

BAR STANDARDS BOARD

REGULATING BARRISTERS

The Bar Standards Board's approach to requests for confidentiality and anonymous reports

1. Introduction

- 1.1. When we receive reports of concerns about barristers, these are sometimes made to us anonymously, meaning that the reporter doesn't give us their name or contact details. These are 'anonymous reports'. We also sometimes receive requests from reporters who give us their name and contact details, to keep their identity confidential. We can additionally receive these types of requests for confidentiality from witnesses and other individuals in connection with a report. This guidance sets out how we approach anonymous reports and requests for confidentiality.
- 1.2. All reports are initially assessed by the Contact and Assessment Team. They decide whether the information in the report warrants further regulatory action, whether by way of supervision activity or potential enforcement action.

2. Anonymous reports

- 2.1. When a report is made to us anonymously, it is generally difficult for us to act on it in terms of taking enforcement action; for example, it may be difficult to obtain information and evidence. We can however pass the information onto our Supervision Team who may be able to take supervisory action where an organisation¹ can be identified in a report.

3. Requests for confidentiality

Our usual approach

- 3.1. We have a duty to keep reports and allegations² we assess or investigate under Part 5A of the Handbook confidential³. This means that the fact and detail of a report and the way it has been handled by the BSB may only be disclosed where permitted under

¹An 'organisation' includes chambers, entities, Authorised Education and Training Organisations (AETOs) or sole practitioners.

² Part 6 of the BSB Handbook sets out the definitions of "report" and "allegations".

³ rE63 of the Enforcement Decision Regulations 2019 (Part 5A of the BSB Handbook).

rE63 or rE64 of the BSB Handbook⁴. The duty of confidentiality applies to the BSB at all times, subject to those exceptions. It only applies to the BSB and not to the barrister or others involved in the investigation.

- 3.2. When we close a report at the initial assessment stage (see below) with no regulatory action, our usual approach is to provide the contents of the report and supporting information to the barrister or organisation concerned. If the case progresses to an investigation for enforcement action, the report and any supporting information will usually be disclosed to the barrister, their legal representative (if applicable) and anyone whom it is necessary to contact to gather relevant information⁵.

How we handle requests

- 3.3. Requests for confidentiality can come from anyone who makes a report to us, including members of the legal profession, pupils, or members of the public. We also receive these requests for witnesses and other people involved in a case.
- 3.4. We try where possible to accommodate these requests where there is good reason to do so. When we consider the request, we will look at factors such as the potential consequences for the person if their identity is revealed and any potential wider effect of revealing a person's identity, such as whether it may deter others from making reports to the BSB.
- 3.5. A reporter should let us know in their reporting form if they want us to keep their identity confidential (and to what extent) and should set out the reasons for their request. Our Contact and Assessment Team will usually be the first point of contact for reporters. They will discuss the request for confidentiality and will seek to address any concerns the reporter has about participating in our processes.
- 3.6. The Contact and Assessment Team will decide whether a request for confidentiality can be agreed at the assessment stage and will discuss with the reporter whether this can be maintained as the case progresses. If the case is referred to another BSB

⁴ rE63: The Bar Standards Board must keep reports and allegations assessed or investigated under these regulations confidential. The Bar Standards Board must not disclose the fact that a report exists, or details of the report or of its treatment as an allegation or otherwise, or of its disposal save as specified in this Section 5.A, or as otherwise required by law.

rE64: Disclosure may be made:

1 for the purpose of the Bar Standards Board's regulatory assurance, supervision or authorisations functions; or

2 for the purpose of keeping the applicable person, or any source of information relating to the applicable person, informed of the progress of the consideration of a report or allegation; or 3 for the purpose of publicising any forthcoming public hearing of charges arising from the allegation; or

4 where the applicable person consents; or

5 in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the BSB authorised individual for a certificate of good standing in respect of a barrister; or

6 for the purposes of providing examples of the types of behaviour that may constitute breaches of the Handbook either externally or internally within the Bar Standards Board, provided that where disclosure occurs in these circumstances although details of the individual reports or allegations may be published, any relevant party's identities will remain anonymous; or

7 with the approval of the Commissioner, where the Commissioner considers it is in the public interest to disclose some or all of the details of the report or allegation.

⁵ rE64 of the BSB Handbook.

team, that team will discuss confidentiality with the reporter and any issues that confidentiality might cause for the further progression of the case.

- 3.7. We may not be able to guarantee confidentiality where doing so could restrict any regulatory action that we may decide to take. There may be other reasons why we can't agree to (or maintain) confidentiality (see section 4 below). Any decision that we take will be subject to an ongoing review.
- 3.8. If we can allow a request to keep a reporter's identity confidential, we will record this on our case management system and will make sure that the information is communicated to all relevant teams at the BSB. We will then take appropriate steps to protect the individual's identity.

4. Limitations on allowing confidentiality

- 4.1. Maintaining the confidentiality of a reporter's identity can limit what we are able to do with information that is provided to us. For example, it may limit an investigation and therefore any potential enforcement action. In these circumstances, we may not be able to continue with an investigation (although we may be able to refer the report to our Supervision Team). If we think that we need to disclose a person's identity in order to continue with a case, we will write to inform them before doing so.
- 4.2. There are other limitations on our ability to agree to keep a reporter's identity confidential. For example, we may have to comply with certain legal obligations, such as a court order, which can mean that we're not able to agree to (or maintain our agreement to) a request to keep a reporter's identity confidential. There may also be an obligation arising under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to make a Suspicious Activity Report to the National Crime Agency, and such statutory obligations as these will automatically override any request for confidentiality.
- 4.3. If the report leads us to believe that there may be a safeguarding issue, the risk may be such that we need to inform the relevant authority, e.g. NHS or the Police. Further information on this can be found at paragraph 2 of our [Guidance for those involved in reports of harassment](#).
- 4.4. If we think that the reporter is harassing the subject of their report by making vexatious reports to the BSB, then a request for confidentiality will not be allowed or maintained.

