

## **Regulatory Decision-making**

### **Annual Report 2020/21**

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Regulatory Operations Department  
Legal & Enforcement Department

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## Executive Summary

1. This is the second Regulatory Decision-Making report we have published since we reformed the way regulatory decisions are taken in October 2019. It covers the period April 2020 to March 2021. We take decisions across a range of our regulatory functions. For example, we decide on applications for waivers or exemptions from our practising requirements, we assess reports about barristers' conduct and decide whether they give rise to issues requiring further investigation and we take decisions on where the evidence suggests we should focus our supervision efforts. This report covers how we have performed in these areas, what we have learnt and touches on areas of focus for the coming year.
2. We now have a full year of statistical data, and this report includes information on performance against key performance indicators (KPIs) in the sections covering the work of the Contact and Assessment (CAT), Authorisations, and Investigations & Enforcement (I&E) teams.
3. The report covers the period where the impact of COVID-19 was felt at its greatest. Like all other organisations, the BSB switched to remote working in March 2020 and continued to operate in this way for the period of this report. The pandemic has had an inevitable impact upon performance, and this has coincided with a substantial increase in reports (up 54% on 2019/20) about the conduct of barristers as well as an uptick in the number of applications to our Authorisations Team for exemptions and waivers from our practising requirements (up 16% on 2019/20). Our performance against KPIs has suffered as a result and we have fallen short in meeting those standards in all areas of our work.
4. Alongside our casework performance, we have worked hard to understand the impact of the pandemic on the profession and to provide support where possible. We have focussed particularly on pupillage and in supporting Chambers to continue to offer pupillage during the pandemic. It has been encouraging to see the lengths that many Chambers have gone to meet their commitments to their pupils. Similarly, it is pleasing to see that the profession has taken positive steps to support the wellbeing of barristers over the last 12 months. The Bar, like most other professions, has faced challenges during the pandemic and it is hugely encouraging to see the many initiatives introduced to provide support and comfort to barristers should they need it.
5. Improving the way in which we handle incoming information about practice at the Bar enables us be more effective in how we target our regulatory interventions in the areas presenting the highest risks. We have for example strengthened our focus on addressing bullying and harassment at the Bar, which remains a key area of concern for the BSB. In this work, our

Supervision Team has placed particular emphasis on understanding the culture of Chambers and the impact that can have on the experiences of barristers. Culture goes beyond policies and procedures and gets to the heart of what Chambers is like as a place to work; improving culture can therefore have an immediate and significant effect. We will continue this work over the coming 12 months as we seek to develop a more proactive approach to the supervision of Chambers.

6. The report also includes a section on the work of our Independent Reviewer, who acts as both an independent review route for decisions taken by the executive on conduct and authorisation matters and as an auditor of the quality of our regulatory decision making. In this section, the Independent Reviewer notes the impact of COVID on the timeliness of assessing reports and handling applications but reports that the quality of decision making remaining high.

## Context

### The impact of COVID-19

7. This report covers the period between April 2020 and March 2021. Inevitably, the COVID-19 pandemic has had an impact not only our regulatory decision-making functions but also on the working lives of the regulated community.

#### *Impact on the BSB's regulatory decision-making activities*

8. As an organisation the BSB was well-placed to deal effectively with the move to remote working required by the pandemic because its staff had been working flexibly since 2016. We were therefore able to make the transition to working from home relatively smoothly. We were also able to transfer the Independent Decision-Making Body's meetings online. The Investigations and Hearings Team worked effectively with the Bar Tribunals and Adjudications Service (BTAS) to conduct remote and hybrid hearings.
9. COVID-19 brought unexpected challenges that inevitably impacted upon the performance of our decision-making functions. Many of our people have children or other caring responsibilities and had to balance those commitments with working. Sickness absence increased. Decision-making resource was drawn into managing the impact of COVID-19 on those we regulate (see below), and this impacted on our resilience and ability to move resource around to manage peaks in activity. At the same time, the number of reports to our Contact and Assessment Team and the applications received

by our Authorisations Team increased (by 29% and 7% respectively). Whilst our ability to meet our published KPIs has been compromised, we have been able to maintain a reasonable level of throughout in casework and the quality of our regulatory decision-making has remained high. Velia Soames, our Independent Reviewer, reports on her experience of the last 12 months at paragraphs 93-102 of this report. But we cannot be complacent and in the coming 12 months we will review our regulatory decision-making processes and procedures to ensure that they are as efficient as possible and remain fit for purpose. We have also recognised that our staffing levels do not provide sufficient resilience to weather peaks in work and turnover in staff without undue impact on performance levels and consideration is being given to strengthening our resilience.

### ***Impact on those we regulate***

10. Much of the focus of Supervision in this period was on the BSB's response to COVID-19, particularly in the area of education and training. Supervision worked closely with the Authorisations, Exams and Policy teams to ensure that training and assessments continued to be delivered and that standards were maintained. We also surveyed 350 chambers, BSB entities and sole practitioners to assess the impact on the profession.

### **Vocational training**

11. In the light of Government restrictions imposed in response to the global pandemic and the subsequent closure of universities, we took the decision to take on responsibility for the delivery of the BSB centralised assessments (civil and criminal litigation and professional ethics) in August 2020. We did so to enable as many students as possible to complete the Bar course and continue with their careers. Regrettably, these assessments did not go as we had planned and a significant minority were unable to complete their exams satisfactorily. We are sorry for the inconvenience and distress that this caused. We commissioned an independent review into our handling of the August exams. The review report and our subsequent action plan can be found [here](#).
12. Authorised Education and Training Organisations (AETOs) have faced the combined challenges of continuing to deliver high quality Bar training courses with their responsibility of looking after staff and students' wellbeing in an unprecedented year of a global pandemic. Towards the end of the academic year, in spring 2020 as lockdown commenced, AETOs had to think fast about how to maintain the continuity and quality of teaching, learning and assessment, and how to move to the delivery of online teaching and

assessment. This coincided with a year of transition, as AETOs began to deliver new courses alongside the run-off of the old BPTC assessments.

13. We maintained close contact with the AETOs throughout the year and continue to do so. Our focus has therefore been:

- Approving alternative assessments proposed by the vocational AETOs in place of the scheduled assessments.
- Responding to concerns reported by vocational component students about their training experience and liaising with relevant AETOs to ensure that we were satisfied with their response. Where relevant, we monitored actions to address issues.
- Reviewing the risk to the financial sustainability of AETOs. All institutions remain committed to Bar training and registrations remained buoyant overall. Some have reviewed their offer for 2021/22, in the light of delivering the new courses for the first time and assessing the demand. The current list of available courses can be found on our [website](#).
- Reviewing lessons learned, such as how communication with students has worked during this time. AETOs certainly rose to the enormous challenges and were able to deliver courses online in their entirety, which was not something they ever anticipated. Rapid and evolving learning was experienced by staff in terms of adapting their teaching practice and making best use of technology to engage appropriately with students. However, there was also feedback suggesting a preference for in-person teaching. A variety of methods were used to support student wellbeing. AETOs are considering their experience this year and whether or how that might change how training is delivered in future. Some also recognise that they need to prepare their students for new ways of working in the profession, and are including training in remote advocacy and negotiation skills.

## Pupillage

14. From the start of lockdown, we engaged extensively with Authorised Education and Training Organisations (AETOs) and published a series of FAQs for pupils and AETOs to encourage them to continue to deliver training and complete pupillages in progress. All pupillages that had already started when lockdown began in March were able to proceed, with many AETOs overcoming considerable challenges.

15. As the year progressed, it became clear that the impact of disruption to the vocational exams had the potential to hold back those students who had already secured pupillages in 2020. We therefore provided a waiver and encouraged AETOs to allow pupils to commence pupillage pending the results of their exams, subject to a risk assessment conducted by the AETOs together with their pupils. This enabled 95 people to progress to pupillage.
16. We published two reports on the impact of the pandemic on pupillage in [September 2020](#) and [February 2021](#). In February we reported that there were 386 pupillages registered with the BSB in 2020. This compares with 592 pupillages registered in 2019 - a fall of 35%. Including later registrations of pupils, the fall in pupillage decreased to around 21% compared with 2019. Nevertheless, the impact of the pandemic on the profession looks set to affect pupillage numbers in 2021, although recruitment levels are picking up again. We continue to monitor the impact and recently met with the Bar Council, the Inns, and the Criminal and Family Bar Associations to discuss pressures on pupillage numbers and how we might respond. In particular, we have initiated discussions about the viability of the apprenticeship route to qualification, which we have already included as an approved pathway in our [Authorisation Framework](#) and in which some AETOs have already expressed an interest.

## **Chambers, entities, and sole practitioners**

17. We issued Regulatory Returns to around 350 chambers, BSB entities and sole practitioners in September 2020. The first tranche of responses addressed the impact of COVID-19 and how this might affect the future.
18. It was clear that many Management Committees were engaged in frequent and regular meetings to oversee and manage finances and cash flow, which came under severe pressure. In their responses, people talked about what they had learnt from this experience and embedding good practice developed during this period.
19. The experience of 2020 has accelerated and magnified changes that were already underway. There is widespread anticipation of a move to more remote working in future, even when the restrictions are lifted. This means that:
  - Barristers must be appropriately skilled and trained, both in office technology and the effective conduct of remote hearings. This mirrors the reflections reported by the vocational Authorised Education and Training Organisations, and it is an area that we will consider as part of our Assuring Competence projects in relation to the early years of practice and Continuing Professional Development.

