



THE COUNCIL OF THE INNS OF COURT

The Bar Tribunals & Adjudication Service

STRATEGIC ADVISORY BOARD MEETING

Wednesday 28th September 2016

The Tribunal Suite, 9 Gray's Inn Square, WC1R 5JD

Minutes

<p>1</p> <p>1.1</p>	<p>Welcome and Apologies</p> <p>Present: <i>Clare Dodgson</i> <i>Chair of SAB and Lay Representative</i> <i>Joan Martin</i> <i>Lay Member, Tribunal Appointments Body</i> <i>Heather Rogers</i> <i>Interim Chair, Inns' Conduct Committee</i> <i>James Wakefield</i> <i>Director, COIC</i> <i>Emir Feisal</i> <i>Member, Inns' Conduct Committee</i> <i>Nicola Sawford</i> <i>Lay Representative, BSB</i> <i>Stuart Sleeman</i> <i>Chair, Disciplinary Tribunal Service</i></p> <p>Apologies: <i>Sheila Hollingworth</i> <i>Panellist, Disciplinary Tribunal Pool</i> <i>Vanessa Davies</i> <i>Director General, Bar Standards Board</i></p> <p>In Attendance: <i>Francis Leeder</i> <i>Administrator, BTAS</i> <i>Margaret Hilson</i> <i>Administrator, BTAS</i> <i>Andy Russell</i> <i>Registrar, BTAS</i> <i>Steve Clifford</i> <i>Corporate Support and Contract Manager, BSB</i></p> <p>The SAB noted that due to exceptional circumstances, it was not possible for the Director General of the BSB to attend but that written comments had been submitted in advance of the meeting.</p>	
<p>2</p>	<p>Minutes of the Last Meeting</p> <p>The minutes of the meeting held on 15 June 2016 were approved and will be placed on the BTAS website.</p>	<p>Annex A</p>
<p>3</p>	<p>Actions from the Last Meeting</p> <p>The SAB noted the update on actions from the last meeting as</p>	<p>Annex B</p>

	detailed in Annex B.	
4	<p>Matters Arising from the Minutes</p>	
4.1	<p><i>An update on the progress of the implementation of the new appraisal system</i></p> <p>The SAB received an oral update on the implementation of the new appraisal system and noted that the appraisal system was working well and appeared to be embedded. No further feedback regarding the appraisal system had been received whether positive or negative.</p> <p>The BTAS Registrar advised the SAB that BTAS would ensure that all existing panellists eligible for another term of office would be required to have undergone appraisal before being regarded as eligible for reappointment.</p> <p>Although the SAB noted that some of the initial feedback concerning the appraisal system had not been entirely positive, following revisions to the framework, the initial concerns appeared to have been largely resolved.</p> <p>The SAB noted that of the 12 panel members who had been granted a six month extension in early 2016 by the Tribunal Appointments Body in order to undergo appraisal, 10 members had completed this requirement and had been reappointed. This left 2 members who had not been able to make themselves available for appraisal and had subsequently not been reappointed. A letter of thanks for their efforts as a Panel Member would be sent to them in the normal way.</p> <p style="text-align: right;">Action 1: AR</p>	
4.2	<p><i>BTAS Service Agreement</i></p> <p>The SAB received an oral update from the Registrar regarding the renewal of the BTAS Service Agreement with the Bar Standards Board which it has been agreed will be extended for a further three years. It was noted that the BTAS Registrar and the BSB Corporate Support and Contract Manager had met to discuss and finalise minor revisions to the agreement.</p> <p>The Registrar highlighted two particular points to the Board:</p> <ul style="list-style-type: none"> (i) A modification to the quarterly KPI reporting deadline to ensure that only one set of KPIs was produced each quarter, for both the SAB and the BSB. (ii) The decision to bring CPD-related proceedings in-house at the BSB had led to a significant reduction in the volume of cases brought before BTAS Tribunals. With this reduction in the footprint of facility usage, BTAS was anxious to maximise use of any vacant rooms by allowing COIC and its 	

