

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Regulatory Decision-making

Annual Report 2021/22

Regulatory Operations Department
Legal & Enforcement Department

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Executive Summary

1. Regulatory operations cover many of the core functions of the Bar Standards Board. It includes, amongst other things, our work on authorising universities to deliver the Bar course, our risk-based supervision of barristers, chambers and other BSB authorised organisations and our assessment of incoming reports about barristers' conduct and any investigation and enforcement action that may follow as a result.
2. This report covers 2021/2022. The impact of COVID-19 on the effective operation of the BSB's regulatory activities has lessened in 2021/22. Productivity and quality of decision making has remained high (see the section from our Independent Reviewer), but we continue to see substantial volumes of reports about barristers' conduct, resulting investigations and applications for waivers and exemptions from practising requirements. This has impacted upon our ability to meet service standards for the timeliness of decisions. Whilst speed of decision making is an important measure of performance, it should not be at the expense of rigorous assessment, careful case analysis and fair enforcement processes. We intend therefore to develop a more balanced set of performance metrics that will both hold the BSB to account for all aspects of its decision making and provide a clear picture on performance externally.
3. Performance in delivering our enforcement work is not where we would like it to be. The volume and complexity of investigation cases has increased, and, although the quality of our decision-making has remained high, we have struggled to keep pace with this. The result is slower performance against the timeliness service standards across all stages of the enforcement process. Steps have been, and are being taken, to address this. An increase in people was agreed in 2020/21 but unfortunately did not fully materialise in 2021/22 due to difficulties in recruitment. While outside the reporting year, action has been taken to improve the prospects for recruitment and to accelerate the pace of investigations.
4. In addition to our reactive work on reports and applications received, we are proactive in our regulation where there is evidence of a need for intervention or closer monitoring. The supervision section in the report highlights a number of these areas. It includes our work to monitor the engagement of barristers with the sanctions regime and, with the Bar Council and others, to raise awareness of what is expected of barristers when instructed to act for sanctioned individuals. Given the referral nature of the Bar, we view the risks for barristers in this area to be moderate, but nevertheless have taken a range of steps to engage with barristers and chambers who are most likely to be involved in acting for sanctioned individuals. This is a fast-moving area and we work closely with other regulators, the Treasury and the Office of Financial

Sanctions Implementation to ensure that the BSB is able to respond quickly should there be evidence of greater risks materialising.

5. The report also highlights the emerging findings from the recent regulatory return exercise. The return sought information from chambers and other authorised entities on a range of regulatory issues. The information gathered is used to inform our risk analysis of the barrister market, to assess levels of regulatory compliance and to evaluate the impact of policy initiatives that we have implemented. We are very grateful for the care and attention that was given to the responses to the return, and we appreciate the time burden that was involved. We will, over the course of the next 12 months, share our thematic analysis of the return and provide examples of good practice.
6. We also continued to strengthen our relationship management approach to supervision. Our work to monitor the delivery of the Bar course is a good example of that in action. We recognise that there is more work to be done to understand the variable pass rates amongst authorised training providers. As a result, we have started a thematic review in 2022/23 looking at differential outcomes and the admissions arrangements of training providers. This review will give us assurance that providers are meeting the expectations of the Authorisation Framework to deliver accessible and flexible courses, whilst maintaining high standards and value for money. It will also help us to ensure that we are targeting our regulation where there is evidence of greatest need.

Regulatory action, performance & statistics

1. This section provides an analysis of our regulatory casework, when responding to reports made to us, and the proactive work that we do to support our regulatory objectives. It covers the work of:

- The Authorisations Team
- The Contact and Assessment Team
- The Investigations and Enforcement Team
- The Supervision Team
- The Independent Reviewer – Quality Assurance

The year in numbers

Authorisations Team

- **1,211** applications for authorisation decided up 6% on 2020-21
- **2,360** general enquiries received by telephone and **17,033** by email
- **1** more vocational training provider authorised bringing the total to 10
- **14** more BSB authorised entities bringing the total to 148

Contact and Assessment Team

- **3,388** reports and general enquiries received by CAT compared to 3,300 in 2020-21
- **2,196** of these were reports, up from 1,885 in 2020-21
- **2,517** reports in total were dealt with, a 54% increase on 2020-21
- Cases closed which related to conduct in non-professional life fell from 274 to **194** but cases involving social media rose from 49 (involving 27 barristers) to **89** (involving 36 barristers)
- Cases relating to conduct at work that was not related to the provision of legal services rose from 131 to **304**

Investigations and Enforcement Team

- Cases referred for investigation rose from 129 to **238** (an increase of 41% even after removing the increase in cases relating to failure to renew a practising certificate)
- **164** referrals were accepted for investigation and **106** investigations were decided compared to 128 and 91 such cases in 2020-21
- **24** out of 29 cases heard at Tribunal were found proved, each case may result in more than one sanction
 - **6** led to disbarments
 - **7** to suspensions
 - **9** to fines and

- **11** to reprimands

Supervision Team

- **119** reports were referred to Supervision from CAT an increase of 35% and a further **90** cases were received directly by Supervision compared to 27 in 2020-21
- **577** barristers began their pupillage in 2021 compared to 400 in 2020 and 504 in 2019
- **318** Regulatory Returns were received and
- **94%** of chambers were found to be compliant or partially compliant with our transparency rules

Independent Reviewer – Quality Assurance

- **131** decisions in the reporting period were reviewed following a request by a party and in **7** cases the Independent Reviewer made recommendations for further action, or a reconsideration of the decision reached, and/or concluded that although the right outcome had been reached, incorrect factors had been taken into account.

Authorisations Team

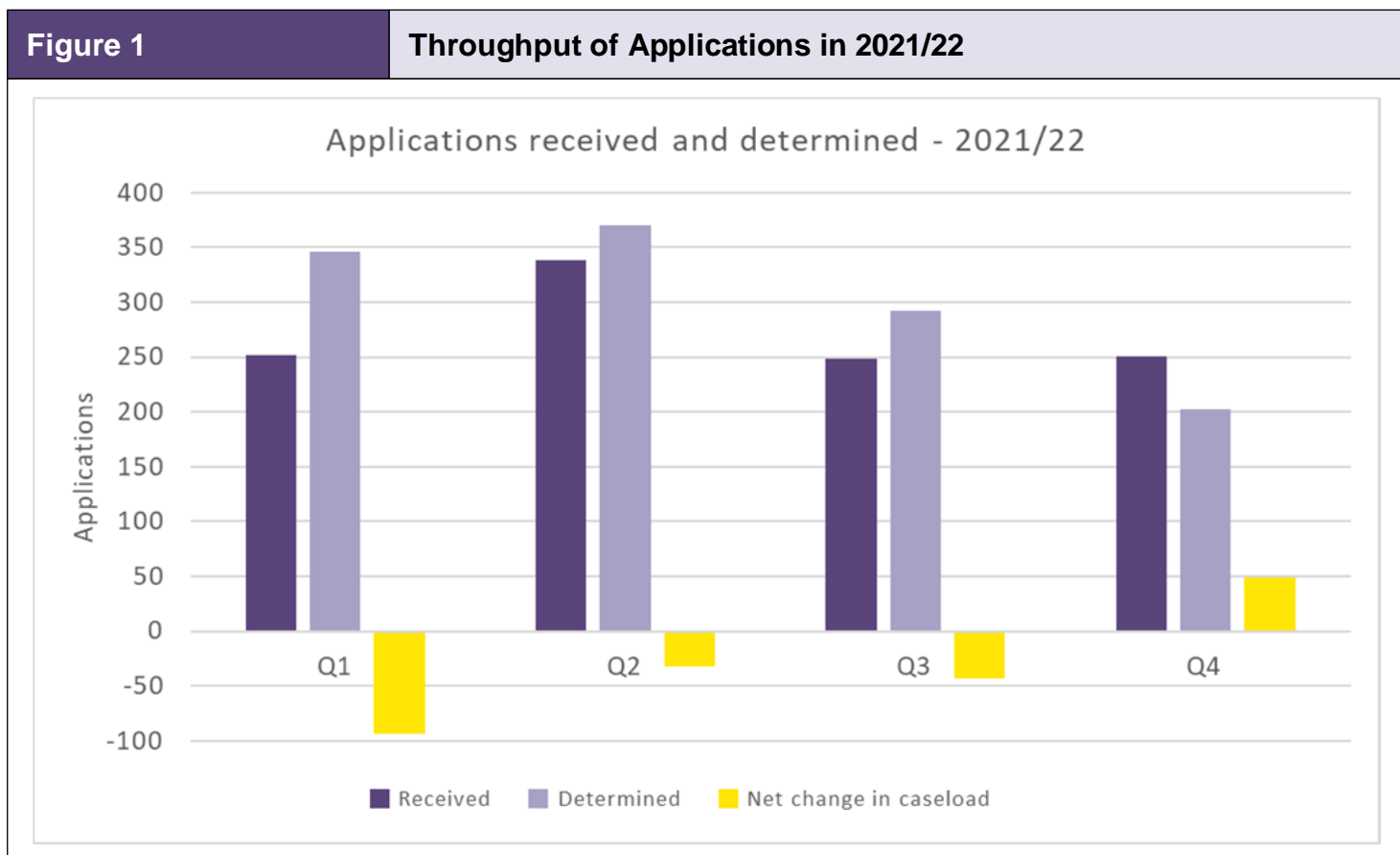
Performance against service standards

2. The Authorisations Team is responsible for authorising providers of vocational Bar training and work-based learning/pupillage as Authorised Education and Training Organisations (“AETO”s), and for authorising entities to provide legal services. In addition, the Team assesses applications from individuals for exemptions and waivers from requirements of Bar Training or individual rules of the BSB Handbook. The Team manages the administration of the pupillage registration and completion processes, and this includes the issue of provisional practising certificates (“PPC”s) and letters confirming full qualification (ie eligibility to apply for a full practising certificate as a barrister). The Team responds to a significant number of enquiries received by telephone and email regarding its various functions, including requests for advice on the components of Bar training and the progress of individual waiver and exemption applications.
3. Since its launch during the previous reporting period, the Team has continued to develop its use of the [Service Update page](#) on the BSB website. The page is updated regularly to act as a primary source of guidance for stakeholders and to assist in anticipating likely queries relating to the work of the Team and current application processing times.

Authorisation casework

4. During the reporting period, the Team processed a total of 1,211 applications, an increase of 6% on the previous reporting period, with 82% determined within 12 weeks.
5. While performance has fallen below our expected service standards for timeliness, productivity has remained high and overall, there has been a significant improvement in performance across the reporting period. There has been a rise in the overall number of applications received by the Team, but the Team has worked hard to prioritise cases and remain as productive as possible.
6. The Team has seen significant turnover of people. The nature of applications can be technical and there is therefore a lead in time before new starters are up to speed. This has an impact on performance in the short term (before the more positive effect of new resource is felt).
7. Table 1 reflects the Team’s overall improvement in performance during the reporting period.

Table 1	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2021/22
Authorisation, exemptions and waivers					
Applications determined within six weeks of receipt of the complete application (Target 75%)	17.1%	48.1%	65.1%	51.7%	43.9%
Applications determined within eight weeks of receipt of the complete application (Target 80%)	24.0%	58.4%	82.9%	77.3%	57.6%
Applications determined within twelve weeks of receipt of the complete application (Target 98%)	52.3%	92.7%	94.9%	95.1%	82.1%
Entity (including ABS) Authorisation					
Authorisation decisions made within six months of receipt of the application and associated fee (Target 90%)	100.0%	80.0%	100.0%	100.0%	92.3%
Authorisation decisions made within nine months of receipt of the application and associated fee (Target 100%)	100.0%	100.0%	100.0%	100.0%	100.0%



Types of applications from April 2020 to March 2021

8. The most common applications are:
 - Admission to the Bar as a Transferring Qualified Lawyer (“TQL”) (293)
 - Certificate of Academic Standing (147)
 - Authorisation to conduct litigation (82)
 - Pupillage reduction (80)
 - Waiver of the pupillage funding, advertising & recruitment requirements (56)

9. The three most common application types during the reporting period were also the most common types, in the same order, in the previous reporting period.