- Linked to this, a number reflected on the threats to the benefits of the chambers model arising from more remote working, particularly, but not exclusively, to junior barristers and pupils.
  - Most chambers talked about investment (made or planned) in technology to meet the needs of remote working, including remote hearings. The strength of information security controls is an area that we are reviewing as part of the full Regulatory Return this year.
  - Noticeably, many said that marketing efforts are moving towards digital marketing and social media, given the limited opportunities for in-person marketing activity. Use of social media is an area of focus as part of our review of conduct outside professional life.
20. We also asked how chambers and entities identified and addressed the impact of COVID-19 on people. There were some very strong responses to this question. A lot of chambers have introduced wellbeing policies, many of which were already in place before the pandemic. Many have appointed specific roles such as dedicated wellbeing officers. The responses provide a strong indication that the progress made by the Bar in this area is having a positive impact in the areas of both inclusion and wellbeing.
21. The varying impact that the pandemic has had is illustrated in the following examples, which were sometimes occurring within the same chambers:
- Whilst some were struggling emotionally and financially with the sudden loss of instructions, staff in chambers suddenly came under immense pressure because so many cases had to be rearranged.
  - Whilst some experienced a prolonged period with very little work, others quickly found themselves with more work than usual and at risk of being overwhelmed.
  - Whilst some found that the move to working remotely improved their work-life balance and helped them to manage caring responsibilities, others struggled mentally with the social isolation.
22. The range of measures put in place included:
- Setting the “tone from the top” about diversity;
  - Conducting surveys and other mechanisms to identify individual need;
  - Active application of flexible working policies;
  - Monitoring fair allocation of work more intensively;



- Financial support measures, such as switching to a percentage chambers fee model and allocation of designated hardship funds;
- Extra marketing support for those most affected by loss of work;
- Mentoring schemes for junior barristers and pupils;
- Support for those who found it difficult to work from home;
- Working closely with the courts and judges on behalf of barristers unable to leave home;
- Extra support in using new technology; and
- Access to mental health support.

23. We will continue to work closely with the profession, Bar Training Providers, the Bar Council, and others to monitor the impact of COVID-19 and to provide support where possible.

## Regulatory Performance & Statistics

24. This section provides an analysis of our regulatory casework. It covers the work of:

- The Authorisation Team
- The Contact and Assessment Team
- The Investigations and Enforcement Team
- The Independent Reviewer – Quality Assurance
- The Supervision Team

### Authorisation Team

#### *Performance against KPI*

25. The Authorisations Team is responsible for authorising organisations as Authorised Education and Training Organisations (AETOs) as well as for authorising Alternative Business Structures and BSB Entities. In addition, the Team assesses applications from individuals for exemptions and waivers from requirements of Bar Training and manages the administration of the pupillage registration and completion processes, which includes the issue of provisional practising certificates (PPCs) and letters confirming full qualification. The Team responds to a significant number of enquiries received by telephone and email regarding its various functions, including requests for advice on the components of Bar training and the progress of individual waiver and exemption applications.

26. The team has launched a [Service Update Page](#) as a single point of guidance for stakeholders and to assist in anticipating likely queries. The impact of this approach will be reported on in the next Annual Report.

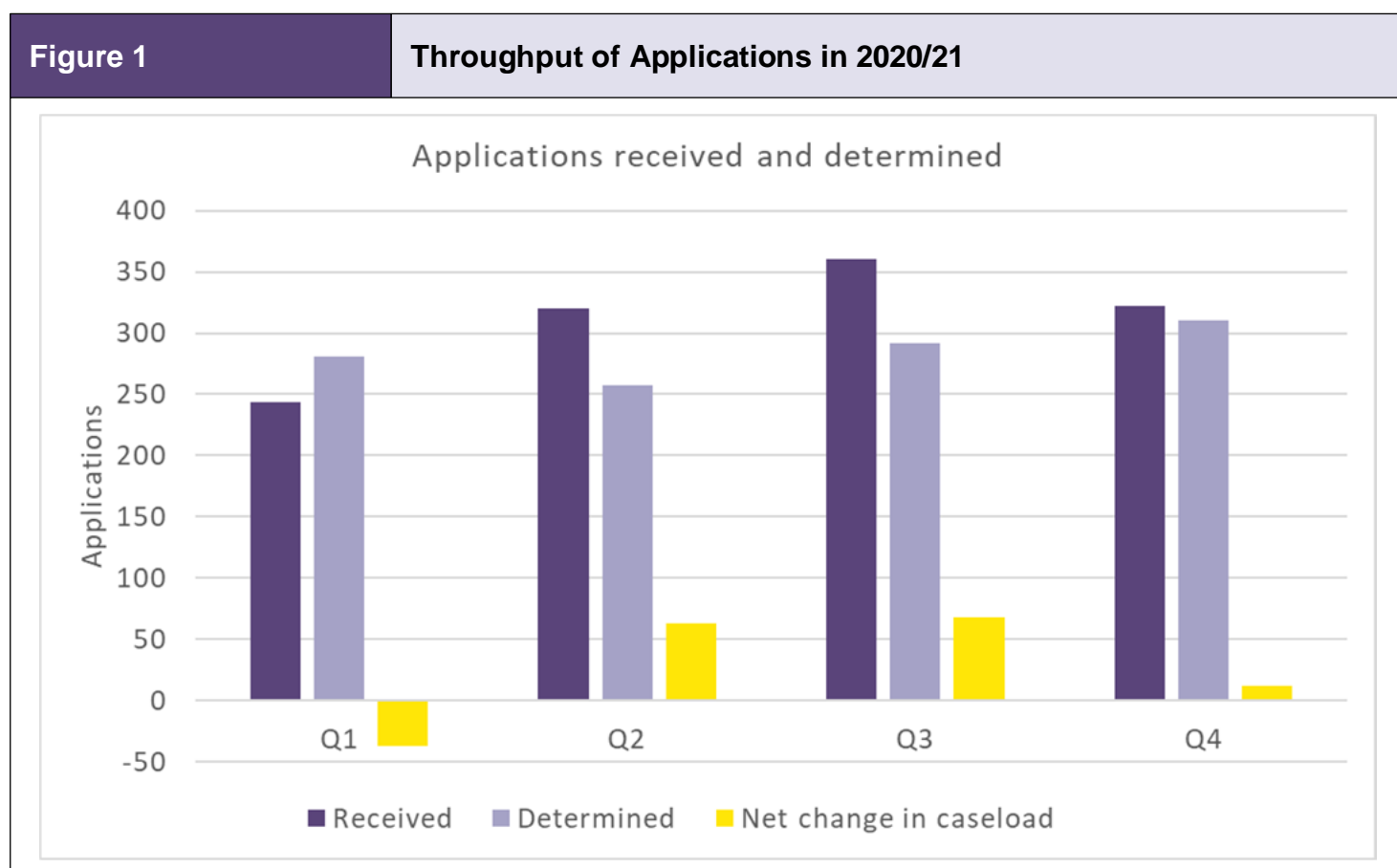
#### *Authorisation casework*

27. During the reporting period the team processed a total of 1140 applications with 59% falling within published KPIs.

28. Whilst performance has fallen below our expected service standards, productivity has remained high. This has been in the face of a rise in the number of cases coupled with the impact of COVID on our available resources. The team has worked hard to prioritise cases and to remain as productive as possible in the face of a challenging 12 months.

29. Table 1 reflects the team's prioritisation of older applications during the reporting period.

Table 1	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2020/21
<b>Authorisation, exemptions and waivers</b>					
Applications determined within six weeks of receipt of the complete application <b>(Target 75%)</b>	20.6%	35.4%	31.5%	19.0%	26.3%
Applications determined within eight weeks of receipt of the complete application <b>(Target 80%)</b>	30.2%	47.9%	48.6%	27.7%	38.2%
Applications determined within twelve weeks of receipt of the complete application <b>(Target 98%)</b>	49.1%	73.9%	67.1%	48.1%	59.0%
<b>Entity (including ABS) Authorisation</b>					
Authorisation decisions made within six months of receipt of the application and associated fee <b>(Target 90%)</b>	100.0%	50.0%	100.0%	100.0%	94.4%
Authorisation decisions made within nine months of receipt of the application and associated fee <b>(Target 100%)</b>	100.0%	100.0%	100.0%	100.0%	100.0%



## **Types of applications from April 2020 to March 2021**

30. The most common applications are:

- Admission to the Bar for Qualified Foreign Lawyers (145)
- Certificate of Academic Standing (131)
- Authorisation to conduct litigation (98)
- Admission to the Bar for Solicitors (94)
- Extensions of Time to complete the Bar Transfer Test (88)

## **General Enquiries**

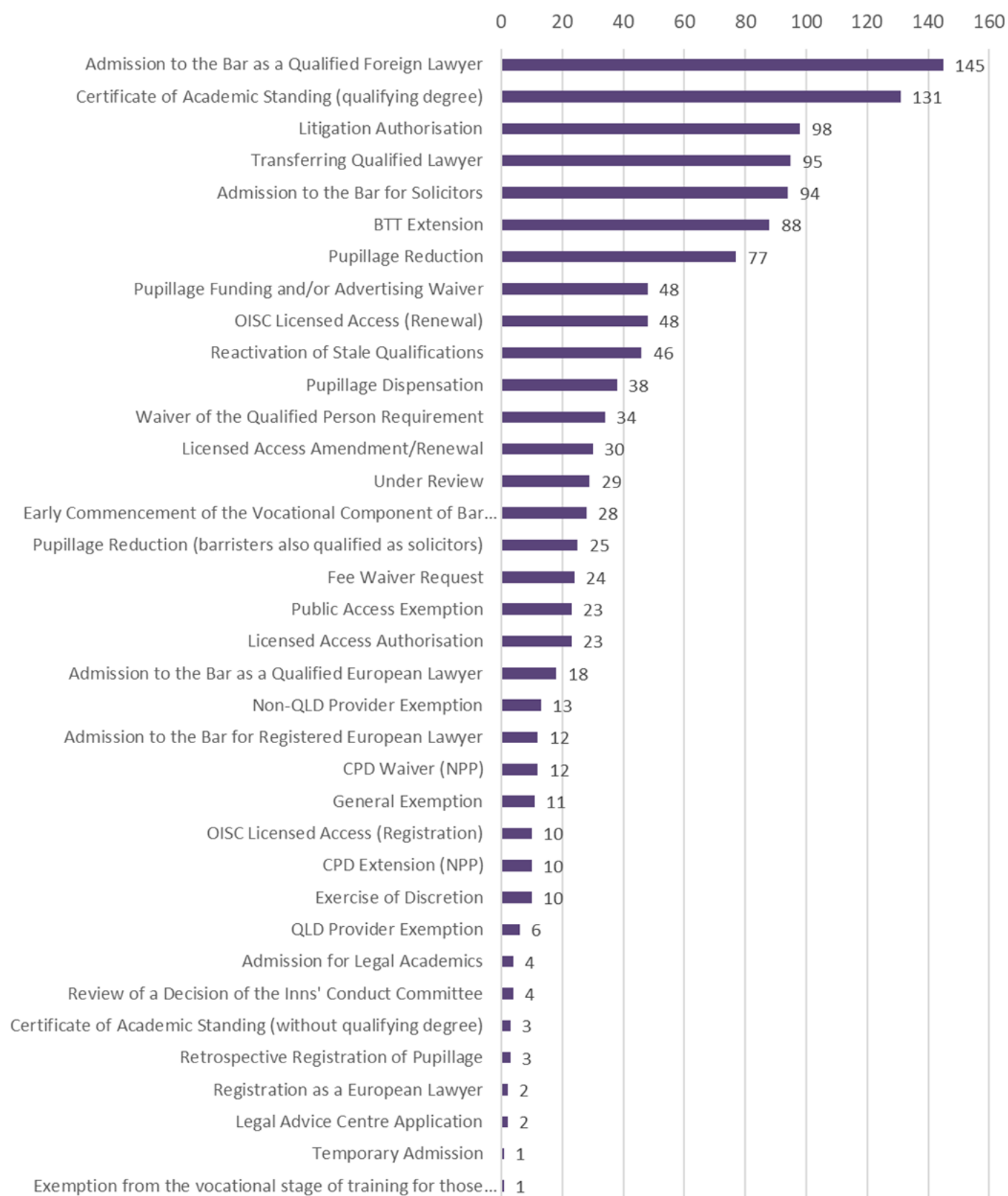
31. The team responded to 1,738 phone calls between August 2020 (when recording call statistics began) to March 2021 and 17,244 email enquiries during the entire reporting period.

