



THE COUNCIL OF THE INNS OF COURT

## The Bar Tribunals & Adjudication Service

### MINUTES OF THE STRATEGIC ADVISORY BOARD MEETING

Friday 18<sup>th</sup> March 2016

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

1	<p><b>Present:</b>  <i>Clare Dodgson</i>                      <i>Chair of SAB and Lay Representative</i>  <i>Vanessa Davies</i>                    <i>Director General, Bar Standards Board</i>  <i>Sheila Hollingworth</i>            <i>Panellist, Disciplinary Tribunal Pool</i>  <i>Joan Martin</i>                         <i>Lay Member, Tribunal Appointments Body</i>  <i>Heather Rogers</i>                  <i>Interim Chair, Inns' Conduct Committee</i>  <i>Stuart Sleeman</i>                    <i>Chair, Disciplinary Tribunal Service</i></p> <p><b>Apologies:</b>  <i>Malcolm Cohen</i>                  <i>Lay Board Member, Bar Standards Board</i>  <i>Emir Feisal</i>                         <i>Member, Inns' Conduct Committee</i>  <i>James Wakefield</i>                 <i>Director, COIC</i></p> <p><b>In Attendance:</b>  <i>Hayley Addison</i>                  <i>Administrator, BTAS</i>  <i>Stephen Clifford</i>                  <i>Senior Corporate Support Officer, BSB</i>  <i>Margaret Hilson</i>                  <i>Administrator, BTAS</i>  <i>Andy Russell</i>                       <i>Registrar, BTAS</i>  <i>Natasha Williams</i>                <i>Business Support Officer, BSB</i></p>	
2	<p><b>Minutes of the Last Meeting</b></p> <p>The minutes of the meeting held on 2 December 2015 were confirmed and will be placed on the BTAS website, subject to Heather Rogers' name being added to the list of those giving apologies.</p>	Annex A
3	<p><b>Actions from the Last Meeting</b></p> <p>The Board noted the update on actions from the last meeting as detailed in Annex B.</p>	Annex B

4	<p data-bbox="300 275 751 309"><b>Matters Arising from the Minutes</b></p> <p data-bbox="188 353 1198 427">4.1 <i>BSB Consultation on Reforms to the Disciplinary Tribunal Regulations</i> (Minute 4.1, SAB 02.12.15 refers) –</p> <p data-bbox="300 472 1214 658">The Director General of the BSB thanked the members of the SAB for their time and efforts in assisting COIC draft and submit a response to their Consultation. All responses received by the BSB had been carefully considered at their Board meeting on 28<sup>th</sup> January 2016 (Item 9 in the <a href="#">Minutes</a> of that meeting).</p> <p data-bbox="300 703 1155 777">The Director General highlighted the following key points of their Board’s discussion:</p> <ul data-bbox="300 822 1214 1240" style="list-style-type: none"> <li>(i) That the revised Disciplinary Tribunal Regulations required Legal Services Board approval, and that the earliest they should be expected to come into effect was October 2016.</li> <li>(ii) That, with the exception of pronouncing disbarments, the role of the Inns of Court in the disciplinary process would be removed.</li> <li>(iii) That Tribunals would have the power to refer cases back to the BSB for consideration for the imposition of administrative sanctions.</li> <li>(iv) That details of dismissed cases would only be published anonymously unless the respondent requested otherwise.</li> </ul> <p data-bbox="300 1285 1171 1471">Point iv was queried by the SAB as potentially inconsistent with a recent decision involving the Solicitors Disciplinary Tribunal. The Director General thanked the SAB for highlighting the matter and giving the BSB the chance to investigate this before submitting the revised DTRs to the LSB for approval.</p> <p data-bbox="188 1516 970 1550">4.2 <i>Revised ICC Rules</i> (Minute 7, SAB 02.12.15 refers) –</p> <p data-bbox="300 1594 1214 1780">The Director General of the BSB confirmed that, contrary to the BSB’s expectations, the Legal Services Board had determined that a full application (including details of a consultation) would need to be provided before the proposed revisions to the ICC Rules could be considered.</p> <p data-bbox="300 1825 1193 2011">It was still hoped that approval might be received to enable the new Rules to come into effect from the start of the 2016/17 academic year, although the SAB was reminded that BTAS would need several months’ prior notice of the change-over to enable the necessary preparatory and implementation work to be conducted in time.</p>	

