

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Annual Report

2007



Principles

The Board will

- 1** Work in the public interest
- 2** Be independent and evidence-based
- 3** Be transparent in our procedures
- 4** Be accountable for our performance and expenditure
- 5** Consult and work in partnership with others
- 6** Operate risk-based regulation
- 7** Encourage diversity
- 8** Value our staff

Strategic Objectives

Strategic Objective 1

Protecting Consumers – To establish systems to identify areas of risk to consumers; to take action to remedy poor performance by barristers (or members of the profession); where things go wrong, to provide an efficient and fair complaints and disciplinary system.

Strategic Objective 2

Access to Justice – To promote accessible and flexible high quality legal services in a competitive market.

Strategic Objective 3

Independent Regulation – To be recognised as a respected, independent regulator operating according to best regulatory principles with the confidence of the Legal Services Board, consumers, the Bar and other stakeholders.

Strategic Objective 4

Excellence and Quality – To promote excellence and quality within the profession and ensure that those who qualify as barristers have the right level of skills and knowledge to provide services to the public, including employers.

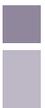
Strategic Objective 5

Diversity – To promote diversity in the profession so that those with the right abilities are able to make a career as a barrister irrespective of their background, race, religion, sex, sexual orientation, disability or age.

Bar Standards Board Annual Report

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Chair's Statement

2007 saw the regulatory reforms anticipated by the Bar Council in establishing the Bar Standards Board finally come to life.

The Legal Services Act came into law in October 2007, crystallising the new framework for provision of legal services and providing confirmation, if any were needed, that the Bar Council had been right to move swiftly and with purpose to separate its regulatory and representative functions.

But this represents only the start of a period of potentially radical change for the Bar of England and Wales. The Act anticipates changes in legal practice that will call for critical re-evaluation of some of the very foundations of the independent, referral Bar including, for instance, the cab-rank rule and the prohibition on partnerships. It takes aspects of complaint handling out of the hands of the profession for the first time. And it makes clear, in no uncertain terms, that regulation must be undertaken in the public interest independently of the profession.

Change on such a scale is daunting and can be unsettling. It is certainly challenging. But, as the Parliamentary process made very clear, it is essential if we are to secure a dynamic and invigorated legal services sector, acting in the public interest. We are committed to playing our part in delivering the aspirations of the Act and look forward to working with David Edmonds, Chair of the Legal Services Board. Our work in 2007, and the work we have planned for 2008, lays the foundations for delivering that aim and the Board is well equipped to do so.

2007 was our second year of operation. We built on the strong base we established in our first year and began delivering our three-year Strategic Plan. The contents of this Report describe in detail our key achievements over the past year.

Promoting and safeguarding the highest standards of legal education and professional practice remain our paramount objectives. We do so on the basis of modern, transparent, evidence-based regulation. I am pleased that in 2007 we were able to deliver a number of key initiatives that support our aspirations in this regard.

We published our first major research report, *"Perceptions of barristers"*, a revealing look at the views and experiences of today's Bar from consumers, barristers, solicitors and others. Commissioned from Ipsos MORI, it provides clear evidence of the high regard in which the Bar is held whilst also highlighting a number of issues that must be addressed if the Bar is to retain its reputation for excellence – notably the need to improve client care. The report also identifies areas where we as the Bar Standards Board must improve if we are to foster the confidence of both the profession and the public.

Most significantly, the profession and the public must be confident that we deal effectively and fairly with the minority of barristers who are not up to standard, who are unethical or who are incompetent. Whilst the Legal Services Ombudsman again commended us in 2007 for our *"strong performance"* in handling complaints, we intend to improve further. We will be assisted in this by the insightful report delivered in July 2007 by our outgoing Complaints Commissioner, Robert Behrens, which made 65 recommendations for improvements to our system. The Board approved all of these recommendations in principle and in December 2007 we launched a major consultation on options for implementation.

We must also ensure that the education and training provided for those aspiring to a career at the Bar is of the highest standard. In 2007 we established our Education and Training Committee

to lead this work and launched a comprehensive review of the Bar Vocational Course (BVC), the critical gateway to the Bar. We are extremely grateful to Derek Wood QC for leading this review and for taking an exemplary, evidence-based approach to all of the concerns we have heard expressed about the existing course.

This work has a strong correlation with our commitment to ensuring that access to and success at the Bar is based on merit and that there are no inappropriate barriers to entry or progression within the profession. Our Diversity Sub-group consulted on an Equality and Diversity Action Plan in October 2007, designed to ensure there is the necessary regulatory impetus to underpin our commitment. It was with this front of mind that we engaged positively with Lord Neuberger's review of access to the profession and welcomed his Report in November 2007. We are looking carefully at the regulatory implications of the Report's recommendations.

The final achievement to highlight underpins all of the above. Quality must be the watch-word for the Bar: professional standards must be of the highest order and must be continuously monitored to ensure they remain high. In 2007 we launched a comprehensive review of the Code of Conduct, the rules governing professional practice. The Review is a long-term project, likely to take three years, and has close links with our quality agenda. It includes the challenging task of articulating what make a good barrister so we can embed the principles of good professional practice at the heart of the Code. We are grateful to Sir Donald Irvine for agreeing to chair a working group tasked with identifying these principles, and to Sir Michael Buckley for working with us to address the challenges associated with possible new forms of business practice.

We could not have begun to address these challenges without the enormous contribution made by our Board and Committee members, our independent Consumer Panel and our staff. In particular, I would like to pay tribute to the unstinting support and wise counsel provided by our Vice-Chair, George Leggatt QC. I would also like to thank, in particular, those founding Board members who left in 2007, barrister members Phillip Bartle QC, John Burrow and Richard Price OBE QC and lay members Clara Arokiasamy and Sandy Forrest.

We have also said goodbye to our first Director, Mark Stobbs, who left the BSB after over 14 years with the Bar Council for pastures new in February 2008. The Board could not have made the progress it has without Mark's knowledge, enthusiasm and integrity. Looking to the future, we welcome Mandie Lavin who joins the Board in June 2008 as its new Director. She will take over leadership of a strong executive team to see us through to the next phase of the Board's existence. Until that point, the Board thanks Julie Myers for her outstanding work as Interim Director.

In closing I would like to note that the Board was set up to build on the strong heritage of professional self-regulation at the Bar. Whilst our approach is different to that which has gone before, we are in no doubt that we can only succeed if we earn the continuing trust and confidence of the profession and the public alike. I believe that we should be judged on our results. This Report is evidence of those

Ruth Evans

Chair

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Director's Report

Preparing this Report has been one of my last acts as Director of the Bar Standards Board and as such it provides me with a particularly opportune moment to reflect on the progress made by the Board in the last year.

The Chair has referred to the main initiatives and challenges that were inaugurated and identified during the year, but it is also important to record that the Board made significant decisions on policy. The debate on deferral of call had been long and controversial, but the Board's open and transparent approach to consultation produced a decision that gained the respect of all parties. Similarly, its approach to the thorny issue of gifts to solicitors and others showed an ability to listen to consultation and take account of differing views. These augur well for the difficult questions that will arise in the future.

The year also saw the new senior management team get into its stride. The new resources enabled the Board to begin important work to improve and modernise its systems. We prepared and published our first business plan and the process of doing so enabled us to provide a strong case to the Bar Council for the resources needed for 2008.

One important development in this area was the Board's decision, endorsed by the Bar Council in agreeing to the budget, to seek to recover costs from those who use its services rather than relying on the practising certificate fee to pay for those activities. The thrust of the policy is that those activities involving individual decisions by the Board, for example for waivers of the qualifications or Continuing Professional Development (CPD) requirements or for the accreditation of CPD courses should be, broadly, self-funding. As a result, the Board's call on the practising certificate fee fell, in percentage terms, from 60% in 2007 to 56.3% in 2008.

The Board's new Performance and Best Value Committee (PBVC) also began its work developing policies in respect of financial reporting, risk management and performance measurement, the fruits of which will be seen in 2008.

The management structure of the Board was put in place in December 2006 and, as promised, I reviewed it in the autumn of 2007. The proposed changes will, I believe, enable the Board's support to be carried out more efficiently and enable new work to be done.

In all of this, the team was greatly assisted by the work of Sandra Jenner, who provided invaluable consultancy services in these areas. She has helped the team grow in confidence and set us on the right track.

We were grateful also for the support that we received from the Finance Committee of the Bar Council and, particularly, to the Treasurer, David Southern, who is now a welcome member of the PBVC. The Committee took an unfailingly positive, supportive view of the Board and its aims and the two sides worked well together to achieve our aims.

Improving the way we communicate with the profession, the public and others was a particularly important feature of the year. Our new website was launched in April 2007 and garnered many positive comments. We also took steps to meet directly with members of the Bar, and the Chair and I undertook a series of visits to the Circuits and Specialist Bar Associations. We were received with considerable hospitality and friendliness and we hope that greater understanding of our work followed. We are aware that the Board risks being quite London-centric and we must continue to find ways of ensuring that its work is well understood across all of England and Wales.

