

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Independent Decision-Making Body

Annual Report 2019/20

Table of Contents

Chair's introduction.....	3
Overview of IDB	4
Background.....	4
Composition of the IDB	4
Remit and regulatory framework of the IDB	5
Induction and training	6
Ways of working	6
Impact of COVID-19	7
Performance Statistics.....	8
Number of panel meetings	8
Reviews and appeals of IDB panel decisions	8
Feedback from members	10
Conclusions and comments on overall performance	11

Chair's introduction

- 1.1 I am pleased to present, on behalf of its members, the first Annual Report of the Independent Decision-making Body (IDB). The contents of this report provide an overview of the background to the creation of the IDB and the work it has carried out since 15 October 2019 when it started operating.
- 1.2 For me, it was a somewhat daunting prospect to take on the responsibility of chairing a new body, despite having previously been the Chair and Vice Chair of the Professional Conduct Committee (PCC) for a total of almost four years. I had been involved in both the development of the structures for the IDB and the recruitment of panel members. Nevertheless, theory is different to practice and the previous high-quality work of the Professional Conduct Committee and the Authorisations Review Panels, which the IDB replaced, was always going to be a hard act to follow.
- 1.3 This first “annual report” of the IDB covers only the period 15 October 2019 to 31 March 2020 to allow future reports to align with the BSB’s standard reporting year. Inevitably, the first six months’ operation of the IDB involved a very steep learning curve for all members including me. For those of us who had previously served on the PCC we were familiar with the fundamental decision-making process, which had not changed, and the terms of the BSB Handbook. However, the structure of meetings, the more direct responsibility for decisions including responsibility for reading the full case file and the need to provide reasoned decisions, presented substantial challenges in adjusting to the new regime. For new members, their learning curve in all areas was even steeper.
- 1.4 I am pleased and proud that all members of the IDB rose to the challenges of operating a new system: their patience, understanding and goodwill in dealing with the inevitable teething issues and adjustments to the operational systems was admirable. By the same token the executive provided excellent support and showed an extraordinary willingness to be flexible and adapt the support systems to reflect feedback from panel members. The result is that the first six months of the IDB’s operation was successful, with robust decisions taken by members who had received comprehensive and effective induction as well as ongoing training.
- 1.5 The IDB is still a work in progress in terms of refining the underlying operational processes and ensuring that meetings run effectively and efficiently. In the period covered by this report, the number of IDB meetings was relatively low and therefore not all panel members were able to apply in practice the learning gained from their training. I understand that the number of meetings and cases considered has increased substantially since I stood down in April 2020 and this is to be welcomed. Nevertheless, during my tenure, given the guidance and support provided by the executive, I saw no discernible decrease in the quality of decision making of IDB panels as compared to that of the PCC.

Overview of IDB

Background

- 2.1 The creation of the Independent Decision-Making Body (IDB) was a long time in the making. The concept had its genesis back in 2016 when the BSB, as part of its ongoing Governance Review, commissioned independent research into options for reforming the governance of the enforcement and authorisations decision-making regimes to reflect modern best practice. The proposals put forward from that research included an option to create a pool of expert decision makers, from which small panels could be constituted to take regulatory decisions that required consideration independent of the BSB executive.
- 2.2 After detailed consideration of the issues by the BSB Board, a public consultation was carried out in March 2018 on Modernising Regulatory Decision-making. This included the proposal to create an independent decision-making body to replace the existing Professional Conduct Committee (PCC) and Authorisations Review Panels (ARPs)¹. The public response was supportive of the proposal and in February 2019 the BSB Board formally agreed that such a new body should be created. On 15 October 2019, the Independent Decision-making Body (IDB) commenced operation.

