



The Bar Tribunals & Adjudication Service

The Council of the Inns of Court

Minutes

Strategic Advisory Board Meeting

Thursday 14th December 2017, 14:00-16:00

The Tribunal Suite, 9 Gray's Inn Square

1. Welcome and Apologies	
a. Present	
<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>Nicola Sawford</i>	<i>Lay Representative, Bar Standards Board</i>
<i>Stuart Sleeman</i>	<i>Chair, Disciplinary Tribunal Service</i>
<i>James Wakefield</i>	<i>Director, COIC</i>
b. Apologies	
<i>Heather Rogers</i>	<i>Chair, Inns' Conduct Committee</i>
c. In attendance	
<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>

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d.	<p>Thanks</p> <p>The SAB was particularly sorry to learn that Heather Rogers had had to give her apologies for the meeting, as this would be the last Strategic Advisory Board she would be able to attend in her role as Chair of the Inns’ Conduct Committee. The Chair also noted that this was the last meeting for Sheila Hollingworth, as she would soon complete her final term of office as a lay member of the BTAS Disciplinary Pool.</p> <p>On behalf of the SAB, the Chair asked that grateful thanks be recorded for the time and efforts of both Heather and Sheila while members of the SAB, and particularly for the huge contributions both had made to a number of very important pieces of the SAB’s work.</p>	
e.	<p>Chair of the Disciplinary Tribunal Service</p> <p>The Chair of the DTS was pleased to update the SAB that the President of COIC had confirmed that he would be reappointed as Chair for another year. This should allow a smooth transition between post holders, and allow plenty of time for the search to be conducted for a successor of similarly high calibre.</p> <p>The SAB congratulated the Chair of the DTS and welcomed the news.</p>	
2.	<p>Minutes of last meeting</p> <p>The minutes of the meeting held on 28 June 2017 were approved and will be placed on the BTAS website, subject to the redaction of information discussed in ‘Any Other Business’ which was not yet in the public domain.</p> <p>The SAB also noted the written update circulated in lieu of the September 2017 meeting which had been cancelled due to lack of urgent business.</p>	<p>Annex A</p> <p>Action 1 (AR)</p> <p>Annex B</p>
3.	<p>Actions from the Last Meeting</p> <p>The SAB noted the update on actions from the meeting held on 28 June 2017 as detailed in Annex A, with the following receiving particular discussion:</p> <ul style="list-style-type: none"> • <i>Action 3: Chair of the Disciplinary Tribunal Service to review qualitative training feedback.</i> <p>The Chair reported to the SAB that he had now reviewed the majority of qualitative feedback provided following the Pool Member training (written and face-to-face) conducted during 2017. While the great majority were complimentary a small number were less so (although even these were usually balanced with other very positive remarks). This in part was inevitable, and</p>	<p>Annex A</p>

	<p>likely to be a result of the very mixed cohort being trained together (both lay and legally qualified individuals, and new and experienced panel members). The SAB discussed whether this ‘mixed’ format was most appropriate, or whether introductory/induction sessions should be given to new panel members separately. After some discussion, the SAB was broadly of the view that the ‘mixed’ approach had been correct as it gave all members of the Pool the opportunity to learn from one another, facilitating the sharing of both experience and innovation. Ultimately it was agreed that the most important views on the topic were those of the new panel members. The SAB agreed that they should be approached as soon as most had had an opportunity to serve on a hearing, and asked whether they considered that the training they had received had appropriately prepared them for sitting.</p> <ul style="list-style-type: none"> • Action 9 – the Registrar reported that the first phase of the Tribunal Suite’s recording equipment upgrade had been successfully completed. The previous digital recording devices had been replaced, and new ‘recording on /off’ warning lights installed. A second and final phase would take place in January, with dual-recording equipment installed (to provide a backup in the event of any technical failures with the new recording devices). 	<p>Action 2 (AR)</p>
<p>4.</p>	<p>Revisions to the <i>Disciplinary Tribunal Regulations (DTRs)</i></p> <p>a) The SAB noted that revised DTRs came into effect on 1 November 2017, and were reassured to hear that all BTAS policies and guidance to Pool Members had been updated where necessary to reflect the revisions, and that all Pool Members had received (and required to confirm they had read and understood) specific written transition training. While an optional face-to-face training session had been considered (<i>Minute 5.2 of the meeting of the 28 June 2017 refers</i>) the very low level of interest in this had not made it viable.</p> <p>b) The Director General of the BSB confirmed that, subject to Legal Services Board approval, the use of the civil standard of proof in Bar Disciplinary Tribunals would come into effect in March 2019, following what was considered by the SAB as a very fair and carefully worded treatment of the issue in a public consultation.</p> <p>The SAB agreed that this was a very significant change, and brought the BSB into line with virtually all other regulatory bodies. However, since the</p>	<p>Annex C</p> <p>Annex D</p>