We reached a broader audience through our hosting of the inaugural annual debate on regulation of legal services, named in honour of Sir David Clementi, whose report led to the founding of the Board. 2007's debate, moderated by the Master of the Rolls, had Sir David as a key speaker along with Lord Falconer of Thoroton, Peter Williamson, Chairman, Solicitors Regulation Authority and Geoffrey Vos QC, prevailing Chairman of the Bar. It set a high standard for future debates to match.

That debate was held with generous support from the Inns of Court and I would like to recognise the important role played by the Inns, whose advocacy training programmes are crucial to the Board's work in maintaining standards, and who run our Disciplinary Tribunals. They have been wholly supportive of the Board's work.

Relations with the Bar Council are potentially difficult, but thanks to the support of Geoffrey Vos QC, we maintained successful relationships – a series of meetings with its General Management Committee also fostered understanding.

The Board's work is supported by the Central Services Department who provide our human resources, finance, accommodation and IT support. We have developed close relationships with them over the year and would not have been able to undertake much of our work without them. The Board's plans for 2008 present particular challenges, particularly for IT and we look forward to working closely with them on those issues.

I would like to thank all my colleagues supporting the Board for their work over the last year. They have worked with commitment and goodwill as we built on the previous year's work and looked towards the challenges ahead. I should particularly mention Jennifer Maclean, the Head of Board Operations, who left us at the end of the year. She played a major role in improving the administration of the Board and our recruitment procedures and I would like to record thanks to her for her work and professionalism.

Finally, I should thank the Board itself. Members have provided unfailingly positive and helpful support over the two years of its existence. Establishing the Board and working with it to develop its way of working and to meet the challenges that face it has been a hugely rewarding experience for me. The Board is in strong shape and the new Director will find a strong team and exciting work to carry forward. I wish her and the Board itself well for the future.

Mark Stobbs
Director

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Overview of the year

2007 was a year of significant achievement in delivering high-quality, cost-effective regulation. It saw the Board address complex and long-standing policy issues such as deferral of call. We established two new expert committees – Education and Training and Performance and Best Value, both of which have already delivered considerable benefits to our performance as a regulator. And we made major progress in delivering the objectives of our three-year Strategic Plan.

This section outlines our progress against our Strategic Plan and highlights key achievements under each of our strategic objectives.

Strategic objective 1 – Protecting Consumers

To establish systems to identify areas of risk to consumers; to take action to remedy poor performance by barristers (or members of the profession); where things go wrong, to provide an efficient and fair complaints and disciplinary system.

Major achievements in 2007:

- The Board addressed a number of policy areas including:
 - Deferral of call – where the Board’s fresh approach to a long-standing issue delivered a broadly well-received conclusion;
 - Public access – where the Board commenced a review of the rules governing clients’ direct access to barristers;
 - Entertainment of solicitors – where we concluded that there was no evidence to support the introduction of further restrictions;
 - Chambers’ complaints handling – launching a consultation on proposals to improve the effectiveness of chambers’ processes;
- We consulted and received advice from our independent Consumer Panel;

- We received a highly regarded, comprehensive report from our Complaints Commissioner on recommendations to improve our complaints handling processes. We are now proceeding with implementation.

Strategic objective 2 – Access to Justice

To promote accessible and flexible high quality legal services in a competitive market.

Major achievements in 2007:

- We commissioned a substantive qualitative and quantitative research exercise into the perceptions of clients and barristers about the way in which barristers’ services are provided. The report, “*Perceptions of barristers*” provided a valuable insight into the concerns of the Bar and of clients, which we will continue to address in our work;
- We launched a fundamental review of our Code of Conduct with a view to ensuring that the rules of conduct are up to date and fit for purpose;
- We undertook preparatory work in anticipation of the practice reforms anticipated in the Legal Services Act.

Strategic objective 3 – Independent Regulation

To be recognised as a respected, independent regulator operating according to best regulatory principles with the confidence of the Legal Services Board, consumers, the Bar and other stakeholders.

Major achievements in 2007:

- We worked with the Bar Council and the Inns of Court to ensure that our constitutional arrangements and resources provide properly for our independence and effectiveness. These discussions continue;

- We continued to adopt the principles of better regulation in our work to ensure that regulation is proportionate, accountable, consistent, transparent and targeted;
- We established a Performance and Best Value Committee to measure the success of our work;
- We published our first Annual Report;
- We launched our new website;
- We published our Business Plan for 2008 setting out in detail the areas of work and activities we would undertake.

Strategic objective 4 **– Excellence and Quality**

To promote excellence and quality within the profession and ensure that those who qualify as barristers have the right level of skills and knowledge to provide services to the public, including employers.

Major achievements in 2007:

- We established our Education and Training Committee;
- We launched a major review of the BVC, chaired by Derek Wood QC;
- We reviewed the Training Regulations in conjunction with the Inns of Court and submitted the proposals to the Legal Services Consultative Panel;
- We developed a proposal for a pilot chambers monitoring programme, which is shortly to commence;
- We responded to the Solicitors Regulation Authority's consultation on Higher Rights of Audience, stressing that any lowering of minimum standards for advocates exercising higher court rights would not be in the interests of the public or consumers.

Strategic objective 5 **– Diversity**

To promote diversity in the profession so that those with the right abilities are able to make a career as a barrister irrespective of their background, race, religion, gender, sexual orientation, disability or age.

Major achievements in 2007:

- We engaged with Lord Neuberger's review of access to the profession;
- We developed and consulted on an Equality and Diversity Action Plan to ensure that the public has access to a Bar reflecting our diverse and multi-cultural community.

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Core areas of activity

Education, Training and Qualifications

Overview

A strategic aim of the Bar Standards Board is to ensure that those who qualify as barristers have the right level of skills and knowledge to provide services to the public. As such, setting the education and training requirements for becoming a barrister is one of the Board's key functions, alongside overseeing continuing training requirements to ensure barristers' skills are maintained throughout their careers.

The Board's work in this area was strengthened by the appointment of a Head of Education Standards from January 2007 and the establishment of a new Education and Training Committee in July. The Education Standards Team, operating through the Education and Training Committee and its Sub Committees (BVC Sub Committee, Pupillage Sub Committee and CPD Sub Committee), has participated in the development of policies for education and training for the Bar with particular reference to the development and monitoring of provision at the academic and vocational stages of training, in pupillage and CPD. The Team has also been responsible for ensuring appropriate monitoring and other procedures are in place so that education and training meets the standards set for professional practice.

Key achievements

Academic Stage

The Bar Standards Board has continued its involvement with the monitoring and accreditation of Qualifying Law Degrees through activity with the Joint Academic Stage Board (JASB) which operates together with the Law Society/Solicitors Regulation Authority. The Board is due to take over the administration of the JASB from the Law Society in September 2008.

Vocational Stage

■ BVC Monitoring

Monitoring of the BVC has continued during 2007 with full visits (or shorter one day 'pastoral' visits) taking place at each provider during each Academic Year. All the BVC providers will have been visited for Academic Year 2007-08 as part of the annual monitoring scheme by April 2008. Overall, the Monitoring Panels have been complimentary about the standards of teaching on the BVC, although some improvements in course structure, staff development and facilities have been suggested to some providers.

The system of external examiners of BVC courses also continues to function well, with training and guidance provided during 2007, and a revised reporting system. In addition, two 'external moderators' were appointed and have commenced work comparing standards across all BVC courses in the teaching and assessment of Negotiation and Evidence.

■ BVC Review

In July 2007 a Working Group was set up to review the BVC. This will include a major review of the BVC Specification Requirements and Guidance, and will consider whether the BVC, as it is currently arranged and delivered, provides the most appropriate method of education and training for students who wish to be called to the Bar. It was agreed that the course must be examined in depth and from first principles, and that the Working Group would have wide terms of reference, entitling it to challenge assumptions about the course and look deeply into its future.

Derek Wood QC accepted the invitation to Chair the BVC Review Working Group in October 2007. The Group is conducting an evidence-based review and members have spent a vast amount of time meeting with a wide range of interested parties to

discuss their views on the course. So far, in excess of 60 meetings have taken place with BVC providers, Inns, Specialist Bar Associations and specialist committees. The Working Group is also taking into account the considerable body of documentary evidence previously amassed during the Bell and Neuberger consultations. The Group is expected to report to the Board by July 2008.

■ Deferral of Call

The Board concluded its investigation into Deferral of Call in July 2007. After a rigorous 12-month consultation and research exercise, the Board confirmed that proposals to defer call to the Bar until after a barrister has completed his or her twelve month pupillage had been rejected. To support this conclusion the Board proposed the following measures to reduce to a minimum any risk of confusion to the public about the practising status of individual barristers:

- The setting up of an online register of all barristers holding a current practising certificate to provide proof of whether an individual is authorised to practice or not;
- A requirement that all barristers undergoing pupillage must be described as pupil barristers until pupillage is completed.

Pupillage Stage

The Pupillage Sub Committee has continued to deal with matters relating to pupillage training. Its main functions and responsibilities are to keep under review and to supervise the regulatory framework for pupillage; the pupillage checklist; further training in pupillage including compulsory courses in pupillage; and the training of pupil supervisors.

■ Registration

527 first six month pupillages and 563 second six were registered by the team during the 2006/07 academic year (compared with 513 and 565 in 2005/06).

