

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Independent Decision-Making Body

Annual Report 2021/22

Legal & Enforcement Department
Regulatory Operations Department

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Chair's introduction

- 1.1 This is the third Annual Report of the Independent Decision-making Body (IDB) and the first in which a direct comparison with a full previous year of data is possible. The inaugural Report covered the six-month period between the IDB's creation in October 2019 to 31 March 2020. Thus, although some analysis of the data was possible, it was not feasible to identify themes or trends. It may still be too early to do so, only having two full years of data, but there are some notable differences between this year and last.
- 1.2 While the number of Enforcement meetings has remained broadly constant, the number and format of Authorisations meetings has increased - volume has increased by 42%, and all meetings in this reporting period were half-day. This in part reflects the lessons learned by the IDB and BSB following the judgment of the High Court in *Eve v BSB*, handed down on 22 July 2021. The judgement criticised the absence of detailed reasons for the IDB decision to uphold the BSB Executive's decision. One of the actions taken by the Executive was to reduce the number of cases considered at Authorisations panels, so that while in 2020/21, 32 applications were considered at seven meetings, in 2021-22, 22 applications were considered at ten meetings. The full details of this are contained in the Performance Statistics section of the report. The aim of this change to scheduling was to ensure that sufficient time was allocated to allow the IDB to give reasons against each of the grounds for review. IDB members have commented positively on these changes, and I am pleased to report that there have been no new Appeals to the High Court or Judicial Reviews of IDB decisions during 2021-22.
- 1.1 July 2021 saw the establishment of the new post of Regulatory Panel Manager, a key part of whose role is to be the first point of contact for IDB members and to oversee the operation of the body as a whole. The creation of this post has increased levels of administrative support to both the Office Holders and members of the IDB, whilst also providing a consistent secretariat function at IDB panel meetings (the latter role having previously been carried out by Investigations & Enforcement Case Officers).
- 1.2 As mentioned in last year's report, we appointed Rohan Sivanandan as Vice-Chair of the IDB in September 2021. Rohan brought with him a wealth of executive and non-executive experience from the judicial, education, health and social care sectors, with significant expertise in the area of Equality, Diversity and Inclusion. Rohan has given considerable assistance in the leadership of the IDB since his arrival and is an asset to the team.

Update on the work of the IDB

The Year in Review

- 2.1 2021/22 was the second full year of the IDB's operation, during which time Enforcement meetings and Authorisations meetings continued to take place remotely. Most of these meetings ran relatively smoothly, with just the occasional technical glitches. Papers for meetings continued to be made available electronically via the CaseLines platform.
- 2.2 A continuing theme in this year's work is the volume of papers that need to be read for each meeting and in a number of cases, the evidential issues can be complex. Members continue to devote a considerable amount of time reading the papers in preparation for the meeting for which they are currently not separately remunerated. Papers are usually circulated a week in advance of the meeting and in most cases, this allows sufficient time for members to prepare.
- 2.3 Members play an important role in assisting the Panel Secretary in producing written reasons for decisions at meetings. Producing an accurate decision sheet is important and can sometimes take longer than the time spent discussing the case. However, there have been occasions where, due to the complexity of the case, it has been necessary for the Panel Secretary, in conjunction with members, to complete the drafting of the decision sheet after the meeting has finished and to ensure it is signed off. As ever, members continue to work closely with the Executive to find ways to improve the efficiency of this process.
- 2.4 Members are kept up to date on current issues via the monthly IDB newsletter, as well as the quarterly training sessions.

Recruitment and induction

- 2.5 A recruitment process was undertaken in the summer of 2021 by the BSB's Governance Team. In September 2021 the BSB formally appointed five new barrister members and eight lay members for a three-year term of office. Most members participated in a three-day induction programme in September 2021, which was organised by the Operational Support Team, and delivered remotely.
- 2.6 The first day of induction programme comprised a one-day session providing an outline of relevant BSB functions, delivered by the Executive, including an introduction to the assessment of incoming information, an overview of the enforcement process as well as an in-depth session on the BSB Handbook – which is vital to the work of the IDB. The second day session, which was delivered by two external trainers, covered the role of the chair and was highly inter-active, involving group discussions on case studies and various styles of questioning. The third day session, also delivered by external trainers, included a session on equality and diversity, which is mandatory for all members within their first three months of office, as well as a session on writing effective reasoned decisions. This latter session took into account the lessons learned from the then recent judgment in *Eve v BSB*, on which more detail is given in paragraphs 4.9 – 4.11 below.
- 2.7 We are grateful for the support and guidance we received from these external trainers. Overall, we received positive feedback from the new members on their induction and we are pleased to report that they have all engaged in their new duties in a very enthusiastic manner. It is also clear that existing members have been very supportive to the new members, sometimes guiding them through the decision-making process and the complexities of the BSB's Handbook.

