

Solicitors Disciplinary Tribunal

Review of the Solicitors Disciplinary Tribunal's Key Performance Measures

Introduction

The Tribunal currently has five key performance measures against which it monitors its performance. These were refreshed in 2019 but a first principles review of these measures was not undertaken at that time.

On 30 October 2019 Dr Helen Phillips, Chair of the Legal Services Board, wrote to the Tribunal formally approving its budget application for 2020 and asked the it to consider conducting a first principles review of its key performance metrics, including the quality of its decision-making.

During 2020 the Tribunal has been reviewing its key performance measures, and the process undertaken and conclusions reached are set out below.

The Tribunal's Current Performance Measures

Performance Measure 1:

(a) Issue of Proceedings (Solicitors, Former Solicitors, Registered Foreign Lawyers, Registered European Lawyers, Clerks and Recognised Bodies)

Target: In 90% of cases, proceedings to be issued or notification of non-certification sent to the Applicant within 5 working days of date of receipt of Originating Application (in the correct format) at the SDT

(b) Issue of Proceedings (Restoration to the Roll, Revoke a s.43 Order, Application to Determine Indefinite Suspension, Application for a Re-hearing, Application to Vary a Condition on Practising Certificate, Appeal S44E, Costs Order and Application to Activate Suspension)

Target: In 90% of cases, proceedings to be issued or notification of non-certification sent to the Applicant within 5 working days of date of receipt of Originating Application (in the correct format) at the SDT

(c) Issue of Proceedings (Lay Applications)

Target: In 90% of cases, the Lay Application to be considered by a Member of the Tribunal and if required a Division of the Tribunal within 8 working days of date of receipt of Originating Application (in the correct format) at the SDT .

Performance Measure 1 is a measure of timeliness and the volume and efficiency of Tribunal services. It measures how well the Tribunal is performing in terms of issuing matters and provides information as to the number and types of cases received.

Performance Measure 2 (a):

75% of cases are first listed for a substantive hearing within 6 months of issue.

This is a measure of timeliness and efficiency of Tribunal services. It measures how well the Tribunal is performing in terms of listing matters.

Performance Measure 2 (b):

No. of cases concluded within 6 months of issue (Target 60%)

No. of cases concluded within 9 months of issue (Target 80%)

No. of cases concluded within 12 months of issue (Target 95%)

No. of cases concluded within 24 months of issue (Target 100%)

This is a measure of timeliness and efficiency of Tribunal services. This measures how quickly the cases before the Tribunal are concluded. This measure is affected by a number of factors outside the Tribunal's control, in particular adjournment applications.

Performance Measure 3:

Costs per court

This measures value for money. The measure divides the costs of running the Tribunal in a calendar year by the actual number of hearing days in that year.

Performance Measure 4:

Following final determination of the application, Judgment to be served on the parties within:-

35% of all Judgments within 4 weeks

50% of all Judgments within 5 weeks

70% of all Judgments within 6 weeks

85% of all Judgments within 7 weeks

95% of all Judgments within 9 weeks

100% of all Judgments within 15 weeks

This is a measure of the timeliness and efficiency of Tribunal services. It measures how quickly the Tribunal issues its Judgments after the substantive hearing.

Performance Measure 5:

Appeals against the Tribunal's decisions

This is a measure of quality of decision making. The level of successful appeals is a proxy for assessing quality.

Review Process

In February 2020 the Tribunal undertook a paper review of various published reports setting out performance information in relation to specific organisations. It also contacted the organisations listed at Appendix 1 to enquire as to what key performance measures they had in place.

Responses were received from the Architects Registration Board, BSB, BTAS, CILEX, CIPFA, CLC, GMC, HCPC, Law Society of England and Wales, Law Society of Northern Ireland, the LSRA, NMC and SSdT.