Composition of the IDB

- 2.3 The IDB consists of a pool of suitably qualified persons, both lay and barrister, who are tasked with taking regulatory decisions on behalf of the BSB that require independent input to ensure that fair and reasonable decisions are taken in the public interest. The size of the “pool” and thereby the membership of the IDB is designed to be flexible and can be scaled up or down according to need.
- 2.4 When developing the concept of the body, the optimum number for members was considered to be 30. However, in order to ensure an acceptable level of continuity of experience and knowledge, the initial membership, as at 15 October 2019, was 40 comprising 23 lay members and 17 barrister members. This larger pool accommodated the transfer of members of the PCC and the ARPs as well as 13 newly recruited members. The combination of existing experience/knowledge and new members unfamiliar with the old regime has proved successful in ensuring continuity between the old and the new decision-making regimes, whilst ensuring the new system includes those with a fresh perspective and is not just the old bodies operating under a new name.
- 2.5 The IDB has two formal Office Holders, a Chair and a Vice-Chair. During the six months covered by this report, Aidan Christie QC was the Chair, and Iain Christie the Vice Chair. Aidan stood down in April 2020 and Iain took on the role of Chair with Cindy Butts, who was previously an ordinary member of the IDB, being appointed as Vice Chair.
- 2.6 An open recruitment was held in early 2019 to appoint the 13 new members including the Vice Chair. The exercise attracted 157 applications and 34 candidates were shortlisted and interviewed. The field was incredibly strong and the decisions on who to appoint were difficult. The 13 successful candidates came from a range of diverse backgrounds - the full list of IDB members, as at 1 September 2019, can be found on the BSB website [[here](#)].

¹ The Professional Conduct Committee was previously responsible for taking decisions on whether enforcement action, including disciplinary action, should be taken against barristers or BSB regulated entities for breaches of the BSB Handbook. Authorisation Review Panels (ARPs) replaced the BSB Qualifications Committee and were responsible for considering appeals against authorisation decisions taken by the BSB executive.

- 2.7 While the IDB commenced operating on 15 October 2019, its members were formally appointed to their roles on 1 September 2019 to allow for induction training to be completed. To ensure the IDB membership is regularly refreshed but continuity is maintained, members were appointed for one, two and three year terms depending on the length of their past service for the BSB: with transferring members having shorter terms and the new members appointed for three years, subject to renewal for a further three years.

Remit and regulatory framework of the IDB

- 2.8 The IDB, while independent of the BSB executive, is still a part of the BSB and accountable to the BSB Board for its performance (but not its decision making in individual cases). Its remit covers two distinct areas: (1) enforcement decisions in relation to breaches of the BSB Handbook; and (2) considering applications for review of executive decisions taken on authorisations. In theory the IDB can also be tasked by the BSB Board with considering other types of regulatory decisions, but its current remit covers only these two areas.
- 2.9 **Composition of the panels:** the IDB sits in panels of either three or five persons depending on the nature of the case under consideration: three person panels consider authorisation reviews, and five person panels consider enforcement cases. All panels have a lay majority and can be chaired by either a barrister or a lay person. There are no standing chairs of panels and all members of the IDB are trained to chair meetings.
- 2.10 **Enforcement:** the enforcement decision-making powers of the IDB are set out in the Enforcement Decision Regulations, Part 5, Section A of the BSB Handbook. These regulations give IDB panels the power to decide whether, on the evidence presented to them, enforcement action should or should not be taken in relation to an allegation of a breach of the BSB Handbook. The options open to IDB panels are to decide that:
- 2.10.1 there is no evidence or insufficient evidence of a breach;
 - 2.10.2 there is evidence of breach but, in all the circumstances, no enforcement action should be taken;
 - 2.10.3 there is evidence a breach and that the breach should be dealt with by the imposition of an administrative sanction; or
 - 2.10.4 there is a realistic prospect of a finding of professional misconduct and that, having regard to the regulatory objectives, it is in the public interest to pursue disciplinary action, either by a referral to a Disciplinary Tribunal or under the Determination by Consent procedure.
- 2.11 In addition, the Chair of the IDB has the power to impose immediate interim suspensions on individual barristers, pending consideration by an independent Interim Suspension Panel and the conclusion of disciplinary proceedings. This power is exercised only where the conduct alleged presents a serious risk to the public. No such suspensions were imposed during the period covered by this report.
- 2.12 **Authorisation reviews:** the IDB's remit to consider applications for review is found in the BSB Standing Orders (Annex 2c, section 1) and the applications that fall within its remit are set out in various sections of the BSB Handbook. In summary, IDB panels can review decisions taken in relation to:
- 2.12.1 The issue, amendment and/or revocation of a practising certificate or litigation extension (Part 3, C6 of the BSB Handbook);

- 2.12.2 A refusal to grant an authorisation or licence, or impose terms, conditions, modifications or suspend the authorisation or licence (Part 3, E11 of the BSB Handbook);
- 2.12.3 Refusal to admit, or re-admit, an individual as a member of an Inn (Inns' Conduct Committee decisions);
- 2.12.4 The authorisation of entities (BSB authorised bodies and BSB licensed bodies);
- 2.12.5 Any decisions taken under the Bar Qualification Rules (Part 4B of the BSB Handbook) where provision is made for a review, essentially decisions on waivers from the qualifications requirements; and
- 2.12.6 General applications for waivers in relation to compliance with the BSB Handbook provisions (Part 1, Section A4).

