



fieldfisher

# Bar Standards Enforcement Review

April 2024

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# Summary of recommendations

# Summary of recommendations

## Purpose of the Enforcement Review

The primary purpose of our work has been to:

- investigate how well the Bar Standard Board (BSB) handles its enforcement process from reviewing potential conduct breaches by barristers, through to final decisions being made on sanctions to be imposed either by staff, by an Independent Decision-making Panel or by the Disciplinary Tribunal;
- make recommendations on where improvements should be made.

Our work has been conducted within the BSB's current policy framework. Our review did not include a remit to explore in any detail the extent of correct decision taking in the enforcement process. However, Independent Reviewer audits and reviews are used by the BSB to validate the quality of internal decision taking, and sanctions imposed by the Disciplinary Tribunal can be appealed in the High Court.

## Summary of the enforcement process

The BSB receives some 1,500 to 1,700 reports each year. The great majority of these reports are assessed as not requiring further substantive action by the BSB. Those limited numbers assessed as requiring further action (typically less than 15 per cent of the total reports received) are passed either to the Supervision Team, because they relate to matters to be resolved with Chambers (or similar entities), or to the Investigations and Enforcement Team (I&E), because they relate to the conduct of an individual barrister. Our focus has been solely on cases relating to the conduct of individual barristers.

The great majority of investigations into potential conduct breaches are triggered by the BSB receiving reports from members of the public. These reports are subject to an initial assessment by the Contact and Assessment Team (CAT) to identify if there is evidence that a potential breach of the BSB Handbook has occurred.

Where the assessment shows that:

- the potential breach presents sufficient risk;
- it can be fairly and properly investigated; and,
- there is no more appropriate body to deal with the matter,

an investigation takes place that can result in a decision that no action is to be taken, that formal advice is given or to pursue some form of enforcement action including disciplinary action.

The least serious cases pursued are typically addressed through a non-disciplinary administrative sanction decided by the Executive or by a panel of the Independent Decision-making Body (IDB); the more serious cases are decided on by a panel of the IDB that is

supported by the BSB; but the IDB Panel is required to refer the most serious alleged breaches to a hearing before the Disciplinary Tribunal (DT) which is independent of the BSB. The management of hearings at the DT are organised by the Bar Tribunal and Adjudication Service (BTAS) that falls under the aegis of the Council of the Inns of Court (COIC).

### Summary of our findings and conclusions

**The Enforcement procedure adopted by the BSB is in line with similar models used in professional regulation elsewhere, fundamentally the approach is appropriate but, we conclude that there is a large number of areas on which both the BSB and BTAS can focus to improve their enforcement remits.**

The BSB has faced challenges in meeting its time-based key performance indicators (KPIs), both in defined parts of the end-to-end process (such as in the time taken to complete initial report assessments), and also in respect of the process as a whole. This has been a source of frustration within the organisation and within the DT and BTAS. It has also been a major source of disappointment to those who initially submitted conduct reports.

Our conclusion is that the BSB's time based KPIs are achievable. Dealing with cases in a timely way is essential to the success of the BSB's risk-based regulation strategy, and also in providing wider confidence that cases of alleged misconduct are acted on without unnecessary delay. We did not find that the applicable procedural regulations were overly complex or created major challenges in respect of enforcement process delivery. However, the processes of reaching those decisions could be much improved.

We accept that disruption caused by the Covid pandemic followed by a debilitating cyber-attack in April 2022 impaired the BSB's performance in respect of achieving its time-based KPIs. However, as our detailed recommendations show, we also found that a wide number of performance challenges could be addressed by operational changes that, collectively, would enable the BSB, together with BTAS, to evolve much more effective and efficient processes.

We also identified a number of clear themes that contributed to performance impairment that need to be addressed as a priority:

1. An absence of clear and direct management accountability for the effective functioning of the end-to-end enforcement system, including BSB's interfaces with BTAS. In our view this has resulted in many challenges not being addressed, even though they may have been identified.
2. Challenges amongst staff in being able to access the right knowledge and know-how, quickly and at the right time, to enable them to deliver their work to the best standard and in a timely way.
3. Considerable difficulties in getting the most out of the BSB's case management systems which can mean that information on a case is not well-shared, processes are slowed down and made complicated; and re-work is often required.

4. A lack of good understanding in the minds of the public who submit reports over the role of the BSB, and equally a lack of certainty within the organisation over the right breadth of engagement with individuals making reports, most of whom had a direct interest in the issue they had raised.

### Recommendations

We made recommendations in eight areas that are summarised below.

#### **1. Create a senior executive role that will take full responsibility for the effectiveness and continuous improvement of the end-to-end enforcement process.**

Currently no single Director in BSB (below the Director General) owns the end-to-end responsibility for effective and efficient enforcement, including the effective contribution of BTAS and the Tribunal. Bringing this responsibility into a single role would mean that: one individual held direct and personal accountability for performance; was therefore highly motivated to deliver against plans and targets; and would constantly seek ways and means of addressing challenges and of delivering continuous improvement. The performance impact would be very substantial.

#### **2. Build a "best-in-class" knowledge management environment.**

Currently the BSB's CAT and I&E teams struggle to find and apply knowledge and know-how in the most effective way. A structured and well-defined approach to building a best-in-class knowledge management environment will enable the assessment and the investigations and enforcement teams to: work more efficiently and effectively; improve on process times; take better and more sound decisions; and provide a platform for individuals' skills and knowledge development and thereby support career development, recruitment and retention.

#### **3. Improve communication and collaboration between the CAT and I&E teams and the BSB's IT function so as to quickly build and roll out an achievable near-term plan to enhance the system/process interfaces so that CAT and I&E can work more effectively.**

Perceived failings in IT functionality and its application to work processes are identified by staff as the leading impairment to effective working. The benefits of delivering an evolutionary approach to enhancing IT support for staff will result in: higher productivity as measured by less time being wasted and therefore more time being applied to key work priorities; reducing the reliance on knowledgeable individuals in the team; less frustration amongst staff and therefore better morale and retention; and improved opportunities to achieve KPI targets.

### **4. Make clear the BSB's core responsibilities to members of the public who submit reports and therefore provide key intelligence that supports its regulatory responsibilities**

The key benefits include: a better understanding by the public who provide information to the BSB of the boundaries of the BSB's role and what the BSB can realistically do so that expectations are better managed; less complaints and challenge handling; potentially the receipt of fewer reports that do not meet the BSB's assessment criteria; sustaining public confidence in the value of reporting; less work pressure on the CAT; and therefore greater focus on those assessments that are key to good risk-based regulation.

### **5. Improve CAT performance, so as to achieve the current time-based KPI for processing assessments, through a number of operational interventions, some of which had already been identified by the Executive and some of which are currently being implemented.**

As CAT is the entry point for conduct reports and the primary initiator of enforcement activity, the changes proposed will improve the BSB's ability to meet the CAT KPI target and consequently the BSB's key KPIs in respect of achieving the time-based target for the end-to-end enforcement process. Benefits should also accrue in respect of better inter-action with public reporters leading to higher satisfaction with the BSB's processing of reports. Also, the changes will have a positive impact on stress and morale amongst staff.

### **6. Implement a set of changes in the way that I&E works and is supported that will significantly improve performance. These changes can be implemented as part of a "continuous improvement" programme.**

The changes, taken as a whole, will show that the BSB deals with cases as quickly as is consistent with a fair resolution of the case and its obligations to the public. They will improve workflow and reduce the time taken to manage cases through the stages required to reach a final decision, be that dismissal of the allegations or the imposition of sanctions by the team, IDB or the Disciplinary Tribunal. This will result in positive impacts on I&E KPI achievement; BTAS perceptions on BSB efficiency of case management; and also on the wider achievement of the BSB's end-to-end time based targets. It will contribute to higher staff morale and job satisfaction that will also contribute to better retention and performance improvement.

### **7. Improve the effectiveness of BTAS and the Disciplinary Tribunal through a set of changes that will in particular reduce the excessive elapsed time occurring in the management of some of its cases. Deliver better and stronger inter-actions between BTAS and the BSB to help achieve common goals around timeliness (without compromising independence).**

The principal benefits will accrue in respect of reducing the elapsed time for hearings and also the amount of wasted effort that goes into the management and support of such hearings. That in turn will enable the BSB to better deliver on one of its key objectives, that is to reduce risk to

the consumer of legal services by the more expedient imposition of sanctions on those members of the profession that are committing the most serious conduct breaches. Also, speeding the process will reduce stress on members of the profession subject to potential sanction and equally reduce the opportunity for those whose aim is to cause delay, to do so.

**8. Make changes to parts of the BSB handbook and internal operating procedures that will enable greater process efficiency. Whilst the procedural regulations compare favourably with those of other regulators the Handbook needs to be better organised and simplified using plain English.**

The benefits of the changes we propose to the operating procedures, conduct rules and also to their expression in the Handbook will act as an efficiency and productivity enabler across the enforcement activities of the BSB. In particular they would support a potentially simplified drafting of allegations, and thereafter charges, with a consequential reduction in their length and associated time spent drafting and deciding them.

# 1. Introduction

# 1. Introduction

This report sets out our findings and recommendations in respect of the Bar Standard Board's (BSB) enforcement processes.

## 1.1 Summary of Project Focus

1.1.1 The objective of our work was to carry out an end-to-end review of the BSB's current enforcement processes, including BTAS and the Disciplinary Tribunal, and associated rules and policies with the aim of establishing the extent to which:

- (i) they are fit for purpose, risk-based and proportionate, and reflect good regulatory practice;
- (ii) they are effective in facilitating the taking of robust, timely, consistent and sound decisions;
- (iii) there is scope for introducing change to improve efficiency and quality in how enforcement cases are handled and decisions taken.

1.1.2 The work, while not primarily focussed on changes introduced in 2019, also covers how those changes are currently operating as part of the overall enforcement system.

## 1.2 Key Benefits Addressed

1.2.1 The key benefits that this report addresses include:

1.2.2 Assuring and/or strengthening the BSB's capability to deliver its Regulatory Objectives, and in particular:

- (i) Protecting and promoting the public interest;
- (ii) Protecting and promoting the interests of consumers;
- (iii) Promoting and maintaining adherence to the BSB's required professional principles.

1.2.3 Contributing better to the delivery of the key aims of the Strategic Plan 2022-2025, in particular:

- (i) Efficiency: delivering core regulatory operations quickly, economically and to a high standard;
- (ii) Standards: ensuring that barristers provide a high quality and responsive service throughout their careers;
- (iii) Independence: strengthening the BSB's independence, capability, self-confidence, and credibility, including in the BSB's relationship with the LSB.

## 1.3 Structure of this Report

In the following Section 2 we summarise the scope of work we have undertaken and our principal findings. In Section 3 we set out our major recommendations and also explain the benefits we expect from their implementation. In Section 4 we set out a full list of all recommendations made.

## 2. Key Findings

## 2. Key Findings

**There is no doubt that disruption resulting from managing through the Covid pandemic and from a debilitating cyberattack have impacted on recent past performance. We recognise that these events have also impaired to some extent the full functioning of the reforms introduced in 2019.**

2.1.1 Through our investigations, we recognise that BSB staff have been very committed in addressing the immediate operational problems that these events created.

**There is a very wide set of embedded challenges to the achievement of effective and satisfactory performance across nearly all aspects of the end-to-end assessment and enforcement processes and procedures. So improvements are needed throughout this whole process. We consider that these challenges are open to being successfully addressed by the BSB. We set out our recommendations on how to address these improvements in Section 3.**

2.1.2 In this Section 2 of the report, we explain where we have identified the major issues facing the BSB's and BTAS' enforcement activities, using the chronology of the process from receipt of report to final conclusion or determination of cases.

2.1.3 We have undertaken extensive reviews of all aspects of the enforcement process and have gathered information and data through:

- (i) A wide-ranging document review based on a set of information requirements we set out at the start of the Project;
- (ii) Five extensive staff workshops supported by interviews with management and with other individuals in the BSB;
- (iii) Seven surveys completed by: CAT and I&E teams; IDB and BTAS members; two surveys addressed to members of the public who submitted reports to the BSB; and barristers who were subject to BSB investigation (barrister respondents);
- (iv) Data on performance extracted from the BSB's CRM system against a set of data requirements submitted;
- (v) Case reviews involving: a deep-dive review into 20 cases concluded before March 2023; sampling CAT closures; CAT referrals closed by I&E; I&E closures (including an admin sanction; and cases closed by the IDB and cases that were determined by the Disciplinary Tribunal).

Our **key findings** are set out in the following sections.

### 2.2 Engagement with Reporters

#### **BSB Engagement with those who provide information and report concerns can be made more effective and useful**

2.2.1 The vast majority of information relating to potential conduct breaches is provided through reports lodged by members of the public. Some 1,500 to 1,700 reports are received each year, and many other members of the public are advised by staff in the Contact and Assessment Team (CAT) to go to other bodies such as the Legal Ombudsman (LeO), or to revert to their solicitor or chambers where the matters raised are complaints that should be dealt with on a client service basis. About 12-15 per cent of reports received in CAT are passed either to the Investigations and Enforcement team (I&E) or to the Supervision team.

#### **The very large number of reports dismissed**

#### **suggests that members of the public could be better advised over the role of the BSB and the limitations on how it can help and support individuals with matters of concern.**

2.2.2 As part of the 2019 re-organisation, the BSB decided to stop referring to information providers or reporters as "complainants". Our understanding is that the intention was therefore to treat reports from the public within the BSB's risk-based regulation framework, where individuals would be seen and referred to as **Reporters** and also potential witnesses and suppliers of additional information.

2.2.3 In practice a key question remains over whether the change in terminology would result in a change in the way that the BSB engages with those members of the public who report concerns. In practice, extensive effort is committed to interactions with many Reporters. Our workshops and surveys identified in particular that considerable time is being expended in CAT in dealing with individual Reporters whose reports are either dismissed or determined to have raised matters of low risk. A substantial amount of CAT resource is being spent both on drafting often very detailed reasons to Reporters why their report is not being acted upon, and also dealing with push-back and complaints from Reporters who do not accept CAT decisions.

## 2. Key Findings continued

2.2.4 It is clearly important that the BSB continues to respect those who submit reports and their reasons for doing so. Also, the BSB needs to demonstrate that it operates very much with the interests of the consumer of legal services at the top of its agenda. However, our conclusion is that, proportionately, much of this work risks being of limited value and also has implications for how CAT time is being used. There are two reasons why this aspect of CAT's work needs addressing:

- (i) First, there appears to be a lack of understanding, clarity and precision within the BSB enforcement teams and amongst some of its stakeholders over responsibilities to the public at large as opposed to the consumer as an individual;
- (ii) Also, a further lack of clarity and understanding amongst many members of the public who submit reports about the BSB's role and how regulation works in practice.

2.2.5 The result is that:

- (i) CAT Assessment Officer time is being eroded on matters of low value. This is a substantive contribution to the reason why there continues to be case allocation backlogs and delays in case processing in CAT, leading to challenges in meeting the current process KPI;
- (ii) The public who submit reports (and take the time to complete the BSB's survey) are generally dissatisfied with the BSB's handling of those reports.

