

1. **INTRODUCTION**
	1. This pack has been prepared for chambers or other authorised organisations wishing to apply to be on the Bar Standards Board’s (BSB) Tribunal Representation Panel (TRP) and provides information about: the BSB; the representation we require; the criteria against we will select organisations to join the TRP; and the remuneration we are offering for the required services. We welcome applications from any organisations with the range of knowledge, experience and capability to act on behalf of the BSB in tribunal and other proceedings arising from our disciplinary work.
	2. Applicants should note that on 15 October 2019 we will be introducing significant changes to our approach to regulatory decision making. While these changes will not impact significantly on our disciplinary processes, the terminology used in this pack relates to the new system which will be in place when the TRP starts operating in January 2020. We have tried to identify in this pack the main changes both in process and terminology, but applicants should bear in mind the pending changes when carrying out research on our website.[[1]](#footnote-1)
	3. We have tried to cover all the information applicants will need to make an application but if you would like to speak to us about any aspect of the application process or our work, please contact Paul Pretty, the Head of Investigations and Hearings at: ppretty@barstandardsboard.org.uk.
2. **BACKGROUND INFORMATION**

**Bar Standards Board**

* 1. The BSB is the approved regulator for barristers in England and Wales. The Legal Services Board, established by the Legal Services Act 2007, oversees the activities of the BSB. One of the main functions of the BSB is to investigate and take appropriate action relating to allegations[[2]](#footnote-2) that barristers may have breached the BSB Handbook, including the Code of Conduct. The Legal and Enforcement Department[[3]](#footnote-3) will be responsible for regulatory investigations and, where necessary, bringing cases to disciplinary tribunal as well conducting any appeals that arise.
	2. **The** BSB must comply with the regulatory objectives which derive from the Legal Services Act 2007. These can be summarised as follows:
* protecting and promoting the public interest;
* supporting the constitutional principles of the rule of law;
* improving access to justice;
* protecting and promoting the interests of consumers;
* promoting competition in the provision of the services;
* encouraging an independent, strong, diverse and effective legal profession;
* increasing public understanding of the citizen's legal rights and duties; and
* promoting and maintaining adherence to the following professional principles:
	+ that authorised persons act with independence and integrity;
	+ that authorised persons maintain proper standards of work;
	+ that authorised persons act in the best interests of their clients;
	+ that authorised persons comply with their duty to the court to act with independence in the interests of justice; and that the affairs of clients are kept confidential.
	1. The objectives of the enforcement disciplinary system are to:

a. promote adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2007 and to the BSB’s regulatory arrangements as set out in our Handbook;

b. provide a credible deterrence to non-compliance with our regulatory arrangements;

c. prevent further breaches; and

d. prevent those who represent a serious risk to the public from practising or working with people or entities regulated by the BSB.

* 1. The BSB currently operates a pro bono Prosecution Panel to provide us with representation at Disciplinary Tribunals, appeals and other hearings. This panel has provided us with expert and high-quality representation for many years. However, the pro bono model is no longer considered appropriate in the modern era and is not the best way to ensure that the BSB has ready access to suitable counsel for all our cases. The BSB Board has therefore decided that, as from January 2020, we will commence remunerating those who represent us. In view of this, the BSB considers it would be more efficient and cost-effective to appoint one or more organisations to provide us with representation rather than operate a panel of individual counsel.
	2. We are therefore inviting chambers or other authorised organisations to apply to be on our Tribunal Representation Panel, who can work in partnership with the BSB to ensure that the quality of the Bar’s disciplinary proceedings remains high.

