

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



REGULATING BARRISTERS

## Meeting of the Bar Standards Board

**Thursday 22 September 2022, 5.00 pm** (Hybrid meeting - in person and online)

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

### Agenda - Part 1 – Public

*Note: this meeting will be preceded by a seminar for Board Members commencing at 3.45 pm on processes for assessment and investigation of reports about barristers (same venue)*

				<b>Page</b>
1.	<b>Welcome / announcements</b> (5.00 pm)		Chair	
2.	<b>Apologies</b>		Chair	
3.	<b>Members' interests and hospitality</b>		Chair	
4.	<b>Approval of minutes from the last meeting</b> <b>(14 July 2022)</b>	Annex A	Chair	<b>3-8</b>
5.	a) <b>Matters arising &amp; Action List</b> b) <b>Forward agenda</b>	Annex B Annex C	Chair Chair	<b>9-11</b> <b>13</b>
6.	<b>Director General's Report – public session:</b> a) <b>Performance Update</b> b) <b>Strategic Update</b> (5.05 pm)	BSB 045 (22) BSB 046 (22)	Mark Neale Mark Neale	<b>15-32</b> <b>33-45</b>
7.	<b>Wellbeing at the Bar</b> (5.20 pm)	BSB 047 (22)	Ewen Macleod	<b>47-52</b>
8.	<b>Annual Report and Cost Transparency Metrics</b> (5.30 pm)	BSB 048 (22)	Wilf White	<b>53-86</b>
9.	<b>Chair's Report on Visits &amp; External Meetings</b>	BSB 049 (22)	Chair	<b>87</b>
10.	<b>Any other business</b> (5.40 pm)		Chair	
11.	<b>Date of next meeting</b> • Thursday 1 December 2022			
12.	<b>Private Session</b>			

**John Picken**  
**Governance Officer**  
15 September 2022



<p style="text-align: center;">BAR STANDARDS BOARD</p>
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REGULATING BARRISTERS

**Part 1 - Public****Minutes of the Bar Standards Board meeting****Thursday 14 July 2022 (5.00 pm)****Hybrid Meeting (Rooms 1.4-1.5, BSB Offices & MS Teams)**

- Present:** Baroness Tessa Blackstone (Chair)  
 Alison Alden OBE – via Teams  
 Emir Feisal JP – via Teams  
 Steve Haines – via Teams  
 Irena Sabic – via Teams  
 Adam Solomon QC  
 Kathryn Stone OBE – via Teams  
 Stephen Thornton CBE – via Teams
- By invitation:** Mark Fenhalls QC (Chair, Bar Council) – via Teams  
 Nick Vineall QC (NV) (Vice Chair, Bar Council)
- BSB Executive in attendance:** Jameelah Bangali (Project Manager) – via Teams  
 Rhys Bevan (Head of Legal Support) – via Teams  
 Christopher Fitzsimons (Communications Manager)  
 Rebecca Forbes (Head of Governance & Corporate Services)  
 Oliver Hanmer (Director of Regulatory Operations)  
 Teresa Haskins (Director of People, BSB)  
 Sara Jagger (Director of Legal and Enforcement)  
 Ewen Macleod (Director of Strategy & Policy)  
 Anna McNee (Legal Support Lawyer) – via Teams  
 Mark Neale (Director General)  
 John Picken (Governance Officer)  
 Paul Pretty (Head of Investigations and Enforcement) – via Teams  
 Wilf White (Director of Communications & Public Engagement)
- Press:** Nick Hilborne, Legal Futures – via Teams

**Item 1 – Welcome / Announcements**

1. The Chair welcomed those present to the meeting and introduced Chris Fitzsimons, the newly appointed Communications Manager.

**Item 2 – Apologies**

- Andrew Mitchell QC
- Leslie Thomas QC
- Malcolm Cree (Chief Executive, Bar Council)
- Lorinda Long (Treasurer, Bar Council)
- James Wakefield (Director, COIC)

**Item 3 – Members' interests and hospitality**

3. None.

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

4. The Board approved the Part 1 (public) minutes of the meeting held on 25 May 2022.

**Item 5a – Matters arising & Action List**

5. There were no matters arising. The Board **noted** progress on the action list.

**Item 5b – Forward agenda**

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

**Item 6 – Addressing KPI performance in Investigations and Enforcement**

BSB 035 (22)

7. Sara Jagger introduced the paper and highlighted the following:
- we need to accelerate the throughput of work in the Investigations and Enforcement Department to address the current performance shortfalls against key performance indicators (KPIs);
  - a barrier to improvement is staff turnover and difficulties in recruitment. This was, made more acute recently by the resignation of a maternity cover postholder. The executive therefore wishes to bring forward the appointment of a Senior Case Officer, originally scheduled for October 2022;
  - staff turnover impacts on productivity because managers then spend time training and supervising new recruits. However, we are still investigating the option of a secondment from Capsticks outsourcing some aspects of casework to 11KBW.
8. Nick Vineall QC commented as follows:
- the paper is not the recovery plan which was requested at the previous meeting;
  - it is critical that the Code of Conduct is enforced fairly, efficiently and promptly;
  - the BSB needs to identify SMART goals within a defined time frame that explains how the backlog will be managed. The plan should incorporate appropriate milestones so that the Board can properly oversee progress;
  - we need to be able to say when the BSB expects to achieve its KPIs. Extending the investigative process only adds to pressure on the barristers concerned and can be detrimental to their mental health.
9. Mark Fenhalls QC endorsed this view and called for the BSB management to self-reflect and fully focus its efforts on this issue. He therefore asked that a plan along the lines outlined above, be prepared in time for the next Board meeting.
10. Adam Solomon QC stated that:
- investigation and enforcement are core functions of the BSB. The changes proposed in the paper are modest and, though these can be supported, they may be insufficient to resolve the problem;
  - the paper cites a 40% increase over the last year in the number of investigations referred to the team. It is not clear, though, whether these are all different cases (or several reports on the same topic) and all of similar complexity;
  - the suggestion that we cease the redaction of names may make us more liable to claims of bias.
11. The Board commented as follows:
- it may be appropriate to consider more radical alternatives. Solutions considered by the Legal Ombudsman service when it faced similar circumstances included:
    - using a call off list for case managers / investigators;
    - using a call off list of investigators from other regulators;
    - re-evaluating triage procedures;
  - there may be systemic issues in play, but our approach gives the impression of a lack of urgency. We should consider short-term interventions to accelerate current investigations and review processes, capabilities and KPIs in the medium term. Such a review might usefully have an independent input.
  - we need to reconsider the capability issues involved. If we outsource work, we need to be clear on performance targets as part of any contractual arrangements;

## Part 1 - Public

- it is concerning that significant improvements are not predicted until early 2023/24. Though we cannot divert all resources to this issue, we need to accelerate investigations sooner.
12. In response, the executive stated that:
- there is no lack of urgency here but there is a lack of capacity;
  - our process does weed out unmeritorious reports early: only a small proportion of reports are investigated;
  - the 40% increase does include investigations of straightforward matters such as practising without a certificate. This is why we are revising our process to ensure such cases are handled earlier on at the assessment stage;
  - we already have call off lists and are using these;
  - we shall be able to introduce greater efficiency once planned projects identified in the report (para 45) have been completed. However, this is a longer-term solution;
  - we are considering outsourcing but, even if this were to occur, it will not have an immediate turnaround effect. Anyone new will need time and the supervision of others to come to terms with the BSB's computer systems and internal procedures. Any investment of this nature is likely to take 6-8 months before there is any meaningful impact;
  - redaction takes up time and resources. The IT software used is not fully reliable – names can still appear in images or in headers / footers. Just one occurrence of a missed redaction invalidates the whole exercise;
  - though timeliness is an issue, we should acknowledge that productivity and the quality of decision making remains high. Had more staff been in place (as was envisaged earlier in the year), then we would be in a much stronger position.
13. Kathryn Stone offered to assist with formulating a revised plan for the September Board. Members welcomed this initiative.
14. The Chair acknowledged the need for a further plan of action by September 2022. She also suggested that more consideration be given to removing the need to redact if there continues to be no software solution that is fully reliable.
15. **AGREED**
- a) to accept the proposals for improving performance against investigation KPIs including approving the immediate recruitment of a Senior Case officer and further consideration on removal of redaction requirements. **SJ to note**
  - b) to include Kathryn Stone and other interested Board members in further discussions on how to seek short, medium and longer term improvements. **MN to note**
  - c) to prepare a further plan in time for the next meeting of the Board taking into account the above comments. **MN / SJ**

**Item 7 – Strategic Planning and Resources Committee (SPR) Annual Report 2020/21**

BSB 036 (22)

16. Steve Haines introduced the Annual Report from the SPR Committee and highlighted future work which will focus on HR related issues ie the employee value proposition (EVP) and how this might be extended to attract and retain BSB staff.
17. **AGREED**  
to note the report.

### Item 8 – BSB review of governance documents: Constitution and Appointments Policy

BSB 037 (22)

18. Rebecca Forbes sought the Board's approval for proposed changes in the Board's constitution and appointments policy. This followed an external review of our governance documentation by consultants, *Indigo Governance*.
19. She referred Members to paragraph 3 of the paper ie that it will be for the Board itself to appoint the new Chair and that she would seek a written resolution to this effect in due course. The Board **noted** this. She also asked for guidance on the following:
  - feedback from the GRA Committee Chair, Stephen Thornton concerning the Appointments Policy ie:
    - the status of the nominee of the Lord Chief Justice (para 4.4);
    - the period of appointment for CEB members (para 7.11);
    - the maximum term of office for a Board Member who may have changed their status is from ordinary Member to Chair or Vice Chair (para 7.6). *Note: a previous decision by the Board means that the membership "clock" is currently re-set in these circumstances.*
  - the composition of the Appointments Panel for the recruitment of barrister members to the Board;
20. The Board agreed with the proposed amendments set out in the paper. On the specific points raised, Members agreed that:
  - paragraph 4.4 should remain as currently worded. It is designed to ensure parity between barrister and lay representation and, in these circumstances, the judicial representative should hold neither barrister nor lay status;
  - CEB members should serve terms of up to *three* years (not terms up to two years). The reason for the shorter term seems to have been historical and there is no reason why a longer term should not apply;
  - a maximum term of 12 years is increasingly common among Boards so the wording should remain providing the underlying principle is understood ie that the figure is a maximum length to allow for members who change their status to hold their new office for at least one term;
  - the Appointments Panel for barrister members should be comprised of the incoming Chair, Andrew Mitchell QC, Alison Alden and a lay independent member.
21. Members also agreed to an amendment suggested by the Chair and Adam Solomon QC in respect of paragraph 24 of the constitution ie that a Board meeting is called by giving *reasonable* notice of the meeting to the Board Members.
22. **AGREED**
  - a) to amend the constitution and appointments policy as described in the report but to also take into account comments made at the meeting (cf. mins 20 and 21).
  - b) to endorse the composition of the Appointments Panel for the recruitment of barrister Board Members as set out in the report (also cf. min 20).

RF

RF to  
note

### Item 9 – Conduct in non-professional life

BSB 038 (22)

23. Rhys Bevan outlined the objectives of the BSB's Conduct in Non-Professional Life project. This has since resulted in a number of draft documents ie:
  - Annex A - a draft consultation paper;
  - Annex B - draft guidance in the regulation of non-professional conduct;
  - Annex C - proposed amendments to non-mandatory guidance in the BSB Handbook;
  - Annex D - a re-drafted social media guidance;
  - Annex E - interim social media guidance.

## Part 1 - Public

24. He also explained that latter document was intended for immediate publication so as to address existing concerns that the original version set the regulatory threshold too low.
25. Members welcomed the paper and endorsed the proposal to consult on this issue and to publish the interim social media guidance at Annex E.
26. Adam Solomon QC commented on some of the examples provided in the paper ie:
- a) Annex B – Case Study 3  
This should be softened. Non-compliance with a court order due to insolvency does not seem to be sufficient grounds to treat as a regulatory breach. We do not, for example, strike off barristers if they become bankrupt.
  - b) Annex D – Case Study 2  
This identifies a “criminal” trial even though the circumstances might equally apply to a civil case. We should therefore avoid making any specification. In addition, we should delete the reference to the “other side” as it should only be the Judge who can give permission to talk to a witness who was giving evidence.
  - c) Annex D – Case Study 4  
This example could be strengthened. It could, perhaps, underline the lack of conflict for a barrister who cites a political opinion but then acts on behalf of a party with an opposing view. We need to counter ill-informed reporting in the press that barristers might be subject to regulatory intervention just because they may have tweeted a political statement.
27. Irena Sabic highlighted the difficulties that barristers can face when they are defending clients in high profile cases. Her own chambers have received seriously threatening messages to the point where some barristers considered applying for anonymity as is afforded to their clients. There needs to be further discussion on guidance for barristers in terms of their duties to clients and any grounds for refusing to take cases.
28. In response to other questions raised, the executive commented that:
- When collating the responses we should be able to identify those from practising barristers and those from unregistered barristers
  - most disciplinary cases against unregistered barristers concern either criminal offences or holding out as a barrister whilst unregistered. There is no “quick fix” solution to the regulation of unregistered barristers and none that can be included in a short-term recovery plan to improve the timeliness of investigations;
  - were any potential criminal offences identified in considering a complaint against a barrister, we would not relay this to the police if that was against the wishes of the alleged victim concerned.
29. **AGREED**
- a) to authorise the executive to commence a three-month public consultation on a proposed approach to regulating non-professional conduct. **RB**
  - b) to authorise the immediate publication of the interim social media guidance (Annex E of the paper) pending the outcome of the public consultation and the conclusion of the BSB’s Conduct in Non-Professional Life project. **RB**
  - c) that the executive contact Irena Sabic to discuss further the points she raised (cf. min 27). **EM**

**Item 10 – The BSB’s Public Engagement Enabling Strategy**  
BSB 039 (22)

30. Wilf White outlined the BSB’s enabling strategy to support its public engagement work. He explained that the proposed allocation of engagement themes to Board Members was for illustrative purposes though he would welcome Member involvement.

## Part 1 - Public

31. Alison Alden suggested there was scope for some cross-referencing in the strategy document ie:

- to “clients”, especially in terms of solicitors, as set out in the covering report;
- between our key messages “for the public” and the section on “public legal education”.

32. **AGREED**

to approve the public engagement enabling strategy subject to further amendment as identified above (cf. min 31).

**WW**

**Item 11 – Director General’s Strategic Update – public session**

BSB 040 (22)

33. The Board **noted** the report.

**Item 12 – Chair’s report on visits and external meetings**

BSB 041 (22)

34. The Board **noted** the report.

**Item 13 – Any Other Business**

35. Bar Training

In response to a question from Nick Vineall QC concerning Bar Training providers, Mark Neale confirmed that a report will be presented to the Board on 1 December 2022.

**Item 14 – Date of next meeting**

36. • Thursday 22 September 2022

**Item 15 – Private Session**

37. The Board resolved to consider the following items in private session:

- (1) Approval of Part 2 (private) minutes – 25 May 2022
- (2) Matters arising and action points – Part 2.
- (3) Corporate Risk Report – summary
- (4) Board complaint: lessons learned and revised policy on complaints about Board Members
- (5) Director General’s Strategic Update – Private Session.
- (6) Any other private business.

38. The meeting finished at 6.20 pm.



## BSB – List of Part 1 Actions

22 September 2022

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
15c (14/07/22) - Addressing KPI performance in Investigations and Enforcement	prepare a further plan in time for the next meeting of the Board to improve KPI performance in Investigations and Enforcement, taking into account comments made at the July meeting	Mark Neale / Sara Jagger	before 15 Sept 2022	13/09/22	<b>Completed</b> – paper on the Board's private agenda
22a (14/07/22) – review of governance documents	amend the constitution and appointments policy as described in the report but to also take into account comments made at the meeting (cf. mins 20 and 21 – 22 July 2022)	Rebecca Forbes	immediate	13/09/22	<b>Completed</b> – amendments made as agreed and revised Constitution and Appointments Policy now published.
29a (14/07/22) – conduct in non-professional life	commence a three-month public consultation on a proposed approach to regulating non-professional conduct	Rhys Bevan	immediate	13/09/22	<b>Completed</b> – consultation was launched on 21 July 2022 and will close at 5pm on 20 October 2022.
29b (14/07/22) – conduct in non-professional life	publish the interim social media guidance (Annex E of the paper) pending the outcome of the public consultation and the conclusion of the BSB's Conduct in Non-Professional Life project	Rhys Bevan	immediate	13/09/22	<b>Completed</b> – the Interim Social Media Guidance was published on 21 July 2022.
29c (14/07/22) – barristers facing intimidation on social media from politically motivated individuals	contact Irena Sabic to discuss further the points she raised about guidance for barristers in terms of their duties to clients and any grounds for refusing to take cases	Ewen Macleod	before 15 Sept 2022	14/09/22	<b>To be completed</b> – at time of writing, the discussion is still to take place
32 (14/07/22) – public engagement enabling strategy	amend the public engagement enabling strategy subject as agreed at the July meeting	Wilf White	immediate	13/09/22	<b>Completed</b> – the document has been amended as suggested and further enabling strategies are now being prepared for approval by SMT.

## BSB – List of Part 1 Actions

22 September 2022

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
9b (25/05/22) – Wellbeing Statement	revisit the policy statement on wellbeing taking into account the points made at the May 2022 meeting	Ewen Macleod	before 15 Sept 2022	14/09/22  07/07/22	<b>Completed</b> – see BSB Paper 047 (22)  <b>To be completed</b> A revised copy will be presented to the Board meeting on 22 September 2022
9b (25/05/22) – minimum terms of cover - professional indemnity insurance	adopt the proposed amendments to the MTCs as drafted in Annex A of the report and to seek approval of these from the Legal Services Board	Chris Young	before 15 Sept 2022	13/09/22  05/07/22	<b>Completed</b> - LSB approval granted on 04 August 2022  We anticipate submitting application to the LSB by 8/07/22.  <b>Note:</b> Top up cover insurers have not matched the changes that Bar Mutual has made to its terms to explicitly include cyber incidents. They believe that PI policies are not intended to provide cover for cyber risks and, as a result, specific exclusions were added.
20d (25/05/22) – performance report	that the presentation of performance data is reviewed with a clearer emphasis on any “red flag” items	Sara Jagger / Alex Williams	before 15 September 2022	13/09/22  06/07/22	<b>Completed</b> – revised format of performance data in public papers  <b>To be completed</b> The next performance report – covering the first quarter of 2022/23 – will be presented to the Board on 22 September
15 (31/03/22) – BCAT	to seek permission from the LSB to withdraw the Bar Course Aptitude Test as a prerequisite for enrolment on the Bar training course on the grounds that:	Chris Young	before 15 Sept 2022	13/09/22  05/07/22	<b>Completed</b> - LSB approval was granted on 07 July 2022  Following meeting with LSB, we anticipate approval of application by 8/07/22

## BSB – List of Part 1 Actions

22 September 2022

*(This includes a summary of all actions from the previous meetings)*

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
	<ul style="list-style-type: none"> <li>the BCAT is no longer a proportionate regulatory requirement;</li> <li>more stringent course admission processes have superseded the need for the BCAT;</li> <li>the risks that BCAT was originally introduced to mitigate are no longer manifesting.</li> </ul>			12/04/22	Draft application submitted to the LSB for comment. Following feedback from the LSB, we anticipate submitting the application on 6 June 2022.



**Forward Agenda****Tuesday 11 October 2022 (Board Away Day)**

- Regulatory Risk Index
- BSB expectations of chambers
- Outcome of Board evaluation survey / committee structure
- Performance

**Thursday 1 December 2022**

- IDB Annual Report
- Regulatory Decisions Annual Report 2021/22
- Mid-year financial report (2022-23)
- GRA Annual Report
- First Annual Report – Bar Training
- Director General's Strategic Update- (including Q2 performance report & BSB six monthly self-assessment against LSB's regulatory performance framework)
- Corporate Risk Report (summary)
- Governance: Governance Manual and revised Scheme of Delegations
- Governance: policies on declaration of interests / gifts and hospitality
- Standards

**Thursday 26 January 2023**

- Annual Diversity Data Report
- The Bar Standards Board Equality and Diversity Strategy 2023 to 2025
- BSB approach to supervision
- Access (and associated work on digital comparison)
- Director General's Strategic Update
- Corporate Risk Report – summary

**Thursday 30 March 2023**

- BSB Business Plan 2023/24
- Director General's Strategic Update- (including Q3 performance report)
- Consolidated Risk Report
- Scoping paper: Part 5 Review of Handbook



## Director General's Performance Update – 22 September 2022

### For publication

### Performance

1. This inaugurates a separate report on the performance of our core regulatory operations which I shall provide quarterly, with updates at intervening Board meetings . Before turning to performance in the first quarter of 2022/23, it is useful to define performance itself.
2. We shall be engaging the Board Task and Completion Group in the weeks ahead on the development of a balanced scorecard to capture the key dimensions of our performance. To anticipate those discussions, however, it would be reasonable to assume that what matters to those who make reports or applications to us and to barristers who are the subject of reports or of investigations are:
  - **the quality of decisions:** do we take decisions which are fair, evidence-based and consistent with our rules?
  - **productivity:** are we dealing efficiently with reports, applications and investigations and, allowing for fluctuations in volumes, keeping pace with in-flows?
  - **speed:** are we turning round decisions on reports and applications and completing investigations promptly to timescales which are serviceable for those seeking, or affected by, our decisions.
3. Our current KPIs cover these dimensions partially and imperfectly and, accordingly, we have been reporting regularly to the Board and to stakeholders for over a year on a broader range of performance which captures these dimensions. The latest such report - on the first quarter of 2022/23 – is at annex A. I shall organise my commentary under the headings above, but should note, by way of preface, that both productivity and speed were affected in the first quarter by the cyber attack which put our Case Management System out of commission for just over five weeks in April and May. We have, accordingly, re-calculated the Key Performance indicators bearing on speed to exclude the days when normal work was not possible.