■ Monitoring

Visits to chambers continue to be one of the key functions of the Pupillage Sub Committee and a more systematic way of undertaking these is being established in order to identify any shortcomings before they become problems. There is close

working with the Quality Assurance Committee to ensure that the system of monitoring chambers (due to be piloted in 2008) addresses pupillage compliance effectively. In 2007, six pupillage monitoring visits were undertaken.

■ Review of Funding of Pupillage

A review of the Pupillage Funding and Advertising Requirements, which came into effect on 1 January 2003, commenced in November 2007. The review has included the sending of a questionnaire to 370 chambers, which has generated 97 completed responses. The findings of the review are expected in 2008.

■ Waivers

In 2007, 39 applications for waivers from the Pupillage and Funding Advertising Requirements were considered of which 26 were granted and 11 were refused. Further information was sought in two cases but not received.

■ Pupillage Training Organisations

Responsibility for authorisation of pupillage training organisations is the responsibility of the Practising Rules Panel of the Qualifications Committee. In 2007 the Panel devised a new application form for organisations seeking authorisation.

Continuing Professional Development

CPD saw its third year as a mandatory requirement for the Bar. Much of the system continues to operate as it did when the requirement was first introduced to New Practitioners in 1997 however some aspects have been revised to ensure there are more robust application processes. In 2007, the decision to charge for CPD accreditation was taken and a new charging structure was developed (effective from January 2008).

The CPD Sub Committee met three times during the year to consider possible rule changes, individual applications for accreditation referred by the executive and new application forms for both providers and courses.

■ Accreditation

Requests for accreditation continued to increase from previous years. The total number of courses accredited for 2007 was 9970. Though requests are

received steadily throughout the year, the busiest months for the section are January to March and October to December. Applications for one-off accreditation are most prominent at these times. A breakdown of the figures is included in Table 1 below. Of particular note is the increase in requests for accreditation of online courses since 2006.

Qualifications

The Qualifications Team handles applications for waivers from the standard requirements for qualification and entitlement to practise as a barrister. Applications relating to the academic stage of training are considered by the Director of the Bar Standards Board. All other applications are considered by the Qualifications Committee, which operates through six Panels each of which is responsible for particular types of application. The Qualifications Committee also considers applications for review of decisions taken by the Panels and by the Director of the BSB.

■ Applications

The Board received 1,106 applications in 2007 compared to 1,281 in 2006. The breakdown of applications can be seen in Table 2 below.

■ Appeals to the Visitors

Two Appeals to the Visitors against decisions of the Qualifications Committee were heard during 2007. Case one related to an individual who had been refused admission to the Bar as a mature student. Case two related to an individual who was appealing against the decision on his application for a reduction in pupillage. In both cases, the appeal was refused and the decision of the Qualifications Committee was upheld.

■ Guidelines

In May, the Qualifications Committee finalised the Criteria and Guidelines documents for all types of application that it considers. These documents set out the procedure for making an application, the

Table 1: Accredited courses

Type of Provider	Number of Accredited Courses	
	2007	(2006)
Inns/Circuits/SBAs	415	(329)
GLS	470	(415)
Chambers	2388	(2035)
Universities	281	(170)
External	5062	(5263)
Solicitors	276	(221)
Magistrates Courts	161	(222)
Online	252	(20)
Individual lectures (by barristers)	665	(752)

Table 2: Applications to the Board

Type of Provider	Number of applications	
	2007	(2006)
Transferring Solicitors Panel	92	(98)
Transferring Qualified Lawyers Panel	49	(65)
Pupillage Panel	156	(171)
CPD Panel	636	(749)
Practising Rules Panel	94	(118)
Pupillage Funding & Advertising Panel	39	(50)
Full Committee	40	(30)
Total	1106	(1281)

criteria against which each type of application is judged and the procedure for applying for a review of the decision. They are published on the Board's website, sent out to anybody enquiring about making an application and used by each Panel when determining applications.

■ **Transferring and Sponsored Pupillages**

Towards the end of 2007, the Committee considered the position of transferring and sponsored pupillages and the circumstances in which such arrangements constitute good grounds for applications for waiver from the Pupillage Funding and Advertising Requirements. In summary, where a pupil transfers from one organisation to another part-way through his/her pupillage for a good reason (eg the set of chambers where he/she is undertaking his pupillage dissolves) then a waiver from the advertising requirement, but not the funding requirement, will usually be granted. The Committee also decided that where a pupil is being sponsored by his/her employer to undertake pupillage, a waiver from the funding requirement, but not from the advertising requirement, will usually be granted.

Standards, Guidance and Quality

Overview

The Board is committed to promoting excellence and quality within the profession and as such needs to be satisfied that the Bar's Code of Conduct is fit for purpose, and that there are mechanisms in place to establish, systematically, whether it is being complied with. Formal means of quality assurance throughout the career of a barrister are also necessary to ensure that barristers are, and continue to be, competent and fit to practice.

The Standards Committee has been tasked with conducting a comprehensive review of the Code of Conduct. Fundamental to the review is the impact of the Legal Services Act and the introduction of alternative business structures (ABS). Such structures are likely to have a marked effect on the way in which legal services are provided. The Code must be flexible and robust enough to allow competition whilst also protect the public interest and the interests of consumers.

In parallel, the Board's Quality Assurance Committee is developing a proportionate and risk-based method for monitoring chambers compliance with the Code of Conduct and looking at how the performance of those at the Bar can be measured.

Both are major long-term projects which are in their early stages and demonstrate the Board's commitment to best regulatory principles.

Key achievements

Standards

The Standards Committee undertook a challenging programme of policy reforms in 2007 including:

■ **Review of the Code of Conduct**

The review is designed to deliver a Code that is written in plain English, and permeated by the core values of access to justice, independence, integrity, quality and value for money, diversity and redress. The Standards Committee issued a wide-ranging consultation paper in June 2007 seeking views on

priority areas for review, whether there were any gaps that needed to be filled and on the physical format of the Code. Two priorities are:

Implications of the Legal Services Act for practice including alternative business structures

The Committee began considering the Code changes that might be necessary to accommodate the new permissive framework for different models of practice anticipated by the Legal Services Act in 2007. The Code provisions most likely to be affected by the new regime are those which forbid barristers from supplying legal services to the public through any body such as a partnership (except in the case of barristers employed by solicitors, who may provide legal services to the firm's clients) and, by implication, the cab-rank rule. A consultation paper was issued in early 2008.

Developing a core principles approach to professional regulation

The Committee began to look at developing core principles as a basis for the Code of Conduct. These principles will be drafted in plain English and will therefore be accessible to both the profession and the public.

Supplementary rules and guidance will be developed to provide context to the principles. Consistent with the BSB's desire to implement means of assessing performance at the Bar, it is proposed that performance standards or behaviours should be developed from the core principles against which barristers would be measured. A Working Group chaired by Sir Donald Irvine has been established to take this work forward.

■ Acceptance of instructions

Extensive re-drafting of the rules governing acceptance of instructions took place in 2007. This followed a public consultation to ensure that the rules reflected modern practice at the Bar and to clarify precisely when a barrister is deemed to have accepted instructions and when they are able to refuse or return them. It was apparent from the responses that there is a lack of clarity in the existing rules and that the Code needs to be amended to reflect the proposed introduction of contractual terms between barristers and their

instructing solicitors. A consultation paper seeking views on the proposed Code amendments was issued in early 2008.

■ Entertainment by barristers

In June 2007 the Board decided against introducing explicit restrictions on barristers offering hospitality. This decision was informed by the results of a consultation exercise that concluded no evidence of abuse or inappropriate behaviour could be found. The consultation had sought evidence of the nature and extent of hospitality offered to solicitors (and others), by barristers, and investigated whether there was risk of inappropriate influence in instructing decisions.

However, given the apparent uncertainty within chambers and amongst barristers as to the extent to which entertainment could be offered, the Committee did issue guidance to remind the Bar as to the risks and potential breaches of the Code which may arise from client entertainment on an excessive level.

■ Review of the operation of the Public Access Rules

A review of the Public Access Rules was launched in February 2007. The Rules, which came into force in 2004, permit a suitably trained barrister, in certain circumstances, to be instructed directly by a member of the public. The Committee sought the views of all registered public access practitioners on: the scope of public access instructions; the training and practising requirements for barristers undertaking public access work; the restrictions on the type of work that a barrister can do in a public access case; and the format and content of guidance issued to the Bar and to members of the public on public access

On the advice of the Board's independent Consumer Panel, views were also sought from members of the public who had instructed a barrister under the public access scheme. As a result, proposals for development of the Public Access Rules are the subject of current consultation.

■ Chambers' complaints handling

In June 2007, a consultation was undertaken to investigate whether any practical difficulties were

likely to arise from the implementation of measures to strengthen complaint-handling requirements placed on chambers. New arrangements designed to improve transparency, consistency, fairness and effectiveness were proposed, key features of which are:

- The introduction of a mandatory protocol, setting out a number of specific requirements that all chambers must include in their complaints handling policy;
- Amendment to the existing guidance and model procedures to provide more precise information on how a complaint should be handled by chambers;
- The introduction of a training course on complaints handling.