## **Transferring Qualified Lawyers (TQLs)**

32. Since the full implementation of Brexit, the service has seen an increase in both enquiries and applications from Transferring Qualified Lawyers (TQLs) which, at the time of this report, appears to be continuing based on the overall increase in email enquiries and the number of applications received post Brexit – further analysis of that trend will be undertaken for the next report.
33. The Authorisations Team has implemented changes to the arrangements for TQLs (the Bar Transfer Test) to align requirements more closely with the changes to Bar training which were implemented in 2020. Decision-making for TQLs wishing to transfer to the Bar of England and Wales now explicitly references the Professional Statement and where individuals are required to take assessments, the assessments are aligned with Bar training, which ensures consistency of standards whichever route a barrister takes to qualify. There is also more flexibility in the transfer system as a TQL can now have unlimited attempts at any required assessment(s) within a five-year period without needing to apply for a new authorisation decision after two years, as was the case previously. The first opportunity for TQLs to be assessed under these new arrangements will be August 2021, and the impact of the new arrangements will be considered in the next reporting period.

**Figure 2**

**Types of applications received in 2020/21**



## COVID-19

34. The work of the Authorisations team, in common with other teams at the BSB, was impacted by the pandemic. The Team worked closely with Exams and Supervision to anticipate the difficulties that students, pupils, applicants for waivers and exemptions and training organisations might have, and to put in place appropriate information, support, or alternative arrangements where appropriate. In particular we waived fees for Transferring Qualified Lawyers needing to extend their period of authorisation because they had not been able to take required assessments, and we put in place temporary arrangements to waive the requirement to have completed Bar training before commencing pupillage, so that those awaiting results of delayed exams would not be disadvantaged.
35. The knock-on effects of the pandemic on all components of Bar training meant that the usual cyclical peaks and troughs of work for the Team were disrupted. In particular, pupillage delays and deferrals meant that instead of the usual peak of activity occurring in August and September it was seen in October and November.

### *Authorisation of Authorised Education and Training Providers (AETOs)*

#### **Vocational AETOs**

36. After the intensive period of authorisation activity in the previous review period in the run up to the launch of the new Bar training courses in 2020, one further existing provider of Bar training was authorised in July 2020 as an AETO. No new AETOs have come forward for authorisation in the period under review in this report.
37. When it became clear that it was unlikely that students would be able to take assessments under normal conditions on campus in 2021, the Exams and Authorisations teams worked to develop a set of parameters against which applications from AETOs to deliver computer-based exams could be assessed. These parameters were designed to ensure that the exams remained as accessible as possible for candidates whilst ensuring that the integrity of the assessments were maintained. AETOs submitted proposals for delivery of the exams in line with these parameters. In doing so, AETOs were required to provide their equality and data protection analysis. It was encouraging to see the positive steps taken by AETOs to provide flexible means of assessment and which enabled exams to continue largely as planned. We will continue to work closely with AETOs as we move out of the restrictions arising from the pandemic to ensure that students are able to complete the Bar Course and continue with their careers.

## **Work based learning (pupillage) AETOs**

38. The Team is at present managing the transition of currently authorised Pupillage Training Organisations (PTOs) to become AETOs and aims to complete this process by 31 March 2022. The team received 118 applications from PTOs seeking authorisation as AETOs between 1 April 2020 and 31 March 2021:

- 40 (34%) are in the early application stages and not yet fully completed by the applicant;
- 56 (47%) have been assigned to a member of the Team and are pending assessment;
- 12 (10%) have been authorised;
- 4 (3%) applications have outstanding information requests open to them;
- 1 (1%) PTO has withdrawn from the process; and
- 5 (4%) PTOs have yet to respond, and these will be contacted separately to establish if they wish to offer pupillage after 31 March 2022 or need any support with their application.

39. Interest from solicitors' firms and BSB entities to deliver work-based learning has continued. Up to date information for [AETO transitional arrangements](#) are on our website.

## ***Entities and Alternative Business Structures***

40. At the end of this reporting period there were 135 BSB authorised entities including Alternative Business Structures. The chambers model of governance for self-employed barristers remains the leading approach and there is limited demand for more varied forms of structure. Fourteen new entities were authorised in 2020/21.

41. We remain keen to hear from anyone who would like to set up an entity and we are willing to discuss informally novel or innovative proposals before any authorisation application is made.

## Contact and Assessment Team (CAT)

42. This was the first full year following the change to the regulatory arrangements in October 2019. The year saw a substantial increase in both the volume and complexity of the reports into the team. This has coincided with a reduction in capacity in the light of COVID with a number of the team having caring responsibilities to manage alongside their work commitments. This has had an inevitable impact upon performance against our service standards. Productivity has however remained high as has the quality of our decision making (see section of the report on the Independent Reviewer and her analysis of decision making). The team is to be commended for their hard work over the last 12 months in the face of extremely challenging circumstances. We have added additional resource to the team in the light of the increase in reports. We do not anticipate a reduction in the number of reports in the future and are committed therefore to ensuring that the team is adequately resourced to both meet KPIs and maintain the quality of our decision making.

### Performance against KPI

#### General Enquiries

43. CAT met the first KPI for general enquiries in that the percentage of substantive responses to general enquiries that can be addressed by CAT were provided in 5 working days. The KPI is 80% and CAT achieved 80.4%.

Table 2	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2020/21
<b>General Enquiries</b>					
General enquiries addressed within 5 days <b>(Target 80%)</b>	90.4%	81.3%	72.9%	74.8%	80.4%
General enquiries referred within 3 days <b>(Target 80%)</b>	68.4%	60.8%	56.1%	66.7%	63.6%
<b>Initial Assessment</b>					
Concluded or referred within 8 weeks <b>(Target 80%)</b>	79.7%	76.8%	70.2%	44.2%	60.4%
<b>Quality Indicators</b>					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review <b>(Target 95%)</b>	94.7%	100.0%	100.0%	100.0%	98.0%



44. For those enquiries that could not be answered by CAT, but rather forwarded to another team, the percentage which were so forwarded within two days was 63.6%. This fell short of the 80% KPI.

## **Initial Assessment**

45. CAT missed the KPI for assessment of reports. 60.4% of cases were assessed within 8 weeks of receipt. This is against a target of 80%. This reflects the significant increase in reports and queries received coupled with a reduced capacity in the team as a result of COVID.

## **Quality**

46. Regarding the quality of decision-making, CAT met the KPI for reviews. Across the year there were 100 requests for reviews. Only two decisions were not upheld. A further two were partially upheld. 96% were upheld. We are clear that we should not compromise the quality of our decision making in order to increase our chances of meeting our KPIs. We have a responsibility to ensure that all reports are given proper consideration and are assessed in line with our published processes.

## **Commentary**

47. Missing the KPI for referring general enquiries and the assessment of reports is attributable to the increased number of reports, queries, and calls. The number of matters (reports and enquiries) opened on our case management system saw a 54% increase on the previous year at 3303 matters. Of that total figure, there was a 105% increase in queries (1416 up from 690), reports 29% percent (1887 from 1460). The Team also received 6364 calls during the year.
48. Despite this, productivity of CAT increased with largely the same headcount (one additional member of staff was added in Q4) with total closures rising 21% (3032 up from 2503). However, this meant that there was a shortfall of 271 matters opened versus matters closed.
49. In response to monitoring throughout the year, CAT added additional resource to address an increase in caseload exceeding KPI .the size of the backlog of cases yet to be allocated for assessment. As noted above, an additional Assessment Assistant was added in March 2021. This freed resource at officer level to allow for increased capacity in assessing reports. As a result, Q4 saw a marked increase in productivity with 761 reports assessed (approx. 415 adjusted for two incidents that saw a high volume of reports).