	<p>exception was the Solicitor’s Disciplinary Tribunal, this did leave the unfortunate possibility of two hearings taking place (one at BTAS, one at the SDT) considering the same facts, but reaching different conclusions because of the different standard of proof.</p>	
<p>5.</p>	<p>BTAS Sanctions Guidance</p> <p>a) The SAB welcomed the findings and recommendations of the Sentencing Guidance Working Group, and expressed their thanks to the members of the Group (which were as follows):</p> <ul style="list-style-type: none"> ○ HH Suzan Matthews (Judicial Chair and Chair of Working Group) ○ Roland Doven (Lay Panel Member) ○ Lee Gledhill (Barrister Panel Member) ○ Penny Griffith (Lay Panel Member) ○ Nigel Poole (QC Panel Member) ○ Mark West (Barrister Panel Member) <p>The SAB also welcomed the change in terminology, arising from the introduction of the revised DTRs, that saw the use of the term ‘sentence’ discontinued and replaced with ‘sanction’, which was agreed to be much more appropriate.</p>	<p>Annex E</p>
	<p>b) The SAB agreed that the draft revised Guidance had successfully met its aim of improving the ease of use of the Guidance. It agreed to recommend to COIC that the revised Guidance be approved by them to come into effect as soon as appropriate, subject to prior verification that the wording in paragraph 6 (regarding the test for a finding of dishonesty) remained valid given the implications of the <i>Ivey v Genting Casinos</i> [2017] UKSC 67 case.</p> <p>c) The SAB also noted and thanked the members of the Working Group for providing a list of other issues pertaining to the Guidance that the SAB may wish to consider at some future date. The SAB was particularly interested in the introduction of ‘range points’ throughout the guidance (e.g. guidance in every case for minor, mid-range and serious breaches) as this potentially could help with consistency in Tribunal decisions. However, the SAB considered it would be premature to immediately initiate another review of the Sanctions Guidance, without first properly ‘road-testing’ the newly revised version in a</p>	<p>Annex F</p>

	<p>meaningful period of use. It therefore agreed to (i) delete mention of a ‘date of next review’ from the revised Guidance to help manage stakeholders’ expectations on this point, and (ii) bring forward this matter for discussion by the SAB again at its first meeting in 2019.</p>	Action 3 (AR)
6.	<p>The Size of the Disciplinary Tribunal Pool</p> <p>The SAB noted the contents of a paper put to a recent meeting of the Tribunal Appointments Body (TAB) regarding the impending reduction in the size of the Pool of Panellists. The TAB representative on the SAB explained that this was taking place as planned and following careful consideration, with the aim of increasing the average number of hearings that BTAS Disciplinary Pool Members sat on (to help ensure increased familiarity and experience with the regulations, rules and policies in operation at BTAS).</p> <p>The SAB recognised that responsibility and accountability for the size of the Pool rested with the TAB, but agreed that given the potential impact of this topic on BTAS’ operations (were the size of the Pool to be reduced too much), it was appropriate for them to also consider the matter.</p> <p>The SAB fully supported the TAB’s decision to try and mitigate this risk by maintaining a small group of ‘reserves’ who, following induction training, could be inducted into the DT Pool. However, given the probable delay while these individuals completed their training, the SAB also felt that another potential option, should a shortfall in Pool size be identified, could be to reappoint some recently time-expired members who could very quickly be ‘called up’ and made eligible to immediately start hearing cases again. This could seemingly be achieved (subject to COIC’s approval) with a modest revision to the Appointments Protocol, and the establishment of a list of recently term-completed Pool members who had indicated they were happy to be approached in this way should the need arise. The SAB agreed to recommend this to the TAB.</p>	<p>Annex G</p> <p>Action 4 (AR/JM)</p>
7.	<p>Key Performance Indicators</p> <p>The SAB noted the latest BTAS KPI data, and particularly the noticeable drop in the number of cases being heard at, and referred to, BTAS. It was suggested that this might be linked to the ‘bedding in’ of the Administrative Sanctions regime (which were imposed directly by the BSB).</p>	<p>Annexes Hi and Hii</p>

