



**The Bar Tribunals and Adjudication Service**

**The Tribunals Appointments Body (TAB)**  
**Annual Report 2013**

*Date of issue – December 2013*

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## **An Introduction to the TAB Annual Report from the Chairman**

I am pleased to present the first Annual Report by the Tribunals Appointment Body (TAB). On behalf of the President of the Council of the Inns of Court (COIC), the Bar Tribunals and Adjudication Service (BTAS) is responsible for appointing and administering Disciplinary Tribunals, Interim Suspension panels, Fitness to Practise panels and Inns' Conduct Committee (ICC) panels appointed to consider admission and disciplinary cases brought by the Inns of Court against student members or applicants for admission to an Inn of Court. Panel members who sit on these hearings are appointed to a pool by the President, on the recommendation of the independent Tribunal Appointments Body (TAB).

The past year has been one of significant change and progress for the Bar Tribunals and Adjudication Service (formally known as the COIC disciplinary service) and the Tribunals Appointments Body (TAB). The TAB has worked closely with the Bar Tribunals and Adjudication Service (BTAS) in completing the recommendations set out by the COIC disciplinary tribunals and hearings review group - final report (the Browne report).

The TAB together with BTAS have succeeded in recruiting, training and appointing an entirely new cohort of panel members and clerks, as well as creating the relevant policies and administrative procedures relating to recruitment and selection for the ongoing running of BTAS.

I would like to thank the members of the TAB and BTAS for their contribution to what has been a very successful year and without whom the significant progress could not have been achieved.

The process of significant change described in these pages could not have been undertaken as successfully as it has, or at all, without the small team of young professionals, initially assembled by the Under-Treasurer of Grays Inn and latterly led so effectively by Wendy Harris following her appointment as Interim Registrar in October 2012. I would particularly wish to mention Katie-Elizabeth Walmsley and Taji Beklik who, together with Margaret Hilson, have made a singular and sustained contribution to all that has been achieved. I am personally very grateful to Wendy Harris and her entire team for the high degree of professionalism that they have brought to this whole endeavour.

This report outlines the background to Tribunals Appointments Body (TAB) and its work since its creation, and offers an overview of the progress during 2013.

A handwritten signature in blue ink, appearing to read 'Lord Justice McFarlane', with a horizontal line drawn underneath.

Lord Justice McFarlane

Chairman of the Tribunal Appointments Body

## **Section 1 – Introduction**

### **1. Historical Background**

- 1.1. In November 2011, The Council of the Inns of Court (COIC) established a review of its disciplinary functions under the chairmanship of Desmond Browne QC. The review was asked to make recommendations to ensure that COIC's procedures were in line with the best regulatory practice and that there was a proper degree of independence from the Bar Standards Board (BSB).
- 1.2. The Chairman of the group recommended, in his interim report 22<sup>nd</sup> February 2012, the urgent appointment of a new Tribunals Appointments Body (TAB) and a new cohort of barrister and lay panel members to replace tainted individuals. The TAB would include:
  - a Chairman, who will be a bencher of one of the four Inns and a practising barrister or a member of the judiciary;
  - 2 Silks, who should be practising barristers and have been a Queen's Counsel for at least 5 years;
  - 2 practising barristers of not less than 7 years standing; and,
  - 2 Lay Representatives
- 1.3. Following the appointment of a new Tribunals Appointments Body (TAB) chaired by Lord Justice McFarlane, the Group began the recruitment of a new cohort of panel members and clerks through open competition.
- 1.4. The TAB Terms of Reference were approved at the COIC meeting 28th March 2012. From what was learnt from past practice and the recent recruitment phase, the TAB decided there were certain issues relating to the Terms of Reference which could profitably be considered. Members were asked to consider the amendments to the TAB Terms of Reference and give comment. In addition, to making provision for appraisal it was proposed that the TAB TOR should provide for a Code of Conduct for TAB members, as well as members of the COIC Disciplinary Pool (as it was then known).