**There is clearly a mis-match between how the BSB communicates and delivers its enforcement role and the expectations of the public who provide reports and who are largely frustrated by the action then taken.**

### **Survey of members of the public who submit reports**

2.2.6 As a matter of course, the BSB always issues a questionnaire to those who have submitted reports once the matter has been dealt with by CAT. However, questionnaire response rates are very low and, as such, do not form a good basis for understanding the views of the public who make up the vast majority of reporters.

2.2.7 We therefore conducted two extensive public surveys during the project. One focused on recent reports that had been reviewed and closed at the assessment stage. The second on a much smaller number of recent reports that had passed to the I&E team when cases had been closed by staff after an investigation, closed by an IDB panel, or closed after a Disciplinary Tribunal. In total 673 surveys were issued to members of the public. The surveys attracted a 20 per cent response rate.

2.2.8 The great majority of responses offered positive feedback about the BSB website and said they understood the BSB's role. Responses were also generally positive about the website providing good guidance on how to complete and submit a report, and individuals largely found the BSB's on-line reporting form easy to use. In sum, the entry points to the BSB were generally considered to be good and acceptable.

## 2. Key Findings continued

- 2.2.9 However, the majority view contained in responses was that the BSB did not keep those reporting adequately informed over progress. Also, some 80 per cent of responses showed dissatisfaction with the time it took to deal with their report.
- 2.2.10 The surveys also sought to understand: why a report had been submitted; the expectations of the reporter in respect of BSB action; and their views on the outcome. The majority of responses (61 per cent) showed that reporters wanted the BSB to carry out a formal investigation of what they saw, read or heard, and to take enforcement action accordingly.
- 2.2.11 On the question of satisfaction with outcomes, broadly 85 per cent of responses were negative. Nearly 90 per cent felt that the BSB had not handled their report in the way they wanted. 86 per cent were not happy that the BSB's decision was correct. Close to 90 per cent thought that their report "had not made a difference".
- 2.2.12 Four charts extracted from the survey, and shown below for information, express responders' expectations of the BSB, and whether in practice the BSB delivered on those expectations.

Which statement best describes what you wanted the BSB to do?  
*choose only one*

**I wanted the BSB to carry out a formal investigation of what I saw/read/heard and take enforcement action against the barrister**



**I wanted the BSB to make a record of my views about someone else's barrister to avoid the same thing happening to others**



**I wanted the BSB to make a record of my views about my barrister to avoid the same thing happening to others**



**I wanted the BSB to resolve my issue with my barrister**



**I wanted the BSB to resolve my issue with someone else's barrister**

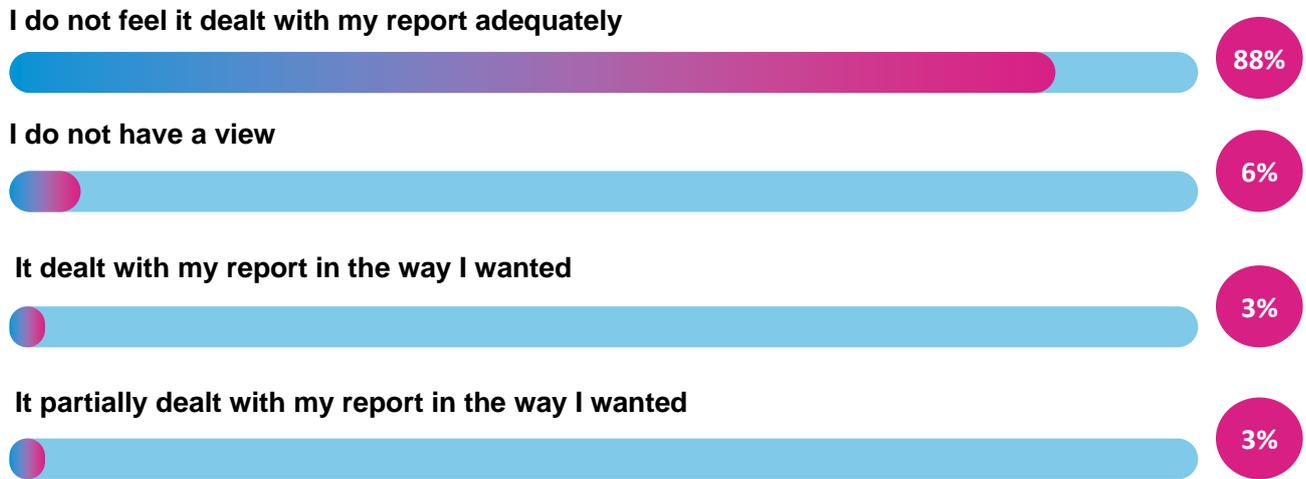


**Other**

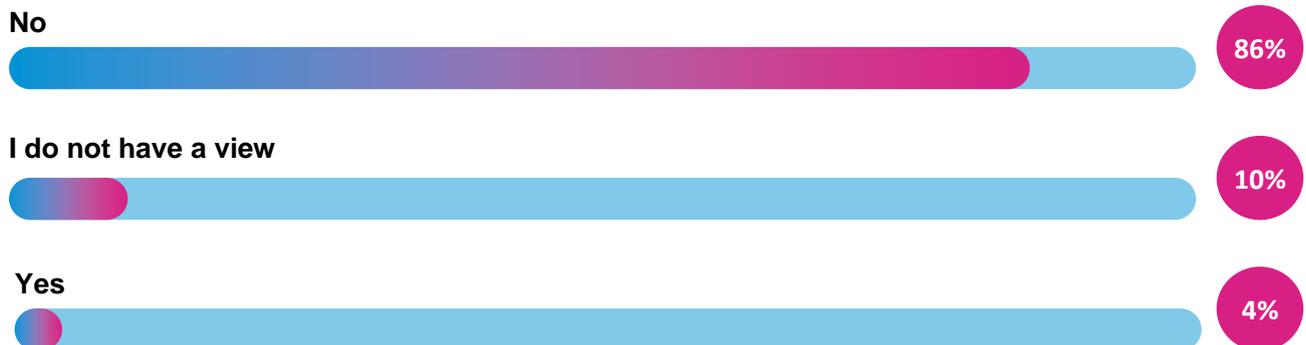


## 2. Key Findings continued

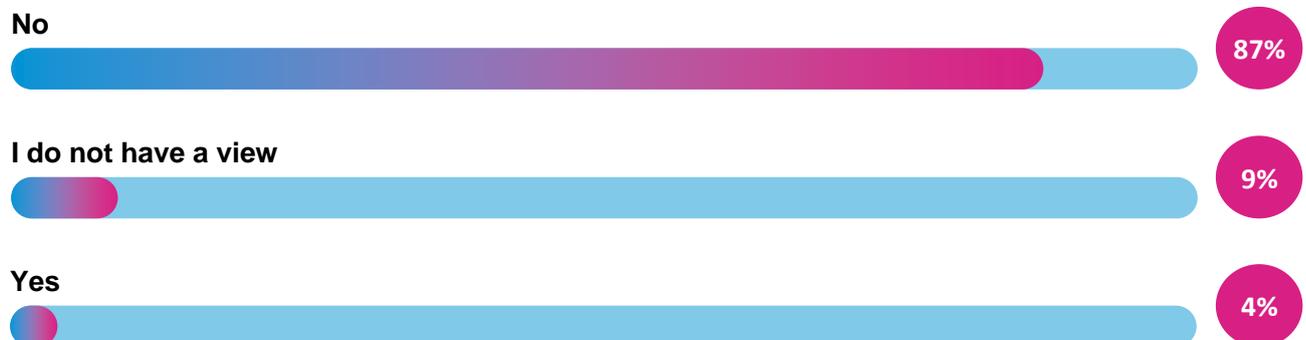
Are you satisfied that the BSB dealt with your report in the way you wanted?  
*choose only one*



Are you satisfied that the decision the BSB made about your report was correct?  
*choose only one*



Do you believe your report made a difference?  
*choose only one*



## 2. Key Findings continued

- 2.2.13 With a 20 per cent response rate on a sample of some 673 reporters, we cannot definitively conclude that the results are wholly representative of the views of the many thousands of individuals who have submitted reports to the BSB since 2019 (the point at which the BSB substantially evolved its approach to assessment and enforcement). Equally, a good number of individuals have taken the time to submit their views to this project through the surveys, and their comments and feedback should therefore be heard and respected.
- 2.2.14 As we explain elsewhere in this report, timeliness in progressing reports and cases can be addressed by the BSB. Also, clear expectations can be set with those making reports over how they will be communicated with. And it lies within the BSB's ability to report back in a timely manner against commitments made to reporters.
- 2.2.15 Where the survey responses identify a clear disconnect for the BSB to address is that reporters largely do not accept that the BSB's process results in a satisfactory conclusion from their perspective. The many comments received through the survey cite issues such as: lack of transparency; exclusion from IDB and DT hearings; the scale of successful appeals against administrative sanctions. In turn this causes some to conclude that the BSB and BTAS are in practice secretive and leaning towards protecting the profession rather than effectively regulating it.
- 2.2.16 We do not know how this discontent filters through social media and other communications channels to a wider population. However, we consider that there is a risk that dissatisfaction with what many see as a futile process of reporting acts over time to reduce the stream of intelligence that the BSB receives from the public in respect of conduct breaches. So it is a serious matter for the BSB to address.

### 2.3 Initial Contact and Assessment

#### **The BSB's Contact and Assessment Team (CAT) does not yet appear to have achieved full effectiveness as the primary point of entry to the BSB in respect of reports, and this is having a major impact on efficient and timely enforcement**

- 2.3.1 Our remit in this project extends only to CAT's handling of assessments of reports received from Reporters relating to potential breaches by barristers. So, apart from touching upon its wider role through a workshop involving all CAT staff and a separate workshop with the Supervision team, we have not reviewed the wider aspects of CAT's total remit.
- 2.3.2 In respect of CAT's contribution to the enforcement process, which we have reviewed in detail, it is clear, and well-recognised by the BSB that CAT has struggled with recruiting and retaining staff to enable it to deliver its role in respect of report assessments. Also, for a variety of reasons equally well recognised, CAT has lacked sufficient senior management input, supervision and guidance.

**CAT is a small team that needs the appropriate level of skills and know-how to work effectively. Its performance is therefore highly vulnerable to unforeseen and unplanned staff absences and departures. The unexpected loss of one Assessment Officer could therefore have an immediate impact on CAT's ability to meet its remit and hit its assessment KPI, as well as its wider service obligations to the BSB. This frailty risks continuing to impair the BSB's overall enforcement performance and so needs a sustainable resourcing solution to be in place. Otherwise, the staffing problem and its consequences will simply re-occur.**

- 2.3.3 There was, at the time of our fact-finding stage in July-October 2023, a large backlog of unallocated reports in CAT. We sought to identify how the backlog impacted on the key CAT time-based KPI of processing 80 per cent of reports logged in 40 working days.
- 2.3.4 Out of 1,711 cases allocated in CAT from April 2022 to Sept 2023, the average time between case opening and case allocation was 31 working days. The CAT-related KPI of 40 working days applies at the point of case opening, so the delay in allocation (a combination of demand management, impairments to focus, and resource shortage) was inevitably having a major impact on KPI achievement.
- 2.3.5 However, in respect of risk-assessed cases (identified by CAT and referred therefore to I&E) once a case was allocated in CAT, the average period from allocation to Assessment Officer to referral to I&E was 39 working days. The assessment part of the process is therefore probably falling within CAT's KPI in respect of risk cases. (This area of positivity is not being currently identified in performance reporting).

## 2. Key Findings continued

2.3.6 The tables below show the data provided by month.

### All cases (open and closed) which have since been allocated

Year	Month	Number of cases	Time unallocated*
2022	April	11	47
	May	93	40
	June	108	35
	July	91	31
	August	117	23
	September	92	12
	October	139	36
	November	105	39
	December	103	26
	January	110	29
	February	97	17
	March	139	26
2023	April	112	37
	May	104	37
	June	82	32
	July	85	42
	August	88	34
September	35	15	
<b>Total</b>		<b>1711</b>	<b>31</b>

### All cases referred to I&E

Year	Month	Number of cases	Time from allocation to referral*
2022	April	6	21
	May	3	18
	June	13	51
	July	9	35
	August	15	60
	September	7	13
	October	9	20
	November	4	31
	December	3	62
	January	16	89
	February	12	41
	March	16	30
2023	April	6	21
	May	4	28
	June	7	36
	July	10	26
	August	10	24
September	12	28	
<b>Total</b>		<b>162</b>	<b>39</b>

*\*Average in working days*

2.3.7 The overall time being taken to address reports (either to dismiss them or to refer them onwards) has consistently breached the KPI of 40 working days.

2.3.8 Our small sample of detailed case reviews demonstrated that delays in allocation of cases caused long periods of elapsed time where no action was taken on incoming information. However once allocated, the cases we reviewed were often assessed promptly, demonstrating that swifter allocation could have a significant impact on timeliness. The consistent failure to achieve targets places much stress on staff, who have at times been faced with working extensive overtime to address this issue.