4.3	<p>It was agreed that the Director General of the BSB and the Interim Chair of the ICC should meet as soon as possible after Easter to consider the best approach to speeding the approval along, even if only on an interim basis. <b>Action 1: HA</b></p> <p><i>Equality and Diversity in Complaints at the Bar</i> (Minute 7.2, SAB 04.03.15 refers) –</p> <p>The Director General of the BSB summarised the recently published equality and diversity report, which continued data previously published two years ago. In essence, the latest iteration indicates that gender is replacing ethnicity in terms of being the significant factor in the outcome of complaints. As a consequence of this, the BSB will seek to handle complaints in as a gender-anonymous way as possible.</p> <p>The Director General emphasised that the data related to BSB-processes alone, and did not include details of cases after they were referred to BTAS. The SAB agreed with her that such an extension of the data could be important, and welcomed her suggestion that BTAS liaise with the BSB’s Research Team to see what might be possible. <b>Action 2: AR/VD</b></p>	
5	<p><b>Key Performance Indicators</b></p> <p>The SAB received the latest KPI data and the accompanying Executive Summary, and agreed that this provided reassuring evidence that BTAS continued to perform satisfactorily in all areas.</p> <p>While it was noted that the number of Reasonable Adjustments made (such as conducting hearings via Skype) was increasing, it was emphasised that in every case these required prior approval by a Directions Judge.</p>	Annexes Ci and Cii
6	<p><b>Review of Postponed Cases</b></p> <p>The SAB welcomed the summary of postponed cases, and agreed that, combined with data they had previously seen, this gave them a comprehensive picture of BTAS’s current caseload.</p> <p>It was agreed that the Registrar would agree with the Chair of the DTS when he should be routinely notified about a postponed case. <b>Action 3: AR/SS</b></p>	Annex D
7	<p><b>BTAS Annual Report</b></p> <p>The SAB welcomed the 2015 Annual Report and commended the BTAS team on its presentation and clarity.</p>	Annex E

	<p>While reviewing the contents of the Report the SAB discussed the following points:</p> <p>(i) The increase in the number of cases where the parties could not agree Directions (para 13 and following) was a concern, and potentially could indicate that applications for Special Directions were being used as tactic to delay the completion of proceedings. SAB agreed that it was paramount to always balance the parties' need for fairness in proceedings with the public's need for their prompt resolution.</p> <p>(ii) That, while the ICC might traditionally align the conduct of its business with the academic (rather than calendar) year, it was not clear if this was a requirement of the ICC Rules. In any case there was no known requirement for its Report to be based on the academic year, and that a move to calendar-year reporting would seem a simple and sensible step that would improve the transparency and accessibility of the data in the ICC Report.</p> <p style="text-align: right;"><b>Action 4: AR/HA</b></p> <p>(iii) The year-on-year reduction in the proportion of cases leading to disbarment could be indicative of increasing leniency in the decisions of Panels. If so this would be a concern that the BSB would also share in the light of a small number of recent Tribunal outcomes. In addition the SAB recognised that there was a strong and legitimate public interest dimension to this issue.</p> <p>The SAB acknowledged that it would always be extremely difficult to achieve any certainty about this, given that only the members of an individual Panel had access to the totality of the evidence presented, the arguments made, and the deliberations that considered these. Furthermore, and in terms of five-person panels (which alone have the power to disbar), it must be kept in mind that these must have Judicial Chairs who are not members of the Panel, nor required to complete the usual training – which includes Sentencing Guidance.</p> <p>Nonetheless the SAB agreed that it was vital that professional and public confidence in the level of any sanctions imposed was maintained. It was accordingly agreed that the issue should be further considered to ensure that any legitimate concerns were appropriately addressed.</p> <p style="text-align: right;"><b>Action 5: AR</b></p>	
8	<p><b>Recruitment of Disciplinary Panel Members and Clerks in 2016</b></p> <p>The Registrar updated the SAB on progress with the 2016 recruitment exercise, and confirmed that adverts had been placed in the national press (with online applications closing on 22<sup>nd</sup> April 2016).</p>	