### Quality

4. The quality of our decision-making remains high as attested to the half-yearly report submitted by the Independent Reviewer to the Governance, Risk and Audit Committee in July. The Independent Reviewer stated that:

*I found that cases and authorisations continue to be well handled in accordance with the general criteria referred to above and considered in a conscientious and thoughtful manner.*

There were no successful appeals against the imposition of administrative sanctions or against the decisions of the Independent Decision-making Body in the first quarter of the year.

5. In order to reinforce independent quality assurance, we have recently recruited a second Independent Reviewer.

### Productivity

6. The loss of five weeks in April and May has caused backlogs of reports and authorisation applications to build up. However, productivity has generally recovered with the restoration of our systems.

**Part 1 - Public**

7. We are now clearing roughly thirty more reports every month than we receive and so making steady in-roads into the backlog. However, higher numbers of reports in July and August – up nearly 40% compared to this time last year – has meant that our original estimate that the backlog would be cleared by October/November has been pushed back to the end of the calendar year.
8. The hiatus in handling reports in the first quarter of the year meant that fewer reports than usual were referred that quarter to the Supervision Team which was, consequently, able to reduce its caseload over the quarter. It is likely, however, that this pattern will reverse in the second quarter, with higher than average referrals to Supervision as the backlog of reports begins to be cleared.
9. The backlog of authorisation applications, which had been largely eliminated by the end of 2021/22 has grown again as a result of the cyber attack. Only a small number of overdue applications are over eight weeks old however and we expect to clear this backlog within three months. Our focus now is on completing by the year end the authorisation of pupillage providers.
10. Despite the difficulty in filling vacant posts in the Enforcement Team and the disruption associated with the cyber attack, we concluded twenty-nine investigations in Q1 – down somewhat on the preceding three quarters, but at a higher level than the equivalent quarter of last year.

***Speed***

11. Largely because of the cyber attack, there was a deterioration in the Key Performance Indicators bearing on speed which are expressed in terms of the proportion of reports applications and investigations completed within a prescribed period. However, when the days lost to cyber attack are taken out of account, performance in handling reports and authorisation applications was close to target. Performance in accelerating investigations is the subject of a separate paper and plan.

**Annex**

Annex A – performance report on the first quarter of 2022/23.

**Mark Neale**  
Director General



## 2022-23 Quarter 1 Performance report – Regulatory Operations and Enforcement

1. This report describes performance in the period during which the Bar Standards Board was subject to a cyber-attack. As a result of the attack, our case management system was not accessible between 14 April (2022) - 20 May 2022 inclusive. During that time, our people in the casework teams had limited opportunities to progress cases. We have included KPI charts for each of the teams which show performance as calculated automatically by the system. However, in the key points for each team, we have noted what performance would have been if the days on which the system was off-line were not counted as 'working' days. We have also added an *adjusted KPI* column in relevant tables with the same information. This is a relatively crude means of assessing performance outside the period of the cyber-attack but nevertheless provides a feel for progress against KPIs.
2. The impact of the cyber-attack will be felt for some time. Teams will need to balance reducing the backlog of cases that built up during the attack with dealing with new cases as they arrive. The impact of the 'bow wave' effect will be felt in KPI performance for at least the next two quarters.

### Reports: Contact & Assessment

#### Key points

- The adjusted KPI figure, factoring in the days on which the system was off-line, is 60.1% and 34.1% for general enquiries, and 77.2% for initial assessment.

#### KPIs & performance data

KPI	Target	Performance Q1	Adjusted KPI
<b>General Enquiries</b>			
The percentage of substantive responses to general enquires, that can be addressed by CAT, provided within 5 working days.	80%	59.0%	60.1%
The percentage of general enquiries, which cannot be answered by CAT, that are referred to another team within 3 working days.	80%	31.7%	34.1%
<b>Initial Assessment</b>			
The percentage of reports assessed and concluded by CAT, or referred to another team for action, within eight weeks.	80%	63.6%	77.2%
<b>Quality indicators</b>			
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	100.0%	100.0%

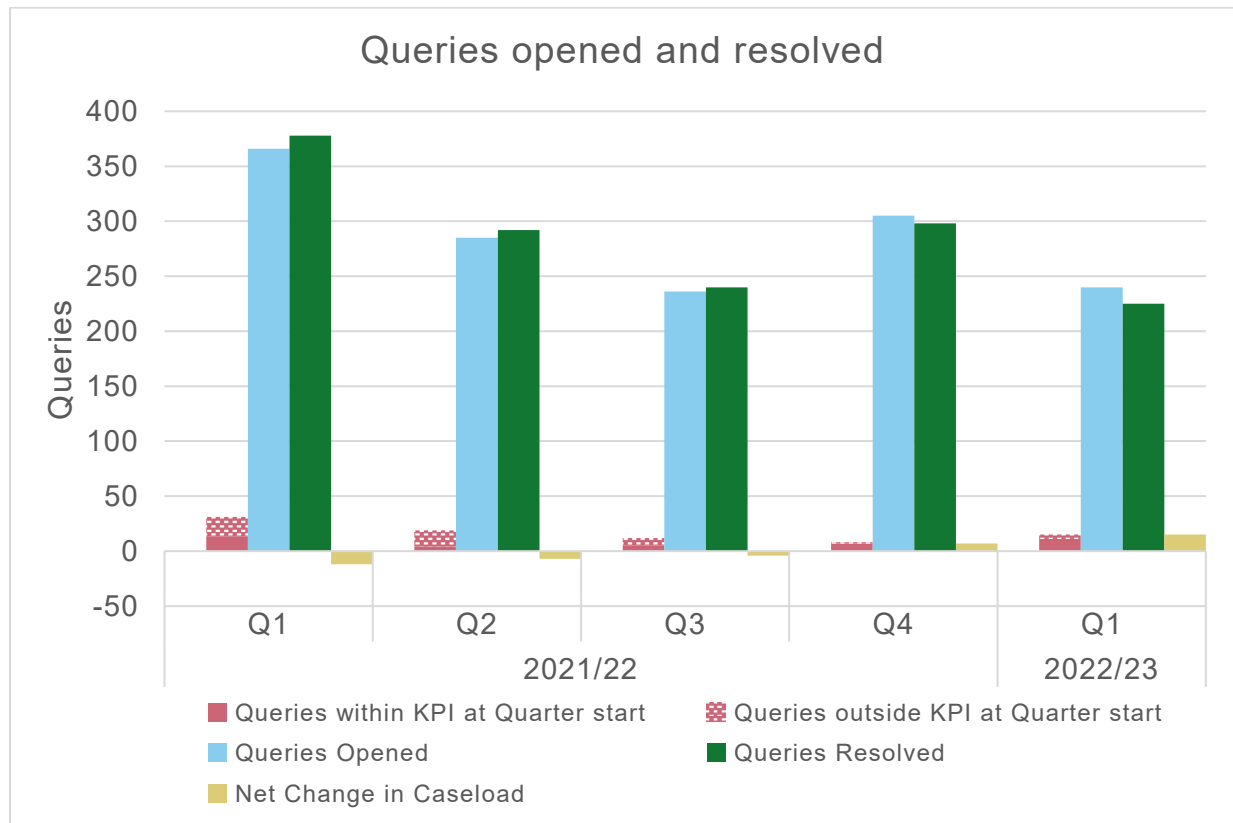
(% of this total that were within service standard)

KPI	2021/22				2022/23
	Q1	Q2	Q3	Q4	Q1
<b>General Enquiries</b>					
General enquiries addressed (5 days)	305 (76.7%)	250 (80.4%)	202 (79.7%)	250 (85.2%)	183 (59.0%)
General enquiries referred (3 days)	73 (56.2%)	42 (50.0%)	36 (47.2%)	47 (72.3%)	41 (31.7%)
<b>Initial Assessment</b>					
Concluded or referred (8 weeks)	595 (55.6%)	752 (28.3%)	431 (49.4%)	524 (71.2%)	206 (63.6%)

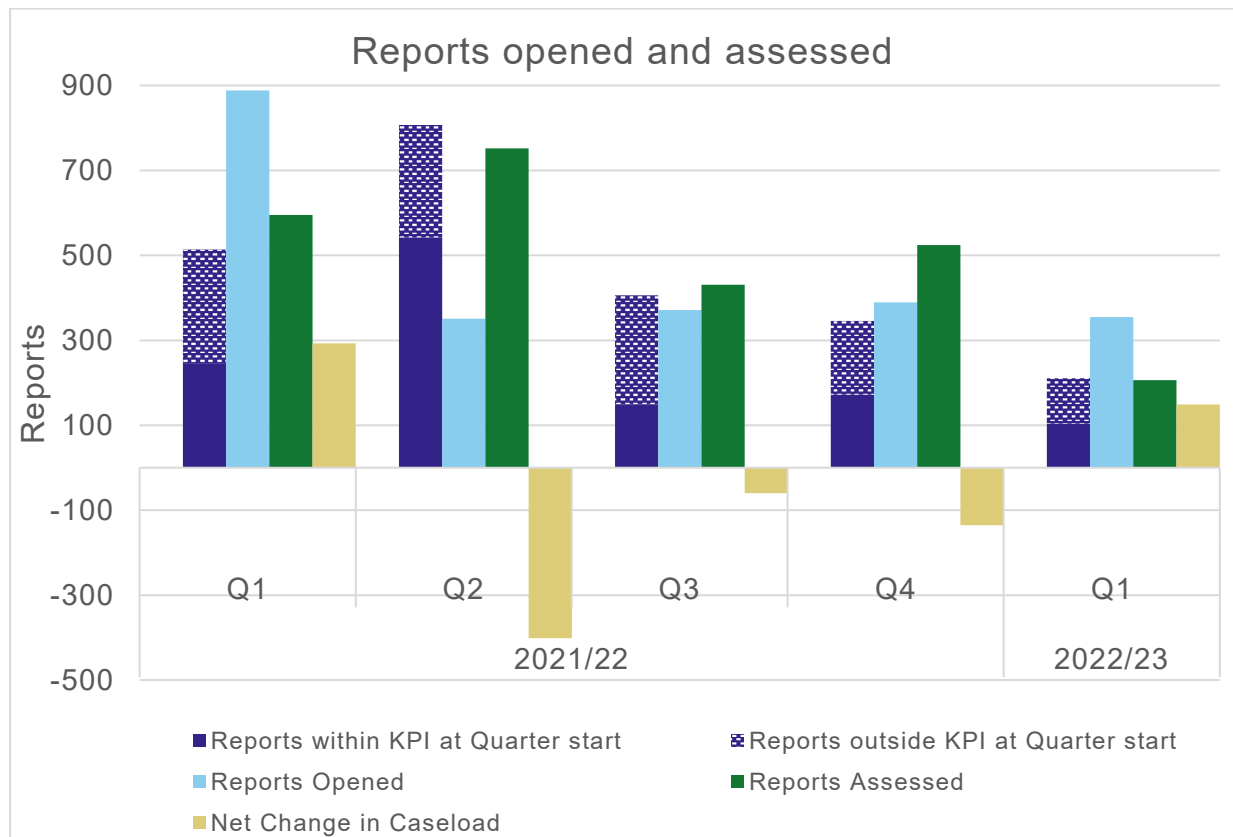
### Number of calls received per month



## General Enquiries



## Reports opened vs Reports resolved



Reports and Queries workload by month

Month	Reports	Queries
Apr-21	510	30
May-21	650	40
Jun-21	800	20
Jul-21	750	15
Aug-21	630	15
Sep-21	400	15
Oct-21	340	10
Nov-21	370	15
Dec-21	340	10
Jan-22	300	20
Feb-22	250	25
Mar-22	210	15
Apr-22	230	10
May-22	330	80
Jun-22	360	30

- ## Commentary

- ## Authorisations

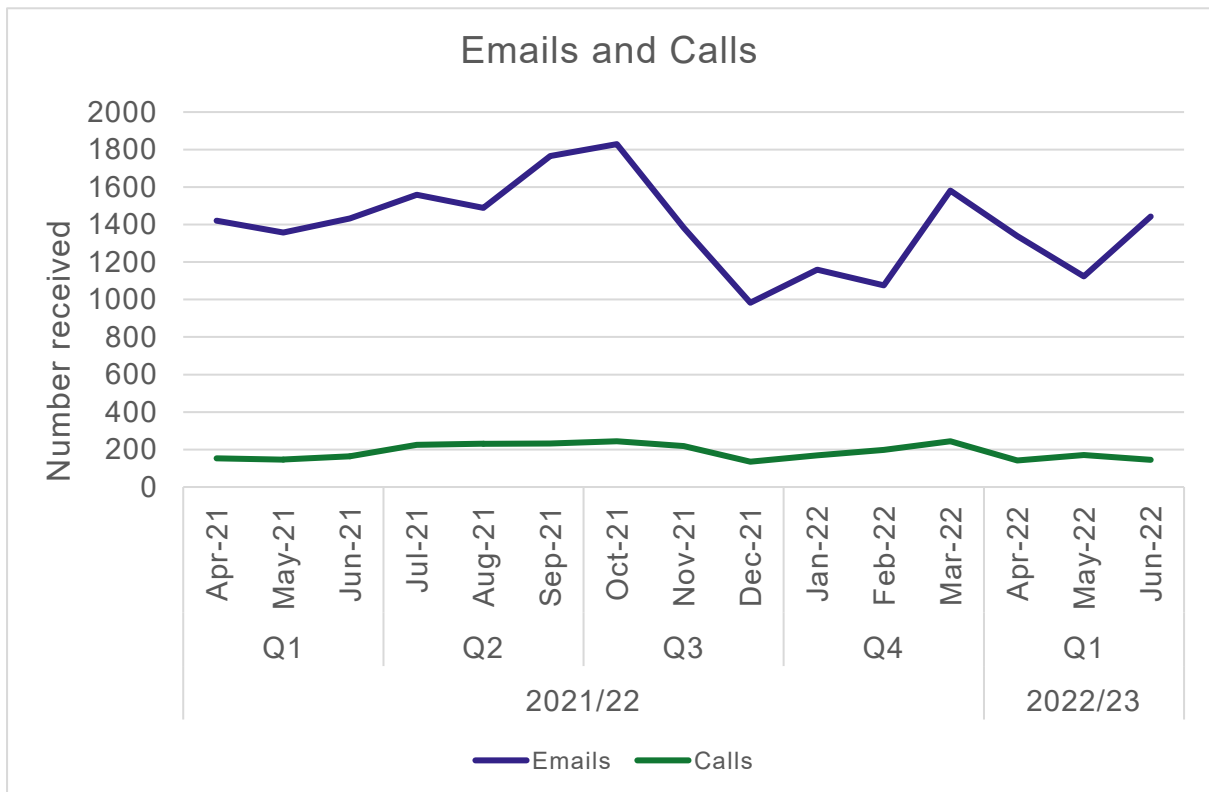
- Compared to Q1 of 2021-22, the team have improved performance year-on-year and should be on track once the backlog of applications resulting from the cyber-attack is cleared.
- The adjusted KPI figure, factoring in the days on which the system was off-line, is 63.9% for the 6-week target, 77.5% for the 8-week target, and 98.2% for the 12-week target.
- Both KPIs relating to Entity Authorisation have been met or exceeded.

**KPIs and performance data**

KPI	Target	Performance Q1	Adjusted KPI
<b>Authorisation, Exemptions and Waivers</b>			
The percentage of applications determined within six weeks of receipt of the complete application.	75%	36.1%	63.9%
The percentage of applications determined within eight weeks of receipt of the complete.	80%	46.2%	77.5%
The percentage of applications determined within twelve weeks of receipt of the complete application.	98%	73.4%	98.2%
<b>Entity (including ABS) Authorisation</b>			
The percentage of authorisation decisions made within six months of receipt of the application and associated fee.	90%	100.0%	100.0%
The percentage of authorisation decisions made within nine months of receipt of the application and associated fee.	100%	100.0%	100.0%

**Cases closed (as a % of the total number of applications determined)**

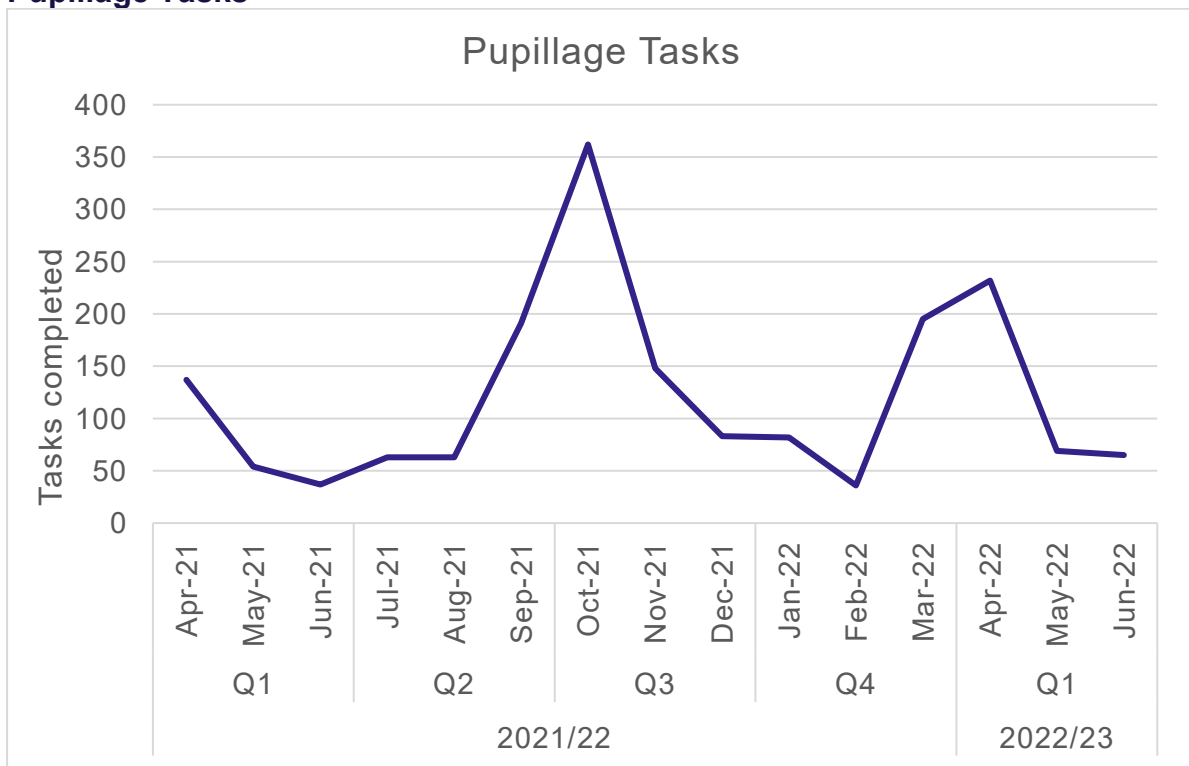
KPI	2021/22				2022/23
	Q1	Q2	Q3	Q4	Q1
<b>Authorisation, exemptions and waivers</b>					
Applications determined within six weeks of receipt of the complete application	59 (17%)	178 (48%)	190 (65%)	105 (52%)	61 (36%)
Applications determined within eight weeks of receipt of the complete application	83 (24%)	216 (58%)	242 (83%)	157 (77%)	78 (46%)
Applications determined within twelve weeks of receipt of the complete application	181 (52%)	343 (93%)	277 (95%)	193 (95%)	124 (73%)
<b>Entity (including ABS) Authorisation</b>					
Authorisation decisions made within six months of receipt of the application and associated fee	2 (100%)	4 (80%)	3 (100%)	3 (100%)	1 (100%)
Authorisation decisions made within nine months of receipt of the application and associated fee	2 (100%)	5 (100%)	3 (100%)	3 (100%)	1 (100%)



### Emails and calls

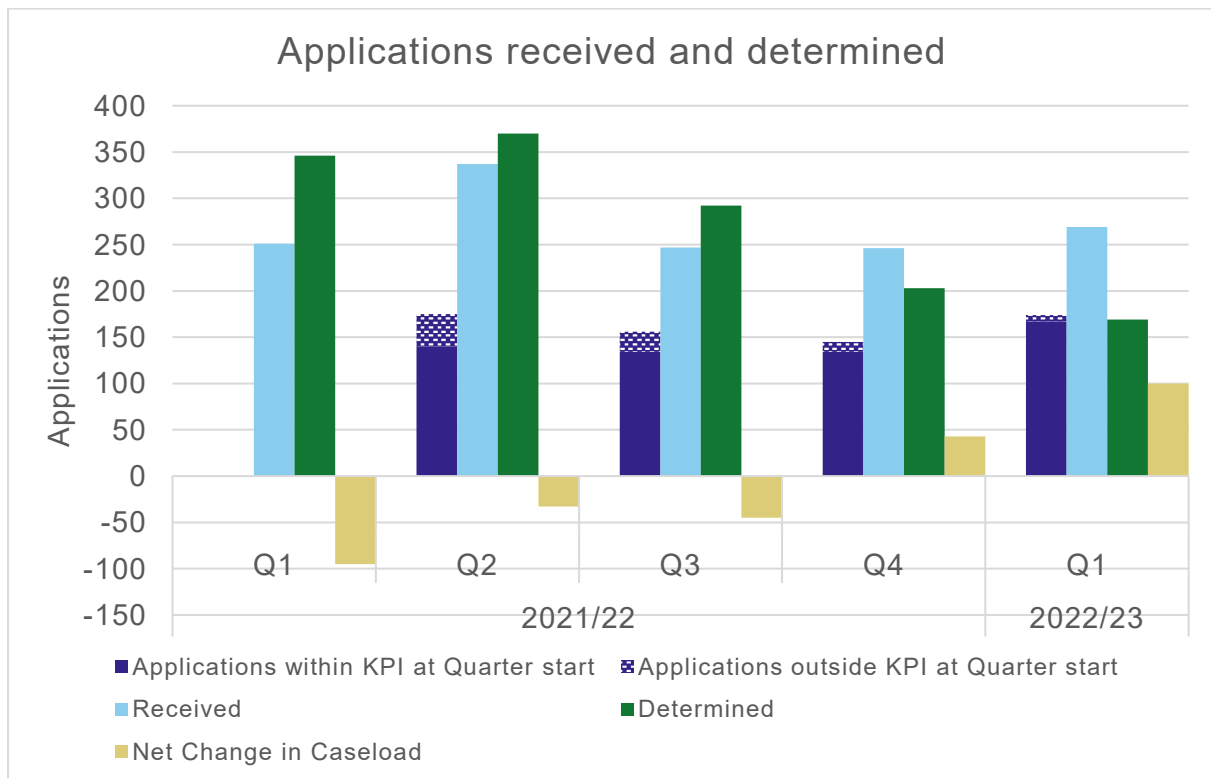
5. The team made effective use of their service update page on the BSB website to reduce the number of calls in both April and May, allowing them to focus on progressing core work.