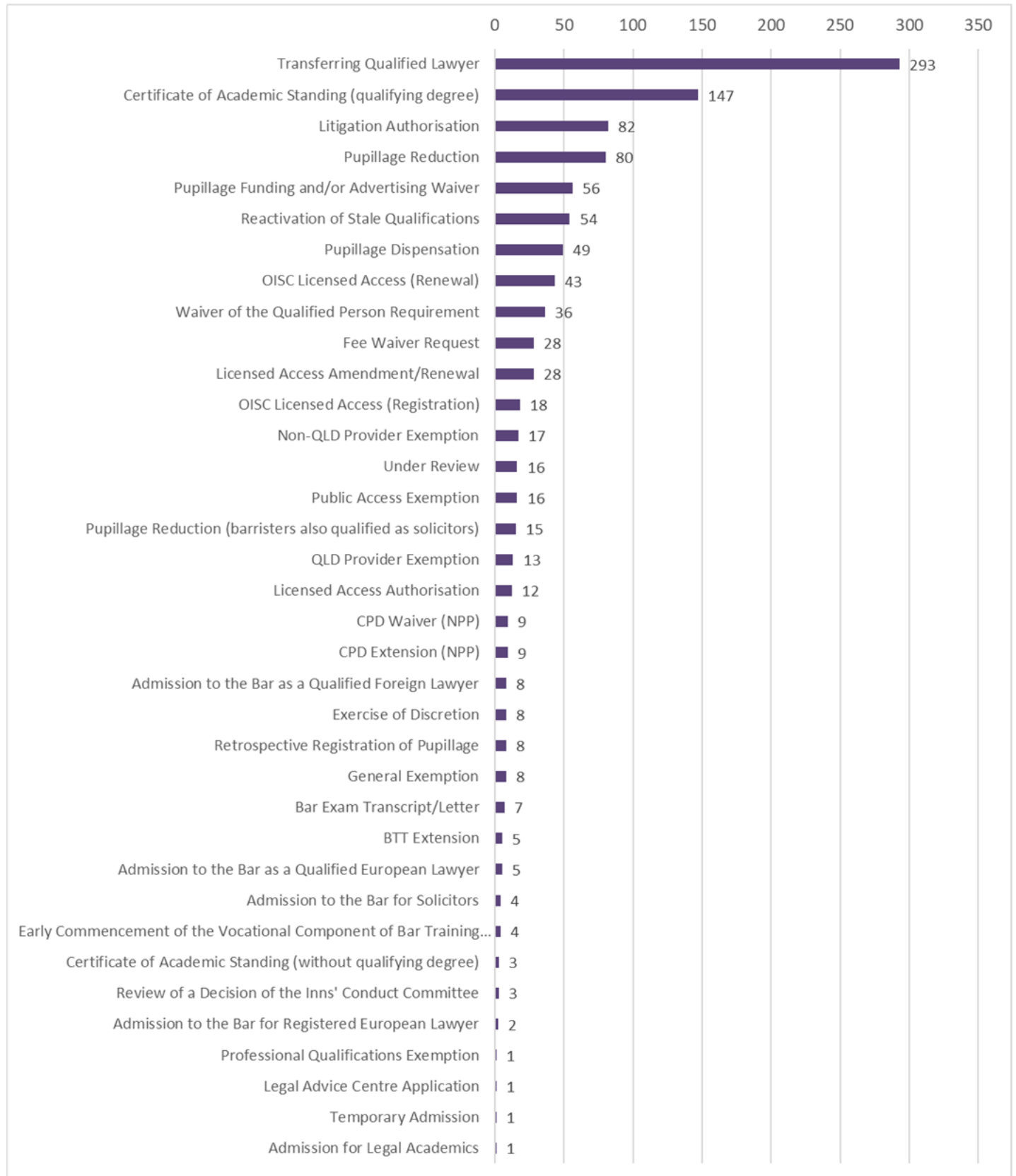
General Enquiries

10. The Team responded to 2,360 telephone calls during the reporting period and 17,033 email enquiries.

11. Telephone enquiries commonly relate to the status of an application submitted to the Team, but also to the pupillage registration and completion processes and more generally to the work of the Team. The high volume of calls and enquiries needs to be carefully balanced alongside the need to process applications. There is a connection between the number of calls and the speed of decision making (given that a reasonable percentage of queries are seeking updates on applications). More timely decision making should result in fewer calls.

Figure 2

Types of applications received in 2021/22



Transferring Qualified Lawyers (TQLs)

12. Applications for admission to the Bar from the various categories of Transferring Qualified Lawyer (“TQL”) continue to be the most common applications received by the Team. Demand for access to the online portal to submit an application continues to be very high; although the demand for access to the portal does not necessarily translate immediately to an equivalent number of submitted applications.
13. Changes to the arrangements for TQLs to undertake Bar Transfer Test assessments were implemented from August 2021. Decision-making for TQLs wishing to transfer to the Bar of England and Wales now refers explicitly to the Professional Statement and, where individuals are required to take assessments as a condition of their admission, these assessments are aligned with those taken by Bar training students, helping to ensure consistency of standards whichever route a barrister takes to qualify. There is also more flexibility in the transfer system as a TQL can now have unlimited attempts at any required assessment(s) within a five-year period without needing to apply for a new authorisation decision after two years, as was the case previously.

COVID-19

14. The knock-on effects of the pandemic on all components of Bar training meant that the usual cyclical peaks and troughs of work for the Team were still somewhat disrupted, although less so than in the previous reporting period. The pupillage registration and completion peaks are still approximately one month out of sync with previous years.

Authorisation of Authorised Education and Training Providers (AETOs)

Bar training providers (Vocational AETOs)

15. One institution which had not been authorised previously to deliver vocational Bar training was authorised in November 2021. No other prospective providers have come forward seeking authorisation in the period under review in this report.
16. The Team continues to process material change requests from the existing providers, eg for changes to the mode of teaching/assessment, authorisation of new locations for existing providers, etc. The use of computer-based examinations (authorised initially in the early stages of the pandemic) has continued for some, though not all, of the Bar Course providers as in-person/on campus teaching and assessment has begun to be reintroduced.

We are continuing to work closely with these providers to ensure that students are able to complete their Bar Courses and continue with their careers.

17. The Team works closely with the BSB's Supervision Team to identify issues arising from the authorisation processes that may require additional monitoring.

Pupillage providers

18. The Team has continued to manage the transition of Pupillage Training Organisations ("PTO"s) to authorised status under our new regime. The deadline for the completion of the transition has been extended from 31 March 2022 to 31 December 2022 to allow sufficient time for the processing of all outstanding applications. The Team has continued to send out targeted communications to existing pupillage providers that have not yet submitted an application to ensure that they do apply in advance of the deadline.
19. The Team has authorised 165 former pupillage providers and more than 100 others are in various stages of processing (eg initial assessment, awaiting outstanding information, pending a decision, etc). The process of authorising pupillage providers is fundamental to ensuring that there are clear and consistent outcomes for pupils as they move in to the early stages of their career at the Bar.
20. Interest from solicitors' firms and BSB entities to deliver work-based learning in the future has continued. Up to date information on the [AETO transitional arrangements](#) is available on our website.

Entities

21. At the end of this reporting period, there were 148 BSB authorised entities (including 13 Alternative Business Structures, which include lay ownership or management). The chambers model of governance for self-employed barristers remains the leading approach and there is limited demand for more varied forms of structure. Fourteen new entities were authorised in 2021/22. The Team met both the six-month and nine-month service standards for entity authorisation applications.
22. We remain keen to hear from anyone who would like to set up an entity and we are willing to discuss informally novel or innovative proposals before any authorisation application is made.

Contact and Assessment Team (CAT)

23. The total number of matters (Reports and General Enquiries) received by CAT increased slightly this year from 3300 to 3388 (3%). However, there was a substantial increase in Reports received from 1885 to 2196 (16%). With the addition of temporary resource, CAT was able to assess more reports than received (2517). This represents 54% increase in the output from the previous year.

Performance against service standards

General Enquiries

24. CAT met the first service standard for general enquiries: that the percentage of substantive responses to general enquiries that can be addressed by CAT were provided in 5 working days. The standard is 80% and CAT achieved 80.3%.

25. For those enquiries that could not be answered by CAT, but rather forwarded to another team, the percentage which were so forwarded within three days was 57.1%. This fell short of the 80% standard.

Initial Assessment

26. CAT did not meet the standard for Initial Assessments. 49.1% (set against the target of 80%) of cases were concluded within 8 weeks of receipt across the year as a whole, although by the fourth quarter 71% of reports were assessed within eight weeks.

Table 2	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2021/22
General Enquiries					
General enquiries addressed within 5 days (Target 80%)	305 (76.7%)	250 (80.4%)	202 (79.7%)	250 (85.2%)	1007 (80.3%)
General enquiries referred within 3 days (Target 80%)	73 (56.2%)	42 (50.0%)	36 (47.2%)	47 (72.3%)	198 (57.1%)
Initial Assessment					
Concluded or referred within 8 weeks (Target 80%)	595 (55.6%)	753 (28.4%)	431 (49.4%)	528 (71.0%)	2307 (49.1%)
Quality Indicators					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)	25 (100.0%)	26 (96.2%)	43 (97.7%)	31 (100.0%)	125 (98.4%)

Quality

27. CAT met the service standard for the quality of decisions. Across the year there were 125 requests for reviews. In 98.4% of these, the decision was upheld by the Independent Reviewer. We are clear that we should not compromise the quality of our decision-making in order to increase our chances of meeting our timeliness standards. We have a responsibility to ensure that all reports are given proper consideration and are assessed in line with our published processes.