50. It is difficult to be certain for the reasons behind the significant increase in reports. We think it is a combination of factors:

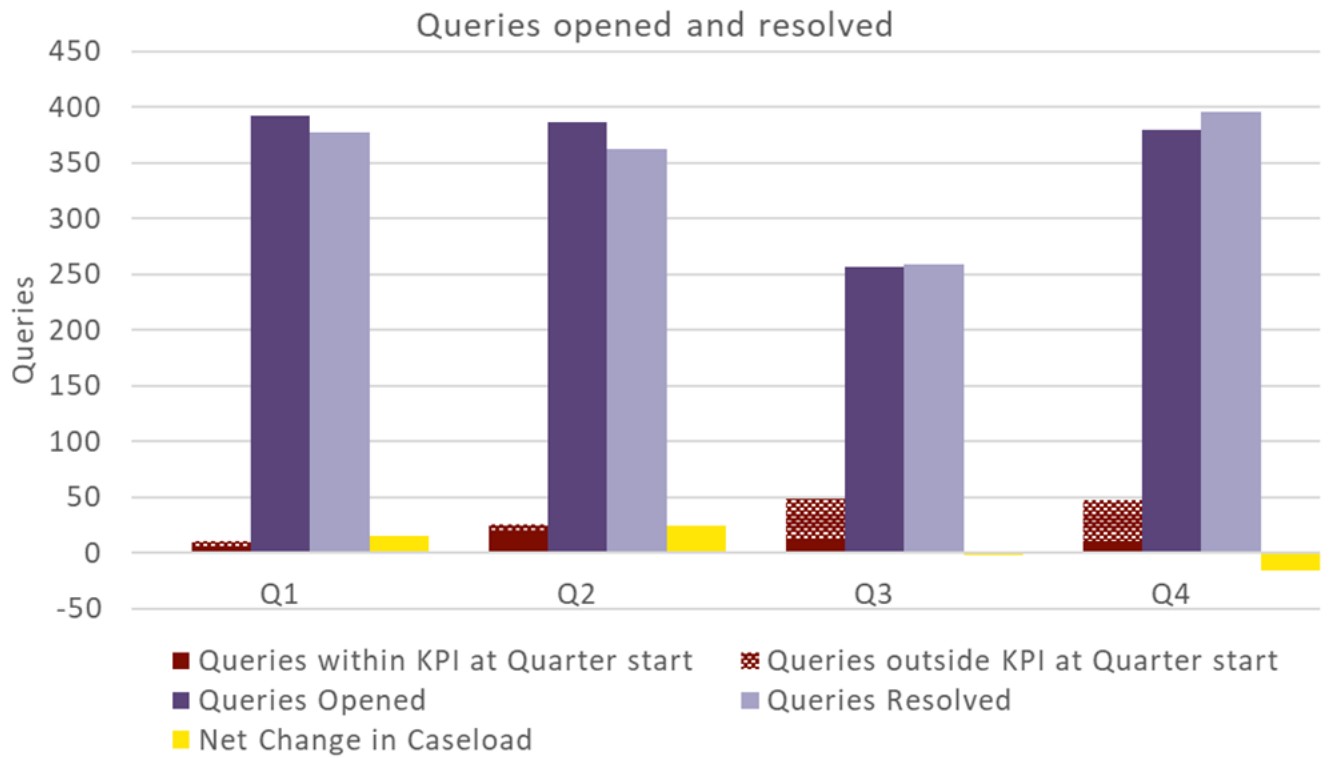
- We have improved the way in which reports can be made with the development of an online reporting form. We have also improved our communication about how to report concerns about a barrister;
- There has been an increase in multiple reports about the same conduct by a barrister; and
- Social media is more widely used by barristers, and this has led to an increase in reports about barristers' conduct on these platforms.

51. We are also seeing an increasing complexity in the reports raised. Reports are assessed across three main stages—screening, identification of issues, and risk assessment. Where, during those three stages, a case is closed, can be an indicator (but not completely indicative) of the case's complexity. Generally, cases that progress and are closed at identification of issues or the risk assessment stage will have higher complexity. In 2019/20, 28% of cases were concluded at the later stages of assessment. This year, that number rose to 30%.

52. We do not anticipate the volume of reports reducing over the next 12-24 months and are planning resources for this period on the basis of at least the same number of reports as were received in 2020/21. This volume, coupled with an increase in complexity, means that we must ensure that our approach to triaging reports when they are received is as streamlined as possible so that we can focus resource on those cases that give rise to the greatest risk. We need to ensure that those cases are referred for further investigation as quickly as possible. We will therefore be reviewing our initial assessment process. In doing so, it will be necessary to strike the balance between efficient handling of assessments and careful analysis of the issues raised. We will report any changes to our processes and their impact on performance next year.

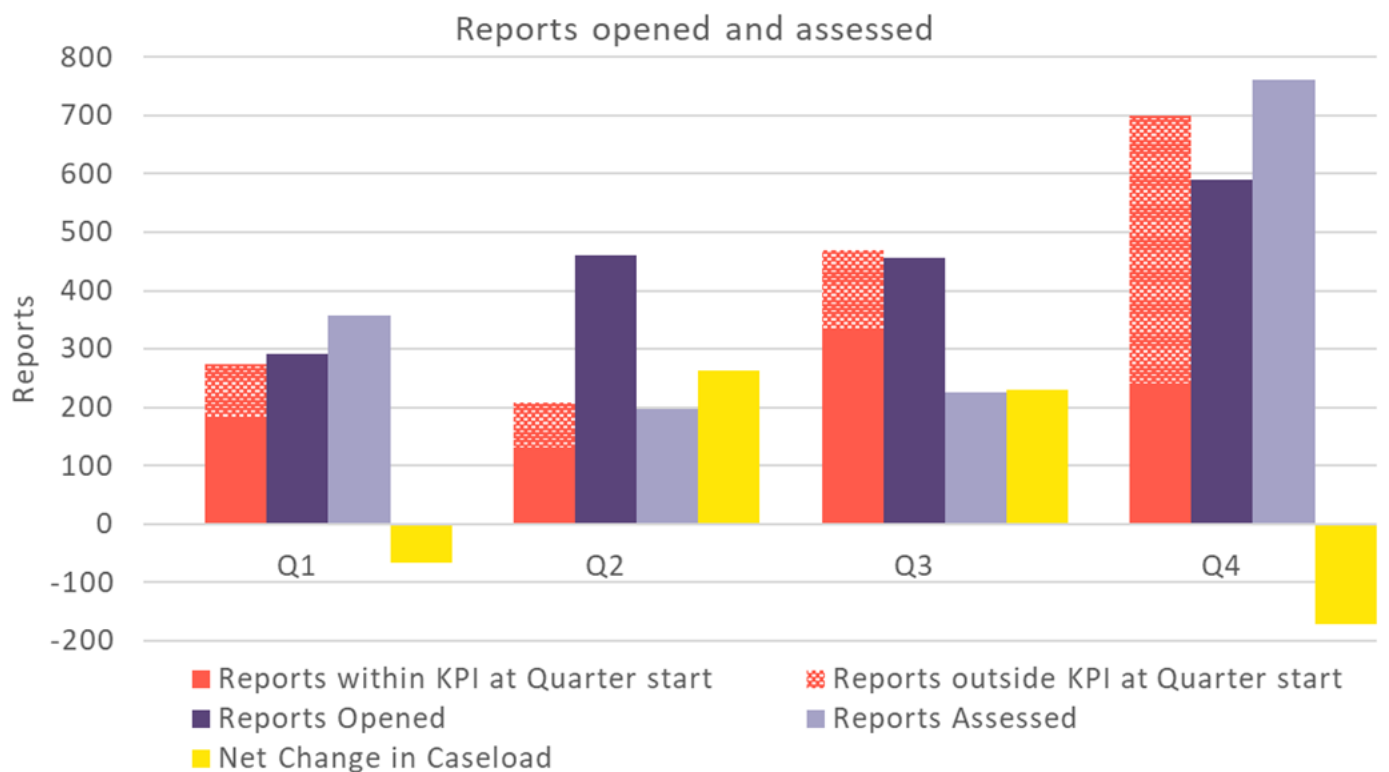
**Figure 3**

**Throughput of General Queries in 2020/21**



**Figure 4**

**Throughput of Reports in 2020/21**



## *Themes and trends*

### **Conduct outside professional life**

53. We continue to see a high volume of reports about barrister's conduct outside their professional life with 16.9% of cases assessed this year falling into that category. This is up from 7.9% in the previous year. This is not unique to the BSB and is common across regulators in other sectors. We believe that we need to look at our approach to handling these types of report so that we are clear about where our regulatory jurisdiction lies.
54. One facet of this relates to inappropriate content on social media. In this area we have seen dramatic increases in reports received. Over the past 5 years, there has been an increase from two distinct cases in 2016/17, to 49 in 2020/21.

### **Area of law**

55. The area of law with the largest percentage of reports was family law at 6.5% of reports assessed relating to this area. This was a small decrease from last year, when the percentage of reports assessed, under the new system, was 7.4%.
56. Crime was the second largest area of law this year with 2.9% of assessed cases arising from criminal proceedings. However, this was a drop from 2019/20 in which 5% of reports assessed arose from criminal proceedings.
57. The comparative changes may reflect the COVID-19 impact on courts with the family courts being able to change to remote hearings more readily. This is consistent with information from the Regulatory Returns that reported similar trends.

### **Other notable trends**

58. Of other notable trends, 2020/21 saw a percentage rise in reports about chambers, which increased to 2.6% from 1.0%. This was accompanied by an increase in allocation of reports to Supervision. It is too early to tell whether this is indicative of increased concern over chambers management or whether it reflects increased awareness of the expanded reporting regime brought in in 2019/20.

## Investigation and Enforcement Team

### General overview

59. The overall picture in relation to enforcement casework was one of throughput being maintained but at a slower pace. The number of cases concluded last year was similar to previous years, but the time taken to complete them was longer and as a result the KPIs for timeliness were not met. This is disappointing but needs to be set against the context of the pandemic. The sustained full-time home working alongside home-schooling had an impact on the ability to progress cases as swiftly as we would have liked. There were also inevitable delays in being able to obtain information and barristers understandably requiring more time in some cases to respond to investigation enquiries. The team has also had to contend with periods of understaffing and associated difficulties in recruitment due to market conditions as well the ongoing embedding of the new case management system.
60. In this context, performance has been good, despite the slowdown, and the staff are to be commended for their resilience and commitment in the face of challenging circumstances.