### Pupillage Tasks



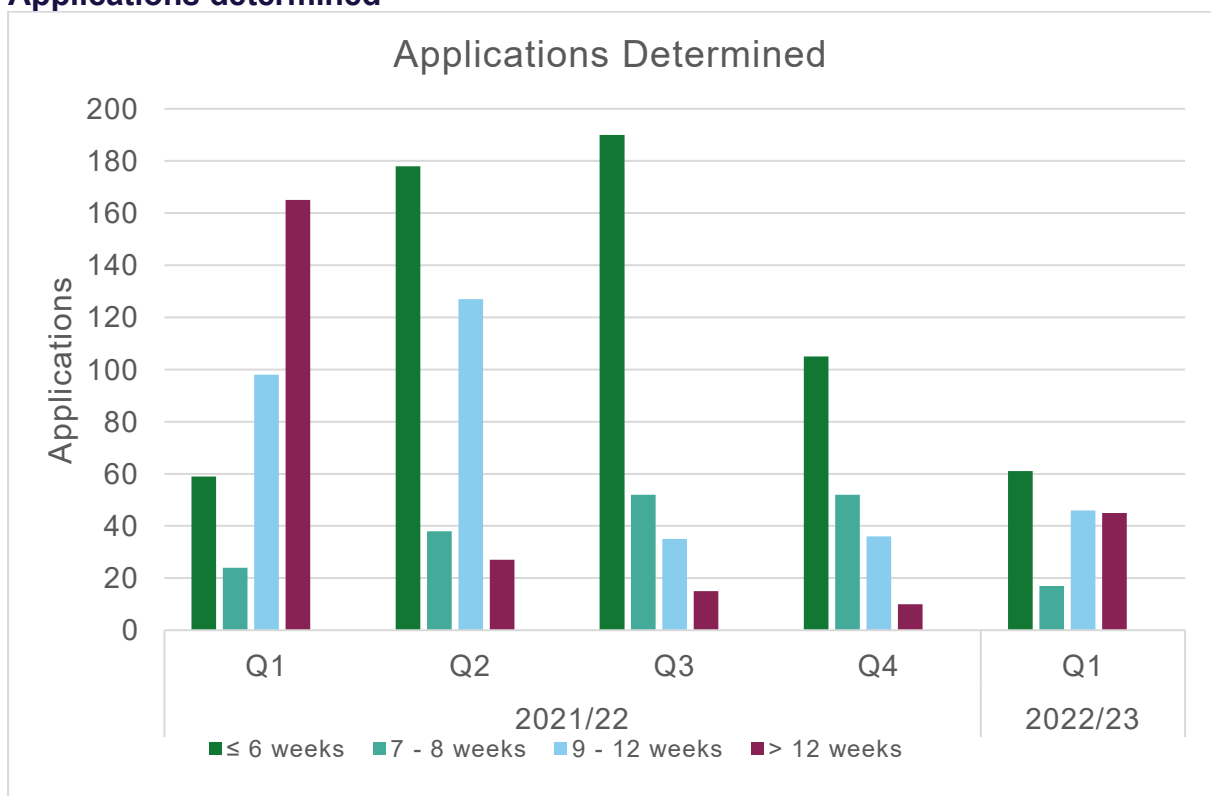
*Pupillage activity peaked in April before tailing off towards the end of the quarter. Activity will pick up again over the next two quarters, with the busiest period falling between August – October 2022.*

### Applications received and determined



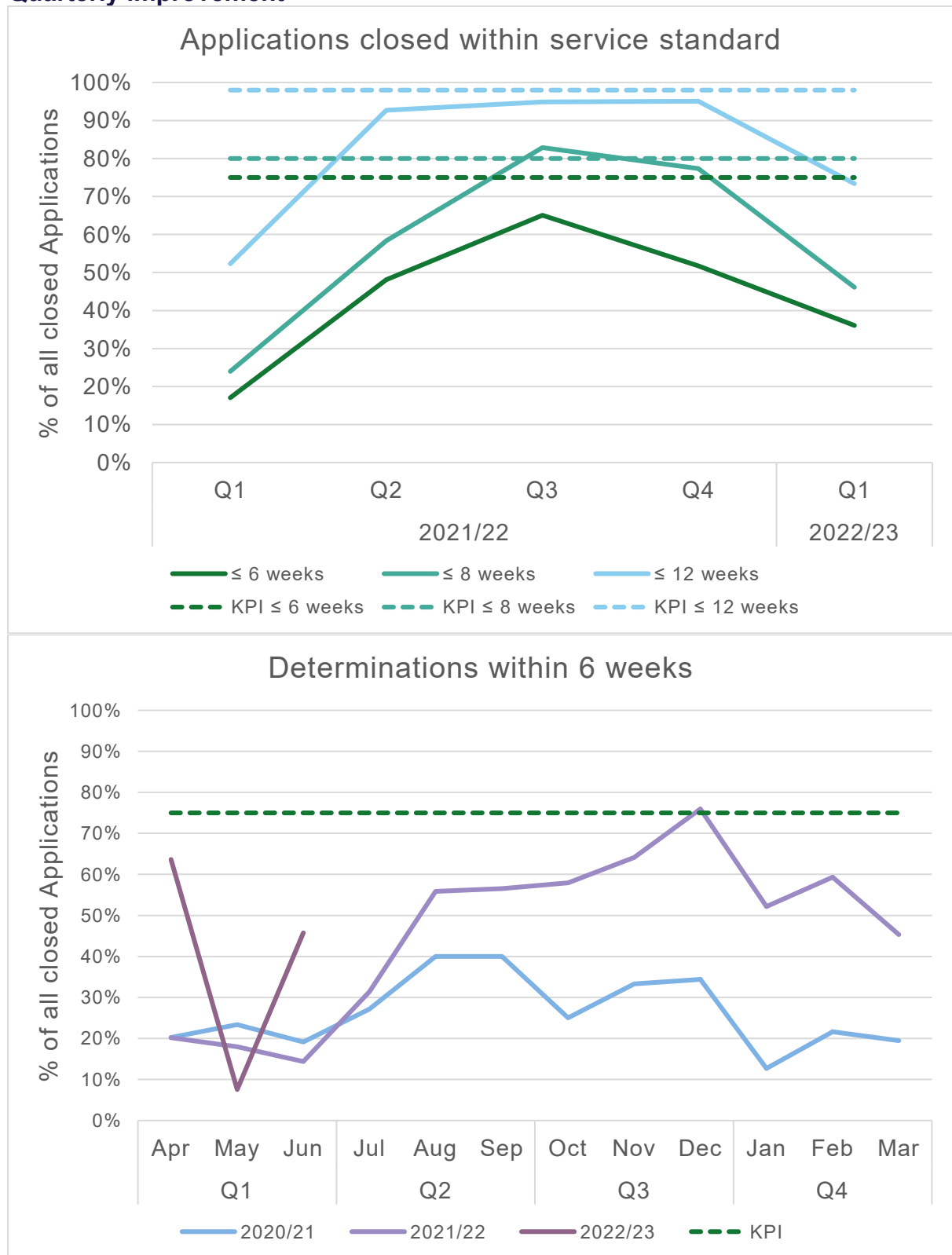
6. This chart shows the impact of the cyber-attack on overall caseload, with the backlog awaiting assessment more than doubling when compared to the previous quarter.

### Applications determined



7. This chart shows that, while the team was not able to determine as many applications in the under 6-week and 7–8-week categories as it did in the last quarter, it has improved performance in relation to the 9-12 week and over 12-week categories.

### Quarterly improvement





## Commentary

8. The team still has a backlog of applications post cyber-attack (both those received pre-cyber-attack and those received since), but only a small number of these are aged over 8 weeks. The remainder are at the 6–8-week range.
9. In terms of their existing workplan, the process is running approximately 1-2 weeks behind schedule. The team estimates that it will take three months to clear the backlog arising from the cyber-attack and to return the team's workload to the pre-attack volume. There are 4 four vacant posts within the team still to be recruited to.
10. The team is around half-way through the process of assessing applications from pupillage providers, some of which are awaiting information to be provided. These will continue to be received up until the submission deadline at the end of August. The team will then need to have completed these assessments by December 2022. A visual representation of the team's progress against the target is included below.

## Investigations and Enforcement

### Key points

- A separate plan to accelerate investigations was presented to the Board 14 July 2022 with a second report submitted to the Board in September 2022.
- All quality indicator KPIs have been met this quarter, which demonstrates that, although the timeliness indicators are not being met, the quality of decision-making remains high.

### KPIs and performance data

KPI	Target	Performance Q1	Adjusted KPI
<b>Referral of cases</b>			
The percentage of cases referred by CAT to another team for regulatory action that are accepted or referred back to CAT within 2 weeks.	80%	6.9%	6.9%
<b>Investigation of allegations</b>			
The percentage of investigations of allegations of breaches of the Handbook completed, and a decision taken on disposal, within 25 weeks of acceptance.	80%	37.9%	37.9%
<b>Quality indicators</b>			
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	n/a	n/a

Number of successful appeals against the imposition of administrative sanctions.	0%	0.0%	0.0%
Number of successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process.	0%	0.0%	0.0%

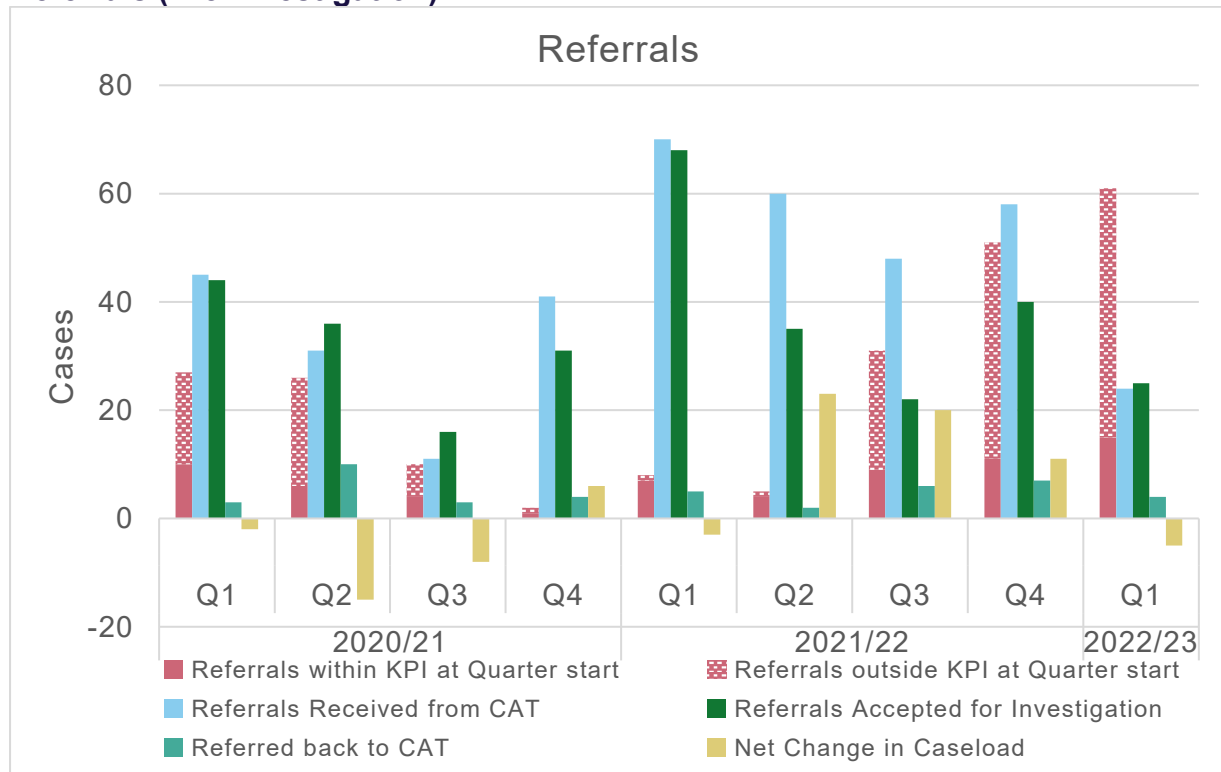
**Cases closed**

(% of this total that were within service standard)

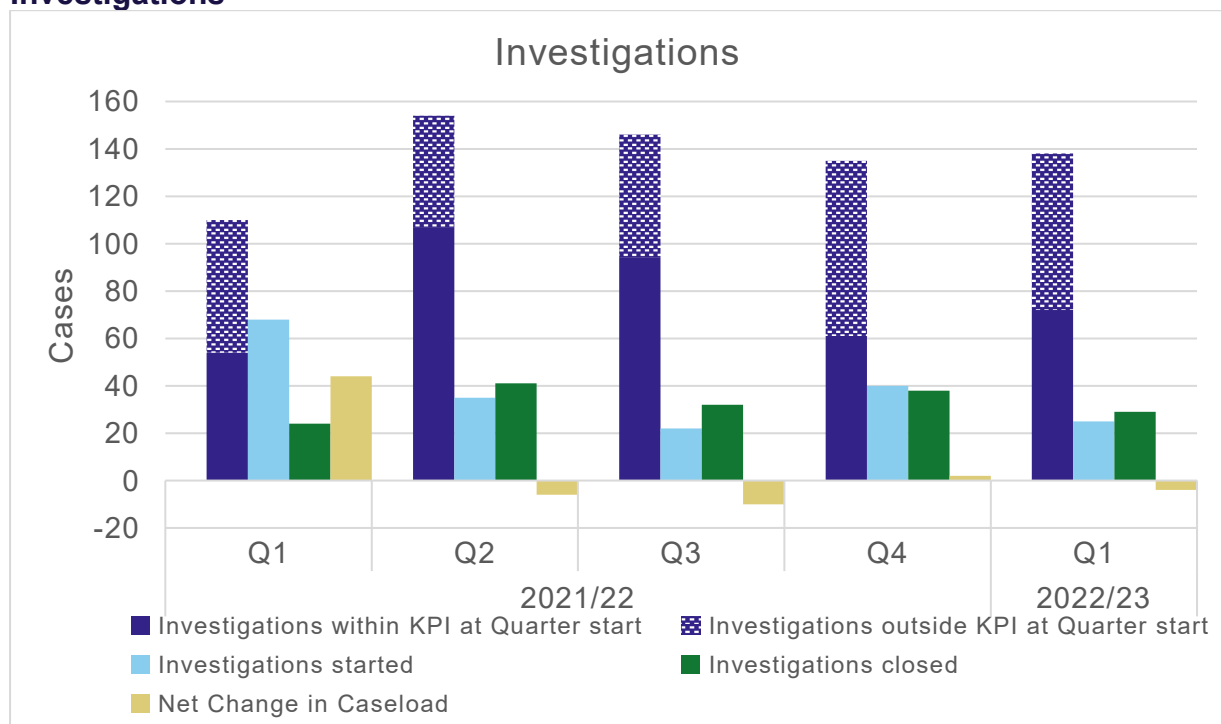
KPI	2021/22				2022/23
	Q1	Q2	Q3	Q4	Q1
<b>Referral of cases</b>					
Accepted or referred back (2 weeks)	73 (89.0%)	37 (62.2%)	28 (21.4%)	46 (10.9%)	29 (6.9%)
<b>Investigation</b>					
Decision on disposal (25 weeks)	24 (33.3%)	41 (53.7%)	32 (31.3%)	38 (15.8%)	29 (37.9%)

Service Standard	2021/22				2022/23
	Q1	Q2	Q3	Q4	Q1
<b>Determination by Consent</b>					
Process completed (93 working days)	1 (100.0%)	2 (50.0%)	1 (100.0%)	1 (0.0%)	2 (0.0%)
<b>Disciplinary Tribunal</b>					
Cases concluded (197 working days)	9 (33.3%)	7 (85.7%)	8 (25.0%)	6 (33.3%)	4 (25.0%)

11. Performance in relation to KPI for acceptance of cases for investigation once again reduced, the reasons for which are addressed below. However, while the investigation KPI was also not met, performance against improved when compared to quarter 4 of 2021-22.

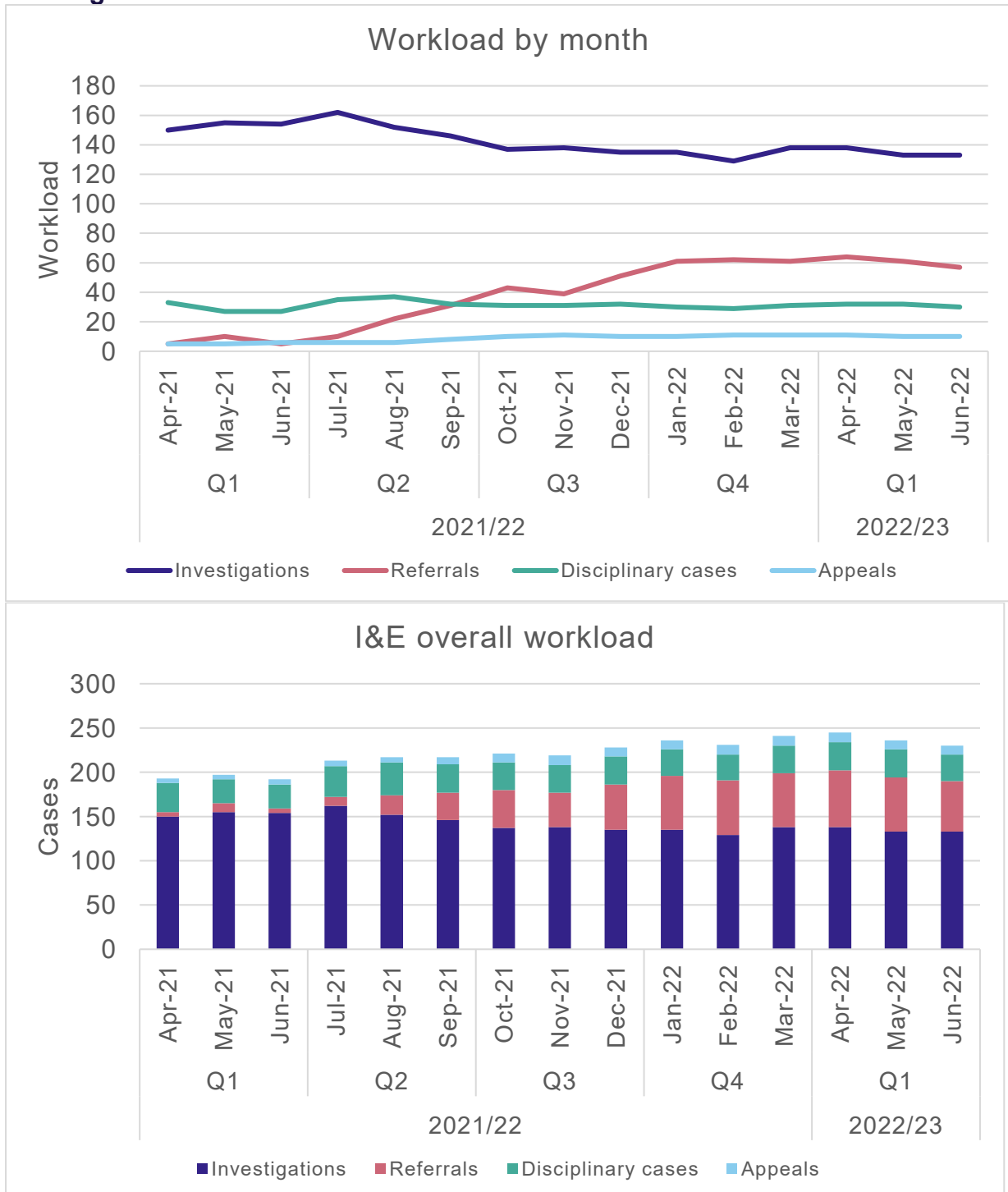
**Referrals (Pre-investigation)**

12. In terms of referrals, while throughput is down when compared to previous quarters, more referrals were accepted for investigation than were received, resulting in a small net reduction in caseload. At the time of writing, the number of cases awaiting acceptance has reduced by around 20 since April 2022. Given the number of cases already outside KPI there is a limit to how much improvement against this KPI there can be until the backlog of cases awaiting acceptance has been cleared. The action plan that has been put in place to address this, and is covered in a separate paper, should see some improvement in this KPI in quarter 2 and more significant improvement in quarter 3.

