



# The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

## Minutes

### Strategic Advisory Board Meeting

Tuesday 25 June 2019; 14:00 – 16:00

The Rose Heilbron Room, South Square, Gray's Inn Square

1.	<b>Welcome and Apologies</b>
1.i	<b>Present</b>
	<i>Clare Dodgson (CD)</i> <span style="float: right;"><i>Chair of SAB</i></span>
	<i>HH Judge Jonathon Carroll (JC)</i> <span style="float: right;"><i>Chair, Disciplinary Tribunal Service</i></span>
	<i>Louise Clements (LC)</i> <span style="float: right;"><i>Lay Panellist, Disciplinary Tribunal Pool</i></span>
	<i>Vanessa Davies (VD)</i> <span style="float: right;"><i>Director General, Bar Standards Board</i></span>
	<i>Lara Fielden (LF)</i> <span style="float: right;"><i>Lay Representative, Bar Standards Board</i></span>
	<i>James Wakefield (JW)</i> <span style="float: right;"><i>COIC, Director</i></span>
	<i>Robert Walton QC (via phone) (RW)</i> <span style="float: right;"><i>Legally Qualified Panellist, Disciplinary Tribunal Pool</i></span>
1.ii	<b>Apologies</b>
	<i>Ian Clarke QC (IC)</i> <span style="float: right;"><i>Chair, Inns' Conduct Committee</i></span>
	<i>Joan Martin (JM)</i> <span style="float: right;"><i>Lay Member, Tribunal Appointments Body</i></span>
1.iii	<b>In attendance</b>
	<i>Samantha Anderson (SA)</i> <span style="float: right;"><i>Secretary, COIC</i></span>
	<i>Margaret Hilson (MH)</i> <span style="float: right;"><i>Administrator, BTAS</i></span>
	<i>Andy Russell (AR)</i> <span style="float: right;"><i>Registrar, BTAS</i></span>

#### The Bar Tribunals & Adjudication Service

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1.iv	<p><b>Welcome</b></p> <p>HH Judge Jonathan Carroll joined the SAB for his first meeting following his appointment as Chair of the Disciplinary Tribunal Service. The Chair welcomed JC to the Board, and all those in attendance made introductions.</p>	
2.	<p><b>Minutes of the Last Meeting</b></p>	
2.i	<p><b>Confirmation of Minutes</b></p> <p>The minutes of the meeting held on 20 March 2019 were approved and will be placed on the BTAS website.</p> <p><b>2.ii Actions from the last meeting</b></p> <p>Actions 1 and 2 were complete.</p> <p>Action 3 (<i>BSB ‘stop the clock’ proposals to be shared with BTAS</i>): VD reported that draft proposals were in the process of being formulated, but that these would not receive approval until August. As such, it would be premature to share anything at this point. It was agreed that this topic be brought back to the December meeting for discussion, and VD agreed to share the proposals as soon as possible after they were approved. The SAB noted that this was an important area with implications for both transparency and public confidence. It was agreed that it was also important that there be consistency between BTAS and the BSB in the way unavoidable adjournments were recorded and reported.</p> <p>Action 4 (<i>Registrar and BSB to meet and initiate small-scale update of Sanctions Guidance</i>): AR reported that he had with the BSB’s Head of Investigations and Hearings to initiate the small-scale update of the BTAS <i>Sanctions Guidance</i>. The SAB noted that this needed to be completed by October 2019 to coincide with changes to the BSB <i>Handbook</i>.</p> <p>Action 5 (<i>Registrar and BSB to meet and propose scope of large-scale update of Sanctions Guidance to the SAB</i>): The SAB agreed that the small-scale review must take priority and only once this was completed should preparatory work commence on the larger-scale review. This topic should appear on the December 2019 agenda.</p>	<p><b>Annex A</b></p> <p><b>Action 1: VD</b></p> <p><b>Action 2: AR</b></p> <p><b>Action 3: AR</b></p>
3.	<p><b>Annual Report to COIC</b></p> <p>The Annual Report was approved for submission to COIC, subject to the following amendments being made:</p>	<p><b>Annex B</b></p>