2.8 In addition, in Spring 2022 several new members attended (remotely) a Disciplinary Hearing run by Bar Tribunals & Adjudication Service (BTAS). This allowed members the opportunity to observe the process of how a BTAS Disciplinary Tribunal operates.

Office Holders

2.9 The Chair and the Vice-Chair continue to meet with the Executive on a quarterly basis, partly to finalise the content of the quarterly training sessions, but also to discuss other matters that are pertinent to the work of the IDB. The Chair and the Vice-Chair play a valuable role in chairing the quarterly training sessions, including facilitating lively debate on topics and generally encouraging members to provide feedback to the Executive.

Composition

2.10 As reported in last year's Annual Report, seven members' terms of office expired on 31 August 2021. As reported above (see paragraphs 2.5), in September 2021 the BSB formally appointed thirteen new IDB members. This meant that as of September 2021, there were 32 members of the IDB (13 barristers and 19 lay members).

Impact of COVID-19

2.11 The induction training in September 2021 for the newly appointed IDB members, as well as meetings and the quarterly training sessions for all members, continued to take place remotely. Surveys undertaken during the reporting period indicated that most members were content for the meetings and training sessions to take place remotely, although some members suggested that they would welcome attending events in person. Nevertheless, it is clear from the feedback on the quarterly training events provided by members that they have benefitted from the shared experience of learning together remotely and a sense of cohesion and support is apparent at the regular IDB meetings.

Performance Statistics

- 4.1 This section outlines the work carried out by the IDB covering the reporting period 1 April 2021 to 31 March 2022.
- 4.2 Number of panel meetings and cases considered:

Number of meetings	Cases considered	Decisions	Type
Enforcement			
40 meetings Full day - 18 Half day - 22	68	Referred to disciplinary action - 29 DBC* referrals - 2 DBC* proved - 3 Referral to 3-person Tribunal - 5 Referral to 5-person Tribunal - 19 Closed after investigation - 34 Administrative sanctions issued - 7 (Fines - 6) (Warnings - 1) Referred to Supervision - 0 Dismissed - 27 Put back for further enquiries - 5	
Authorisations			
10 meetings Full day - 0 Half day - 10	22	Executive Decisions: Affirm Executive Decision - 7 Substitute Another Decision - 8 Further information required - 3 ICC Hearing Panel Decision: Affirm ICC Decision - 3 Adjourn case - 1	Pupillage Reduction - 4 Admission to the Bar as a Transferring Qualified Lawyer - 7 Admission to the Bar as a Solicitor - 2 Admission to the Bar as a Qualified European Lawyer - 1 Admission to the Bar as a qualified foreign lawyer - 1 General Exemption - 1 Pupillage Funding and Advertising & Recruitment Requirements Waiver - 1 Reactivation of Stale Qualifications - 1 Inns' Conduct Committee (ICC) decision - 4

*Determination by Consent

Number of panel meetings

- 4.3 Table showing the number of IDB meetings covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to March 2022.

Meeting Type	2020/21	2021/22
Enforcement	38	40
Full Day	15	18
Half Day	23	22
Authorisations	7	10
Full Day	1	0
Half Day	6	10

Enforcement & Authorisations cases

- 4.4 Table showing the breakdown of cases/applications considered covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022.

Meeting Type	2020/21	2021/22
Enforcement		
Cases	73	68
Authorisations		
Applications	32	22

Decisions taken

- 4.5 Table showing the outcomes of enforcement meetings covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022.

Outcome	2020/21	2021/22
Put back for further enquiries	4	5
Closed after Investigation	33	34
Administrative Sanction - Discretionary Fine	4	6
Administrative Sanction – Warning	6	1
Referred to Supervision	1	0
Dismissed	21	27
Referred to Disciplinary Action	37	29
D5	17	19
D3	12	5
DBC* - initial referral	3	2
DBC* - proved	5	3

- 4.6 Table showing the outcomes of authorisation meetings covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to March 2022.