**The Regulatory Framework**

* 1. The BSB Handbook sets out the regulatory framework for those the BSB regulates and includes the Code of Conduct, Practising Regulations, Authorisation Regulations and essential guidance. The Equality and Diversity Rules and Guidance are published separately but the principles run through all the BSB’s work.
	2. The regulations covering the investigation of allegations of breaches of the Handbook, as well as those governing the disciplinary tribunal process, are set out in Part 5 of the Handbook. The former is currently covered by Part 5: Section A of the BBS Handbook – the Complaints Regulations. However, these regulations will be replaced by the Enforcement Decision Regulations (EDRs) on 15 October 2019. The BSB will not be publishing the EDRs until after the deadline for TRP applications, but a copy of the EDRs, which have been approved by the Legal Services Board, is appended to the decision notice that can be found [on the LSB website](https://www.legalservicesboard.org.uk/our-work/statutory-decision-making/alterations-to-regulatory-arrangements/attachment/final-dn).
	3. The regulations in relation to Disciplinary Tribunals can be found in Part 5: Section B of the BSB Handbook. These regulations are not affected by the pending changes except for minor consequential amendments.
	4. Disciplinary Tribunals are managed and administered independently, under a services agreement with the BSB, by the Bar Tribunal and Adjudication Service[[4]](#footnote-4) (BTAS). BTAS recruits the pool of panel members eligible to sit on Disciplinary Tribunal and other panels. BTAS, via the President of the Council of the Inns of Court (COIC), is also responsible for nominating the individual members of panels to hear cases. The BSB has no involvement in these decisions.

