



BAR
STANDARDS
BOARD

REGULATING BARRISTERS



The Bar Standards Board's complaints process – Information for barristers

About us

We were set up in 2006 to regulate barristers in England and Wales. We are independent from the Bar Council and are responsible for making sure that the high standards of the profession are maintained.

We publish a Code of Conduct for barristers and are responsible for taking disciplinary action against barristers if they have breached the Code of Conduct. By doing this we aim to:

- act in the public interest;
- protect anyone who uses legal services;
- maintain the high standards of the profession;
- promote confidence in the complaints and disciplinary process; and
- make sure that complaints are dealt with fairly, consistently and with reasonable speed.

We do not have the power to take action relating to complaints about the service barristers have provided to their clients. Under the Legal Services Act 2007, the Legal Ombudsman deals with these complaints. However, we are responsible for considering complaints of professional misconduct.

Meeting your needs

We can provide this leaflet in different formats, such as in Braille, in large print and on audio tape or CD. If you are disabled, please let us know so that we can make appropriate adjustments to make sure you deal with the complaint in line with our complaints procedure. You can contact us by calling 020 7611 1444 and asking to speak to the member of staff dealing with your case.

Complaints that can be made against you

Service complaints

Your clients can complain to the Legal Ombudsman about the service you have given them. The Legal Ombudsman will normally expect the client to have gone through your chambers' or employer's complaints procedure first.

You can find out more about the Legal Ombudsman's complaints procedure by contacting them in the following ways.

By phone: 0300 555 1777

By email: enquiries@legalombudsman.org.uk

Through their website: www.legalombudsman.org.uk

By post: Legal Ombudsman,
PO Box 6806, Wolverhampton,
WV1 9WJ

Complaints of professional misconduct

We are the only body that can take disciplinary action against

you for breaching the Code of Conduct. However, the process for making a complaint is different according to whether the person making the complaint is your client or someone else.

Complaints from us

We can raise complaints against you for breaches of the Code of Conduct, even if nobody has made a complaint about you. Complaints raised by us will usually be about matters such as breaches of the practising requirements, criminal convictions or failure to report bankruptcies. However, we can raise complaints about any breach that we find out about.

Complaints of professional misconduct from clients

The Legal Ombudsman is the single point of contact for all complaints from clients of legal professionals, even if the complaint includes issues of professional misconduct. The Legal Ombudsman will assess whether the complaint raises any issues of professional misconduct. If it does, they will refer those issues to us.

If we receive a complaint direct from your client, we will still send it to the Legal Ombudsman. This is to make

sure that the Legal Ombudsman has an opportunity to consider whether the complaint includes any issues relating to your service which they might need to deal with.

A complaint made to the Legal Ombudsman may involve issues relating to both your service and your conduct. The Legal Ombudsman will deal with the issues relating to your service but will pass the conduct matters to us. If this happens, we will assess whether the complaint relates to a potential breach of the Code of Conduct. If it doesn't, we will not take action and we will tell you and the client about this.

If there is some evidence that you might have breached the Code of Conduct, we will normally wait until the Legal Ombudsman has considered the issues relating to your service before deciding what action to take. However, we can start an immediate investigation into the issues of professional misconduct. We are likely to do this if the misconduct issues are serious or the allegations of misconduct are not related to the complaints of poor service.

Complaints of professional misconduct from people other than clients

Complaints from anyone other than clients are made directly to us. We do not expect them to go through your chambers' or employer's complaints procedure first. However, in a few cases we may decide that the complaint can be satisfactorily resolved by your chambers or employer, and we will refer the complaint to them.

Decisions to investigate a complaint

We will only investigate a complaint of professional misconduct if there is some evidence that suggests that you have breached the Code of Conduct. If there is no such evidence we will dismiss the complaint. In some cases, particularly if the complaint is from somebody who is not your client, you will not know about the complaint until you receive a letter from us saying that the complaint has been dismissed.