**Investigations**

13. This chart also shows that over the last quarter, the team progressed more investigations than were started, again resulting in a small overall reduction in caseload.

### Investigations and enforcement workload



14. The overall caseload dropped slightly over the course of the quarter but remains broadly similar to the level seen in the last quarter.

## Commentary

15. The cyber-attack also had an impact on the progression of investigations but not as marked as in other areas. Referrals from CAT reduced, but I&E staff were able to carry out productive work on some investigations because access to CaseLines (the cloud-based document bundling software) was not affected and a number of case files had been transferred to that system prior to the attack. However, there was a substantial impact on being able to communicate progress to relevant parties as well as to update the case management system. Also, four Independent Decision-making Body meetings had to be cancelled because of lack of access to relevant systems, which impacted the ability to bring investigations to a conclusion.

## Supervision

### Key points

- The team has exceeded two of its three KPIs, with only the regulatory response target being missed. The missed KPI was caused by the team being unable to access the case management system for 5 weeks during the cyber-attack and relates to two cases referred to Supervision at the end of March. Another two cases were one day over KPI.
- Because of the cyber-attack, only three cases were referred to Supervision by CAT during this quarter (all at the start of April). In Q1, therefore, the team focussed on clearing open actions on cases, particularly in relation to Regulatory Return and transparency cases, once access to the case management system was regained on 20 May.
- No visits were conducted as the team did not have access to case notes.
- The adjusted KPI figure, factoring in the days on which the system was off-line, is 100.0% for allocations, and 63.6% for regulatory responses. No visit report letters were issued in Q1.

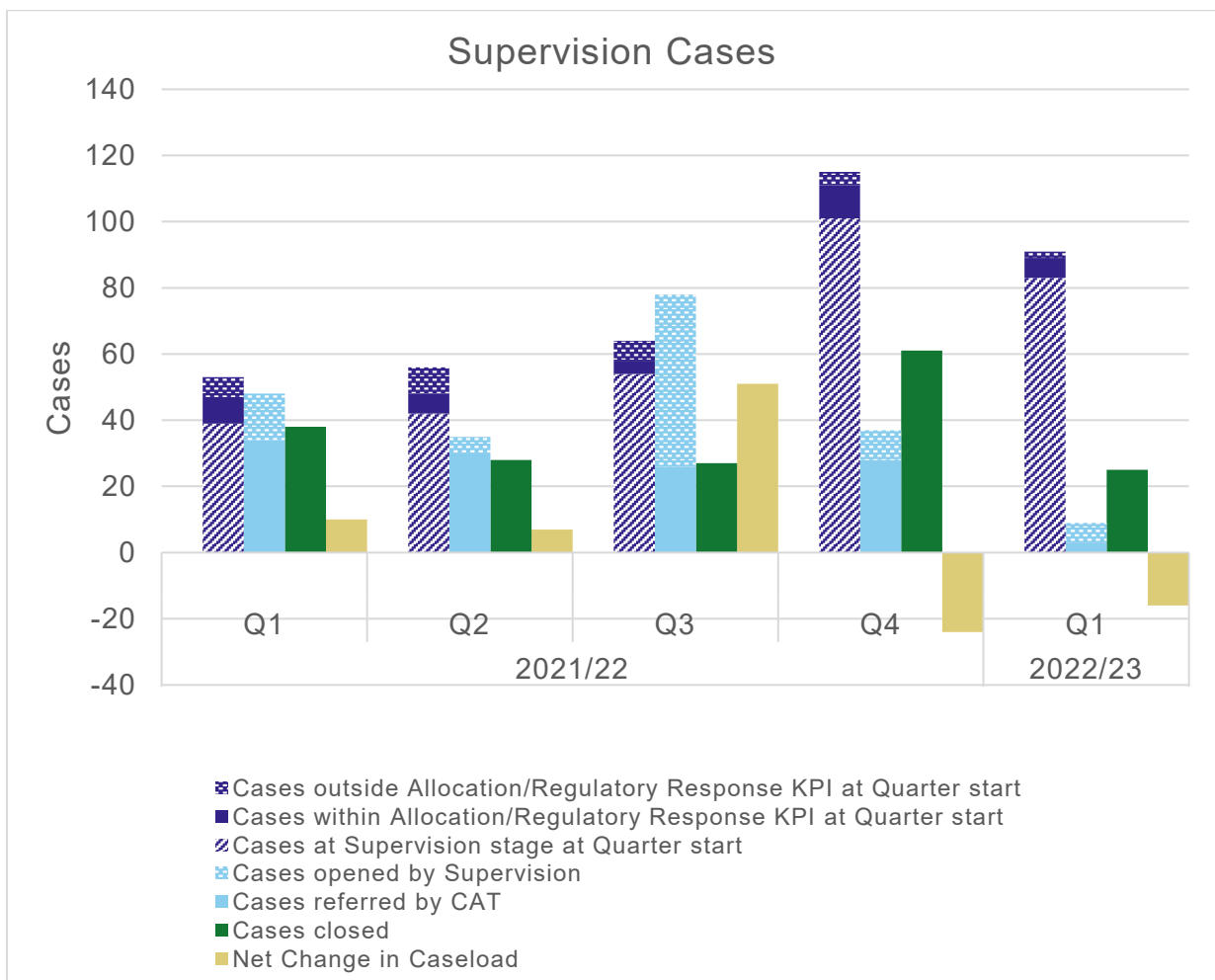
### KPIs and performance data

KPI	Target	Performance Q1	Adjusted KPI
<b>Allocations</b>			
Cases assigned within 3 working days of the team receiving the referral from CAT.	80%	100.0%	100.0%
<b>Regulatory Response</b>			
Cases for which a regulatory response was agreed within 20 working days of the case being assigned.	80%	54.5%	63.6%
<b>Visits</b>			
Visit report letters issued within 5 working days of a visit to an organisation.	80%	n/a	n/a

**Cases actioned**

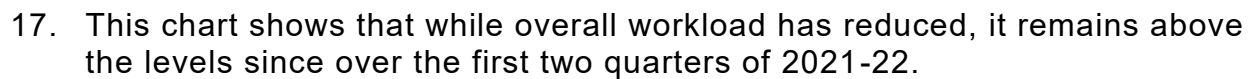
(% of this total that were within service standard)

KPI	2021/22				2022/23
	Q1	Q2	Q3	Q4	Q1
<b>Allocations</b>					
Cases assigned (3 days)	32 (96.9%)	32 (100.0%)	24 (87.5%)	30 (100.0%)	3 (100.0%)
<b>Regulatory Response</b>					
Response agreed (20 days)	44 (93.2%)	39 (84.6%)	74 (95.9%)	43 (81.4%)	11 (54.5%)
<b>Visits</b>					
Letters issued (5 days)	3 (100.0%)	1 (100.0%)	1 (100.0%)	1 (100.0%)	0

**Supervision open case volumes excluding Regulatory Returns**

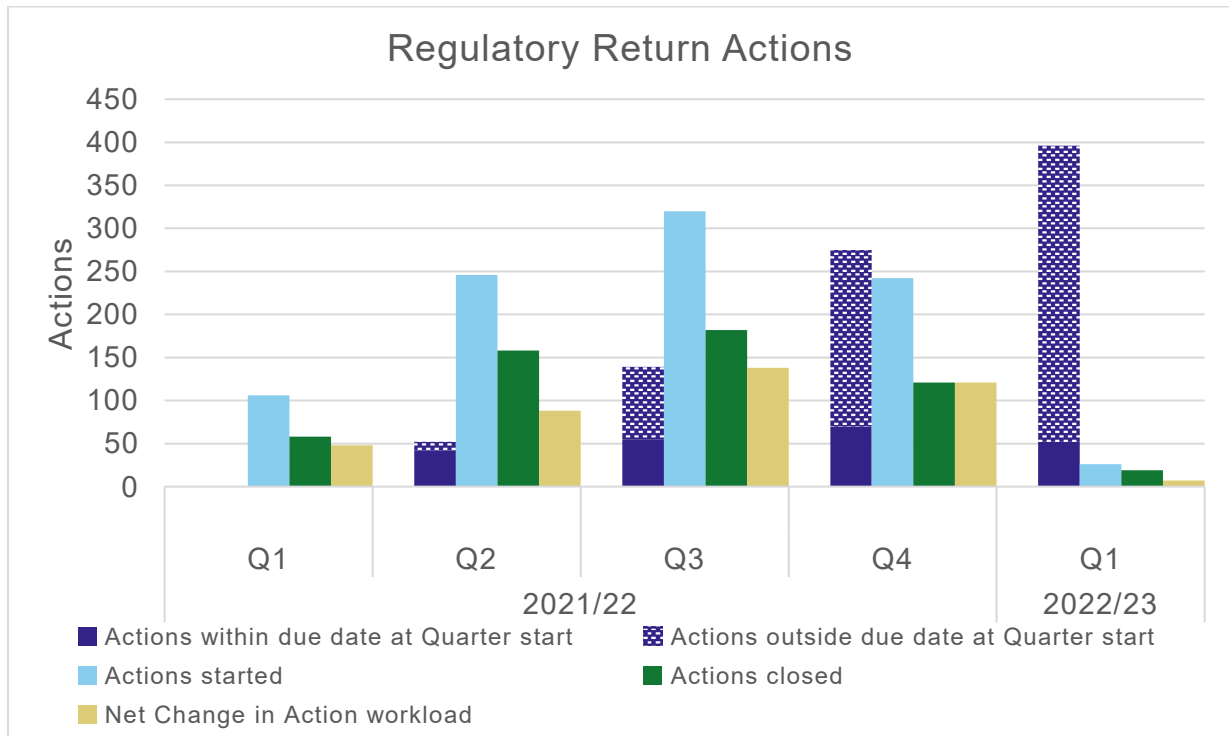
16. As a result of the cyber-attack, the team experienced a significant drop in referrals from CAT and was only able to close just over a third of the volume of cases they had in the previous quarter. The low volume received

### Total caseload by month excluding Regulatory Returns



**Supervision Actions**

Quarter	Actions within due date at Quarter start	Actions outside due date at Quarter start	Actions started	Actions closed	Net Change in Action workload
Q1 2021/22	9	0	55	40	15
Q2 2021/22	24	0	26	6	20
Q3 2021/22	31	13	22	18	4
Q4 2021/22	18	30	39	24	15
Q1 2022/23	10	53	5	9	-2

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

18. As the team was unable to access the case management system and emails for so much of this quarter, it was unable to make the progress it wanted to clear actions outstanding from the Regulatory Returns. This has now been prioritised while volume of referrals from CAT is low.

**Commentary**

19. The team has continued to reduce its caseload when compared to the period prior to the cyber-attack. During the period systems were down the team continued to work with barristers, chambers, entities and training and pupillage providers where possible. There is still a backlog of case records stored temporarily on Objective from this period, awaiting the appointment of a temporary resource to Authorisations, which will be shared with Supervision. The temp is due to start in August.



**Bar Standards Board – Director General’s Strategic Update – 22 September 2022****For publication****Role of Chambers**

1. As foreshadowed in our *Business Plan 2022/23*, we want to begin a dialogue with the profession about the important role that chambers can play in support of our strategic priorities of: *standards, equality* and *access*. To this end, we shall hold this Autumn and winter a series of roundtable discussions, to be hosted by the Chair, in all the circuits. The purpose of the roundtables will be to seek the views of barristers about how, in partnership with the profession, we can best consolidate information about good practice in implementing and going beyond our regulatory requirements which bear on the maintenance of standards, the promotion of equality and diversity and the facilitation of access for consumers to legal services. I attach at annex A a discussion paper we have prepared for these roundtables which will kick off in London in early October. We have shared the discussion paper in draft and our plans for the roundtables with the Bar Council. Board members will be very welcome to attend the roundtables.

**Well-led action plan**

2. We continue to make good progress with the implementation of the governance and other reforms which the Board adopted in June 2021. The latest progress report is at annex B. The Board will note that we plan to use the Board off-site in October as an opportunity for discussions about incorporation and about the refreshing of our analysis of the risks to our regulatory objectives – the *Risk Index*.

**Business Plan: progress**

3. I have included on the agenda a separate report on our performance in the first quarter in delivering our core regulatory operations. At annex C is the usual overall scorecard setting out performance against our Business Plan. Unsurprisingly given the cyber attack and the re-deployment of people to work on regulatory operations, we have made a slow start to some of the strategic issues which got under way in April.

**International Conference of legal Regulators, Chicago: 26 & 27 October**

4. The Chair and I will both be attending this conference in Chicago next month. The Chair will be speaking at a session entitled: *Shifting Sands – What Is An “Ethical” Lawyer in the 21st Century?*. I am also seeking a speaking slot – perhaps in a session reviewing the regulatory paradigm for legal services at which I can make useful comparisons with financial services.

Annex A: Discussion document on the role of chambers  
 Annex B: Update on progress against the well-led action plan  
 Annex C: Progress against Business Plan

**Mark Neale**  
 Director General



**DRAFT DISCUSSION PAPER**  
**THE ROLE OF CHAMBERS IN PROMOTING STANDARDS, EQUALITY AND ACCESS:**  
**CONSOLIDATING GOOD PRACTICE**

1. Chambers have an important role to play in supporting the delivery of objectives which are shared by the profession and by the Bar Standards Board: to maintain high standards; to promote equality; and to facilitate access for consumers. As the Bar Standards Board's recent *Regulatory Return shows*, there is already much good practice among chambers in all these respects. This paper aims to build on existing good practice by facilitating a discussion about how, working together, the Regulator and the Bar can consolidate good practice in a way which is helpful to chambers and also provide practical support to adopt good practice.
2. The focus is on chambers, including sole practitioners, because the great majority of barristers – 13 500 out of 17 000 – are self-employed and work within the chambers' framework. Employed barristers, however, have much to contribute to this discussion because their employers will often have in place effective arrangements to oversee standards of work, to promote equality and inclusion and to engage consumers. We want to learn from and draw on the experience of employed barristers and BSB is separately working on good practice guidance for the employers of barristers

***Shared objectives....***

3. The Legal Services Act 2007 gives the Bar Standards Board important public interest objectives:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of citizens' legal rights and duties; and
  - promoting and maintaining adherence to the professional principles.
4. From these objectives, the Bar Standards Board derives its core regulatory responsibilities for setting standards of entry to the profession and for discipline and enforcement. These come together in our top strategic priority of *efficiency*.
5. The regulatory objectives also, however, embrace the interests of the consumers of legal services and the rule of law. A strong independent and diverse profession is essential to both. From these public interest obligations, the Bar Standards Board has derived three further strategic objectives:
  - *Standards* – ensuring that barristers provide a high quality and responsive service throughout their careers;
  - *Equality* - promoting equality, diversity and inclusion at the Bar and at the BSB and the profession's ability to serve diverse consumers.
  - *Access* – promoting consumer understanding of legal services and choice and good value in using those services (covering both the supply of, and demand for, barristers' services).

***Limitations of regulation...***

6. We are very conscious that these objectives are also shared by the Bar itself. We also recognise that, though the Bar Standards Board can play some part in furthering these objectives (of which more below), regulation can only be a partial response. That is because we regulate individual barristers, whereas these objectives engage the profession collectively. It is also because the Bar Standards Board's powers are not well-adapted to shaping behaviours and attitudes day-to-day. We can intervene in cases of serious professional misconduct, but not so readily where a barrister has an off-day in court, or has turned a blind eye to uninclusive recruitment practices, or has not challenged poor quality information on the chambers' website about the costs and quality of services. We are also small relative to the profession: there are ten supervisors at the Bar Standards Board and 17 000 barristers.

***An opportunity for chambers?***

7. By contrast, chambers can, and often do, support barristers day-to-day, as employers do for the 3 500 employed barristers. Nearly 80% of the 17 000 barristers are self-employed and work from just over 400 chambers. Although chambers are unincorporated associations and vary in size, the majority employ clerks to broker flows of work and many employ professional administrators to deal with employment, IT, marketing and other issues. Especially where underpinned by administrative support, chambers, therefore, can:
- help sustain professional standards by brokering feedback to barristers from judges, solicitors, fellow barristers, clerks and clients, by fostering mentoring and the sharing of good practice within chambers and by handling complaints;
  - advance equality by ensuring that processes for recruitment, advancement and the distribution of work are inclusive and by collecting, monitoring and debating data bearing on the operation of these processes;
  - ensure that robust policies are in place to combat bullying and harassment and to support pupils or barristers who are subject to these behaviours; and
  - promote access by ensuring that consumers can find good quality information about the price and quality of the services provided by their barristers and that clients have a choice of barrister.
8. The best chambers do all these things. There is also much good practice among the employers of barristers on which to draw. The question is: how can we generalise this good practice in the interest of our regulatory objectives?

***Consolidating expectations and good practice***

9. As things stand, the Bar Standards Board and the Bar Council support chambers through a variety of channels.
10. In practice, we would expect barristers in leadership positions – the head of chambers, for example – to bear a larger share of responsibility for ensuring compliance with these requirements. The BSB requires individual barristers to ensure that their chambers have

## Part 1 – Public

in place certain minimum policies and governance roles: our CPD<sup>1</sup>, *Equality*<sup>2</sup> and *Transparency*<sup>3</sup> rules are examples of this.

11. We also set expectations of what chambers should be doing to promote regulatory objectives. The most obvious example here is the Anti-Racist Statement<sup>4</sup> which we published in November 2020. The Statement set out four actions which we expected all chambers to implement and which we have followed up in our supervisory work.
12. Where chambers are providers of pupillage, they must be authorised by the BSB and this entails compliance with an Authorisation Framework<sup>5</sup> which requires chambers to demonstrate how they will meet the four principles of: accessibility, flexibility, affordability and high standards.
13. The Bar Council is also active in support of chambers by promoting good practice which goes beyond regulatory requirements. In partnership with the Legal Practice Management Association, the Bar Council provides an annual Chambers Management Package which aims to assist chambers' members in meeting regulatory responsibilities. It also promotes good practice by commissioning and publishing research and analysis. An important recent example is the *Race at the Bar report*<sup>6</sup> by Barbara Mills QC and by Simon Regis which was published in November 2021
14. Although important and helpful in their own terms, the collective impact of these interventions is fragmented and uneven. There is much good practice, but what constitutes good practice in chambers' administration is nowhere consolidated and set down coherently. In consequence, chambers are not consistently the effective force for higher standards, equality and access which they could be if all chambers emulated the practices of the best. That is why in the Bar Standards Board strategy document<sup>7</sup> published in April 2022 we said: *There is a need to clarify our expectations of both chambers and employers in overseeing standards and equality. We believe that there is good practice in both parts of the Bar that can be shared to improve standards across the profession.*
15. Accordingly, we should like to consult on the desirability and practicality of drawing up just such a consolidated statement of good practice. By good practice, we mean not simply examples of how to implement minimum regulatory requirements effectively – though is certainly part of it – but also opportunities to go above and beyond the minimum in support of high standards, of equality and of good customer service. Such a statement might draw on the findings of the BSB's *Regulatory Return* and cover all or some of the ground outlined in the framework at annex A and would be drawn up in partnership with the profession itself. We would then aim to fill out this framework

<sup>1</sup> <https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=EF7C8717-3AB4-4120-AB72FA53D17C3F28&q=Part+4+-+C.+The+CPD+Rules>

<sup>2</sup> <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/equality-and-diversity-rules.html>

<sup>3</sup> <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/transparency-rules.html>

<sup>4</sup> <https://www.barstandardsboard.org.uk/resources/press-releases/bsb-publishes-anti-racist-statement.html>

<sup>5</sup> <https://www.barstandardsboard.org.uk/training-qualification/the-authorisation-framework.html>

<sup>6</sup> <https://www.barcouncil.org.uk/uploads/assets/d821c952-ec38-41b2-a41eb2ea362b28e5/Race-at-the-Bar-Report-2021.pdf>

<sup>7</sup> <https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-strategic-plan-for-2019-22.html>

through our continuing programmes of work on standards, equality and access and would do so in consultation with key stakeholders, including the profession itself, the Legal Practice Management Association and the Institute of Barristers Clerks.