- 1.5. The Disciplinary Tribunals and Hearings Review Group reported to COIC on 18 July 2012<sup>1</sup>. The review identified a number of administrative irregularities in the maintenance of the list of those appointed to sit as non-judicial members of disciplinary tribunals. Following the publication of the COIC disciplinary tribunals and hearings review group - final report (the Browne report), COIC commissioned a change programme to complete the majority of the recommendations within the report.
- 1.6. The majority of recommendations have been delivered and the changes are now being embedded/ normalised under the new tribunal service, known as the Bar Tribunals & Adjudication Service (BTAS). All recommendations specifically relating to the TAB have been completed.
- 1.7. TAB launched an advertising campaign at the end of May 2012 to recruit silks, barrister volunteers, clerks and lay representatives to the COIC Disciplinary Pool. It was agreed that the aim should be to recruit in sufficient numbers to provide a total Pool size of 100 comprising of: silks, barrister volunteers, clerks and lay representatives.
- 1.8. TAB sought consultancy advice from Bindi Dholakia CPsychol, AFBPsS, who has expertise in the areas of fair recruitment and selection methods and equality and diversity. Ms Dholakia has provided input to ensure that both sift and interview stages were competency based and systems and processes were such that an accurate and fair assessment of each candidate could be made, and further to ensure that any equality obligation was fulfilled.
- 1.9. A total of 149 interviews were scheduled for July, September, October and November. This placed an enormous and unsustainable burden on the 7 members of TAB and it became apparent that in order to complete the interview task it was necessary to appoint additional members to TAB, with the agreement of the President of COIC the members were appointed out of committee, and appointments were subsequently endorsed by COIC on 24 October 2012.

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<sup>1</sup> <http://www.graysinn.info/index.php/disciplinary-tribunals-review-coic>

1.10. The additional appointments were:

- 3 Silks, that are practising barristers and have been a Queen's Counsel for at least 5 years;
- 2 practising barristers of not less than 7 years standing; and,
- 1 Lay Representative

## **2. The Tribunals Appointments Body**

2.1. The Tribunals Appointments Body to whom COIC has delegated its authority to:

- appoint practising barristers (including silks) and lay representatives to the COIC Disciplinary Pool (the Pool), members of which sit on Disciplinary Tribunals and other panels adjudicating on cases of misconduct and fitness to practise against barristers; and,
- appoint lay representatives to the Inns' Conduct Committee panels adjudicating on fitness to practise issues relating to admission to an Inn of Court and student conduct matters ;
- appoint barristers as clerks to Disciplinary Tribunals; and,
- certify that those they select are fit and properly qualified to conduct the business for which they have been selected and remain so for their period of appointment.
- recommend a Chair of the Disciplinary Tribunals for appointment (to be recommended by the Chairman of the TAB to the President of COIC);
- recommend a Chair of the Inns' Conduct Committee for appointment (to be recommended by the Chairman of the TAB to the President of COIC).

2.2. The TAB is also charged with:

- oversight of the appraisal process and offering informed recommendations to the President of COIC for the re-appointment of members of the Pool for a second term of office.

- 2.3. Details on the composition of the current TAB can be found at Annex 1.
- 2.4. The TAB congratulates Stephen Phillips QC on his appointment to the High Court Bench as of October 1<sup>st</sup> 2013, necessitating his retirement from the TAB. The TAB agreed that there is no current need to recruit a replacement member to the TAB.



## **Section 2 – Progress 2013**

### **3. The Appointments Protocol 2013<sup>2</sup>**

- 3.1. The TAB created a new Appointments Protocol 2013 replacing the TAB Terms of Reference 2012. The new protocol defines the responsibilities of the new TAB and the eligibility requirements for TAB members, panel members (both Disciplinary Tribunals and Inns' Conduct Committee members) and clerks. In liaison with the COIC Change Programme Project Board, the TAB provided for a quarantine period, for applicants who were previously an employee of the Bar Council/BSB or a member a Bar Council/BSB committees or in receipt of payment for services, within the protocol as suggested in the Browne report at paragraph 14 Annex 10.
- 3.2. Further amendment was made to the Protocol following an Inns' Conduct Committee rule change; extending the term of office of Inns' Conduct Committee members from 3 to 4 years in line with the Disciplinary Tribunal members in July 2013.

### **4. Training**

- 4.1. All those recruited to the Pool were required to complete the three mandatory aspects of the pre appointment training:
- pre appointment induction training;
  - equality and diversity training session; and,
  - observation of a Disciplinary Tribunal
- 4.2. Pool members were also provided with an Information and Guidance Pack. The pack was distributed to Pool members at the beginning of the induction training session.
- 4.3. Only once all three training elements had been undertaken and the completed training logs returned were appointments finalised and each member appointed formally by the President of COIC for a defined period of office.

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<sup>2</sup> <http://www.tbta.org.uk/wp-content/uploads/2013/07/Appointments-Protocol-2013-x.pdf>

#### **4.4. Induction Training**

4.4.1. It was proposed that an evening session of 2.5 hours should be offered on 4 occasions in December 2012/January 2013/February 2013. The session provided environment specific induction briefing and group work based scenarios.