	<p>i. While the Report (para 20 of Annex B) sets out the costs arising from the payment of fees and expenses to Disciplinary Pool members, it made no reference to all BTAS' other (and often very significant) expenditure including staff costs, rent and insurance etc. This had the potential to be misleading and confusing to the public, not least because the BSB's own Annual Report included approximate annual BTAS operating costs (which had been supplied to the BSB by BTAS). The SAB agreed that this figure – of £600,000 – should be added to the BTAS Report. It was noted that a precise figure could not be provided because of difficulties correctly assigning a figure for the BTAS-only element of shared COIC costs such as staff, equipment and other costs. If BTAS was a stand-alone entity, it was estimated that its operating costs would be elevated by around 10-20%, but in any case for accounting purposes, BTAS is a part of COIC, which is the legal (and audited) entity.</p> <p>VD also highlighted that a complicating factor in all matters to do with BTAS reporting was that it operated on a calendar year, whereas the BSB operated on a financial year. This meant that no BTAS and BSB reports or KPIs ever covered the same period, and VD proposed that transparency might be improved were BTAS to adopt the BSB's reporting cycle. While it was agreed that AR and JW should take this point away and consider it, it was highlighted that BTAS' financial year was the calendar year, and that attempting to separate its reporting cycle from its financial cycle could prove to be extremely difficult. Moreover, it was noted that the four Inns of Court (who provide all of BTAS's funds) work to the same financial and reporting cycle as BTAS.</p> <p>ii. The table in paragraph 13 and the data in paragraph 15 were inconsistent in terms of the number of AAAS hearings. This needed to be investigated and corrected in the Report.</p> <p>iii. Paragraph 17 x should be revised to make clear that <i>all</i> members of the Disciplinary Pool will require training.</p> <p>AR will make the necessary changes to the Annual Report before passing it to CD to sign off on the behalf of the Board.</p>	<p><b>Action 4:</b> AR / JW</p> <p><b>Action 5:</b> AR</p>
4.	BTAS / BSB Service Agreement	Annex C

	<p>The SAB noted the draft contents of the new Service Agreement between BTAS and the BSB, with marked changes proposed by the BSB. This is intended to come into effect on 1 January 2020, as the current agreement expires, and governs the delivery of Tribunals and other hearings set out in the <i>BSB Handbook</i>.</p> <p>The SAB recognised that the proposed agreement is little changed from the current agreement, and it was agreed that this represented a vote of confidence in BTAS’s performance. The BSB’s proposed changes were seen as generally minor, terminological or necessary updates to reflect changes in legislation (such as the introduction of the GDPR).</p> <p>While BTAS expected to propose further changes to the draft Service Agreement before it could be signed, these were similarly expected to be only minor updates and corrections.</p> <p>The SAB were grateful for the progress report and pleased that the new Service Agreement should be agreed shortly and without either party feeling the need to propose substantive changes.</p>	
<p><b>5.</b></p>	<p><b>Progress Update on the BTAS Pool Members Recruitment Exercise</b></p> <p>AR provided the SAB with a progress update regarding the recruitment of new Disciplinary Pool members by the Tribunal Appointment Body (the TAB).</p> <p>The TAB had launched a nationwide recruitment exercise in February 2019, having first tasked BTAS with minimising the number of very weak applications, whilst simultaneously improving the diversity of applicant body.</p> <p>The SAB was delighted to note that an equality and diversity analysis of the applications showed that they were being received from very diverse backgrounds, and particularly gratifying was that nearly 30% of applicants stated they were from a non-white British background. Moreover this diversity had been sustained through the anonymous shortlisting process, demonstrating that there had been no drop in the quality of the applications. The key area where the SAB agreed that there was still work to do was in terms of the proportion of candidates declaring themselves to have a disability.</p> <p>Clearly until the process had been completed, interviews conducted and appointments made, it was too early to say that the exercise as a whole had achieved all that had been hoped for, but the SAB agreed that the TAB was to be congratulated on the progress made to date.</p> <p>The SAB noted that the equality analyses were being performed on the applicant</p>	<p><b>Annex D</b></p>