### Performance against KPI

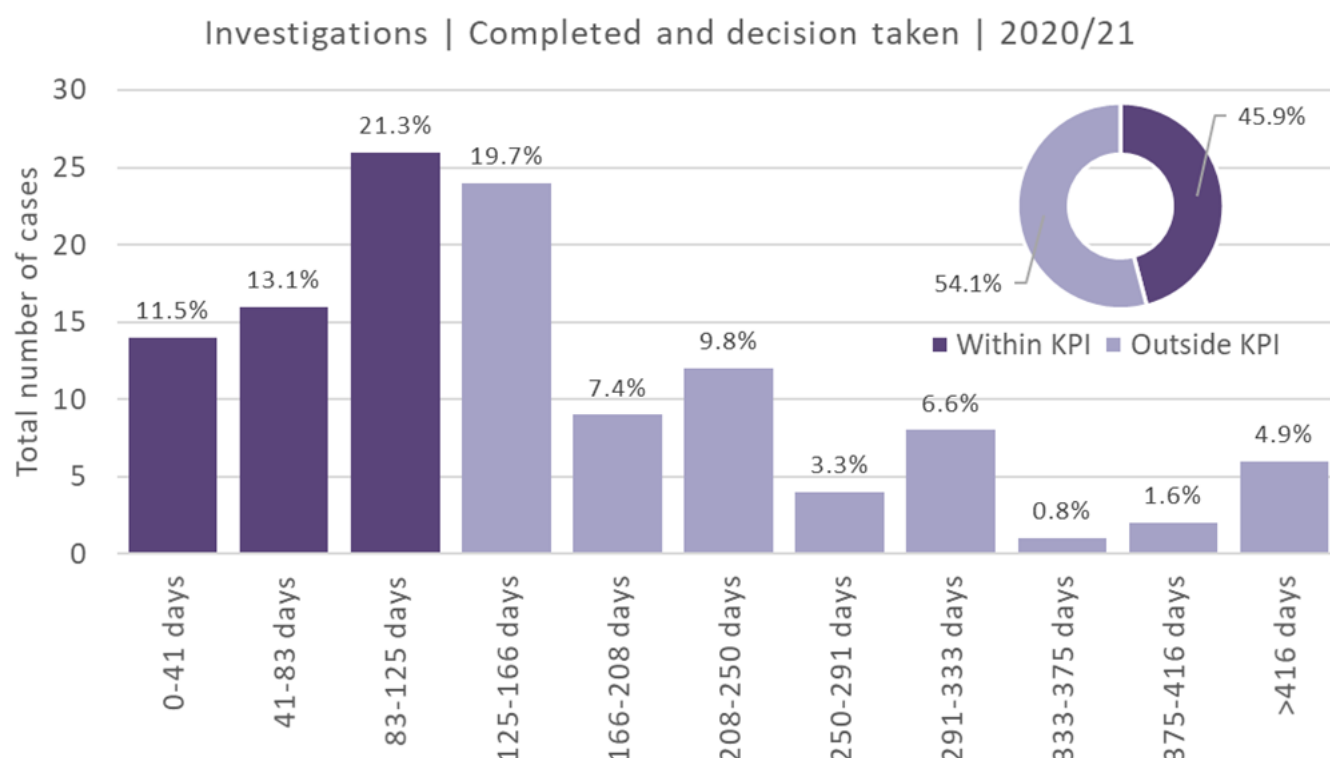
61. Two KPIs apply in relation to the timeliness of Investigations and Enforcement Team (I&E) work, these targets were not met during the reporting year as Table 3 demonstrates.

Table 3	Quarterly KPIs				
KPI	Q1	Q2	Q3	Q4	2020/21
Referral of cases					
Accepted or referred back within 2 weeks (Target 80%)	13%	17.4%	35.0%	65.7%	29.9%
Investigation					
Decision on disposal within 25 weeks (Target 80%)	66.7%	51.4%	37.5%	32.3%	45.9%
Quality Indicators					
Percentage of cases where the Independent Reviewer upheld the original decision following a request for review (Target 95%)	100.0%	100.0%	100.0%	100.0%	100.0%

62. In terms of the first KPI (accepting investigations) the year-end figure was 29.9%, which is substantially below the 55.2% performance for 2019/20. In the main this was due to difficulties in allocating cases during periods of understaffing. Performance against the KPI was very low at the beginning of the year but improved substantially during the course of the year. As the breakdown of performance by quarter in Table 3 above shows, there was a significant improvement quarter on quarter ending with 65.7% in Q4 against the 80% target. In part this stemmed from the impact of increased staffing but also was a result of changes to how we review and accept cases as the new processes introduced in 2019 bedded down.
63. Performance against the second KPI was also disappointing with the trend being downwards throughout the year. The year-end outturn was 45.9% as compared to 63.4% in the previous year. However, as Figure 5 shows, over half the cases closed outside the KPI (ie another 19.7% of cases) were closed within eight weeks of the end of the KPI period. This indicates a slowdown in progressing cases which was not unexpected due to the unusual circumstances prevailing throughout the year.
64. The following sections provide more detail of the performance and trends in our enforcement work.