Outcome	2020/21	2021/22
Executive Decisions	29	18
Affirm Executive Decision	24	7
Substitute Another Decision	5	8
Further information required	0	3
ICC Hearing Panel Decision	3	4
Affirm ICC Decision	3	3
Adjourn case	0	1

Reviews and appeals of IDB panel decisions

- 4.7 IDB panel decisions can be reviewed or appealed under two mechanisms.
- 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 mechanism¹. 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 re-considered, 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 there were five requests for review.
 - 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 BTAS. During the period covered by this report, there were no such appeals.
- 4.8 For authorisations IDB decisions, there is a statutory right of appeal to the High Court pertaining to the Bar Qualification Rules (Part 4, B4 of the BSB Handbook). In this reporting period no appeals were lodged.
- 4.9 We reported in last year's Annual Report about the case of *Eve v Bar Standards Board* [2021] EWHC 2030 (Admin) which was handed down in July 2021. The judgment found in Mr Eve's favour and in doing so raised concerns about the quality of the BSB decision-making process and in particular the depth of reasons given for the decisions that were taken. Criticisms were levelled at both the BSB and IDB handling of the case. As chair of the IDB I carried out a thorough and extensive lessons learned review which sat alongside the BSB's own lessons learned exercise. Together we made a number of recommendations to improve the quality and process of decision making. At its March 2022 meeting the Board accepted those recommendations in full.
- 4.10 The BSB produced an action plan arising from the reviews which has been fully implemented. In so far as concerns the IDB, the actions included: IDB members receiving additional training on giving reasoned decisions at their quarterly training sessions in September/October 2021; newly appointed panel members receiving guidance on drafting authorisations decisions at their induction training in September 2021; new processes for settling decision-letters including post-meeting finalisation; reduction in the number of applications considered at authorisation meetings and the cessation of full

¹ Formal appeal mechanisms are in place in relation to decisions to impose administrative sanctions and decisions on authorisations.

day meetings; awareness-raising of the IDB's independence from the BSB executive and the need to consider the authorisation application afresh. Further reflection on the lessons learned was carried out with the 3 individual panel members who made the decision in Eve as part of their appraisal in the summer of 2021.

- 4.11 The improvements to the IDB's processes must be considered alongside the actions taken to change the way the Executive handles authorisation applications, such as: improving the consistency and quality of decision-making at first instance; amendments to the decision-making template; adopting a more flexible approach to applications with the intention of assisting the applicant to achieve their desired outcome; and additional support and training for the authorisations team. The BSB has also made a number of changes to the way in which it handles litigation, including engaging with the IDB office holders and relevant panel members in respect of a challenge arising out of an IDB decision. Whilst the prospect of a further successful appeal to the High Court cannot be ruled out, I am as satisfied as I can be that these reforms will substantially reduce the risk of an IDB authorisation decision being overturned in future.
- 4.12 There were two further appeals lodged to the High Court against IDB decisions in respect of findings of the Inns Conduct Committee which were reported in last year's Annual Report. Both appeals were settled without a hearing and were remitted back to the IDB for consideration. In both cases, the IDB affirmed the decision of the Inns' Conduct Committee.
- 4.13 In respect of Enforcement cases, there were five cases considered by the Independent Reviewer (IR) in the reporting period; three decisions were confirmed and two were referred back to the panel to reconsider. In one case, following a decision to dismiss with advice the barrister provided new evidence and asked that the decision be reviewed. The original panel considered the advice of the IR and withdrew its advice to the barrister. In the other case, issues were raised by those involved in reporting the matter relating to the operation of Article 10 of the ECHR, and a decision was made that the matter should be reconsidered by another IDB panel. At the time of writing, that matter is yet to be reconsidered.
- 4.14 There were also two appeals against administrative sanctions imposed by the IDB. One of these, relating to a barrister's comments on social media, was allowed by the appeal panel with considerable publicity by the barrister who waived his right to anonymity.
- 4.15 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. No applications for judicial review against IDB decisions were received in the reporting period.
- 4.16 IDB decisions made in the reporting period 1 April 2021 to 31 March 2022 which were subject to review, Appeal to the High Court, Appeal to BTAS, or Judicial Review.

IDB decisions subject to:	Number of cases	Outcome
Independent review	5	All Enforcement Confirmed - 3 Reconsider - 2
Appeal to BTAS	2	All Enforcement Successful - 1 Dismissed - 1
Appeal to the High Court	0	n/a
Judicial Review	0	n/a

- 4.17 Table showing the number of completed reviews of IDB decisions, by the year of the original IDB decision, covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022. Please note that the review may have been completed in a subsequent reporting year(s) than when the original decision was made by the IDB.