Findings from the Review

Compared to Her Majesty's Court and Tribunals Service (HMCTS) the Tribunal has a very small caseload. In 2018-2019 HMCTS operated 341 courts and tribunals that heard 4.4 million cases. Court statistics are reported separately for different types of court. By comparison, in 2019 the Tribunal received 137 applications and 144 cases were concluded. HMCTS performance information is published quarterly and annually and provides information about caseload and performance by tier of court. HMCTS tribunal statistics include the type and volume of cases received, whether disposed of or outstanding. Some HMCTS performance information also includes statistics on the participants in a case.

In reviewing published performance information from various organisations it was apparent that the reporting information appropriate to an organisation receiving the original complaint about an individual and with an end to end process (i.e. until final disposal of that complaint) was not directly applicable to the SDT, which is independent of the regulator and whose role is not to investigate and dispose of allegations of misconduct but only to determine the allegations of misconduct it receives. Further, the Tribunal does not hold certain information in relation to those that appear before it (for example demographic information that may be known to the regulator).

For example, a health regulator might report on how many professionals have joined or left the profession, quality assurance matters (in terms of inspections carried out), service complaints (including numbers received and resolved) and/or the volume of cases and

hearings. Of that list the Tribunal would only be able to provide information as to the volume of cases and hearings – information which is included in its Annual Report.

The Health and Care Professions Council has performance indicators to assist with monitoring of its tribunal service and these include the listing of cases, the commencement of cases and notification of hearing outcome. It also monitors adjourned and part heard rates for its final hearings.

BTAS have the following performance measures and indicators:

Indicators	Measures
Volume and efficiency of hearing/tribunal services	<ul style="list-style-type: none"> - Number of hearings held - % of cases completed within 6 months of directions being issued
Availability of hearing suites, rooms and venues	<ul style="list-style-type: none"> - Number of occasions when another venue is used - Number of occasions when both suites were in use
Appointment of Panel members	Average number of hearings
Quality of Tribunal Decisions	Number of successful appeals against a BTAS decision
Quality of facilities	Number of instances where expectations of technological facilities were not met and number of requests and adjustments made.
Timeliness of service and communications	% of Judgements/Commencing Orders & Hearings heard or published not in line with regulations.

The Tribunal’s current measures provide information as to the volume and efficiency of hearing/tribunal services; quality of Tribunal decisions and the timeliness of service and communications. Given the facilities available at Gate House the Tribunal is fortunate not to have experienced issues in terms of the quality of facilities nor the availability of courtrooms and with the introduction of remote hearings this is even less likely to be an issue.

The Tribunal collates information in relation to the number of hearing days each Panel member undertakes per calendar year. Members are expected to sit for 15 days per annum but the actual number of sitting days per member can be impacted by hearings finishing in fewer days than estimated, last minute adjournments and Agreed Outcomes, so in the Tribunal’s context this would not appear to be a particularly informative measure.

The Scottish SDT does not publish performance information but internally tracks its performance in 6 areas, 4 of which overlap with the Tribunal. The 2 additional areas are hearings to start within 10 minutes of the appointed start time and compensation hearings to be fixed within 4 months of the date of the professional misconduct hearing. This aspect is not part of the Tribunal's remit.

Proposed retention of the current key performance measures

The Tribunal considers that the key indicators of its success are the volume and efficiency of its services; the timeliness of its services and communications; and value for money and quality of decision making. The key performance measures that the Tribunal has in place are a set of quantifiable measures used to gauge its performance in these areas over time.

Having reviewed its current key performance measures the Tribunal has concluded that they remain the appropriate measures. However the Tribunal also recognises that it holds other information that is of interest to its stakeholders, the public and the profession. Going forward, we suggest that some or all of this additional information should be provided in order to enrich the overall picture of the SDT's activities and level of performance.

Proposed provision of additional information

Information to be included in the 2020 performance data and going forward

The Tribunal already provides information to the LSB and in its Annual Report about the number of adjournment and Agreed Outcome applications and the impact of these on the number of hearing days. The Tribunal proposes to continue to provide this information. In addition it will also provide a brief commentary as to the reasons why Agreed Outcome applications were not approved in order to increase transparency in respect of its decision making and improve confidence in that decision making.

