPIs

KPI	Q1	Q2	Q3	Q4	2022/23
General Enquiries					
General enquiries addressed within 5 days (Target 80%)	183	248	138	169	738
	(59.0%)	(79.0%)	(79.7%)	(87.6%)	(76.2%)
General enquiries referred within 3 days (Target 80%)	41	60	30	55	186
	(31.7%)	(61.7%)	(60.0%)	(70.9%)	(57.5%)
Initial Assessment					
Concluded or referred within 8 weeks (Target 80%)	199	439	405	539	1582
	(65.8%)	(58.5%)	(58.3%)	(54.7%)	(58.1%)
Quality Indicators					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)	20	26	26	24	96
	(95.0%)	(100.0%)	(96.2%)	(100.0%)	(97.9%)

# Table 5 Reports and other cases opened\*

Year	Number of cases
2018/19	1,340
2019/20	1,459
2020/21	1,885
2021/22	2,199
2022/23	1,911

<sup>\*</sup>General enquiries with the case type 'Ask a Question' are excluded

### Table 6 All incoming information

Purpose	2021/22	2022/23
Ask a Question	1,192	913
Report Something	1,812	1,564
Report - Reporting Obligations	187	168
Other	200	179

### Table 7 Closures and outcomes

Outcome	2021/22	2022/23
Ask a Question	1208	926
Closed by CAT	1208	926
Report Something	2074	1425
Allocated to Enforcement	161	71
Allocated to Supervision	75	52
Closed by CAT	1838	1291
Ongoing	0	11
Report - Reporting Obligations	220	157
Allocated to Enforcement	59	35
Allocated to Supervision	11	15
Closed by CAT	150	107
Other	210	182
Allocated to Policy	1	0
Allocated to Supervision	1	2
Closed by CAT	208	180