■ EU Services Directive

A working group was set up to consider the potential effects of the EU Services Directive, and to liaise with the other Bars and Law Societies of the UK to create a unified approach to implementation. The Directive, due to be implemented by December 2009, seeks to simplify procedures for instructing professionals across the European Union. The main issues identified by the working group as being relevant to the Bar are:

- facilitating provision of services across the EU;
- removal of barriers to provision of services by professionals;
- simplification of process of finding and using service providers;
- implementation of a central point of contact for a service(s).

Quality

The Board's Quality Assurance Committee was established to lead on quality assurance initiatives for the Bar. A number of initiatives were instigated in 2007:

■ Quality Working Group

The Board established a working group to review existing quality assurance arrangements and to determine its work priorities. The group took a notional chronological journey through a barrister's career and reviewed the systems in place to assess

and ensure competency and standards of performance at key career milestones.

The Group held a seminar in May 2007 to hear the views of the Bar and other interested parties on quality, at which the following speakers gave their own perspectives:

- Dame Janet Smith – Court of Appeal Judge, President of COIC and former Chair of the Shipman Inquiry;
- Sir Donald Irvine – former president of the General Medical Council;
- Sir Michael Bichard – Chair of the Legal Services Commission.

The seminar generated stimulating debate and identified a number of challenges for the Board in its work to develop quality assurance mechanisms. These will be addressed by the Quality Assurance Committee.

■ Chambers' Monitoring

The Board is committed to developing a quality assurance scheme to monitor compliance by chambers with the Code of Conduct, professional standards and other best practice principles. Such a scheme will enable the Board, for the first time, to identify chambers that comply with the Code. The emphasis of the scheme is to help chambers improve their administration so as to make the delivery of service to the client more efficient. However, as a last resort and where there is serious or persistent non-compliance, the Board has the full range of disciplinary sanctions available.

During 2007, the Quality Assurance Committee worked on developing a scheme to pilot with a representative sample of chambers. The scheme's aim will be to identify non-compliance, highlight good practice to be shared across the profession and provide targeted recommendations for improvement.

The pilot scheme will commence in 2008.

■ Money Laundering

New Money Laundering Regulations came into force on 15 December 2007 and place a responsibility on the Board to ensure that members

of the profession are in compliance with the requirements placed on them by the Regulations.

The Bar is a low risk profession in terms of exposure to potential money laundering or involvement. Chambers will be asked to self-certify annually that they are in compliance with the regulations. Further steps will be taken where non-compliance or potential risk to the consumer or the profession is identified.

Self-certification will commence in September 2008.

■ CPD Compliance Monitoring

The CPD Compliance Team has responsibility for monitoring completion of CPD, both under the Established Practitioner Programme and the New Practitioner Programme. CPD plays an important quality assurance role in ensuring that members of the Bar continue to undertake training throughout their careers and that they keep up to date on changes in legislation, court procedure and legal practice. The Compliance Team ensures that, through effective monitoring and auditing processes, the vast majority of barristers comply with their CPD requirements. Those that do not are referred to the Complaints Committee who take disciplinary action against them. In 2007, 35 new practitioners and 215 established practitioners were referred to the Complaints Committee under the fines and warning system.

Complaints and Discipline

Overview

There are two ways in which barristers can become the subject of complaints to the Bar Standards Board. First, any person whether a client, solicitor, witness, judge or member of the Bar, is entitled to raise a complaint. Such complaints from external sources are known as “3rd party complaints” and the Board’s independent Complaints Commissioner is responsible for assessing these complaints, conducting investigations and, where appropriate, referring the complaint to the Complaints Committee for consideration of further action. Second, the Board has the power to raise complaints of its “own motion” if becomes aware that a breach of the Code may have been committed. The large majority of these complaints are raised against barristers who have failed to comply with the practising requirements laid down in the Code such as completion of CPD and payment of practising certificate fees.

As well as raising its own complaints, the Board continues to receive a steady stream of complaints from a wide range of people, with criminal defendants and civil litigants forming the majority of 3rd party complainants. However, the number of complaints received each year remains relatively low with only approximately 5% of members of the Bar being subject to complaints and around 1% being referred to some form of disciplinary action¹.

The low level of complaints is a reflection of the continued high quality of work and services provided by the Bar. However, the Board is not complacent and recognises that a crucial factor in maintaining high standards and confidence in the Bar is ensuring that the complaints and disciplinary system is not only effective and fair but also meets the requirements of modern strategic regulation. Therefore, in 2006, the Board asked the Complaints Commissioner, Robert Behrens, to conduct a review of the complaints and disciplinary processes. In July 2007, after nine months of detailed and comprehensive research, the Commissioner published his report “*A Strategic Review of Complaints and Disciplinary Processes*”.

Complaints Commissioner's Strategic Review

The Board thanks Robert Behrens for his exemplary work in conducting and reporting on the Strategic Review. It has resulted in one of the most comprehensive and well-researched reviews ever conducted into the complaints and disciplinary processes. The Board was pleased to note that the Commissioner concluded that the current arrangements are reasonably coherent, cost effective and have worked extremely well over the last decade. However, it acknowledges that the Commissioner considers the arrangements are not "state-of-the-art" and that improvements should be made.

The Commissioner made 65 for improvements and the Board has accepted these in principle. A Steering Group, chaired by Sue Carr QC (now Chair of the Complaints Committee) was set up in October 2007 to take forward the implementation of all 65 recommendations with a timescale for implementation of Autumn 2008. This timescale is challenging but the Board is committed to ensuring that improvements to the system are put in place as soon as possible. The Board is also committed to ensuring that consumers and the profession are involved and consulted about changes to the complaints and disciplinary processes. A consultation document was issued in December 2007 and the results will be reported in Summer 2008.

Changes to the current system

The Commissioner has also had a significant impact on the rigour of the current processes for considering and investigating complaints. Following his appointment in June 2006, he introduced a number of changes to the way in which complaints are assessed. These changes have had a positive impact on the quality of decision making in the early stages of a complaint. Indeed, it is encouraging to note that the number of complaints to the Legal Services Ombudsman decreased in 2007 from 182 in 2006 to 115. Further, the level of criticisms made by the Ombudsman about decisions she regarded as either unreasonable or supported by a poor explanation also reduced from 32% in 2006 to only 10% in 2007.

However, the changes introduced in 2006 placed an additional burden on staff within the Complaints Team and this, combined with a relatively high staff turnover during 2007, resulted in a slow-down in the time taken to deal with complaints and led to backlogs arising. It also led to an increase in the number of cases where the Ombudsman recommended payment of compensation to complainants for the delay they had experienced and a reduction, from 86% to 80%, in the proportion of cases where the Ombudsman considered the BSB's handling of complaints was satisfactory.

The staff coped admirably in such challenging circumstances and it is to their credit that, although delays did occur in processing, the number of complaints closed within six months remained fairly static in 2007. The Bar Standards Board recognised that the Complaints Team was understaffed and is grateful to the Finance Committee of the Bar Council for the allocation of extra funds to allow the staff complement to be increased. New staff were recruited in 2007 and took up post in January 2008: the Board is confident that improvements in turnaround times for complaints will be achieved early in 2008.

Key achievements

■ Publication of forthcoming disciplinary hearings

The Code of Conduct stipulates that all disciplinary hearings are held in public unless a specific order has been made otherwise. However, the Board, after reviewing how information about hearings was disseminated, recognised that these provisions were being undermined by the lack of easily accessible information about when and where hearings were taking place. To remedy this, in September 2007, the Board introduced a new section of its website listing all forthcoming disciplinary hearings including appeals to the Visitors to the Inns of Court. Details of hearings are now posted on the site when a disciplinary panel is convened to hear a case and remain posted until the conclusion of the hearing. Thereafter, if the charges against the barrister are found proved, the information about the case including the sanctions imposed, are transferred to the existing

Disciplinary Findings section of the website. The Board believes that publication of forthcoming hearings provides a helpful resource for the public and demonstrates its ongoing commitment to transparent regulation in the public interest.

■ **Sanctions for breaches of the Code**

Inadequate professional service: In 2006, the Complaints and Standards Committees conducted a joint consultation on proposals to increase the maximum level of compensation awarded in cases of inadequate professional service from £5,000 to £15,000. The results of the consultation were positive and the Board approved the increase in September 2007.

Disciplinary Tribunals: The Board approved an extension to the sentencing powers of Disciplinary Tribunals to allow Tribunals to order that a barrister apologise to a complainant where breach of the Code amounting professional misconduct is proved. Such a power had previously only been available in cases of inadequate professional service. Both changes will become effective early in 2008.

Warnings and fines: The warnings and fines system, which allows for administrative fines and written warnings to be imposed for minor breaches of the Code, has now been in place for two years. The system is primarily used to take action in relation to failures to comply with CPD and practising certificate requirements. It has, on the whole, worked well in improving compliance rates but unfortunately there is still a core of barristers who persistently fail to comply with the practising requirements despite the imposition of fines. The fine level in 2006 and 2007 remained at £100. However, the Board considers this level is too low and does not provide sufficient encouragement to comply with the Code. The Board therefore agreed to increase the fine to £300, effective as of 1 January 2008. It is hoped that this will result in a further decrease in the need to raise formal complaints for minor breaches of the Code.