4.4.2. The target outcomes for the induction training were as follows:

- understand their role and responsibilities and the expected standards;
- understand the regulatory framework in which the Disciplinary Tribunal Service operates;
- have developed knowledge of relevant sections of the Code of Conduct, guidance and cases/regulatory case law and understand their underlying principles;
- know how to apply the Code (rules and regulations) and BTAS Sentencing Guidance when making decisions in relation to disciplinary cases; and,
- demonstrate developed knowledge, skills and attitudes (knowledge and technical skill) to enable Pool members to make effective and positive contributions.

4.4.3. Those attending were required to complete and return a training log to allow Pool members to evaluate the degree to which they consider the specified training outcomes had been met. The aim of this exercise was to ensure Pool members play an active part in their learning and development.

#### **4.5. Equality & Diversity Training**

4.5.1. Following a research and tendering exercise, this training was outsourced to specialist equality and diversity consultants; Impact Training Consultancy Ltd.

4.5.2. The target outcomes for the equality training were as follows:

- appreciate key obligations under equalities legislation;
- ensure that tribunals and conduct committees are run in a fair manner and that the equality and diversity needs of defendant barristers,

students, applicants, witnesses and other participants in the hearing process are respected;

- identify and challenge their own prejudices and apply this to their decision-making;
- highlight the difficulties faced by those with protected characteristics, particularly at the Bar; and,
- demonstrate developed knowledge, skills and attitudes (Commitment to Diversity and Inclusion).

4.5.3. Those attending were required to complete a training log to allow Pool members to self-evaluate the degree to which training outcomes have been met.

#### **4.6. Observation of a Disciplinary Tribunal**

4.6.1. The final element of the pre appointment programme was to observe a tribunal. The target outcomes for the observation of a tribunal were as follows:

- understanding of the role, responsibilities and expected standards of panel members;
- understanding of the other parties present at hearings and their respective roles;
- understanding of the conduct of the hearing, including the Finding and Sentencing stage; and,
- demonstrate developed knowledge, skills and attitudes (knowledge and technical skill) to enable Pool members to make an effective and positive contribution.

4.6.2. In common with the induction training session and the equality and diversity training, pre appointees were asked to reflect on what they gained from the observation of a tribunal via completion of a self-assessment training log.

## **5. Final Appointments 2013**

- 5.1. As a result of the recruitment drive, prospective members of the BTAS Disciplinary Pool were recruited in the following numbers:
- 30 barristers
  - 17 QCs
  - 33 lay representatives
  - 12 Clerks
- 5.2. As the entire Pool were being appointed simultaneously it was decided by the TAB that on this one occasion a range of first term of office length would be applied.
- 5.3. The issue of allocating (and staggering) terms of office for the new cohort was resolved using the list of competency-based scores, repeating the 4, 3, 2 years in descending order down the list. This seemed the fairest approach to create an equal split such that each resulting grouping (of 2, 3 and 4 years 1<sup>st</sup> terms of office) held a cross-section of competency. Otherwise, to have grouped the highest, middle and lowest scores might be perceived that those scoring lowest being offered a 2-year term were less competent than those given 3 or 4 years. Also to assign in groupings of similar competency score effectively imposed a further threshold on candidates which was thought to be unfair. The rationale for staggered terms of office is reflected within the appointments protocol.
- 5.4. Having necessitated a Register of Interests to be completed annually by all members of the disciplinary Pool under the clause 29 of the Appointments Protocol 2013, the TAB agreed the pro forma to capture this information routinely for publication on the BTAS website.
- 5.5. Selection, training and appointment of the new cohort of panel members and clerks commenced in February 2013 and was completed in April 2013. Tribunals comprising entirely of newly appointed members therefore began sitting in early February 2013.
- 5.6. At the point of completion of the recruitment process and final appointments the TAB commissioned a report from Bindi Dholakia to reflect on the recruitment

process. On receipt of Ms Dholakia's Report on the COIC Appointments Process the TAB approved the Recruitment Policy and Recruitment Guidance which incorporated the observations made in the report and that of the TAB.