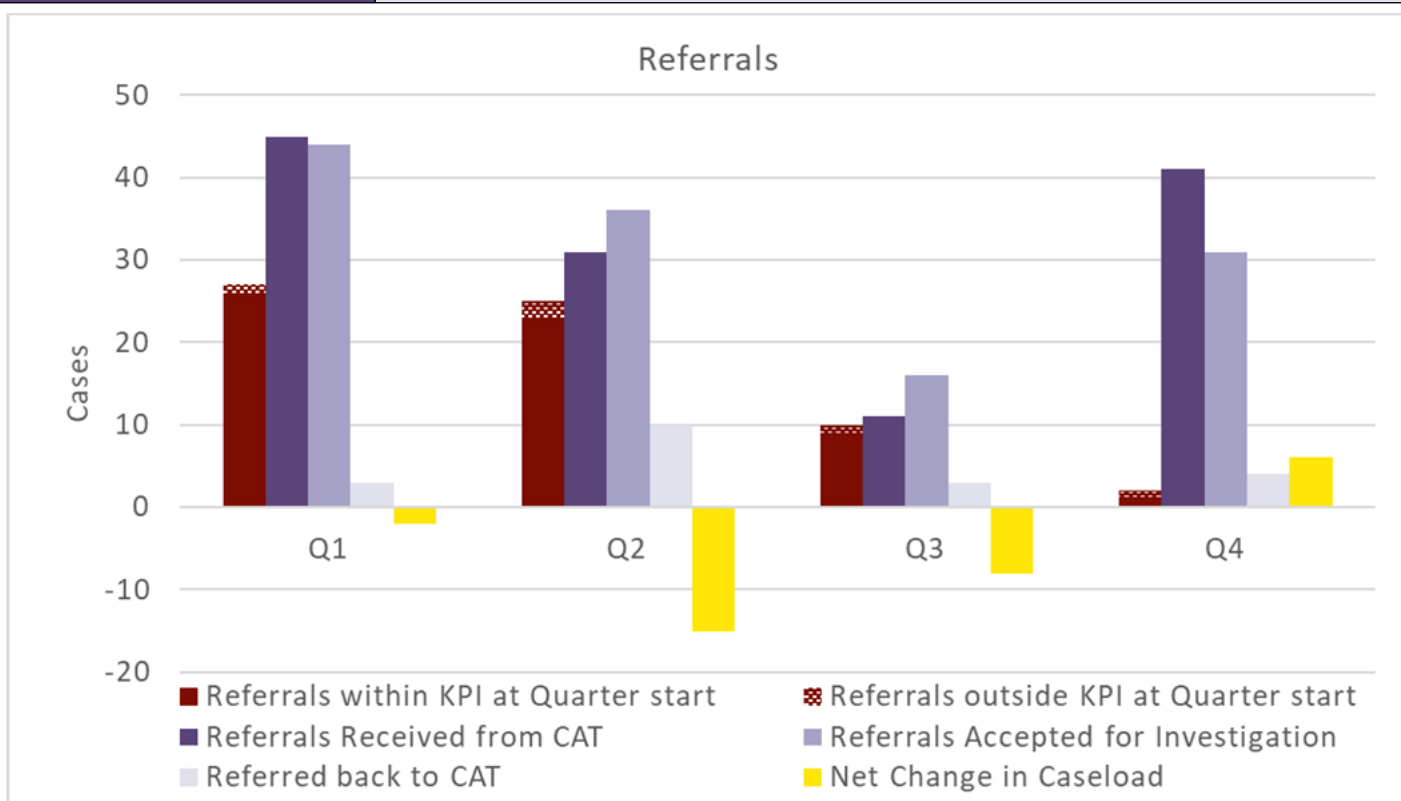
**Figure 5**

**Age distribution of Investigations decided in 2020/21**



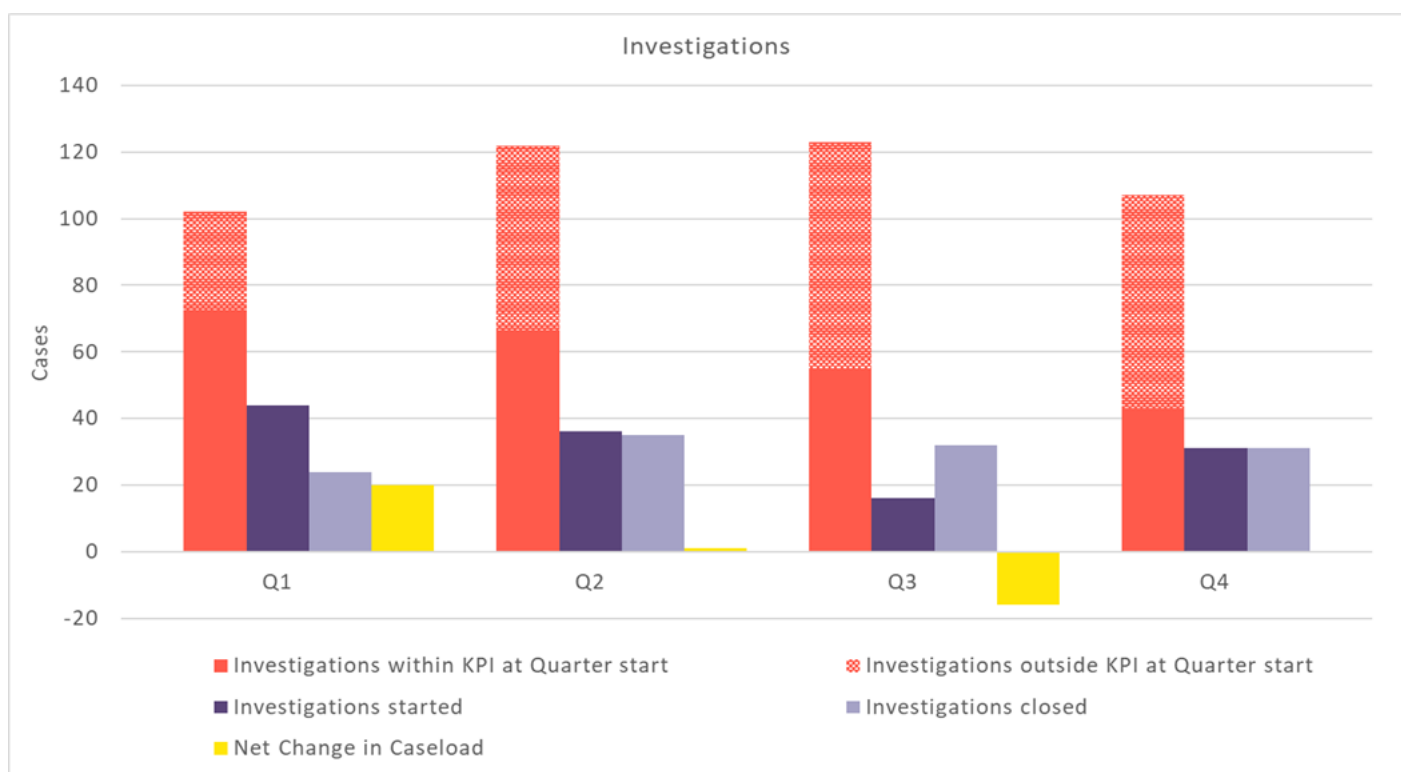
**Figure 6**

**Throughput of Referrals in 2020/21**



**Figure 7**

**Throughput of Investigations in 2020/21**



## Investigations

65. Caseload figures indicate that the number of cases progressing through I&E has been maintained, despite the impact of external pressures. 129 investigations were completed during the year as compared to 127 in 2019/20. Further, the total number of active cases was broadly similar to last year with 310 cases actively being worked on during the course of the year as compared to 334 in 2019/20.
66. Although throughput of investigations was maintained, the age profile of cases shows that overall cases took much longer to complete. The KPI for investigation reflects this. The average time to conclude investigations rose from 200 days in 2019/20 to 296. While this figure indicates a slowdown it also reflects the closure of some long-running and complex investigations.

## Types of conduct

67. The types of conduct investigated are recorded on the BSB Case Management system as “aspects”. Similar to 2019/20, the top two aspects or types of conduct investigated remained the same. The highest for 2020/21 was “Other diminishing trust and confidence” (38 counts and 18% of all aspects). This was similar to last year, albeit it formed a larger proportion of the total aspects recorded. (39 and 11%). The type of conduct falling under this heading was wide ranging: it included allegations of rudeness/ aggressive behaviour towards others involved in proceedings where the barrister was acting; abuse of the position of barrister; and an allegation that the barrister did not follow the process in family litigation involving a litigant in person.
68. The second most common aspect was “Some form of misleading” with 15 counts and 11% overall. This was a drop in terms of numbers and percentage on last year when it had the highest number (40 and 11%). It may be that the impact of the pandemic upon courts operating has had some influence on this. Often such cases arise from allegations that counsel made misleading statements to the court, or in the course of proceedings. With fewer hearings

Table 4	Open cases at year end		
Stage	2018/19	2019/20	2020/21
Referrals	4	27	8
Investigations	82	108	98
IDB/PCC	9	3	12
Determination by Consent	5	1	2
Disciplinary Tribunal	41	29	34
Appeals	5	11	6
<b>Total</b>	<b>146</b>	<b>179</b>	<b>160</b>



taking place during the first part of the year there was less opportunity for such concerns to arise.

69. One area that saw a substantial increase (although the numbers remain very low) was allegations relating to harassment of some form. This increased from four cases or 1% of all aspects to 10 or 5%. This may indicate an increased willingness by those subjected to such behaviour to raise concerns with the regulator.
70. Another area that saw an increase was investigations related to inappropriate use of social media. This rose in number from 6 to 11 cases or 2% to 5% of all aspects recorded. Although small in overall number it does equate to almost a doubling in the number of investigations in this area. The rise is part of an ongoing trend that has also seen a large increase in the number of reports to CAT about inappropriate use of social media (see paragraph 54). A relatively low percentage of reports result in investigations (approximately 20%). Examples of cases investigated were comments that were considered to be discriminatory and using Twitter to gratuitously insult others. There was also one case of an unregistered barrister holding out as practising on Twitter.
71. In terms of the source of reports that were investigated the most significant increase has been in the number of barristers submitting reports about potential serious misconduct under their reporting obligations. This increased from 17 to 46. This means that such reports formed the basis of 35.4% of investigations opened in the year. Interestingly while the number of self-reports by barristers more than doubled, from 10 to 21, the most significant increase was in the reporting of misconduct of other barristers, rising from 7 to 25. This may represent a deterioration in behaviour at the Bar, but it is probably more reflective of the increased willingness to report serious misconduct as well as improvements in the BSB's reporting mechanisms.

## **Outcomes of investigations**

72. Investigations can result in allegations being dismissed due to lack of evidence, administrative sanctions being imposed for breaches that do not amount to professional misconduct or a referral to disciplinary action. Cases which result in a dismissal or administrative sanction are classified as "closed after investigation". In all, 91 cases were closed after investigation this year, similar to the 96 for the year before. These outcomes are explored further below.
73. At the end of investigation, the decision on what action, if any, to take is either taken by staff or a panel of the Independent Decision-Making Body (IDB). Staff have the power to dismiss cases due to lack of evidence as well as impose administrative sanctions but only limited powers to refer cases to disciplinary action.

74. Of the 91 cases closed after investigation, the number of decisions taken by staff was in line with the year before, 66%, compared to 68%. There was also an increase in the number of cases closed by an IDP after investigation. This was 31 cases or 34%. This number of cases is an increase on the number decided by a panel last year (including those decided by the PCC), where the number stood at 22.

## **Dismissals**

75. Investigations are recorded as dismissed where there is either insufficient evidence of a breach or, occasionally, the risk to the regulatory objectives is too low to warrant taking enforcement action. Of the 91 decisions taken on cases that concluded after investigation, 48 were dismissals. Of these 28 were staff decisions and 20 by an IDP. Where allegations are dismissed but there is still a cause for concern then formal advice can be given. This occurred in 5 staff decisions and 5 IDP decisions. These figures were comparable with 2019/20, where a total of 45 cases (from 96) were dismissed after investigation, with 7 including advice.
76. The decision to raise an allegation is based solely on whether the information received provides evidence of a potential breach (or breaches) of the Handbook that represents a sufficient risk to the regulatory objectives to warrant consideration of regulatory action. The purpose of the investigation is to gather further evidence in order to establish if the potential breach is supported. As indicated above, over 50% of investigations last year result in a dismissal because the investigatory process revealed that either a breach had not occurred or there was insufficient evidence of a breach. There are no discernible trends in relation to types of allegations that were dismissed following investigation. The most common type of allegation dismissed was in relation to "other diminishing trust and confidence" (accounting for 10 dismissals. This again was similar to last year where this was again the most common, totalling 9.

## **Imposition of administrative sanctions**

77. Where there is evidence of a breach of the BSB Handbook, as opposed to professional misconduct, both staff and an IDP can impose an administrative sanction. This is either in the form of a warning and/or a financial penalty and does not constitute a disciplinary finding. Such sanctions are imposed where the breach has been assessed as presenting a low risk to the regulatory objectives but is of a level that requires regulatory action.
78. The number of administrative sanctions imposed decreased from 37 last year to 32 this year. The ratio of warnings compared to fines remained at a similar

level. Last year 33 warnings were imposed by staff and IDP/ PCC with 4 fines. This year the BSB imposed 28 warnings and 4 fines.

79. As with last year, the most common conduct which resulted in an administrative sanction related to breaches where the barrister had practised without a practising certificate or held out as a barrister. This year 19 cases included an aspect where this was the case, as opposed to 25 the year before. Administrative sanctions for practising certificate breaches are usually imposed where the barrister has inadvertently practised without renewing or obtaining their practising certificate and taken steps to rectify the situation as soon as it is discovered. Nevertheless, the period during which they practised without proper authorisation left clients without the protection of the Legal Ombudsman's jurisdiction and technically amounted to a criminal offence. The remaining types of conduct resulting in an administrative sanction were wide ranging, with no other type of conduct amounting to more than three instances in the year.

### Referrals to disciplinary action

80. Where there is evidence of a breach of the BSB Handbook that is too serious to be dealt with by administrative sanction the case will usually be referred to some form of disciplinary action: either in front of a Disciplinary Tribunal or under the Determination by Consent (DBC) procedure. DBC is a consensual process reserved for cases where there is no dispute of facts and the nature of the conduct would not warrant a greater sanction than a fine. DBC cases are decided by IDPs on the papers but findings of professional misconduct under the process have the same status as findings by Disciplinary Tribunals.
81. The number of referrals to disciplinary action increased in comparison to the previous year, rising from 30 to 38 or 29% of all decisions taken after investigation an increase of 5%.

### Disciplinary action

82. Although the number of cases referred to disciplinary action since last year increased, the number of cases which concluded decreased from 47 to 33. These 33 cases consisted of 29 Tribunal cases and 4 DBC's, as opposed to 42 and 5 last year, the drop was therefore in the cases heard at Tribunal.