## 2. Key Findings continued

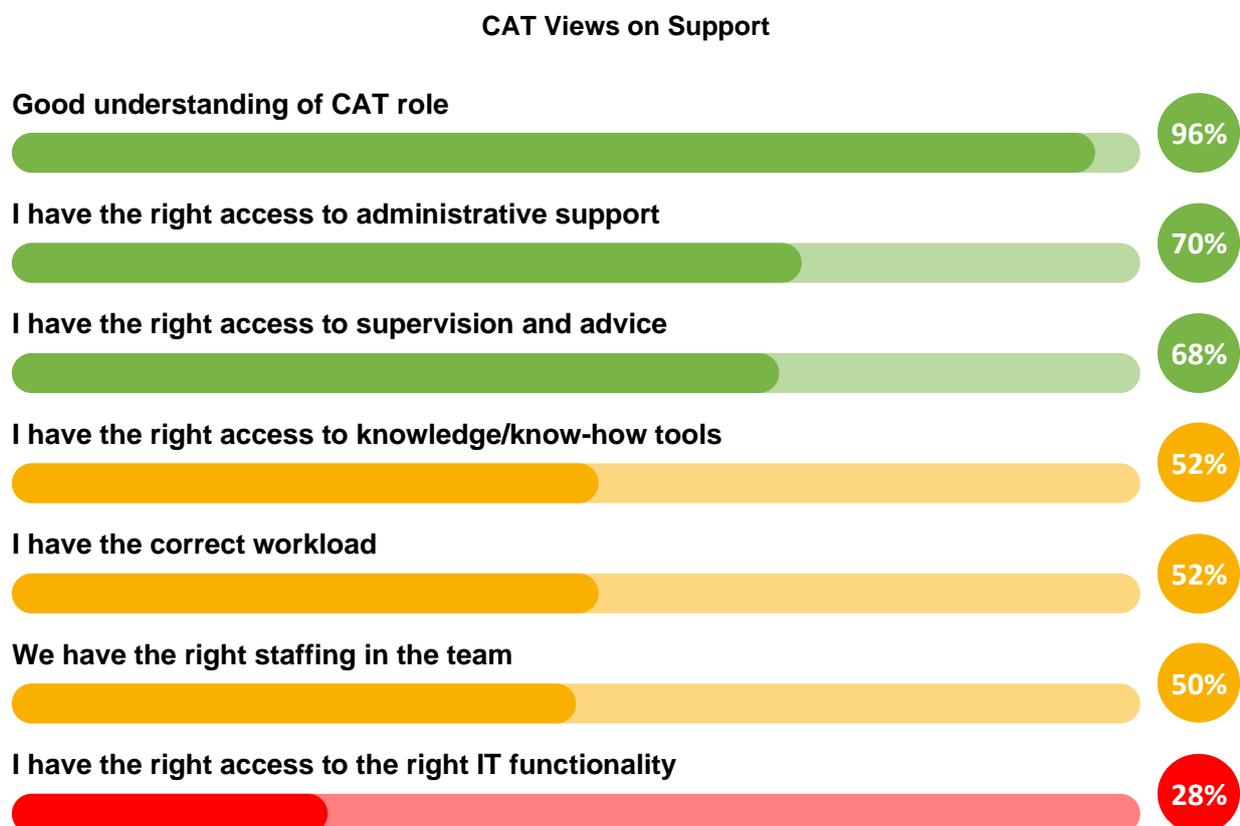
The predominant causes of CAT's performance challenge are threefold:

- **The continuing substantial backlog in case allocation that needs to be urgently addressed and cleared to create the opportunity for cases to be assessed far more promptly;**
- **Lack of consistent resource to do the assessment work;**
- **Excessive time spent in low value-add engagement with those submitting reports**

2.3.9 We recognise the work that has already been undertaken by CAT's management to identify and to start remedial action in respect of performance improvement. Additional staff are being recruited and a plan is being implemented to clear the current backlog.

2.3.10 Our workshops, interviews and surveys conducted with CAT staff also identify a set of challenges to effective working. Some of these relate to policy (for example in respect of how needs for public engagement are interpreted) and others relate to impediments to good working practice, as shown in the chart below.

### Levels of impairment to working effectively identified by CAT members



*(Note: since this survey was undertaken CAT staffing has increased so we anticipate that the dissatisfaction on staffing levels as seen in the survey is being addressed)*

## 2. Key Findings continued

2.3.11 Although since the beginning of 2023 it has reduced in usage, the referral to an Independent Reviewer of dismissed cases that are then challenged by Reporters, together with periodic sample audits shows good evidence that, in respect of dismissed reports, CAT staff are making the correct calls based on their assessment work. However, the position with cases referred to I&E is less clear since there is an apparent difference of approach at the CAT and I&E border over the question of the scope of assessment work needed prior to a case being referred to I&E and the application of the risk assessment. This consumes added resource and wastes time.

2.3.12 The problem arises from:

- (i) a lack of succinct and clear guidance documentation to support CAT staff in reaching their decisions;
- (ii) a lack of knowledge development in CAT relating to I&E approaches to investigations work;
- (iii) issues in the ease of access to aspects of the CRM system so that the I&E team report finding challenges accessing the full assessment history of all cases referred to them, and CAT team members cannot easily find the details and reasons for cases being returned to them;
- (iv) a lack of sufficient effective informal communication between the two groups where borderline assessments can be resolved;
- (v) disagreement between CAT and I&E over what constitutes a valid and acceptable CAT assessment;
- (vi) an overly complex risk assessment policy and online risk assessment form, and a need to apply an override to the automatic scoring, for example in relation to "previous regulatory history";
- (vii) potentially, stress in terms of scale of workload in both CAT and I&E.

2.3.13 We recommend how these issues can be addressed in Section 3.

**In summary, CAT is facing multiple challenges that, when taken together, seriously impair the team's ability to perform. These impairments mean that CAT is struggling to deliver on the mission and role it was expected to deliver in 2019.**

### 2.4 End-to-End Enforcement Responsibilities

#### **Since 2019 CAT and I&E have sat in separate directorates which has resulted in no-one below the Director General level having responsibility for the end-to-end Enforcement process within the BSB**

- 2.4.1 The scope of our review has not extended to the various other important functions undertaken by CAT but has focused primarily on its work delivering the Enforcement procedures. We have, however, considered the case for and against a part-reversion to the arrangements that were in place prior to the 2019 changes as a means of providing a single director responsibility for the whole enforcement process. Before that restructuring, Assessment and Investigations and Enforcement came under the responsibility of a single member of the SLT. *(Later in the report we discuss the "downstream" question of how the BSB and BTAS engage in the overarching delivery of regulatory enforcement objectives).*
- 2.4.2 We have read the reports prepared for and by the Director General and for the BSB Board, that identify challenges to performance. Clearly, we cannot take any view on how well the pre-2019 regime had performed in respect of enforcement efficiency. However, it is clear that the transitions between CAT and I&E, and how the two teams engage, could be better.
- 2.4.3 The criteria for accepting and taking forward a report include an assessment of risk and whether the matter can be properly and fairly investigated. We note that, in accordance with a key internal policy document (ROD02), CAT is currently limited to making recommendations on whether a case should be accepted, the actual decision on acceptance being made by I&E. This policy is not required by regulations or legislation but is how BSB has opted to operate the acceptance stage. This has created tensions with I&E returning many acceptance recommendations to CAT as not being acceptable. Our view is that this area of tension could be avoided.
- 2.4.4 In most enterprises, processes need to cross departmental borders and, very often, hand-offs and co-operation at these crossing points can become impaired unless clear and specific efforts are made to make these transitions work better. Otherwise, siloed behaviours are at risk of emerging. However, it has been hard for us to identify clear processes and procedures (formal and informal) between CAT and I&E through which cross-directorate issues are effectively addressed, solutions identified, and changes implemented. For example, we have not identified the existence of a "continuous improvement programme" or anything similar between CAT and I&E that could extend from the advice and guidance given to potential reporters all the way through to supporting the final determinations of the Disciplinary Tribunal.
- 2.4.5 Moreover, the tensions between the two teams/directorates now figure in part of the DG's performance report that shows the numbers of assessment referrals from CAT that are rejected by I&E. We do not view these figures as a measure of poor work. Rather they reflect the need for greater co-operation. We should make it clear that we do not see this as being a fault that can be attributed to individuals. Rather, it is a systemic failing.

## 2. Key Findings continued

- 2.4.6 Although the remit of Supervision fell outside our terms of reference, we did also consider whether there were substantive issues at the interfaces between Supervision and both CAT and I&E. It was reported to us that CAT and Supervision were more closely aligned with good communication and a joint approach to decision taking on Reports that were not straightforward to address. We did not see any reason to propose that the CAT:Supervision interface was changed in any substantive way.
- 2.4.7 For risk-based regulation to work well, both I&E and Supervision need to deliver on a complex relationship where there is full and effective information exchange, a good understanding of one another's roles and, where appropriate, aligned decision taking. We did not identify any case for structural or responsibility changes at the boundary between I&E and Supervision, but it is an area where it is important that the quality of communication is high.
- 2.4.8 In our recommendations we suggest a systemic solution to the interactions between assessment and enforcement and we discuss in more detail in those recommendations our conclusions on whether or not a part reversion to the pre-2019 model is needed.

### 2.5 Investigations and Enforcement (I&E)

#### **I&E is facing a wide range of impediments and challenges that undermine its performance and also its support of IDB and the DT**

2.5.1 I&E has five primary functions:

- (i) The detailed investigation of reports based on referrals primarily from CAT;
- (ii) The development of allegations;
- (iii) Taking decisions covering: case closure; the imposition of an administrative sanction; or a referral to the Independent Decision-making Body (IDB) for a decision on allegations; referral to IDB for a determination by consent (DBC); direct referral to the Disciplinary Tribunal (DT) or referral to an Interim Panel;
- (iv) Where I&E determine that a referral to the IDB is required, the preparation of case bundles for the IDB;
- (v) The preparation of charges and presentation of cases against barristers at the DT for cases referred to the DT.

2.5.2 The current principal KPI for I&E is time-based. Chart 2.4.1 below shows, based on our I&E team survey, how people assess the focus of their effort which in turn has an impact on case progression and therefore on KPI achievement. The survey provides a very important and useful insight into how time is consumed. It asked team members to divide their time between:

- (i) The point of referral to the point before any allegation drafting;

## 2. Key Findings continued

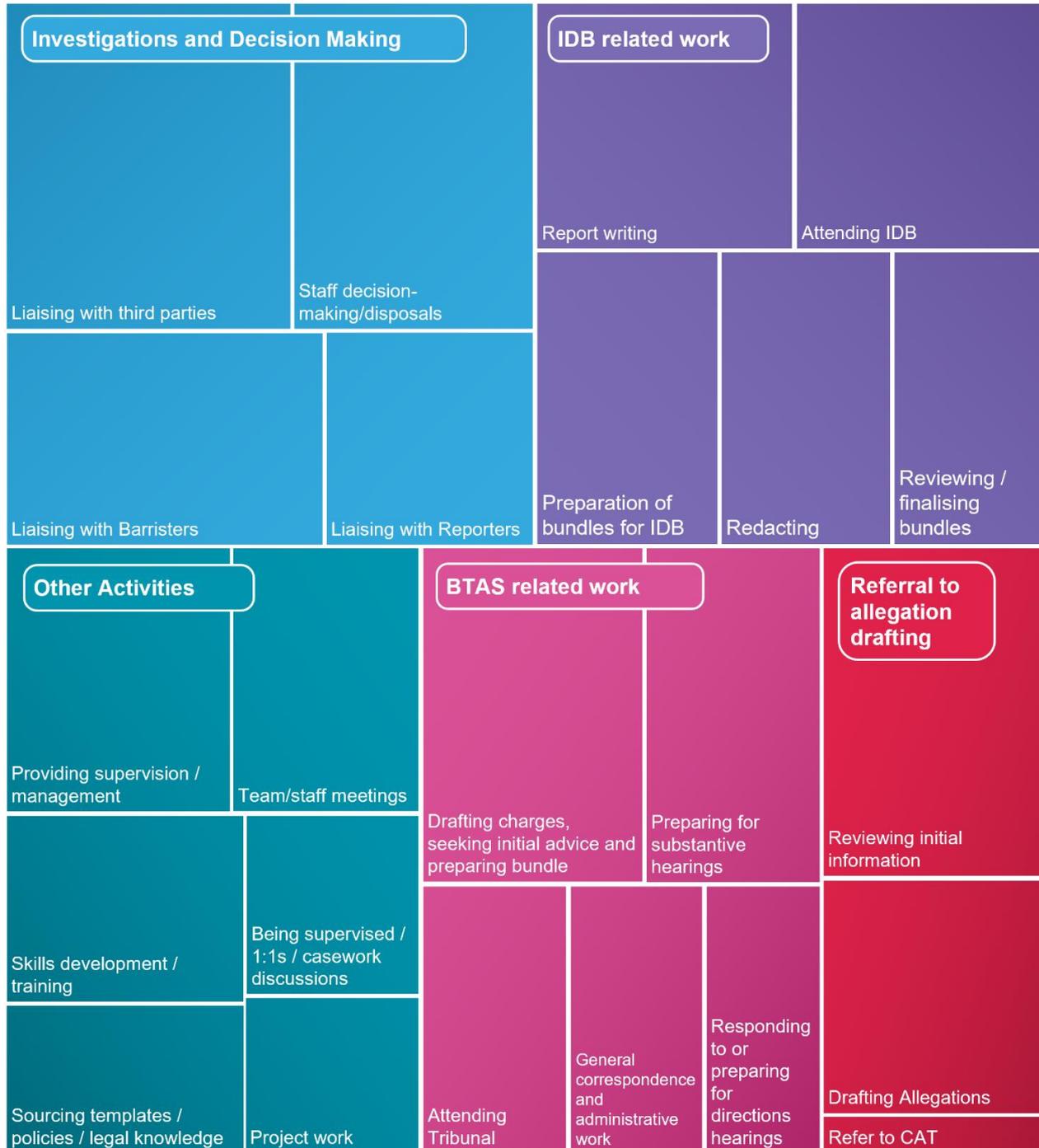
- (ii) Time spent in undertaking investigations and subsequent decision-taking;
- (iii) Work related to preparation for and support of the IDB;
- (iv) Work related to preparation and support of cases referred to the Disciplinary Tribunal;
- (v) Other activities, such as team meetings and supervision, not directly related to case progression.

2.5.3 As the chart shows, IDB and DT related effort consume substantial amounts of time. As these activities take priority over other case progression work, the net effect is that work of less immediacy is de-prioritised and that can therefore lead to delay that in turn impairs KPI achievement.

## 2. Key Findings continued

### Investigations and Enforcement work division

#### I&E Work Division

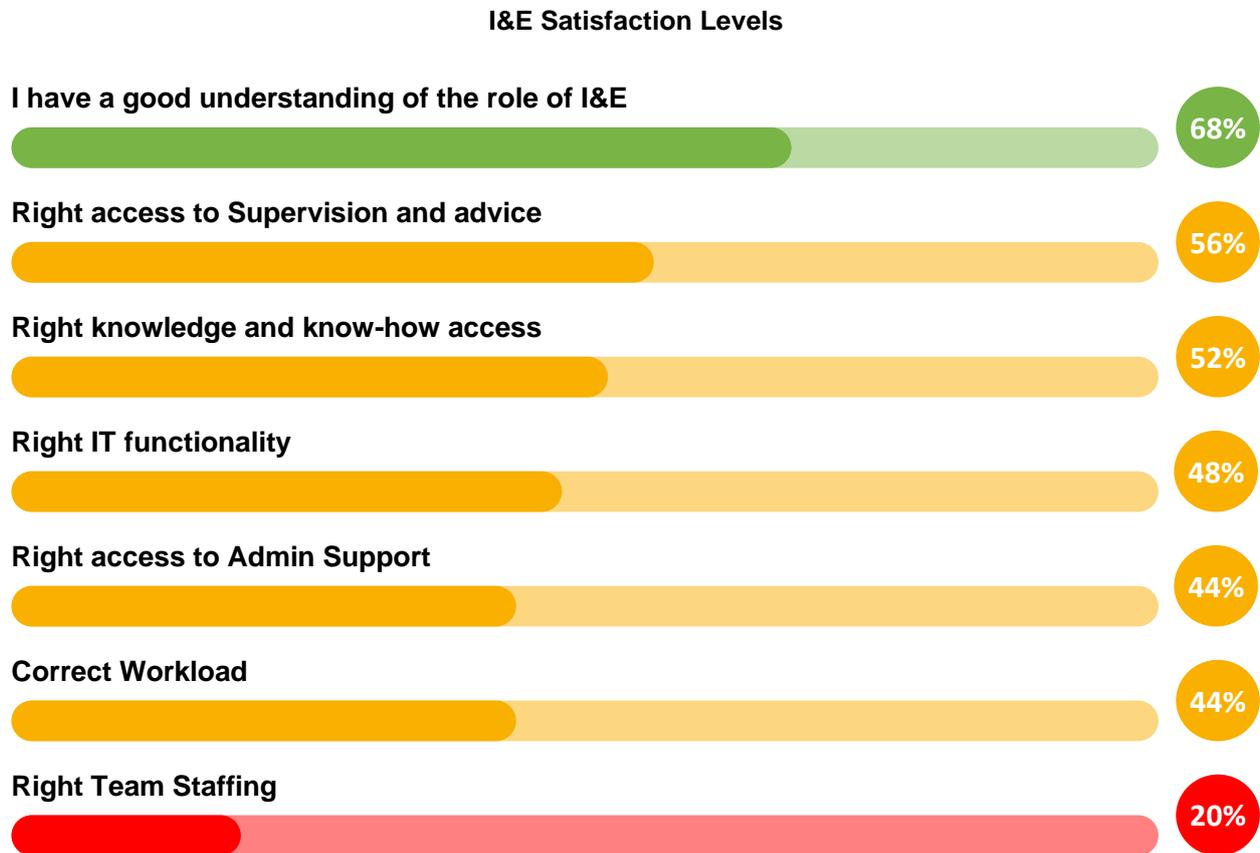


2.5.4 However, impairments to I&E productivity and timeliness, a combination of elapsed time, resource input, and quality of output achieved, are extensive and are not driven by any specific dominant issue, such as growing case complexity. (We note that a complexity rating has recently started to be applied to cases and so data will in time be available on that area)

## 2. Key Findings continued

2.5.5 Our surveys and workshops also explored how staff saw wider impairments to case progress. These are summarised in the chart below.