Figure 3 Age distribution of general enquiries addressed in 2022/23

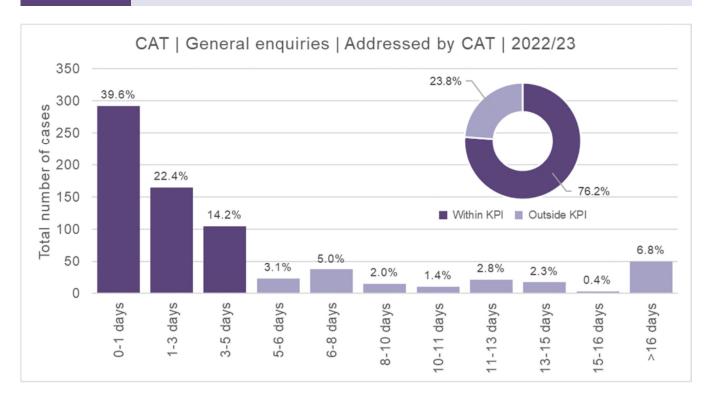


Figure 4 Age distribution of general enquiries referred in 2022/23

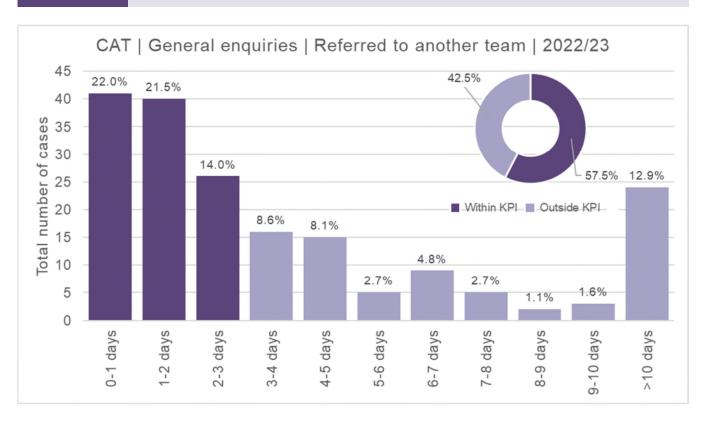


Figure 5 Age distribution of reports concluded or referred in 2022/23

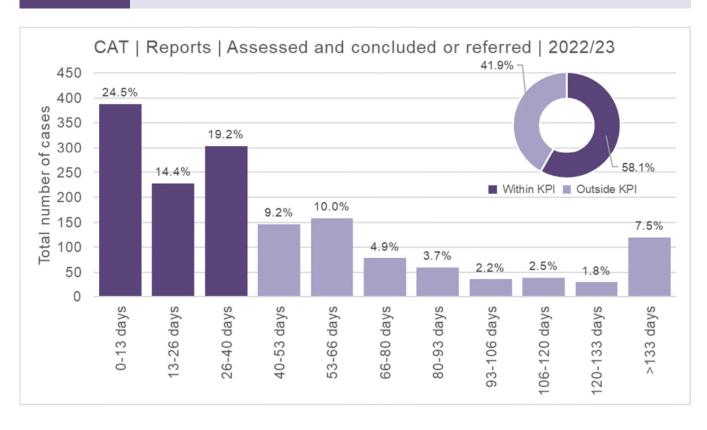


Figure 6 Throughput of general enquiries in 2022/23

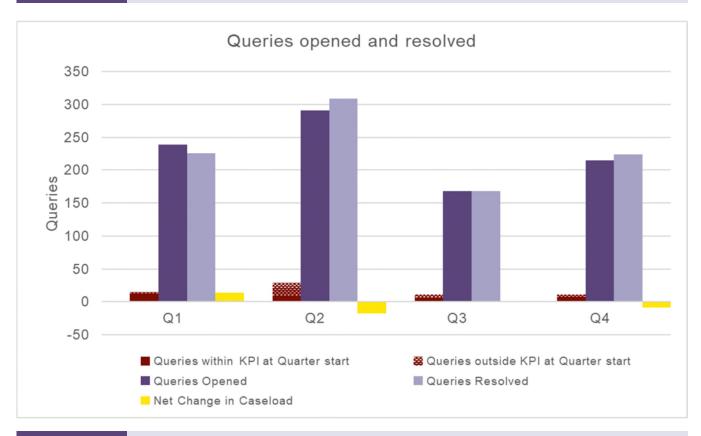
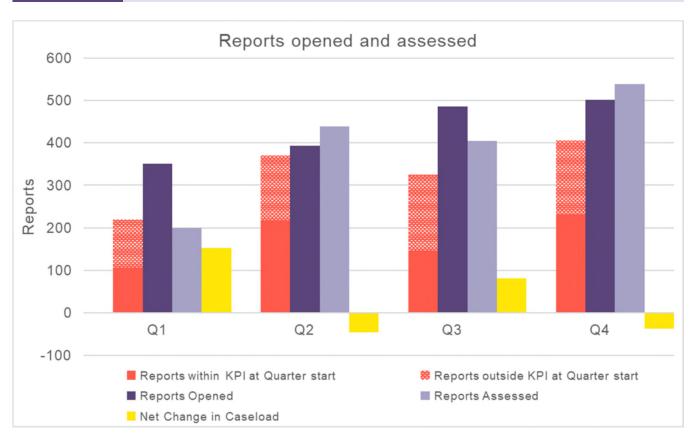


Figure 7 Throughput of reports in 2022/23



# **Investigation and Enforcement Team**

Table 8 Quarterly KPIs

КРІ	Q1	Q2	Q3	Q4	2022/23
Referral of cases					
Accepted or referred back within 2 weeks (Target 80%)	29 (6.9%)	84 (20.2%)	21 (100.0%)	44 (97.7%)	178 (46.6%)
Investigation					
Decision on disposal within 25 weeks (Target 80%)	29 (37.9%)	31 (38.7%)	61 (39.3%)	56 (51.8%)	177 (42.9%)
Quality Indicators					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)	0	4 (75.0%)	0	1 (100.0%)	5 (80.0%)
Number successful appeals against the imposition of administrative sanctions (Target 0%)	1 (0.0%)	0	1 (100.0%)	1 (0.0%)	3 (33.3%)
Number successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process (Target 0%)	3 (33.3%)	1 (0.0%)	0	1 (0.0%)	5 (20.0%)

