

The Council of the Inns of Court

**The Bar Tribunals & Adjudication Service**

**MINUTES OF THE STRATEGIC ADVISORY BOARD MEETING**

**Thursday 4th December 2014**

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

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| 1  1.1 | ***Present:***  *Clare Dodgson Chair of SAB and Lay Representative*  *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*  *Stuart Sleeman Chair, Disciplinary Tribunal Service*  ***Apologies:***  *Malcolm Cohen Lay Board Member, Bar Standards Board*  *Heather Rogers Interim Chair, Inns Conduct Committee*  ***In Attendance:***  *Hayley Addison Administrator, BTAS*  *Chandra Connaghan Contract Management Officer, BSB*  *Andy Russell Registrar, BTAS*  *James Wakefield Director, COIC*  The Board was very pleased to note that Stuart Sleeman continued to act as Chair of the Disciplinary Tribunal Service (*Minute 1.2, 09.07.14 refers)* and that his eligibility had been confirmed as fully in accordance with the Bar Standards Board’s (‘BSB’) *Disciplinary Tribunal Regulations.* While his appointment as a DCJ had not been renewed, his skills and expertise made him unquestionably the most qualified person to undertake the role and the SAB was grateful to have his continuing input. |  |
| 2 | **Minutes of the Last Meeting**  The minutes of the meeting held on 9th July 2014 were confirmed, and will therefore be placed on the BTAS website. | Annex A |
| 3  3.1  3.2 | **Actions from the Last Meeting**  The Board noted the update on actions from the last meeting as detailed in the agenda.  In terms of Action 10 – the provision of a rolling forecast of future Tribunal numbers - the Registrar confirmed he is in discussions with the BSB’s Investigations and Hearings Team Manager regarding the provision of the numbers of cases being put to the BSB’s Professional Conduct Committee. It is hoped this will provide BTAS with advance and trend information about the numbers of future hearings. | Annex B |
| 4  4.1 | **Matters Arising from the Minutes**  Standard of Proof (*Minute 4.1, 09.07.14 refers*): The Director General of the BSB confirmed that the issue had been recently considered by their Board, and agreed to provide a copy of paper put to the Board for the SAB’s reference. **Action 1: VD**  She highlighted that the BSB had undertaken to revisit the matter in 2016, unless cases in the courts meant it had to be returned to more quickly in which case she would update the SAB. |  |
| 5  5.1  5.2  5.3  5.4 | **Key Performance Indicators**  The Board received the BTAS KPI data as required under the terms of its contract with the BSB, and was pleased to note that all indicators showed fully satisfactory performance.  The KPI details presented regarding 3-person and 5-person Panels prompted a wider discussion on the current ‘two-tier’ Tribunal system. Members of the SAB questioned why there are 5 person panels at all, instead of all panels being composed of 3 people, regardless of the charge being considered. It was stated that this would be in line with the practice of other regulators, and reference was made to the GMC having 3-person panels in all cases. Members of the SAB felt that such a change was worth further consideration as a strategic issue for the future. The Board agreed that based on the experience of other bodies it was unlikely to have any adverse impact on the quality of the panel's decision-making. However an evidence base should be researched and established to demonstrate this. **Action 2: AR**  Such a change was felt to offer many advantages, such as probable significant reductions in delays reconvening panels after an adjournment. In the same way, SAB Members noted that this change would avoid the unsatisfactory situation at present whereby a 3 person panel sometimes decides the case is so serious that it needs to refer the matter to a (wholly new) 5 person panel where the case is reheard, with all the associated delays this causes. Finally, it was noted that this could also end the oddity whereby 5 person panels have judicial chairs, and 3 person panels don't – enabling greater consistency in panel membership.  It was agreed that the matter should be considered in more detail at the next SAB meeting, and that in the meantime the Registrar should bring the matter to the attention of the BSB as part of their current review of the *Disciplinary Tribunal Regulations.* It was also agreed that financial considerations should not be a factor in any discussions on this topic. **Action 3: AR**  The Registrar introduced recently developed wholly new KPIS, which provided information on time to completion of hearings, current BTAS workloads, and the number of hearings attended by panellists. The SAB welcomed the additional information and the format in which it was presented, and felt that this enabled them to have a far greater understanding about BTAS’s processes and performance. It was agreed that these KPIs would now be developed to allow trends over time to be readily identified, and the BSB requested that a commentary on this, based on the discussions of the next SAB meeting, be provided for the information of their Board. **Action 4: AR**  In terms of future developments, the SAB expressed a desire to have indicators related to equality and diversity issues developed, for example in outcomes by gender, or by UK v foreign-trained barristers. This was likely to require some sharing of personal data between BTAS and the BSB, but the Registrar undertook to consider this and report back at a future SAB meeting. **Action 5: AR** | Annexes C & Cii |