16. The statement would aim to clarify for chambers:
- what is mandated by relevant existing regulations bearing on continuing professional development, equality and transparency. All barristers working from chambers would have an accountability to ensure that these mandatory requirements were fulfilled;
  - where to find good practice and associated guidance in implementing the mandatory requirements, but also good practice which goes beyond the mandatory requirements and which has demonstrated its effectiveness in sustaining standards, promoting equality and inclusion and facilitating access for consumers; and
  - our expectations of governance within chambers in support of standards, equality and access and promote a culture, policies and practices consistent with these goals.

**Questions for discussion:**

- i. Do you agree that it would be useful to consolidate expectations of chambers and good practice in meeting those expectations?
- ii. Do you agree that good practice should cover not just the mandatory regulatory requirements, but also bring together examples of excellent practice which go beyond the minimum?
- iii. Does the framework at annex A represent sensible coverage? Is anything important missing? Can anything be dropped?
- iv. What is the best way of presenting this information for chambers? As a website, with links to relevant regulations and examples of good practice?

**Defining minimum requirements**

17. As outlined, we are in the process of reviewing the minimum regulatory standards bearing on standards, equality and access set out in our CPD, Equality and Transparency rules respectively. In doing so, we should welcome views on how we should frame these minimum requirements.
18. As things stand, the requirements are currently largely stated in terms of the policies or roles which barristers must ensure their chambers have in place. This has the virtue of clarity. It is relatively straightforward, for example, for barristers to verify whether their chambers has an Equality and Diversity Officer in place and an up-to-date policy on equality and diversity. The existence of roles or policies tells you little, however, about their effectiveness in delivering the outcomes we all want.
19. An alternative approach, therefore, might be to re-cast our minimum regulatory requirements more in terms of outcomes. For example, instead of prescribing what diversity monitoring data chambers are expected to collect and to address, we might instead prescribe the outcomes which such data exist to promote: fairness in the allocation of unassigned work, for example. This would require barristers in chambers – and particularly senior barristers – to ask hard question not just about whether the right policies and posts were in place, but whether they were making a difference.

**Questions for discussion:**

- i. In reviewing minimum regulatory requirements, should we aim to move more towards prescribing outcomes rather than policies and roles?
- ii. If so, how far in this direction should we move: re-casting all minimum requirements in terms of outcomes alone or retaining some prescription of the underlying policies and roles?

**Supporting delivery**

20. We expect all chambers, regardless of size, to meet the minimum regulatory requirements and to be alert to opportunities to embrace good practice which goes beyond those requirements. We also recognise, however, that meeting expectations and implementing good practice will be easier for larger chambers which are able to support a critical mass of professional support. Of the over 400 chambers in 2020/21, 5 had over 200 barristers, 4 had between 150 and 200 barristers, 20 had between 100-150 barristers, 89 between 50-100 barristers and the remainder – the majority - fewer than 50.
21. Against this background, we should like to discuss options for supporting chambers to adopt good practice and so become more effective in overseeing standards, promoting equality and facilitating access. There will be no one right answer, but options might include:
  - Chambers sharing resources, for example, by agreeing to share the costs of important resources such data analysts;
  - the provision of support to chambers by the Inns or Circuits: this might include training and expertise or access to support for barristers who are subject to bullying or harassment.
22. We should also be interested in views on whether there would be merit in recognising chambers which exemplified good practice through either a kitemarking or an awards scheme. This would provide a tangible incentive to chambers to seek out and to implement good practice. We would expect any such schemes to be developed and run from within the profession rather than by the Regulator, but, if there were an appetite to move in this direction, would be happy to foster, and to take part in, discussions.

**Questions for discussion**

- i. How might we best support small and medium chambers to adopt best practice?
- ii. Is it realistic to encourage chambers to share resources? How might this work?
- iii. What support can the Inns and Circuits provide to chambers?
- iv. Would there be merit in recognising exemplary chambers practice through either a kitemarking or an awards scheme?

## **ANNEX A**

### **GOOD PRACTICE IN CHAMBERS' OVERSIGHT OF STANDARDS, EQUALITY & ACCESS: OUTLINE FRAMEWORK**

#### **Diversity**

- Chambers' approach to recruitment to pupillage, including the monitoring of applications.
- Chambers' approach to the retention and development of junior barristers, including monitoring of opportunities such as acting as a junior.
- Chambers' approach to the distribution of work, including the monitoring of work allocation.
- Chambers' approach to creating an inclusive working environment and promoting equality, including through training and culture change.

#### **Bullying & harassment**

- Chambers' arrangements for supporting pupils and barristers who are the victims of harassment and bullying and for investigating complaints of harassment or bullying.

#### **Professional standards**

- Chambers' arrangements for supporting the professional development of barristers in the early years.
- Chambers' approach to supporting barristers' reflection and continuing professional development, including by fostering the provision of feedback to individual barristers on their performance.
- Chambers' approach to handling complaints about barristers' professional competence.

#### **Access**

- Chambers' approach to publishing information about the services provided by barristers and the costs of those services.
- Chambers' approach to engaging with direct access clients
- Chambers' approach to gathering feedback from clients – both professional and lay – about the service provided.

#### **Governance**

- Governance arrangements within chambers to ensure appropriate senior oversight of diversity, standards and access.
- The professional support available in or to chambers to manage essential functions such as recruitment and the distribution of work.



## Well-Led Action Plan - Updates against delivering the Well-Led Action Plan

Theme	Action	Lead responsibility	Achievements at time of last update (25/05/22)	Achievements since last update	Target completion date
<b>Consolidating BSB's independence as a regulator (WL2, WL7)</b>	A People Survey will be undertaken in Spring 2021 – to be repeated annually - to inform a review of BSB's culture as an independent regulator.	Teresa Haskins	Draft framework of BSB values-based behaviours to be reviewed in March by the Anti Racism working group. It has been reviewed by Heads of Departments and the framework was presented at the Townhall meeting and discussed with all staff.	The draft framework of BSB values-based behaviours has been reviewed by the Anti Racism working group and Heads of Departments. An external EDI expert will review the framework during September, following which it will be incorporated into the draft appraisal system.	On-going: surveys to be run once every calendar year
	BSB's policies for the recruitment, retention and development of its people will be reviewed and re-cast to support the culture and behaviours agreed by the Board and Senior Management Team.	Teresa Haskins	SMT have now had three facilitated discussions on reward and have agreed a way forward for cost modelling. A framework of values based behaviours has been developed in consultation with all staff. This framework will underpin a new performance management system, and a range of other new people policies. A draft learning and development strategy and policy has been developed and approved by the SMT for consultation with staff. A review of recruitment processes is scheduled to commence in July.	We are consulting with internal staff on the draft learning and development strategy for the BSB and will be running feedback sessions. The new strategy for learning and development will be implemented in Autumn 2022.	Dec-22
	The current operation of the Internal Governance Rules will be reviewed in the first half of 2022/23 in the light of their operation in the preceding 18 months to assess whether they support BSB's independence of decision, operation and culture. The Review will consider the costs and benefits of incorporating the BSB as well as the effectiveness of the services which continue to be shared between BSB and the Bar Council.	Mark Neale	A project has now been established to coordinate the review. Specifications have also been drawn up for (i.) an independent audit of the fitness for purpose of current shared IT systems and support arrangements and (ii.) legal and accountancy advice on the incorporation of the BSB as a company limited by guarantee.	Project underway. The Bord will discuss incorporation at its October off-site.	Mar-23
<b>Aligning strategy with the regulatory objectives (WL3, WL5)</b>	As a contribution to the development of BSB's three year strategy for 2022/23 to 2024/25, the BSB regulatory Risk Index will be reviewed and refreshed to ensure that it aligns with the regulatory objectives and captures the key risks to those objectives and the evidence bearing on likelihood and impact of those risks	Ewen Macleod	We have reviewed how we do the remainder of this work because the Board away day has moved. We will now discuss any amendments to the Risk Index at the away day in October, with interim discussions with the SPR and GRA Committees. It should be noted that all risks are kept regularly under review (and our understanding of risks in the market was refreshed as part of our strategic planning). The outstanding task relates to amending how the risks are described in the index.	New Head of Regulatory Risk in post and progressing this action. The new risk index is on track to be discussed at the Risk Forum in early September, followed by SMT later in the month. On track for a discussion at Board meeting later in the year.	Oct-22

Theme	Action	Lead responsibility	Achievements at time of last update (25/05/22)	Achievements since last update	Target completion date
<b>Enhancing consumer and stakeholder engagement (WL4, WL6)</b>	BSB will develop engagement strategies for relationships with key stakeholders, including the LSB, and Board members will pair with stakeholders to provide a further channel of engagement.	Wilf White/Board	The first strategy is being presented to the Board on 14 July and the others will be finalised over the next few months.	This action has been completed.	<b>Completed</b>
<b>Delivering high performance (WL1,WL2)</b>	The Director General will report to the Board quarterly on the performance of the Bar Standards Board in delivering its annual business plan, including its performance in achieving the service standards set for its core regulatory work of considering reports, handling applications for authorisations and waivers and taking forward investigations of potential disciplinary matters	Mark Neale	The report on the fourth quarter of 2021/22 will be submitted to the Board for discussion at its meeting on 25 May, alongside the six monthly report to LSB.	Continuing: 1st quarter 2022/23 report be submitted to Board at September off-site.	Ongoing
	The Board will formally discuss the LSB's assessment of BSB's performance against its Regulatory Performance Assessment Framework annually at its first meeting after BSB receives the assessment. The discussion will be fully recorded. <i>(LSB finding 8)</i>	The Board	The information request for reassessment from the LSB will be discussed at the meeting in May.	Completed	<b>Completed</b>
<b>Enhancing governance (WL1, WL5. WL7)</b>	In the light of independent review of its governance, the Board will hold regular strategy discussions in addition to formal Board meetings, facilitated by the relevant member of the senior Management Team	The Board	A Board strategy discussion on the role of chambers in supporting delivery of the BSB strategy will be held at the Board meeting on 25 May 2022.	Continuing	Ongoing
	The Director General will ensure that the Board is provided with all the information and analysis needed to support effective decision-making, including, where relevant, a costed analysis of options and an analysis of risks. This will identify 'significant' decisions in terms of, for example, novelty, contentiousness, or repercussion, and set out appropriate governance arrangements. The 2020 recommendations of BSB's internal auditors bearing on Board decision-making in the light of the review of 2019 decisions on public legal education will be implemented. These recommendations include provision for the Board, where minded to change strategic direction, to receive a follow-up paper analysing the key risks and stakeholder views. Discussions will take place with the Chair pre-Board meetings to confirm that papers are fit for purpose in all these respects. <i>(LSB findings 3, 4, 6 &amp; 9)</i>	Mark Neale	Continuing	Continuing	Ongoing

Theme	Action	Lead responsibility	Achievements at time of last update (25/05/22)	Achievements since last update	Target completion date
	BSB's internal policies will be reviewed over the course of 2021/22 to ensure that the policies comply with statutory objectives and better regulation principles, support BSB's independence as a regulator and are understood and implemented by BSB's people. Priority will be given to policies currently shared with the Bar Council. <i>(LSB finding 5)</i>	Mark Neale	The Board will sign off policy on the appraisal of the Chair and Board members at its meeting on 25 May after a preliminary discussion at the 31 March Board. Further policies will follow	Continuing	To be determined
	BSB's internal delegations, including the matters reserved to the Board and its Committees, will be reviewed and associated governance documents refreshed to meet the requirements of the UK Corporate Governance Code	Mark Neale	Revised constitutional and governance documents have now been prepared for Board approval.	Key governance documents approved at July Board. Delegations to be reviewed in Autumn 2022	Dec-22



Business Plan Summary				
Task	Assigned	Priority	Status	Budget
Strategic Aim 1 - Efficiency				
3. Conduct in non-professional life	LST	High		
4. Rules on how barristers market services and receive instructions	S&P	Medium		
5. Code of Conduct: reviewing the Core Duties	S&P	Medium		
6. Clarifying the rules around cyber security and PII	S&P	High		
7. Regulatory Operations review	ROD/OST	High		
8. Reviewing authorisations framework	ROD	High		
9. Review of CRM	DG	High		
10. Scoping the review of our Enforcement Regulations	LED	High		
Strategic Aim 2 - Standards				
5. Evaluation of reforms to Bar training	S&P/ROD/Comms	High		
6. Assessment of negotiation and advocacy	ROD	High		
7. Review of BCAT	S&P	High		
8. Assuring standards at the Bar - CPD	ROD	High		
9. Evaluation of our work on Coroner's Courts	ROD/S&P	Low		
10. Assuring standards at the Bar - EYP	ROD/S&P	High		
11. Regulatory Return	ROD	High		
12. Expectations of chambers	ROD	Medium		
Strategic Aim 3 - Equality				
5. Tackling bullying, discrimination and harassment at the Bar	OST	High		
6. Equality and diversity in AETOs	ROD	Low		
7. Apprenticeships	ROD	Medium		
8. Good practice disability case studies	S&P/E&AJ	High		
9. Review of Equality Rules	S&P	Medium		
10. Equality and Diversity - best practice in chambers	ROD	High		
Strategic Aim 4 - Access				
5. Unbundling legal services	ROD	High		
6. Digital Comparison Tools	S&P	High		
7. Regulatory Information Service	Comms	High		
Strategic Aim 5 - Independence				
4. Reviewing reward and recognition	HR	High		
5. Promoting wellbeing	HR	High		
6. Learning and development	HR	High		
7. Promoting diversity and inclusion	HR	High		
8. Putting our values into action	HR	High		
9. Reviewing the case for incorporation	DG/G&CS	High		

**Note/s**  
¹ Index is a calculation of the actual versus budget, multiplied by 100 - showing how far above or below budget the actuals are. For example, index 120 means 20% above budget and index 80 means 20% below budget.  
² Status field greyed out where there is no milestone for this quarter.

KPI Summary		C&A - General Enquiries		C&A - Initial Assessment
On target	5	General enquiries addressed (5 days) - 80%	General enquiries referred (3 days) - 80%	Concluded or referred (8 weeks) - 80%
<10% below target	1	59%	32%	64%
>10% below target	9			
I&E - Referral of Cases	I&E - Investigation	I&E - Quality Indicators		
Accepted or referred back (2 weeks) - 80%	Decision on disposal (25 weeks) - 80%	Original decision upheld by IR following review - 95%	Successful appeals against admin. Sanctions - 0%	Successful appeals of DT where BSB is responsible - 0%
7%	38%	N/A	0%	0%
Authorisation - Authorisation, Exemptions & Waivers			Authorisation - Entity Authorisation	
Applications determined (6 weeks) - 75%	Applications determined (8 weeks) - 80%	Applications determined (12 weeks) - 98%	Authorisation decisions made (6 months) - 100%	Authorisation decisions made (9 months) - 100%
36%	46%	73%	100%	100%
	Supervision - Allocations	Supervision - Reg. Response	Supervision - Visits	
	Cases assigned after referral from CAT (2 days) - 80%	Regulatory response agreed (20 days) - 80%	Visit report letters issued (5 days) - 80%	
	100%	55%	0%	

Financial Summary				
Category	FY Actual	FY Budget	Variance	Index²
Income	3,153	14,383	-11,230	22
Expenditure	1,387	8,198	-6,811	17
Category	FY Actual	FY Forecast	Variance	Index²
Income	3,153	14,331	-11,230	22
Expenditure	1,387	7,992	-6,811	17

Corporate Risk Summary (Action Priority)				
Period	High	Medium-High	Medium	Low
Q1 22/23	6	3	9	5
Q4 21/22³	3	4	10	6

Directorates		% of occupied posts
CPE	Communications and Public Engagement	100%
G&CS	Governance & Corporate Services	80%
LED	Legal & Enforcement	88%
ROD	Regulatory Operations	84.31%
S&P	Strategy & Policy	58.82%

Service Complaints Summary				
Q1 Received	5	YTD Received / Upheld	9	7



<b>Meeting:</b>	Bar Standards Board	<b>Date:</b>	22 September 2022
<b>Title:</b>	Wellbeing at the Bar		
<b>Author:</b>	Ewen Macleod		
<b>Post:</b>	Director of Strategy and Policy		

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

1. This paper asks the Board to revisit a proposed statement on wellbeing, previously discussed at its May meeting and updated in the light of that discussion.

### Recommendations

2. That the Board approves the draft statement at **Annex A**.

### Background

3. During the consultation on our new strategy, we received representations from the Criminal Bar Association (CBA) about the impact of wellbeing issues at the Bar (particularly in criminal practice.)
4. In discussions with the SMT and the Strategic, Planning and Resources Committee, an important consideration has been whether this is a representative or a regulatory matter. Although arguably it is the former (and the Bar Council is better placed to promote wellbeing issues in the profession more generally) it does raise important issues about the culture in the profession (which we touch on in the Equality enabling strategy). We believe it is important to challenge some of the entrenched cultures and behaviours in the profession, for it to become more inclusive. As such, the statement promotes the regulatory objective of encouraging an independent, strong, diverse and effective legal profession and we believe it is also indirectly in consumers' interests by promoting a healthier profession that can better meet clients' needs (and hence also indirectly promote adherence to the professional principles.)
5. In the previous discussion, the Board accepted the value of promoting wellbeing in principle, but had some questions about how such a statement would practically impact on how we regulate and whether it accurately reflected the realities of practice at the self-employed Bar. The Board was also interested to hear about the work that other organisations have been doing in this area.

6. Board members asked about the approach taken by the judiciary. A Judicial Health and Wellbeing Strategy was launched in February 2021, which aimed (amongst other things) to: promote the judicial welfare offer; raise awareness of the importance of mental wellbeing; build an inclusive culture across the judiciary; and take preventative action to support the judiciary to stay healthy and sitting. This led to a judicial wellbeing survey, and the publication of a report and action plan. The action plan focuses on a number of key areas, such as dealing with stress and anxiety, providing better support for holders of judicial office and improving peer support. Its focus is on the wellbeing of holders of judicial office rather than those appearing before the courts<sup>1</sup>.
7. The Solicitors Regulation Authority (SRA) has published guidance on the workplace environment and the risks of failing to protect and support colleagues<sup>2</sup>. This sets out the approach that the SRA will take where it considers that firms have failed to take appropriate steps to look after their staff's wellbeing in the workplace. It sets out the main standards that apply to law firms and those responsible for their culture and the systems in place within them. The SRA has also undertaken a workplace culture thematic review and has consulted on introducing explicit obligations in the Codes of Conduct for both firms and individuals to treat colleagues fairly and with respect, and clarifying that the SRA can take action to manage risks arising from an individual solicitor's health issues.

### Draft statement

8. The proposed statement at **Annex A** has been updated in the light of previous comments. It now refers to the Equality supporting strategy approved by the Board, in which we recognise the need to improve the culture at the Bar. It is proposed that a number of activities listed in that strategy will also explicitly consider wellbeing issues, where relevant. Through that process, we will consider whether any Handbook changes or other guidance will be helpful. Otherwise, this is a statement of our current policy and barristers will continue to be subject to the same Handbook duties until such time as we consult on changes. We have removed some text that may have been confusing in the context of individuals in independent, self-employed practice.

### Resource implications / Impacts on other teams / departments or projects

9. The document at **Annex A** is consistent with the BSB's Strategy and its supporting strategy for Equality. There are no resource implications beyond what has already been agreed and budgeted: we are already considering wellbeing issues as part of the analysis of regulatory returns in the Equality workstream.

### Equality and Diversity

10. This document contributes to the Equality strategic priority, and to the regulatory objective of encouraging an independent, strong, diverse and effective legal profession and our duties under the Equality Act.

### Risk implications

11. The priorities identified in this paper are the product of the risk analysis and prioritisation undertaken as part of the strategy review process. Wellbeing issues could be a contributing factor to a number of risks in our risk index, including: failure to provide a proper standard of service; unethical conduct; lack of professional competence; or failure in the management of an individual practice or chambers. They could also contribute to

<sup>1</sup> [https://www.judiciary.uk/wp-content/uploads/2022/03/14.51\\_Judicial\\_Wellbeing\\_Survey\\_2021\\_Report\\_and\\_Action\\_Plan\\_FINAL2\\_WEB.pdf](https://www.judiciary.uk/wp-content/uploads/2022/03/14.51_Judicial_Wellbeing_Survey_2021_Report_and_Action_Plan_FINAL2_WEB.pdf)

<sup>2</sup> <https://www.sra.org.uk/solicitors/guidance/workplace-environment/>



some sector-wide risks such as: the profession fails to reflect the diversity of society; access to justice failures; and commercial and other external pressures are detrimental to the consumer and / or the public interest.

### **Publicity**

12. Subject to agreement, we will publish the statement at **Annex A**, and include these issues in our discussions with the profession about good practice and the role of Chambers.