Induction and training

- 2.13 While the IDB became operational on 15 October 2019, members were appointed from 1 September 2019 to allow them to complete induction prior to sitting on IDB panels. In addition to an introduction to the BSB and an overview of the regulatory changes coming into force on 15 October 2019, the induction programme consisted of sessions on the BSB Handbook; chairing of panels; Equality & Diversity awareness; effective drafting of reasoned decisions; and systems training.
- 2.14 Ongoing training is integral to the efficacy of the IDB and therefore quarterly training sessions are embedded in the system and all members are expected to attend. The content of the quarterly sessions is based on feedback from IDB members and finalised in collaboration with the Chair and Vice-Chair. The first quarterly session was held in January/February 2020, covering the role of the Chair/Vice-Chair; the appraisal system; a review of the induction training; and information-sharing systems. Although outside the period of this report, we have continued to hold training events during 2020, with sessions being held virtually in June and September 2020.

Ways of working

- 2.15 One new feature of the way the IDB works, as compared to the old system, is that panel members are provided with the full enforcement case file rather than just a report containing a summary of the case. Authorisations cases comprise the original application, executive coversheet and decision letter, and the review request, which had been the arrangement previously. To facilitate this sharing of case documentation, the BSB introduced the use of a digital evidence management system, called CaseLines. This is a system widely used in tribunals and courts and allows bundles of evidence to be accessed electronically via an online platform.
- 2.16 CaseLines has also allowed the IDB membership to have easy online access to information resources including an information pack, policy and guidance documents, IDB panel decisions and training materials.
- 2.17 **Anonymisation:** all enforcement and authorisations case files and reports are anonymised to reduce the risk of unconscious bias in decision-making: the name and the gender of the barrister in the case is, where possible and unless it is material to the issues, redacted from all documents presented to IDB panels.

- 2.18 While the concept of anonymising cases is laudable, in practice it is very difficult to achieve effectively. In a case bundle of hundreds of pages, ensuring all references to the barrister's name and gender are redacted is challenging. If only one reference is missed, then the purpose of all other redactions is entirely lost, and unfortunately this is fairly common. This is no criticism of the executive. The level of resource that needs to be put into redacting and checking documentation must be substantial but unfortunately the purpose of anonymisation is not achieved if just one redaction is missed. In light of these difficulties, the BSB may wish to look again at the concept of anonymisation of full case files and consider whether it is proportionate.
- 2.19 **Newsletters:** To ensure IDB members are kept updated on issues that may affect their work, a monthly newsletter is circulated by the executive, containing updates on operational and policy changes, performance statistics, case law summaries, and reports of tribunal and staff decisions. This is a valuable source of information for IDB members and assists with creating consistency in approach and decision-making.
- 2.20 The IDB has relatively sophisticated ways of working, which utilise effective IT systems and the support provided to us by the executive is extensive. Nevertheless, the learning curve for all members has been high. As will be seen from the section below on performance statistics, the volume of work presented to the IDB in the period covered by this report was relatively low and therefore it took some time for all members to become fully conversant with the ways of working and the decision-making processes. In regard to the latter, the presence of members who previously served on the PCC and ARPs has been hugely beneficial.

Impact of Covid-19

- 2.21 While the Covid-19 pandemic only hit at the very end of the period covered by this report, the impact of the lockdown restrictions was immediate. Due to the existing and stable remote working arrangements already in place at the BSB, and the use of CaseLines, the IDB was able to move swiftly to holding all IDB panel meetings virtually without the need to introduce new structures. While the move to online meetings required all panel members to adjust to the use of the video conferencing technology, such technology had already been used by some members unable to attend meetings in person. The greatest adjustment has been to the different ways of approaching the work that virtual meetings require. It is to the credit of both panel members and the executive team, that there was no break in the schedule of meetings and business as usual was able to continue in an effective manner.