Table 5		Throughput of Investigation cases				
Decisions		2016/17	2017/18	2018/19	2019/20	2020/21
Closed after Investigation		105	154	130	96	91
Referred to Disciplinary Action		55	37	47	30	38
<b>Total</b>		<b>160</b>	<b>191</b>	<b>177</b>	<b>126</b>	<b>129</b>

83. The time taken to conclude Tribunal cases from date of referral to investigation stayed broadly the same (638 days as opposed to 648 days the year before). However, there was an increase from 323 to 380 calendar days for the average time taken from when a case is referred to a disciplinary tribunal until it concludes. This reflects the fact during the first quarter very few hearings took place due to the pandemic. This meant that some cases which would have been heard in the first quarter of 20/21 were adjourned until later in the year, with most eventually taking place remotely later in 2020.
84. As mentioned above, due to the pandemic, at the beginning of the reporting year the UK moved to remote working and hearings in person were not possible. Arrangements therefore had to be made for remote hearings and this form of hearing continued throughout the year. However, while the arrangements were being put in place cases which had been listed to take place in person were adjourned. This meant that the number of cases concluded at tribunal reduced during the first half of the year (a total of 9 for the first two quarters). However, with the move to remote hearings the numbers of hearings it was possible to hold increased with 20 in the last six months of the reporting period.
85. There has also been a slight increase in the average length of a hearing, from 1.3 to 1.4 days. Although not a large rise, it is reflective of the impact of remote hearings which tend to take slightly longer than in person hearings. There were also a higher number of cases that went part heard during the year and cases that were adjourned at short notice in the early part of the year due to the pandemic. Such cases have a greater impact on our resources due to the need for repeated preparation for hearings.

### **Outcomes of disciplinary action**

86. There were four cases dealt with by the DBC process last year, three of these arose from conviction for drink driving. The sanction in each of these was a fine and a reprimand.
87. At the tribunal, in total 20 cases resulted in one or more charges being found proved equating to approximately 71% of cases heard. There was a broad spectrum in the types of behaviour that gave rise to these charges. One notable change since last year was that the number of findings arising from a criminal conviction, which decreased from eight to three cases.
88. In total there were eight cases where no charges were found proved. This compares to two cases dismissed at tribunal the year before. However, this should be viewed alongside the fact that the BSB only offered no evidence in one case as compared to four (and one withdrawal) for the year before that.

Adding these figures together means that the number of cases at tribunal that did not result in a finding was almost the same.

89. Two cases that were dismissed were heard at the same time because they related to the linked conduct of two barristers. Separately, another two cases were heard together because they arose from similar conduct by the same barrister.
90. All the conduct in the dismissed cases took place before April 2019 when the standard of proof changed from the criminal standard (beyond reasonable doubt) to the civil standard (on the balance of probabilities). A review of the dismissals has looked at whether this change could have yielded a different result had the conduct taken place after April 2019. The analysis suggests that this is unlikely. In two cases the panel did mention that they did not find charges proved to the criminal standard but did not go on to comment whether the civil standard would have made a difference. In another two cases the panel found a breach of the Handbook but did not feel that the conduct was serious enough to amount to professional misconduct. While the number of cases dismissed at Tribunal went up, it is notable that no costs orders were made against the BSB. Where applications were made for costs, the Tribunal rejected them on the basis that the charges were properly brought by the BSB.

## Sanctions imposed

91. The sanctions available for a tribunal range from no further action through to a reprimand, fine, suspension and ultimately disbarment. Inevitably given the reduction in tribunal cases, the number of sanctions imposed also reduced. Proportionality there was a drop in the percentage of charges resulting in disbarment (down to 16% as compared to 27% in 2019/20) and an increase in the percentage of charges resulting in fines (up from 27% to 45%).

Table 6	Disciplinary action cases concluded				
Disciplinary Action	2016/17	2017/18	2018/19	2019/20	2020/21
Determination by Consent	9	8	9	5	4
Disciplinary Tribunal	55	39	28	42	29
Total	64	47	37	47	33

Table 7	Sanctions imposed by Disciplinary Tribunal panels or under the Determination by Consent procedure				
Sentence	2016/17	2017/18	2018/19	2019/20	2020/21
Disbarred	20	6	4	10	4
Suspended	6	9	4	15	9
Fined	25	18	18	10	11
Reprimanded	16	15	16	13	10
<b>Total</b>	<b>48</b>	<b>32</b>	<b>27</b>	<b>36</b>	<b>24</b>

92. Of the four cases which resulted in disbarment, three arose from a previous finding of professional misconduct by the Solicitors' Disciplinary Tribunal. The other arose from the barrister acting dishonestly in proceedings in which they were a party. The conduct underlying the nine suspensions was more varied: three suspensions were imposed for sexual misconduct (including a criminal conviction) and three for non-payment of disciplinary fines from previous tribunals.

## Quality assurance – Independent Reviewer

93. The Independent Reviewer (IR) role was created by the Bar Standards Board in 2019 to provide an independent mechanism for quality assuring the BSB's regulatory decision-making.

94. As such, the role's main functions are to carry out:

- a. Quarterly quality assurance audits of a random sample of cases in which relevant decisions, across the regulatory process, have been taken by staff.  
In the year 2020/21, the IR found that decisions in the cases she audited had all ultimately been made appropriately. The IR also made a number of recommendations arising from her audit, which have been accepted by the relevant Director.
- b. Reviews of decisions taken in a case, when requested by a party to a report or case. In these cases, the IR makes a recommendation which may be accepted or declined by the relevant Director or Head of department.  
The IR reviewed 113 decisions in the reporting period following a request by a party. One hundred requests for reviews arose from decisions of the Contact and Assessment Team (CAT) not to take further action, while nine related to staff decisions at the Investigation and Enforcement (I&E) stage

and a further four related to decisions of the Independent Decision-Making Body. The IR made recommendations for further action or a reconsideration of the decision reached in a total of seven cases across the different stages.

### ***Lessons learned and improvements in decision-making process***

95. As well as considering the appropriateness of a particular decision the IR also considers more general matters, such as whether regulations and policies have been applied correctly and whether the case was handled fairly.

96. The IR has made a number of recommendations arising from her consideration of those general matters. Recommendations have been wide ranging, and include:

- ensuring decision-making templates are kept up to date in respect of relevant BSB policies;
- ensuring data is retained in accordance with the BSB privacy policy;
- amending the website to give a realistic timeframe for consideration of applications for authorisation (now resolved via the Service update page); and
- consideration of what information about the progress of a case, and when, is given to information providers (especially where a case has been referred for further regulatory action).

97. As indicated above, timeliness in case handling has been seen to be a challenge through the last year, not just because of the increase in the number of reports being made, but also because of delays in obtaining information from other sources (for example, the courts/transcribers), and delays within teams (for example, when a member of staff leaves). The IR has noted in her audits that where case handlers provide regular updates about the progress of cases, parties are generally very understanding of delays and appreciate the reassurance that their case or application has not been forgotten about.

98. The IR has noted a number of improvements and actions taken in response to her feedback. These include:

- Fuller and clearer reasons provided by CAT to those making a report to the BSB as to why no further regulatory action will be taken;
- Sensitivity especially where a party (it could be either the information provider or the respondent barrister) has disclosed personal difficulties;

- Training delivered on relevant issues which have arisen in cases (for example, mental health and matters related to registered and unregistered status); and
- Care taken in all cases to ensure that initial correspondence to the respondent is delivered to the appropriate email address.

### ***Nature of cases referred for review***

99. At all stages it is nearly always the person who originally made the report to the BSB who makes a request for review. In a very small number of cases, the respondent barrister has requested a review of a decision to refer a report for further action (including disciplinary action). Requests for reviews have also been made in cases where a barrister or other legal professional has made a report about another barrister (these are no more likely to result in a recommendation for reconsideration of the original decision than where the request is made by a litigant in person).
100. In most cases however the person requesting the review is a litigant in person and their report arises from a dispute or hearing where the respondent barrister represents the party on the other side. Unrepresented parties may not fully understand the role of the barrister in a contested case, or that a report to the BSB will not in itself alter a disappointing outcome in a dispute. Over the reporting period, reviews appear to have arisen most frequently from cases involving child contact or care proceedings, which understandably generate very strong feelings, as well as probate disputes and employment matters.
101. Concerns about information providers' own barristers also feature regularly in requests for review. These reports have to be referred first to the Legal Ombudsman and information providers frequently challenge such referrals; it can be difficult for those making a report to appreciate the boundary between the regulator and the Ombudsman service, or to accept that the BSB does not have jurisdiction to consider complaints about service.

### ***Development of IR role***

102. All those who request a review of the decision made in their case are entitled to a thorough, careful, and independent consideration of their request. The IR has developed this aspect of her role, to give reassurance that a concern has been fully considered even if the recommendation is to confirm the original decision. The review and audit process also allows further sharing of feedback to staff, in the light of the IR's independent perspective.



## Supervision Team

103. We published an updated Supervision Strategy and Framework in September 2020. This sets out our approach to supervising barristers, chambers, BSB entities and Authorised Education and Training Organisations, including how we assess risk, when we might undertake supervision visits and what to expect from a visit; our information gathering policy and co-operating with the regulator; and how we work with others.

### Concerns reported to the BSB

104. A total of 99 cases were handled by the Supervision Team. This compares to a total of 102 cases in the prior year. The key themes arising are addressed in this report.

**Figure 8**

**Throughput of Supervision Cases in 2020/21**



105. The Supervision module of the Case Management System was launched in April 2020, together with the functionality to measure KPIs. This year, our focus has been on training staff to use the system effectively, including updating relevant fields accurately as cases progress. KPIs were therefore not reported and monitored by management until April 2021. They will be included in future reports.

## ***Bar training***

### **Vocational component**

106. During this period, we implemented changes to the way that we work with our External Examiners, who provide us with specialist advice on the consistency of standards of the assessments set by the vocational AETOs. We recruited sixteen External Examiners, who are now organised into subject groups with a subject lead in each group. This will help to ensure consistency of assessments across all AETOs. We organised induction training for the External Examiners and strengthened the guidance we provide to them, as well as the way that we communicate with them and enable them to share good practice and learning. You can read more about our External Examiners on our [website](#).

### **Pupillage component**

107. In November 2020, following a period of consultation, we implemented an important change that requires all pupillages to be advertised and recruited in line with a [mandatory timetable](#) in order to make pupillage recruitment fairer and more consistent. We appreciate that, for many AETOs, the effects of the pandemic created uncertainty last year. For this reason, alternative arrangements were put in place to allow greater flexibility during the 2020/21 recruitment period. Whilst we strongly encouraged AETOs to adhere to the mandatory timetable, where this was not possible, advertising for pupillage outside the timetable could still take place. However, interviews had to be concluded before the end of August 2021 and offers for pupillage could only be made once the Gateway timetable had closed. Any other arrangements required a waiver application.