### **Annexes**

Annex A: Draft wellbeing statement

**Ewen Macleod**

Director of Strategy and Policy



### BSB commitment to wellbeing

1. The statutory Regulatory Objectives of the Bar Standards Board as prescribed in the Legal Services Act 2007 include:
  - protecting and promoting the public interest;
  - supporting the constitutional principle of the rule of law;
  - improving access to justice;
  - protecting and promoting the interests of consumers;
  - promoting competition in the provision of legal services;
  - encouraging an independent, strong, diverse and effective legal profession;
  - increasing public understanding of the citizen's legal rights and duties; and
  - promoting and maintaining adherence to the professional principles.
2. Consistent with these regulatory objectives, the BSB Handbook sets out the Core Duties of barristers. These include barristers' duty to the court in the administration of justice and duty to act in the best interests of each client and, in doing so, to provide a competent standard of work and service.
3. The Bar Standards Board recognises that the wellbeing of barristers is important if barristers are to meet their own duties and, accordingly, that it also matters to the achievement of the BSB's broader regulatory objectives. In promoting the objective of encouraging an independent, strong, diverse and effective legal profession we believe there should be a sustainable number of suitably qualified and experienced barristers in any given area of law. If that ceases to be the case because experienced practitioners leave, that will also be contrary to the interests of consumers and access to justice. A more inclusive culture in the profession may help to slow or reverse such trends, where they occur.
4. In the BSB's Equality Strategy we recognise that there is a continuing need to improve the culture at the Bar and to ensure a supportive environment for all barristers and pupils. This is necessary to achieve our objective of encouraging an independent, strong, diverse and effective profession. In implementing our Equality Strategy we will have regard to whether any working practices have negative consequences for practitioners' health and wellbeing and for equality and diversity in the profession. It is not generally in clients' interests to be represented by someone who is unwell or exhausted; nor is it in the interests of justice. The profession will also struggle to be inclusive and to reflect the society it serves if certain groups of barristers disproportionately experience poor wellbeing. We want to ensure that wellbeing issues do not prevent the progression of barristers from a diverse range of backgrounds, the retention of experienced practitioners or the return of experienced barristers to the profession. In an inclusive profession, it is important that barristers can combine working life with family life and caring responsibilities. We will bear these issues in mind when we consider the following activities in our Equality Strategy:
  - a. Updating our equality rules;
  - b. Setting our expectations of chambers;
  - c. Publishing good practice examples; and
  - d. Strengthening governance responsibilities for the promotion of equality and inclusion.
5. The Bar Standards Board supports flexible working and accepts that barristers are entitled to take reasonable steps to regulate their working hours, subject to being reasonably available for any continuing hearings. Under rC30 in our Handbook, the "cab-rank" rule, barristers are not therefore obliged to accept instructions "that would require

**Part 1 – Public**

them to do something other than in the course of their ordinary working time”. We do not seek to define “ordinary working time” in terms of a set number of hours because we recognise that the hours which individual barristers choose to work may vary and “ordinary working time” must be seen in terms of an individual barrister’s normal working patterns. Similarly, barristers are not obliged to accept instructions if they are not offered “a proper fee” for their services and it is for individual barristers to determine what “a proper fee” might be.

6. We are also determined to eliminate bullying, discrimination and harassment at the Bar. We regard such behaviour as serious professional misconduct, and we welcome the increase in the possible sanctions for such misconduct in the new Sanctions Guidance from the Bar Tribunals and Adjudication and Service which took effect from 1 January 2022. All barristers, their clients and others with whom they work, are entitled to be treated with courtesy and respect at all times. Making unreasonable demands on others that require them to work outside their normal working hours may be seen as a breach of those standards and may be regarded as potential professional misconduct.
7. Finally, in regulating the Bar in the public interest the Bar Standards Board will always seek to minimise the costs and burdens of regulation. We will seek to deal with our essential regulatory activities (including requests for authorisations, waivers and exemptions and reports of potential misconduct) as efficiently as possible. We will always bear in mind the wellbeing of all those who are involved in actual or potential disciplinary action. We will also seek to ensure that all our stakeholders are given the opportunity to contribute to our policy making.

<b>Meeting:</b>	Strategic Planning and Resources Committee	<b>Date:</b>	22 September 2022
<b>Title:</b>	Annual Report and Cost Transparency Metrics		
<b>Author:</b>	Wilf White and Rebecca Forbes		
<b>Post:</b>	Director of Communications and Public Engagement and Head of Governance and Corporate Services		

<b>Paper for:</b>	<b>Decision:</b> <input checked="" type="checkbox"/>	<b>Discussion:</b> <input checked="" type="checkbox"/>	<b>Noting:</b> <input type="checkbox"/>	<b>Other:</b> <input type="checkbox"/> (enter text)
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**Paper relates to the Regulatory Objective (s) highlighted in bold below**

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

☐ Paper does not principally relate to Regulatory Objectives

### Recommendations

- The Board is invited to **review and agree** the attached draft Annual Report and Cost Transparency Metrics for publication.

### Executive summary

- The attached documents should be self explanatory and report on the final year of the last strategic plan which covered the years 2019 - 2022. They therefore follow the format of previous documents. We have tried to make them as brief and accessible as possible and to follow the Business Plan closely. They were approved by the Strategic Planning and Resources Committee on 5 September subject to some drafting amendments which have subsequently been made.
- The Annual Report aims to cover all our activities, although our Regulatory Decision-Making report, which is usually published a little later in the year, then gives a much more detailed account of those areas of our work. The Cost Transparency Metrics document is a requirement of the Legal Services Board.
- We would normally be publishing these documents in July but the April cyberattack severely delayed the auditing of last year's financial figures

### Communications and stakeholder engagement

- We will highlight publication with a Press Release, through Regulatory Update and via social media.

### Annexes

- Annex 1 – Draft BSB Annual Report for 2021-22  
Annex 2 – Draft Cost Transparency Metrics for 2021-22



# Annual Report

## 2021-2022

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest.

If you would like a version of this publication in an alternative format, please contact the Equality and Access to Justice (E&AJ) Team by telephone on 020 7611 1444 or: [equality@barstandardsboard.org.uk](mailto:equality@barstandardsboard.org.uk)

# Who we are and what we do

## We are responsible for:

- prescribing the education and training requirements for becoming a barrister;
- establishing continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- setting standards of conduct for barristers;
- authorising organisations that focus on advocacy, litigation, and specialist legal advice;
- monitoring the service provided by barristers and the organisations we authorise to ensure they meet our requirements; and
- considering reported concerns about barristers and the organisations we authorise and taking enforcement or other action where appropriate.

## The Regulatory Objectives

Like the other legal services regulators, our objectives are laid down in the Legal Services Act 2007. They are:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services;
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of citizens' legal rights and duties; and
- promoting and maintaining adherence to the professional principles.

## Risk-based regulation

We take a proportionate, risk-based approach to regulation. This means that we are constantly monitoring the market for barristers' services. We identify all the potential risks that could prevent the Regulatory Objectives from being met. When we have done this, we focus our attention on the risks that we think pose the biggest threats to the public interest. We then take action to try to prevent those risks from occurring, or to reduce their impact. The work that we do is governed by the Legal Services Act 2007 and other statutes.

Please visit our website at [www.barstandardsboard.org.uk](http://www.barstandardsboard.org.uk) to find out more about what we do.



# Welcome to our Annual Report for 2021-22

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<b>Our income and expenditure</b>	<b>24</b>
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# Our year in numbers: 2021-22

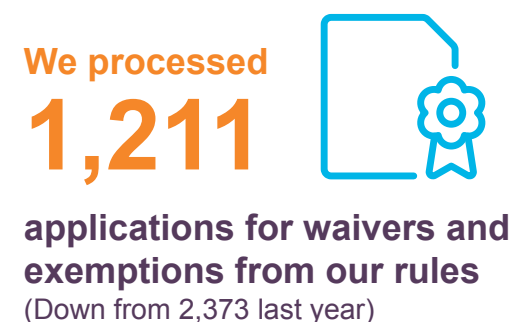
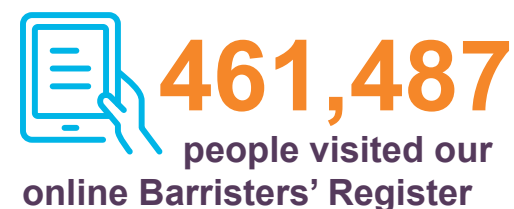
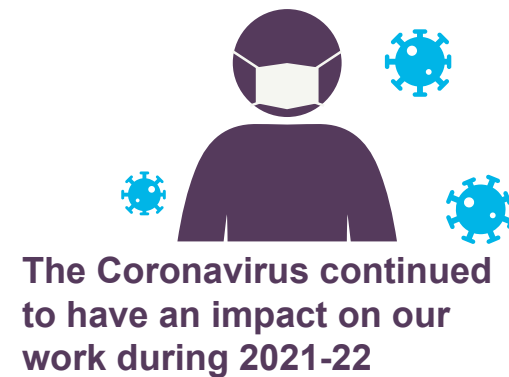
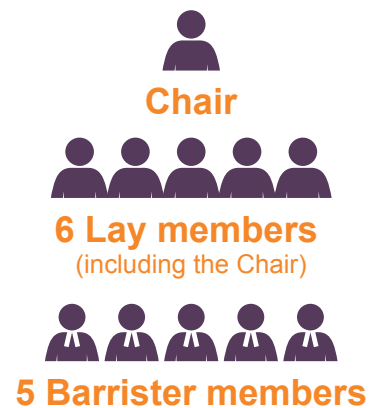
## About us



(and a further **55,894** barristers without practising certificates who are also subject to our regulation) as at 31 March 2022.



### Our Board



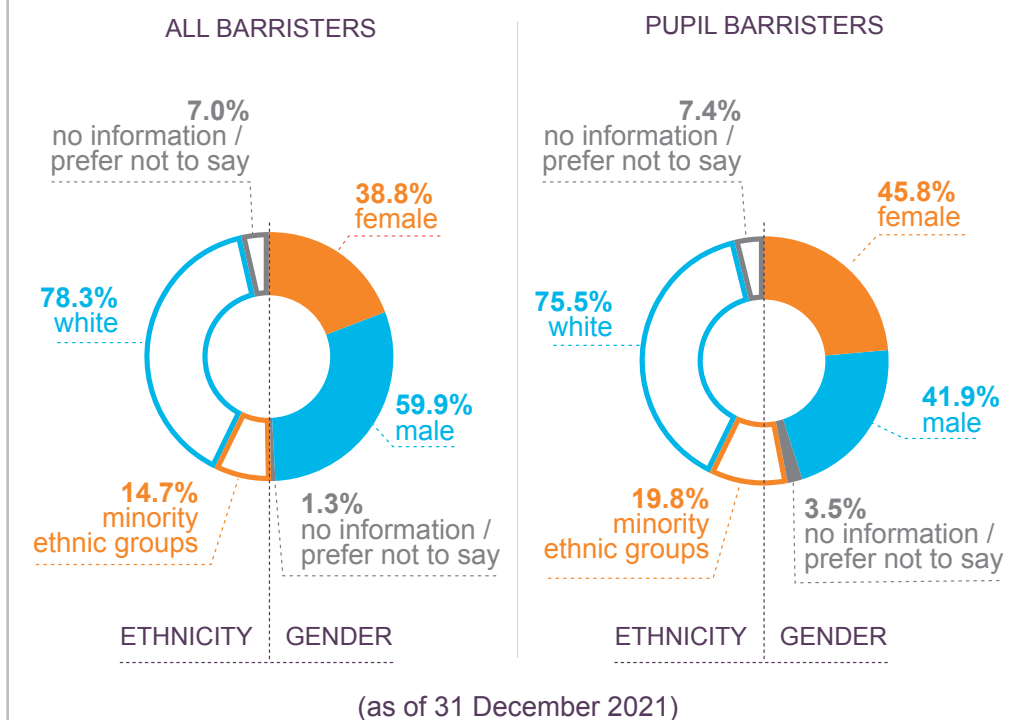
## Bar training



## Regulating barristers



### Promoting diversity at the Bar



# Foreword by the Chair of the Bar Standards Board

This report covers the BSB's activities between April 2021 and March 2022. I became Chair with effect from 1 September 2022 and I am very much looking forward to working with my fellow Board members to regulate the Bar in the public interest.

I am very aware of the challenges which barristers currently face, especially at the publicly funded Bar. At the BSB our primary concern is to ensure that barristers meet their duties to the court and to their clients in the public interest but we also believe that our regulatory objectives can only be achieved if the publicly funded Bar is able to work effectively. We therefore hope for a speedy resolution to the current dispute at the criminal Bar and a sustainable funding settlement for the future.

This was a year in which COVID-19 continued to have an impact on the courts, the profession and the public as well as our staff, who had to continue to work from home for much of the year. BSB employees worked hard to maintain, and even increase, their productivity but the loss of key staff, and difficulty in recruiting new staff, did affect our work in several areas. Indeed, staff retention and recruitment remains a concern for the BSB.

We are guided by our statutory Regulatory Objectives and our core regulatory work includes overseeing the education and training requirements for becoming a barrister; monitoring the standards of conduct of barristers and taking action when we believe the standards are not being met; and assuring the public that everyone we authorise to practise is competent to do so.

Our work to promote equality, diversity and inclusion at the Bar and to address bullying, discrimination and harassment also remains a very high priority for us. We want to see every

Chambers taking action in line with our Anti-Racist Statement and the Bar Council's Race at the Bar report.

Over the past year we have also been carefully analysing responses to our Regulatory Return questionnaire which was designed to assess risk within barristers' practices and to improve our understanding of the levels of compliance with our rules.

Mindful of the financial impact of the pandemic we have also continued to seek to control our costs and to maximise our value-for-money. Our year-end position resulted in a surplus of income over expenditure of £918,000.

During the year the Bar Standards Board (BSB) lost a very dedicated Board member through the sad death of Lara Fielden. Lara had been a member of the Board since January 2018. She was devoted to the public interest and a keen champion of consumers in particular. She was always ready to speak her mind and to offer her support and she is greatly missed by all her friends and colleagues on the Board and on the Executive.

Nicola Sawford stepped down from the Board at the end of August after many years of excellent service. The Board has benefited enormously over the years from her wise counsel and her business experience.

Finally, I should also like to pay tribute to our former Chair, Baroness Blackstone, who stepped down in July 2022, for her dedicated hard work and commitment to the BSB during her years in office. We wish her well as she takes up new challenges.

**Kathryn Stone OBE**

Chair of the Bar Standards Board

# Delivering our business plan from April 2021 to March 2022

In this section, we outline what we achieved during 2021-22. We have split this into three parts:

- Part 1 briefly outlines how we manage risks to our Regulatory Objectives and the Strategic Aims in our 2019-22 Strategic Plan which governed our priorities in 2021-22;
- Part 2 sets out the work we did to meet those Strategic Aims measured against what we said we would do in our 2021-22 Business Plan; and
- Part 3 describes the work of our departments.

## Part 1: Our Strategic Plan for 2019-22

As the regulator of the Bar in England and Wales, our strategic aims for the 2019-22 period reflected the key risks that we identified in the market for barristers' services and those provided by the specialised businesses we regulate.

## Managing risks to our Regulatory Objectives

We have a series of controls in place to mitigate the eight regulatory risks we announced in our 2019 Risk Index and these risks also informed our Strategic Aims for the period. As we embark on a new three year strategy, we are currently reviewing the Risk Index.

Risk No.	Risk Description	Controls in place or planned
1	<b>Failure to provide a proper standard of service</b>  The risk that a member of the regulated community fails to provide a proper standard of client care or quality of work to clients.	<p>Our primary controls of the first four risks consist of our published rules and guidance and the business as usual activity undertaken by our Supervision and Enforcement Teams to monitor compliance and to act on breaches. In addition:</p> <ul style="list-style-type: none"> <li>• we monitor a range of sources of information bearing on barristers' conduct and competence, including complaints to the Legal Ombudsman and data breaches reported to the Information Commissioner which may have compromised client confidentiality</li> <li>• we maintain rules on continuing competence which require barristers to reflect on their practice and to undertake continuing professional development to maintain their skills and competence</li> <li>• we aim to encourage the reporting of discrimination, harassment, bullying or victimisation</li> <li>• we seek to manage risks to fair recruitment having reformed the advertisement and recruitment process for pupillages</li> <li>• we control the risk that consumers will find it difficult to find good value barristers to advise or represent them by monitoring compliance with our transparency rules.</li> </ul>
2	<b>Unethical conduct</b>  The risk that the conduct of a member of the regulated community falls below the ethical standards expected of them.	
3	<b>Lack of professional competence</b>  The risk that a member of the regulated community lacks the levels of competence expected of them or is otherwise unfit to provide a proper standard of client care or quality of work.	
4	<b>Failure in the management of an individual practice or chambers</b>  The risk that ineffective or inadequate practice management gives rise to regulatory concerns.	

*Table continues overleaf*



Risk No.	Risk Description	Controls in place or planned
5	<b>Failure in training provision</b> Training is not available or is not of sufficiently high standard to prepare barristers for practice.	<ul style="list-style-type: none"> <li>We control risks to the health, independence and diversity of the market through the programmes of activity outlined in this report. In 2021-22 we focused particularly on how the pandemic might have an impact upon the Bar over the longer term and affect the profession's ability to represent and respond to the public's legal needs.</li> <li>Specifically also: <ul style="list-style-type: none"> <li>our Future Bar Training reforms have led to the approval of nine providers to provide the vocational component of Bar training. The courses they offer are more accessible, affordable and flexible, while maintaining high standards</li> <li>we seek to manage risks to the diversity of the profession through our Equality and Diversity Strategy</li> <li>we try to reduce the risk that consumers will struggle to access justice through partnerships with organisations which are trusted by, and support, consumers who face legal difficulties.</li> </ul> </li> </ul>
6	<b>Profession fails to reflect the diversity of society</b> Low levels of public confidence in an under-representative profession.	
7	<b>Access to justice failures</b> Consumers do not have access to, or do not have the confidence in, the profession.	
8	<b>Commercial and other external pressures are detrimental to the consumer and / or the public interest</b> Technological innovation, the reform of court services or changes in the wider provision of legal services, have a detrimental effect on consumers and / or the public.	

These risks helped us to formulate our strategic aims over the period.

#### Our strategic aims for 2019-22 were:

Delivering risk-based, targeted and effective regulation;

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

Advancing access to justice in a changing market.

You can read more about what our strategic aims were, and the key risks which we identified, in [our 2019-22 Strategic Plan](#). You can also find [our new Strategic Plan](#) for the period from 2022-25 on our website.

## Part 2: What we did in pursuit of our Strategic Aims in 2021-22

### Strategic Aim 1

#### Delivering risk-based, effective and targeted regulation

As we set out in our 2021-22 Business Plan we continued to deliver our core work of

- authorising organisations that provide the vocational and work-based learning components of Bar training and managing our relationship with them;
- authorising business entities (legal services businesses owned and managed by lawyers or owned and managed by lawyers and non-lawyers);
- managing centralised examinations;
- assessing and authorising applications for waivers and exemptions, and applications from transferring qualified lawyers;
- assessing all the incoming information we receive to determine whether regulatory action is required to address risks to the regulatory objectives;
- proactively supervising those whom we regulate, including considering the information we receive about them;
- investigating allegations of breaches of the professional obligations within the BSB Handbook and taking enforcement action where necessary;
- reporting data and statistics on regulatory decision making;
- fulfilling our duties under the Money Laundering and Terrorist Funding Regulations;
- monitoring and reporting on our performance as a regulator to ensure that we are efficient and effective;
- communicating and engaging with stakeholders; and
- regularly reviewing and reporting to the Board about our evidence of changing risk in the market.

Full details of our activities in these areas are published annually in our separate Regulatory Decision-making Report.

As the following tables show, this was a year in which, although we met all our KPIs for our supervisory work, in other areas a combination of rising volumes, the increasing complexity of work and staff sickness and turnover meant that we failed to meet key KPIs during the year as a whole. By the fourth quarter of 2021-22 we were meeting or close to meeting the service levels for our initial assessment of reports on barristers and for applications for authorisation. There was also a reduction in the caseload of reports as productivity exceeded the in-flow of new cases. The proportion of authorisation requests dealt within six weeks was just over 50% compared with a target of 75% but we were very close to the targets for clearance over eight and twelve weeks, signifying that the BSB was now largely on top of work flows.

The main challenge remained the progressing of investigations where performance continued to be affected by recruitment and retention challenges and by a higher number of cases referred for investigation as we dealt with the backlog of reports. Investigations opened across the year were up by 30% on last year and although we were able to increase our productivity - by around 11% - this was not enough to match the increase in volumes. An increase in average investigation times is common to other legal service regulators but we are determined to improve our performance against these KPIs in 2022-23, although we have been severely hampered by a serious cyberattack in the middle of April which denied us access to our systems for many weeks.

Performance against our quality indicators remained stronger but the figures do include a single successful appeal against the imposition of administrative sanctions.