Performance Statistics

- 3.1 This section outlines the work carried out by the IDB during the six-month reporting period, 15 October 2019 – 31 March 2020: next year's IDB report will cover the full year 2020/21.

Number of panel meetings

- 3.2 During the period, 13 panel meetings were held: ten enforcement meetings and three authorisation Panel meetings. A total of 24 cases were considered: 16 enforcement cases and eight authorisation cases. The detail of the decisions taken by the panels is set out in the table below.

Panel type	Number of meetings	Cases considered	Decisions	Type
Enforcement	10	16	6 - Referred to disciplinary action 5 - Administrative sanctions imposed 5 - Allegations dismissed	-
Authorisations	3	8	6 - Executive & ICC decisions upheld 2 - Executive decisions overturned	4 - Pupillage Reduction 2 - Admission to the Bar as a qualified foreign lawyer 1 - Inns' Conduct Committee (ICC) decision 1 - Withdrawal of authorisation as an Authorised Education and Training Organisation (AETO)

- 3.3 The number of panel meetings in the period was in line with initial views of the scheduled frequency of meetings i.e. in the region of two per month. However, the number of cases considered at each meeting was initially less than envisaged. The main reason for this is the requirement that panels produce reasoned decisions: initially this took, and still takes, quite a proportion of meeting time. The ongoing feedback loop between the IDB and the executive means continuous learning has allowed the system to speed up as experience is gained, but the need to provide agreed reasons for decisions will remain a contributing factor to the length of time it takes to conclude each case.
- 3.4 Further, it was always envisaged that ad hoc meetings would take place and be slotted in alongside scheduled meetings to allow for flexibility in addressing fluctuating volumes of cases requiring IDB consideration. Such ad hoc meetings were not included in the programme in the first six months and therefore, with a pool of 40 IDB members, the frequency at which members were involved in meetings was initially quite low. In the first six months, a backlog of cases awaiting consideration built up. While outside the reporting period, this situation has been addressed by the scheduling of increased numbers of panel meetings and the standard frequency of meeting going forward has been increased by 50%.

Reviews and appeals of IDB panel decisions

- 3.5 IDB panel decisions can be reviewed or appealed under two mechanisms.

- 3.5.1 Decisions to refer cases to disciplinary action or dismiss allegations are not open to appeal. However, the BSB has an internal review mechanism in the form of the Independent Reviewer (IR). The IR has a wide remit in relation to reviewing enforcement decisions that are not subject to a formal appeal mechanism². A review by the IR can be requested by the person who made the original report about the barrister or by the barrister subject to the report. The IR has no decision-making powers and can only make recommendations. If the IR recommends that a decision of an IDB panel should be altered, the recommendation will be put to a newly constituted IDB panel to decide if the recommendation should be accepted. During the period covered by this report no requests were made for IDB panel decisions to be reviewed.
- 3.5.2 Where an administrative sanction is imposed by an IDB panel (or indeed staff members), barristers have the right to appeal the decision to an Appeal Panel, convened by the Bar Tribunals and Adjudication Service. During the period covered by this report, two appeals against decisions by IDB panels to impose administrative sanctions were made. One of these appeals is awaiting a decision. The other appeal was successful (see below).
- 3.6 The successful appeal arose from a warning imposed by an IDB panel in December 2019 for the barrister's use of social media (Twitter), making comments which it was alleged was offensive, bullying and threatening. The IDB panel found that there had been a breach of Core Duty 5 (you must not behave in a way that is likely to diminish trust and confidence in you or in the profession). In a decision handed down on 31 July 2020 (outside the period of this report but included here for completeness), the Appeal Panel found that the IDB panel decision was flawed for a number of reasons: it failed to give full regard to the context of the tweets; the decision was based on the impression that a user "might come away with", rather than on what a reasonable reader would understand the message to mean in context; and the IDB's written reasons were insufficient for the barrister to understand which aspects of the allegations were well-founded and which were not. By the time the appeal was heard, further training had already been carried out on drafting reasons. The case and its implications were covered at subsequent IDB training in early September 2020 and in the September issue of the IDB Newsletter to ensure that the learning points were firmly embedded in the work of the IDB.
- 3.7 Finally, while not an internal route of review, IDB decisions can potentially be subject to scrutiny in the courts via an application for judicial review. Such challenges are rare, and none were received during the period covered by this report.