Workloads and Performance

Staff dealing with complaints are divided into two teams: Complaints and Investigations. The

Complaints Team assists the Complaints Commissioner and Complaints Committee in investigating complaints and, where necessary, referring cases for further action. The Investigations Team is responsible for taking forward any cases referred by the Committee for further action including the prosecution of disciplinary cases. The large majority of complaints are dismissed either by the Complaints Commissioner or the Complaints Committee (72%) usually because the complaint does reveal any breaches of the Code or the complainant has not been able to provide sufficient evidence to support further action being taken.

■ **Complaints Team**

Full details of the workload and performance of the Complaints Team are set out in the Complaints Commissioner's Annual Report, which can be found at Appendix 1, and therefore only a brief overview is provided here.

Complaints received: The number of complaints received in 2007 from 3rd parties eg clients, solicitors, and judges etc, remained constant in comparison to 2006, with 596 complaints being opened as compared to 592 in 2006. Formal complaints raised by the Board itself continued to decline: down by 42% from 192 in 2006 to 111 in 2007. This reduction reflects the continued success of the warnings and fines system but needs to be treated with some caution as up to 60 barristers who were granted extensions to complete CPD have failed to comply with those extensions and complaints against them are likely to be raised in 2008.

Complaints closed: The number of cases closed in 2007 was down by almost 14% from 845 in 2006 to 729 in 2007. The reduction is entirely attributable to the number of BSB complaints closed, which was down from 272 in 2006 to 146 in 2007, whereas 3rd party complaints closed increased slightly from 573 to 583.

Turnaround times: The turnaround times for complaints closed within six months increased slightly in 2007 from 56% in 2006 to 54%. While this is disappointing, it reflects the staffing problems encountered in 2007. Now that further

staff resources have been allocated to the Complaints Team, improvements in the turnaround times should be seen early in 2008.

■ Investigations Team

Cases referred to disciplinary action: 145 new cases were referred to disciplinary action in 2007 although there was a significant shift in the proportion of cases referred to Disciplinary Tribunals as opposed to Summary Procedure Hearings. The summary jurisdiction is reserved for cases where there is no significant dispute of fact and the breach(es) would not warrant more than a maximum sanction of three months' suspension from practice.

In 2006, 37% of Committee referrals were to Summary Hearings but this increased to 65% in 2007 with a correlating decrease in Disciplinary Tribunal referrals from 46% in 2006 to 24% in 2007. This shift is in sharp contrast to the previous trend of year on year increases in the number of Disciplinary Tribunal referrals. It is difficult to assess the reason for the change in the referral pattern but it may indicate that the level of seriousness of complaints raised against barristers has reduced and/or that more barristers are more willing to accept the facts on which complaints are based, thus allowing matters to be dealt with by the summary process.

Cases closed and outcomes: There was a significant decrease in the number of disciplinary cases closed in 2007 down from 299 in 2006 to 129 in 2007. The majority of this decrease can be attributed to the fall in Summary Hearing cases closed (down from 174 in 2006 to only 52 in 2007). This is to be welcomed and indicates improved compliance with practising requirements such as completion of CPD, which are the subject matter of the majority of cases referred to Summary Hearing panels. It is also positive that, the conviction rate for disciplinary cases remains high with 98% of Summary Hearing panels finding cases proved (an increase of 4%) and 66% of cases being found proved at Disciplinary Tribunals. The latter figure represents a drop of 4% on 2006 but still remains higher than in previous years.

Turnaround times: In relation to the turnaround times for disciplinary cases these improved in 2007 with 54% of all disciplinary cases being

closed in less than 12 months compared to 47% in 2006. A further breakdown of these figures shows that in 2007 88% of Summary Procedure cases were closed in less than 12 months with 62% of Disciplinary Tribunals being closed within that period. There has also been a dramatic improvement in the number of disciplinary cases over 18 months old remaining open at the end of the year. In 2006, 33% of the 84 cases open at the end of the year were over 18 months old whereas in 2007 this figure dropped to 8% of the 89 open cases.

Sanctions: Disciplinary panels have a number of sanctions available to them to impose when a breach of the Code is found: these range from no further action, through to fines, suspensions and disbarment. The powers of Summary Hearing panels are restricted to a maximum fine limit of £500 and a maximum period of suspension from practice of three months. Disciplinary Tribunals, which deal with the more serious cases or those where there is a dispute of facts, can impose fines of up to £5,000, unlimited suspensions and disbarment. The most common sanctions imposed at Summary Hearings are fines and reprimands. In 2007, these represented 32% and 23% respectively of the sanctions imposed. At Disciplinary Tribunals, the more serious nature of the cases is reflected in more severe sanctions with suspensions amounting to 26% of the sanctions imposed and disbarments 33% (14 in 2007). The Complaints Commissioner in his Strategic Review recommended that the sentencing options be revisited to ensure that they provide sufficient flexibility: consideration is being given to introducing the concept of suspended sentences as well as increasing the fines limits.

The year ahead

The year ahead will inevitably be another challenging one not only for the Complaints and Investigations Teams but also for all those involved in the complaints and disciplinary system. However, we are in an exciting period of change which the Board is confident will produce significant benefits for both consumers and the profession.

End notes:

1 – based on 15,000 members of the Bar

5

Looking ahead

2008 will see the Board and its Committees continuing to deliver its three-year strategy and delivering its Business Plan for the year.

We will prioritise action on three key challenges:

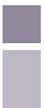
■ **Quality** is the watchword for the profession and is central to meeting the public interest. Work in this will area will include:

- Devising standards to identify what makes a good barrister;
- Considering the most effective ways of monitoring to ensure that barristers are meeting those standards – ideally through chambers obtaining feedback and barristers acting on that feedback;
- Looking at ways of identifying the relatively small number of barristers who are under-performing or who provide a risk to the public and taking action against them;
- Developing mechanisms to monitor compliance, particularly in the field of complaints, pupillage and diversity.

■ **New forms of practice.** This will be a critical year in preparing for the Legal Services Act environment. The Act changes the regulatory landscape and creates opportunities as well as challenges in the market for legal services. We have an important role to play in helping to fulfil the aspirations of consumers and barristers who would like to do things differently as a result of the new opportunities created by the legislation.

■ **Education and Training.** If the Bar is to retain its reputation for excellence, then its education and training (including its continuing professional development) must be of the highest order. The BVC Review and forthcoming reviews of pupillage and CPD provide the opportunity for the BSB to make sure that the education and training needed for the Bar is world class.

Alongside this, we will continue to improve further the way we engage with the Bar, the public and others with an interest in the regulation of barristers. And we will continue to monitor our own performance to ensure we deliver the high-quality, cost-effective regulation the Bar and the public demand.



6

Financial review of 2007

The summary of accounts for the year 2007 is at Appendix 5.

The Board delivered its regulatory programme within budget in 2007. This is because, in our second year of operation, we were able to make a more realistic assessment of the Board's needs, based as it was on the experience of 2006. As will be seen from the figures at Appendix 5, the Board's staff and budget increased to reflect the full range of regulatory responsibilities. In future years, the Board will also have to deal with significant additional work in preparing for the implementation of the Legal Services Act and in settling its policy on Alternative Business Structures.

With the agreement of the Bar Council, the Board decided in 2007 that it should seek, in 2008, to recover a greater proportion of the costs of its activities. For this reason, fees for individual waivers and for CPD accreditation increased. These are activities that carry significant benefits for the individuals and organisations applying for them and it was deemed appropriate that they should bear the cost rather than the Bar as a whole.

The relationship with the Bar Council over finance is potentially fraught, given its role also as a representative body. Through joint working on the Finance Committee we were able to agree a new model for agreeing the budget and for resolving disputes.

Our approach to financial management has been greatly helped by our PBVC which has a particular role in ensuring that the money is spent wisely and it has already developed improved processes for financial reporting and control.

We continue to be well-served by the staff of the Finance Team and are grateful for the support they have given to our new way of working.



Appendix 1: Annual Report of the Complaints Commissioner

Introduction

The complaints and disciplinary arrangements of the Bar Standards Board have been subjected to unprecedented scrutiny in the last two years. Preparations for the Government's Legal Services Act (2007), and the move away from self-regulation, involved close Parliamentary scrutiny of arrangements. The Bar Standards Board itself commissioned a Strategic Review (2006-7). At the same time, reviews were launched into Chambers complaints handling and the Code of Conduct.

In this context, the pre-eminent danger for complainants and barristers they complained about was that the complaints system would succumb to a 'paralysis of analysis' in which operational issues concerning the handling of individual complaints were subordinated to grander, strategic thinking.

There was also a danger that the Bar Standards Board would see the uncertainties created by the large legislative changes to be made in 2010 and 2011 as an excuse for postponing a scrutiny and incremental change of its own arrangements which had not taken place since the present system was established in 1997.

Neither danger materialised. The operational tasks were not impaired by necessary and scarce resource given to the Strategic Review. Although there were occasional instances of delay, no persistent backlog of case handling emerged. Further, the quality of decision-making judged by the external scrutiny of the Legal Service Ombudsman actually improved over the period of the Strategic Review.