### Impairments Identified by I&E Team



### The principal challenges to I&E achieving its performance targets

2.5.6 As we explained earlier, the challenges to I&E achieving its operational potential are wide ranging and are in many instances inter-related:

- (i) **Lack of functionality and connectivity in IT Systems** that makes it challenging to work on and bring together information and documents in a manageable and efficient way. We experienced this directly also in our limited sample case reviews, where we had difficulties in accessing some attachments to emails and observed gaps in evidencing or communicating internally the basis for decision making, for example statements provided to CAT were not transferred to I&E. I&E staff also experienced significant challenges in preparing bundles using the Caselines system. There were also challenges in the time being taken to fully implement redactions in preparation for IDB panels. These IT issues slow work down and create unproductive time to that which individuals spend on cases.
- (ii) **Lack of easy access to knowledge and know-how.** Many staff in I&E are relatively new and so need easy-to- access support in the form of well-formed

## 2. Key Findings continued

guidance documentation, precedent, and the experience and advice of their peers and managers. For the BSB's enforcement work, effective knowledge management is critical to high performance. At present this key area lacks sufficient focus. There are, for example, approaching 40 policy documents with review dates ranging from September 2020 to April 2023 apparently yet to be reviewed, given other priorities, projects and pressures on time.

- (iii) **Organisation and sharing of work.** Cases are allocated to team members on the basis of skills and experience, and also, more recently, complexity. Once cases are allocated to an individual the expectation is that they remain with that individual until closure, resulting in each individual holding managing a caseload where the cases can be at every stage of the process, from initial review of a CAT referral through to presentation to the Disciplinary Tribunal. This expectation of cases lying with the same individual through the whole life cycle is not in reality always achieved, since long-running cases are in fact re-allocated between staff over time. However, this approach to individuals holding cases at different stages of the process results in work for DT hearings and for IDB hearings, being prioritised by individuals over investigations work and allegations formulation. This produces case progression delay that we believe contributes to more serious and therefore higher risk cases losing momentum. I&E case officers are also distracted from core work through undertaking some tasks, such as filing documents, preparing bundles and liaising with their external counsel which could be undertaken by administrative and paralegal support teams.
- (iv) **The management of, and policies under-pinning, inter-actions with respondent barristers** that consume substantial amounts of individual's time. Our view is that this time commitment could be reduced which in turn would free resources.
- (v) The lack of clarity in respect of what constitutes effective triage by CAT.

### 2.5.7 This raises two issues:

- (i) There is a different interpretation between CAT and I&E over what constitutes the correct level of triage prior to a referral and, in our limited sample case reviews we saw several cases where there were very divergent views as to risk, cases rated "Amber" or "Red" by CAT were sent back to be downgraded to "Green". This difference in subjective assessment of risk, the application of overrides on the risk assessment and sufficiency of inquiry is leading to too many instances of referrals moving back and forth between the two teams. Some of the difficulties experienced are the result of CAT not having final responsibility for the "acceptance" decision which currently sits with I&E. We consider that it is an internal BSB policy rather than regulations (or any legislative requirement) that results in CAT taking responsibility only for "recommending" while I&E take responsibility for "accepting".
- (ii) The acceptance test is more complex than in many regulators, who usually accept reports that raise a question as to whether the regulated person has committed

## 2. Key Findings continued

professional misconduct (or some other type of breach), with an element considering whether this is potentially "sufficiently serious".

2.5.8 The results of our case audit have exposed how the issues and challenges we explain above unfold in examples of case management. We should underline that the issues we identify below are systemically driven rather than being down to the competence or otherwise of any individuals. These include:

- (i) Instances of premature allegations drafting, and also inconsistencies between different team members over when allegations drafting should best be started. To avoid an immediate response from a barrister subject to an investigation for the details of what they are alleged to have done it appears that members of the I&E team will often move to draft allegations at the outset of their investigation. We understand that they are seeking to provide precision at the point of notifying the barrister. However, they can then find that they lack the evidence to prepare the exact allegations, creating delay in communication. In the eight cases we sampled the barrister was first contacted and provided with the allegation between 123 and 563 days after the report had been received by CAT (with a mean of 359 days - approximately one year). The BSB's current policy (LED04) anticipates "Summary Sheets" being sent rather than allegations, but it also refers to the potential breaches of the Core Duties or parts of the Handbook being identified. In addition to delaying notification, the current approach of crafting precise allegations too early may constrain open-minded investigation and also impedes the IDB who would like some latitude (within the bounds of fairness) in relation to the allegations referred.
- (ii) **Investigations prioritisation.** Whilst it is difficult to extrapolate from our small and historic case samples it was not evident that "red" risk cases were allocated any additional focus, such as weekly or fortnightly review.
- (iii) **Investigations may need better planning.** The need for witness statements was not always identified early in the investigation, or a complete enough set of materials was not obtained from Family proceedings.
- (iv) **Witnesses may need earlier and better engagement.** A lack of prompt witness engagement resulted in difficulties subsequently obtaining contemporaneous file notes from them or securing their attention for finalising a statement. Guidance on working with witnesses (LED27) proposes updates regularly and at least every 6 weeks, compliance with this policy is hampered by lack of early identification of witnesses and case management prompts.
- (v) Tension between adopting neutrality during investigations and then switching to a more adversarial role if cases are referred to DT. Case officers handle a case from allocation/acceptance through the various processes described above to the conclusion of a case. When investigating cases an "open mind" is required to be receptive to conflicting evidence that may lead to decisions to close cases or to reduce the scale of allegations. However, once a case is referred for an interim order or the substantive DT, attitudes and approaches need to alter to ensure that

case presentation is more than "neutral" and instead advocates to prove the charges, and to seek an appropriate sanction. In this respect, BTAS feedback also noted a lack of recognition and ownership within the I&E team of their responsibility as the regulator to ensure cases were listed, presented and outcomes were reached in a timely manner.

### The views of Barrister Respondents

- 2.5.9 It was important for the Project to understand the BSB's assessment and enforcement processes from the point of view of Barrister respondents. Through the BSB, 79 barristers who had recently been subject to BSB assessment and enforcement procedures were approached in confidence for comment. Their anonymous views and comments were based upon a structured survey. In all, we received just ten responses, 13 per cent of those who were approached.
- 2.5.10 The number of replies against those asked to participate in the survey, and in the context of the much wider group of barristers that have been subject to aspects of the BSB enforcement process is not sufficient in number for us to reach any substantive conclusion as to whether the responses were representative of the general feelings of barristers who had been through the BSB process.
- 2.5.11 Nonetheless, it was very helpful to receive some comments and responses from this group. Some were generally satisfied with the overall process whilst others (a majority) were not. Amongst the group several points emerged that are worthy of further consideration by the BSB.
- (i) It appeared that a number of those subject to the enforcement process were less than clear over how the process worked and would have welcomed more advice;
  - (ii) Most respondents sought to deal with the case themselves, whilst a minority sought support from another barrister.
  - (iii) There was general dissatisfaction with the time it took to progress cases. Barrister's responses on time to complete ranged from less than six months to as much as two years. The number of respondents is small but their dissatisfaction with time taken is in contrast with opinion in the I&E team and also at BTAS that there is a tendency (unquantified) amongst barrister respondents to string out cases.
  - (iv) Also there was substantial dissatisfaction over communication as to the progress of the case and what the next steps would be.

**In summary, the collective impact of a number of impairments puts the I&E team under substantive pressure in respect of moving cases efficiently and effectively through the system. This means that they are not being effective in facilitating the taking of robust, timely, consistent and sound decisions.**

### 2.6 Independent review and quality of investigations

- 2.6.1 Independent reviews are regarded by the BSB as an important way of identifying that correct decisions are arrived at. Our remit did not extend to an independent review of the quality of decision taking. However, we did explore how the independent reviews dovetailed into the enforcement processes. Historically, the largest number of reviews related to challenges made to CAT decisions to dismiss reports. The BSB has now concluded that the scale of such reviews was unnecessary, offered little if any value-add, and was time consuming.
- 2.6.2 Independent Reviews can occur in two ways. First, where independent "ad hoc" reviews are called for by respondent barristers or Reporters at key decision stages. In these cases, results show that, in the great majority of cases the end decision of the BSB is upheld. Second, scheduled reviews of cases are undertaken every quarter that are not driven by an external request but are, in practice, a form of decision audit. In the great majority of cases, we were told that the decision was upheld as correct. However, in the absence of a major case review exercise, we are not in a position to draw conclusions over the overall quality of work being undertaken even if the end decision can be supported as being the right outcome.
- 2.6.3 In November 2023 the BSB issued a new external facing Policy and Operational Guidance on "Reviews of regulatory decisions and the role of the Independent Reviewers" (BSB28) which is an important stage in further clarifying and explaining the role and powers of IRs, making clear what can trigger a review, which decisions can be reviewed and that IRs make recommendations to the person with the power to make the decision. We think this revised Policy and Operational Guidance will help to manage expectations of those who seek an independent review, and it reflects and supports the approach taken not to refer so many CAT closures to the IRs. IRs can only make non-binding recommendations. They do not have the power to take or re-take decisions in individual cases as their role sits outside the BSB Regulations. The relevant Head or Director (or where applicable IDB) is responsible for deciding whether to accept IR recommendations. If a recommendation is not accepted then that decision must be recorded in writing with reasons. We noted that their "independence" means that IRs do not create any direct inputs on the CMS system and we consider it important that their involvement, recommendations and resulting decision should be clearly evident on the CMS system.
- 2.6.4 We identified a lack of clarity as to whether the IR review process provides an assurance of the quality of an investigation (rather than the decision). There is an important focus as to whether the decision taken should be upheld or revised and the amended BSB28 guidance mentioned above, and LED 34, focus on the decision taken. Revised operational Guidance (BSB04) covers quality assurance audits and sets out such audits are to provide assurance that decisions taken under delegated authority are being taken efficiently and effectively in line with relevant policies and procedures and performance indicators and that cases are being handled appropriately. For audit and ad hoc review purposes therefore, it is an important input to better ways of working that IRs should be reviewing the quality of the investigation including matters of timeliness and avoidable delay; that no further information could have been gathered; that the case has been handled fairly, appropriately and in an open transparent and accessible manner; and in

## 2. Key Findings continued

accordance with the BSB's values and the applicable aims and objectives. Our understanding is that comments on these matters are included in file assessment forms and audit spreadsheets.

### 2.7 The Independent Decision-making Body (IDB)

- 2.7.1 We reviewed how the IDB was scheduled and its processes for handling the allegations submitted to it. We interviewed the chair of the IDB, surveyed the views of its members (barristers and lay), and interviewed the Regulatory Panel Manager.
- 2.7.2 We noted that the scheduling of panel sessions works well and that there is little evidence that availability of panel members and scheduling arrangements lead to any significant delays in the enforcement processes.
- 2.7.3 We understand that the IDB comprises a good mix of individuals, with members willing to express their views and opinions. Members have a strong feel for enforcement issues and are familiar with relevant processes. Communication about relevant matters is timely and of appropriate frequency.
- 2.7.4 We noted in particular that the panels worked well recently under the accelerated procedures, but that proposals were in train for their modification. (We understand that revised procedures incorporating many of the accelerated procedures have now been recently agreed with the IDB). Remote hearings were reported to have worked efficiently and effectively for members. However, it was expressed that training in-person should be encouraged or made mandatory to foster greater opportunity for face-to-face discussion, as opposed to attending online that might mean that some attendees were less inclined to participate.
- 2.7.5 The panels conduct self-assessments that we consider to be a very effective and useful way of self-reflection leading to opportunities for continuous improvement.
- 2.7.6 It is to be expected that there will be a reasonable amount of liaising between panel members and the I&E team over certain cases and bundles, but we did not see this activity as over-bearing. However, one common factor of irritation (shared by both the IDB and the I&E team) lies in the issues surrounding the accurate translation of files into Caselines so that they remain clearly and accurately referenced.
- 2.7.7 Comments from IDB panel members were that allegations could seem repetitive, imprecise or poorly worded that in turn could result in members remitting allegations back to I&E for clarification or simplification. The IDB panel members also made the point that it would be of considerable benefit if Rules could be changed (reE19) to enable the panels to add or modify allegations as they assessed cases. This appears to be a reasonable proposal but any such change would require an assessment of the full benefits and potential consequences of so doing, one of which is likely to be how fairness in the process is ensured for the person who has responded to the allegations.

## 2. Key Findings continued

- 2.7.8 IDB panel members also reported that the current system of drafting decisions post-hearing is much more efficient than the previous system of dictating decisions during meetings. However, their view was that the process could still benefit from being improved upon further, which would help with both clarity of timescales to return drafts and a consistent approach to drafting.
- 2.7.9 Panel members reported frequent issues with redaction of material within the bundles; this ranged from members reporting 20-30 per cent of papers or cases not being fully redacted or raising issues related to redaction. We are aware that redactions are a necessary but time-consuming exercise intended to reduce unconscious biases. Whilst the principle of redacting to create anonymous decision making is seen by many as best practice, its value can be lost if it is not done thoroughly resulting in missed redactions and inadvertent mention of names. The BSB should explore what technology solutions might assist in this exercise and what would be needed to achieve full compliance in the redaction exercise.

