



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Minutes

Strategic Advisory Board Meeting

Tuesday 11th December 2018, 14:00-16:00

The Tribunal Suite, 9 Gray's Inn Square

1.	Welcome and Apologies
a.	Present <i>Clare Dodgson</i> <i>Chair of SAB and Lay Representative</i> <i>Louise Clements</i> <i>Lay Panellist, Disciplinary Tribunal Pool</i> <i>Vanessa Davies</i> <i>Director General, Bar Standards Board</i> <i>Lara Fielden</i> <i>Lay Representative, Bar Standards Board</i> <i>Joan Martin</i> <i>Lay Member, Tribunal Appointments Body</i> <i>Stuart Sleeman</i> <i>Chair, Disciplinary Tribunal Service</i> <i>James Wakefield</i> <i>Director, COIC</i> <i>Robert Walton</i> <i>Legally Qualified Panellist, Disciplinary Tribunal Pool</i>
b.	Apologies <i>Ian Clarke QC</i> <i>Chair, Inns' Conduct Committee</i>
c.	In attendance <i>Sara Jagger</i> <i>Director of Professional Conduct Department, BSB</i>

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	<p><i>Margaret Hilson Administrator, BTAS</i></p> <p><i>Andy Russell Registrar, BTAS</i></p>	
d.	<p>Welcome</p> <p>The Chair welcomed Sara Jagger, who was attending to introduce the BSB’s Annual Enforcement Report and speak to any questions the SAB had regarding it.</p>	
2.	<p>Minutes of the Last meeting</p>	
a.	<p>Confirmation of Minutes</p> <p>The minutes of the meeting held on 20th September 2018 were approved and will be placed on the BTAS website.</p>	<p>Annex A</p> <p>Action 1: AR</p>
b.	<p>Actions Arising</p> <p>The SAB noted the update on actions arising from the minutes of the meeting held on 20th September 2018 as detailed in Annex A, and were satisfied that all were complete, ongoing or dealt with elsewhere on the agenda.</p> <p>While Action 3 (“<i>Registrar / TAB to consider how best to attract newly qualified barristers to apply to be Clerks</i>”) was not yet due, the Registrar provided an update to the SAB. The SAB noted that Bindi Dholakia, BTAS’ Equality & Diversity Advisor, had been approached to advise about advertising strategies. While the 2016 recruitment exercise had been designed around a fair and ‘blind’ selection process, the overall diversity of the Pool had not changed significantly as a result. With hindsight, it was clear that the selection process could only be expected to result in diverse appointments if the initial pool of applicants was itself diverse, rather than to a large extent homogeneous. Therefore advice is being sought to ensure the adverts make use of locations and mediums which can be expected to reach a diverse range of individuals, and that those advertisements are worded in such a way as to appeal to the widest possible range of individuals.</p> <p>In view of the above it was suggested that the Bar Council’s Young Bar Committee could be approached and asked to disseminate the adverts to attract potential Clerks.</p>	<p>Annex A</p> <p>Action 2: AR</p>
3.	<p>BSB’s Annual Enforcement Report</p> <p>a. The Director of the BSB’s Professional Conduct Department outlined the major</p>	<p>Annex B</p>

points in the BSB's latest *Enforcement Report*, and particularly highlighted:

- i. That 2017-18 shows an increase in the time taken to conclude complaints referred to a Disciplinary Tribunal, from 15.1 months (2016-17) to 17.9 months (2018-19). While this was of course undesirable, the BSB does not believe that it is indicative of a systemic problem (either at the BSB or at BTAS), but will continue to monitor this closely for evidence of trends.
 - ii. Echoing BTAS' own data (as set out in the KPI Report – item 5 in this agenda) the number of cases referred from the BSB to BTAS has fallen to 47 in 2017-18, equivalent to 10% of all complaints (compared with 17% of all complaints in 2016-17). However, the PCD Director asked the SAB to note that the referral rate was a 'lag measure', with many of the 47 cases that had been referred to BTAS in 2017-18 arising from complaints made to the BSB in 2016-2017. The increased number of complaints in 2017-18 (up by 29% compared with 2016-17, as set out in the Enforcement Report) might be indicative of an increase in the coming year of the number of cases referred to BTAS.
- b. The SAB Chair thanked the PCD Director for her summary and, before opening the topic up for wider discussion, reminded all members that the raw numbers, particularly in cases referred to BTAS, were low enough to mean that any apparent 'trend' could simply be a statistical anomaly. The SAB should keep this in mind before rushing to seek to draw strategic conclusions from the data.
- i. The Registrar reminded the SAB that, while the reduction in the overall numbers of cases referred to BTAS had been foreseen and forewarned by the BSB, the expectation had been that this would be accompanied by an increase in the proportion of the most serious and more complex cases that were required to be heard by a five-person panel (5PT). The opposite, however, appeared to be the case. The Director of the PCD suggested that this might be due to (i) an unusually high number of 5PTs taking place in 2016-17 distorting the overall trend, and (ii) the BSB's move to risk-based regulation, whereby the risk profiles of cases were now taken into account as well as the facts of the complaint, when determining how it should be progressed.
 - ii. This discussion in turn led to several members of the SAB expressing their dissatisfaction once again with the Rule that meant the BSB (as prosecutor)