Table 9 Cases referred to investigation

Year	Number of referrals
2018/19	163
2019/20	175
2020/21	128
2021/22	236
2022/23	122

### Throughput of investigation cases

Decisions	2018/19	2019/20	2020/21	2021/22	2022/23
Closed after Investigation	133	96	91	107	127
Referred to Disciplinary Action	48	31	39	29	53
Total	181	127	130	136	180

# Table 11

### Decision sources for cases closed after investigation

Decision Source	2021/22	2022/23
LED staff	74	94
Independent Decision-making Panel	33	32
Other	0	1
Total	107	127

# Table 12

### Final outcomes of reports

Outcome	2021/22	2022/23
Closed without Investigation	19	38
Closed after Investigation	107	127
Administrative Warning/Fine	48	58
Dismissed	50	35
Closed/Withdrawn	9	34
<b>Determination by Consent</b>	4	4
Proved/Upheld	4	4
Dismissed	-	-
Disciplinary Tribunal	29	25
Proved/Upheld	24	21
Dismissed	4	1
Withdrawn/Struck Out/No Evidence Offered	1	3
Total	159	194

### Notes

The outcomes listed are the final outcomes of reports. Where reports were reopened, only the final outcome is listed, not any interim decisions.

### Disciplinary action cases concluded

Disciplinary Action	2018/19	2019/20	2020/21	2021/22	2022/23
Determination by Consent	9	5	4	4	4
Disciplinary Tribunal	28	42	29	29	25
Total	37	47	33	33	29

### Table 14

# Sanctions imposed by Disciplinary Tribunal panels or under the Determination by Consent procedure

Sentence	2018/19	2019/20	2020/21	2021/22	2022/23
Disbarred	4	10	4	6	9
Suspended	4	15	9	8	5
Fined	18	10	11	12	7
Reprimanded	16	13	10	14	5
Total	27	36	24	26	22

### Notes

The figures listed are the number of barristers who were subject to these sanctions.

### Table 15

### Open cases at year end

Stage	2020/21	2021/22	2022/23
Referrals	8	61	4
Investigations	98	129	91
IDB	12	9	12
Determination by Consent	2	2	2
Disciplinary Tribunal	34	29	51
Appeals	1	7	2
Total	155	237	162

# Sources of new investigation cases

Role of Reporter	2021/22	2022/23
A barrister	76	39
A chambers	1	0
A member of another professional body/regulator	36	15
A member of public	37	32
A pupil	1	1
Another legal profession - other	1	0
BSB staff	10	10
Coroner	0	0
Employee of Barrister/Chambers/Entity	0	1
Judge	6	2
Legal Ombudsman	1	0
Other	16	10
Solicitor	20	10
Not specified/unknown	31	4

# Table 17

# Aspects of new investigation cases

Aspect	2021/22	2022/23
Other diminishing trust and confidence	63	45
Dishonesty in professional or personal life	18	21
Other misleading the court*	14	10
Misleading a person or client*	9	10
Providing an incompetent standard of work/service	14	7
Other abuse of role as an advocate	9	7
Criminal conviction for drink driving	3	7
Failing to provide information promptly to the BSB	10	6
Criminal conviction other than drink driving	8	6
Harassment	7	6
Other	3	6
Holding out as a barrister when not authorised to do so	26	5
Not acting in the client's best interests	10	5
Making misleading/false/unfounded submissions or statements*	7	5
Handling client money	6	5
Breach of confidentiality	5	5
Failing to administer practice properly/efficiently	2	5
Other failing to comply with authorisation to practise regulations	2	5
Failing to renew practising certificate	60	4
Inappropriate use of position as a barrister	4	4
Misleading clients about the nature/scope/terms of work*	4	4