## **6. Appraisal**

- 6.1.** Following the inclusion of the provision for appraisal within the Appointments Protocol 2013 the TAB agreed the creation of a performance & appraisal policy by BTAS. BTAS consulted on the policy with all panel members, clerks, Inns' Conduct Committee members and members of the TAB.
- 6.2.** After consultation, the Performance and Appraisal Policy was approved by the COIC Change Programme Project Board 24<sup>th</sup> May 2013.
- 6.3.** The Performance and Appraisal Policy states:
  - Newly appointed Disciplinary Tribunal and Inns Conduct Committee members and Clerks must have an initial appraisal which is to be conducted during the 12 - 15 month period following their respective appointment.
  - The Chair of the Disciplinary Tribunals and The Chair of the Inns' Conduct Committee will be responsible for appraising panel members and clerks; they may however delegate this responsibility to the Chairs of Disciplinary Tribunals and Inns' Conduct Committee Hearings. Therefore all Chairs (including the Chairman of TAB) will be required to attend appraisal training.
- 6.4.** The TAB has encouraged the implementation of best practise methods and as such 360 degree feedback forms are available to all members of the disciplinary pool through the year for continual reflection.
- 6.5.** Outcomes from the appraisals will be considered (amongst other information) when the TAB offers recommendations for re-appointment for a second term to the President of COIC (at the appropriate time).

6.6. The members of the TAB are also subject to appraisal under the policy. The Appointments Protocol 2013 states at clause 3:

- The Body will be selected for appointment by the President of COIC, in consultation with the Treasurers of the four Inns. Thereafter the Chairman will be responsible for the appraisal and performance of the other members of the Body.

## **7. Recruitment of the Disciplinary Tribunal Chair**

- 7.1. The Appointments Protocol 2013 makes provision for the President of COIC to appoint on recommendation by the Chairman of the Tribunal Appointments Body (TAB) a Chair of the Disciplinary Tribunals from the silk members of the Bar Tribunals and Adjudication Service (BTAS) panellist pool (paragraph 33, Appointments Protocol). This Chair is described as providing guidance and mentoring to panel members, including having a role in their appraisal.
- 7.2. The Appointments Protocol provides for a three-year term of office for the post, with opportunity for one further term.
- 7.3. Recruitment for this post is ongoing at the time of writing this report. Members of the TAB will continue to be involved in the interview process.

## **8. Expenditure for 2013**

- 8.1. The total expenditure relating to the business of the TAB during 2013 was £19,639.60. This value relates to:
- Fees and expenses for TAB meetings and interview panels.
  - Expenses paid to candidates for attendance at interview.
  - Work commissioned by the TAB.

## **Section 3 – Looking forward to 2014**

### **9. Roles for TAB in 2014**

#### **9.1. TAB lay member to the Strategic Advisory Board**

9.1.1. The Strategic Advisory Board (the SAB) is being established to provide an independent source of information, advice and support to BTAS and COIC on strategic and/or operational issues or risks.

9.1.2. A lay member of the TAB will also be a member of the SAB, thereby offering insight into the appointments whilst clearly focusing on the public interest.

#### **9.2. Training needs analysis**

9.2.1. In future it is the intention that the TAB, together with the chairs of the Disciplinary Tribunals and the Inns' Conduct Committee and the Registrar, will review the training needs to determine future requirements and any required amendments to the competency framework.

#### **9.3. December 2014 – second terms**

9.3.1. Following successful appraisal and subject to any required training the TAB will prepare to make recommendations to the President of the Council of the Inns Court for the appointment for second terms of office (for those initially appointed with a 2 year term of office), for a period of 4 years, in 2015.

#### **9.4. Future budget**

9.4.1. Forward plans indicate a reduced demand upon the TAB in 2014, the projected budget allocated from the BTAS operational budget has been appropriately reduced to £9,800.

#### **9.5. Future of the TAB**

9.5.1. During 2014, the TAB will reflect on its own purpose, role and working methods and if appropriate make recommendations to COIC as to its future composition and/or approach. The TAB will also be involved in the review of the Appointment Protocol 2013.

## ANNEX 1- The Tribunal Appointments Body

### Membership and recorded register of interests 2013

<b>Lord Justice Andrew Ewart McFarlane BA, LL.M</b>	<b>1<sup>st</sup> term 4 years</b>
<p>(Gray's Inn)</p> <p>Lord Justice of Appeal; Honorary Life Vice President, Family Law Bar Association (FLBA); Chair of Management Committee (Grays Inn) (2014); Chair of the Clergy Discipline Commission and President of Tribunals [Church of England] (from January 2014); Chancellor of the Diocese of Exeter; Patron of the HOPE Family Centre, Herefordshire; Member, Garrick Club.</p>	
<b>Ms Tracy Ayling QC BA (Dunelm)</b>	<b>1<sup>st</sup> term 3 years</b>
<p>Barrister (Inner Temple)</p> <p>Self-employed barrister; Special advocate for the Attorney-General; member, COMBAR; member, South Eastern Circuit; member, Western Circuit.</p>	
<b>Dr Robert Gaitskell QC PhD (KCL); BSc (Engineering); CEng</b>	<b>1<sup>st</sup> term 2 years</b>
<p>Barrister (Gray's Inn)</p> <p>Self-employed barrister; Chairman, IET/IMechE Joint Committee on model forms; member, Worshipful Company of Arbitrators; member, Worshipful Company of Engineers; member, Society of Construction Law; member, Commercial Bar Association [COMBAR]; member, Technology &amp; Construction Bar Association [TECBAR]; member, London Common Law and Commercial Bar Association [LCLCBA]; member, South Eastern Circuit; Benchers, Gray's Inn.</p>	