	<p>body as a whole, rather than broken down into the various roles (QC, barrister, lay and clerk), and agreed that this was appropriate given the small numbers involved, given the risk of statistical anomalies. Nevertheless, it agreed it was important that some scrutiny be given to the individual cohorts, to ensure that no unwanted outcomes took place without notice and discussion by the TAB (for example that no female QCs were offered appointment to the Panel).</p> <p>The SAB also agreed that, in due course, further data should be collected about appointed candidates. This should include their geographical spread across the UK, and information about the legally qualified members' areas of practice. It was hoped that the later could provide some indication as to whether offering fee payments to legally qualified members had succeeded in encouraging applications from the publicly funded Bar.</p> <p>The SAB asked that an update be provided on the final stages of the recruitment exercise at their next meeting.</p>	<p><b>Action 6:</b> AR</p> <p><b>Action 7:</b> AR</p> <p><b>Action 8:</b> AR</p>
<p><b>6.</b></p>	<p><b>Pool Member Induction and Refresher Training</b></p> <p>The SAB considered the appropriate format and topics for the 2019 training of members of the BTAS Disciplinary Pool. It noted that there were two distinct aspects to this item that should be given careful consideration: the format of the delivery of the training; and the content / topics that should be covered to ensure Pool Members would be effective in their roles.</p> <p>i. Delivery</p> <p>The SAB thanked AR for Annex E, which served to remind them of the details of the previous (2017) training exercise. The delivery of that training had been done over two face-to-face sessions arranged in such a way as to maximise flexibility and accessibility for Pool members, whilst at the same time making clear attendance at both was mandatory. The training had been structured in such a way as to ensure all sessions were attended by a mix of lay and legally qualified individuals, as well as newly-appointed members (for whom this was their induction training) and established members (for whom it served as refresher training), and by so doing help to forge a 'community' of pool members.</p> <p>The SAB agreed that the approach that was implemented in 2017 was had been very well-received, and had worked very well in terms of its administrative delivery. While noting the amount of material that needed to be covered, the SAB agreed</p>	<p><b>Annex E</b></p>

that the face-to-face training requirement should not exceed two half-day events. This was both because of the considerable commitment that three half-day sessions (plus potential travelling time) represented for Pool members, and to ensure the training burden remained proportionate to the relatively low number of sitting days that Pool members would be asked to undertake.

The SAB also agreed that it would be useful for a 'roving observer' to be present during the training sessions; who could offer comments and support to those being trained.

AR reported that in February 2020 half of the current panel were due to complete their second terms of office. As such, it was clearly highly desirable that the induction training of new panel members was completed prior to that point, and it was agreed that September through to December 2019 offered a realistic window for this to be done.

ii. Content

The SAB noted paragraph 4 of Annex E, which provided a list of the potential topics to be covered in the training. It was agreed that, in addition to the 'core' topics (fair tribunal training; sanctioning; equality and diversity) the following should be considered:

- a. That there should be an introduction, delivered by the BSB, to the 2019 Handbook and Disciplinary Tribunal regulations;
- b. That the 'Managing Vulnerability' session that was delivered last time be customised and/or subsumed into the 'fair tribunal training' session. The SAB agreed that this was a vital topic, but that its delivery should not focus on the cross-examination of vulnerable witnesses, but instead ensure that vulnerable individuals (whatever their role) are handled appropriately at BTAS hearings, and that Hearing Panels are aware that vulnerable individuals can be offered appropriate reasonable adjustments (such as the use of screens);
- c. That 'Dealing with Bullying and Harassment' was a new but very important area that would need to have appropriate content developed;
- d. That 'Data Protection Legislation Training' was felt to be unnecessary for Pool Members, but instead that it should be made clear to Pool Members what their data protection duties were in terms of protecting the sensitive data they were entrusted with as part of their role.
- e. The SAB carefully considered whether to introduce 'Anti-Money Laundering'

**Action 9:**  
**AR**

	<p>training as a requirement for Pool members. While the SAB noted that there was specific legislation that would be relevant when considering cases that included charges involving money laundering, it was satisfied that it was part of the Prosecutor’s responsibility to fully address this when presenting the case to the Panel. For this reason it agreed that anti-money laundering training was not appropriate for Pool Members. The SAB also noted that there was a provision within the Rules for experts to be appointed to join Tribunal Panels, which enabled the Panel access to further advice, if required, on topics that are more highly specialised than is commonly the case.</p> <p>f. The SAB noted, since the last training events, the Pool had taken on responsibility hearing for Inns’ Conduct Committee cases and agreed that this must be incorporated into the training.</p> <p>The SAB reminded itself that the Judicial Chairs of some Tribunal Panels were appointed by HMCTS and that they were not members of the BTAS Pool. As such Judicial Chairs could not be required to attend BTAS training events.</p> <p>The Registrar thanked the SAB for its guidance and confirmed that he would prepare the training programme fully in accordance with their advice.</p>	<p><b>Action 10:</b> <b>AR</b></p>
<p><b>7.</b></p>	<p><b>Key Performance Indicators</b></p> <ul style="list-style-type: none"> <li>i. Summary Document</li> <li>ii. KPI Data Q2 2019</li> </ul> <p>The SAB noted the latest BTAS KPI data, and accompanying summary of the key points presented by the Registrar.</p>	<p><b>Annex F</b> <b>Annex G</b></p>
<p><b>8.</b></p>	<p><b>Inns Conduct Committee</b></p> <p>The SAB noted that that new <i>Bar Qualification Rules</i> were published by the BSB in April 2019. These confirmed for the first time that “<i>the BSB shall set out in writing... the manner in which an Inn shall assess whether such individuals are fit and proper</i>”.</p> <p>It was confirmed that the Inns’ Conduct Committee had been consulted on the BSB’s new <i>Guidelines for Determining if a Person is Fit and Proper to Become a Barrister</i>, and that the ICC was in the process of developing new Rules to accord with and give effect to the <i>Guidelines</i>.</p>	
<p><b>9.</b></p>	<p><b>Dates of Future Meetings</b></p> <p>Tuesday 3 December 2019 at 14:00.</p>	