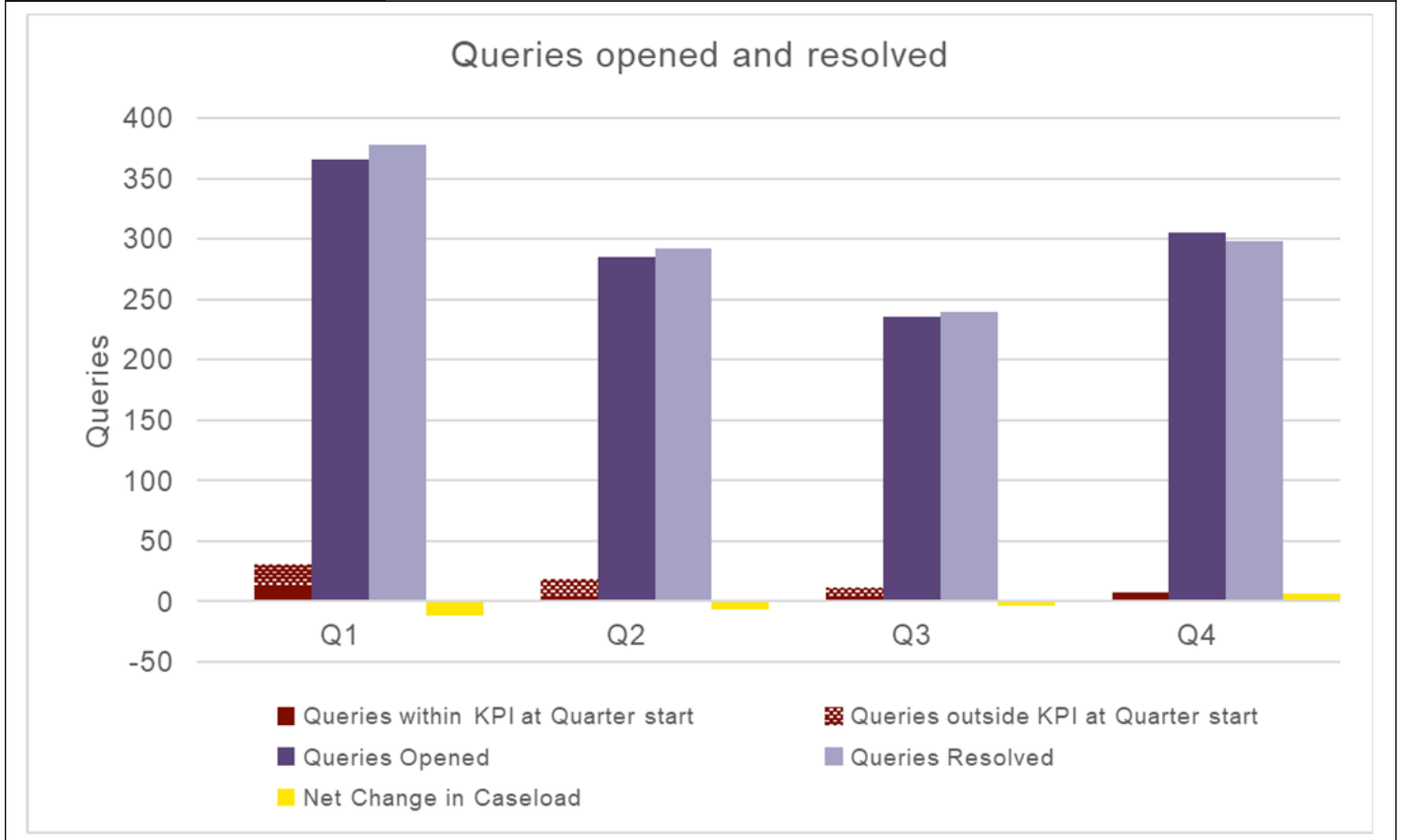
Productivity

28. The CAT Team significantly improved its productivity across the year. CAT output increased from 1634 matters (excluding general enquiries) to 2517 matters. This is an increase of 54%. This is set against a 29% increase in headcount for part of the year. Accordingly, in 2021/22, CAT became more efficient in assessing reports. That efficiency was insufficient, however, to overtake the increased reports.

29. It should be noted that in Q4, when headcount reached the full 29% increase, there was a substantial rebound in performance against KPI with the team reaching 71% from a quarterly low of 28.4%.

Figure 3

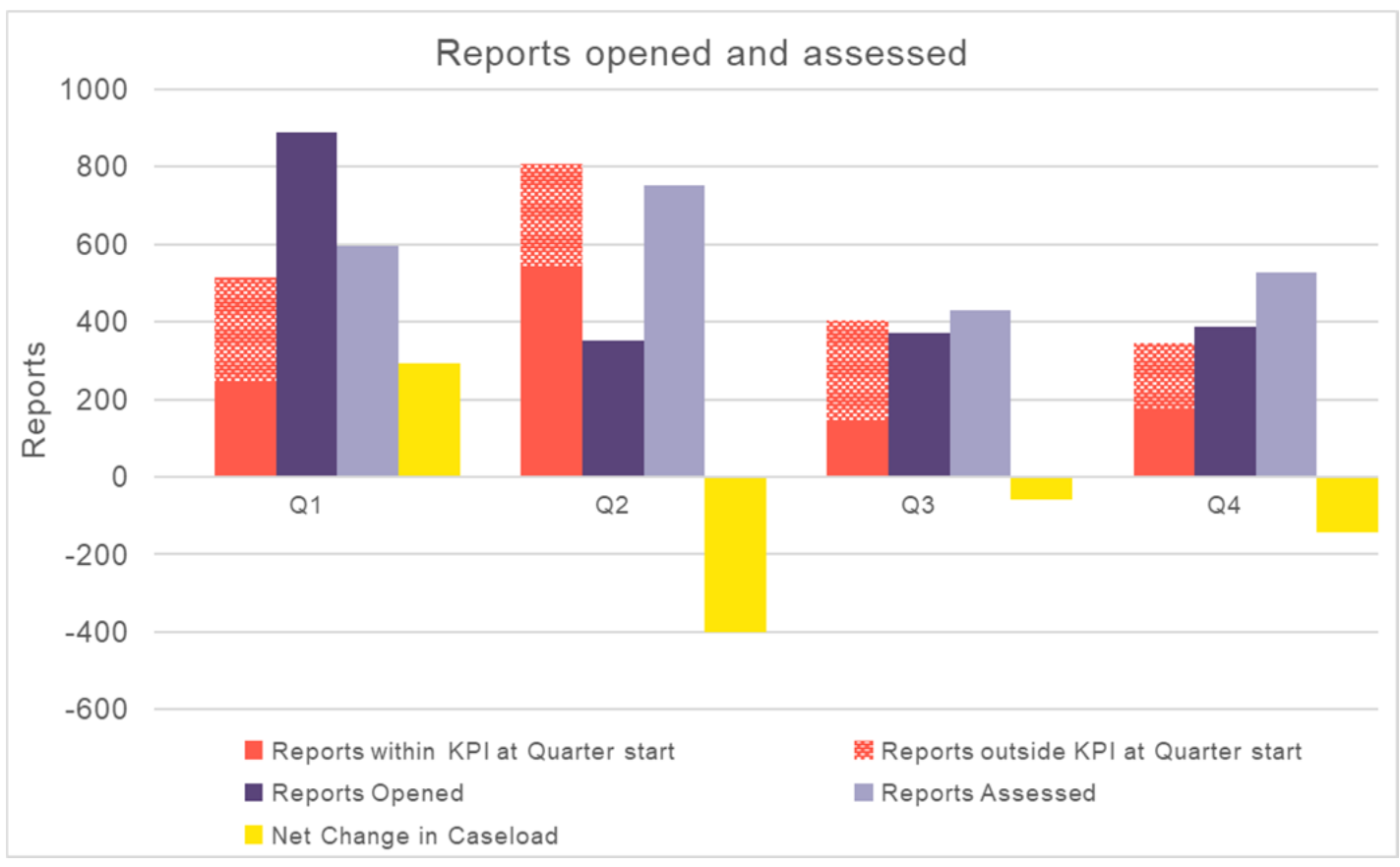
Throughput of General Queries in 2021/22



30. When looking at performance, resource capacity is only one part of the equation. We should also look at the effectiveness of our decision-making processes. We will be reviewing CAT's operating processes as part of the review of the changes made in 2019 to our regulatory operations. In particular, we will look at whether there is a means of streamlining our approach to dealing with cases where there is no evidence of misconduct. These make up a significant majority of the cases and we need to ensure we are taking a proportionate approach to their handling so that the Team has capacity to focus sufficiently on cases which may require further investigation or regulatory action.

Figure 4

Throughput of Reports in 2021/22



Themes and trends

Conduct outside professional life

31. This year saw a reduction of cases (from 274 to 194) where we identified the setting as occurring outside a barrister's professional life. However, in cases involving social media, which often relate to non-professional life, there was a substantial increase in reports assessed. In 2020/21 49 distinct cases involving 27 distinct barristers were assessed. In 2021/22 these figures rose to 89 and 36, respectively.
32. Throughout this year, the BSB was engaged in a project concerning non-professional life. As a result of this work we released, in July 2022, Interim Social Media Guidance. This will provide both barristers and the public clearer expectations around social media use. In turn, we are hopeful that in the year to come, we should see a reduction in reports in relation to social media.

Area of law

33. The area of law which occupies the highest proportion of cases remains Family law (7.4%). This was a small increase from 2020/21 (6.5%) and is the same as 2019/20.
34. We saw a slight increase (3.5% from 2.8%) in the number of reports relating to Criminal law.
35. Also notable was Employment law where the number of reports received more than doubled. Immigration is another area where we saw numerical increases in reports.

Other notable trends

36. The number of cases involving Litigants in person increased numerically but was stable in terms of percentage of reports.
37. We also saw an increase in reports involving conduct at work but not in relation to the provision of legal services. This would, include, for example, conduct in chambers. This year we assessed 304 cases of this nature up from 131 the previous year.

Investigation and Enforcement Team

General overview

38. 2021/22 was an extremely challenging year for enforcement work, particularly in relation to the acceptance and completion of investigations. We struggled to hit timeliness performance standards throughout the year. 54% of cases referred to the Team were accepted for investigation within two weeks and 34% of investigations were concluded within 25 weeks (see Table 3).
39. The main reasons for this poor performance are twofold: a substantial increase in the number of referrals to investigation; and ongoing problems with understaffing. However, against this background the team was still able to accept more cases for investigation than in 2020/21 and also conclude more investigations, whilst progressing to conclusion the same number of disciplinary cases.
40. The picture therefore is one of investigations slowing down and cases taking longer to progress, but not one of reduced productivity or lower quality. The issues with staff capacity were recognised by the Board during the year and an increase in people within the team was agreed. Unfortunately, it proved difficult in the current labour market to recruit to the new posts and to vacancies arising during the year. By the year end, the team complement had not increased, and at times it had fallen below the level prior to the agreed increase. There was therefore insufficient capacity to handle the increase in referrals and hence the service levels were adversely affected.
41. While our people are to be commended for continuing to maintain the throughput of cases, the low performance against the timeliness standards, both in this year and previous years, is a cause for concern. We are not complacent. Following the year end, an action plan was put in place with a view to recovering the position by the end of 2022/23 and we hope to report an improved position in next year's report. Further, as part of the review of the changes in 2019 under the Modernising Decision-Making initiative ("Regulatory Operations Review"), we will be considering ways to streamline the investigation process and will be examining whether changes to the regulations need to be made to facilitate this when we review Part 5 of the BSB Handbook in 2023/24.
42. The following sections provide more detail of the performance and trends in our enforcement work.

Performance against service standards

43. Table 3 below shows performance against the service levels.

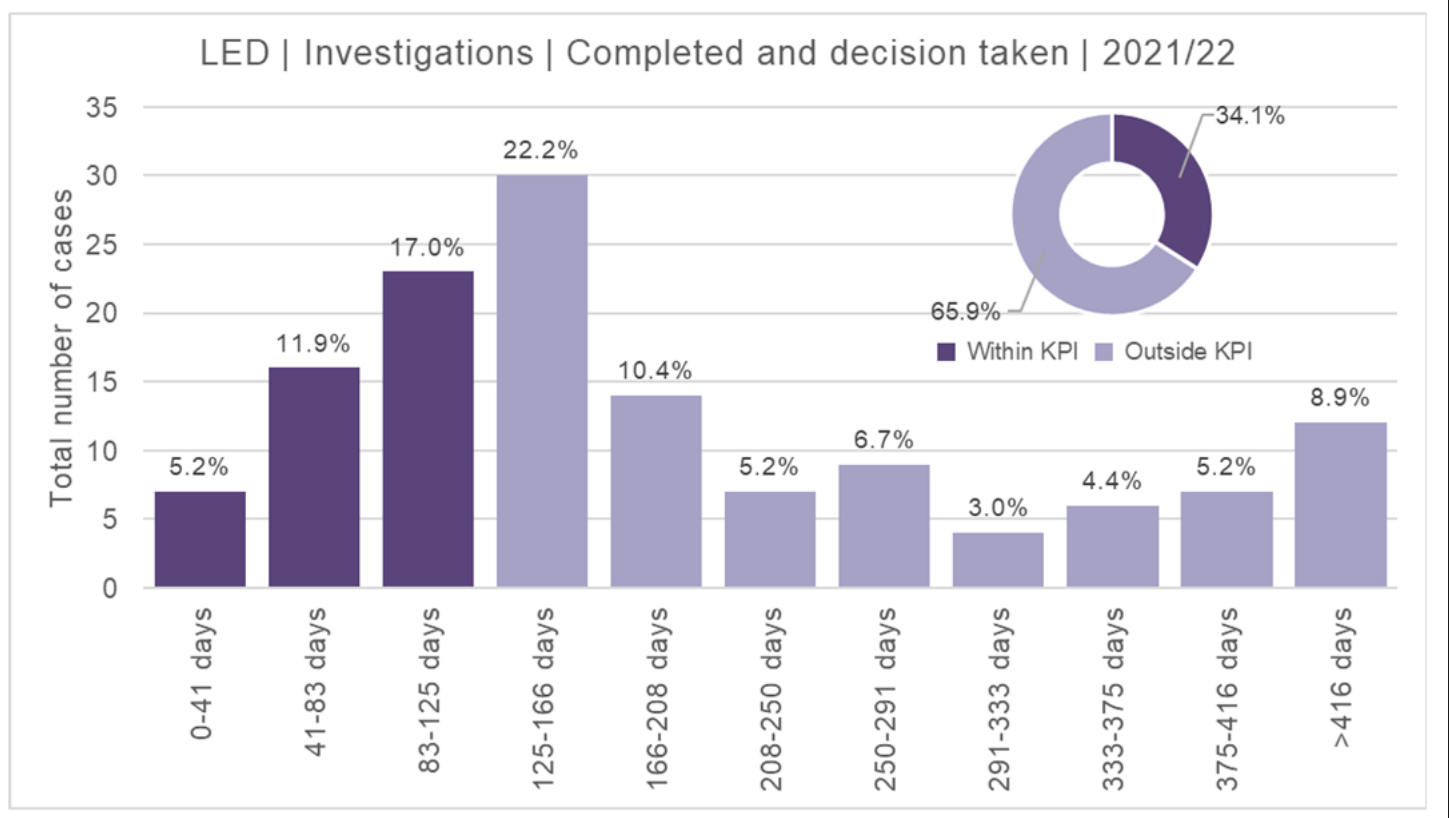
44. **End to end times for investigations:** the BSB currently monitors time taken to conclude cases based on the individual stages, eg assessment, referral and investigation. We recognise that this does not provide a full picture of how long it is taking from receipt of information to the conclusion of any enforcement action taken. We intend to remedy this as part of the wider review of our service standards. In 2021/22, the median time it took for investigations to be closed, from date of receipt of the initial reports, including the imposition of administrative sanctions, was 318 days as compared to 296 in 2020/21. This figure includes periods when investigations are put on hold, usually due to the ill health of the barrister or the need to await the conclusion of associated criminal or civil proceedings, the outcome of which would have a bearing on the investigation.