### 2.8 The Disciplinary Tribunal and BTAS

**The Disciplinary Tribunal needs better support to improve the efficiency and effectiveness of its hearing process having been unable to meet deadlines in 50% of cases.**

**Performance data is difficult to access and the Disciplinary Tribunal has no case management IT.**

**The Tribunal members are experienced and appointed on the basis of competencies, providing tribunals which are fit for purpose, but frustrated by a lack of more structured case management and listing arrangements.**

**BTAS' Strategic Advisory Board (SAB) is a source of advice, support and challenge to BTAS but it is not a directional board and does not impose a line of accountability, which may make it difficult for BTAS to achieve change.**

**Once referred to the Disciplinary Tribunal cases should be largely ready for hearing. They should be listed and heard promptly, to ensure compliance with the BSB's regulatory objectives.**

- 2.8.1 BTAS and the Tribunal Chair are frustrated over the challenges to their ability to deliver the key objective of processing cases efficiently and effectively. Cases that result in tribunal hearings are, by definition, the most serious of those processed by the BSB, and it is therefore very important that they are dealt with in an efficient and timely manner. In practice, there are several impediments in the way.
- 2.8.2 We interviewed the current Chair of the Tribunal, BTAS staff, and conducted a survey of tribunal members, as well as addressing BSB and BTAS interactions through interviews,

## 2. Key Findings continued

workshops and surveys of the BSB's I&E staff and management. We also reviewed helpful analysis submitted by BTAS.

- 2.8.3 The target time taken to reach a Tribunal final determination is set at 6 months (183 days) from receipt of first directions. However, a recent survey of cases conducted by BTAS using both BTAS and BSB data shows that both this target, and the overall BSB target of 18 months (558 days) from first acceptance of a report, are not being consistently achieved.
- 2.8.4 The BTAS survey of cases, which we have reviewed, analysed the 67 cases coming before the Tribunal from July 2020 to November 2022. The analysis shows that:
- (i) some 50 per cent of DT cases did not receive a final determination within the target of six months (183 days) from receipt of first directions;
  - (ii) some 80 per cent of cases did not meet BSB's end-to-end target of 558 days (approximately 18 months);
  - (iii) some 30 per cent of cases took over 12 months to progress through DT;
  - (iv) some 60 per cent of the cases which took longer than 6 months were adjourned at least once;
  - (v) some 25 per cent of those cases were adjourned part-heard.
- 2.8.5 BSB Rules (rE102 and rE103) provide for a ten-week period between referral (usually by the IDB) before the BSB must serve the charge on the respondent barrister. Only at that point is the case officially notified to BTAS. There is then a requirement on the BSB to serve its evidence and suggest its proposed directions "as soon as practicable" and usually within 28 days, but this may be longer if this is explained to the respondent barrister. The regulations then expect the BSB and the respondent barrister to agree directions within a 35-day period. Only after this period, if it has not been possible to agree directions, can the BSB ask BTAS for the involvement of a Directions Judge. If oral directions hearings are required these may take at least six to eight weeks to schedule. Although not required in every case, this "pre-directions" stage can take more than 6 months between referral and directions being issued.
- 2.8.6 Once directions have been deemed accepted (in the absence of any response from the barrister), agreed between the BSB and the barrister or ordered by a Directions Judge, both parties (the BSB and the barrister) must submit details of their availability for the substantive DT hearing to BTAS. Once BTAS have availability details (or the deadline for providing them expires) BTAS will fix the date of the substantive hearing, having regard to:
- (i) the availability of the parties (if provided);
  - (ii) "the need for the prompt determination of any charges" according to Regulation rE130 which we interpret to mean having regard to the public interest and the wider interest in the case determination not being delayed.

## 2. Key Findings continued

2.8.7 Our sample of case investigation work showed an example where the BSB was unable to serve its evidence on the barrister, because it was continuing to investigate, so the stage of seeking to agree directions was delayed. It took a year from IDB decision to refer allegations until the BSB sought non-standard directions from BTAS because it was only at this point the BSB had served its evidence and moved to try to agree directions, which did not prove possible. It then took a further three weeks for the directions to be issued by a Directions Judge.

### The Root Causes of the problem

2.8.8 Addressing the major impediments standing in the way of a more effective Disciplinary Tribunal operation include:

- (i) developing a greater imperative for co-operation between the BSB and BTAS so that the case load can be more efficiently managed through the Tribunal process as a whole. Our understanding is that regular meetings between the two bodies tend to address operational challenges within the context of the present practices but do not seek to address more fundamental, long-standing structural issues and frustrations;
- (ii) changes to the Regulations which would give BTAS greater authority in respect of setting directions. This would include requiring greater accountability from BSB and the respondent barristers in meeting BTAS requirements in terms of the parties having to comply with the expected timetable or seek permission and approval if deadlines cannot be met;
- (iii) mitigating the challenges posed by frequent adjournments, both before hearings and as a result of cases being part heard. In particular convening, and recalling, five-person panels is time consuming and causes added delay, given the challenge of aligning busy diaries across five individuals. The areas to address include;
  - (A) improved time estimates for hearings being obtained from the BSB and respondent barristers and reviewed by BTAS;
  - (B) mitigating and reducing the impact of delaying tactics by respondents by imposing clearer expectations about compliance with a directions timetable;
  - (C) working to create a more effective case management environment so that both the I&E team in the BSB and BTAS could work in tandem to better drive cases through the process;
- (iv) improving BTAS access to and use of IT. At present, all substantive inter-actions between BTAS and the BSB are managed by email or even by preparing and posting files, rather than through a case management system (such as Caselines). The lack of IT slows down the process and unnecessarily consumes resources.

### Impairments to collaboration and co-operation

- 2.8.9 We recognise that it is important to maintain clear and evident separation between the BSB's enforcement functions and BTAS. However, this separation also risks creating an accountability or authority vacuum. In turn that impairs, for example, BTAS' ability to identify and resolve issues that may be impeding efficiency and effectiveness of hearings.
- 2.8.10 A contributing factor also seems to lie in clarity over the accountability lines of BTAS and also how the Tribunal, BTAS and the BSB are jointly held accountable for achieving the overarching professional regulatory goals.
- 2.8.11 The governance and accountability arrangements that apply to BTAS and the Tribunal could benefit from greater role clarity. On behalf of the President of the Council of the Inns of Court (COIC), BTAS is responsible for appointing and administering Disciplinary Tribunals and other panels. Since the enactment of the Legal Services Act the BSB has had responsibility for the disciplinary arrangements for barristers and, since 2013, has had a service level agreement with COIC relating to the Enforcement Regulations services BTAS now provides under Parts 5B (The Disciplinary Tribunal Regulations), 5D (Interim Suspension and Disqualification) and Part 5E (Fitness to Practise Regulations) of the Handbook.
- 2.8.12 BTAS is been funded by the Inns of Court at a cost of approximately £500,000 per year. In the future, it is proposed that it will be funded to approximately £600,000 per year with the BSB bearing 50% of these costs and the Inns of Court the balance.
- 2.8.13 Also, the agreement between the BSB and COIC relating to the provision of BTAS and DT services would be more valuable were it to be clear in relation to where responsibility lay for case progression and management during the DT stage between the BSB and BTAS. The current service agreement also does not include provisions for effective oversight and performance management. There is therefore a resulting lack of accountability for deficiencies at the Disciplinary Tribunal stage.

**It is reported that there is a culture of non-compliance by many respondent barristers in respect of directions agreed with the BSB or issued by Directions Judges at the start of the hearing stage. This could be mitigated by greater use of existing enforcement powers.**

### Reducing Adjournments and Deferrals

- 2.8.14 Because of a lack of clarity in the Regulations and in the agreement as to where responsibility and authority rests, there is a lack of co-ordinated and proactive case management being undertaken by either the BSB or BTAS at the hearing stage to ensure the prompt setting of, and compliance with, directions.
- 2.8.15 This is exacerbated since the Tribunal panels do not appear to be making extensive use of, or reference to, the existing powers available to them in Part 5 of the BSB Handbook which could be used to reinforce expectations that directions can and must be complied

## 2. Key Findings continued

with. The Handbook includes for example a regulation ((rE168) that contains the power to exclude evidence or draw adverse inferences for failure to comply with directions. Another regulation (E244) provides a broad costs power which could be used when unnecessary costs have been incurred as a result of non-compliance. There is also a Core Duty 9 in the BSB Handbook which requires a barrister to co-operate with the BSB and Rule C64 requires the prompt provision of information so that the BSB can undertake its regulatory functions.

### 2.8.16 What is required is that:

- (i) directions are swiftly put in place once a hearing has been referred to the Disciplinary Tribunal;
- (ii) all those engaged at this stage of the process see the directions as sacrosanct and to be complied with;
- (iii) requests to revise the directions timetable by more than a very short period should be considered by BTAS and variations should always be justified;
- (iv) the pattern of multiple applications for directions being made and opposed by respondents and the BSB needs to be addressed. Repeated directions hearings extend the timetable before the case is ready to be listed for the substantive hearing. BTAS need to be able to deal with applications promptly and to encourage all issues requiring directions to be identified at the earliest opportunity;
- (v) the existing requirements on barristers and the potential sanctions for failing to comply with directions, should be routinely referenced in all directions to emphasise the expectation of compliance;
- (vi) where directions are not complied with, it appears that there is currently insufficient resource time available promptly to follow up on non-compliance. As a result the parties may perceive that compliance is not closely monitored and non-compliance with directions may appear to be tolerated by the Disciplinary Tribunal. Greater use of powers requiring cooperation and imposing consequences, promptly where possible, for non-compliance would also support a culture of compliance and timeliness;
- (vii) there should be a standard direction for time estimates to be agreed or reviewed by a Directions Judge before a listing is finalised. Inadequate attention to efficient case management often leads to the issues between the parties not being clarified ahead of the final hearing. In particular it appears that the time estimates for substantive hearings are often too short. As a result of this, a significant proportion of contested hearings are adjourned before they start. or are adjourned part-heard, due to insufficient time estimates.

2.8.17 The issues of delay and lengthy hearings are considered to be compounded by the BSB's over-complex and repetitive approach to charge drafting (a point expanded upon below).

## 2. Key Findings continued

- 2.8.18 There is a particular issue relating to the constitution of panels which compounds delay in some adjournment situations. Although, once the panel attached to a particular case has been convened, there is an ability to substitute members before the hearing commences, once the Charge is read, if the case is then adjourned the same members are expected to reconvene, often resulting in a significant delay before the same panel can be reconvened for further hearing dates. The regulations (rE-150) provide that a panel can reduce to four or three members but there is no provision for replacement members. The delays resulting from late adjournments are clearly worse for five person panels as more individuals must be simultaneously available for new dates. Delays are also caused as a result of a regulation (rE211) that requires a three-person tribunal to refer a case to a five person tribunal for sanction if it considers the case may warrant the more severe sanctions available under rulerE210, such as disbarment or a suspension of longer than 12 month).
- 2.8.19 Delay impacts the BSB's and BTAS's regulatory objectives, especially in respect of risk management.

### Interim Orders

- 2.8.20 It appears that Interim Orders are very rarely applied for by the BSB. Also, the Tribunal had no power to impose an Interim Order during an adjournment even after an admission of breach by the barrister. (This particular issue will be resolved in the proposed amendments to the Regulations are agreed by the LSB and added as rE202A-F).
- 2.8.21 The limited use of interim orders is another factor contributing to a culture of non-compliance and delay, simply because it reduces the incentive for the respondent barrister to progress towards a final hearing. Again, a change to the Regulations has been approved by the Board which may increase applications for and making of interim orders when the amended Regulations are adopted.

### Case Presentation

- 2.8.22 DT members report that the quality of electronic and paper bundles provided to the panels could in some cases be improved. Members considered that there was unnecessary duplication of materials and that panellists would be aided by better indexing, and search functions for electronic documents. Some proposed standard structuring of bundles would assist.
- 2.8.23 The standard of case presentation on behalf of the BSB during the hearings is reported by Tribunal panel members to be good. Feedback from the Tribunal's panel members confirms that the panel members consider that the nature of the cases reaching the DT stage appears to be right with the great majority of the cases reaching the Tribunal stage are recognised to be serious.
- 2.8.24 We have not examined the quality of final decision making by the Tribunal with appeals and litigation being out of scope of this review.

### **BTAS Support**

- 2.8.25 BTAS is now supported by an administrator and by a recently appointed "Registrar and Head of Administration" who reports to the "COIC Director". Tribunal panels are clerked usually by junior barristers appointed on a case-by-case basis.
- 2.8.26 BTAS does not have its own case management system and relies on the BSB for information about its case load.

# 3. Recommendations

## 3. Recommendations

In this section we summarise our key recommendations for change. In the sections that then follow we elaborate on those recommendations in turn to address:

- The benefits they offer;
- The options in respect of their implementation

In many areas our recommendations for change could be achieved in a number of different ways. It is, however, important that the principle behind the change recommendation is addressed whilst it is open to the BSB and BTAS to determine how best to take forward the implementation of these recommendations.

### 3.1 Focus on delivering an effective end-to-end enforcement process

**Create a senior executive role that will take full responsibility for the effectiveness and continuous improvement of the end-to-end enforcement process.**

#### Benefits

- 3.1.1 Currently no single Director in BSB (below the Director General) currently owns the end-to-end responsibility for effective and efficient enforcement, including the effective contribution of BTAS and the Tribunal. Bringing this responsibility into a single role would mean that one individual held direct and personal accountability for performance and was therefore highly motivated to deliver against plans and targets, and constantly to seek ways and means of addressing challenges and of delivering continuous improvement. The impact on performance would be very substantial.

#### Commentary

- 3.1.2 The first management point in the current BSB management structure where any individual has responsibility for the BSB's total enforcement processes is the Director General. Also, there appears to be no obvious body or person that accepts responsibility for the total process including the performance of entities beyond the BSB's boundaries.
- 3.1.3 This results in lost opportunities for change through an absence of clear leadership and advocacy. It is therefore very important to the continuing success and improvement of the end-to-end enforcement process that there is a clear individual owner, who would sit within the BSB and deliver this remit.