KPI	Target	Performance 2021/22
<b>General Enquiries</b>		
The percentage of substantive responses to general enquiries, that can be addressed by our Contact and Assessment Team (CAT), provided within 5 working days.	80%	80.3%
The percentage of general enquiries, which cannot be answered by CAT, that are referred to another team within 3 working days.	80%	57.1%
<b>Initial Assessment</b>		
The percentage of reports assessed and concluded by CAT, or referred to another team for action, within eight weeks.	80%	49.1%
<b>Quality indicators</b>		
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	98.4%



KPI	Target	Performance 2021/22
<b>Authorisation, Exemptions and Waivers</b>		
The percentage of applications determined within six weeks of receipt of the complete application.	75%	43.9%
The percentage of applications determined within eight weeks of receipt of the complete.	80%	57.6%
The percentage of applications determined within twelve weeks of receipt of the complete application.	98%	82.1%
<b>Entity (including Alternative Business Structures) Authorisation</b>		
The percentage of authorisation decisions made within six months of receipt of the application and associated fee.	90%	92.3%
The percentage of authorisation decisions made within nine months of receipt of the application and associated fee.	100%	100.0%

KPI	Target	Performance 2021/22
<b>Referral of cases</b>		
The percentage of cases referred by CAT to another team for regulatory action that are accepted or referred back to CAT within 2 weeks.	80%	53.8%
<b>Investigation of allegations</b>		
The percentage of investigations of allegations of breaches of the Handbook completed, and a decision taken on disposal, within 25 weeks of acceptance.	80%	34.1%
<b>Quality indicators</b>		
Percentage of cases where the Independent Reviewer upholds the original decision following a request for review.	95%	83.3%
Number successful appeals against the imposition of administrative sanctions.	0%	100.0%
Number successful appeals of Disciplinary Tribunal decisions attributable to procedural or other error by the BSB or discrimination in the decision-making process.	0%	0%

KPI for supervisory work	Target	Performance 2021/22
<b>Allocations</b>		
Cases assigned within 3 working days of the team receiving the referral from CAT.	80%	96.6%
<b>Regulatory Response</b>		
Cases for which a regulatory response was agreed within 20 working days of the case being assigned.	80%	89.9%
<b>Visits</b>		
Visit report letters issued within 5 working days of a visit to an organisation.	80%	100.0%

We also said that we would:

- complete our work to implement fully the new Bar Qualification Rules introduced in 2019 including the introduction of new centralised assessments to take place during pupillage.** The first new Ethics exams in pupillage were successfully conducted in April 2022 and, as we had promised, they took full account of the recommendations identified in the report of the independent review into the August 2020 exams. We are also planning to introduce a course in Negotiation Skills during pupillage.
- review the role and effectiveness of the Bar Course Aptitude Test (BCAT).** We completed this review which concluded that the BCAT was no longer serving a useful purpose and should no longer be required as a condition for beginning vocational training for the Bar. The Board subsequently obtained the approval of the Legal Services Board and the Test was abolished with effect from 31 July 2022. Bar training providers must, however, continue to comply fully with the requirements of the Authorisation Framework when selecting their students including their obligations to maintain high standards and to promote accessibility. We shall continue
- to monitor providers carefully to ensure that their own selection of students is fair and rigorous.
- engage with students and other stakeholders in order to continue our ongoing evaluation of the impacts of our recent reforms to Bar training.** An evaluation report is currently being prepared for publication following extensive consultation with training providers and Bar students.
- evaluate the effectiveness of the changes we introduced in 2019 to modernise our decision making.** Planning for this review is complete, but the cyberattack which meant that our Case Management System was unavailable for several weeks in April and May 2022 caused a backlog of regulatory work which had to be prioritised. This evaluation will therefore take longer than was originally planned.
- set up an independent evaluation of our corporate governance and consider any improvements proposed along with suggestions from the Legal Services Board.** In July 2021 we published an action plan for reform to improve the BSB's governance and to demonstrate our compliance with the well-led standard of the LSB regulatory performance assessment

framework. The plan has since been further developed and refined, as we have developed our strategy and reviewed our culture as a regulator, and in the light of an independent review of our governance by *Independent Audit*. The Board is accountable for the delivery of the plan and receives regular reports on its implementation from the Executive.

- **consulting on our work to consider the appropriate scope of regulation of barristers' non-professional life.** We established a Stakeholder Reference Group including practising barristers and regulatory experts to examine this issue during the year and our proposals were published for public consultation in July 2022 along with a proposed revision to our Social Media Guidance.
- **work with the Bar Tribunals & Adjudication Service to review the Sanctions Guidance which is used by disciplinary tribunals.** This review was completed during the year. Revised draft guidance was subject to two rounds of consultation and new guidance was published in December 2021 and took effect from 1 January 2022. The new guidance gives Disciplinary Tribunals the authority to impose tougher sanctions in cases involving a wide range of professional misconduct and the BSB particularly welcomed the increased sanctions for cases involving sexual harassment.
- **understand better the working culture within the BSB and to improve learning and development;** We ran a staff survey in March and April 2021 which found that engagement, at 75%, is above both the 2018 level and the benchmark for equivalent

organisations. The Senior Management Team reviewed the detailed results in May 2021. In the light of the survey, we are defining and consulting on the culture, values and behaviours which will be needed to ensure the BSB's future effectiveness as an independent regulator.

- **developing and publishing our Strategic Plan for 2022-25.** The new Strategic Plan was subject to public consultation between October and December 2021 and was agreed by the Board on 31 March 2022 and published on 5 April. You can find [our new Strategic Plan](#) for the period from 2022-25 on our website.
- **as capacity permits, continue our work to simplify the Code of Conduct.** Progress has been made in reviewing the regulation of barristers' conduct in non-professional life and in our review of our Equality Rules but a full review of our Code of Conduct has been postponed until we can increase our capacity.

## Strategic Aim 2

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

As set out in our Business Plan we continued our work:

- collecting and publishing diversity data on the profession;
- supervising barristers' practices;
- working with others to understand the factors that influence diversity within the profession;
- undertaking research activity to improve understanding of the legal services market and the impact on the market of BSB regulation; and
- monitoring barristers' Continuing Professional Development (CPD).

We also said that we would:

- **work alongside the profession to ensure the future of pupillage in light of the fall in the number of pupillages registered in 2020 due to the pandemic.** We were pleased to see that pupillages were facilitated by the waivers we set in place in the light of the pandemic and that during 2021-22 the overall number of pupillages recovered to pre pandemic levels. We are, however, concerned by the long-term decline in pupillage places and, in particular, that sustaining the number of pupillages in certain areas of the publicly funded Bar – particularly the criminal Bar – is likely to remain a challenge.
- **continue our work to raise standards at the Bar.** During the year we continued to review how we can encourage the judiciary and others to share areas of concern, and how we can improve feedback from stakeholders to inform individual barristers' self-reflection as part of their continuing professional development. This work continues as part of our Assuring Competence project.
- **implement our joint work with the Solicitors Regulation Authority in relation to advocacy within the Coroners' Courts.** This work was completed and in September 2021, along with the Solicitors Regulation Authority and CILEx Regulation, we published new guidance designed to assure standards for those working in the Coroners' Courts. This includes:
  - a set of competences which spell out the standards expected of lawyers by the regulators and the public; and
  - guidance and other resources to help make sure that the standards are met.

The new guidance was introduced in the light of concerns expressed about standards of practice and in particular, about the adversarial approach adopted by some practitioners. The guidance also took into account the experiences of bereaved families.

The competences set targeted expectations for lawyers working in the Coroner's Court and cover law and procedure; dealing with vulnerability; communication and engagement; and raising awareness of key organisations. We also published a toolkit of resources for those working in this area.

- **scope our work in relation to our regulation of barristers in their early years of practice.** The aim of our work here is to ensure the competence of newly qualified practitioners (those who have held a practising certificate for less than three years) and to consider what changes may be required to their Continuing Professional Development (CPD) obligations under our New Practitioner Programme. In 2021-22 we carried out research into this area and held a number of roundtables with stakeholders to discuss the role of qualified persons and CPD in the early years of practice.
- **continue to challenge the Bar to promote anti-racism and to tackle discriminatory practices.** In 2021-22 we used the Regulatory Return process to gather information on whether barristers' practices had completed the four important actions we asked them to undertake in our recent Anti-racist Statement. We are now considering whether additional steps are needed to further encourage the profession to complete these actions.
- **work alongside stakeholders to deliver robust improvements to our regulatory approach in tackling bullying, discrimination and harassment at the Bar.** We have held meetings with stakeholders to discuss our approach and are considering our next steps in the light of the report of those meetings. We also worked with BTAS to increase the range of penalties for such behaviour as part of the revision of their Sanctions Guidance.
- **analyse the responses we received from the 2020 Regulatory Return** following up where necessary with individual practices, and determining appropriate regulatory policy action for the future depending on what trends the returns might show.

All returns were reviewed and the Supervision team engaged individually with the chambers, entities and sole practitioners, setting actions where we identified areas to strengthen compliance or risk management. We are currently monitoring the implementation of those actions.

The "How we have used the information that has been submitted" section of this webpage: <https://www.barstandardsboard.org.uk/for-barristers/supervision/regulatory-return-2020.html> shows what we have done so far with the information.

We are currently also preparing a series of reports covering a range of topics which will be designed to promote best practice in chambers and entities.

- as capacity permits, **continue our review of the Equality Rules within the BSB Handbook** to ensure that they remain fit for the purpose of delivering the equality and diversity objectives for the profession as a whole. After an initial information gathering stage this review has now formally begun.



## Strategic Aim 3

### Advancing access to justice in a changing market

In our business plan we said that we would continue to:

- provide information to the public about barristers and legal services, which we have continued to do directly through our press notices, publications and our website and in partnership with others;
- work with our stakeholders and other regulators and agencies to understand some of the barriers to accessing justice and how best we can meet legal need, which we have done as members of a special working group of legal regulators and in partnership with frontline providers of help to those in legal need including Citizens Advice, Law for Life, Support through Court and Refugee Action;
- sharing information with the public to help them overcome these barriers, which we continue to do on our own website and in partnership with others such as Law for Life's advicenow website;
- continuing to implement our public engagement strategy to increase public understanding about legal services, and in particular those offered by barristers, in partnership with consumer organisations; and
- providing ongoing assurance of professional competence which we do by assessing the information we receive, monitoring Continuing Professional Development, working with other legal regulators, where appropriate, on targeted regulatory interventions (such as in the areas of immigration and the Youth Courts and Coroners Courts) and in considering where there may be good cause to collaborate on new and wider regulatory initiatives.

We also said that we would:

- **use our research with consumers to better understand what matters to them when using barristers' services.** We commissioned research from IRN who conducted in-depth interviews and focus groups with consumers who had been clients of a barrister in the previous two years and with consumer support organisations. The research found that:
  - very few clients are completely confident that they can deal with a legal matter when it first occurs;
  - for most, it is a new and stressful experience;
  - many clients who are referred by a solicitor have little or no choice in their barrister though most clients feel that this did not impact on the usefulness of the advice given;
  - most clients have little initial understanding of a barristers' duties or how the relationship will work but that barristers are generally good at explaining the legal processes.

- virtual hearings were a good experience for most participants and
- most clients were satisfied with the way their barrister dealt with the legal process and with the service they had received.

This research will help inform our work in various areas and in particular our review of the Code of Conduct.

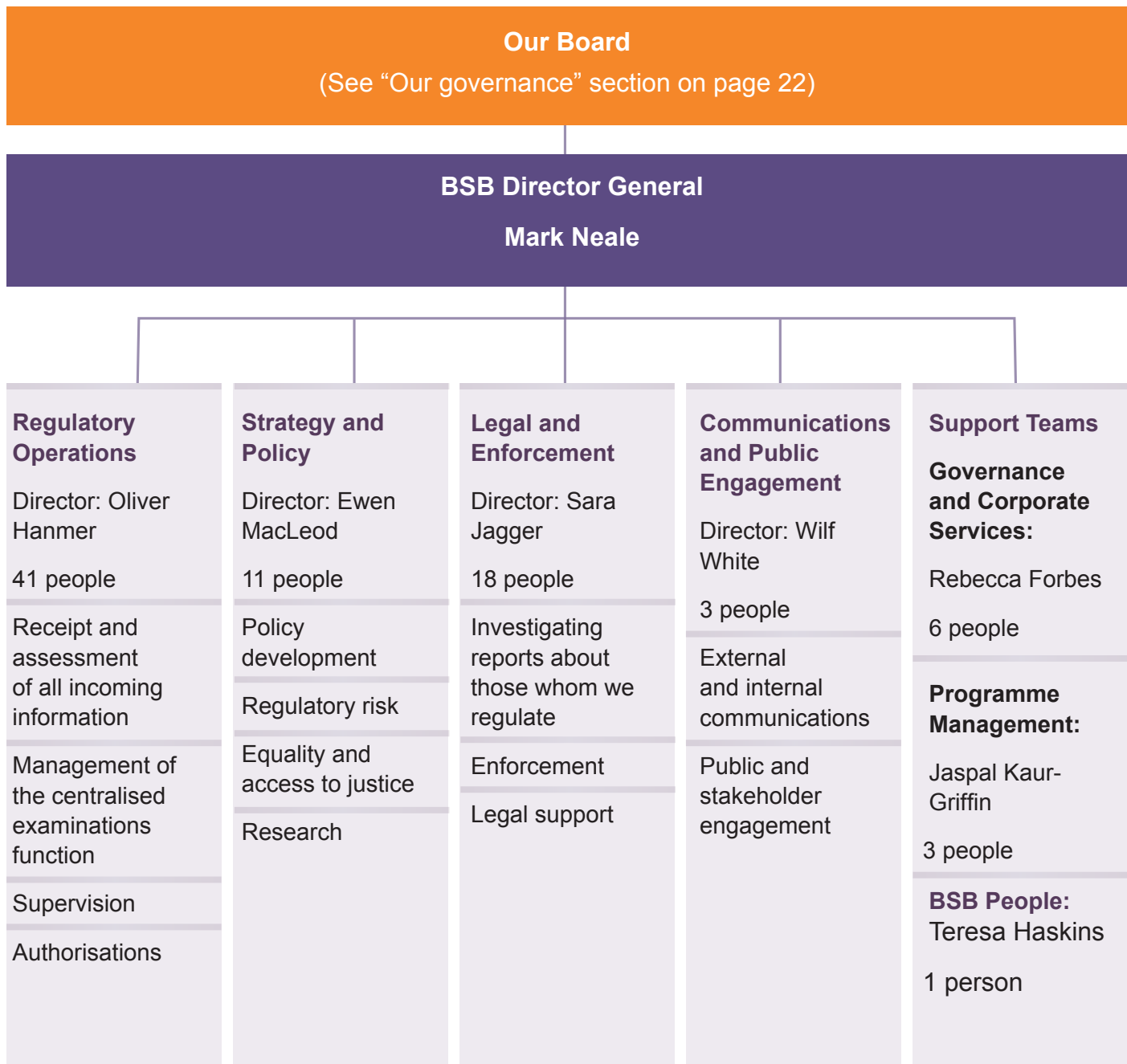
- **collaborate with other regulators to understand the possible benefits of quality indicators and pilot new approaches;**
- **develop a regulatory approach to how barristers might use consumers' feedback about their services to improve the quality indicators available to those seeking to engage the Bar;**

This work has been delayed but in September 2022 we intend to begin a pilot looking at whether digital comparison tools using feedback from consumers might be of value to consumers in choosing a barrister. This will complement a similar recent study undertaken by the Solicitors Regulation Authority, the Council for Licensed Conveyancers and CILEX Regulation.

- **ensure compliance with the current rules on price transparency, and undertake an evaluation of the impact of those rules.** We conducted a review of compliance which found that 94% of those assessed were either compliant or partially compliant with the rules. Our evaluation report found that the rules have been successful in encouraging clients to become better informed before choosing a barrister:
  - among barristers' clients, the proportion who had obtained details of service or price before choosing a barrister had increased from 10.25% on both indicators in 2019, to 23.4% obtaining details of services and 25.7% obtaining prices in 2021.
  - complaints relating to costs had declined while the percentage of clients 'shopping around' for a barrister appeared to have increased from 7.4% in 2019 to 17.5% in 2021.
  - the proportion of all clients obtaining prices from more than one barrister had increased from 6.4% in 2019 to 19.8% in 2021.
  - awareness among clients of the regulatory status of their barrister had also risen from 63.3% to 71.3% (and to 83.7% for public access clients) and awareness of complaints procedures had also increased.

## Part 3: Our teams and their work

### Our organisational structure and staffing



Figures are for Full Time Equivalents rounded to the nearest whole number.

Additionally, we share the following support services with the Bar Council: Facilities, Finance, Information Services, Records, the Project Management Office, and those centralised Human Resources services not provided by the dedicated BSB function.



## More about the work of our teams

### Regulatory Operations

Our Regulatory Operations Department brings together all our assessment, supervision and authorisation functions.

Its aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing the adherence to the standards set out in the BSB Handbook of both the individuals we regulate and the chambers and entities in which they practise. This includes a risk-based approach to assessment, supervision, the authorisation of new entities and the regulation of Continuing Professional Development.

The Department oversees the academic, vocational, and pupillage / work-based learning components of training that must be completed in order to qualify as a barrister. It sets and marks centralised examinations for prospective barristers. It also decides on individual applications from people wishing to qualify and/or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

The Department also contains our Contact and Assessment Team which is the central point of contact for anyone getting in touch with us, including anyone contacting us with concerns about a barrister's behaviour. The Team performs an initial assessment of all incoming information and refers cases to the relevant department if it is thought that action may need to be taken.

### Legal and Enforcement

Our Legal and Enforcement Department is responsible for ensuring that the professional obligations set out in the BSB Handbook are adhered to and, if necessary, taking enforcement action where those obligations have not been met. It also provides legal support services across the organisation in relation to regulatory decision-making, including handling any litigation.

The Department carries out investigations of potential breaches of the Handbook. Where an investigation reveals sufficient evidence, and the conduct poses a risk to the Regulatory Objectives, enforcement action will be taken in accordance with the processes described on [our website](#).

Decisions on what action, if any, to take can be made by staff or panels of the BSB's Independent Decision-Making Body.

Staff decision-making is limited to dismissing allegations or imposing non-disciplinary administration warnings or fines (up to £1,000 for individual barristers).

Our Independent Decision-making Body, sitting as five person panels, has wider powers: they can also refer cases of professional misconduct to a Disciplinary Tribunal and have the power to decide less serious charges of professional misconduct, with the barrister's consent, under the Determination by Consent procedure.

The Department is also responsible for preparing and presenting charges of professional misconduct to independent tribunals, convened and administered by an independent organisation called the Bar Tribunals & Adjudication Service (BTAS). In doing so, the BSB is assisted by chambers appointed to our [Tribunal Representation Panel](#) which provide representation at tribunals and other hearings. It is for the independent tribunal to decide whether the charges brought by the BSB are proven and to determine any sanction.

The Legal and Enforcement Department also deals with concerns about barristers' fitness to practise for health reasons, and with interim suspensions from practice pending conclusion of disciplinary proceedings where the alleged misconduct poses a serious risk to the public

## Strategy and Policy

Our Strategy and Policy Department is responsible for collecting evidence about the effectiveness of our rules and policies, assessing regulatory risk, and, where necessary, changing existing rules or introducing new ones.

The Department gathers evidence about what is happening in the market and the impact that our actions are having by conducting research (either by itself or with others) and by collaborating with stakeholders who have an interest in our work. Where necessary, it uses this knowledge to set or revise standards and introduce rules and guidance for barristers and entities. These rules are contained in the BSB Handbook. It develops policy on the educational pathways into the profession, and on the conduct of practice in areas such as direct public access to barristers. Another important area is equality and diversity, where the Department is responsible for setting and seeking to achieve the objectives within our Equality Strategy.

## Communications and Public Engagement

Our Communications and Public Engagement Department is responsible for all our internal and external communications including our publications, website, social media activity and media relations. It helps our other teams to engage with the profession and other stakeholders to make sure that we discuss our policy development plans and significant operational changes affecting the regulatory arrangements, in an open and consultative way. The Department helps make sure we fulfil our transparency and accountability functions, and our obligations to promote public legal education.

## Governance and Corporate Services

The Governance and Corporate Services team supports strategic and business planning and budgeting. It coordinates performance reporting and monitoring of our corporate risks and assurance activities including internal audit. The team ensures that we act in accordance with good governance practice, supports the Board and its committees in the stewardship of the organisations and also provides support for the Chair, Vice Chair and Director General.

## Programme Management

The Programme Management team provides guidance and ensures that best practice is followed in the setup, running and closure of all our major programmes and projects so that the maximum benefits can be realised. It provides project management training to officers in other teams.

## BSB People

Our dedicated People team is responsible for setting and delivering our people strategy, our learning and development strategy and for guiding the senior leadership team and managers in defining and developing the BSB's culture as an independent regulator. The Team is also responsible for developing BSB HR policies, the provision of HR business partnering to BSB teams, and supplies a wide range of operational services to BSB managers and staff, assisted by administrative and transactional support from the Bar Council shared service.

# Our governance

We are governed by a Board made up of a combination of lay people and barristers. It has a lay majority and a lay chair.

The Board met 9 times during the year: there were 4 ordinary meetings, 4 special meetings and 1 Away Day. The first part of ordinary Board meetings is held in public and we invite members of the legal press to attend all public sessions. Board meetings during 2021-22 were either virtual or hybrid meetings where some members were physically present and others joined online.