In retrospect, concurrent activity by the same, few, individuals on both operational and strategic fronts had a beneficial and symbiotic impact on

both activities. Individual cases were investigated against a back-drop of reputable independent research by Dr Deborah Price of Kings College, London University (2007) which showed significant lack of complainant confidence in present arrangements. Strategic questions were addressed against a background of daily engagement with complainants and barristers in which impartiality, accuracy, proportionate and sympathetic responses were imperative. In the end, operational and strategic tasks mediated one another to good effect. As Govan Mbeki explained in another context, "The first principle of the Revolution is effective time-keeping".

Delivering the Strategic Review

The Strategic Review of Complaints and Disciplinary Processes was published on time and within budget in July 2007. Its aim was to use an evidence-based approach to create a consensus for incremental and useful change across barrister and consumer opinion. In this ambition, it largely succeeded.

Outlined at Table 1 is a timeline for the publication and implementation of the Strategic Review.

I concluded, having tested the views of more than a thousand complainants, barristers, decision-makers appointed by the Bar Standards Board and the Council of the Inns of Court (COIC), and wider stakeholders, that existing processes worked well, and benefited significantly from pro-bono contributions from barristers.

However, these arrangements were far from being 'state-of-the-art' as was sometimes claimed. There were key deficits, notably poor communication with complainants, arcane processes, and the absence of consideration of risk in the decision-making rules.

Even before proposals were put out to consultation in December 2007, the Bar Standards Board accepted and began implementing more than 30 of the 52 recommendations in the Report (see Table 2). As a result, significant improvements are being made to the system’s clarity and purpose, its accessibility, and its proportionality and flexibility.

These measures are designed to enhance user confidence without prejudicing the rights of barristers to a fair hearing. They are also designed to improve the quality of decision-making, which is already of a high order.

Some larger issues – notably the introduction of more proportionate procedures for reaching decisions, the proposed new concept of ‘Improper Behaviour’, and the balance between barristers and lay members in decision-making – have gone out to consultation (see Table 3), and have attracted wide-ranging and vibrant submissions. Even where the proposals are challenging, responses have not divided on ‘barrister’ and ‘consumer’ lines and this is an encouraging reflection of the seriousness of the debate and the interest in and commitment to sensible change.

The Review benefited from very high levels of complainant, barrister and stakeholder participation. There were invaluable and prolonged contributions from Sara Down, Oliver Hanmer and Anju Still from the conception of the Review and throughout until the Report was published. Julie Myers and Ariel Ricci performed wonders on

proof-reading the draft. Sue Carr QC, Sara Down and Ariel Ricci then created an expert, industrious and highly effective Steering Group to guide the Review to its implementation.

Complaints Handling

Individual Decisions

The number of complaints from members of the public (‘third party’) against barristers continues to rise slowly each year (see Table 4 and Chart 1). As in previous years there were significant numbers of complaints from criminal defendants in 2007. There were also a large number of complaints from family law and other civil litigants (see Table 5).

These developments will need to be studied carefully because the reasons behind them are not entirely clear. On one level, and in the last year, while lack of capacity in the complaints team was acknowledged, action to address the situation was delayed. I commented on this in the Strategic Review Report.

This situation, combined with a rapid turn-over of core complaints staff, impacted adversely on the ability of the excellent complaints team to match the turn-round figures for 2006. The appointment of Sara Down as Head of Complaints and Investigations in July 2007 has ensured that necessary corrective action has now been taken. The impact of this welcome, if belated, development can be seen from the turn-round figures for the first quarter of 2008, which show

Responses to the Strategic Review

“This is an outstanding report. With findings which are sensible and thoughtful. I expect the Board will agree to implement most, if not all, of the recommendations and we will be producing an action plan for implementation very shortly.”

Ruth Evans, Chair, Bar Standards Board

“We are delighted that the review’s recommendations tackle the concerns Which? Has with the current system. If all these recommendations are implemented, consumers can be more confident that the Bar Standards Board’s complaints handling will be ‘fit for purpose’.”

Which?

“This is a fair analysis of the complaints and disciplinary processes for barristers and we welcome [the] recommendations.”

National Consumer Council

a marked improvement on the fourth quarter of 2007.

At the same time, at the end of 2006, reforms were introduced to ensure that draft decisions were reached by the contribution of more than one person and thereby minimise the risk of poor, hasty, decision-making. There is now a more rigorous audit trail of decisions and the ways in which they are tested. In this sense, the lengthening of the decision-process is, in part, a reflection of better, more considered decision-making.

More third party complaints were closed in 2007 than in any previous year (see Table 6). There was, however, a small drop in 2007 in the number of cases closed within three months compared to 2006, and a significant rise in the number of cases closed between 7 and 12 months (see Table 7).

The Complaints Committee

I explained in detail in the Review Report the key role played by the Complaints Committee in contributing to the high quality of decision-making when dealing with complaints. The Bar Standards Board and the wider public receives exemplary service from the Chair, Officers and members of this Committee, to whom I send cases where there is prima facie evidence of either professional misconduct or inadequate professional service.

Richard Price QC OBE served the Committee with distinction as Chair. He is now succeeded by the equally formidable Sue Carr QC. All barrister members of the Committee operate on a pro bono basis and provide outstanding, expert and disinterested advice to the Commissioner on a regular basis.

I have recommended that there is change over a period of four years to the balance of barristers and lay members on the Complaints Committee. This is a sensitive issue, and there is a need not to impair the technical capacity of the Committee. However, broad lay member parity with barrister representation on such an important decision-making body is a key ingredient of the Clementi-inspired move away from self-regulation and towards greater public accountability for the profession.

The Legal Services Ombudsman

The percentage of cases where the Ombudsman endorses a Bar Standards Board decision and recommends “No further action” continues to be extremely high (80 per cent). It is higher than any other comparable regulator.

Interestingly, there were far fewer referrals to the Legal Services Ombudsman by disappointed complainants in 2007 compared to 2006. In addition, there was a dramatic reduction in the number of cases where the Ombudsman judged our decision-making had been “Unreasonable” (see Tables 8, 9, 10, 11).

The relationship with the Ombudsman and the Bar Standards Board – between regulator and regulated – must necessarily be constrained but the exchanges have been cordial and constructive and the quarterly meetings have been useful. The Ombudsman made an important and helpful written submission to the Strategic Review’s call for evidence.

Outward-Facing Activity

In a period of intense activity, I have regularly attended the meetings of the Bar Standards Board, chaired with resolute determination and strategic insight by Ruth Evans. I have also attended meetings of the Bar Council and the Council of the Inns of Court, at which I defended the recommendations emerging from the Strategic Review.

I attended a number of meetings with Ministers and officials at the (now) Ministry of Justice in the context of the Legal Services Bill, and the creation of the (new) Office for Legal Complaints. I have engaged in constructive and continuing dialogue with officers from **Which?** and the **National Consumer Council (NCC)**. And I was pleased to brief the new Consumer Panel of the Bar Standards Board on the outcome of the Strategic Review (see Table 12 for major talks).

Getting outside London was particularly worthwhile. I had useful dialogue with Pupils on the North-Eastern Circuit in Leeds and BVC students at Nottingham Trent University. My participation in the Bar Leaders Conference in

Croatia taught me that the United Kingdom has a very different approach to the regulation of legal services than currently exists in either continental Europe or North America. In this sense the Bar Standards Board is emphatically a pioneer in the field of professional regulation and its experience is being keenly observed and assessed.

Leaving

Having been Commissioner for nearly two years, I now hand over the baton. My predecessor, Michael Scott, welcomed me to the role with a clear desk and a thorough briefing and I hope to do the same for my successor.

It remains for me to thank the many people – too numerous to name individually and some already referred to – who assisted my work and office. First and foremost, the Commissioner is heavily reliant on the work and advice of a very wide range of people. The members of the Complaints and Investigations teams led by Sara Down and Adrian Turner have performed superbly. They digest and marshal vast quantities of key

information. They also consume with great discipline and tolerance the occasional frustration of complainants and barristers alike.

To a very large degree, however, and for the record, I have benefited greatly from the courtesy and cooperation of complainants and barristers alike. I am impressed with the culture of deference towards the Code of Conduct in the profession. And I recognise that most complainants are motivated by honourable ambitions when they approach the Bar Standards Board.

I have been privileged to work with two outstanding personal/executive assistants – Anju Still and Charlotte Corrish. I am grateful to all those associated with the Bar Council and Bar Standards Board – members of secretariats, officers, members of committees and decision-making bodies – for their collaborative working. I wish the Bar Standards Board well in the challenges to come.