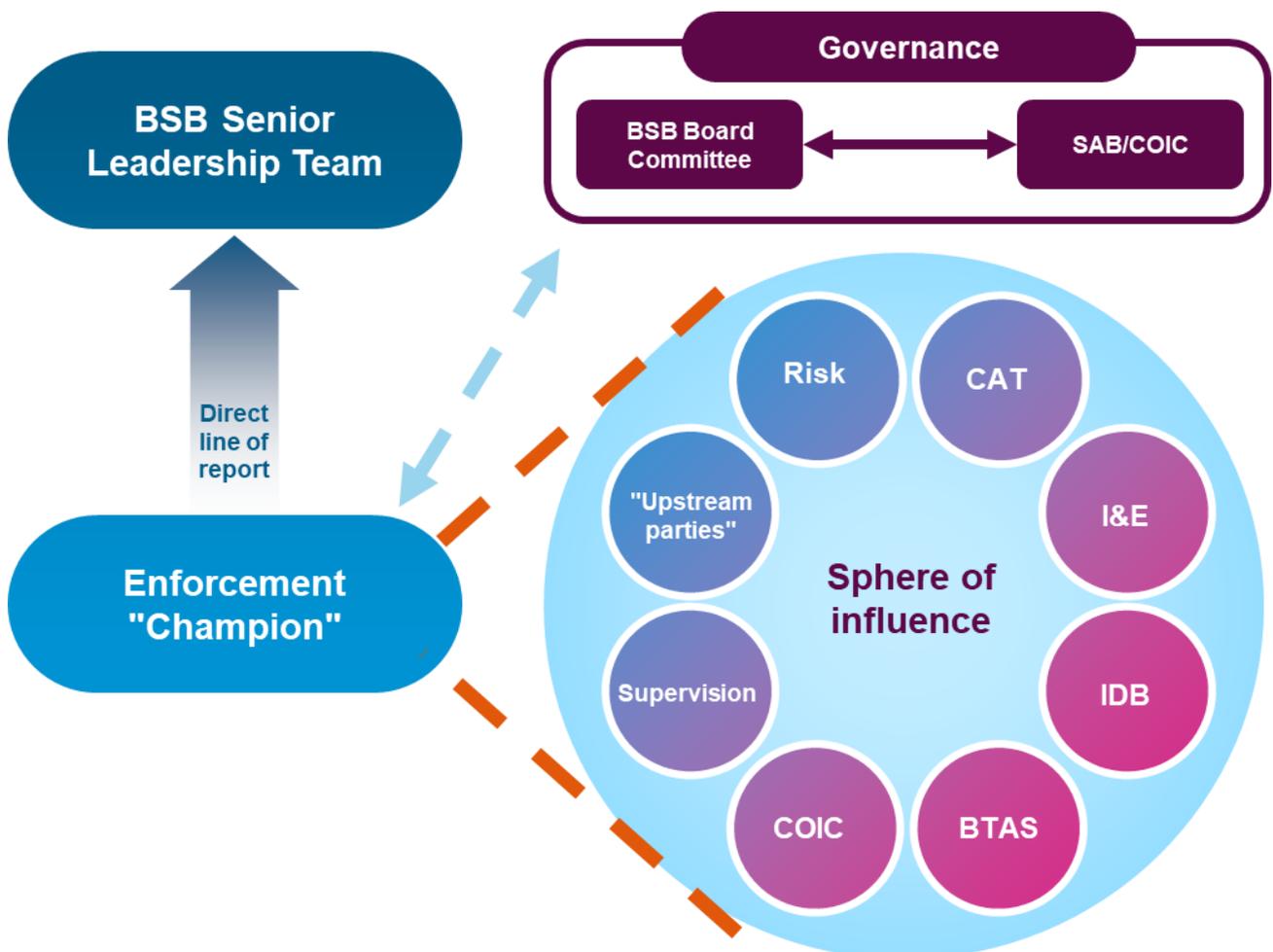
### 3. Recommendations continued

- 3.1.4 There are several options (or combinations of options) open to the BSB in addressing this challenge:
- (i) Revert to the pre 2019 arrangements where assessment functions sat with the predecessor to LED under the leadership of a Director;
  - (ii) Form a joint cross-departmental task group that would be the focal point for the design and implementation of better working and performance (including BTAS);
  - (iii) Create a "single owner" with responsibility for the success of the end-to-end processes (but without direct line-management responsibilities) who would have the power and status to interact with current Directors and BTAS to drive change.
- 3.1.5 It is for the senior leadership of the BSB to determine the most effective and practical way of designing such a model, and to determine how the positives and negatives would balance out. However, in reaching a conclusion on the optimal model, the following considerations need to apply, including:
- (i) fully assessing the wider organisational implications of recombining the assessment function with the enforcement function, as a part return to the arrangements that were in place prior to the implementation of the 2019 reforms;
  - (ii) recognition that the success of the BSB also depends substantially on the effective working of the Disciplinary Tribunal and BTAS, whilst acknowledging BTAS' independence and ability to make decisions free from interference. And there are other bodies such as the Legal Ombudsman who can also be contributors to, for example, a better public understanding of the BSB's core mission as a regulator, so that less resource needs to be committed on addressing matters and individuals' aspirations that fall outside the BSB's remit. So it is important that the BSB actively embraces a "life cycle" responsibility that reaches outside its organisational boundaries and also gets the best out of collaborative working between different departments within the BSB.
  - (iii) Exploring whether an opportunity exists to introduce a form of "matrix management" where responsibility for the overall success of individual functions could be held by a senior member of the leadership. This post would act as a point of co-ordination and performance delivery in collaboration with those responsible for operational management in separate functional areas. the current hierarchical structure that the BSB employs across its operational areas. This would mean a shift in the current BSB operating model.
- 3.1.6 Whatever solution fits best with the BSB's operating model, the four core leadership responsibilities of the leader would be to:
- (i) ensure and improve the effective delivery of the BSB's risk-based enforcement strategy from the initial receipt of information through to intermediate closures or final determination at the Disciplinary Tribunal;

### 3. Recommendations continued

- (ii) co-ordinate and manage through the programme of change agreed by the Board in the light of this report (a role that could equally be performed by a separate implementation project leader);
- (iii) deliver stronger alignment and co-operation within the BSB (for example with Supervision) and with third parties, for example the Legal Ombudsman the Bar Council; the COIC; legal consumer bodies, and other legal sector regulators to promote more efficient and effective enforcement;
- (iv) contribute to better understanding and acceptance amongst members of the public of the BSB's role.

3.1.7 Below we set out a schematic representation showing the potential range of management and influence that would be required to deliver the role.



### 3.2 Achieve best-in-class knowledge management

#### Build a "best-in-class" knowledge management environment.

##### Benefits

3.2.1 Currently the BSB assessment and enforcement teams struggle to find and apply knowledge and know-how in the most effective way. A structured and well-defined approach to building a best-in-class knowledge management environment will enable the assessment and the investigations and enforcement teams to: work more efficiently and effectively; improve on process times; take better and more sound decisions; and provide a platform for individuals' skills and knowledge development and thereby support career development, recruitment and retention.

##### Commentary

3.2.2 Access to and application of knowledge and know how is a core contributor to effective and efficient regulatory enforcement.

3.2.3 We concluded in our findings that there were very significant impairments to knowledge management in the BSB. It is very important that the BSB prioritises the enhancement of this area of its capabilities.

3.2.4 Really effective knowledge management is a critical enabler of the BSB's enforcement performance. In the context of this project, we define better knowledge management as resulting from a set of inter-linked recommendations that need to be addressed as a change programme:

- (i) Having a complete set of up-to-date, well-articulated documents that provide enforcement and assessment teams with the knowledge they need to deliver their work;
- (ii) Ensuring easy-to-navigate systems accessibility to relevant information as it is required;
- (iii) Providing effective and thorough induction to new joiners;
- (iv) Ensuring up-to-date policies are accessible via the website to provide barristers and other stakeholders with sufficient information to anticipate and understand BSB approaches to processes and decision making;
- (v) Ensuring continuing knowledge development (including key legal updates but also wider embedding of BSB processes) occurs across teams (both CAT and I&E);

### 3. Recommendations continued

- (vi) Delivering regular opportunities for knowledge and know-how sharing between individuals that would support wider knowledge acquisition and also case specific issue sharing and advice;
- (vii) Building a team culture where knowledge development and knowledge share is seen as of high value;

3.2.5 To design and deliver this extensive change programme, we recommend that the BSB appoints an experienced individual to deliver the knowledge management function. Potentially an individual who would have worked in a professional services provider or another regulator. Once the changes are bedded in, it may be that workload becomes more process than project focused, in which case, the time commitment might be reduced, the role-holder could accept wider, similar responsibilities and might work with a broader team to support this key function.

### 3.3 Enhance how IT systems better support performance

**Improve communication and collaboration between the CAT and I&E teams and the BSB's IT function so as to quickly build and roll out an achievable near-term plan to enhance the system/process interfaces so that CAT and I&E can work more effectively.**

#### Benefits

3.3.1 Perceived failings in IT functionality and application to work processes are identified by staff as the leading impairment to effective working. The benefits of delivering an evolutionary approach to enhancing IT support for staff will result in: higher productivity as measured by less time being wasted and therefore more time being applied to key work priorities; reducing the reliance on knowledgeable individuals in the team; less frustration amongst staff and therefore better morale and retention; and improved opportunities to achieve KPI targets.

#### Commentary

3.3.2 Fit-for-purpose IT systems are critical to the BSB's ability to perform its enforcement functions. As is people's ability to use those systems to their potential in support of their work. As we explained in Section 2, our findings are that issues staff currently experience in using the core IT systems are a source of delay, frustration, wasting of valuable work time, and potentially a factor in undermining morale, with wider consequences in respect of longer-term retention and development of talent.

3.3.3 Our project remit did not include a detailed review of the BSB's IT systems and their usage. However, we understand that the provision of technology services at the BSB has seen substantive change since the reorganisation in 2019 and that this change progresses. We

### 3. Recommendations continued

fully support this work in progress that continues to need commitment, prioritisation and effective funding.

3.3.4 The BSB (and the General Council of the Bar) were subject to a highly disruptive cyber-attack in April 2022 that resulted in a programme of recovery, remediation, and rebuilding resilience in the technology environment. Subsequently, a report by Grant Thornton in summer 2022 made several recommendations for change including:

- (i) migrating systems to cloud-based hosting;
- (ii) creating a cyber security officer role in the organisation;
- (iii) introducing regular risk governance and reporting frameworks into the organisation for cyber security;
- (iv) revisiting business continuity and disaster recovery plans for the organisation.

3.3.5 A further review was undertaken by Deloitte in February 2023 of Case Management and CRM systems. The key recommendations of the report were to enhance the business support potential of these key applications by:

- (i) migrating to cloud hosting (recently implemented by moving from on-premises 2016 Dynamics CRM to cloud-hosted Dynamics 365). This has also created greater potential and flexibility to deliver future change and improvement;
- (ii) appointing a solution owner that would enable more focused identification and delivery of benefits;
- (iii) simplifying process and architecture;
- (iv) introducing more structured change management;
- (v) empowering the CRM support team which would lead to more effective interaction between those responsible for IT and the user community.

3.3.6 In parallel, a quarterly release plan has been agreed that is intended to take user-group input into change and development processes to ensure greater alignment with change priorities in the organisation.

3.3.7 To support these projects and other activity, a technology trainer has been recruited into the organisation. In our view this is a crucial development in helping staff fully develop their capability to get the best out of current systems. Also, we understand that a project is in train to revise and improve all existing user documentation; create a training hub on the intranet site for this and other user materials; and to deliver comprehensive and team-specific training to all CRM users in the organisation. A new approach to regular and less formal change communications has also been piloted.

## 3. Recommendations continued

3.3.8 A restructure of the technology group has been proposed, to reflect the changing dynamic in the provision of technology to the organisation. A solution architect has been appointed and will play a key role in developing and implementing an overall architecture based on agreed principles.

### Moving Forward

3.3.9 Following the enforcement process review, a programme of work will be required to implement any changes required. In general terms, we support the BSB's proposals as to how such a change programme should be addressed that would include:

- (i) establishing the principles for architecture redesign. These should focus on: simplicity of process and architecture - a single case management solution focussed on the complaint and the respondent to better support the team handling the case; a focus on configuration over coding; a willingness to challenge legacy ways of working; and the ability to support the solution internally amongst users and others.
- (ii) collating and review of current state documentation, so as to understand how things work currently and to baseline the change process.
- (iii) developing a future state architecture based on the various inputs outlined in the process review.
- (iv) agreeing a programme of development work and change activity to implement the future state architecture.
- (v) sustainable delivery of functionality, along with change activity to users.
- (vi) embedding regular support following change delivery.

3.3.10 It is important that the requirements of BTAS and the need for smooth and effective interfaces between the BSB and BTAS are part of this work.

## 3.4 Clarify the BSB's role and responsibilities to members of the public and to Reporters

**Make clear the BSB's core responsibilities to members of the public who submit reports and therefore provide key intelligence that supports its regulatory responsibilities**

### Benefits

3.4.1 The key benefits include: a better understanding by the public who provide information to the BSB of the boundaries of BSB's role and what the BSB can realistically do so that

### 3. Recommendations continued

expectations are better managed; less complaints and challenge handling; potentially the receipt of fewer reports that do not meet the BSB's assessment criteria; sustaining public confidence in the value of reporting; less work pressure on the CAT team and therefore greater focus on those assessments that are key to good risk-based regulation.

#### Commentary

3.4.2 It is important that the BSB implements a number of changes in the way it communicates and inter-acts with the public, to: improve the way that the BSB is understood by those who submit reports; to deliver the updates and progress that reporters have been led to expect; and so as to reduce unnecessary work pressure in CAT. This includes:

- (i) clarifying policies over the BSB's responsibilities to and interactions with Reporters so that staff have a clear set of guidelines to work to: in particular over the definition of reasonable and proportionate updates and correspondence dependent on the context of a given assessment or case. For example, where successful appeals against sanctions are made (that would not otherwise be publicly available) determine the most appropriate way of communicating this in particular to Reporters;
- (ii) improving the information provided on the website as that is the first and predominant point of contact with the public. This should include very clear statements covering: the role of the regulator, how information provided is used, and what reporters can realistically expect by way of acknowledgement, updates and outcomes; the need for such improved clarity for the public should also be reflected in any future review of the BSB handbook;
- (iii) introducing better on-line forms that can filter out and block the submission of many reports that are not appropriate for initial assessment (and that also puts limits on the scale of supporting documentation submitted);
- (iv) clearer responses to information provision as to what will happen next, setting expectations about when/whether a reporter will be updated and distinguishing where such providers are potentially going to be required to make statements or provide other further evidence;
- (v) ensuring that chambers and practising barristers send the same messages and so have up to date guidance, paper and electronic, that can be provided to members of the public to explain how they can best take forward matters of concern and complaints that they believe have not been addressed fully through the client relationship;
- (vi) undertaking an annual survey of Reporters that is focused on collecting precise and actionable responses that can contribute to continuous service improvement. We understand that the BSB is planning the introduction of a cross-BSB running survey. Our view is that the value of periodic surveys is that they can be tailored to fit evolving and changing issues, concerns and needs for information. And thereby inform, for example annual reviews and planning rounds.

### 3.5 Improving CAT performance

**Improve CAT performance, so as to achieve the current time based KPI for processing assessments, through a number of operational interventions, some of which had already been identified by the Executive and some of which are currently being implemented.**

#### Benefits

3.5.1 As CAT is the entry point for conduct reports and the primary initiator of enforcement activity, the changes proposed will improve the BSB's ability to meet the CAT KPI target but also its other key KPI in respect of achieving the time target for the end-to-end enforcement process. Benefits should also accrue in respect of better inter-action with public reporters leading to higher satisfaction with the BSB's processing of reports. Also the changes will have a positive impact on stress and morale amongst staff.

