

**The Council of the Inns of Court**

**The Bar Tribunals & Adjudication Service**

**MINUTES OF THE STRATEGIC ADVISORY BOARD MEETING**

**Wednesday 4th March 2015**

The Tribunal Suite, 9 Gray’s Inn Square, WC1R 5JF

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| 1 | ***Present:***  *Clare Dodgson Chair of SAB and Lay Representative*  *Malcolm Cohen Lay Board Member, Bar Standards Board*  *Vanessa Davies Director General, Bar Standards Board*  *Emir Feisal Member, Inns’ Conduct Committee*  *Sheila Hollingworth Panellist, Disciplinary Tribunal Pool*  *Joan Martin Lay Member, Tribunal Appointments Body*  *Heather Rogers Interim Chair, Inns’ Conduct Committee*  *Stuart Sleeman Chair, Disciplinary Tribunal Service*  ***Apologies:***  *Chandra Connaghan Contract Management Officer, BSB*  ***In Attendance:***  *Margaret Hilson Administrator, BTAS*  *Andy Russell Registrar, BTAS*  *James Wakefield Director, COIC* |  |
| 2 | **Minutes of the Last Meeting**  The minutes of the meeting held on 4th December 2014 were confirmed, and will be placed on the BTAS website. | Annex A |
| 3 | **Actions from the Last Meeting**  The Board noted the update on actions from the last meeting as detailed in Annex B. | Annex B |
| 4  4.1  4.2 | **Matters Arising from the Minutes**  Forecasting Future Tribunal Numbers (Minute 3.2, 04.12.14 refers) –  The Registrar confirmed that the BSB is now providing high-level (anonymous) data regarding the outcomes of their Professional Conduct Committee meetings.  Draft Inns’ Conduct Committee Rules (Minute 7.1, 04.12.14 refers) –  The Registrar advised the Board that the revised ICC Rules had not been approved by the Council of the Inns of Court at their meeting in January 2015 due to questions around how the burden and standard of proof were currently drafted; and that at a subsequent meeting, the ICC Rules Review Group had responded to this by agreeing a revised formulation of wording that stressed that matters should be shown to the ‘satisfaction’ of the Panel.    The SAB reminded itself that it was an *advisory* board, and as such it had no power to approve (or not) the revised ICC Rules. However, it agreed that it was appropriate to express its very clear view of the proposed change.    The Board agreed that it was of paramount importance that the burden and standard of proof should be made transparently clear to all involved with the Hearing (both Panellists and applicants/students), and that this should be done in terms whose meaning was established in use and understanding by the general public. Anything otherwise, it seemed to the Board, would lead to confusion, inconsistency in the application of the Rules by Panels, and invite legal challenge.    The SAB then unanimously agreed that the standard of proof should be the civil standard, and that the option proposed was inappropriate. In reaching this position SAB was fully aware that, under the DTRs, the criminal standard of proof was applied to barristers, but regarded this as an anomaly that needed to be addressed. The Board considered that introducing the criminal standard into ICC hearings would simply exacerbate the present inconsistency with the vast majority of other regulatory systems.    The Chair of the ICC agreed to feedback these points to the ICCRRG, and recommend that they consider producing a revised draft articulating the civil standard and that this be put back to COIC, accompanied by a note setting out the SAB’s concerns so that COIC was fully aware of them when it revisited the matter.  **Action 1: HR & AR**    For the avoidance of doubt the Board reconfirmed that it agreed with the assignation of the burden of proof expressed in the revised ICC Rules. |  |
| 5  5.1  5.2 | **Meeting of the Tribunal Appointments Body on 21 January 2015**  The Registrar outlined to the Board changes to the appointment process for Panellists agreed at the recent TAB meeting.  The SAB noted and fully endorsed the TAB’s decision to introduce three-year terms of office on the Tribunal Panel (renewable once for a further three years), and their proposal that this would best be done by regarding the Panel as being made up of two ‘cohorts’ with appointments to each synchronised so that appointments to one cohort took place every three years at the same time as re-appointments to the other.  This was a change from the current policy whereby Panellists were eligible to be appointed to two four-year terms, and where the Panel was effectively made up of three ‘cohorts’ with staggered initial appointment periods. The SAB noted that the TAB regarded it as imperative that this policy change be introduced as soon as possible.  The SAB did however have some concerns regarding the Registrar’s current proposal for transitioning from a three-cohort to a two-cohort Panel, as this was based around recruiting new Panellists while simultaneously not re-appointing some existing Panellists. The SAB agreed that any mechanism must be transparent and carefully explained to all those involved, so that the process did not appear as arbitrary or unfair to those existing Panellists not being re-appointed.  The Registrar agreed to circulate a paper ahead of the SAB’s next meeting fully explaining the proposed transitional arrangements and considering any viable alternative approaches. **Action 2: AR** |  |