Table 3		Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2021/22	
Referral of cases						
Accepted or referred back within 2 weeks (Target 80%)	73 (89.0%)	37 (62.2%)	28 (21.4%)	46 (10.9%)	184 (53.8%)	
Investigation						
Decision on disposal within 25 weeks (Target 80%)	24 (33.3%)	41 (53.7%)	32 (31.3%)	38 (15.8%)	135 (34.1%)	
Quality Indicators						
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)	1 (100.0%)	1 (100.0%)	3 (66.7%)	1 (100.0%)	6 (83.3%)	
Number successful appeals against the imposition of administrative sanctions (Target 0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (100.0%)	1 (100.0%)	
Number successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process (Target 0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	

45. **Quality indicators:** while the timeliness of our work is important in ensuring that we meet our obligations and provide an effective service, it is also important that we monitor the quality of our work to ensure that decisions are fair and robust. In 2021/22, there were six requests for review arising from decisions taken at the end of an investigation by either staff or a panel of the Independent Decision-making Body (IDB). In one case, the Independent Reviewer recommended that the decision be taken again and in another she recommended that part of the decision be revisited. This meant that we missed our target of 95% of decisions being upheld with an outturn of 83.3%. We also did not meet the target of 0% for successful appeals from administrative sanctions. However, as Table 3 above indicates the outturn of 100% arose because the one decided appeal during the year was successful. There were no successful appeals of Disciplinary Findings and therefore the target for this KPI was met.

Figure 5

Age distribution of LED Investigations decided in 2021/22



Workload/productivity

46. As indicated above, the overall picture in relation to the timeliness KPIs is that performance reduced. However, the timeliness KPIs provide only a limited picture and do not reflect the volume of work the team handled during the year or the throughput of cases.
47. As the paragraphs below demonstrate, the overall volume of work increased in 2021/22. The number of cases accepted for investigation and the number concluded during the year increased (164 accepted for investigation and 106 closed after investigation in 2021/22, compared to 128 and 91 respectively in 2020/21). The team was also able to maintain the number of disciplinary cases concluded (33).

Investigations

48. In 2021/22, an unprecedented number of cases were registered as being received from CAT as referrals throughout the course of the year: up from 129 in 2020/21 to 238 – an increase of 83%. The volume of work the team had to handle and/or absorb, without the additional staffing, was therefore significant. The fact that only 184 referrals were accepted or referred back to CAT shows that a backlog of cases awaiting acceptance for investigation built up.
49. A significant percentage of the additional throughput of referrals related to referrals from the Barrister Records Team for failures to renew practising certificates. In 2020/21 there were only four such cases referred for investigation, whereas in 2021/22 there were 60 such cases. These cases therefore accounted for 55% of the increase in the throughput of investigation referrals in 2021/22.
50. The increase in practising certificate referrals is likely to have arisen from the impact of Covid and the extended payment arrangements in consecutive years. While the investigation of such cases requires staff capacity to progress, the time involved is less than other cases and they usually result in a staff decision so are less resource intensive. Nevertheless, they impact on the ability to deal with other cases. Even if such cases are removed from the overall throughput of referrals for the last two years, the increase in referrals for 2021/22 was still up by 41% as compared to 2020/21.
51. As most of the investigations of practising certificate breaches result in an administrative warning imposed by staff, following the year end we considered ways of handling such breaches in a more proportionate and efficient manner. The intention in the future is that such breaches will be addressed earlier in the process by CAT without the need for a formal investigation.

Figure 6

Throughput of Referrals in 2021/22

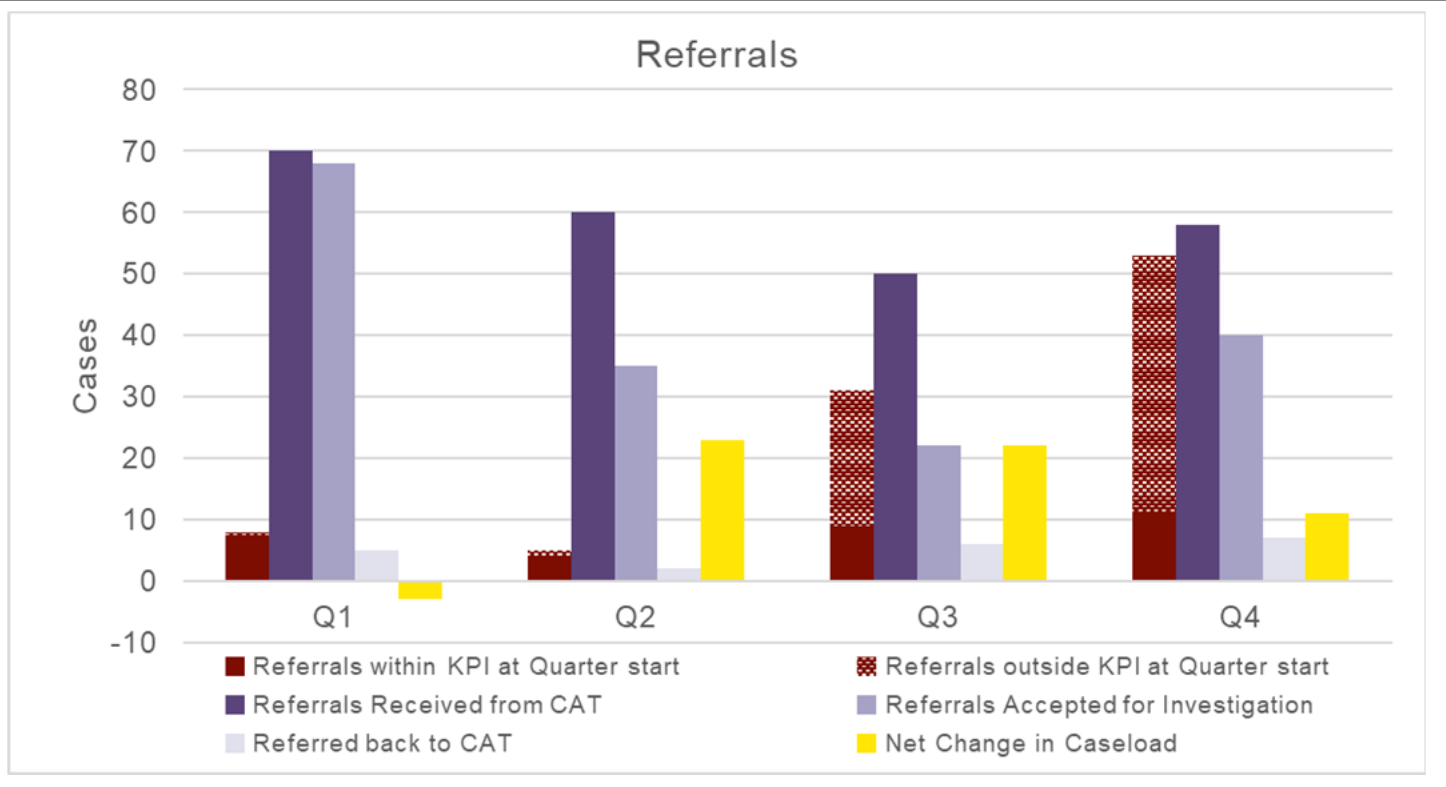


Figure 7

Throughput of Investigations in 2021/22

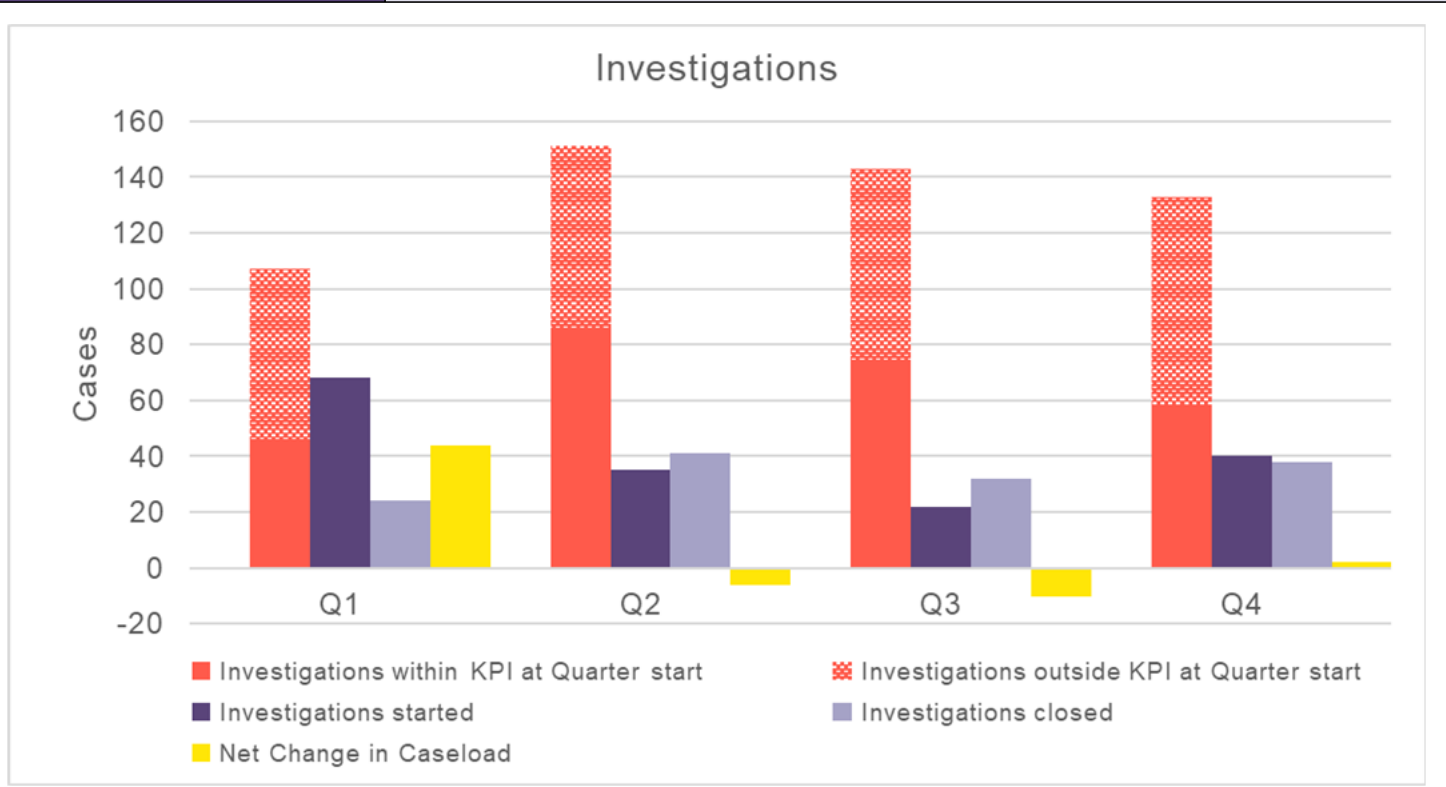


Table 4		Open cases at year end		
Stage	2019/20	2020/21	2021/22	
Referrals	27	8	63	
Investigations	108	98	129	
IDB/PCC	3	12	9	
Determination by Consent	1	2	2	
Disciplinary Tribunal	29	34	29	
Appeals	9	4	11	
Total	177	158	243	