Aspect	2021/22	2022/23
Failing to submit documents on time	3	4
Inappropriate content on social media	8	3
Failing to report disciplinary action by another regulator	7	3
Conducting litigation when not authorised to do so	6	3
Failing to report criminal charges or convictions  Conflict of interest	6	3
Discrimination	5	3 3
Making serious allegations without proper foundation	5	3
Failing to preserve client confidentiality	4	3
Inappropriately remaining in or withdrawing from instructions	3	3
Failing to administer chambers/entity competently/efficiently	2	3
Failing to properly advise client	2	3
Drafting statements/documents not properly arguable	1	3
Undue delay in dealing with papers	1	3
Failing to report own serious misconduct	19	2
Failing to act independently	4	2
Failing to take steps to ensure court has all relevant information	4	2
Other breach of Public Access Rules	4	2
Practising without 'qualified person(s)'	3	2
Failing to report a bankruptcy or other associated proceedings	2	2
Inappropriate communications with clients or others  Making unsupported allegations of fraud/false assertions	2	2
Failing to acknowledge complaints promptly	1	2
Failing to inform client that cannot carry out instructions	1	2
Failing to notify a change of practising address	1	2
Failure to comply with the complaints handling regulations	1	2
False declarations on call/in CVs and other official documents	1	2
Inappropriate handling of information or evidence	1	2
Victimisation	1	2
Failing to co-operate with the Legal Ombudsman	0	2
Failing to keep proper records	0	2
Failing to keep records	0	2
Failing to pay BMIF premiums	0	2
Fee dispute	0	2
Inappropriately withholding services	0	2
Failure to obtain practising certificate	13	1
Failing to comply with sentence of a tribunal	9	1
Wasting the court's time	7	1
Failing to obtain appropriate insurance	6	1
Drafting statements/documents not supported by client or instructions	3	1
Failing to provide or disclose information	3	1
Failing to consider if best interests served by other representation	2	1
Failing to follow instructions	2	1

Aspect	2021/22	2022/23
Inappropriately accepting instructions	2	1
Rudeness/misbehaviour out of court	2	1
Disciplinary finding by another body	1	1
Failing to comply with undertaking when conducting litigation	1	1
Failing to register with BMIF	1	1
Inappropriate cross-examination	1	1
Making inappropriate media comments	1	1
Failing to comply with regulations on witnesses	0	1
Failing to report serious misconduct by another	0	1
Money laundering	0	1
Providing legal services when not authorised to do so	9	0
Performing reserved legal activities when not authorised to do so	6	0
Rudeness/misbehaviour in court	6	0
Inappropriate drafting of documents	5	0
Failing to comply with legal or other non-regulatory obligations	4	0
Making statements designed to insult/annoy/humiliate	4	0
Accepting instructions when not authorised to do so	3	0
Civil debt (including clerks) or bankruptcy	3	0
Failing to comply with a court order	3	0
Failing to use own professional judgement	3	0
Acting outside role as self-employed barrister	2	0
Failing to comply with the regulations on returning instructions	2	0
Making allegations not put in cross examination	2	0
Obtaining information unlawfully	2	0
Unregistered barrister failing to provide information to client	2	0
Administration/liquidation/winding up proceedings	1	0
Encouraging witness to give misleading or untruthful evidence*	1	0
Failing to comply with High Court order on appeal	1	0
Failing to comply with the regulations on Association with Others	1	0
Failing to notify client of required information	1	0
Inappropriate contact with witnesses/making payments to witnesses	1	0
Paying or receiving referral fees	1	0
Private dispute	1	0

### Notes

<sup>&</sup>quot;Aspects" describe the allegations made in a report. A report may have multiple different aspects.

<sup>\*</sup>Misleading aspects grouped under the umbrella term "Some form of misleading" in the 2021/22 Regulatory Decision-Making report.