Review type	2020/21	2021/22
Enforcement		
Independent review	3	5
Appeal to BTAS	0	2
Appeal to the High Court	0	0
Judicial Review	3	0
Authorisations		
Independent review	0	0
Appeal to BTAS	0	0
Appeal to the High Court	2	0
Judicial Review	0	0

- 4.18 Table showing ongoing reviews of IDB decisions, by the year of the original IDB decision, covering the period 1 April 2020 to 31 March 2021 compared with the reporting period 1 April 2021 to 31 March 2022.

Review type	2020/21	2021/22
Enforcement		
Independent review	0	0
Appeal to BTAS	0	0
Appeal to the High Court	0	0
Judicial Review	0	0
Authorisations		
Independent review	0	0
Appeal to BTAS	0	0
Appeal to the High Court	1	0
Judicial Review	0	0

Quarterly training

- 5.1 During the period 1 April 2021 to 31 March 2022 quarterly training sessions continued to take place online via Microsoft Teams. Sessions were held in June, September/October and December 2021, and March 2022
- 5.2 The content of the quarterly sessions is based on feedback from IDB members and issues identified by the Executive and finalised in collaboration with the Chair and Vice-Chair.
- 5.3 The quarter one session included members being provided with an overview of the IDB appraisals' process and the BSB's Regulatory Risk Assessment Policy. The main focus of this session was on casework learning arising from both authorisations and enforcement panel meetings. Finally, the session provided an opportunity for the Chair to say farewell to departing members.
- 5.4 The quarter two session welcomed the 13 new members who had recently joined the IDB, as well as a short introduction to the Regulatory Panel Manager, who was just a few months into her new role. There was also a detailed session on the *Eve v BSB* High Court judgement and the lessons learned review. The session was wrapped up with a session on social media and its relevance to the work of the IDB.
- 5.5 The quarter three session began with an introduction to the Operational Support Team, where members met the three members of staff. The staff provide high level administrative support to both the Office Holders and members of the IDB, including organising meetings and training sessions and circulating information via CaseLines. This session was followed by training for members on the BTAS Sanctions Guidance which was published in early 2022. The Guidance is relevant in IDB Enforcement cases where the Panel is minded to refer the allegations to a Disciplinary Tribunal. There then followed a presentation on the day-to-day work of the Executive delivered by staff from the Centralised Assessment, Investigations and Enforcement, and Supervision Teams.
- 5.6 The final training session of the year featured a refresher on the application of the BTAS sanctions guidance (published in January 2022). Members learnt about the application of the Sanctions Guidance in small groups, using enforcement case studies. There was also an overview of the revised Authorisations rules and guidelines for applications and waivers.
- 5.7 Attendance at training sessions continues to be high and members have commented positively on the training received.

Feedback from members

- 6.1 Each member is sent, within one day of a panel meeting having taken place, a link to an online feedback form in which they are invited to reflect on their own performance and comment on the performance of other members who attended the meeting. They are also invited to comment on other matters not relating to their own performance or that of other members. This has included comments on the scheduling of the cases, including whether the time allowed is realistic, given the complexity of some of the cases. Other members have commented favourably on the use of SharePoint for considering and drafting decisions, as well as acknowledging the support of the Duty Manager at the various meetings.
- 6.2 Overall, the feedback indicates that members work well together in the meetings, with plenty of opportunity for thorough discussion. Notwithstanding the challenges of conducting IDB meetings remotely, members have continued to work closely, offering support and guidance to their colleagues.

Conclusions and Chair's comments on overall performance

- 6.3 Despite the phased exit from coronavirus lockdown between March to July 2021 and the eventual lifting of restrictions during this reporting period, the IDB has continued to meet remotely for both panel meetings and training. This has had the benefit of increasing flexibility for members, but we hope to be in a position to report a return to the more usual 'hybrid' way of working (some in-person attendance, some remote) by the time of the next IDB annual report. Indeed, we have already held one such training session in the latter part of this year. We feel it is important for members to meet and train together in person on a regular basis in order to develop a collegiate way of working and to build constructive relationships.
- 6.4 A formal appraisal process took place in the summer of 2021 in respect of the 18 members whose terms of office were due to expire on 31 August 2022, three of whom decided not to renew for a further term and stepped down from their positions. We have subsequently conducted a recruitment exercise for new barrister members and are in the process of appointing and arranging inductions for the successful candidates. We will report on this in more detail in next year's Annual Report.
- 6.5 To conclude, I should like to offer my thanks once again to all the members of the IDB and the Executive who have worked together to ensure the continued successful operation of the IDB over this reporting period in sometimes challenging circumstances.

Iain Christie,

Chair of the Independent Decision-Making Body

November 2022