	<p>determined whether a case should be referred to a 3PT or a 5PT hearing. The SAB was unaware of any evidence that suggested the decision-making of a 5PT was in any way better than that of a 3PT, indeed it was noted that under the Disciplinary Tribunal Regulations (DTRs) a 5PT could be legitimately reduced to just three persons, whilst retaining all the powers of the larger tribunal. The concern with the current rules was that, by choosing to refer a case to either a 3PT or a 5PT, the BSB was in effect able to telegraph its views on the seriousness of the alleged misconduct, and the severity of the sanction that was appropriate, to the panel and indeed the public well in advance of the hearing. The Director of the PCD informed the SAB that this point was due to be reviewed by the BSB within the next five years.</p> <p>iii. In terms of the increase in the average time taken to conclude Tribunal cases (as outlined in 3.a.i above), all present agreed this was taking too long, and that they were conscious of the potential impact this could have on barristers facing charges of misconduct waiting for the opportunity to publicly respond or ‘clear their name’. However, the SAB noted that there was some evidence that the overall time-to-completion data was being artificially increased by a small number of cases with very long (and potentially unavoidable) delays, such as those adjourned with the agreement of all parties due to illness. Consideration should be given to how this could best be taken into account, perhaps by introducing a ‘stop the clock’ mechanism, which would lead to a more valid overall picture. It was agreed that data setting out all of BTAS’ adjourned or postponed cases would in the meantime be provided to the SAB so that they could better understand the position.</p> <p>iv. The SAB was reminded that the DTRs were due to be updated in March 2019 to incorporate a move from the criminal standard of proof to the civil. However, it was felt unlikely this would have any impact on referral rates from the BSB to BTAS.</p> <p>v. Finally, while all present agreed that efforts must be made to understand and try to improve the overall time taken to conclude cases, it was noted that the completion rates were still substantially better than those of many other regulators and tribunal services.</p>	<p>Action 3: AR</p>
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<p>4.</p>	<p>Provision of Case Law Updates to Panel Members</p> <p>The SAB considered the proposal made at the last meeting (<i>Minute 8, 20.09.18 refers</i>) that BTAS makes use of the BSB’s Prosecution Panel’s newsletter system to identify and then disseminate key developments in regulatory case law to Pool members.</p> <p>The SAB was grateful for the BSB’s offer, but also mindful that it must not be the case, or appear to be the case, that the prosecutor was in some way choosing the cases to be seen by the wholly independent members of the Disciplinary Pool. It was therefore agreed that the BSB would provide the Registrar with information about any cases it was including in its Prosecution Panel’s newsletter (but not the newsletter itself), and the Registrar would forward these to the Chair of the Disciplinary Tribunal Service to confirm whether and how they should be disseminated to the Pool.</p> <p>The SAB noted that not all Appeal Court judgments were readily accessible to lay readers, and that efforts should be made to ensure the key points could be readily and equally understood by all.</p>	<p>Action 4: BSB</p>
<p>5.</p>	<p>Key Performance Indicators</p> <p>The SAB noted the latest BTAS KPI data, and the accompanying executive summary. It thanked the Registrar for presenting the information.</p>	<p>Annexes C & D</p>
<p>6.</p>	<p>SAB Annual Report</p> <p>The SAB discussed the key topics that should be included in the Board’s Annual Report to COIC. It was agreed that, in addition to the usual data and graphs, a review of progress with regards to the Browne Report should also be included. This was likely to be the final such update required, as it would incorporate the recent decision made by COIC that legally qualified members of the Disciplinary Pool should receive payment.</p> <p>It is agreed that this will be first drafted by the Registrar and then improved and approved by email.</p>	
<p>7.</p>	<p>Payments to Legally Qualified Members of the Disciplinary Pool</p> <p>The SAB was very pleased to note that COIC had recently approved (and the Inns of Court agreed to fund) their proposal that attendance payments should be offered to barrister and QC members of the BTAS Disciplinary Pool from 1 April 2019. The SAB particularly thanked Dr Joan Martin, as she had been instrumental in driving this</p>	

	<p>proposal over a number of years.</p> <p>The SAB sincerely hoped that this change would help increase diversity in the membership of the BTAS Pool, and that it may also increase representation on the Pool from members of the publicly funded bar. This step was even more important for Tribunals lasting for several days – it simply was not appropriate or reasonable to expect practitioners to give up such significant amounts of their time without any financial recompense.</p>	
8.	<p>Service Agreement with the Bar Standards Board</p> <p>The SAB noted that the service agreement between BTAS and the BSB is due to expire on 31 December 2019 (having first come into effect in 2013 and then being extended for a further period of three years in January 2016).</p> <p>It was agreed that this should be included on the agenda of the June 2019 meeting for full discussion.</p>	Action 5: AR
9.	<p>Dates of future meetings</p> <ul style="list-style-type: none"> • Thursday 7 March 2019 • Tuesday 25 June 2019 • Tuesday 3 December 2019 <p>All meetings commence at 2.00pm.</p>	
10.	<p>Any Other Business</p> <p>There was none.</p>	

No.	ACTION	MINUTE	OWNER	PROGRESS
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No.	ACTION	MINUTE	OWNER	PROGRESS
1.	Minutes of the meeting held on 20 September 2018 to be posted on the BTAS website.	2a	AR	
2.	Registrar to ask Bar Council's Young Bar Committee to disseminate recruitment adverts.	2b	AR	
3.	BTAS to detail all currently postponed and adjourned cases.	3.b.iii	AR	
4.	BSB to provide BTAS with relevant case law updates.	4	BSB	
5.	Topic of BTAS / BSB Service Agreement to be included on June SAB agenda.	8	AR	