Robert Behrens

April 2008

Table 1: Strategic Review timeline

Task	Complete
Terms of Reference agreed by BSB	July 06
Commissioning of Quantitative Research by King's College, University of London	August 06
Issues and Questions Paper published	September 06
Quantitative and Qualitative Research conducted.	October-December 06
Deadline for submissions to Issues and Questions Paper	December 06
Quantitative Research delivered by King's College.	January 07
Interviews with selected stakeholders	January-March 07
Drafting of Report	April-June 07
Strategic Review Report published.	July 07
Bar Standards Board approves Strategic Review Recommendations in principle. Steering Group under Sue Carr QC established to consult on Implementation	September 07
Implementation Consultation Paper published	December 07
Deadline for submissions to Implementation Consultation Paper	February 08
Bar Standards Board approves Implementation Recommendations	
Remaining changes implemented	

Table 2: Strategic Review recommendations agreed by Bar Standards Board in advance of consultation

Recommendation Number	Recommendation	Status
Clarity, Purpose and Accountability		
1 and 2	Aims of system should be defined, published and set against performance indicators	Agreed and implemented
3	Emerging Decisions should be audited	Agreed
6,7 and 8	Learning from decisions should be widely disseminated and the Commissioner should hold an open Annual Meeting.	Agreed
User Confidence		
9,10,14,15 and 17	Public material about the system should be reviewed with the emphasis on plain English and accessibility to all sections of the community.	Agreed
16	Complainants should be able to submit complaints on-line	Agreed
18	Introduction of regular and systematic user surveys	Agreed
21a and 21 b	Requirement that the Chair of the Complaints Committee be a barrister of 20 years call be abolished. The quorum for meetings should be more proportionate to total membership	Agreed and implemented
28	Review of practice for setting hearing dates to prevent defendant barristers causing unnecessary delay	Agreed
Proportionality and Flexibility		
29	Referral of complaints to Chambers and require report on outcome	Agreed
31	BSB to agree at outset detail of complaint with complainant.	Agreed
32	BSB to develop strategic objectives for regulating compliance with the Code of Conduct	Agreed
43	BSB to review the current sentencing options.	Agreed

Continued opposite

Table 2: Strategic Review recommendations agreed by Bar Standards Board in advance of consultation (cont.)

Recommendation Number	Recommendation	Status
Quality Outcomes		
22	Uniform template for Complaints Committee Reports should be introduced	Agreed and implemented
23	A more rigorous approach to the allocation of files to barrister members of the Complaints Committee	Agreed and implemented
24	Complaints Committee members should be consulted on and subjected to performance standards	Agreed
44	Induction training for Complaints Committee members	Agreed and implemented
45	Guidance packs for decision-makers	Agreed
46 and 47	Liaison with Council of Inns of Court (COIC) over training and guidance for tribunal members	Agreed
48	Databases and information to be developed and made publicly available about previous decisions	Agreed
49-51	Review of staff induction, development, guidance and appraisal.	Agreed
52a and 52b	Liaison with relevant providers and stakeholders to develop barrister competence in complaints handling.	Agreed

Table 3: Strategic Review recommendations out for consultation

Recommendation Number	Recommendation
4	Introduction of Lay Observer
20	The composition of the Complaints Committee should reflect a more even balance between barristers and lay members
30	Introduction of new offence of “Improper Behaviour”
33 – 42	Introduction of more proportionate procedures for reaching decisions

Table 4: Complaints opened between 1 January 2002 and 31 March 2008

Complaint Category	2002	2003	2004	2005	% change from 2004	2006	% change from 2005	2007	% change from 2006	1/1/08 to 31/3/08
External	518	526	516	560	+8.5%	592	+5.7%	596	+0.8%	138

Chart 1: External complaints opened: 2002 – 2007

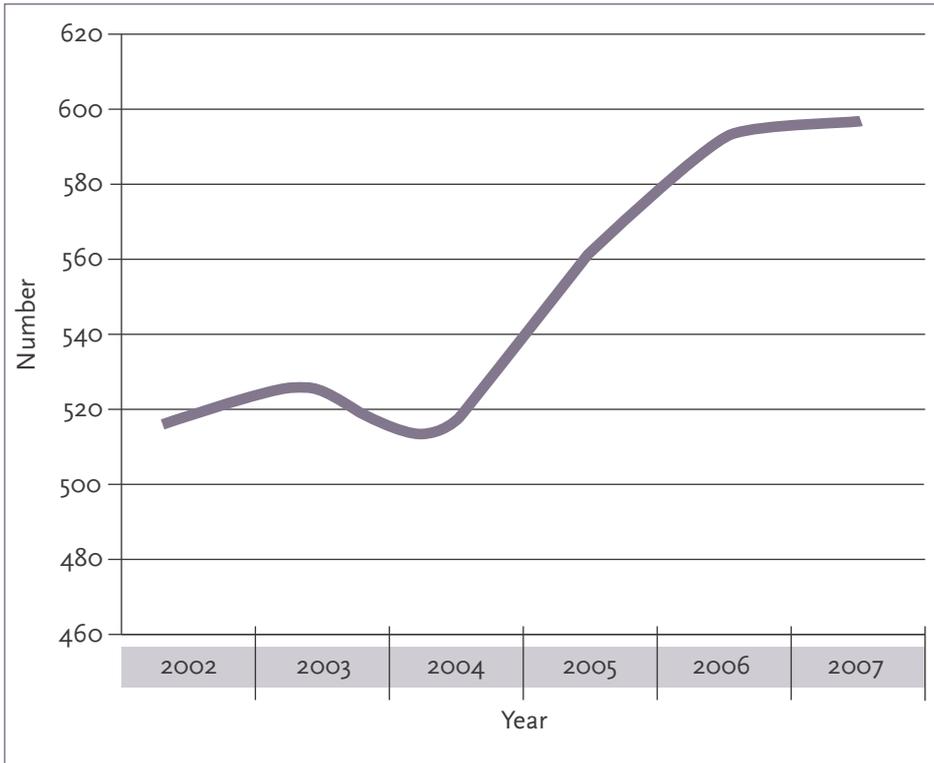


Table 5: Analysis of complaints opened by complainant category

Complainant Category	2005		2006		2007		1/1/08 to 31/3/08	
Bar Standards Board	317	36%	192	24%	111	16%	71	34%
Barrister(s)/Head of Chambers	13	1%	14	2%	20	3%	2	1%
Clerk(s)	0	0%	0	0%	0	0%	0	0%
Criminal Defendant(s)/Prisoners	109	12%	134	17%	140	20%	37	18%
Department for Constitutional Affairs (now Ministry of Justice)	2	0%	0	0%	1	0%	0	0%
Family Law Litigant	64	7%	104	13%	85	12%	21	10%
Immigration Appellate Authority	1	0%	1	0%	2	0%	0	0%
OISC	4	0%	5	1%	3	0%	1	0%
Invalid complaint	62	7%	36	5%	1	0%	0	0%
Judge (or official on his/her behalf)	4	0%	5	1%	7	1%	3	1%
Legal Services Commission	0	0%	0	0%	0	0%	0	0%
Licensed Access complainant	0	0%	0	0%	0	0%	0	0%
Magistrates/Clerk to the Justices	2	0%	0	0%	1	0%	0	0%
Other Civil Litigants	166	19%	164	21%	175	25%	47	23%
Other Members of the Lay Public	37	4%	49	6%	18	3%	10	6%
Other – Not Defined	48	5%	35	4%	115	16%	7	3%
Public Access complainant	7	1%	15	2%	3	0%	1	0%
Solicitor(s) on Lay Client's behalf	16	2%	14	2%	11	2%	1	0%
Solicitor(s) on own behalf	25	3%	16	2%	14	2%	8	4%
Total	877	100%	784	100%	707	100%	209	100%

Table 6: Complaints closed between 1 January 2002 and 31 March 2008

Complaint Category	2002	2003	2004	2005	2006	2007	1/1/08 to 31/3/08
External	499	541	548	484	573	583	180

Table 7: Turnaround times – complaints closed up to and including Committee decision (External complaints only)

Period	2006		2007		% change from 2007	1/1/08 to 31/3/08
0-3 months	265	54.6%	199	38.0%	-24.9%	78
4-6 months	136	28.0%	152	29.0%	+11.8%	46
7-12 months	68	14.0%	147	28.0%	+116.2%	38
13-18 months	8	1.6%	26	5.0%	+225.0%	6
19-24 months	8	1.6%	0	0.0%	-100.0%	0
Over 24 months	1	0.2%	0	0.0%	-100.0%	0
Total	486	100%	524	100%	+7.8%	168

Statistics from the Office of the Legal Services Ombudsman (OLSO)

Table 8: Reason for complainant contacting OLSO

Reason for complainant contacting OLSO	2006		2007		1/1/08 to 31/3/08	
	Count	Percentage	Count	Percentage	Count	Percentage
Decision unreasonable/poor explanation given	56	31%	47	41%	28	47%
Total	182	100%	115	100%	59	100%

Table 9: Outcome of OLSO investigation

Outcome of OLSO investigation	2006		2007		1/1/08 to 31/3/08	
	Count	Percentage	Count	Percentage	Count	Percentage
No recommendation made	156	86%	92	80%	47	80%
Formal criticism made	5	3%	7	6%	4	7%
Recommendation made	21	12%	16	14%	8	13%
Total	182	100%	115	100%	59	100%

Table 10: Breakdown of recommendations

Breakdown of Recommendations	2006		2007		1/1/08 to 31/3/08	
	Count	Percentage	Count	Percentage	Count	Percentage
BSB to reconsider only	18		10		2	
BSB to pay compensation	3		5		6	
BSB to reconsider case and pay compensation	0		1		0	