Types of conduct investigated

52. We record the types of conduct investigated as “aspects” of case. Where more than one type of conduct is covered in a case, it will have multiple aspects therefore the number of aspects will always be higher than the total number of cases.
53. As indicated above, there was a big increase in the number of cases investigated related to failures to renew practising certificates on time. This was the highest category of aspects recorded as accepted for investigation at 12% of the total (as compared to 2% in 2020/21). Inevitably, such cases have skewed the percentage figures in relation to different types of conduct investigated. Therefore, leaving aside breaches of practising requirements, the next highest number of cases investigated related to the aspect “other diminishing trust and confidence”, ie breaches of Core Duty 5 where the conduct does not fit within any other specific category: these were up from 39 to 57. This aspect covers a wide range of conduct and examination of the types of conduct investigated in 2021/22 does not reveal any significant trends. The most common types of conduct arising under this heading in 2021/22 were: issues with the drafting/submission of court documents; holding out as a barrister when not entitled to do so; breaches of confidentiality; and use of social media
54. As Table 5 shows, the next highest aspect in the top-five aspects was “some form of misleading” which again encompasses a wide range of conduct from misleading the court to misleading any person whether in professional or non-professional life. Investigations which included this type of conduct almost doubled in 2021/22 from 16 to 31. Holding out as a barrister also increased as an aspect from 10 to 25, some which related to conduct associated with practising certificate breaches. The increase in the aspect of “failing to report

own serious misconduct” was significant, up from 1 in 2020/22 to 19 in 2021/22. This aspect is included in a case where conduct comes to attention to the BSB that should have been reported by the barrister under their reporting obligations but was not. The majority of these aspects (14) were associated with investigations of failures to review/obtain a practising certificate. The others related to a failure to report a breach of confidentiality by multiple barristers in one case.

55. **Harassment:** In 2021/22, there were eight new cases that included the aspect of “harassment” (including sexual harassment). Two of these eight cases related to unregistered barristers (this means an individual who does not hold a practising certificate but who has been called to the Bar by one of the Inns and has not ceased to be a member of the Bar) and were referred back to CAT because it was not possible to carry out an investigation. This compares to three cases referred back to CAT in 2020/21. During 2021/22, ten investigations relating to harassment and/or sexual misconduct were closed. Five were closed after investigation, and five were referred to disciplinary action. Of the five closed after investigation, one was withdrawn, one resulted in an administrative sanction, two were dismissed and one, that was originally referred to disciplinary action, was not proceeded with following counsel’s advice. In addition, two cases were closed after disciplinary action, in both cases the charges were proved (one case resulted in a suspension, the other resulted in disbarment).

56. **Social media:** in 2021/22, six cases relating to social media were referred for investigation as compared to nine in 2020/21. This contrasts starkly with the 83 reports of concerns about the use of social media by barristers that were received by CAT. While not necessarily the same cases as referred during the year, seven cases related to social media were concluded in the year. None were referred to disciplinary action, two cases resulted in the imposition of administrative sanctions and the rest were dismissed.

Table 5		Top-five Aspects of new Investigation cases (as a percentage of all aspects)	
Aspect	2020/21	2021/22	
Failing to renew practising certificate	4 (2%)	60 (12%)	
Other diminishing trust and confidence	39 (17%)	57 (12%)	
Some form of misleading	16 (7%)	31 (6%)	
Holding out as a barrister when not authorised to do so	10 (4%)	25 (5%)	
Failing to report own serious misconduct	1 (0.5%)	19 (4%)	

Outcomes of investigations – overview

57. The following paragraphs provide an overview of the outcomes of investigations concluded in 2021/22 – more detail on each of the outcomes is provided in subsequent sections.
58. Investigations can result in allegations being dismissed because of lack of evidence, administrative sanctions being imposed for breaches that do not amount to professional misconduct or a referral to disciplinary action. Cases which result in a dismissal or an administrative sanction are classed as “closed after investigation”. Cases that are referred to disciplinary action, while not closed, are counted in the figures for outcomes of investigation.
59. At the end of an investigation, the decision on what action, if any, to take is either taken by staff or a panel of the Independent Decision-Making Body (IDB). Staff have the power to dismiss cases due to lack of evidence and to impose administrative sanctions, but only very limited powers to refer cases to disciplinary action.
60. In total, 135 investigations were concluded in 2021/22. This was up by six cases on the year before – a small increase of just under 5%. Of the 135 concluded investigations, 106 were closed after investigation (78.5%) and 29 referred to disciplinary action (21.5%) – see paragraphs 63-71 for further analysis of the outcomes.
61. As Table 6 shows, in the last five years there have been fluctuations in the number of cases concluded after investigation with significantly more cases being concluded in the years 2017/18 and 2018/19 as compared to the last three years. In the main this is due to a difference in approach within the Records team in 2018 in chasing up failures to renew practising certificates, thus reducing the number of such failures that need to be investigated. There was a spike again in these cases in 2021/22 (see paragraph 49 above) due to the impact of Covid and revised deadlines for renewing. Just over half of the investigations of these cases were concluded in 2021/22.
62. Of the 106 cases closed after investigation, the proportion of decisions taken by staff remained consistent with previous years at around 69%. There has been little fluctuation of this figure in the last three years. Thus, the proportion of decisions taken by staff as compared to those taken by panels of the IDB remains roughly at two thirds to one third respectively: thus demonstrating, as far as is possible, decisions are being taken at the lowest level possible.

Dismissals

63. Investigations are recorded as “dismissed” where there is either no evidence/ insufficient evidence of the original alleged breach(es) referred to investigation, or, occasionally, there is evidence of a breach but the risk to the regulatory objectives is too low to warrant taking enforcement action.
64. In 2021/22, 50 cases were dismissed at the end of investigations equating to 37% of all investigations concluded in the year, the same percentage as last year, when 48 of the 129 investigations concluded resulted in dismissals. Where cases are dismissed, but there is still cause for concern the decision can be accompanied with formal advice to the barrister. Six of the 50 cases dismissed (12%) were subject to such advice: a lower proportion than in 2020/21 when 10 dismissals decisions included formal advice (21%).
65. The relatively high dismissal rate after investigation, in part, reflects our current process but is also a reflection of the fact specific nature of investigation cases. Decisions to carry out an investigation are based on the information presented to CAT at the initial assessment stage (see above). This information does not include the barrister’s comments on the matters alleged or any enquiries of relevant witnesses. Such information is obtained during the investigation and in many of the cases that are dismissed the barrister’s account, and/or that of witnesses, produces a fuller picture of the circumstances that results in the dismissal.
66. A review of the changes to the enforcement processes, introduced in 2019 as part of the Modernising Decision-Making initiative, as well as the Enforcement Regulations, is planned for 2022/23 -2023/24. A part of this will be considering whether adjustments to the earlier stages of the processes can be made to reduce the proportion of cases dismissed after investigation.

Table 6		Throughput of Investigation cases				
Decisions	2017/18	2018/19	2019/20	2020/21	2021/22	
Closed after Investigation	154	130	96	91	106	
Referred to Disciplinary Action	37	47	30	38	29	
Total	191	177	126	129	135	

Imposition of administrative sanctions

67. Where there is evidence of a breach of the BSB Handbook, which is not so serious as to amount to professional misconduct, both staff and an IDP can impose administrative sanctions in the form of a warning or fine up to £1,500 for individual barristers. The imposition of an administrative sanction does not constitute a disciplinary finding.
68. In 2021/22, the number of administrative sanctions imposed increased quite substantially from a total of 32 in 2020/21 to 49 in 2021/2. The vast majority of these (94%) were warnings as opposed to fines. They were imposed for a wide range of conduct but mostly: failures to renew a practising certificate (while continuing to practise); holding out as a barrister when not entitled to do so; and misleading others as to status.

Referrals to disciplinary action

69. Disciplinary action refers to action taken in the most serious cases where the conduct is considered to amount to professional misconduct as opposed to only a breach of the Handbook requirements. There are two forms of disciplinary action available: the Determination by Consent procedure or a Disciplinary Tribunal. The former is a procedure whereby the charges of professional misconduct are decided by a panel of the IDB on the papers with the consent of the barrister.
70. In 2021/22 there was a relatively significant reduction in the number of cases referred to disciplinary action: down by nine cases (23%) from 38 in 2020/21 to 29. This reduction is not likely to be due to any changes in behaviours at the Bar but to the slowdown in the time taken to investigate cases and the number that are still awaiting decision.
71. The main types of conduct that led to the referrals to disciplinary action were: criminal convictions (7); dishonesty (5), harassment (4) and misleading the court or others (4).

Disciplinary action

72. The same number of disciplinary cases (33) were concluded in 2021/22 as in the previous year although this number related to only 29 individual barristers given that some barristers were subject to more than one disciplinary case relating to separate incidents of misconduct. These 33 cases consisted of four that were dealt with under the Determination by Consent procedure and 29 that were heard in front of a Disciplinary Tribunal.

73. The median time taken to conclude the Tribunal cases, from the date the report was first received and the end of the hearing, increased substantially in 2021/22 from 638 days (21 months) in 2020/21 to 805 days (26.5 months). The figure includes periods when cases are put on hold or formally adjourned by a Tribunal. Such pauses generally arise due to ill health of the barrister or witnesses or associated ongoing criminal or civil proceedings relevant to the case. The increase in the median time is not necessarily a reflection of the increased time it was taking to investigate cases as the median time to conclude Tribunal cases from the date of referral remained similar to last year at 386 days as compared to 380. We recognise that these timescales are too long and need to be reduced. The increased staffing referred to above and the action plan that has been in put in place to accelerate investigations will assist with this. However, we also recognise that systemic issues may be contributing, whether this is the case will be examined as part of the Regulatory Operations and Part 5 reviews.

Outcomes of disciplinary action

74. As in 2020/21, there were four cases that were dealt with under the DBC process relating to three barristers. Two arose from a criminal conviction for drink driving, one from a police caution and the other arose from matters of failing to keep a client updated and associated Solicitors Regulatory Authority finding. All four resulted in findings of professional misconduct and sanctions of reprimands and/or fines.

75. Of the 29 cases concluded at Tribunal, 24 cases resulted in one or more charges being found proved equating to nearly 83% of the cases heard. This was an increase on last year where the percentage was approximately 70%. In the other five cases four were dismissed by the Tribunal and in one case, due to receipt of further evidence, the BSB offered no evidence. No costs orders were made against the BSB during the year, thus indicating that in the cases where the charges were dismissed, the Tribunal considered they were properly brought.