### Charges upheld at disciplinary action

Charge	2021/22	2022/23
Breach of duties	18	13
Undermining honesty, integrity or independence in public eyes	14	11
Misleading or attempting to mislead anyone	2	3
Acting in a manner likely to bring prof into disrepute	1	3
Being dishonest or otherwise discreditable	2	2
Failing to provide information to BSB promptly	2	2
Misleading or attempting to mislead the court	1	2
NULL	1	2
Practising without a practising certificate	1	2
Making untrue or misleading submissions, representations or suggesting facts to witnesses	0	2
Carrying out reserved legal activity without authorisation	2	1
Failing to report a criminal conviction/caution	2	1
Holding out	2	1
Acting in a manner prejudicial to admin of justice	1	1
Failing to comply with a decision or sentence of BSB/BTAS panel	1	1
Failing to report (general)	1	1
Failing to report a criminal charge	1	1
Failing to report serious misconduct	1	1
Failure to keep adequate records of fees	0	1
Knowingly or recklessly misleading the court	0	1
Misleading client as to nature/extent/terms of services that can be provided	3	0
Failing to promote best interests of client	1	0
Failing to provide reasonable assistance to LeO	1	0
Failure to report regulatory or disciplinary action by another regulator	1	0
Handling client money	1	0
Inappropriate supply of legal services	1	0
Public Access Rules - non-compliance with requirements for under three years' standing	1	0
Wasting court time	1	0

### **Notes**

The figures listed are numbers of charges for cases upheld following a Disciplinary Tribunal or the Determination by Consent procedure. A case may have multiple different charges, and within a case the barrister may have breached the same paragraph of the Code of Conduct multiple times.