	<p>sister organisation, the Inns of Court College of Advocacy, to make full use of them rather than booking (and paying) for space elsewhere. Under the current KPIs agreed with the BSB, any lack of availability for a date for a Tribunal due to other room usage would reflect negatively on BTAS' 'performance'. The SAB noted that BTAS was seeking an amendment to the KPIs (but not to the Service Agreement itself) to address this. BTAS recognised that Tribunals and other hearings must always be 'priority' bookings, but this had to be balanced with the fact that the Tribunal Suite currently stood empty 60% of the time 'in case' a Tribunal might need to be held.</p> <p>The SAB were pleased with the positive outcome of these meetings and the renewal of the contract.</p>	
5	<p>Key Performance Indicators</p> <p>The SAB received the latest KPI data and the accompanying Executive Summary, and agreed that this provided reassuring evidence that BTAS continued to perform satisfactorily in all areas.</p> <p>The SAB noted that due to an administrative oversight, one recent tribunal had not been recorded - all parties had been immediately informed as per the Service Agreement.</p> <p>The ICC Administrator was thanked in relation to the improvement in the completion rate of cases after a small dip in the rate during the first quarter of 2016.</p>	Annexes Ci and Cii
6	<p>Key Developments in Legal Services Regulation</p> <p>6.1 <i>Presentation from the Director General of the BSB</i></p> <p>In the absence of the Director General of the BSB, it had been agreed that the Director of the Council of the Inns of Court (COIC) would speak to this item and members of the SAB would be asked to reflect on the possible implications of the proposals made by the LSB in their recently published vision statement. The statement contains six proposals for reform.</p> <p>The first proposal concerned reducing the regulatory objectives from six to one. It was noted that no reference to 'justice' was made in this proposed overarching objective. It was possible that, as a result, the legal system could be viewed to be primarily a consumerist activity as opposed to also being a part of the constitutional system. The SAB did not consider the appropriateness of this perspective, instead considering what implications this view might have.</p> <p>The second of these six proposals concerned the scope of legal services regulation –that regulation is primarily risk based and</p>	

designed to protect the most vulnerable clients, witnesses and consumers. The SAB felt this might not involve such a major change from the approach currently taken.

The third proposal concerned the refocus of regulation away from title to activity and the potential implications of such a change were judged to be much greater. One of the outcomes from this objective could be the decoupling of regulatory matters from the title 'Barrister' so that the title no longer reflected a person's rights of audience. Instead those who have completed the prescribed process to qualify for rights of audience may be a Solicitor or a Barrister or something else. A 'ban' on titles was one possible, though unlikely, reading of this regulatory objective. It was thought more likely that titles might instead become signifiers of quality. The SAB considered what this might mean for the Inns and the Director of the COIC thought it very likely that the Inns would still seek to discipline its members.

The fourth proposal concerned independence of regulation. It was noted that the Bar Council and the Law Society had both created regulatory arms following the Clementi review. Many were of the view that the task of completely separating the regulatory and representative functions had not been completed; this is what the LSB proposed. SAB noted that the BSB and SRA were both in favour of complete separation; that the Law Society were in favour though perhaps meant something different by 'independence' and that the Bar Council were opposed to it. The SAB considered the reasoning behind this opposition and noted that under a proposed split, the practising certificate fee might no longer be available to fund the Bar Council's activities.

The fifth proposal was to raise the prominence of the consumer voice. This was unlikely to be objectionable though it was noted that legal services are not pure consumer contracts. Duty to the client is balanced with duty to the court and the rule of law.

The final proposal is for a single legal services regulator. The SAB also considered the implication of this proposal to be significant. It was noted that under this proposal the LSB was likely to subsume the other legal services regulators of which there are a considerable number. The SAB noted that the BSB was not in favour of this proposal and considered that advocacy represents a very small proportion of all legal activity and the nuances of this activity might be lost under a single regulator.

The SAB noted that the most obvious implications of this proposal might include a common code of conduct for the legal professions including common training and common disciplinary regulations. The logical conclusion of this proposal might be a single tribunal service.

The SAB considered all of the above, noting that the regulatory framework might appear to be simpler for the consumer under a

6.2	<p>single regulator. This view was tempered by a degree of concern that the constitutional role of the Bar may not have been fully considered in such a vision. The SAB concluded that in terms of an impact assessment for BTAS it would be useful to consider how far these proposals might be taken forward under current legislation; it had been acknowledged that these proposals would require primary legislation for which there is limited capacity in the current political landscape and that it was likely that these objectives would be pushed only so far as the current legislation permitted.</p> <p><i>New Inns' Conduct Committee Rules</i></p> <p>The SAB received an oral update on the potential interim approval of limited provisions within the new ICC rules, and noted that the BSB had been in contact with BTAS to request a version of the new rules that removed the provisions which had apparently been contentious when they were considered by the Legal Service Board. Specifically this referred to the provisions concerning public/private hearings, and those introducing a standard and burden of proof into use with the ICC.</p> <p>The SAB noted with approval that this seemingly meant that the provision concerning the use of the members of the Disciplinary Tribunal Pool to sit on ICC hearings could be progressed, once confirmation to this effect was received from the BSB.</p> <p>The SAB thanked the Chair of the ICC for the time and effort she continued to give to this and related matters, and were delighted to hear that her position as Chair had been extended for a further period.</p>	
7	<p>Disciplinary Pool Member Recruitment</p> <p>The SAB received an oral update on the progress of the Pool Member recruitment noting that the shortlisting of candidates had been completed over the summer and that, following moderation checks, interviews were now underway.</p> <p>The Registrar informed the SAB that members of the Tribunal Appointments Body would be conducting interviews throughout October, with a total of nearly 70 required. The SAB discussed the demands and considerable person-hours required to conduct so many interviews and considered that alternative methods may be considered for recruitment in the future once conclusions and feedback had been drawn from the current round.</p> <p style="text-align: right;">Action 2: AR</p>	
8	<p>Sentencing Guidance Review</p> <p>The SAB considered the review concerning the level of sanctions imposed by Tribunal Panels. The review had been separated into four</p>	Annexes Di-Dv