Table 7		Disciplinary action cases concluded				
Disciplinary Action	2017/18	2018/19	2019/20	2020/21	2021/22	
Determination by Consent	8	9	5	4	4	
Disciplinary Tribunal	39	28	42	29	29	
Total	47	37	47	33	33	

Table 8

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

Sentence	2017/18	2018/19	2019/20	2020/21	2021/22
Disbarred	6	4	10	4	6
Suspended	9	4	15	9	7
Fined	18	18	10	11	12
Reprimanded	15	16	13	10	14
Total sanctions	48	42	48	34	39
Total barristers	32	27	36	24	26

Sanctions imposed

76. The sanctions available for proved disciplinary findings range from no further action through to a fine, suspension and disbarment, although the latter two sanctions cannot be imposed under the Determination by Consent procedure. In 2021/22, 39 separate sanctions were imposed on 26 barristers arising from the 28 proved cases. The sanctions imposed are set out at Table 8 above and the pattern and number of the sanctions of each type remained broadly similar to last year.
77. The six disbarments mainly involved some form of dishonest conduct. Two were directly related to conduct that led to a criminal conviction (dishonest immigration claims and anti-money laundering failures). Three arose from the barristers' conduct in relation to their legal practice: misleading a client (combined with a benefits conviction), and two cases, against the same barrister, for providing false evidence/documents to the court. The sixth was imposed for sexual misconduct but was later reduced on appeal to a suspension. The suspensions imposed arose from a range of conduct including criminal convictions, harassment, misleading the court, and handling client money.
78. **Sanctions Guidance:** on 1 January 2022, the Bar Tribunal and Adjudication Service issued revised Sanctions Guidance applicable to all sanctions imposed on or after that date. The revised Guidance generally increased the indicative sanctions for misconduct and substantially increased the band levels for fines and the indicative sanctions for sexual misconduct, discrimination, and harassment. In the three months of 2021/22 when the new Guidance was applicable, only four disciplinary cases fell to be decided under it. Two of these involved dishonesty (the indicative sanction for which is disbarment both under the old and new Guidance). The other two were cases where the panel reconvened for sanction after 1 January 2022, but the finding

of misconduct was made prior to the introduction of the new Guidance. The Tribunal decided in both cases that the old Guidance should apply. Therefore, the revised sanctions levels in the new Guidance were not relevant in any of these cases. The impact of the revised Guidance will be assessed in next year's report, when it will have been in place for a full reporting year.

Supervision Team

79. Our [Supervision Strategy and Framework](#) sets out our approach to supervising barristers, chambers, BSB entities and Authorised Education and Training Organisations. The focus of supervision is to seek assurance that risks identified at both an individual and sector level are being controlled in a proportionate manner so that those risks do not materialise (or if they do, they can be mitigated effectively). The team takes both a reactive and proactive approach: reactive in terms of the unsolicited information we receive from a range of sources about practice at the Bar, and proactive, to gather evidence to support our risk-based approach and to ensure that we are targeting our resources where they are most needed.

Concerns reported to the BSB

80. The team met all of its service levels this year.
81. The Contact and Assessment Team referred 119 reports to Supervision for action, which is a 35% increase on the previous year and reflects the increase in volumes described elsewhere in this report.
82. In addition, Supervision opened 90 cases, compared to 27 last year. This includes 45 cases related to testing compliance with the transparency rules (see paragraph 110 below).
83. The additional spike in cases that is reflected in Figure 8 is caused by the number of cases opened following assessment of the Regulatory Returns (see paragraph 99 below).
84. The open caseload therefore rose over the course of the 12 months. Where reports were relevant to the topics covered in the Regulatory Returns, officers reviewed them with chambers and entities as part of that process (eg a report concerning complaints procedures was assessed in the context of the information provided by the chambers in the Regulatory Return).
85. Where reports related to concerns about pupillage, Supervision officers liaised with the Authorisations Team as applications from pupillage providers were assessed, to ensure a co-ordinated approach. As the timeframe for the authorisation process has been extended, we have changed our approach and decided not to delay supervision action on new cases where the applications have not been submitted or assessed. However, where Supervision concerns arise, these are referred to Authorisations to prioritise assessment and chase late submission of the application.

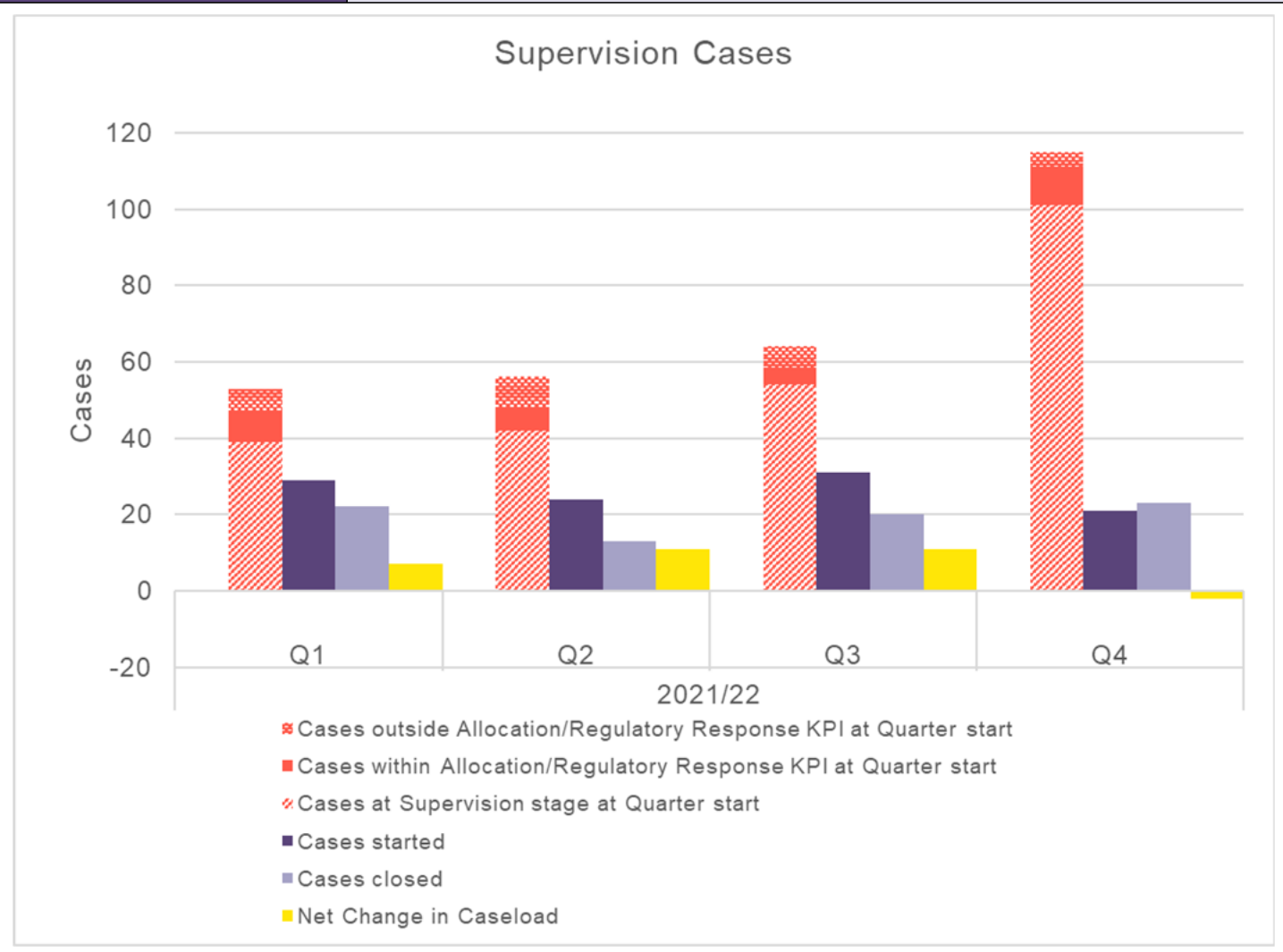
Table 9

Quarterly KPIs

KPI	Q1	Q2	Q3	Q4	2021/22
Allocations					
Assigned within 3 working days (Target 80%)	32 (96.9%)	32 (100.0%)	24 (87.5%)	30 (100.0%)	118 (96.6%)
Regulatory Response					
Agreeing a regulatory response within 20 working days of the case being assigned (Target 80%)	44 (93.2%)	39 (84.6%)	73 (95.9%)	43 (81.4%)	199 (89.9%)
Visits					
Report letters issued within 5 working days of a visit to an organisation (Target 80%)	3 (100.0%)	1 (100.0%)	1 (100.0%)	1 (100.0%)	6 (100.0%)

Figure 8

Throughput of Supervision Cases in 2021/22



86. There is a risk that Supervision's ability to progress cases could be impacted by the backlog in the Enforcement Team (see paragraph 48 above) where cases are referred by the Contact and Assessment Team to both teams. This typically arises where the Enforcement Team is considering barrister misconduct and the Supervision Team is considering the policies, processes and culture in chambers that may have contributed to it. For example, this typically arises in cases relating to bullying and harassment. Where this happens, the team heads meet regularly to agree aspects of the case that can be progressed by the Supervision Team without impacting the enforcement process.

Bar training

Vocational component

87. The turbulence of the previous year that was caused by the pandemic coinciding with the launch of the new Bar courses, began to settle as training providers went into the second academic year (2021/22) of delivering the new courses. There was still some impact on providers, particularly at the start of the academic year, requiring us to assess some further material change requests relating to how assessments were delivered, in collaboration with the Authorisations Team. We conducted a Supervision visit at one provider where communication with students had not worked well during the pandemic, and we reviewed and monitored the plans that the provider had in place as a result of lessons learned.

88. We meet with all providers quarterly and recently we were able to get back to an in-person meeting together with external examiners, to reflect on the first two years of the reforms. Providers were particularly positive about the flexibility that our reforms created, enabling them to be more creative in the delivery of the courses, helping them to promote high standards and to prepare students for a career at the Bar or elsewhere. They are reflecting on what has worked well and feel that as they enter a more stable period, this creativity will continue to evolve.

89. This year, we began to see the benefits of our subject-based external examiner team structure that we introduced the previous year. The teams collaborated well, helping to assure consistency of standards in the assessments that are set and marked by the providers. In addition to individual reports to providers, themes were shared with all providers.

90. Overall, the quality of assessments is high across providers. In most cases they are appropriately challenging, realistic and in line with the Curriculum and Assessment Strategy and the Professional Statement. Generally, marking, second marking and moderation processes at providers appear to be working

and are robust. Where individual areas of concern were identified, external examiners and the Supervision Team worked with providers to address issues raised and set actions where needed.

91. Providers deliver their courses through a range of cohort start dates, and some have taken up the opportunity of the new 4-part pathway, splitting the Bar course into two parts. That means that there is a wide range of academic calendars, and our external examiner teams need to plan their time accordingly. In some cases, providers have not given external examiners sufficient time to review materials and the scheduling of some assessment boards has been problematic. In a couple of cases, this has meant that results have not been released to students when they should have been. We anticipate improvements this year.
92. Legal Research and Opinion Writing was an area of change in the new Curriculum and Assessment Strategy. The Subject Lead reported some initial inconsistencies, which were resolved.
93. As responsibility for assessment of Professional Ethics during the vocational component moved from the BSB to providers, the external examiner team had a particular focus on ensuring consistent standards, when there was a wide variety of assessment formats. The team worked hard with providers to ensure consistency of standards, whilst giving providers the freedom to create their own approach to assessment. Providers told us that they have particularly welcomed the flexibility that the reforms have given to embed the teaching of ethics across the Bar course, meaning that the qualification prepares students well for pupillage, as well as creating training held in high regard internationally.