If we decide that there is some evidence to suggest that you might have breached the Code of Conduct, we will carry out a formal

investigation. We will also carry out a formal investigation if we raised the complaint against you.

Investigating complaints of professional misconduct

Investigations are carried out based on the evidence provided to us, although we can phone you if there are issues we need to clarify. Investigations normally involve sending the complaint and supporting documents to you, and to anyone else who may be able to provide information about the complaint. This could include your instructing solicitor, a judge, or anyone who may have seen or heard things relevant to the complaint. You will be expected to provide a response to the complaint. The response you provide, as well as any responses from relevant witnesses, will normally be sent to the complainant.

If the Legal Ombudsman has investigated the complaint, they will have given us any relevant documents you gave to them. So we may already have a lot of the information we need to decide whether to take action against you. However, we will still ask for your comments before making a decision.

We will tell you who we are asking for information. If you think there are any other relevant witnesses, you can give us their details, or you can approach them direct for information if you think it appropriate.

Providing confidential information

You should provide a response that can be sent to the complainant, so it should not include confidential or privileged information. However, if there is relevant information that you do not want the complainant to see, you should provide this on a separate sheet and clearly mark at the top that it is confidential and 'not for disclosure'. You should explain why you think it should not be disclosed (for example, because the complainant is on the other side in a case or you want to provide personal or medical information).

We take the view that a client complaining about you waives confidentiality to the extent that you can respond to their complaint. However, there may be client-confidentiality issues when the complainant is not your client.

If you want to discuss the need to provide confidential documents as

part of your response, please contact the member of our staff dealing with your case.

Responding to investigations

Before we contact you we normally try to agree with the complainant a summary of the issues of professional misconduct we will be investigating. We will send you this summary, with the complaint and the supporting documents, so you can comment on the issues raised.

Although there is no set format for your response, it is helpful to include:

- a chronological summary of the main facts and issues relating to the case or complaint;
- your response on each aspect of the complaint; and
- any supporting documents that you think are relevant to the complaint, such as opinions or copies of instructions.

A common dilemma for barristers is how much detail to include in a response to a complaint. Your aim

should be to cover all aspects of the summary of complaints. If you feel that other material may be helpful, but may not be directly relevant, you can list it in your response and we will ask you for it if necessary.

Obligation to provide a response

Paragraph 905(d) of the Code of Conduct says that barristers must respond promptly to our letters asking for information or comments on a complaint. If you do not respond, or if there is an unreasonably delay you responding, this is in itself a breach of the Code of Conduct.

You normally have to provide your comments within three weeks of the date of our letter asking for them. We can give you a reasonable extension to this time if there is a good reason for the delay. If you need an extension, you should contact the member of staff dealing with your case.

Decisions to take disciplinary action

When we have finished our investigation, we will consider whether we have enough evidence

to prove that you have breached the Code of Conduct. If we do not have enough evidence, we will normally dismiss the complaint, but we may decide to give you formal advice about your behaviour.

If we think we have enough evidence to prove that you have breached the Code of Conduct, we will refer your case for disciplinary action. The decision to refer your case for disciplinary action will be taken by our Professional Conduct Committee or a senior manager in the Professional Conduct department.

Types of disciplinary action

There are two types of disciplinary action which your case can be referred to:

- determination by consent; or
- an independent disciplinary tribunal.

Determination by consent

This is a procedure by which our Professional Conduct Committee can, if you agree, make a decision on whether you are guilty of breaching the Code of Conduct. This procedure is normally

used for breaches of the practising requirements, such as failure to complete your CPD requirements. Our Professional Conduct Committee can:

- fine a barrister;
- give written advice;
- reprimand a barrister; and/or
- order a barrister to attend on the Chair for advice to be given.

Disciplinary tribunals

Disciplinary tribunals have a range of disciplinary powers, which include reprimanding you, ordering you to pay a fine, suspending you from practice and disbarring you. There is more information on the types of sentences a disciplinary tribunal can impose in the Sentencing Guidance published on our website.