In respect of Key Performance Measure 5 the Tribunal would propose including in its commentary a summary of the reasons for any appeals that were upheld together with the number of appeals remitted for re-consideration by the Tribunal per calendar year. The addition of this information should mean that this is a more meaningful measure of the quality of the Tribunal's decision making than providing the figures alone.

Information to be collated from January 2021 and included in the 2021 performance information

The introduction of the Tribunal's new case management system will increase its scope to collect and report on the data it holds.

The Tribunal has previously provided information in its Annual Report as to whether dishonesty was alleged in any given case. The Tribunal proposes in future to report on whether or not dishonesty was alleged against an individual respondent and if so whether or not it was found proved. This is important information in relation to the quality of decision making when compared to outcome as generally, unless exceptional circumstances are found, a finding of dishonesty results in the respondent being struck-off the Roll of Solicitors. The Tribunal will also provide information as to the number of cases where dishonesty was proved, exceptional circumstances found and whether or not this resulted in a sanction other than strike-off.

The Tribunal is independent of the SRA and does not decide which cases it should consider. It recognises that the provision of more information in respect of the respondents that appear before it would increase the public's understanding of the scope and nature of Tribunal cases and the individuals involved, and accordingly the Tribunal proposes to provide the following information for each respondent:

- Type of respondent (i.e. partner, sole practitioner etc.)
- Main practice area(s) of the respondent
- Honorific used by respondent (as an indication of gender)

The Tribunal is committed to open justice. It will provide information in relation to the number of cases heard in private (both the number heard in private throughout the hearing and the number heard in private for part of the hearing only). It will also provide information as to the number of non-party disclosure applications received and the outcome of those applications.

Although applications made by lay applicants account for a relatively small number of the applications the Tribunal receives each year the Tribunal is aware that these applications are of considerable public interest and it will provide the following information in respect of lay applications:

- Number of lay applications received
- Number certified as showing a case to answer without any adjournment for investigation by the SRA
- Number not certified as showing a case to answer without any adjournment for investigation by the SRA
- Number certified as showing a case to answer following an adjournment for investigation by the SRA

- Number not certified as showing a case to answer following an adjournment for investigation by the SRA
- Number certified and then subsequently struck out at a preliminary hearing
- Number of lay applications received by applicant per calendar year
- Number of appeals received in relation to lay applications.

Finally, the Tribunal is very aware that one of the professions and the public's key concerns is the overall time taken in relation to the investigation and conclusion of allegations of misconduct by solicitors or their employees. Although the Tribunal does not hold information in relation to the date on which the SRA first receives a report, it does hold information about the date on which the SRA decides to refer a matter to the Tribunal. It will therefore provide information on the time from the SRA's initial decision to refer a matter to the final disposal by the Tribunal.

Recommendation

The SDT's Board considers that the above KPMs and proposed provision of information is appropriate and asks the LSB to consider and agree the continuation of the measures and the provision of the information for introduction from 1 January 2021.

SDT/SDTAL
September 2020

Appendix 1

Architects' Registration Board
Association of Chartered Certified Accountants
Bar Standards Board (BSB)
Bar Tribunal and Adjudication Service (BTAS)
Chartered Institute of Management Accountants (CIMA)
Chartered Institute of Legal Executives (CILEX)
Chartered Institute of Public Finance and Accountancy (CIPFA)
Council for Licensed Conveyancers (CLC)
General Chiropractic Council
General Dental Council
General Optical Council
General Osteopathic Council
General Pharmaceutical Council
Health and Care Professions Council (HCPC)
Institute of Chartered Accountants in England and Wales
Intellectual Property Regulation Board
Irish Legal Services Regulatory Authority (LSRA)
Irish SDT
Legal Ombudsman
Medical Practitioners Tribunal Service (MPTS)
Nursing and Midwifery Council (NMC)
Royal Institute of Chartered Surveyors
RCVS
Solicitors Regulation Authority
The Law Society (England and Wales)
The Law Society (Northern Ireland)
Scottish Solicitors' Discipline Tribunal (SSDT)
Solicitors Disciplinary Tribunal (Northern Ireland)