108. All chambers and other organisations that provide pupillage training are supervised based on the criteria in the [Authorisation Framework](#), whether or not they have completed their application to transition their authorisation status. Members of the Supervision Team regularly attend training provided by the Inns and Circuits to share their experience with pupil supervisors and promote good practice.

109. Whilst many responded positively to the challenges of the pandemic, we have continued to receive reports from pupils who are not satisfied with the quality of their training experience. Invariably, these pupils are from AETOs that have failed to implement the reforms that we introduced, in particular in relation to ensuring that their pupils have a written agreement when they start pupillage, are assessed against the competences in the Professional Statement, and are given consistent and clear feedback during the course of their pupillages.
110. The [written agreement](#), which became mandatory in May 2020, sets out the duties of the AETO, the duties of the pupil, details of the pupillage and the written policies that AETOs must provide to pupils. This means that pupils know what is expected of them and what they can expect from their AETO and their pupil supervisor. It also provides information about what they can do, and who they can turn to, if they encounter problems or are concerned about their training. It was introduced to try to prevent some of the problems that the Supervision Team has seen when pupils report their concerns to us.
111. It became mandatory to assess pupils against the competences in the [Professional Statement](#) from September 2019. We have found that using the Professional Statement competences and the requirement to meet the relevant mandatory criteria in the Authorisation Framework has been a trigger for AETOs to develop more robust and transparent processes and documentation of the assessment of pupils. This benefits pupils because it is much more transparent to them how they are being assessed and what areas they need to improve on. It also benefits pupil supervisors when pupils are not progressing as they would expect, because they have a framework for difficult conversations and a record should they ultimately fail to complete pupillage successfully, despite the best efforts of the pupil supervisor.
112. Giving effective feedback is a skill that new pupil supervisors may not have had the opportunity to acquire, particularly in the self-employed Bar. One of the most common reasons for the relationship between pupils and pupil supervisors to break down is because feedback is not given regularly or constructively. Mandatory pupil supervisor training can only cover this at a very high level in the limited time available. We encourage pupil supervisors to reflect on this when planning their Continuing Professional Development and encourage AETOs to consider what training they might be able to provide to their pupil supervisors.
113. Maintaining effective pupil supervision remotely during lockdown was a particular challenge. As well as the usual benefits of being able to shadow experienced barristers, the pastoral and other support that AETOs routinely provide to pupils is less easily replicated virtually. Whilst most rose to this

challenge with creativity, some pupils felt isolated as a result. It is clear that the profession anticipates that there will be more remote working in future and AETOs will need to consider how they adapt their pupillages, as well as prepare pupils for the new silks required for remote advocacy and hybrid hearings.

### *Supervision of chambers, BSB entities and sole practitioners*

#### **Regulatory Return**

114. Our Supervision activity helps our understanding of barristers and the way in which they practise. It enables the BSB to proactively identify risks and take appropriate action, and to encourage more effective risk management by those we regulate. In September 2020 we issued a Regulatory Return to 350 chambers, BSB entities and sole practitioners. Unlike some regulators, we do not issue annual returns. The last time we conducted a similar exercise was in 2015-16 and we needed to refresh the information that we have about the profession and make sure our current assessment of risk is accurate.

115. There are five main objectives to this Return:

- To refresh our understanding of risk at an organisation or practice level;
- To gather information that will contribute to our evaluation of recent policy changes;
- To support a number of projects that are a current strategic priority for us; the responses provide a valuable evidence base to decide our approach as a regulator;
- To capture emerging trends or themes so that we are focussing on the right priorities for the future, particularly as we develop our next [Risk Outlook](#) and our new three year strategic plan; and
- To assess and understand how the profession has been impacted by COVID-19 so that we can continue to review our response as a regulator.

116. The Returns are providing a very rich source of information that is informing our approach. We are very grateful for the time and effort that has been put into responding, in this very challenging period. We are currently assessing the responses and providing individual feedback.

#### **Price transparency**

117. The Bar Transparency Rules came into force on 1 July 2019. The rules are designed to improve the information available to the public before they engage the services of a barrister. Chambers, BSB entities and sole practitioners must publish the required information on their website (if they

have one). They must have this information in a readily available format, such as a factsheet, to provide to consumers if they do not have a website or where, for example, the consumer does not have internet access.

118. We have published extensive [guidance](#) to assist barristers in complying with the Transparency Rules. Anyone who remains unsure about how to comply should read this guidance, which includes:

- Guidance on the mandatory transparency rules for all self-employed barristers, chambers and BSB entities;
- Guidance on the additional transparency rules for those undertaking Public Access work;
- Checklists to help with compliance; and
- Annexes that include lots of practical examples and templates in a range of areas of law, which you can adapt for your own use. These were developed with the help of practising barristers.

119. The Supervision Team has been conducting a series of compliance checks and good progress has been made. The Team is prepared to work with those engaging with them, to help them to achieve compliance with their obligations. But it is now two years since these rules came in and where a chambers, BSB entity or sole practice is assessed as non-compliant and has not engaged satisfactorily with the actions set to achieve compliance, it is likely to result in enforcement action.

120. As part of the Regulatory Return, we are conducting further compliance checks. We have also asked for feedback about the impact of the rules, which we are currently evaluating.

### **Competence of barristers who conduct work in the Coroners' Courts**

121. Reports by Bishop James Jones into the Hillsborough Inquiry and Dame Elish Angiolini DBE QC into deaths and serious incidents in police custody raised concerns, amongst other things, about the adversarial approach taken by some lawyers working in the Coroner's Court.

122. As a result of these reports and of further research carried out by the Ministry of Justice (MOJ), we set up a working group in 2020 jointly with the SRA, which included the MOJ, representatives from the Chief Coroner's Office, the Deputy Chief Coroner, INQUEST (the charity which provides expertise on state related deaths and their investigation to bereaved people), coroners, and solicitors and barristers working in this area. The

purpose of the working group was to assist us in developing standards and resources for barristers working in the Coroners' Courts.

123. In conjunction with the SRA and CILEx Regulation, we developed a set of competences which outlines the knowledge, skills and attributes that lawyers need in order to be effective in the Coroner's Court. The Coroner's Court competences is further supported by a toolkit, a suite of resources to assist lawyers to better understand what is required of them when practising in the Coroners' Courts and how they can ensure they have the requisite skills to serve clients effectively. The competences and toolkit were also developed with input from lawyers undertaking cases in Coroners' Courts, bereaved families, and consumer organisations.

124. In addition to the engagement workshops, we also gained useful feedback from a group of coroners, sourced by the Deputy Chief Coroner, as well as from colleagues from the MOJ.

125. The competences and toolkit were published on 13 September 2021 and can be found below:

[Bar Standards Board](#)

### **Discrimination, bullying and harassment**

126. In cases where enforcement action has been taken against individuals and in cases referred solely to Supervision for action, the Supervision Team has engaged with chambers to identify lessons learnt and to review policies and procedures in order to consider where they might be strengthened. As part of this, Supervision assesses whether the culture at chambers contributed to creating an environment in which inappropriate behaviour was tolerated or not reported. Some recurring themes have been identified by the Supervision Team, and we encourage others to consider whether they can learn from them:

- The role of the Head of Chambers is critical in setting the tone and determining how seriously reports of bullying, harassment or discrimination are taken, but the Head of Chambers must have the full backing of members of chambers in order to respond robustly.
- Rule c110 requires chambers and BSB entities to appoint an Equality and Diversity Officer (EDO). We have found that the role is not consistently filled. Where it is, the influence that EDOs have in chambers is variable and there is uncertainty about the purpose of the role. This means that EDOs are not always involved in reviewing such cases and are not empowered to drive necessary changes.

- Policies which should assist individuals who fall victim to bullying and harassment are not always clear about how and to whom incidents should be reported, and what happens after it is reported. This means that victims do not trust and fail to use internal processes.
- Where an internal investigation is initiated, those involved are not always clear about the decision-making process, what outcomes are possible, and what happens in the event of disagreement (eg an appeals process). Chambers' constitution and supporting policies should be clear about what happens to a member of chambers that is accused of bullying, harassment, or discrimination, both whilst investigation is underway and if it is proved.
- Victims of bullying and harassment are not always treated with dignity and respect and their wellbeing, particularly while an investigation is underway, is not managed.
- Chambers do not always ensure that internal support is available (either from the EDO or elsewhere) both to those reporting, and those being accused of, bullying, discrimination and harassment.
- Where both the accuser and the accused are members of chambers, chambers do not always ensure that practical measures are taken to ensure there is limited or no contact, eg being clerked separately.
- EDOs are not routinely involved in the induction of pupils. We consider that it is good practice for pupils to be introduced to the EDOs early on, so that pupils are aware of relevant equality policies and so that any reasonable adjustments that a pupil may need can be identified. Pupils can find it difficult to talk about their needs in relation to disabilities. Providing a safe environment for them to do so can help to prevent problems coming to a head later, including allegations of discrimination.
- Policies and processes are not always clear about how someone who is not a member of chambers can report that they have been a victim of bullying, harassment, or discrimination (for example when an incident has occurred at a chambers event at which others have been present).

### **Supervision of relevant persons under the Money Laundering**

127. We are responsible for the supervision of relevant persons under the Money Laundering Regulations. The 2019 Amendment Regulations now require us to

publish an annual report on our supervisory activity, which HM Treasury has instructed us to prepare as a separate standalone report.

## Concluding comments

128. A combination of an increase in cases and managing the impact of COVID-19 on our regulatory decision-making and those we regulate have made for a challenging 12-month period. Nevertheless, we have kept the quality of our decision-making high and worked hard to support the profession as it responds to the pandemic. Our experience of the last 12 months has demonstrated that we need to have sufficient resilience in our levels of staffing, whilst ensuring that our processes are as streamlined and targeted as possible, so that we can focus our efforts where they are most needed. Both of these issues will be addressed over the coming year, and we will report on their impact next year.