	<p>It was agreed that if a further meeting is required in the interim between this meeting and the one scheduled for 3 December, a further one could be arranged.</p>	
<p><b>10.</b></p>	<p><b>Any Other Business</b></p> <p>BTAS Publication Policy – point 3.19</p> <p>JW highlighted a possible inconsistency in BTAS’ Publication Policy, and invited the SAB’s advice:</p> <p>At present, if a case were dismissed by a BTAS Tribunal Panel, all record of the hearing would be removed from the BTAS website. However, if the case was initially found proven by the Panel, but an appeal subsequently upheld in the High Court, while the details of the BTAS hearing would be removed in entirety from the BTAS website, para 3.19 of the Publication Policy required the judgment of the Appeal to be indefinitely posted on the BTAS website. Such a judgment would usually rehearse the details of the original case heard at BTAS, which was anomalous both in itself, and yet more so when it was considered that unless the case had involved the most serious outcomes (such as disbarment), even proven cases would be removed from the BTAS website whilst the Appeal judgment remained there indefinitely.</p> <p>The rationale for publishing appeal case judgments was transparency in the public and profession’s interest, so that any comment by the Judge about BTAS during the appeal hearing – favourable or critical – was readily available on the BTAS website. The SAB agreed that this principle was vital, but nonetheless had some sympathy for any appellant who might find details of their case – even if their appeal was fully upheld by the High Court – permanently on the BTAS website in consequence.</p> <p>After careful discussion, the SAB agreed that the transparency principle remained fundamental, and that appeal judgments should remain on the BTAS website. It recognised that many of these judgments were readily available elsewhere in the public domain (the BAILLI website, for example) and that for BTAS not to provide full details itself would seem odd. The SAB also discussed, and then rejected, the possibility of anonymising and/or redacting such judgments. This was on the grounds that unredacted versions were readily available elsewhere, and the SAB was unsure if it had the right to edit Crown copyright judgments in this way.</p> <p>However, the SAB agreed that the reason the appeal judgments were on the BTAS website was for the benefit of those with an interest in BTAS’ work. BTAS did not seek to draw attention to these judgments for any other reason, and AR agreed to investigate ways to reduce their profile on search engines (as opposed to searches</p>	



	by those already on BTAS' website). BTAS would trial posting links to the BAILLI judgment, rather than reposting a pdf version of the judgment itself.	
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No.	ACTION	MINUTE	OWNER	PROGRESS
1.	BSB 'Stop the Clock' proposals to be shared with BTAS.	2.ii	VD	Done
2.	BTAS to complete review of Sanctions Guidance in October 2019	2.ii	AR	Done
3.	Large-scale review of Sanctions Guidance to be put on December 2019 agenda.	2.ii	AR	Done
4.	AR & JW to consider aligning BTAS's reporting cycle with the BSB's.	3.i	AR/JW	Done
5.	AR to revise Annual Report for CD's approval.	3.iii	AR	Done
6.	AR to ensure TAB provided with e&d data at a role level, rather than all-applicants level.	5	AR	Done
7.	BTAS to collect data on appointed candidates' geographical location and, where appropriate, area of practice.	5	AR	Done
8.	Update on the recruitment exercise to be put on the December 2019 agenda.	5	AR	Done
9.	A roving observer to attend Panel training sessions	6i	AR	Done
10.	Training Programme to be developed to enable delivery September - December 2019.	6	AR	Done