**The Disciplinary Tribunal process**

* 1. The paragraphs below provide an overview of the BSB’s disciplinary process and counsel’s involvement in it. As outlined above, this process will not change post 15 October 2019, but some terminology may be different.
	2. **Investigation and referral:** where the BSB determines that a report[[5]](#footnote-5) discloses a potential breach of the BSB Handbook by someone we regulate it will be investigated as an allegation. Following the completion of the investigation a decision is taken as to the appropriate action, if any, that the BSB should take. The decision may be to take no action and “dismiss” the allegation. Another available outcome is to impose administrative sanctions, which are non-disciplinary. Where the investigation indicates that the breach is serious and amounts to professional misconduct, we will refer the case to disciplinary action. This will happen in those cases where there is a realistic prospect of a finding of professional misconduct being made and, having regard to the regulatory objectives, it is in the public interest to pursue disciplinary action.
	3. Decisions on whether to refer an allegation to disciplinary action can be taken by the executive staff in certain circumstances but will more usually be taken by a five-person panel of the Independent Decision-Making Body (IDB).[[6]](#footnote-6)
	4. **Standard of proof:** the standard of proof for findings of professional misconduct is the civil standard for conduct occurring on or after 1 April 2019, and the criminal standard for conduct arising before 1 April 2019. As there will a be relatively long transition period to get to the stage where the civil standard applies in all cases, the issue of which standard of proof will apply in relation to individual allegations/cases will remain a live one for some time to come.
	5. **Instructing counsel:** after an allegation is referred to a Disciplinary Tribunal, counsel from the TRP will be instructed. The BSB will expect counsel to settle the disciplinary charges to allow them to be served, with the bundle of evidence, within 10 weeks of the referral, as required under the regulations. Counsel will also be expected to provide initial advice on evidence, directions and any issues on the merits of the case. Further advice may be needed during the course of the preparation for the Tribunal hearing. The preparation process will also usually involve drafting skeleton arguments, opening notes or other submissions as directed by the Tribunal. The Officer in the BSB responsible for the case will provide assistance in drafting such documents. Most Officers are legally qualified and hold practising certificates either as solicitors or barristers.
	6. **Directions:** directions for submission of evidence and the timetable for the hearing are usually agreed on paper. However, counsel may also need to represent the BSB at contested directions hearings or other hearings, such as applications to strike out charges. If this is the case, a separate brief and refresher fee will be paid for the hearing.
	7. **Disciplinary Tribunal hearings:** Disciplinary Tribunal hearings are not normally lengthy and substantive hearings usually last one day. Where there is challenged live evidence they can take longer, but it is unusual for Tribunal hearings to take longer than two days. Hearings take place at the BTAS Tribunal suite in central London.
	8. If charges are found proved, the respondent has a right of appeal to the High Court on the finding and/or sanction. Barristers who have been disbarred also have a right of appeal from the High Court to the Court of Appeal. Usually the BSB will seek to retain the same counsel to conduct any appeal. It is less common, but also possible that new counsel will be asked to advise on and conduct an appeal.
	9. From time to time we may also seek advice earlier in our processes before a decision to refer to disciplinary action is made. This is likely to be in cases where the investigation, or indeed the initial assessment, is complex and we need to establish how best to approach the case to support any potential later disciplinary action.
	10. Outside the Disciplinary Tribunal process, there are also other types of hearings where the BSB may require representation. This might be in relation to:
* Interim Suspension Hearings;
* Fitness to Practise Hearings (relating to the health of a barrister); and/or
* Appeals against the imposition of administrative sanctions.
1. **LEVEL OF WORK ANTICIPATED**
	1. It is difficult to predict the level of representation services the BSB will require each year as it fluctuates and the BSB cannot guarantee any level of work. Recent statistics show that there has been an average of 38 hearings per year in the last couple of years at an average length of 1.3 days per case. However, the number of tribunal cases is rising as are their complexity. It is anticipated that the number of hearings in 2020/21 will be greater and could be in the region of 45+.
	2. In recent years, High Court appeals have stood at around six to seven a year and these hearings normally last a day or less. In terms of other types of hearings, such as interim suspensions and fitness to practise, there are usually between five to ten days of these types of hearings per year.
	3. There are also, rarely, associated public law challenges to cases, where counsel instructed in a case, or other appropriate counsel, may be required to represent or advise us.
	4. The seniority of counsel required to represent us will depend not only on the complexity of the allegations, but also the seniority of the respondent and whether the issues in the case have wider implications for the regulation of the Bar and/or have attracted media attention. The historic use of a pro bono panel means that we have previously instructed on the basis of availability, as opposed to required level of seniority. This has meant that we have used counsel of over 10 years call in 75% of cases but it is unlikely that such a high percentage of senior juniors will be required from the TRP.
2. **SCOPE OF WORK REQUIRED**
	1. In summary, the scope of the representation services the BSB will require of TRP appointed organisations is:
	2. Advice on the preparation of Disciplinary Tribunal cases as well as representation at any hearings including appeals arising and hearings before other Panels as needed; and
	3. Advice and representation for other types of cases as needed.
3. **FEES**
	1. As a public interest regulator, funded in the main by the practising fees of paid by individual members of the Bar, the BSB must ensure good stewardship of its finances. The BSB has therefore set a fee structure for remuneration of those who provide us with representation services in line with that of other public bodies and some professional regulators. The fee structure is attached at Annex 1 and is based on a model of brief and refresher fees. Where cases fall outside the norm of that described above, individual fees may be agreed but will be in line with the fees set out in Annex 1.
4. **CRITERIA FOR ASSESSING APPLICATIONS**
	1. The criteria against which applications will be assessed are set out below.
	2. The successful applicant should be able to demonstrate:
5. a clear understanding of the legal regulatory environment;
6. a strong track record in providing representation services to professional regulators;
7. that it can provide a range of suitably experienced counsel at different levels of seniority from lower junior level through to QC level;
8. previous experience of providing legal advice and representation in relation to large and legally/ factually complex cases;
9. experience in public law and how it impacts on professional disciplinary processes;
10. The ability to manage the volume of BSB’s requests for representation as well as returns and urgent matters;
11. That appropriate and effective safeguards are in place to deal with conflicts of interest;
12. compliance with obligations as a Data Controller under the General Data Protection Regulations (GDPR);
13. a commitment to equality and access to justice; and
14. the ability to ensure that those carrying out work for the BSB, will attend induction and other regular training provided by the BSB to ensure they remain up to date with our practice and procedure.
	1. Applications should also set out the following:
* the qualifications and experience of each of the barristers who it is proposed will undertake work for the BSB; and
* information on the diversity make-up of chambers or authorised organisation.
1. APPLICATION GUIDELINES
	1. The guidelines for submitting an application are set out below. You are free to set out your written application in any order that works for you, but the application should conform with the following requirements. It should specifically address the criteria set in section 6 above and be sent in hard copy or electronically to:

 Paul Pretty

 Head of Investigations and Hearings,

 Bar Standards Board

 PPretty@BarStandardsBoard.org.uk

 289-293 High Holborn, WC1V 7HZ

1. **TIMETABLE FOR APPLICATIONS**
	1. **Application period opens:** Monday 16 September 2019.
	2. **Deadline for submission of applications:** Friday 11 October 2019 at 5.00pm.
	3. **Selection of applicants for interview:** each of the written applications will be considered and those that best meet the criteria will be shortlisted for interview. Organisations will be notified if they have been shortlisted by 25 October 2019.
	4. **Date of interviews:** interviews will take place on 12 November 2019 and applicants should ensure they have suitable representatives available to attend on that day. We intend interviews to take around an hour.
	5. **Commencement date for provision of services:** the BSB will require the successful applicants to be able to provide the relevant services from 1 January 2020.
	6. **Duration of provision of services:** once appointed, the BSB anticipates using the successful organisations to provide us with services for an initial period of three years, with the option to extend this by mutual agreement for a further two years to five years.
	7. **Induction training:** it is essential that relevant counsel from the successful organisations are trained on the BSB processes and procedures prior to the commencement of the provision of services. The successful applicants will therefore be expected to facilitate training and ensure maximum attendance on a date between 3 December 2019 and 6 December 2019.

**Annex 1**

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**Tribunal Representation Panel fees schedule**

1. The BSB will remunerate members of the Tribunal Representation Panel on the basis of a banded system of brief and refresher fees.
2. The bandings, which reflect the seniority of the counsel instructed, are as follows:

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| --- | --- |
| Band A – 2-5 years’ post-qualifying experience (PQE)[[7]](#footnote-7) | Brief fee of £1,000 and refresher fee of £500 per day after the first day of the final hearing |
| Band B – 5-10 PQE | Brief fee of £1,750 and refresher fees of £750 per day after the first day of the final hearing |
| Band C – 10 PQE+ | Brief fee of £2,000 and refresher fees of £1,000 per day after the first day of the final hearing |

1. The “brief fee” is paid per case and includes all preparatory work and attendance at the first day of the hearing. While the BSB has set a minimum level of experience of two years PQE, there may be occasional cases where it would be appropriate to accept a lower level of experience. In such cases, we will look at agreeing alternate rates.
2. Where counsel is required to attend an oral preliminary hearing, this will be paid at the same rate as a “refresher” day.
3. Occasionally, the BSB will require advice outside of the normal disciplinary process (for example in relation to investigations). This will be paid at the hourly rate of £70, £110 and £140 for each respective band.
4. Chambers or organisations outside London who apply to be considered should be aware that we will not pay travel expenses for counsel to attend disciplinary hearings in London. Successful applicants will be expected to absorb this cost. However, we will pay any other travel expenses, such as attendance at appeals in other parts of the country.

**16 September 2019**

1. For detailed information on the changes to our regulatory decision making, see [our consultation paper](https://www.barstandardsboard.org.uk/media/1924546/modernising_regulatory_decision_making_-_consultation_paper.pdf) and [response](https://www.barstandardsboard.org.uk/media/1957528/mrdm_consultation_response_final.pdf) on “Modernising Regulatory Decision Making.” [↑](#footnote-ref-1)
2. “Allegation” is the new term to describe what is currently known as “complaints” under formal investigation for a potential breach(es) of the BSB Handbook. [↑](#footnote-ref-2)
3. The Legal and Enforcement Department is a new department that will come into existence on 15 October 2019 – it will replace, in part, the current Professional Conduct Department. [↑](#footnote-ref-3)
4. <https://www.tbtas.org.uk/> [↑](#footnote-ref-4)
5. “Report” is the new term that will apply after 15 October 2019 to all information received by the BSB. In the enforcement context, it will cover information that may indicate that a breach of the BSB Handbook has occurred. The current term for such information is “complaint”. However, the BSB has decided to move away from the terminology of complaints because it does not reflect our remit as a regulator. For more information about this change, please see the BSB’s consultation paper on “Modernising Regulatory Decision Making”, which is linked in footnote 1. [↑](#footnote-ref-5)
6. The Independent Decision-Making Body will replace the Professional Conduct Committee on 15 October 2019. The IDB is pool of appointed barristers and lay persons from which panels will be nominated to consider allegations that may require referral to disciplinary action. [↑](#footnote-ref-6)
7. PQE is taken from the date of completion of pupillage. [↑](#footnote-ref-7)