<b>Mr Hugh Jackson</b>	<i>1<sup>st</sup> term 3 years</i>
<p>Barrister (Middle Temple)</p> <p>Self-employed barrister; Judge of the First Tier Tribunal, Property Chamber (Land Registration Division); member, Chancery Bar Association; member, Professional Negligence Bar Association (PNBA); member, Fellow, Chartered Institute of Arbitrators (FCIArb); member, Property Bar Association; member, Financial Services Lawyers Association; member, Society for Computers and Law.</p>	
<b>Mr Christopher Jeans QC LLB (Lond), BCL (Oxon)</b>	<i>1<sup>st</sup> term 3 years</i>
<p>Barrister (Gray's Inn)</p> <p>Self-employed barrister; Recorder (criminal), arbitrator, President of the Commonwealth Secretariat Arbitral Tribunal, member; ELAAS, EAT Free Representation scheme; member, Employment Lawyer Association; member, Employment Law Bar Association; member, Administrative Law Bar Association; Fellow, Institute of Professional Development; Benchers, Gray's Inn; member, Inner Temple.</p>	
<b>Ann Kelly BA, MBA, FCMI</b>	<i>1<sup>st</sup> term 3 years</i>
<p>Lay</p> <p>Consultant; member, Chartered Management Institute, member and Fellow; Royal Society of Arts; Lightning member, Royal Air Force Museum.</p>	
<b>Professor Peter Lees B.Pharm, PhD, DSc</b>	<i>1<sup>st</sup> term 2 years</i>
<p>Lay</p> <p>Retired University Lecturer, consultant; Norbrook Laboratories Limited, member; British Pharmacological Society; member, Council of the Royal College of Veterinary Surgeons and Chairman of its Disciplinary Committee.</p>	

<b>Dr Joan E Martin F.C.O.T, D. Phil, MA</b>	1 <sup>st</sup> term 3 years
<p>Lay</p> <p>Retired University Lecturer; member, The Court Service of Northern Ireland (Tribunals); Royal College of Veterinary Surgeons (Selection Panels); Royal College of Surgeons, Invited Review Panels; member, Royal College of Medicine; Fellow, College of Occupational Therapists.</p>	
<b>Ms Margia Mostafa LLB (Hons)</b>	1 <sup>st</sup> term 3 years
<p>Barrister (Lincoln's Inn)</p> <p>Self-employed barrister; Recorder (Criminal) North Eastern Circuit; member, South Eastern Circuit; member, Bar Representation Committee and Education Committee at Lincoln's Inn.</p>	
<b>Mr John Brychan Steel QC BSc (Hons)</b>	1 <sup>st</sup> term 3 years
<p>Barrister (Gray's Inn)</p> <p>Self-employed barrister; Honorary Legal Adviser, Air League and Air League Trust; Honorary Adviser, Mission Aviation Fellowship; Board member, Durham University Global Security Institute and adviser to the Vice Chancellor; Trustee, Blenheim Palace Estate and trusts; Fellow, Royal Aeronautical Society; Fellow, Royal Geographical Society; Fellow, Royal Society of Arts; Honourable Fellow of Law, Durham University; Bencher, Gray's Inn and Chairman of Management Committee 2012/2013; Member, Chartered Institute of Arbitrators (CI Arb).</p>	
<b>Mr Rodney Stewart-Smith BA, LLB</b>	1 <sup>st</sup> term 2 years
<p>Barrister (Middle Temple)</p> <p>Self-employed barrister.</p>	

**Ms Caroline Willbourne**

*1st term 3 years*

Barrister (Inner Temple)

Self-employed barrister; Benchers, The Honourable Society of the Inner Temple; Deputy District Judge, Principal Registry of the Family Division; trained mediator; member, Family Law Bar Association (FLBA); member, International Bar Association (IBA); member, London Common Law and Bar Association (LCLCBA); member, Institute of Fiscal Studies; member, Royal Society of Medicine.