#### Commentary

3.5.2 CAT's complete role sits outside our remit, so we are not able to take a view on CAT's wider activities other than those related to I&E. As we have explained, a number of issues have impacted CAT's ability to perform in respect of its role in the enforcement process.

3.5.3 In respect of CAT's ability to deliver a smooth and high-quality flow of assessment work relevant to enforcement, we recommend the following in addition to the changes already being implemented:

- (i) Implement the public facing changes explained in section 3.5 above. This will help both manage demand and also enable Assessment Officers to spend more time on report assessment;
- (ii) Create a sustainable and resilient resource pool for CAT so as to remove the impact of churn and unanticipated staff shortages on the team's ability to perform. This will reduce future risk of backlog and KPI breach;
- (iii) Enhance the senior management presence in the department so that there is adequate resource in place to supervise work, enhance performance, and manage through change;
- (iv) Clear the current backlog of unassessed reports through creating a short-term team with responsibility to clear the decks within a specified time (under way);
- (v) Be precise between I&E and CAT over the role of CAT as a preliminary assessment function and what constitutes reasonable evidence and sufficiently high risk to warrant further investigation in I&E;

### 3. Recommendations continued

- (vi) Review the "acceptance" of cases stage with a view to entrusting this to be completed by CAT (having enhanced a collective understanding of the acceptance criteria and knowledge of the Code and Handbook). If risk assessment is still to be included at this stage it will require the production of clearer and more precise guidance to support such risk assessment;
- (vii) Create better and more frequent knowledge-share activities between CAT and I&E teams.
- (viii) Match resource to workload leading to higher probability levels of KPI achievement and no backlog;
- (ix) Introduce changes to the CRM system to provide a more effective, and clear process to make and communicate the preliminary risk assessment;
- (x) Spend less time and resource wasted at the point of hand-over between CAT and I&E.

#### 3.6 Improving Investigations and Enforcement performance

**Implement a set of changes in the way that I&E works and is supported that will significantly improve performance. These changes can be implemented as part of a "continuous improvement" programme.**

##### Benefits

3.6.1 The changes, taken as a whole, will show that the BSB deals with cases as quickly as is consistent with a fair resolution of the case and its obligations to the public. They will improve workflow and reduce the time taken to manage cases through the stages required to reach a final decision, be that dismissal of the allegations or the imposition of sanctions by the team, IDB or the Disciplinary Tribunal. This will result in positive impacts on I&E KPI achievement; BTAS perceptions on BSB efficiency of case management; and also on the wider achievement of the BSB's end-to-end time based KPI. It will contribute to higher staff morale and job satisfaction that will also contribute to better retention and performance improvement.

##### Commentary

3.6.2 We have identified elsewhere in our recommendations improvements that can be made in systems support and knowledge share to enable the team to work better and smarter.

### 3. Recommendations continued

3.6.3 Additional changes to how work is segmented and organised is also a key contributor to improving productivity and delivering higher speed of resolution in case progression. Our principal recommendations are:

- (i) Reset the nature of communications with barristers where cases are accepted for investigation. Providing them with notification when their case is "accepted" (which might be a CAT decision if recommendations made above are taken forward). Provide only a broad description of the nature of matters under investigation at this stage, explain no response is required (although some barristers will seek to send materials or object at this stage). Review references to the "summary sheet" in guidance document LED04 and consider whether this type of summary would be a useful way of consistently capturing and sharing the nature of the matters under investigation. Defer further detailed engagement with barristers under investigation until investigations are more mature and better definition is possible to enable proper allegations to be developed and shared. This should reduce the interaction time with barristers.
- (ii) Review the approach to charge-drafting to reduce repetition and focus on specific incidents rather than separate charges for each breach of the Handbook relating to the same incident.
- (iii) Clarify the role of the BSB representative (the BSB's barrister) in drafting charges. The structure of "charges of professional misconduct" appears to have been influenced by rule rE236 which refers to the BSB being able to appeal against sanction "where one or more charges of professional misconduct have been proved". The enabling legislation (section 24 of the Crime and Courts Act 2013) does not limit the BSB power to appeal in such a precise way so an amendment to the Regulations would further remove the concern about needing very itemised charges/breaches.
- (iv) Ensure that case investigation plans are sufficiently broad, that they have anticipated areas of evidence that may be required, and that progress is regularly reviewed. A number of key questions should be addressed at the outset, with an opportunity to review and agree these with a senior I&E manager. Early focus should include:
  - (A) Is there likely to be a need for witnesses and to have their contemporaneous documents been secured?
  - (B) Are witness communications being maintained for optimal engagement?
  - (C) If permission is needed for Family Court documents attempts should be made early to agree documents to be sought in a single application to the Judge
  - (D) If expertise is required as to whether conduct may or may not be a breach, usually from an expert in a particular legal specialism – this may need to be prioritised.

### 3. Recommendations continued

- (v) Ensure the I&E team can give case presentation (for IDPs and DTS) the focused resourcing it requires without investigations work having to take a lower priority, possibly by having some team members focused on case presentation tasks and others on investigations.
- (vi) Ensure metrics are in place so that progress on high-risk cases is effectively monitored and that interventions to speed up progress are made where needed.

#### 3.7 The Independent Decision-making Body

**Only modest change needs to be put in place for the IDB which works well. Give the IDB more freedom to shape and determine its procedures and ways of working while remaining an integral part of the BSB.**

##### Benefits

- 3.7.1 The proposed recommendations will enable the IDB to continue on a trajectory of effective and efficient working.

##### Commentary

- 3.7.2 As we explained in our findings, the IDB functions well.
- 3.7.3 We recommend that the BSB gives the IDB greater authority to shape its work as it sees fit so as to best deliver its remit. For example, it should be for the IDB to determine its procedures (for example which of the accelerated procedures to drop and which to keep and evolve as has already been done).
- 3.7.4 There should also be a form of IDB "charter" drafted that identifies how the IDB is expected to contribute to the overall efficiency and success of the enforcement process, both from the perspective of how it manages its workload and through to the powers it should have that enable it to make the most timely and effective decisions. It should also have a clear ability to be able to call I&E to account in terms of support provided, and to have a clear voice in future plans for improvements.

### 3.8 Enable the efficiency of BTAS and the Disciplinary Tribunal

**Improve the effectiveness of BTAS and the Disciplinary Tribunal through a set of changes that will in particular reduce the excessive elapsed time occurring in the management of some of its cases. Deliver better and stronger inter-actions between BTAS and the BSB to help achieve common goals around timeliness (without compromising independence).**

#### Benefits

3.8.1 The principal benefits will accrue in respect of reducing the elapsed time for hearings and also the amount of wasted effort that goes into the management and support of such hearings. That in turn will enable the BSB to better deliver on one of its key objectives, that is to reduce risk to the consumer of legal services by the more expedient imposition of sanctions on those members of the profession that are committing the most serious conduct breaches. Also, speeding the process will reduce stress on members of the profession subject to potential sanction and equally reduce the opportunity for those whose aim is to cause delay, to do so.

#### Commentary

3.8.2 The impairments to the efficiency of BTAS and the Tribunal can be addressed by effecting change in three areas.

Through:

- (i) Re-defining and clarifying how the BSB and BTAS and the Tribunal can work more effectively at a strategic level to common goals while maintaining the separation and independence of the Tribunal;
- (ii) Removing and mitigating unnecessary delays to case progression during hearings;
- (iii) Improving the support of individual hearings by the BSB, BTAS and the two bodies working together.

#### Redefining the strategic BSB, BTAS and Tribunal Relationship.

3.8.3 It stands that the BSB must have full accountability for the successful end-to-end delivery of enforcement notwithstanding that the Tribunal and BTAS must maintain freedoms from interference and influence in the delivery of their responsibilities to make sound decisions on the cases that are laid before them. And all parties across the enforcement spectrum must be clear on sharing the responsibility and accountability for performance. We have however not been able to identify a status document that clearly defines the relationship between the parties and how they work together. We recommend that such a document is produced as a basis for ensuring that end to end improvement and evolution occurs.

### 3. Recommendations continued

- 3.8.4 A prerequisite of such an agreement is clarity over the status of the Tribunal, its structure of governance and accountability including the roles and responsibilities of the various bodies that carry obligations for its successful operation. At present, we are not clear over the party with whom the BSB would enter such a commitment. We recommend that this is clarified and we accept that this may not be a simple or quick process.
- 3.8.5 In the short term, we recommend a project to define how the SAB role could be developed so as to underpin its current remit as a conduit for agreeing and implementing change.

#### Mitigating Delays

- 3.8.6 We explained in our findings that BTAS had very helpfully undertaken a recent analysis into case progression including causes of delay in case progression during hearings. Clearly, the high levels of case delay against targets set are not in anyone's interests, given that the most serious cases arrive at the Tribunal.
- 3.8.7 The causes of delay are well understood. As are many of the remedies. This issue lies in getting to grips with resolving them through a structured form of continuous improvement process. We recommend that, as a matter of priority, a joint BSB and BTAS team is set up to:
- (i) Confirm the negative impact of delays;
  - (ii) Identify the relative impact, time and cost required to resolve them; and
  - (iii) Prioritise how these will be addressed and within what timescales.
- 3.8.8 Examples of potential tactical changes are included below.

#### Better Collaborative Working

- 3.8.9 The BSB and BTAS have a common interest in ensuring effective and efficient case progression. It is important that BTAS fully supports the process through which the BSB decides and implements our recommendation for an individual who would take overall responsibility for ensuring the success of the end-to-end enforcement process.

#### Potential Areas for Improvement

- 3.8.10 Amend procedural rules relating to directions. All cases to use standard directions, with the scope for parties to agree to vary (but only for a limited number of days (to be defined)) beyond standard directions or for cases to be referred to a Directions Judge (possibly with the need for a hearing) to avoid the BSB feeling pressured to 'negotiate' with the barrister and the agree longer timelines to meet 21-day deadline under Regulation rE106 to have agreed directions.
- 3.8.11 Amended Regulations should provide for limited extensions to be agreed between a respondent barrister and the BSB (up to 14/28 days). Any non-compliance with the initial Directions should be referred to the Directions Judge promptly by the BSB so that

### 3. Recommendations continued

sanctions for non-compliance could be considered, timetables are not allowed to drift and the public interest in cases being heard is given proper consideration.

- 3.8.12 Introduce clear written guidance and/or additional training for Tribunal panels and Directions Judges on using the existing enforcement powers set out in Part 5 rE168 and the costs powers set out in rE244ff of the Handbook to address non-compliance by applying financial/costs penalties or by applying adverse inference provisions and evidence-excluding orders. This should be supported by more communication in any directions and associated correspondence which refers to a barristers' duties to co-operate with the BSB and the Tribunal.
- 3.8.13 Use a case management questionnaire or where necessary an on-line or remote case management hearings before the final hearing is fixed at which an indication should be given by the barrister as to whether they will accept the allegations. This will also provide an opportunity to raise and resolve any key issues identified by the parties, any procedural directions given, and the hearing time estimate confirmed. A further check on hearing readiness should also be made by the BSB and BTAS sufficiently ahead of the hearing, with a further on-line directions hearing held if needed, to reduce the risk of late adjournments or other last-minute applications.
- 3.8.14 Amend current I&E processes so that time estimates for the final hearing do not have to be set immediately after the initial directions are agreed or made when the respondent barrister may not have served their evidence and the parties have not addressed how their case will be presented and to what extent issues are agreed or disputed.
- 3.8.15 Make more flexible the current requirements in respect of five-person panels:
- (i) review and consult as to whether the current requirement for 5 person panels is necessary and proportionate given its impact on the overall timeliness of cases;
  - (ii) if there remains an option for BTAS to convene a larger panel for some cases decide whether the constitution of the Tribunal should depend upon the potential sanction rather than other issues such as length, complexity and seriousness of the case.
- 3.8.16 The BSB and BTAS should review their agreement to show who has responsibility for the monitoring of and the progression of case management of all cases at the hearing stage, including: clear performance management measures such as timescales for directions being in place; the monitoring of compliance; time estimates being more accurate; and a high proportion of cases being concluded within defined timeframes. The agreement should reflect if should BTAS have increased responsibility for case progression and whether this will require case progression staff.
- 3.8.17 Keep under review the BSB's use of interim orders which might be anticipated to increase if and when new powers come into force. Amendments have been agreed (subject to LSB approval) that bring the power to make orders more closely aligned with the Regulatory Objectives. The new powers widen the powers for seeking and ordering an interim order and will include the power to take interim action where it is necessary for the protection of the public or public interest, and to impose interim orders after a finding of

### 3. Recommendations continued

professional misconduct pending a decision on sanction. This may have consequences for Tribunal members (required to sit and decide these applications and then conflicted from further involvement) and on compliance, with a potentially increased urgency for cases to be progressed

- 3.8.18 Improve bundle preparation (perhaps based on CPR requirements) and include standard indexes and case summary and chronology documents in each case.

## 3.9 Rules Changes

**Make changes to parts of the BSB Handbook and internal operating procedures that will enable greater process efficiency. Whilst the procedural regulations compare favourably with those of other regulators the Handbook needs to be better organised and simplified using plain English.**

### Benefits

- 3.9.1 The benefits of the changes we propose below to the conduct rules and also to their expression in the Handbook will act as an efficiency and productivity enabler across the enforcement activities of the BSB. In particular they will support simplified drafting of allegations, and thereafter Charges, with a consequential reduction in their length and in the time spent drafting and in considering them.

### Commentary

- 3.9.2 There is a "Handbook Log" held by the BSB that identifies areas for potential drafting changes to the Enforcement Regulations Part 5). We have undertaken a summary review of this document and endorse its aim and its direction of travel. However, it falls outside our current remit to review and comment on the proposals in this document in detail, or to set out the precise nature of the revisions that might be required. Where we have identified particular Rules that might be relevant to our findings and recommendations we have referenced them in earlier parts of this report.
- 3.9.3 By comparison with other regulators, our assessment is that The Code of Conduct is adequate but does not match the best in class. For example, the level of detail in Part 2 of the Handbook that addresses both Core Duties and Conduct Rules as they apply to barristers is challenging to read and understand.
- 3.9.4 Procedural regulations in Part 5 compare favourably with other regulators and follow the stages and processes we would expect to see in fair enforcement procedures. However, these parts of the Handbook, like most other BSB documents that support work in assessment and enforcement, need to be better organised and simplified using plain English. The handbook contains most of the provisions required for disciplinary investigations and hearings and our assessment is that in substance it is comprehensive and acceptable and is fit for purpose.