	The SAB welcomed the progress report, but noted that timescales for the process were tight and the demands on the members of the Tribunal Appointments Body could be high.	
9	<b>Appraisal Policies</b>	
9.1	<p><i>Review of new Panellist Appraisal Policy</i></p> <p>The SAB thanked the Registrar for presenting detailed information and feedback regarding the piloting of the new appraisal system, and his paper setting out options for its full implementation. It was recognised that the contributions from SH and SS, members of the SAB’s Appraisal Working Group, had been particularly valuable in reaching this point.</p> <p>At the outset the SAB reconfirmed its firm view that the move away from face-to-face meetings towards a competency-based ‘questionnaire’ completed by all panel members after every Tribunal remained the most viable and effective system, likely to produce the most valuable output. This was entirely unchanged from the core principles of the system approved by COIC in 2015. However, having reviewed the details of the system in operation during its pilot phase, the SAB agreed that carefully streamlining it would result in improvements in the system’s use (both in function and in perception), and that this could be achieved without any expected loss in terms of the quality of the output achieved.</p> <p>Having carefully considered the full range of options in Annex F, the SAB agreed that implementation of the piloted system should now go ahead but streamlined much as per option ‘Cii’ in Annex F. Revisions should include:</p> <ul style="list-style-type: none"> <li>(i) Removal of the numbering that accompanied each competency on the appraisal form.</li> <li>(ii) Restructuring the form so that scoring is done at a competency-area level (e.g ‘Analysis and Decision Making Skills’) rather than for each specific competency within that area.</li> <li>(iii) In the light of ‘ii’ above, that there be a requirement for panel members to clearly identify any exceptionally strong or poor performance in a specific competency (including when an individual’s performance in the other specific competencies within that overall competency areas was satisfactory).</li> <li>(iv) That the format of the questionnaire should be simplified so that rather than an excel-based ‘matrix’ layout it be a simpler one-form-per-person design, and ideally in either WORD or online (such as using SurveyMonkey software).</li> <li>(v) That consideration should be given to the use of a red-amber-green (‘traffic-light’) scoring system if that would more easily</li> </ul>	Annex F, & Appendices A - C

	<p>identify areas of concern.</p> <p>(vi) That the three additional competency areas required of Panel Chairs (and which had been combined on the appraisal form during the pilot phase) should be included separately.</p> <p>(vii) That there be a requirement for the completed form to be submitted within 7 days.</p> <p>It was agreed that the SAB's Appraisal Working Group (SS, SH and AR) should finalise the revisions to the form. It should then enter use and – subject to any unforeseen issues arising – remain unchanged pending SAB's review of the system at the March 2017 meeting. <b>Action 6: AR, SH &amp; SS</b></p> <p>In terms of implementation, the SAB agreed that it must be made clear to all members of the panel that this is a mandatory system, and must become part of the culture of panel membership. Failure to meaningfully engage with the system by any individual serving on the Panels should be seen in the same way as them failing to adhere to any other COIC policy, and must call into question their continued membership of the Panel. To facilitate the use of the appraisal system future panel members' training should include a focus on the competencies required of panel members, and enable a common understanding of what 'good' performance looks like. This, along with other topics to be included in future panel member training, should be considered at the SAB's next meeting. <b>Action 7: AR</b></p> <p>9.2 <i>Appraisal of Clerks</i></p> <p>Once the revisions to the panel member appraisal system were made and it was in routine use, it was agreed that the members of the Appraisal Working Group should consider what modifications to the system were necessary for it to be used for the appraisal of clerks. <b>Action 8: AR, SH &amp; SS</b></p> <p>9.3 <i>Appraisal of SAB Members</i></p> <p>The Registrar clarified that, based on BTAS records, his belief at the time of preparing the agenda had been that the majority of SAB members completed a first term of office in December 2016. This implied a reappointment process that potentially included the need for appraisals. However, having consulted the SAB's <i>Terms of Reference</i>, it was now clear that all posts on the SAB (excluding the Chair) were <i>ex officio</i> of other roles, and as such no reappointment process or appraisal of members was necessary.</p>	
10	<b>Dates of Future Meetings</b>	

	<p>Wednesday 15th June 2016: 2 – 4pm</p> <p>Members will be contacted shortly to establish their availability to meet later in 2016 .</p> <p style="text-align: right;"><b>Action 9: AR</b></p>	
11	<p><b>Any Other Business</b></p> <p>The Director General of the BSB reminded the SAB that the current Service Agreement between BTAS and the BSB (and under which BTAS administers tribunals and other hearings) expires in December 2016. The BSB Board will formally consider the recommendation for its renewal at their May meeting.</p>	