

You, your practice and the new Code of Conduct for barristers

From 6 January 2014 a new Handbook,
which includes a revised Code of
Conduct, will come into force.



The revised Code now forms Part Two of the new Bar Standards Board (BSB) 'Handbook', which brings together all the BSB's regulations and guidance for barristers into one publication.

The new Handbook's approach is less prescriptive, with more focus and guidance on what the outcome of a rule should be, rather than attempting to define how a barrister should act in every situation.

For training, support and information about the new Handbook, or to download an electronic version, visit <http://handbook.barstandardsboard.org.uk>



The biggest changes for barristers are:

- ***Self-employed barristers will be able to apply for an extension to their practising certificate in order to conduct litigation.*** This will relieve clients approaching Public Access barristers from having to act as a self-representing litigant and conducting certain administrative tasks themselves if they are not going through a solicitor.
- ***Associations with others.*** Previous rules preventing self-employed barristers from sharing premises and forming associations with non-barristers have been removed. This will allow barristers to pool together risks and resources with others so long as the interests of clients are protected.
- ***Reporting serious misconduct.*** Barristers will be required to self-report and report others in relation to 'serious misconduct' (there will be an exemption for barristers giving advice via the Bar Council ethics helpline).
- ***Unregistered barristers.*** The Core Duties – the core elements of professional conduct – will apply to all barristers, including unregistered barristers when they are providing legal services.
- ***International practising rules.*** The definition of international work has been changed and replaced by three new definitions of "foreign work", "foreign clients" and "foreign lawyers." The new definitions will allow the Handbook to be applied to foreign work in a more consistent and logical way than is currently achieved by the existing Code. Public Access rules will apply to foreign work when instructions are received directly from a lay foreign client or a lay client in England and Wales in relation to foreign work.
- ***The Cab-rank rule*** has been extended to apply to instructions for work in England and Wales coming from lawyers in Scotland, Northern Ireland and EEA member states. It has also been extended to non-advocacy work. The new Handbook retains a number of other requirements from the previous Code of Conduct. For example, the prohibitions on handling client money and on the payment of referral fees are retained in Part Two of the Handbook. In addition, Part Three of the Handbook retains the ban on managing client affairs.

- ***Co-operating with the regulator will be enshrined in the Core Duties.***
All chambers will be expected to appoint a member responsible for liaising with the BSB and who will help streamline communication and the flow of information between the chambers and the regulator. This replaces the current duty on heads of chambers. However, all barristers are under a duty to ensure – as far as reasonable, given their role within chambers – that their chambers are administered competently.
- ***The introduction of a disqualification power*** in cases where a person (whether a barrister or an employee of someone regulated by the BSB) has breached, or caused an authorised person to breach, regulatory rules which apply to them and it is necessary in the public interest to prevent them from continuing to work for a BSB-regulated person in the future.

How to navigate the Handbook

Part Two (the Code of Conduct) includes all the Core Duties, outcomes and conduct rules which apply to barristers. To assist in the interpretation of the Core Duties and rules the Code of Conduct also includes guidance. The Code is divided into the following sections:

- A. APPLICATION
- B. CORE DUTIES
- C. CONDUCT RULES
- D. RULES APPLYING TO SPECIFIC REGULATED INDIVIDUALS

Section A explains to whom and when the various regulatory requirements set out in the Code apply.

Section B sets out the 10 Core Duties that apply to all barristers and provides further guidance about their application.

Section C sets out the conduct rules with which barristers must comply. For ease of reference, this section is further divided into the following subsections relating to barristers' relationships with others and the conduct of their business:

- a. You and the court
- b. Your behaviour towards others
- c. You and your client
- d. You and your regulator
- e. You and your practice.

The QASA rules sit in **section C** 'you and your client'.

Section D sets out rules which apply to the following types of regulated person as well as highlighting cross border activities within the European Union and the European Economic Area:

- a. Self-employed barristers and chambers;
- b. Barristers undertaking Public Access or licensed access work;
- c. Registered European Lawyers; and
- d. Unregistered barristers.

Key terms

The revised Code includes Core Duties, rules, outcomes and guidance. These terms, and their inter-relationship, are briefly explained below.

Core Duties: There are now ten Core Duties which build on rules that were in the previous Code. However, they now apply to all barristers, not just practising barristers (therefore unregistered barristers are required to comply with the Core Duties when providing legal services). They underpin the entire regulatory framework and set the mandatory standards that all BSB regulated persons are required to meet.

O

Outcomes

Outcomes: At the beginning of each section are identified outcomes, which explain the reasons behind the regulatory scheme and what it is designed to achieve. The outcomes are derived from the regulatory objectives of the Legal Services Act 2007 and the risks that must be managed if they are to be achieved. These outcomes put the rules into context and, together with the Core Duties, help barristers to determine how they should act if a specific situation is not covered by the rules or it is not clear how a rule should be applied in a specific situation. The outcomes are not themselves mandatory, but the BSB will take into account whether or not an outcome has, or might have been, adversely affected when considering how to respond to alleged breaches of the Core Duties or rules. As such, barristers should have the outcomes in mind when interpreting the rules.

R Rules

Rules: The rules supplement the Core Duties and are similarly mandatory. Prescriptive rules have only been used where necessary to achieve a desired outcome. The rules provide barristers with a clear understanding of exactly what is required of them and ensure that clients and the public know what they can reasonably expect of those who provide legal services.

However, the rules are not intended to be exhaustive. In any situation where no specific rule applies, reference should be made to the Core Duties. In situations where specific rules do apply, it is still necessary to also consider the Core Duties, since compliance with the rules alone will not necessarily be sufficient to comply with the Core Duties.

G Guidance

Guidance: Throughout the Handbook, including Part Two – the Code of Conduct – we have presented relevant guidance alongside associated rules. The guidance serves several purposes. It may assist in the interpretation of the rules by giving further explanations and examples of how the rules apply in certain circumstances. It may draw attention to related rules. Also it may provide examples of the types of behaviour that might lead to compliance with the rules or factors that need to be considered by the regulated person if they are to act in compliance with the Core Duties and the rules and achieve the outcomes.

Relationship between Core Duties, outcomes, rules and guidance

The Core Duties underpin the entirety of the BSB's regulatory framework and pervade the whole Handbook. Compliance with the Core Duties will be mandatory and they define the core elements of professional conduct. The outcomes put the conduct rules into context and, together with the Core Duties, help barristers to determine how they should act if a specific situation is not covered by the rules or it is not clear how a rule should be applied in a particular situation.

Rules are intended to supplement Core Duties where a Core Duty alone is considered insufficient to address the perceived risk or where experience

suggests that additional, but mandatory, rules are needed to achieve the required end. In some cases rules are necessary in order to clarify the nature of competing duties owed by barristers. Our general approach has been to express all requirements that are genuinely mandatory as rules, whilst providing further information or examples of behaviour that would breach rules in guidance.

Ensuring compliance

Underpinning the Handbook will be new approaches to enforcement and supervision. For chambers, the new approach to supervision will allow for more constructive engagement with the BSB, aimed at assisting chambers and entities to identify and address risks before non-compliance materialises. BSB resources will be targeted at those who are managing risk less effectively and the new enforcement strategy will see disciplinary action being reserved for more serious matters.

Scored through text

The Handbook still contains scored through text which is still subject to approval by the Legal Services Board (LSB). This text relates only to entity regulation and is provided for information. The BSB will be seeking approval from the LSB for these outstanding rules, which we expect to come into force in early 2014.

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