| 6  6.1  6.2 | **BTAS Annual Report**  The SAB welcomed the 2014 Annual Report and thanked the BTAS team for their efforts in producing it.  The Director General of the BSB indicated that she had a small number of specific comments, but that she would send these direct to the Registrar for his reference. **Action 3: VD** | Annex C |
| 7  7.1  7.2 | **Key Performance Indicators**  The SAB reviewed the KPI report and were satisfied that all key targets were being met. It noted that to gain a meaningful overview of the Tribunal process as a whole it would be necessary for them to somehow link with information from the BSB regarding events pre-referral to BTAS. Certainly the ‘public interest’ was felt to be in the duration of a case from a complaint being raised to a Tribunal’s decision, rather than BSB or BTAS data in isolation.  The Director General of the BSB drew the SAB’s attention to a recent report by the Legal Services Board on the performance of all legal services regulators, which made reference both to the BSB specifically and the focus on ‘time to completion’ of disciplinary cases generally, and it was agreed that the Registrar would circulate this to the Board for their reference. **Action 4: AR**  The SAB considered the potential development of equality and diversity focussed KPIs, and reminded itself at the outset that – given the relatively small number of Tribunals taking place – any outcomes were unlikely to achieve a threshold of statistical significance (and would therefore be indistinguishable from the results of chance).   1. The Registrar confirmed it would be possible to report on the ethnicity/diversity make-up of Tribunal Panels. The SAB then discussed whether this would be of particular value in achieving a better outcome in terms of equality and diversity. At present individual Panels were not specifically constituted to be ethnically or gender diverse. The SAB was fully committed to the principle of greater diversity but was concerned that seeking to do so would require disproportionate effort for questionable gain – even were it achievable at all. The SAB also reminded itself that all Panel Members had received equality and diversity training which was intended to ensure all Panel Members were aware of the key issues here. 2. The SAB agreed that it would not be meaningful to attempt to report on Panel decisions cross-referenced against the ethnicity and diversity data of defendants. This was because Hearings only formed a small part of the BSB’s disciplinary process, and any meaningful study would need to take into account *all* cases investigated by the BSB, whether or not they resulted in a Tribunal. The Director General of the BSB informed the SAB that the BSB did conduct periodical reviews on this exact topic, and while it was currently working on the next iteration of this it was agreed that the latest available version would be circulated to the SAB for their reference. **Action 5: VD** 3. The SAB agreed to review the BSB’s report and then consider whether the development of any meaningful and valid BTAS-specific KPIs on this topic were possible, or whether the wider BSB data addressed all the key issues itself. | Annex D |
| 8  8.1  8.2 | **Performance and Appraisal Process**  The SAB thanked the Working Group for developing the draft new policy, and had no hesitation in agreeing that this should be recommended to COIC for approval. It also agreed to strongly recommend to COIC that the new competencies (developed by Sheila Hollingworth for the Working Group and set out in Annex E / version 1.2 of policy) replace those currently in use, noting that they were considerably more straightforward and very clearly identified the behaviours required of Panellists. SAB did however suggest that the use of the word ‘file’ was preferable to ‘bundle’ in the competences, and that the policy be revised accordingly. **Action 6: AR.**  The SAB noted the legal advice that had been received regarding the potential disclosure of completed new-format appraisal forms, and agreed that this provided reassurance that it was still appropriate to move to the new appraisal policy. | Annexes E & F  Annex G |