Pupillage component

94. We were pleased to see that pupillage numbers bounced back strongly after the dip that was caused by the pandemic. 577 pupillages commenced in the 2021 calendar year, compared with 400 in 2020 and 504 in 2019.
95. We regularly present at the pupil supervisor training delivered by some of the Inns and Circuits to ensure that pupil supervisors understand the regulatory requirements, and would welcome the opportunity to do so at others. These forums provide an opportunity for us to meet pupil supervisors and share examples of good practice, in addition to the common themes seen by the Supervision Team when things go wrong. We are pleased that pupils are confident in approaching the BSB when their concerns cannot be resolved internally, and that the Bar Council encourages pupils that contact their pupillage helpline to contact us. The typical reasons that things go wrong in

pupillage continue to be those that we have reported in previous years, and we urge all AETOs to be mindful of the following:

- Robust policies and processes are crucial in making sure that pupillages are successful, particularly in relation to having a clear training plan and robust feedback mechanisms.
- Pupillage providers should have arrangements in place so that both they and their pupils know what to do if a pupillage is not going well. Pupils should have people other than their pupil supervisor to turn to if necessary.
- The pandemic has accelerated the trend towards more remote working, both within chambers, and with clients and cases. Providers need to keep under review how effective pupillage training can be sustained, how pupil supervisors engage with pupils and how training may need to be adapted to address different skills that may be needed.

96. The first BSB-set and marked ethics exam in pupillage was successfully delivered to the first cohort of pupils in April 2022. The Supervision Team worked with the Exams Team to provide [information](#) to AETOs and pupil supervisors about the new exam and what pupils need to do to prepare and register for the exam.

97. We are currently working with academics, the Inns and the Circuits to implement the final reforms to the Curriculum and Assessment Strategy, in relation to Advocacy and Negotiation Skills training and assessment during pupillage.

Apprenticeship pathway

98. The apprenticeship pathway was approved in principle as part of our Bar training reforms in 2019 but is not yet available to students. There is a growing interest from both the employed and self-employed Bar, as well as the vocational providers, who all see the potential it has to increase diversity at the Bar and open up new opportunities for a career at the Bar. We are currently working with interested parties to test whether it will be feasible to introduce this pathway. Anyone interested in getting involved should contact supervision@barstandardsboard.org.uk.

Supervision of chambers, BSB entities and sole practitioners

Regulatory Return

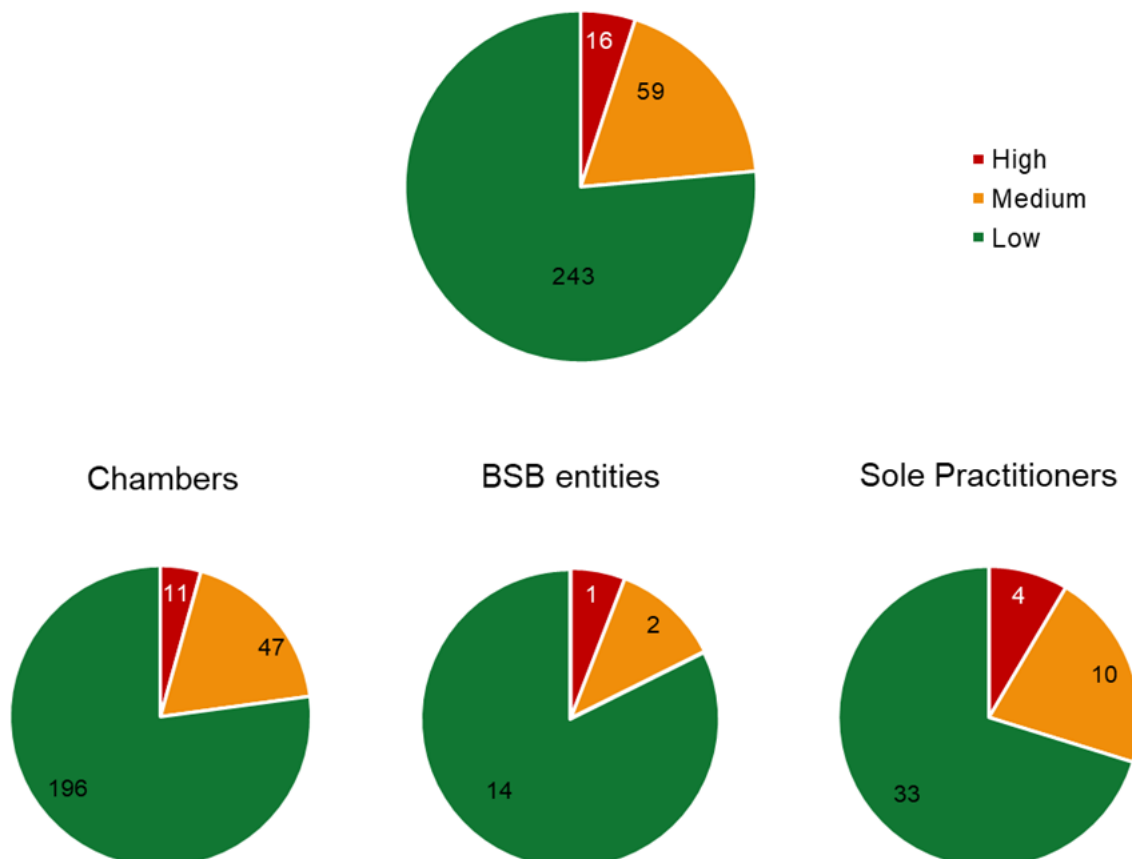
99. We completed our supervision assessment of the Regulatory Returns. In total, 318 were completed. The Return provided an opportunity for those selected to explain how effectively potential risks are being managed within their organisations or entities, how they ensure compliance with the BSB Handbook, and how high standards of practice are maintained. We carried out a risk assessment based on the responses provided and contacted the relevant chambers, entity or sole practitioner, either to provide the outcome of the assessment or, where relevant, to seek clarification in certain areas or to obtain further information where a response to one or more questions was not sufficiently detailed. This has helped us to refresh our understanding of risk at an organisation or practice level and represents a considerable amount of individual engagement between members of the Supervision Team and those that participated.

100. As we anticipated, the vast majority were assessed as low or medium risk.

Figure 9

Risk assessments for all Regulatory Returns

Risk ratings - All Chambers, BSB entities, Sole Practitioners



101. As part of this process, 1,031 actions were set, which we mapped against the categories in the [BSB Risk Index](#). Given the focus of the questions, we would expect the majority of actions to fall in the category “management of an individual practice or chambers”, which has been the case. Actions were prioritised according to risk, with priority 1 actions being the most urgent, reflecting the areas of highest risk. The implementation of those rated priority 1 to 3 are followed up by the Supervision Team. Priority 4 actions represent other areas where controls could be strengthened; the Supervision Team does not monitor the implementation of these actions, but they should be followed up by the relevant organisation or individual. As at 18 November 2022, 187 actions remain open and are in the process of being followed up by the Supervision Team.

102. In addition to providing individual feedback to all those who completed the Return, we have already used a great deal of information in the Returns, for example:

- It has informed our latest three-year strategy.
- It has helped us to evaluate the Price, Service and Redress Transparency Rules (see paragraph 110 below).
- Responses have informed the problem definition phase of both the Ongoing Competence project and the Early Years of Practice project, and will feed into the development of policy changes as the projects progress.
- The bullying and harassment project used the responses to gain a better understanding of how chambers can guard against allegations of bullying and harassment, and how they can effectively deal with reports of harassment when they occur.

103. We will be publishing a series of thematic reports providing more granular information on the headline areas highlighted above – both risks identified and examples of good practice. These will cover areas such as risk management; complaints handling; data protection and information risk management; equality, diversity and inclusion; the role played by chambers and entities in ensuring barrister competence; and the changing use of technology and innovation in the profession. A particular theme that has recurred in the course of discussions with chambers, that we aim to address, is a desire for more clarity about our expectations of what standards smaller chambers should be aiming for, ensuring that we are acting proportionately as a regulator, and also more guidance about what they can realistically and practically contribute to objectives such as improved diversity and inclusion.

104. You can read more about this on our [website](#).

Figure 10

Supervision Actions mapped to BSB Risk Index

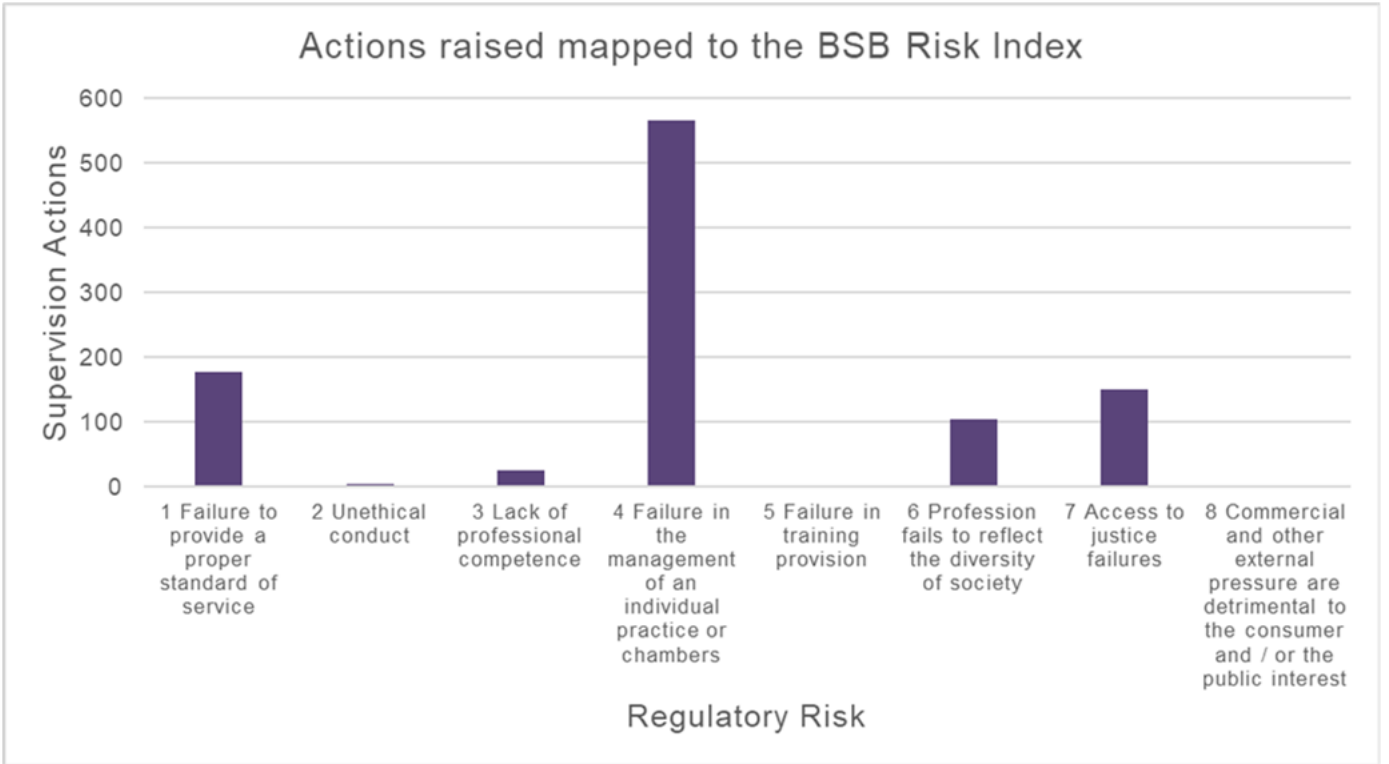
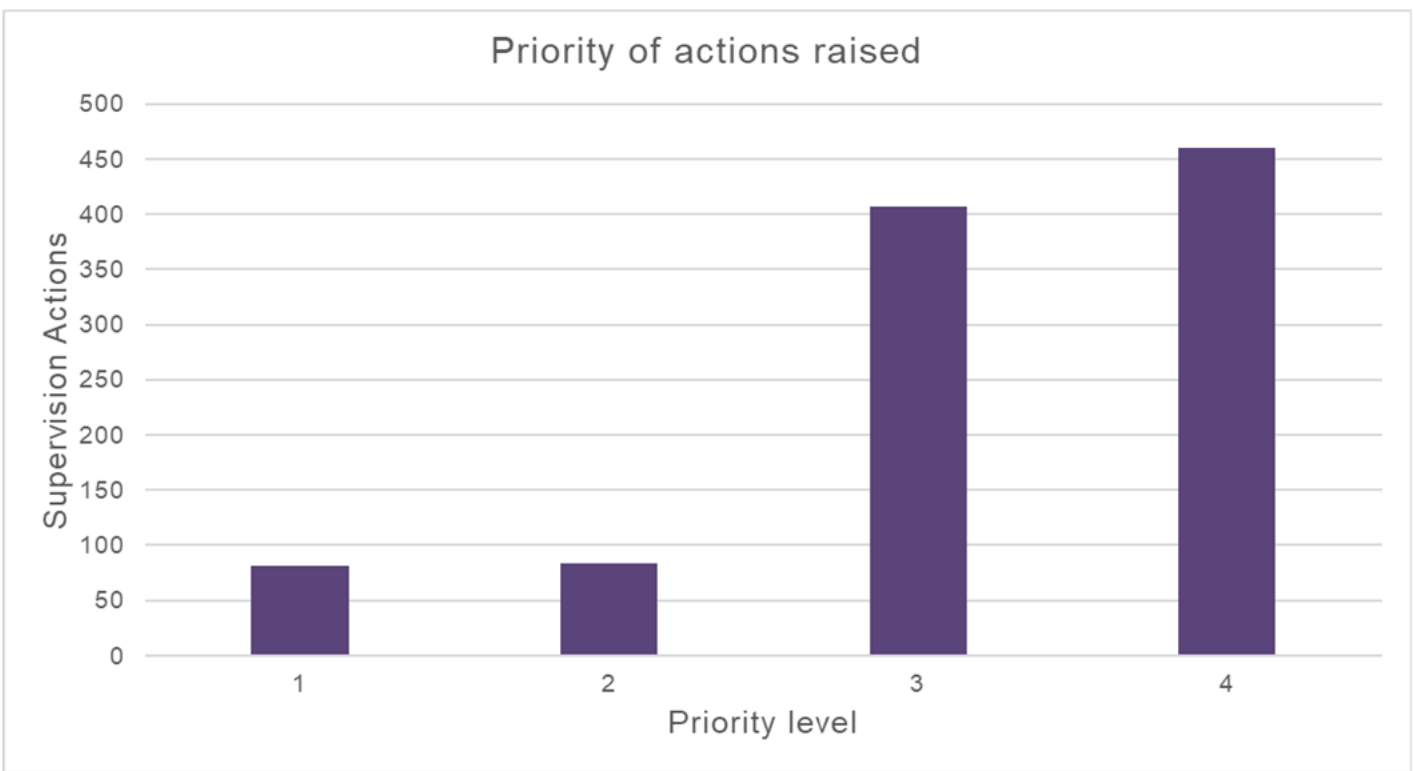