² Formal appeal mechanisms are in place in relation to decisions to impose administrative sanctions and decisions on authorisations appeals.

Feedback from members

- 4.1 Obtaining feedback is an important aspect of monitoring the work of the IDB to support continuous improvement. Feedback is received via both formal and informal means. Towards the end of the reporting period, a system of formally inviting panel members to appraise, after each meeting, the performance of other panel members and to reflect on their own performance was introduced. This consists of sending to each panel member, within two days of a meeting, a link to an online feedback form in which they are invited to rate performance according to specific criteria and provide free text comments. Given that only two meetings were held in the reporting period after introduction of this system, feedback was sought from specific panel members for the purposes of completing this report (see paragraphs 4.4 – 4.6).
- 4.2 Feedback is also requested at the quarterly training meetings and, informally, panel members are encouraged to contact the Chair, Vice-Chair, or the executive staff if they wish to raise any issues.
- 4.3 Over the period of this report, these formal and informal mechanisms have provided useful information that has allowed the work of the IDB to develop and become more streamlined.
- 4.4 As noted above, the IDB membership comprises those who transferred from previous decision-making bodies (the PCC and ARPs) and newly appointed members. Feedback from transferring members of the PCC indicates that they found the move to smaller panels to be beneficial as it allows for more inclusive discussions, which they previously found harder in a larger group. This has led to a feeling of greater investment both in the process of making individual decisions and in membership of the IDB as a body. Transferring members have also commented favourably on the greater efficiency and functioning of the IDB as compared to the PCC/ARP.
- 4.5 Feedback from newly appointed members indicates that they appreciate the experience of former members of the PCC/ARP, and that the induction training had prepared them well for their new roles. Both barrister and lay members felt that they had been underused in this initial period, perhaps only attending one panel in the first six months, but that conversely the workload for that panel had been heavy, having to decide two or more cases. These are both issues that have been addressed subsequent to the reporting period (see paragraph 3.4 above).
- 4.6 General feedback also shows that members consider the IDB has an excellent mix of professional and lay members, both new and experienced, which encourages thorough debate. This is felt to be particularly helpful in drafting decisions which accurately reflect the panel's findings. The involvement of BSB staff in ensuring that panels follow a consistent procedure was also seen as invaluable in ensuring a smooth transition and the ongoing efficacy of meetings.

Conclusions and comments on overall performance

- 5.1 Any change of system, even within an established organisation such as the BSB, is likely to bring with it a period of uncertainty and disruption whilst participants get used to the new processes. The six months covered by this report was a learning period both for members of the IDB and the executive staff while those new procedures were embedded. It has been a remarkably smooth transition without any major issues of management or substance arising.
- 5.2 Lessons learned from the first six months of operation include the need to schedule more regular meetings of differing lengths, with a more balanced case-load allocated to each panel and to fine-tune the processes for drafting decisions, which can be challenging and time-consuming when working in groups of three or five. The outcome of the administrative sanction appeal was helpful in drawing potential errors to the attention of panel members in training and valuable lessons have been learnt. In and of itself it is not evidence of any failing of the new process.
- 5.3 There is an ongoing challenge, given the multiple roles which most members fulfil outside their work for the IDB and the infrequency with which they come together, in ensuring that members of the IDB feel they are working as part of a team and belong to a cohesive group. I am aware that this is something of which my successor and the Vice-Chair are particularly conscious. Their participation in quarterly training sessions and responsibility for pastoral oversight of members, allows them to address such issues, for example by discussing the values which members of the IDB bring to their work. Forthcoming training needs, identified by the members, including raising awareness of unconscious bias, will not only ensure decisions continue to be fair but also enhance working relationships between IDB members.
- 5.4 The Board will have noted the comments at paragraph 2.17- 2.18 regarding anonymisation of case files and may wish to consider reviewing the approach given the practical challenges of both ensuring anonymisation is effective and the resource implications of doing so.
- 5.5 It has been a pleasure to oversee the transition from the PCC to the IDB, which completes the move to fully independent regulation which the BSB wished to establish. I am delighted to hand over my responsibilities as Chair to my successor with the new system and processes firmly in place.

Aidan Christie, QC

Chair of the Independent Decision-Making Body (October 2019 – April 2020)

Iain Christie

Vice-Chair of the Independent Decision-Making Body (October 2019 to April 2020))

November 2020