Administrative Sanctions: imposing warnings and fines
Introduction

This leaflet provides an overview of the Bar Standards Board’s (BSB’s) use of administrative sanctions as one of the tools available to it as part of its Enforcement Strategy. Enforcement action is taken if a barrister does not keep to (“breaches”) the obligations imposed by the BSB Handbook.

What is new about administrative sanctions?

As of 6 January 2014 and under the new BSB Handbook introduced on that date, the BSB has the power to impose an administrative sanction on a barrister for any breach of the Handbook, including a breach of the Core Duties or Conduct Rules as set out in the Handbook (or the old Code, if the case is considered on or after 6 January 2014 but the breach took place prior to 6 January 2014).

In contrast with the approach prior to 6 January, where only a few breaches of the Code of Conduct could be dealt with by way of administrative sanction, the scope of this enforcement tool is now more wide-ranging and can be applied, where appropriate, to any breach of the Handbook. The only exception to this is where the complaint involves a conviction for dishonesty or deception. In such cases, the level of risk to the BSB’s Regulatory Objectives is such that the Complaints Regulations require that the complaint should be referred to a Disciplinary Tribunal.

What are the principles behind applying administrative sanctions?

The general principles we use to apply administrative sanctions are that they:
- are applied expeditiously, be proportionate and based on identified risks and are appropriate to those risks; and,
- should deter future breaches which cause harm, or risk of harm.

Our approach to administrative sanctions?

Our approach to enforcement decision making is based on our Enforcement Strategy, which can be found on the BSB’s website here.
We take an outcomes focussed, risk based and proportionate approach to enforcement decision making, the purpose of which is to ensure that enforcement action is focused on the issues that pose the greatest risk to our Regulatory Objectives (please refer to our leaflet “Enforcement action: applying risk and risk assessments to decisions” for more information). A decision on whether the imposition of an administrative sanction is appropriate will only be taken following the completion of a formal investigation. At this point, sufficient evidence will have been gathered to: (i) establish whether or not there has been a breach of the Handbook; and, (ii) allow a decision to be made about whether enforcement action should be taken.

**When will Administrative Sanctions be imposed?**

An administrative sanction can only be imposed where there is sufficient evidence on the *balance of probabilities* of a breach of the Handbook and enforcement action of this nature is appropriate to: (i) the type of breach; (ii) the circumstances round it; and, (iii) its impact. All of these factors determine the level of risk posed by the conduct. If the decision is taken to impose an administrative sanction, this will mean that the breach was not considered sufficiently serious to amount to professional misconduct and referral to disciplinary action was therefore not appropriate.

While our aim is to maximise consistency in the decision making process through the Enforcement Strategy, we also recognise the importance of retaining a level of flexibility. Subject to adopting a broad but consistent approach to determining the level of the sanction, each case is judged on its own circumstances. This is in line with best practice in outcomes focused regulation.

The table below sets out the factors that decision makers will take into account when determining whether to impose an administrative sanction, or take other enforcement action (where a breach of the Handbook has been established):
Factors taken into account when determining whether to impose an administrative sanction

The risk posed to/impact on one or more of the BSB’s regulatory objectives

Any adverse impact on any of the outcomes in the BSB Code of Conduct

The seriousness of the potential breach

Whether the breach was an isolated incident or part of a pattern of repeated breaches

Whether the breach, if proved, would amount to a criminal offence

The impact of the act/omission given the BSB’s regulatory priorities

The impact on clients or others if we take action compared to impact of not taking action

The impact on public confidence in the profession and the administration of justice

The period of time over which the act or omission took place

The number of individuals affected and the seriousness of the adverse impact (or potential adverse impact on these individuals (particularly if vulnerable clients are affected)

Evidence or a record of insufficient care being taken over compliance or of recklessness, deliberate breaches or dishonest behaviour

Whether there was self-reporting or steps to correct the breach and provide appropriate redress

Whether the resources required to pursue the matter are disproportionate to the likely sanction

What Standard of Proof is used?

In taking decisions on whether there has been a breach that would warrant an administrative sanction, we apply the civil standard of proof. i.e. “on the balance of probabilities”, which means that it is more than likely that what is alleged is true.

1 The factors listed are taken from the Enforcement Strategy and are not exhaustive.
What types of Administrative Sanction are available?

The following types of administrative sanction are available:

- **formal warning**;
- **fixed penalty fine** (currently set at £400 and subject to a 50% reduction for early payment); and/or,
- **discretionary fine** of up to £1,000.

**Formal Warnings**: Where there has been similar previous breach, steps have been taken to remedy or mitigate the breach and it appears unlikely that the breach will be repeated, the breach is likely to result in a warning (see table below for more detail on the factors that would indicate that it is appropriate to impose a warning).

**Fixed Penalty Fines**: These will generally be imposed for referrals involving non-compliance from other sections of the BSB for specific breaches of the Handbook, even if the breach was unintentional (i.e. “strict liability” breaches). Such breaches include: (i) failure to complete the authorisation to practise process, leading to a limited period of practice without a practising certificate; or, (ii) failure to complete a chambers monitoring or supervisory risk assessment. Mitigating factors which might lead to a warning being imposed rather than a Fixed Penalty Fine are set out in the table below.