<p>8.1</p> <p>8.2</p>	<p>streams of research:</p> <ol style="list-style-type: none"> 1. A review of BTAS tribunal sentences 2014-2015; 2. a review of the published findings of other regulators 2014-2016; 3. a review of the sentencing guidance of other regulators 2014-2016; and, 4. a review of BTAS Tribunal appeal outcomes 2014-2016. <p>For a full summary of the findings please refer to Annexes Di-Dv. Broadly speaking, the main findings were as follows:</p> <p><i>BTAS Sentencing 2014-2015</i></p> <p>145 charges of professional misconduct were found against barristers between 01 January 2014 and 31 December 2015.</p> <p>There is a significant lack of published information which is publicly available and explains how the sentence is derived.</p> <p>There is a trend towards the submission of charges which no longer fit cleanly within the categories of the sentencing guidance. As such the categories of charges will need to be amended reflect the full range of cases currently being heard by the tribunal service. Action 3: FL</p> <p>There is a tendency to sentence above the level of severity of the indicated sanctions and these particular cases may need to reviewed to consider why the panel has deviated from the published guidance</p> <p>Sentencing, and indeed the disciplinary process, is complicated by cases with increasing numbers of similar or identical charges and the SAB agreed that there was a need for the sentencing guidance to more accurately guide Panels when considering how multiple charges may aggravate one another. Action 4: FL</p> <p>Simple revisions are required to the guidance concerning public access work to make the guidance more clear and comprehensible as well as consistent with the rest of the document. Action 5: FL</p> <p>Changes to the format for judgements will help to clarify the sentencing and identify which sentences relate to particular charges. Action 6: FL</p> <p><i>Published Findings of Other Regulators</i></p> <p>The volume of tribunals held by other regulators (for example the Solicitor’s Disciplinary Tribunal or the Medical Practitioner’s Tribunal Service) is much greater than the volume of cases handled by BTAS.</p> <p>For this reason, the examples selected from the data were assumed to be indicative of their sentencing practise but should not be</p>	
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	<p>presumed to be statistically valid due to the volume of cases. Additionally, data was selected to show comparable offences e.g. Drink Driving. This was due to the differences present in the nature of the professions which were reviewed.</p> <p>The SAB was hesitant to draw direct comparisons between professions due to possible differing priorities (for example dishonesty, whilst cardinal to the bar may carry a lesser tariff with other regulators).</p> <p>However, this notwithstanding, BTAS sentences did not appear to be out of step with those of other regulators.</p> <p>8.3 <i>Other Regulators' Sentencing Guidance</i></p> <p>The published sentencing guidance of a number of other regulators had been reviewed and the primary finding was that other regulators guidance did not directly relate one particular category of charge to a list of indicative sanctions, but instead worked from a reverse approach of listing possible sanctions and providing an accompanying list of example offences.</p> <p>It was not suggested that BTAS emulate this approach since this ordering may be harder for panellists, who sit intermittently on tribunals, to follow and lead to a reduction in the transparency of the disciplinary process.</p> <p>8.4 <i>BTAS Appeals</i></p> <p>There were an insufficient number of appeals which had been completed for this period to draw any meaningful or statistically relevant conclusions.</p> <p>Whilst no appeals had been upheld in favour of the defendant, the Chair of the Tribunal Service cautioned against confidence in this fact and advised the SAB that in other jurisdictions, a small number of appeals upheld in favour of the defendant was regarded by some as a positive sign that the right balance was being struck between leniency and harshness.</p> <p>8.5 <i>Conclusions</i></p> <p>Overall, the current sentencing guidance was judged to be a well-structured document which was fit for purpose but required small-scale revisions as detailed above in order to bring it up to date.</p> <p>Beyond the discussions outlined in the annexes the SAB also discussed the potential for reconsidering the range of sanctions to consider ways in which the sentences might become supportive as opposed to merely punitive for example the ordering of medical reports or referral to Support Services associated with alcohol abuse.</p>	
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9	Dates of Future Meetings <ul style="list-style-type: none">- 14th December 2016 – 2pm.- To be arranged <p style="text-align: right;">Action 7: FL</p>	