Table 11: Reason for recommendations

Reason for Recommendations	2006		2007		1/1/08 to 31/3/08	
Issues not considered	5	18%	6	29%	0	0%
Delay during investigation	1	4%	4	19%	4	36%
Delay in sending file	1	4%	3	14%	3	27%
Information/evidence overlooked	1	4%	3	14%	0	0%
Decision unreasonable/poor explanation given	9	32%	2	10%	1	9%
No details of OLSO given	0	0%	1	5%	0	0%
Other poor admin issue	1	4%	1	5%	1	9%
Other poor decision issue	2	7%	1	5%	0	0%
Inappropriate rejection	4	14%	0	0%	1	9%
Investigation closed prematurely	2	7%	0	0%	0	0%
Complainant not kept informed	1	4%	0	0%	0	0%
Inadequate reply to letters/phone calls	1	4%	0	0%	0	0%
Losing files/correspondence	0	0%	0	0%	1	9%
Failure to prioritise	0	0%	0	0%	0	0%
Ex gratia payment insufficient	0	0%	0	0%	0	0%
Total	28	100%	21	100%	11	100%

Table 12: Talks undertaken

Organisation	Date
North Eastern Circuit Pupils Training Course	3-5 January 2007
Chancery Bar Association	20 January 2007
Nottingham Law School BVC	27 February 2007
Inner Temple Education Day	26 March 2007
Bar Standards Board Consumer Panel	29 March 2007
BIOA conference	26-27 April 2007
Bar Standards Board Meeting	10 May 2007
International Bar Association Conference – International Bar Association Annual Bar Leaders’ Conference – The Croatian Bar Association	15-18 May 2007
Bar Standards Board Meeting	20 September 2007
Inner Temple Education day	25 February 2008
Legal Practice Management Association Annual Conference	29 February 2008
Council of the Inns of Court	5 March 2008

Appendix 2: The Bar Standards Board

The Board comprises 15 members, seven lay members and eight barristers. The Members of the Board during 2007 were:

Ruth Evans – Chair

George Leggatt QC – Vice-Chair

Clara Arokiasamy- lay member

Philip Bartle QC – Chair, Quality Assurance Committee

Sarah Brown – lay member

John Burrow – barrister member

Dr John Carrier – lay member, Chair, Education and Training Committee

Sandy Forrest – lay member

Christopher Graham – lay member

Dr Vicki Harris – lay member, Chair, Performance and Best Value Committee

Charles Hollander QC – Chair, Standards Committee

Simon Monty QC – Chair, Qualifications Committee

Michael Pooles QC – barrister member (interim Chair, Quality Assurance Committee from 1 Jan 07)

Richard Price OBE QC – Chair, Complaints Committee

Emily Windsor – barrister member, Chair, Diversity Sub-group

Members in italics left the Board at the end of 2007.

New members appointed from 1 January 2008 are:

Sue Carr QC – Chair, Complaints Committee

Paula Diggle – lay member

Professor Peter Hutton – lay member, Chair, Quality Assurance Committee (from 1 September 2008)

Anthony Inglese CB – barrister member

Matthew Nicklin – barrister member

In 2007, seven committees and sub-groups supported the Board:

Complaints – responsible for investigating complaints and taking action against barristers who have breached the Code of Conduct or provided poor service;

Education and Training – responsible for setting the standards of education and training that people must pass before being able to practise as barristers, together with the further training requirements that barristers must comply with throughout their careers;

Diversity Sub-group – responsible for developing the Board's approach to equality and diversity in regulation;

Performance and Best Value – responsible for reviewing the corporate governance structures of the Board and its committees to ensure that they are working economically and effectively;

Qualifications – responsible for looking at individual applications from people wishing to become barristers but who may be exempted from the normal training requirements;

Quality Assurance – responsible for monitoring standards at the Bar;

Standards – responsible for the Code of Conduct which all barristers must obey and issuing guidance on good practice and, in 2006, for rules governing training for the Bar.

Consumer Panel

The Board has also established a Consumer Panel whose membership during 2007 was:

Dianne Hayter (Chair)

Caron Bradshaw – Institute of Chartered Accountants in England and Wales (from July 2007)

Duncan Campbell – Confederation of British Industry (from July 2007)

Adam Creme – Trades Union Congress (from July 2007)

Fiona Freedland – Action against Medical Accidents

Andrew Greensmith - Resolution

Nancy Kelley – Refugee Council (to July 2007)

Sue Leggate – Which?

Aleathia Mann – National Federation of Women's Institutes, Federation of Small Businesses

James Molloy – Automobile Association (to November 2007)

Victoria Mortimer-Harvey - Association of Personal Injury Lawyers

John Rees – Local Government Association

Teresa Reynolds – Victim Support (to July 2007)

James Sandbach – Citizens Advice

Chris Stanley – NACRO

Rodney Warren – Criminal Litigation Solicitors' Association

The Consumer Panel met formally three times in 2007 and provided formal advice to the Board on the following issues:

- Entertainment of solicitors and others by the Bar;
- Public access rules;
- Deferral of call;
- Chambers complaints handling;
- Code of Conduct Review.

The BSB Consumer Panel published its first Annual Report in January 2008.

Appendix 3: Bar Standards Board staff – 31 December 2007

Mark Stobbs – Director

Sarah Dale – PA to Director and Chair

Board Operations

Jennifer Maclean – Head of Board Operations

Charlene Johnstone – Assistant to Head of Board Operations

Complaints and Investigations

Robert Behrens – Complaints Commissioner

Liz Revell – PA to Complaints Commissioner

Sara Down – Head of Complaints and Investigations

Adrian Turner – Complaints Manager

Andrew Hill – Complaints Officer

Helen Dhami – Complaints Officer

Jack White – Complaints Officer

Michelle Scanlon – Secretary, Complaints

Karen O'Rourke – Secretary, Complaints

Jemma Bourn – Administration Assistant, Complaints

Fredelinda Telfer – Investigations Officer

Neil Mallon – Investigations Officer

Ariel Ricci – Policy/Investigations Officer

Vacant – Assistant Investigations Officer

Lesley Shepherd – Administration Officer, Investigations

Hazel Fillery – Administration Assistant, Investigations

Kathryn Camp – Secretary, Investigations

Elena Barilone – Administration and Statistics Officer

Karolina Stancic – Project Assistant

Education Standards

Valerie Shrimplin – Head of Education Standards

Cordelia Lean – Education Officer (Courses and QA)

Andrea Clerk – Pupillage Officer

Liz Prats – Continuing Education Officer

Ellen Harewood – Administration Officer

Claire Pace – Administration Assistant

Donna-Marie Maragh – Administration Assistant

Qualifications

Jo Dixon – Qualifications Regulations Manager

Steve Behr – Training Regulations Officer, Academic Stage

Pauline Smith – Training Regulations Officer, Qualifications

Lucy Mersh – Training Regulations Assistant

Standards and Quality

Oliver Hanmer – Head of Standards and Quality

Toby Frost – Standards and Quality Assistant

Dawn Elvy – Training Compliance Officer

Rachel Reeves – Training Compliance Assistant

Sarah Hellier – Training Compliance Clerical Assistant

Strategy and Communications

Julie Myers – Head of Strategy and Communications

Jennifer Sauboorah – Research and Projects Officer

Kofi Kramo – Communications Officer

Appendix 4: Annual Statistics for the Practising Bar 2007

	Men	Women	Total
Self Employed Bar (incl QCs)			
In London	5304 (5342)	2287 (2243)	7591 (7585)
Outside London	3011 (3028)	1436 (1401)	4447 (4429)
Overseas	12 (11)	8 (9)	20 (20)
Total	8327 (8381)	3731 (3653)	12058 (12034)
QCs at the Self Employed Bar	1107 (1160)	116 (118)	1223 (1278)
Employed Bar	1597 (1539)	1375 (1317)	2972 (2856)
Total Practising Bar	9924 (9920)	5106 (4970)	15030 (14890)
Barristers Called to the Bar 2006/2007	906 (794)	870 (846)	1776 (1640)
Pupillages 2006/2007	1st 6 months: 2nd 6 months:	527 (513) 563 (565)	
Chambers			
In London	195 (207)		
Outside London	139 (139)		
Total	334 (346)		
Sole Practitioners			
In London		135 (125)	
Outside London		174 (173)	
Total		309 (298)	

Figures in brackets relate to 2006

Appendix 5: Bar Standards Board costs – 2007

	Disci- plinary	Education Standards	Qualifi- cations	Standards & Quality	Executive & Board	2007 Total	2006 Total
Staff Numbers	19	7	4	5	14*	49	42
	£000	£000	£000	£000	£000	£000	£000
Direct Costs:							
Staff Costs	826.4	284.1	180.4	184.2	519.3	1,994.4	1,674.6
Activity Costs	166.7	100.3	9.5	28.8	203.9	509.2	590.2
Allocated Costs:							
Executive & Board	438.3	87.7	87.7	109.5	-723.2**		
Office Accommodation	181.4	42.7	26.1	35.6		285.8	286.4
Central Services:							
Finance	694.0	139.0	139.0	167.0		1,139.0	1,045.8
Print & Distribution							
Office Services							
IT							
Equal Opportunities							
Member Records							
Human Resources							
Total Costs	2,306.8	653.8	442.7	525.1		3,928.4	3,597.0†

Notes:

Premises costs have been apportioned on the basis of floor area occupied.

Central Services costs have been allocated on an estimated usage/headcount basis.

* includes seven lay members of the board

** BSB Management costs have been allocated on a headcount basis.

† calculated on an alternative basis to the 2006 Annual Report



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