### 3. Recommendations continued

3.9.5 Our work has identified a number of areas where changes in the Rules set out in the Handbook should be made to enable greater process efficiency. In summary:

- (i) Part 2: The Code of Conduct. Both the assessment and the investigations and enforcement teams (and the Independent Reviewers) find this part of the Handbook difficult to navigate. They also find it takes excessive time for them to be comfortable that they have gained sufficient familiarity with the contents and substance to apply it to their assessment of cases
- (ii) The complexity of the Code of Conduct also leads to substantial additional work being needed identifying the very specific breaches of Conduct Rules and Core Duties that in turn results in complex allegation and charge drafting. (For example, the wording related to power of appeal is driving cumbersome ways of drafting allegations then charges where one act of conduct is separately alleged to be for example a failure to observe duty to the court, a failure to act with honesty and integrity, a failure to ensure a practice was efficiently and properly administered etc).
- (iii) As a consequence, this adds to the work undertaken by IDB panels in reaching decisions and articulating those decisions where each allegation must be discussed and decided upon and reasons given, often in a very repetitious manner. There is a similar impact for the Disciplinary Tribunal.
- (iv) Part 5: The Enforcement Regulations. The Handbook Log sets out a number of clarifications or minor adjustments to the processes. Navigation of Part 5 follows a logical order but Regulation references are complex (for example "professional misconduct contrary to Rules rC3.1, rC6.1, rC6.2 and Core Duty 1 and Core Duty 3 of the Conduct Rules (BSB Handbook, version 4.5 and version 4.6) Professional misconduct, contrary to Rule rC87.1 of the Conduct Rules (BSB Handbook, version 4.5 and version 4.6)").
- (v) Potentially redraft parts of the Handbook to clarify certain existing powers in respect of, for example: excluding evidence; drawing adverse inferences; and imposing costs, so that these are deployed by the Disciplinary Tribunal and Directions Judges to improve case progression. It appears some powers available, for example to BTAS, are not necessarily well known to Tribunal panel members.
- (vi) We do not recommend that BTAS should draft its own Rules, as the Rules need to be owned by the BSB and be approved as part of its regulatory arrangements by the Legal Services Board. However, there is scope for collaborative working to update Part 5B of the Handbook if it is thought necessary to undertake a major review.
- (vii) New regulations would be required as a result of a decision to reduce to three-person tribunals. Maintaining an option for five-person tribunals in certain circumstances would also require a Rule change.

# 4. Full list of recommendations



## 4. Full List of Recommendations

In this final section we include, for completeness, a comprehensive listing of all recommendations in this report.

In many areas our recommendations for change could be achieved in a number of different ways. It is, however, important that the principle behind the change recommendation is addressed whilst it is open to the BSB and BTAS to determine how best to take forward the implementation of these recommendations.

### 1. **Create a senior executive role to take full responsibility for the effectiveness and continuous improvement of the end-to-end enforcement process.**

#### 1.1 Options:

- (i) Revert to the pre 2019 arrangements with assessment together with enforcement under one Director;
- (ii) Form a cross-departmental task group (including BTAS);
- (iii) Create a "single owner" of process success (but without direct line-management responsibilities) to drive change.

1.2 if reversion chosen, fully assess the wider implications of recombining the assessment function with the enforcement function on other aspects of performance beyond enforcement;

1.3 If "matrix management" (Option iii) assess how this would fit with the current BSB operating model;

1.4 deliver four key leadership responsibilities (whatever option):

- (i) improve the effective delivery of the BSB's risk-based enforcement strategy from the initial receipt of information through to intermediate closures or final determination at the Disciplinary Tribunal;
- (ii) co-ordinate and manage through the programme of change agreed by the Board in the light of this report;
- (iii) deliver stronger alignment and co-operation within the BSB, with BTAS, and with third parties: the Legal Ombudsman; the Bar Council; the COIC; legal consumer bodies, and other legal sector regulators;
- (iv) achieve a to better understanding and acceptance amongst the public of the BSB's role.

## 4. Full List of Recommendations continued

### 2. **Build a "best-in-class" knowledge management environment.**

- 2.1 a complete set of up-to-date, well-articulated guidance and information documents;
- 2.2 implement easy-to-navigate systems accessibility to relevant information;
- 2.3 provide effective and thorough induction to new joiners;
- 2.4 ensure up-to-date policies are accessible via the website for barristers and others so they understand BSB approaches to processes and decision making
- 2.5 continuous knowledge development (including key legal updates but also wider embedding of BSB processes) across teams (both CAT and I&E);
- 2.6 deliver regular opportunities for knowledge and know-how sharing between individual;
- 2.7 build a culture where knowledge development and sharing is of high value.
- 2.8 appoint an individual responsible for Knowledge Management to deliver this remit.

### 3. **Improve communication and collaboration between CAT and I&E and the BSB's IT function so as to quickly build and roll out an achievable near-term plan to enhance the system/process interfaces so that CAT and I&E can work more effectively, building on existing plans and projects as set out below**

- 3.1 continue with the key recommendations of the 2023 Deloitte IT Review:
  - (i) migration to cloud hosting (recently implemented);
  - (ii) appoint a solution owner to help deliver user benefits;
  - (iii) simplify IT process and architecture;
  - (iv) introduce more structured change management;
  - (v) empower the CRM support team for better interaction between IT and the user community.
- 3.2 maintain the plans for a quarterly release plan to take user-group input into change and development processes and priorities;
- 3.3 ensure that the new post of technology trainer fully supports staff to get the best out of current systems.
- 3.4 Complete, as planned, the current project to revise and improve all existing user documentation;
- 3.5 create, as planned, a training hub on the intranet site for this and other user materials; and to deliver comprehensive and team-specific training to all CRM users in the

## 4. Full List of Recommendations continued

organisation. A new approach to regular and less formal change communications has also been piloted.

- 3.6 establish the principles for architecture redesign. These should focus on: simplicity of process and architecture - a single case management solution focussed on the complaint/respondent and the team handling the case; a focus on configuration over coding; a willingness to challenge legacy ways of working; and the ability to support the solution internally amongst users and others.
- 3.7 collate and review of current state documentation, so as to understand how things work currently and baseline the change process.
- 3.8 develop a future state architecture based on the various inputs outlined in the process review, applying policy settings.
- 3.9 agree a programme of development work and change activity to implement the future state architecture.
- 3.10 create sustainable delivery of functionality, along with change activity to users.
- 3.11 embed regular support following change delivery.

### 4. **Be clear on the BSB's core responsibilities to members of the public who submit reports.**

- 4.1 clarify policies over the BSB's responsibilities to and interactions with the public so that staff have a clear set of guidelines to work to;
  - (i) improve the information provided on the website as that is the first and predominant point of contact with the public;
  - (ii) the role of the regulator;
  - (iii) how information provided is used;
  - (iv) what reporters can realistically expect by way of acknowledgement, updates and outcomes;
- 4.2 explore the opportunity to improve on-line forms that can filter out and block the submission of many reports that are not appropriate for initial assessment;
- 4.3 be clear in responses to reporters as to what will happen next and in setting expectations;
- 4.4 ensure that chambers and practising barristers send the same messages and so have up to date guidance;
- 4.5 undertake an annual survey of reporter to collect responses that can contribute to continuous service improvement;

## 4. Full List of Recommendations continued

4.6 where successful appeals against sanctions are made (that would not otherwise be publicly available) determine the most appropriate way of communicating this to Reporters in particular.

### 5. **Improve CAT performance to achieve the current time based KPI for processing assessments.**

5.1 implement the public facing changes explained in 4.4 above

5.2 create a sustainable and resilient resource pool to remove the impact of churn and unanticipated staff shortages;

5.3 enhance the senior management presence in the department;

5.4 clear the current backlog of unassessed reports;

5.5 be precise between I&E and CAT over the role of CAT as a preliminary assessment function;

5.6 entrust responsibility for the "acceptance" of cases stage wholly to CAT;

5.7 redraft the handbook to clarify CAT's role in acceptance of reports;

5.8 create better and more frequent knowledge-share activities between CAT and I&E teams;

5.9 match resource to workload leading to higher probability levels of KPI achievement and no backlog;

5.10 introduce better preliminary risk assessment;

5.11 production of clearer and more precise guidance to support acceptance risk assessment;

5.12 spend less time and resource wasted at the point of hand-over between CAT and I&E.

### 6. **Implement changes in the way that I&E works that will significantly improve performance. These changes can be implemented as part of a "continuous improvement" programme.**

6.1 reset the nature of communications with barristers where cases are accepted for investigation;

(i) provide barristers with notification when their case is "accepted";

(ii) provide only a broad description of the nature of matters under investigation at this stage;

(iii) decide the appropriate format for capturing and sharing the nature of the matters under investigation (review reference to "summary sheet" in LED04);

## 4. Full List of Recommendations continued

- (iv) defer further detailed engagement with barristers under investigation to enable proper allegations to be developed. Together, these actions should reduce the interaction time with barristers.
- 6.2 change the approach to charge-drafting to reduce repetition and focus on specific incidents rather than separate charges for each breach of the handbook;
- 6.3 reduce the extent of premature allegations drafting that occurs;
- 6.4 ensure that "red" risk cases are allocated additional focus and are subject to more frequent review;
- 6.5 clarify role of the BSB representative (their barrister) in drafting charges;
- 6.6 ensure that case investigation plans are sufficiently broad and that progress is regularly reviewed;
- 6.7 key questions should be addressed at the outset and early focus should include:
  - (i) Is there likely to be a need for witnesses and have their contemporaneous documents been secured;
  - (ii) Are witness communications being maintained for optimal engagement;
  - (iii) If permission is needed for Family Court documents attempts should be made early to agree documents to be sought in a single application to the Judge;
  - (iv) If expertise is required as to whether conduct may or may not be a breach – this may need to be prioritised.
- 6.8 Change "mindset" once a case is referred so that case presentation focus is more "prosecutorial";
- 6.9 Give case presentation (for IDPs and DT) the focused resourcing it requires without investigations work having to take a lower priority, ensure metrics are in place so that progress on high-risk cases is monitored and that interventions to speed up progress are made where needed.
- 6.10 Explore how technology might assist in streamlining the time-consuming redaction exercise and in achieving full compliance with redaction requirements.
- 6.11 Where IRs have feed-back about handling of cases (both in case reviews and audits) this clearly communicated to managers, for action where appropriate.

## 4. Full List of Recommendations continued

### 7. Effect modest changes in place for the IDB which otherwise works well.

- (i) the BSB should give the IDB greater authority to shape its work as it sees fit so as best deliver its remit;
- (ii) it should be for the IDB to determine its procedures (for example which of the accelerated procedures to drop and which to keep and evolve as has already been done);
- (iii) produce an IDB "charter" that identifies how the IDB is expected to contribute to the overall efficiency and success of the enforcement process;
- (iv) ensure that the IDB can call I&E to account in terms of support provided;
- (v) the IDB must have a clear voice in future plans for improvements in enforcement processes.

### 8. Improve the effectiveness of BTAS and the Disciplinary Tribunal, in particular to reduce the excessive elapsed time occurring. Set up stronger inter-actions between BTAS and the BSB to help achieve common goals.

- 8.1 define, through new documentation, how the BSB and BTAS can work effectively at a strategic level to common goals while maintaining the separation and independence of the Tribunal;
- 8.2 improve the support of individual hearings by the BSB, BTAS with the two bodies working together.
- 8.3 clarify the status of the Tribunal, its structure of governance and accountability;
- 8.4 define how the SAB role could be developed so as to underpin its current remit as a conduit for agreeing and implementing change.
- 8.5 as a matter of priority, set up a joint BSB and BTAS team to:
  - (i) confirm the negative impact of delays;
  - (ii) identify the relative impact, time and cost (resource and otherwise) required to resolve them; and
  - (iii) prioritise how these solutions will be addressed and within what timescales.
- 8.6 mitigate unnecessary delays to case progression during hearings:
  - (i) amend rules relating to directions: rules could allow for all cases to use standard directions, or for the parties to agree to vary but only by a limited number of days, or for cases to be referred to a Directions Judge (possibly with the need for a hearing);

## 4. Full List of Recommendations continued

- (ii) explore how rules could allow for limited extensions to be agreed with respondent barrister but any other non-compliance to be referred back to the Directions Judge;
  - (iii) Introduce guidance for panels and Directions Judges on using existing enforcement powers in Part 5 rE168 and costs powers in rE244 ff to address issues of non-compliance using clearer financial/costs penalties or adverse inference provisions/evidence-excluding orders, supported by more communication focus by BSB on barristers' duty to co-operate with regulator and more active case progression approach by the BSB acting as regulator 'in public interest'.
  - (iv) make use of case management questionnaires (and a remote hearing if needed) before the final hearing is fixed at which an indication should be given by the barrister as to whether the allegations will be accepted, and the key issues identified by the parties, and any necessary procedural directions given and the hearing time estimate confirmed. A further check on hearing readiness should also be made by the BSB/BTAS 2 weeks before the hearing, and another remote directions hearing held, if needed, to avoid late adjournments or other last minute applications.
  - (v) amend current I&E process so that time estimates for final hearing do not have to be set at the outset before issues have been clarified;
- 8.7 make more flexible the current fixed requirements in relation to 5 person panels:
- (i) check if the current requirement for 5 person panels is needed given its impact on the overall timeliness of cases;
  - (ii) if using a larger panel in some cases is appropriate, whether the constitution of the Tribunal should depend upon the potential sanction and not upon other issues such as length/complexity/seriousness;
- 8.8 review the BSB/ BTAS service agreement to:
- (i) set responsibility for, and routine monitoring of, the progression and case management of all cases at the hearing stage;
  - (ii) performance management measures
- 8.9 review if BTAS should be given increased responsibility for case progression including appropriate case progression staff.
- 8.10 review the BSB's future use of interim orders and its potential impact on BTAS workload;
- 8.11 improve bundle preparation, and standard indices and case summary and chronology documents in each case.
- 8.12 ensure that BTAS is properly equipped with the IT to enable it to function effectively.

## 4. Full List of Recommendations continued

### 9. **Make changes to the BSB Handbook to enable greater process efficiency. Make the Handbook better organised and simplified using plain English.**

- 9.1 re-draft Part 2 of the Handbook as it is challenging to read and understand; it needs to be better organised and simplified using plain English;
- (i) Part 2 – the Code of Conduct needs a redraft. Both the assessment and investigations and enforcement teams (and the Independent Reviewers) find this part of the Handbook difficult to navigate
  - (ii) the complexity of the Code of Conduct also leads to complex allegation and charge drafting. (It needs simplifying.
  - (iii) Part 5 – the Enforcement Regulations. The Handbook Log sets out a number of sensible clarifications or minor adjustments to the processes. Navigation of Part 5 follows a sensible order but Rule references are complex and it appears some powers available for example to BTAS are not necessarily well known to Tribunal panel members.
  - (iv) Redrafting is needed to amplify certain powers that exist in relation to excluding evidence, drawing adverse inferences or imposing costs, so that these are deployed to support case progression.
- 9.2 BTAS should not draft its own Rules as these need to be owned by BSB and approved as part of its regulatory arrangements by the Legal Services Board. However, there is scope for collaborative working on drafting.
- 9.3 New regulations would be required if there were a decision to reduce to 3 person tribunals. Maintaining an option for 5 person tribunals in certain circumstances would also require a Rule change.