**Discretionary Fines**: Where a warning or a Fixed Penalty Fine is not appropriate, a discretionary fine will be imposed. The general starting point for discretionary fines is £400, with the amount being adjusted according to the aggravating or mitigating circumstances of the breach (see table below). The financial circumstances of the barrister will be taken into account when deciding the level of a discretionary fine and an opportunity will be provided to submit evidence in relation to this. Generally a global sanction will be applied for multiple breaches arising from the same set of circumstances. The sanction will be based on the most serious breach, with multiple breaches being an aggravating feature.
### Imposing the appropriate administrative sanction: factors²

<table>
<thead>
<tr>
<th>Discretionary fine (factors for determining level of fine)</th>
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<td><strong>Aggravating factors</strong></td>
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<td>Inappropriately working in an area outside normal specialism</td>
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<td>Breach attributable to recklessness or intentional behaviour</td>
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<td>Persistent pattern of behaviour</td>
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<td>Breach occurred over a long period or was repeated</td>
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<td>Adverse impact on the administration of justice</td>
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<td>Wider implications for the whole Bar or sections of it</td>
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<td>Causing direct or potential future financial loss as a result of the breach</td>
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<td>Financial gain and or intent</td>
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<td>Vulnerable person or child affected</td>
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<td>Adverse impact on public confidence in the profession</td>
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<td>Previous disciplinary findings for similar behaviour</td>
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<td>Previous imposition of administrative sanctions for similar behaviour</td>
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<td>Failure to address, or delay in addressing the breach</td>
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<td>Failure to show insight</td>
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<td>Lack of remorse</td>
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<td>Failure to self-report when necessary</td>
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<td>Failure to respond to the BSB and/or inappropriate behaviour that frustrates the administration of the complaint</td>
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<tr>
<td>Failure to address, or delay in addressing the breach</td>
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² The factors listed are only examples and are not exhaustive
Administrative Sanctions: Imposing Warning and Fines

| Behaviour attributable to low level bullying or intimidation |
| Abuse of position of authority |
| Attempt to conceal the breach and wrongly place the blame elsewhere |

**Fixed Penalty Fine** *(factors that might mitigate sanction down to a warning)*

- The reason for the breach was ill-health and/or family bereavement and/or any other adverse circumstances
- For reasons outside the barrister’s control, they were not aware of the breach

**Warning** *(factors that would influence imposition of a warning)*

- The regulated person has no previous disciplinary findings or record of administrative sanctions for similar behaviour in the past two years
- The breach has been remedied, or the barrister has taken all reasonable steps to mitigate the impact of the conduct
- There have been no adverse consequences for any persons
- There has been no adverse impact on the public confidence in the administration of justice or the profession
- There are exceptional circumstances that make the imposition of a financial penalty inappropriate

**Who takes the decisions that an Administrative Sanction should be imposed?**

The decision to impose an administrative sanction lies with the BSB’s Professional Conduct Committee or senior staff within the Professional Conduct Department acting under formal authorisations from the Professional Conduct Committee (the Professional Conduct Committee is made up of both barristers and independent lay members (non-lawyers)). Senior staff consider the more standard and straightforward cases, whilst the PCC handles the more complex cases.

All those involved in taking decisions about whether an administrative sanction should be imposed are trained and provided with guidance designed to ensure that decisions are made consistently and appropriate sanctions are applied. There is appropriate oversight of decisions: the PCC receives a report of all staff decisions to impose administrative sanctions and, every 3 months, a committee of PCC members - *the Quality Review Sub-Committee* - reviews a percentage of staff decisions. In addition, the BSB appoints an ‘Independent
Observer’ to observe the operation of the system and identify systematic issues, as well as making recommendations for improvement.

Is there an appeal route?

All administrative sanctions are subject to a right of appeal to an independent panel appointed and administered by the Bar Tribunal and Adjudication Service (BTAS). An appeal is a review of the original decision and not a consideration. The appeal will be on paper unless an oral hearing is requested. A notice of appeal must be lodged within 28 days of the imposition of an administrative sanction; the appeal fee is currently £100. More information on the appeal process can be found on the BSB’s website here.

Are administrative sanctions published?

As administrative sanctions are imposed for low risk breaches of the Handbook and do not amount to a disciplinary finding, the BSB does not publish the outcome for complaints where administration sanctions are imposed. Although administrative sanctions are not published, the fact that an administrative sanction has been imposed is recorded on a barrister’s record and will be taken into account if further breaches of the Handbook occur.
ADMINISTRATIVE SANCTIONS: IMPOSING WARNINGS AND FINES

References

See:

- **Part 5 (A) of the BSB Handbook: Complaints Regulations** – this Section of the Handbook sets out the framework for imposing administrative sanctions. See in particular:
  
  - **rE2.13** – the PCC has the power to impose, or direct the imposition, of an administrative sanction.
  
  - **rE37.3** – the PCC may conclude that the conduct did constitute a breach of the Handbook (on the balance of probabilities) and that that breach should be dealt with by an administrative sanction.
  
  - **rE50** – the PCC can impose administrative sanctions: (i) only where there is sufficient evidence on the balance of probabilities of a breach of the Handbook by that person; and (ii) where the PCC considers that to impose an administrative sanction is a proportionate and sufficient in the public interest.
  
  - **rE51** – In determining the level of administrative sanction to be imposed, the PCC must have due regard to the enforcement strategy and may have regard to such other matters as the Bar Standards Board may consider relevant from time to time.
  
  - **rE55 and rE84-89** – The BSB regulated person may appeal a decision of the PCC to impose an administrative sanction.
  
  - **rE90 and 91** – The PCC has the power to reopen or reconsider complaints which have been disposed of.

- **Part 6 of the BSB Handbook – Definitions**
  
  - **Definition 5: administrative sanction** – means the imposition of an administrative warning, fixed penalty fine or other administrative fine up to the prescribed maximum, or any combination of the above in accordance with Section 5.A.
  
  - **Definition 166: professional misconduct** – means a breach of this Handbook by a BSB regulated person which is not appropriate for disposal by way of no further action or the imposition of administrative sanctions, pursuant to Section 5.A.

- **BSB Enforcement Strategy** – this sets out our strategy in relation to the enforcement of the regulatory requirements set out in our Handbook.