Figure 8

### Age distribution of referrals closed in 2022/23

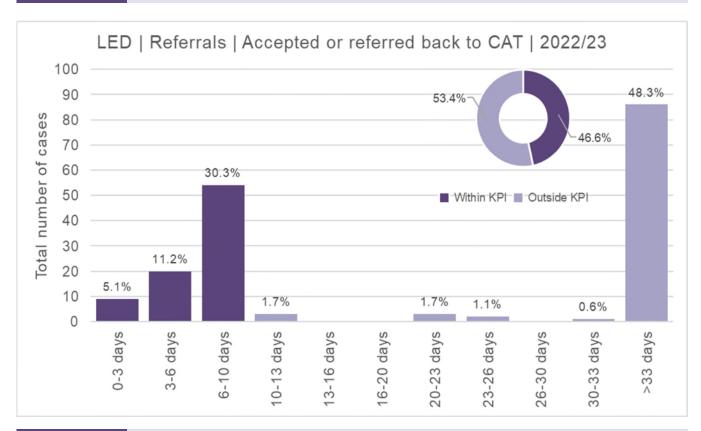


Figure 9 Age distribution of investigations decided in 2022/23

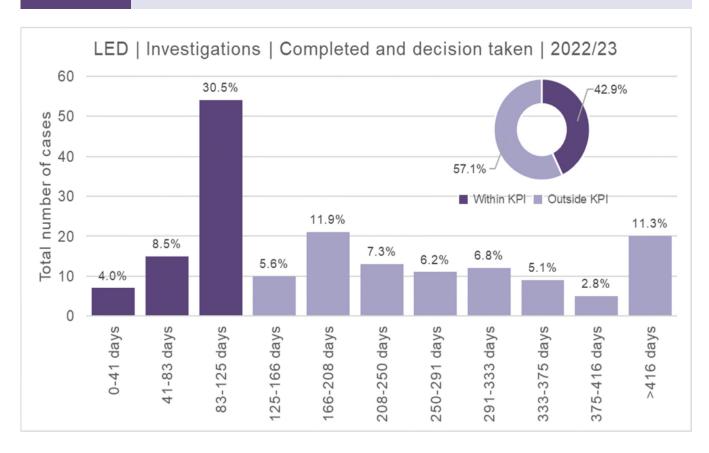


Figure 10 Throughput of referrals in 2022/23

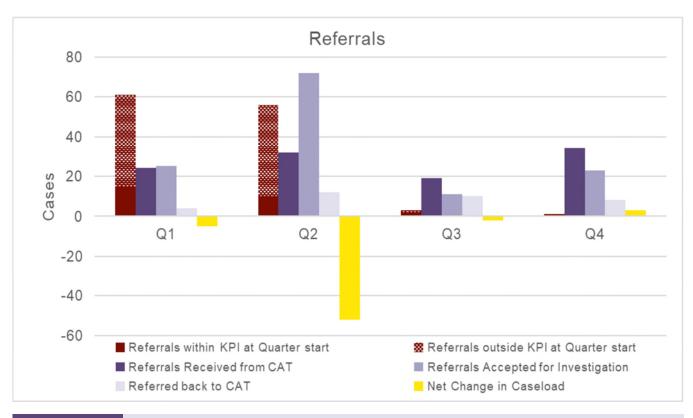
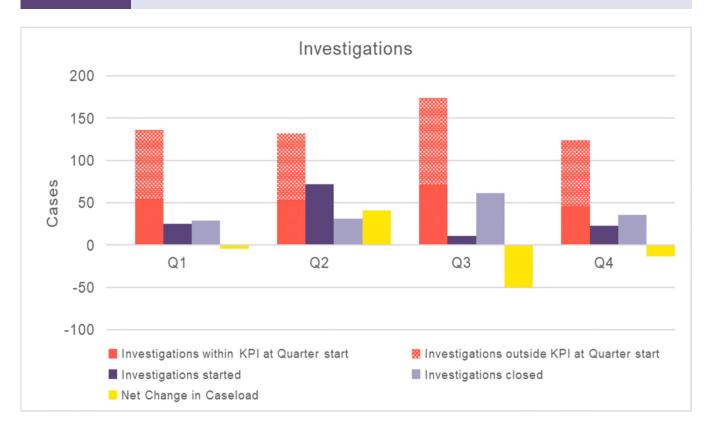


Figure 11 Throughput of investigations in 2022/23



# Supervision Team

# Table 19 Quarterly KPIs

KPI	Q1	Q2	Q3	Q4	2022/23
Allocations					
Assigned within 3 working days (Target 80%)	3 (100.0%)	28 (100.0%)	20 (100.0%)	27 (100.0%)	78 (100.0%)
Regulatory Response					
Agreeing a regulatory response within 20 working days of the case being assigned (Target 80%)	11 (54.5%)	24 (91.7%)	57 (100.0%)	33 (100.0%)	125 (94.4%)
Visits					
Report letters issued within 5 working days of a visit to an organisation (Target 80%)	0	1 (0.0%)	1 (100.0%)	8 (100.0%)	10 (90.0%)

# Table 20 Cases opened

Purpose	2021/22	2022/23
Referred to Supervision by CAT	119	79
Received directly by Supervision	45	35
Thematic Reviews	45	31

# Table 21 Stages completed

Stage	2021/22	2022/23
Allocations		
Cases assigned to members of the Supervision team	118	78
Regulatory Response		
Agreement of the regulatory response	197	125
Visits		
Report letters issued	6	10
Closures		
Cases closed	152	118