Figure 11

Priority levels of Supervision Actions



Sanctions regime compliance

105. All barristers and BSB entities must comply with the UK's sanctions regime and must have procedures in place to ensure that sanctions are not breached. There are some exemptions for which a licence can be sought from the Office of Financial Sanctions Implementation (OFSI). These include in order to receive reasonable fees for the provision of legal advice. In addition, legal professionals have certain reporting obligations. Barristers must inform OFSI promptly if they know or reasonably suspect that a person is a designated person or has committed offences under sanctions regulations, where that information is received in the course of carrying on business.
106. This came into sharp focus in February this year, following the Russian invasion of Ukraine, when the government imposed a raft of new sanctions. The government sought the support of all regulators to raise awareness of the regulations and to test compliance.
107. In response, we published a series of articles in the [Regulatory Updates](#), we created a new [page on our website](#) and we wrote to a number of the Specialist Bar Associations to explain the requirements and raise awareness.
108. We have also been working closely with HM Treasury, the National Crime Agency and other regulators to share good practice and intelligence about where there is the greatest risk of breaches. OFSI (which is located within HM Treasury) has proved a little harder to engage with as a result of their significant workload, which has clearly stretched their resources, but we continue to liaise with HM Treasury and the Ministry of Justice. Reflecting this engagement, and with the input of our own [APEX](#) expert, we prepared our own risk assessment. From this, we developed a compliance testing plan which focuses on those conducting work under the Money Laundering Regulations (where we had previously already conducted some Supervision activity) and members of Combar, the Specialist Bar Association for commercial barristers advising the international business community. This work is in progress, and we will report any themes that emerge from it for others to learn from.
109. In September, following Russia's proclaimed annexation of the Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporizhzhia, the Government announced new sanctions, including a ban on transactional legal advisory services for certain commercial activity. We are awaiting further details and barristers should monitor our website and Regulatory Updates.

Price transparency

110. Since the Bar Transparency Rules came into force in 2019, the Supervision Team has supported effective implementation by the profession through a programme of compliance testing. This work has involved extensive engagement with the profession, helping chambers, BSB entities and sole practitioners to understand and meet their obligations and meet the objective of improving the information available to the public before they engage the services of a barrister. We also asked for feedback about the impact of the rules in the Regulatory Return, which the Research team used to inform their analysis. In July, we published [two new reports](#) on compliance with the rules and their impact on consumers.

111. The first report shows that the Bar has made encouraging progress in ensuring compliance with the rules, as only 6% of those assessed were neither compliant nor partially compliant. This is a significant improvement on the figure of 25% from our last report in 2020. It is now three years since these rules came in and where a chambers, BSB entity or sole practice is assessed as non-compliant and has not engaged satisfactorily with the actions set to achieve compliance, enforcement action is taken.

112. The second report shows positive trends in consumer behaviour between 2019 and 2021:

- the proportion of consumers who obtained details of service or price before choosing a barrister increased from 10% to 23% obtaining details of services and 25% obtaining prices;
- awareness of complaints procedures increased and the levels and proportions of complaints that relate to cost and clarity of information about costs have both declined, as has the level and proportion of complaints that relate to the timescales of cases;
- the percentage of clients shopping around when choosing a barrister increased from 7% to 17% who obtained details of services from more than one provider, and from 6% to 20% who obtained prices from more than one barrister; and
- awareness among clients of the regulatory status of their barrister increased from 63% to 71% (and to 83% for public access clients).

113. This evaluation is being used to inform the next phases of our work around ensuring transparency for clients, together with the Research and Policy Teams, including:

- reviewing our guidance to ensure that it is sufficiently clear;
- considering whether further guidance is needed for barristers who use third party marketing platforms, particularly where that is the primary means through which they publish information about their services; and

- we have recently launched a [pilot on Digital Comparison Tools](#) in order to understand whether this can promote access to barristers' services for consumers.

114. We will continue to check compliance with the rules through our Supervision activity.

Supervision of relevant persons under the Money Laundering Regulations

115. We are responsible for the supervision of relevant persons under the Money Laundering Regulations. The Regulations require us to publish a separate annual report on our supervisory activity, which can be found [here](#).

Quality assurance – Independent Reviewer

116. The Independent Reviewer (IR) role was created by the Bar Standards Board in 2019 to provide an independent mechanism for quality assuring the BSB's regulatory decision-making.

117. As such, the role's main functions are to carry out:

- a. Quarterly quality assurance audits of a random sample of cases in which relevant decisions, across the regulatory process, have been taken by staff.
 - In the year 2021/22, while making a number of recommendations arising from her audits, the IR found that decisions in the cases she audited had all ultimately been made appropriately.
- b. Reviews of decisions taken in a case, when requested by a party to a report or case. In these cases, the IR makes a recommendation which may be accepted or declined by the relevant Director or Head of department.
 - The IR reviewed 131 decisions in the reporting period following a request by a party.
 - Most requests were made by parties who were dissatisfied with the decision of the Contact and Assessment Team (CAT) not to take further action in their case: 125 in total. Two requests related to staff decisions at the Investigation and Enforcement (I & E) stage and a further four related to decisions of the Independent Decision-Making Body. In a total of seven cases across the different stages, the IR made recommendations for further action, or a reconsideration of the decision reached, and/or concluded that although the right outcome had been reached, incorrect factors had been taken into account.

Lessons learned and improvements in decision-making process

118. In addition to considering the appropriateness of a particular decision, the IR also considers more general matters, such as whether regulations and policies have been applied correctly and whether the case was handled fairly.

119. The IR has made a number of recommendations arising from her consideration of those general matters. Recommendations have been wide ranging, and include:

- ensuring only necessary personal data is retained
- consideration of how much information is provided to those making reports where the report is referred or partly referred for further investigation
- consideration of greater use of triage at the assessment stage

- consideration of an alert system to ensure progression of cases
- consideration as to how relevant matters are shared with other regulators
- consideration of whether there is consistency in approach to risk in certain matters (for example, closure of chambers).

120. Timeliness in case handling has been seen to be a challenge through the last year, for various reasons including the IT security issues and the volume of reports. As last year, it continues to be the case that where case managers provide regular updates about the progress of cases, parties are generally very understanding of delays and appreciate the reassurance that their case or application has not been forgotten about.

121. The IR has also noted a number of improvements (both in response to her feedback and generally) and examples of good practice, which include the following:

- Full and clear reasons for decisions are now provided in nearly every case
- A form of triage is now in place so that, for example, cases which cannot be considered for jurisdictional reasons, are identified early and the information provider is promptly informed
- Staff continue to show sensitivity in appropriate cases and signpost to sources of help
- Timeliness appears to have improved in recent months.

Nature of cases referred for review

122. At all stages it is nearly always the person who originally made the report to the BSB who makes a request for review. Very often, the person making the report has been or is a litigant in person and their report arises from a dispute or hearing where the respondent barrister represents the party on the other side. Unrepresented parties may not fully understand the role of the barrister in a contested case, or that a report to the BSB will not in itself alter a disappointing outcome in a dispute.

123. As context, it continues to be the case that barristers' alleged conduct in disputes about family proceedings (especially where child contact is involved) often gives rise to requests for review. Cases involving social media and expression of opinion have also given rise to many requests for review over the last year; the decisions in such cases are finely judged but parties in them often hold very strong views and ask for the decision to be reviewed. Concerns about information providers' own barristers have also again featured regularly in requests for review. These reports generally have to be referred first to the Legal Ombudsman and information providers have often challenged the jurisdictional constraints placed on the BSB to consider this type of report and/or the need to refer the report to the Ombudsman. We

intend to review this position so that we are able to consider conduct matters concurrently with the Legal Ombudsman's investigation of service issues.

Development of IR role

124. All those who request a review of the decision made in their case are entitled to a thorough, careful and independent consideration of their request. The IR has continued to seek to ensure that information providers can be reassured that their concerns have been fully considered (even if the recommendation is ultimately to confirm the original decision).

125. The number of decisions where a review is requested has grown each year since the IR role started, and a second independent reviewer has recently been recruited. The additional resource will not only help with workloads, but also provide a fresh perspective on decision-making and quality assurance.

Concluding comments

126. This reporting year has presented challenges for the BSB, particularly in relation to the timeliness of progressing cases. The quality of our decision making remains high (which is acknowledged by our Independent Reviewer) as does the productivity of the case work teams. The performance of our regulatory operations will continue to be a priority for the BSB and we will during 2022/23 also be carrying out a review of our decision making processes to ensure that they remain fit for purpose, efficient and robust.

127. Key to the success of the BSB's regulation is building constructive relationships with the profession, consumers and other interested parties. This helps develop the picture of how effectively our regulated community is in meeting our expectations and those of consumers. The report highlights examples where we have taken active steps to identify potential risks to high standards of practice and to address them through targeted and proportionate interventions. We see this more proactive approach to our regulation as critical to our effectiveness and it will be an increasing feature of how we engage with the profession and others. We will report on progress in 2022/23.