We have also published a separate leaflet on the disciplinary tribunal process. We will send you a copy of that leaflet if we decide to refer your case to a disciplinary tribunal. If you would like a copy of that leaflet, please call us on 020 7611 1444 or visit our website at www.barstandardsboard.org.uk.

Our Professional Conduct Committee

Our Professional Conduct Committee is made up of practising barristers and independent lay people (non-barristers). All the committee members are appointed through open competition and on merit. The lay members come from a variety of backgrounds and professions, and broadly represent the wider community. They play an important role in making decisions on complaints. If a complaint is presented to the Committee, it can only be dismissed if more than half the lay members present at the time agree.

The rules governing our complaints and disciplinary procedures

The rules governing the complaints and disciplinary processes are set out in the Code of Conduct. The relevant sections are the Complaints Rules (Annex J) and the Disciplinary Tribunal Regulations (Annex K). You can look up the Code of Conduct on our website at www.barstandardsboard.org.uk.

About our service standards

We are committed to providing a high-quality service. In particular, we are committed to:

- dealing with complaints and disciplinary action as promptly as we can, taking into account the need for a thorough investigation and fairness;
- making sure the action we take fits the circumstances of the case and is necessary to protect the public, acting proportionately and maintaining the standards of the profession;
- working in an open way which takes account of the need to protect, as far as possible, the privacy and reputation of clients, complainants and barristers;
- giving clear and well-reasoned explanations for all decisions; and
- being polite and professional in all our dealings with people.

If we decide that disciplinary action should be taken against you, the action will normally be taken within 12 months of us receiving the complaint, but sometimes it can take longer.

Confidentiality

We keep the details of complaints confidential between us, the barrister, the complainant and the Legal Ombudsman. However, as disciplinary tribunal hearings are held in public, we will publish a summary of the charges you are facing on the 'Forthcoming Hearings' section of our website shortly before the date of the hearing.

If a finding of professional misconduct is made, we will put details of the finding and sentence on our website as well as sending them to relevant parties. The findings will also be given to any member of the public, put on Certificates of Good Standing, and disclosed in response to enquiries about your disciplinary history from Queen's Counsel Appointments or the Judicial Executive Board.

There may be other circumstances in which some information about a complaint is disclosed if there is a good reason.

Equality statement

We are fully committed to making sure that everyone using the complaints and disciplinary system is treated fairly, with respect, and without being discriminated against because of their race, sex, sexuality, disability, religion or belief, sexual orientation, gender re-assignment, age or marital/civil partnership status.

Complaints about our staff

If you want to raise a concern or make a complaint about a member of staff, contact the Head of Professional Conduct by writing to us or by phoning our switchboard on 020 7611 1444.

Help with complaints and disciplinary action

BMIF

The Bar Mutual Indemnity Fund (BMIF) can give you advice and representation while we are investigating a complaint, and in relation to any disciplinary action that may follow. You can phone the BMIF on 020 7621 0405.

BCAS

The Bar Council operates the Barristers' Complaints Advisory Service (BCAS). This is a list of barristers who have volunteered to provide advice and representation to barristers involved in complaint or disciplinary action. Although the majority of the barristers on this list provide their services free, some may charge and you should check the position with them when you first contact them.

You can get a copy of the BCAS list from the member of staff dealing with your case or from the Bar Council's or Bar Standards Board's websites (www.barcouncil.org.uk or www.barstandardsboard.org.uk).

The London Common Law and Commercial Bar Association (LCLCBA)

LCLCBA runs an assistance scheme and has a list of advisers who will provide help to their members. You can get details of the scheme by phoning the LCLCBA on 020 7831 8441 or by visiting their website at www.lclcba.com.

More information

If you need to know anything more about our procedures for dealing with complaints of professional misconduct, our complaints staff will be able to help. The contact details are set out overleaf.

Contact us

Professional Conduct Department
Bar Standards Board
4th Floor
289-293 High Holborn
London
WC1V 7HZ

Switchboard: 020 7611 1444

Fax: 020 7611 1342

Website: www.barstandardsboard.org.uk