	<p>The SAB welcomed the introduction of RAG (Red, Amber, Green) ratings in the data to clearly set out performance levels. There was some discussion on which RAG rating should be assigned to the technological failings in Q1 and Q2 2017 (regarding single technical failures affecting multiple hearings) but the SAB agreed that as long as the narrative explanation was clear on what had occurred the issue was to some extent moot.</p> <p>The SAB agreed to modify how Indicator 1 was being reported to ensure it brought out the proportion of cases that <i>were</i> completed within 6 months of referral, expressed as a percentage of those that <i>could</i> have been completed in this period.</p> <p>The Director of COIC reminded the SAB that, under the Service Agreement between BTAS and the BSB, as revised in January 2017, it had been agreed that BTAS would ‘hold back’ a proportion of available dates so that the facilities of the Tribunal Suite could be better made use of. This reduction in availability for Tribunals would, at some point, be reflected in the KPI data and this should not be regarded as in some way amounting to a failing in BTAS’ performance.</p>	Action 5 (AR)
8.	<p>Payments to Barristers</p> <p>The SAB noted that for the first time BTAS is offering to make payments to the Barrister Members of its Pool (at the same rate as Lay Members) for sitting on a Tribunal with a wholly exceptional 7-day time estimate scheduled. All members, including the Director General of the BSB, agreed that this was wholly appropriate given the length of the case, indeed it would be unreasonable (and probably unworkable) to expect barristers to serve on this particular Tribunal on a pro bono basis.</p> <p>The SAB noted that this step was exceptional and did not set any precedent.</p>	
9.	<p>SAB Annual Report</p> <p>The SAB agreed that, in addition to the usual qualitative data and commentary, their report to COIC should focus on all cases that had been appealed in a higher Court during 2017, whether complimentary or critical of BTAS and its Tribunals (and, in the latter cases, set out that lessons had been learned and remedial steps taken where appropriate).</p> <p>It was agreed that the Chair would review the first draft, which should also take account of the SAB’s discussions in early 2017 on the previous Annual Report.</p>	Action 6 (AR)
10.	BSB Consultation on Future Bar Training	

	The SAB noted the details of the Consultation, and that both COIC and the ICC would be submitting responses. It was agreed that it had been useful to have sight of this as it helped maintain the SAB's wider awareness.	
11.	Dates of Future Meetings It was agreed to schedule four dates for the SAB to meet in 2018 (by conducting a doodle poll).	Action 7 (MH)
12.	Any Other Business The Director General of the BSB informed the SAB that its Board had reviewed the provision for the delivery of Tribunals in future, and that as it was broadly satisfied with BTAS' performance it was not minded to change the current arrangements. It was therefore likely that a new three-year Service Agreement would be offered from January 2020, including a requirement for a continuous improvement programme. The Director of COIC responded by confirming that COIC had informally indicated that it too was broadly satisfied with the arrangements, and was also minded to renew the agreement.	

No.	ACTION	MINUTE	OWNER	PROGRESS
1.	AOB to be redacted from public version of 28 June 2017 SAB Minutes.	2	AR	
1.	Obtain views of new Pool members about how useful the training was in practice.	3	AR	
2.	Amend <i>Sanctions Guidance</i> as per Minutes, and ensure topic is put on agenda of March 2019 meeting.	5	AR	
3.	Recommend using ex-Pool Members as 'reserves' to TAB.	6	AR / JM	
4.	Modify presentation of Key Performance Indicator 1 data to highlight the area that BTAS is accountable for.	7	AR	

No.	ACTION	MINUTE	OWNER	PROGRESS
5.	Registrar to prepare first draft of Annual Report.	9	AR	
6.	Schedule dates of meetings in 2019.	11	MH	