During 2021-22 our Board members were:

**Chair:** Baroness Tessa Blackstone

**Vice-Chair:** Mr Andrew Mitchell KC

## **Barrister members:**

Ms Elizabeth Prochaska

Ms Irena Sabic

Mr Adam Solomon KC

Professor Leslie Thomas KC

## **Lay members:**

Ms Alison Allden OBE

Ms Lara Fielden (*until August 2021*)

Mr Emir Feisal (*from 1 January 2022*)

Mr Steven Haines

Ms Nicola Sawford (*until 31 August 2021*)

Ms Kathryn Stone OBE

Mr Stephen Thornton CBE

## Accountability and how we manage risk

Under the Legal Services Act 2007, the Legal Services Board is responsible for overseeing the approved regulators for legal services in England and Wales. The approved regulator for barristers is the General Council of the Bar (GCB), which is also the representative body for the Bar.

The Act requires the separation of regulatory and representative activities, so the GCB established the Bar Standards Board to exercise its regulatory functions independently. We have a protocol in place with the GCB to ensure that the exercise of the regulatory functions is not prejudiced by the professional body's representative functions.

The Board is responsible for setting our budget and for the management of our allocated resources, and our operations are monitored by the BSB's Strategic Planning & Resources Committee (SPR) who report to the Board. The Committee also helps develop our strategic and business plans.

The Governance, Risk and Audit (GRA) Committee is responsible for ensuring the maintenance of good governance standards and internal control processes and advises the Board on the corporate and regulatory risk management framework. The Director General and senior managers are responsible for the areas of risk that relate to their departments.

The corporate risk register is reviewed at least quarterly by our Senior Management Team and the GRA Committee. In addition, the GRA Committee conducts regular in-depth risk reviews throughout the year, and considers Internal Audit reports.

The Nomination Committee advises the Board on fair, inclusive and transparent approaches to recruitment to the Board and senior executive roles and oversees, on behalf of the Board, some aspects of the recruitment process.

A separate Remuneration Panel ensures that the BSB independently determines the remuneration and terms of engagement for its staff and non-executives. The Panel makes recommendations to the Board which takes final decisions on these matters.

# Our income and expenditure

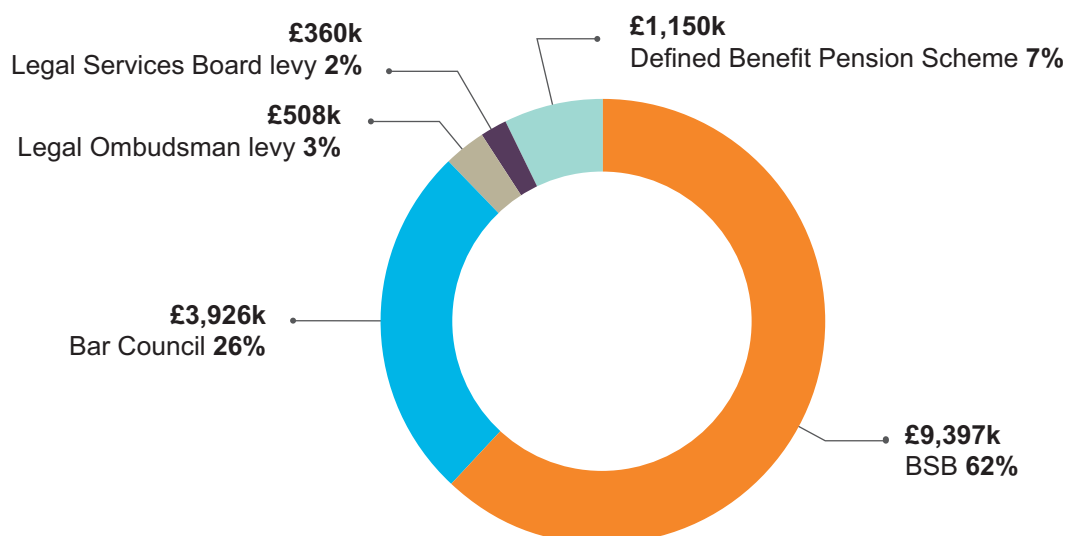
## Income

Every practising barrister has to renew their practising certificate annually and is required to pay a Practising Certificate Fee (PCF). In 2021-22, the fees set were based on a barrister's income and were as follows:

Band	Income Band	2021-22 Fees
1	£0 - £30,000	£100
2	£30,001 - £60,000	£246
3	£60,001 - £90,000	£494
4	£90,001 - £150,000	£899
5	£150,001 - £240,000	£1,365
6	£240,001 - £500,000	£1,850
7	£500,001 - £1,000,000	£2,500
8	£1,000,001 and above	£3,000

A proportion of the PCF is spent by the BSB on regulation and a proportion is spent by the Bar Council on some of its functions (as permitted under s51 of The Legal Services Act). The PCF also pays for the Bar's share of the costs to run the Legal Services Board and the Legal Ombudsman.

### Allocation of PCF between Bar Council, the BSB, LSB and LEO



Apart from the PCF, some of our income comes from charges we make for specific services we provide to individuals and organisations. We describe those charges as “income streams other than the PCF”. These income streams include the fees from Bar Training (BT) providers, and the Bar Transfer Test (BTT).

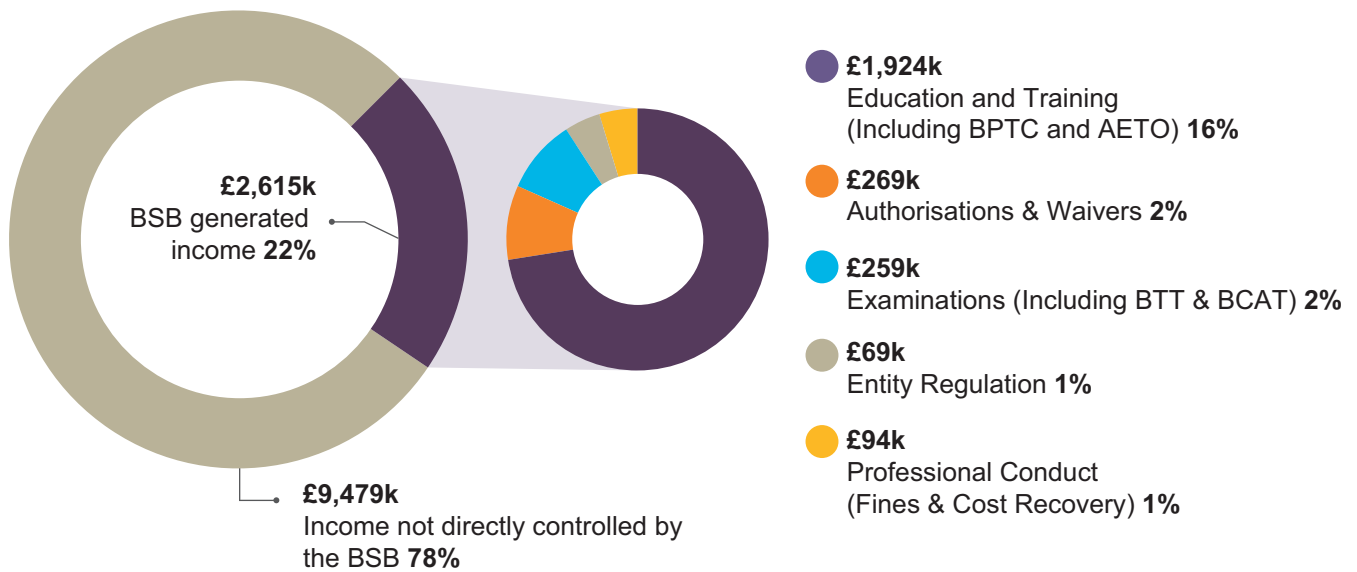
Income Area	£ thousands
Education and Training	1,924
Authorisations and Waivers	269
Examinations (Including BTT & BCAT)	259
Entity Regulation	69
Professional Conduct (Fines & Cost Recovery)	94
<b>Total BSB Generated Income</b>	<b>2,615</b>

As with previous years, income from fees for Bar training remained the most significant proportion of the BSB controlled income during 2021-22. The forecast income for Bar training was set at £1,350,000 based upon expectations modelled on the 2020-21 uptake, however due to a number of factors we generated an additional £573,520 of income as student numbers increased. Overall, the BSB exceeded its (non-PCF) income target by £836,420 (+47%).

Total Income for the BSB	£ thousands
PCF Contributions	9,398
Income from Bar Council Resources Group	81
Planned Contributions from Reserves	0
<b>Total income not directly controlled by the BSB</b>	<b>9,479</b>
<b>Total BSB Generated Income</b>	<b>2,615</b>
<b>Total income</b>	<b>12,094</b>



## BSB Income



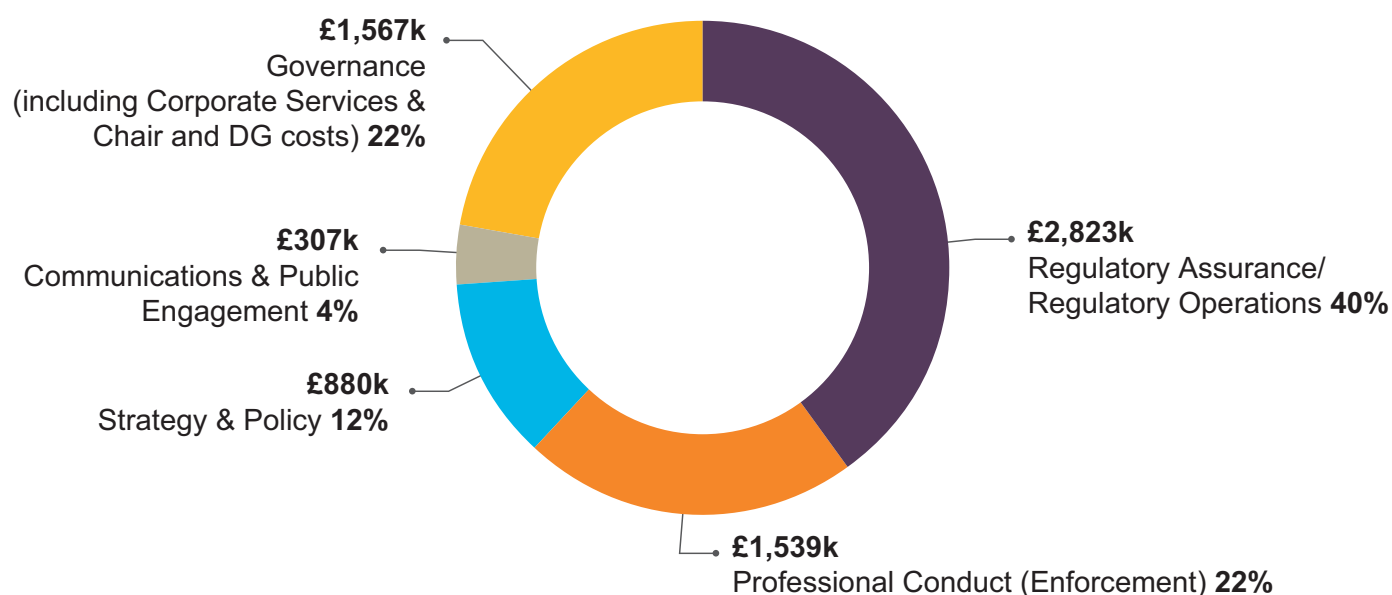
## Expenditure

BSB directly controlled expenditure was £7,116k against a budget of £6,989k, a £127k (less than 2%) overspend with an underspend on non-staff costs being more than offset by an overspend on staff costs (see below).

The full cost of regulation includes an allocation of shared costs (IT, Finance, HR and Premises costs) from the Bar Council Resources Group. The Resources Group expenditure budget is managed separately, outside the direct control of the BSB, and is apportioned to the organisation.

Department	£ thousands
Regulatory Operations	2,823
Legal Enforcement	1,539
Strategy and Policy	880
Communications and Public Engagement	307
Governance (Including Corporate Services & Chair and DG costs)	1,567
<b>Total Direct BSB Expenditure</b>	<b>7,116</b>
Resources Group allocation & adjustments	4,060
<b>Total cost of regulation</b>	<b>11,176</b>

## Direct BSB Expenditure



### Staff related costs

Overall staff related costs were £5,352,264 (an overspend of more than 8%). This was partly due to higher than expected recruitment costs. Any salary savings achieved from vacancies were offset by recruitment related expenses and temporary cover for business critical roles.

### Non-staff costs

Total non-staff expenditure was £1,763,684 (a £268,231 or more than 13% underspend). This is because we did not commission as many questions for the centralised examinations as we had planned and a reduction in expenses incurred because of remote working.

### Monitoring Expenditure

We pay close attention to how we spend our money:

- Our budgets are set annually and our budget envelopes are informed by our business plans;
- The budget is divided up into departmental budgets which our Directors manage;
- Each month we receive detailed management accounts which enable us to keep a close eye on our business;
- Each quarter we think about what we might need to spend in the future and produce forecasts;
- We tightly monitor our largest area of spend which is our staffing costs;
- We make sure that our resources are directed at our key priorities; and
- Our financial performance is scrutinised by our Strategic Planning and Resources Committee (SPR).



# Our remuneration and expenses

Name	Salary / Fees	Pension	Allowance	Total	Expenses incurred in relation to BSB business
<b>DIRECTOR GENERAL</b>					
Mark Neale	£152,250	£0	£1,300	£153,550	£0
<b>CHAIR</b>					
Baroness Tessa Blackstone	£90,000	£0	£1,300	£91,300	£0
<b>BOARD MEMBERS</b>					
Mr Andrew Mitchell KC	£16,564	£0	£325	£16,889	£0
Ms Alison Alden OBE	£9,240	£0	£0	£9,240	£0
Mr Emir Feisal	£2,310	£0	£0	£2,310	£0
Ms Lara Fielden	£3,850	£0	£0	£3,850	£0
Mr Steven Haines	£13,090	£0	£0	£13,090	£0
Ms Elizabeth Prochaska	£9,240	£0	£0	£9,240	£0
Ms Irena Sabic	£9,240	£0	£0	£9,240	£0
Ms Nicola Sawford	£5,003	£0	£0	£5,003	£0
Mr Adam Solomon KC	£9,240	£0	£0	£9,240	£0
Ms Kathryn Stone OBE	£9,240	£0	£0	£9,240	£0
Professor Leslie Thomas KC	£9,240	£0	£0	£9,240	£0
Mr Stephen Thornton CBE	£11,935	£0	£0	£11,935	£0

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## Contacting us

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## Write to us:

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289-293 High Holborn  
London WC1V 7HZ  
DX: 240 LDE  
Tel: 020 7611 1444

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Twitter: [@barstandards](https://twitter.com/barstandards)

[www.linkedin.com/company/the-bar-standards-board](https://www.linkedin.com/company/the-bar-standards-board)

# Cost Transparency Metrics

## 2021-2022

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest.

If you would like a version of this publication in an alternative format, please contact the Equality and Access to Justice (E&AJ) Team by telephone on 020 7611 1444 or: [equality@barstandardsboard.org.uk](mailto:equality@barstandardsboard.org.uk)

## Cost Transparency Metrics

The Bar Standards Board (BSB) has a strong commitment to the principle of transparency and publishes financial and other transparency metrics as part of the Annual Report and Business Plan in accordance with the recommendations of the Legal Services Board's (LSB) Cost of Regulation Project.

### Practising Certificate Fees (PCF)

Barristers are only legally entitled to undertake reserved legal activities if they are authorised to do so by the BSB. They do so by holding a current Practising Certificate renewed annually via a process known as Authorisation to Practise, which includes payment of a Practising Certificate Fee (PCF). The PCF funds the expenditure that falls within the 'permitted purposes' as defined by the Legal Services Board<sup>1</sup> (LSB). The PCF is shared between the Bar Standards Board who deliver the regulatory functions, the Bar Council who deliver non-regulatory permitted activities, and levies for the Legal Services Board and the Legal Ombudsman.

	thousands	thousands
Metric	2020-21	2021-22
Total PCF Reported	£15,747	£15,341

In 2021-22, the total £15,341k collected was shared 62% (£9,398k) for the BSB and 26% (£3,926k) for the Bar Council, with 7% (£1,150k) being allocated to the defined benefit pension scheme and a further 5% (£868k) is allocated towards the costs of the Legal Services Board (£360k) and the Legal Ombudsman (£508k).

Portion of PCF funding 'non-regulatory permitted purposes' <sup>2</sup>	38%	38%
Total Permitted Purposes reserves <sup>3</sup>	£3,302	£3,874

### BSB Specific Finances £k

PCF Income	£9,687	£9,398
<b>BSB Generated Income<sup>4</sup></b>	<b>£2,524</b>	<b>£2,615</b>
Income from Bar Council Resources Group	£138	£81
<b>Total Income</b>	<b>£12,349</b>	<b>£12,094</b>
<b>Total Regulatory Expenditure<sup>5</sup></b>	<b>£10,191</b>	<b>£11,176</b>
Surplus / (Deficit)	£2,158	£918

### The Profession

Number of registered barristers <sup>6</sup>	16,914	17,170
Number of authorised entities <sup>7</sup>	138	130

In April 2015, the BSB began authorising specialised legal services businesses known as “entities”. These are owned and managed by lawyers only, including barristers, solicitors and other legally qualified persons. From April 2017, the BSB began authorising licensed bodies or Alternative Business Structures (ABSs) which are businesses owned by both lawyers and non-lawyers. The entity and ABS regulation schemes at the BSB operate on a full economic cost recovery (FECR) model and fees are published on our website [our website](#).

## Staff resources

Headcount <sup>8</sup>	81 (78.5 FTE)	90 (85.1 FTE)
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## Remuneration<sup>9</sup> of Officers / Executive

Chair of Board total remuneration	£84,419	£91,130
Vice Chair total remuneration	£31,499	£39,836
Director General total remuneration	£140,914	£153,550

The median staff salary at the BSB in 2021-22 was £37,123, the ratio between this and the Director General (salary: £153,000) was 1:4.1. As well as the Director General, the Bar Standards Board has four Senior Managers<sup>10</sup> paid in a salary band between £80,000 and £110,000.

## Summary

Staff costs	£4,485,000	£4,894,922
Board costs <sup>11</sup>	£204,292	£221,994
<b>Average cost of regulator for each authorised individual</b>	<b>£573</b>	<b>£547</b>

Figures expressed in £k in this document have been rounded to the nearest £1,000.

The average cost of the regulator for each authorised individual is calculated by dividing total PCF income (£9,398k in 2021-22) by the number of practising barristers at 31 March 2022 (17,170).

1 In accordance with s51 of the Legal Services Act 2007 (LSA) and the rules made thereunder.

2 All BSB activities are considered regulatory activities under the definition in the LSA07. Non-regulatory permitted purposes include Bar Council permitted purposes activities, and non-operating activities such as the LSB / OLC levy.

3 The Permitted Purposes reserve shows the cumulative position with regard to permitted purpose funds (derived from the PCF).

4 Part of our income comes from charges we levy for the services we provide. Directly controlled income streams include the fees from the Bar Professional Training Course (BPTC) providers, the Bar Transfer Test (BTT), fees related to waivers and entity & ABS authorisation fees.

5 This includes a share of the premises at 289-293 High Holborn, as well as support staff and costs from the Resources Groups (e.g. HR, Finance and IT). The Resources Group budget is managed separately and part of it is apportioned to the BSB.

6 This is the number of barristers holding a practising certificate as at 31 March 2021. In addition, there are approximately 54,000 unregistered barristers who do not hold practising certificates. We regulate these barristers reactively (i.e. we will take enforcement action against them for breaches of the Handbook).

7 Licensed Bodies (ABS): 12, Authorised Bodies (Entities): 126.

8 Snapshot of direct headcount at end of each financial year, this does not include support staff in the shared Bar Council / BSB Resources Group.

9 Total remuneration includes: Salary; Pension Contributions and, for staff members, Chair and Vice Chair, a fixed allowance of £1,300. The total remuneration paid to the Chair, Vice-Chair and Director-General was less in 2020-21 than it was in 2019-20. This is because they agreed to reduce their remuneration in response to the financial pressures faced by the BSB as a result of the pandemic.

10 Director of Communications and Public Engagement, Director of Regulatory Operations, Director of Legal and Enforcement, and Director of Strategy & Policy.

11 Including salary costs and expenses for Chair, Vice-Chair and all Board members but excluding the costs of the Director General which are included in staff costs.

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**Chair's Report on Visits and External Meetings from August – September 2022****Status:**

1. For noting

**Executive Summary:**

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

**List of Visits and Meetings:****Introductory meetings**

3 August	Mark Fenhalls KC – Chair, Bar Council
1 September	Dr Helen Phillips, Chair, Legal Services Board

**1-2-1 Meetings**

1 August	Mark Neale – DG
30 August	Mark Neale - DG
15 August	Stephen Thornton – Lay Board member
15 August	Andrew Mitchell KC – Vice Chair of Board
22 August	Adam Solomon KC – Barrister Board member
26 August	Alison Allden – Lay Board Member
7 September	Irena Sabic – Barrister Board member

**Meetings**

15 August	Met with Governance Team – Rebecca Forbes, John Picken, Jeanette Fordyce-Harvey
26 August	Attended Finance Committee
30 August	Attended Senior Management Team meeting
5 September	Attended Strategic, Planning and Resources Committee
9 September	Attended Legal Enforcement Team meeting
21 September	Attended Board briefing meeting
21 September	Attended Chairs' Committee meeting

**SMT 1-2-1 meetings**

9 September	Oliver Hanmer, Director of Regulatory Operations
9 September	Sara Jagger, Director of Legal and Enforcement