| 6  6.1  6.2 | **Library of Resources**  The SAB considered the merits of developing a ‘library’ of relevant cases on the BTAS website, and acknowledged that the existing resource could seem rather limited for those preparing for a forthcoming hearing.  However, the SAB stressed that it was crucial that BTAS could not be seen to be advising either of the parties attending a Hearing, and that it would be inappropriate for it to provide anything that might be regarded as legal advice on tribunal matters.  SAB agreed that the primary purpose of the existing resources was to facilitate transparency by providing details of any court case that touched on BTAS or its Tribunals from the date it came into existence in 2013.  SAB agreed that there was a need for an effective mechanism for promptly bringing the attention of all panellists to updates in relevant case law, which might include its incorporation into training programmes. The matter was complicated by the fact that it was the BSB, not BTAS, that was listed as a respondent in appeal cases, and that BTAS consequently relied on the BSB to keep it informed of which cases were being appealed and their outcomes. The Director General of the BSB also offered the possibility of sharing the regular legal commentary and analysis on relevant cases that the BSB already has in place, but stressed that this step would have to be carefully considered to ensure it was an appropriate relationship for the BSB and BTAS to enter into. The Registrar agreed to follow this up with the BSB’s Investigations and Hearings Team Manager. **Action 6: AR** | Annex D |
| 7  7.1 | **Draft Inns’ Conduct Committee Rules**  The SAB reviewed the summary of key changes and accepted the recommendations of the ICC Review Group with the following comments:   1. SAB agreed with the recommendation that ICC hearings would normally be in private, and noted that this was comparable to Fitness to Practice Hearings held regarding students in University Medical Schools. 2. The recommendation to disband the ICC’s existing membership so that future Hearings would be conducted by members of the (separate) Disciplinary Tribunal Pool was questioned on the grounds that this was likely to be regarded as unfair by the ICC, and that it might appear more equitable to merge the two Panels in some way. However, SAB was reminded that the membership of the DT pool had been entirely been renewed in 2013 following the Browne Review, that each pool-member had been appointed following an open recruitment exercise, and that all members of the pool were trained and liable to appraisal. In contrast the ICC had not undergone any change of membership post-Browne, that some panellists had been members for nearly ten years, and that the selection process previously used was not always transparent or recorded. Further, ICC panel members were not trained or appraised. In the light of this the SAB fully endorsed the recommendation, but stressed that it would need to be carefully and sensitively communicated with the reasoning behind the decision made very clear. Moreover, while the *existing ICC* was no longer needed its *individual members* could apply to become members of the Disciplinary pool themselves. In any case, it was suggested that it would be important for the President to write and thank all ICC members for their service. **Action 7: HR, HA, AR**. 3. The SAB accepted the recommendation to allow Hearings by video-conference etc, but stressed this must be only in exceptional circumstances when there was no other way for the student / applicant to attend. | Annexes E & F |
| 8  8.1  8.2 | **Performance and Appraisal Process**  The SAB thanked the Working Group for developing their proposals to date, and were broadly very supportive of them, and particularly endorsed the potential new competencies. They tasked the Working Group with developing this into a formal policy for consideration at the next SAB meeting, including making clear under what circumstances it would be appropriate for face-to-face meetings to take place. **Action 8: SS, SH, AR.**  It was however highlighted that any appraisal system that created a record of comments on specific panellists’ performance at individual hearings was highly likely to be subject to a disclosure request at some point. This was particularly the case where competency-based questions on (e.g.) a Panel-member’s preparedness for a case could be argued to be relevant for a defendant in any subsequent appeal. The Working Group accordingly agreed to take legal advice on this point ahead of the next meeting. **Action 9: AR** | Annexes G & H |
| 9 | **Effective Sentence Date**  The SAB approved the circulation of a policy note confirming that the date of pronouncement of sentence by Treasurers should now always be 5 working days after they received notification of the sentence.  **Action 10: AR** | Annex I |
| 10 | **Dates of Future Meetings**  Wednesday 4 March 2015 2pm – 4pm  Tuesday 16 June 2015 2pm -4pm  Thursday 17 September 2015 2pm – 4pm  Wednesday 2 December 2015 2pm – 4pm |  |
| 11 | **Any Other Business**  None |  |