5. How requests for confidentiality are dealt with by other teams across the BSB

- 5.1. Once a report has been assessed by our Contact and Assessment Team, it can be referred to our [Supervision Team](#) and/or our [Investigations and Enforcement Team](#). Referrals can also be made to other teams such as our [Authorisations Team](#). The sections below explain how other teams deal with requests for confidentiality.

Investigations and Enforcement Team

- 5.2. We may disclose details of an investigation in line with rE63 and rE64 – usually for the purpose of exercising the BSB's functions (e.g. to gather evidence to assist our investigation into whether a barrister has breached the BSB Handbook) or because it is in the public interest to do so. This may include, where necessary, disclosure of the identity of the reporter or other individuals, such as witnesses.

- 5.3. Where the Contact and Assessment Team refers a report to the Investigations and Enforcement Team and has agreed to a request for confidentiality at the assessment stage, the Investigations and Enforcement Team will try to investigate the case whilst maintaining the confidentiality of the reporter.
- 5.4. There may be circumstances where we need to provide the name of the reporter to progress an investigation; for example, to allow the barrister under investigation to respond to allegations. If that is the case then we will write to the reporter first, before disclosing their name.
- 5.5. The Investigations and Enforcement Team can also receive requests for confidentiality from witnesses and other parties to an investigation. Where we need a statement from a witness, our usual practice is to share the name of that person with the barrister and/or their legal representative. We will assess whether we can continue with an investigation whilst protecting someone's identity. If we cannot do so and a person decides not to provide a witness statement or participate in our processes, we may not be able to take enforcement action. This will particularly be the case in investigations where the evidence is based mainly on the first-hand evidence of the reporter/ witness.
- 5.6. We can receive reports where the identity of the reporter and/or witnesses is not relevant to the allegations. In these circumstances it is less likely that we will need to identify individuals. This may also be the case where a barrister is discharging their reporting duty. The [Guidance on Reporting Serious Misconduct of Others](#) states that *"If you wish to provide information confidentially, we may be able to take reasonable steps to protect your identity. However, depending on the facts of the case, it may be difficult to take enforcement action without identifying you"*.

Disciplinary Tribunals

- 5.7. Disciplinary Tribunal hearings are usually held in public and witnesses may be asked to attend to give evidence. We can, in most cases, apply to the Disciplinary Tribunal for anonymity orders as part of an application for 'special measures'. The Disciplinary Tribunal will consider the reasons for the application, including if the person is a vulnerable witness. The application may be contested by the barrister and the decision will ultimately be for the Disciplinary Tribunal to make.
- 5.8. Even if an anonymity order is granted, it may still be necessary to identify the individual to the Disciplinary Tribunal, barrister and legal representatives for both sides. There are measures we can put in place to make sure the witness feels supported and the anonymity order will prevent the identity of that person from being made public. In cases where 'jigsaw identification' of an individual may be possible from wider reading of the published decision of the Disciplinary Tribunal, further steps may be taken to prevent the identity being inadvertently revealed.
- 5.9. If a witness decides not to participate in the Disciplinary Tribunal proceedings, we will decide whether we can continue with the proceedings based on the other evidence available.

Supervision Team

- 5.10. The Supervision Team can, on a case-by-case basis, agree to confidentiality where there is good reason to do so, whilst also taking further action directed at the general operation of the organisation.
- 5.11. Reports are typically made to our Contact and Assessment team as outlined above, but occasionally are made directly to the Supervision Team. Either way, we will, in

most cases, speak to the reporter before taking any action, and discuss their request for confidentiality and the limitations this may have on any action we can take.

- 5.12. This is particularly important where the reporter or the subject of the report still works in the organisation concerned. We always consider the impact that our involvement may have on the parties, and whether it would be appropriate to adjust our response accordingly, to ensure that they are not put at risk by the way in which Supervision action is conducted, or by the timings of it.
- 5.13. If we agree to keep the name of a reporter confidential, we can still contact or visit the organisation in question and take the concerns forward with them whilst maintaining the confidentiality of the reporter. This is because the work we do in the Supervision Team is focused on the operation of the organisation, and its processes and policies, and we are therefore able to take action without reviewing specific incidents. The organisation may be able to decipher the identity of the reporter from the information we provide (particularly in smaller organisations), and we will make this clear to the individual/s concerned before taking any action. We can also explain to the organisation that we take victimisation seriously, and that there must be no ramifications if they are able to decipher the identity of the reporter⁶.
- 5.14. In some cases, we can postpone action to avoid any detriment to the reporter. For example, where a pupil has reported concerns about a chambers to us, we can wait until they have left the chambers and secured tenancy elsewhere. This is dependent on the level of risk involved, assessed on a case-by-case basis.
- 5.15. The Supervision Team also operates a Money Laundering Hotline, and confidentiality can be requested when contacting us on this. Details of this can be found [here](#).

⁶ Rule C69 states that a barrister must not victimise anyone for making in good faith a report under Rule C66. rC66 refers to the duty to make a report where a barrister has reasonable grounds to believe that there has been serious misconduct by a barrister or a registered European lawyer, a BSB entity, manager of a BSB entity or an authorised (non-BSB) individual who is working as a manager or an employee of a BSB entity.