Figure 12 Age distribution of supervision cases allocated in 2022/23

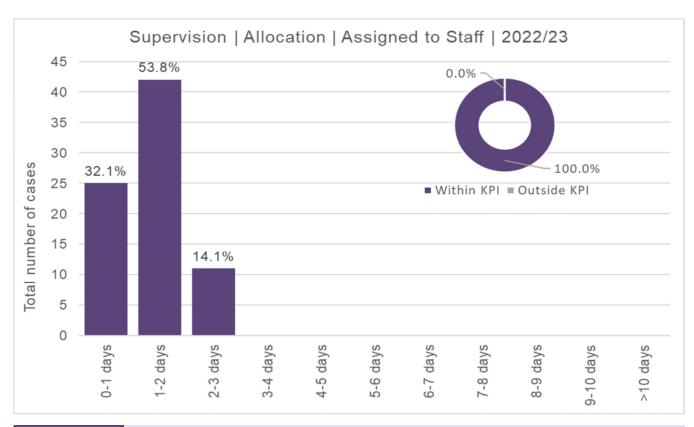
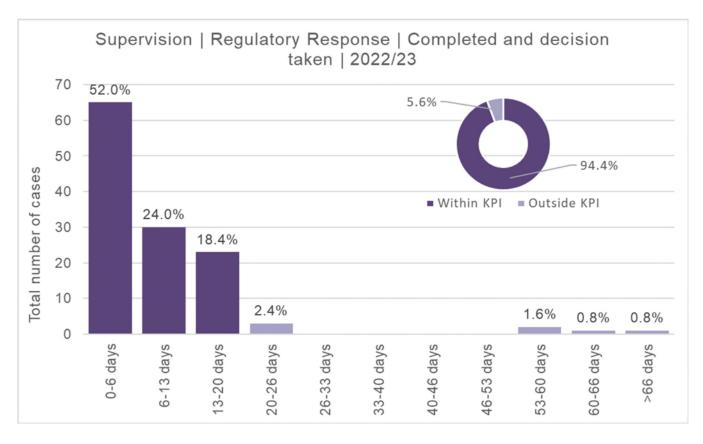
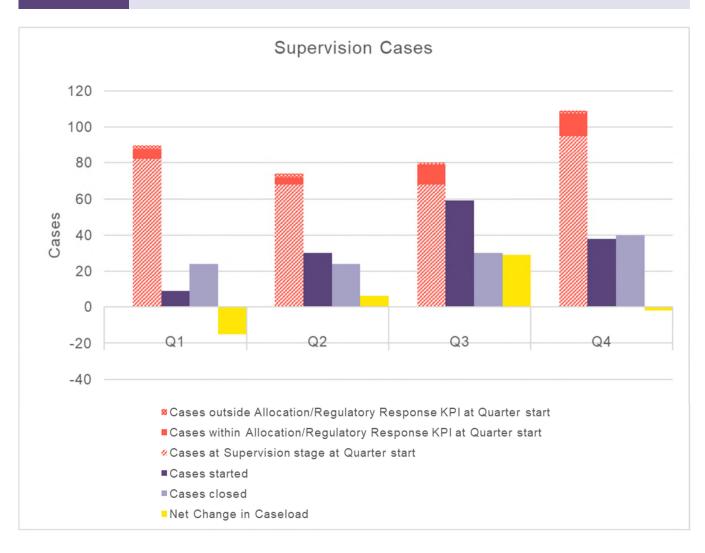


Figure 13 Age distribution of regulatory responses agreed in 2022/23



# Figure 14 Throughput of supervision cases in 2022/23



# Independent Reviewer

# Table 22

# Requests for reviews

Outcome	2021/22	2022/23
CAT	125	96
Decision Upheld	121	92
Decision Partially Upheld	2	2
Decision Not Upheld	2	1
Further Enquiries	0	1
I&E	6	5
Decision Upheld	4	3
Decision Partially Upheld	1	1
Decision Not Upheld	1	1

# Quality assurance audits

Outcome	2021/22	2022/23
Authorisations - Waiver Applications	47	28
Decision Appropriately Made	47	28
Decision Not Appropriately Made	0	0
Authorisations - Entity/ABS applications	8	5
Decision Appropriately Made	8	5
Decision Not Appropriately Made	0	0
CAT - Closures	68	31
Decision Appropriately Made	68	29
Decision Not Appropriately Made	0	2
CAT - Referrals to Supervision or Enforcement	26	9
Decision Appropriately Made	26	9
Decision Not Appropriately Made	0	0
I&E - Dismissals	17	16
Decision Appropriately Made	17	16
Decision Not Appropriately Made	0	0
I&E - Administrative Sanctions	12	9
Decision Appropriately Made	12	9
Decision Not Appropriately Made	0	0
I&E - Disciplinary Action referrals	3	4
Decision Appropriately Made	3	4
Decision Not Appropriately Made	0	0
Supervision - Regulatory Response	9	6
Decision Appropriately Made	9	6
Decision Not Appropriately Made	0	0