| 9  9.1  9.2 | **Future Training of Disciplinary Tribunal Panel Members**  The SAB warmly welcomed the proposal that the delivery of training should be based around a three-yearly cycle, so that the induction training of new Panellists was simultaneously the refresher training of existing panellists, and that this would help to develop a ‘community’ of Panellists sharing their knowledge and experience. This training would be augmented by ad hoc face-to-face, online or documentary training as necessary.  The SAB reiterated that training, in whatever form, was vital for Panellists and must be obligatory for those seeking appointment or reappointment to the Panel. That being the case, the SAB expressed some concerns about the suggested format for the key induction/refresher training, which currently was built around a single one-day event. The SAB did not accept that it was an unrealistic aim to expect every Panellist to be available to attend this. The SAB noted that it was proposed that the event be videoed and that this then become required viewing for those who were unable to attend. It felt that this should be by exception only, or there was a real risk this could reduce the value of the event and might even serve to further reduce attendance by providing a potentially more convenient alternative.  The SAB reiterated that it was fully behind the concept itself, but felt that the proposed delivery should be reviewed, with a choice of two or even three alternate dates for the training seeming more likely to achieve the desired aim. It believed that attendance on at least one of the dates should be compulsory, but that a video could subsequently be provided on a case by case basis to those with sufficient extenuating circumstances (but that this not be advertised in advance). **Action 7: AR**  The Registrar brought to the SAB’s attention a point recently raised by the Chair of the Disciplinary Service, regarding the training of 3-person Panel Chairs. He had observed that while some QC Panellists had acted for many years as Recorders or in similar roles, others had little experience of chairing tribunals (or indeed involvement with tribunals at all), and clearly there was likely to be a considerable variation in their skills sets. In view of this, the SAB agreed that it would seem appropriate to develop and provide specific training for Panel Chairs, and that this should be considered at a future date. **Action 8: AR** | Annex H |
| 10  10.1  10.2 | **BTAS Newsletter**  The Registrar reported that the current format and quarterly frequency of the newsletter was not really working, and that it was a struggle to find suitable content of interest to Panellists. It was also far from clear that Panellists gained much value from (or indeed even read) the newsletters.  The Registrar proposed to move towards the introduction of ‘bulletins’, to bring key learning points (such as developments in case law) promptly and effectively to Panellists’ attention. This would be done as and when the need arose, rather than on an artificial or arbitrary timescale. These bulletins could be collated annually and kept as a reference source for current and future Panellists.  The SAB noted that the current format of ‘newsletters’ formed part of BTAS’s agreement with the BSB, but all (including the Director General of the BSB) agreed that such a change was appropriate, represented good practice, and should go ahead. **Action 9: AR**  Following on from the above, the SAB agreed that it was particularly important to bring any ‘learning points’ arising from Tribunal decisions that had been subsequently appealed to the attention of those Panellists who had served on the Tribunal in question, along with a copy of the full judgement on the case for their information and reference. **Action 10: AR** |  |
| 11 | **Membership of the Disciplinary Panel**  At the Registrar’s request, the SAB considered whether another appointment offered to a Panel Member represented a conflict of interest were it to be accepted.  The SAB accepted that a measure of common sense had to be applied to such requests, and that it would not want Panel membership to be regarded as overly onerous or restricting.  However, in the particular circumstances outlined, the SAB agreed that there had always to be ‘clear water’ between BTAS and the BSB/Bar Council, and that it had to err on the side of caution in such cases. It therefore agreed that the Panel Member involved should be advised that the other appointment could be seen to involve too close a relationship with the BSB/Bar Council, and therefore could amount to a potential conflict of interest. **Action 11: AR** | Annex I |
| 12 | **Dates of Future Meetings**  The Chair apologised to the Committee on the grounds that she could no longer attend the next scheduled meeting (Tuesday 16 June 2015 2pm -4pm). The Committee agreed that efforts should be made to find an alternative date to enable all to attend. **Action 12: AR**  Thursday 17 September 2015 2pm – 4pm  Wednesday 2 December 2015 2pm – 4pm |  |
| 13  13.1  13.2 | **Any Other Business**  The Chair of the Disciplinary Tribunal Service highlighted a recent case where a Panel he was Chairing had heard a case involving a previously disbarred barrister who had since been readmitted. The Chair of the DTS questioned the processes around an individual’s readmission, and agreed to contact the Director General of the BSB regarding the principles involved in the matter. **Action 13: SS**  The SAB agreed that it was important to bring the matter of 3 / 5 Person Panels back on the agenda as soon as an evidence base had been assembled (*Minute 5.2, 04.12.14 refers*). The TAB representative present offered to provide the Registrar with contact details for an employee at the GMC who might be able to provide valuable information on this point. **Action 14: AR** |  |