



BAR
STANDARDS
BOARD

REGULATING BARRISTERS



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 regulated person 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 regulated person for any breach of the Handbook, including a breach of the Core Duties or Conduct Rules as set out in the Handbook.

In contrast with the approach prior to 6 January 2014, where only a few breaches of the Code of Conduct could be dealt with by way of administrative sanctions, 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 breach 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 the 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.

https://www.barstandardsboard.org.uk/media/1555518/the_enforcement_strategy_2014_-_final.pdf

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. 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 the circumstances of the breach require enforcement action.

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 sanction¹

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 likely than not 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: The breach is likely to result in a formal warning where:

- there has been no similar previous breaches;
- steps have been taken to remedy or mitigate the breach;
- there has been no adverse consequences for any person or adverse impact on public confidence in the administration of justice/the profession;
- and it appears unlikely that the breach will be repeated (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 in relation to internal referrals from other sections of the BSB about non-compliance with specific breaches of the Handbook even if the breach was unintentional (ie: “strict liability” breaches). Such breaches include:

- failure to comply with continuing professional development requirements (ii) failure to complete the authorisation to practise process, leading to a limited period of practice without a practising certificate;
- or, (iii) 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](#).

Where a fixed penalty fine is imposed, it is subject to a reduction of 50% if paid within 15 days of the date of the letter informing the person of the imposition of the fine.

Discretionary Fines: Where a warning or a Fixed Penalty Fine is not appropriate, a discretionary fine can 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 regulated person 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 only one administrative sanction will be imposed even if there are multiple breaches arising from the same set of circumstances.

The level of the sanction will be based on the most serious breach, with multiple breaches being taken into account as an aggravating feature that may result in a higher sanction.

Imposing the appropriate administrative sanction: factors²	
Discretionary fine (factors for determining <u>level</u> of fine)	
Aggravating factors	Mitigating factors
<p>Inappropriately working in an area outside normal specialism</p> <p>Breach attributable to recklessness or intentional behaviour</p> <p>Persistent pattern of behaviour</p> <p>Breach occurred over a long period or was repeated</p> <p>Adverse impact on the administration of justice</p> <p>Wider implications for the whole Bar or sections of it</p> <p>Causing direct or potential future financial loss as a result of the breach</p> <p>Financial gain and or intent</p> <p>Vulnerable person or child affected</p> <p>Adverse impact on public confidence in the profession</p> <p>Previous disciplinary findings for similar behaviour</p> <p>Previous imposition of administrative sanctions for similar behaviour</p> <p>Failure to address, or delay in addressing the breach</p> <p>Failure to show insight</p> <p>Lack of remorse</p> <p>Failure to self-report when necessary</p>	<p>Reporting of the breach as soon as possible</p> <p>Admission of the breach</p> <p>Prompt action taken to prevent a re-occurrence</p> <p>Circumstances beyond the control of the individual</p> <p>A one off breach</p> <p>No history of a previous similar breaches</p> <p>Exceptional personal and/or financial circumstances</p> <p>Genuine remorse and willingness to apologise</p>

² The factors listed are only examples and are not exhaustive

<p>Failure to respond to the BSB and/or inappropriate behaviour that frustrates the administration of the complaint</p> <p>Failure to address, or delay in addressing the breach</p> <p>Behaviour attributable to low level bullying or intimidation</p> <p>Abuse of position of authority</p> <p>Attempt to conceal the breach and wrongly place the blame elsewhere</p>	
Fixed Penalty Fine <i>(factors that might mitigate the sanction down to a warning)</i>	
<p>The reason for the breach was ill-health and/or family bereavement and/or any other adverse circumstances</p> <p>For reasons outside the regulated person's control, they were not aware of the breach</p>	
Warning <i>(factors that would influence imposition of a warning)</i>	
<p>The regulated person has no previous disciplinary findings or record of administrative sanctions for similar behaviour in the past two years</p> <p>The breach has been remedied, or the regulated person has taken all reasonable steps to mitigate the impact of the conduct</p> <p>There have been no adverse consequences for any persons</p> <p>There has been no adverse impact on the public confidence in the administration of justice or the profession</p> <p>There are exceptional circumstances that make the imposition of a financial penalty inappropriate</p>	

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

The power to impose an administrative sanction lies with the BSB's Professional Conduct Committee (PCC). However, staff within the Bar Standards Board's Professional Conduct Department are authorised by the PCC to take decisions to impose administrative sanctions. In most cases the decision will be taken by authorised senior staff in the PCD

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 the appropriate sanction is applied. The BSB ensures there is appropriate oversight of decisions. This includes, the PCC receiving regular reports (every three weeks) of all staff decisions to impose administrative sanctions and, every three months, a sub-committee of PCC members - *the Quality Review Sub-Committee* – carrying out a review of a percentage of staff decisions. In addition, the BSB employs 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 reconsideration. 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.

[https://www.barstandardsboard.org.uk/media/1588304/140401 - ge14 -
_appeals_against_administrative_sanctions_-_guidance_for_barristers_-_live.pdf](https://www.barstandardsboard.org.uk/media/1588304/140401_-_ge14_-_appeals_against_administrative_sanctions_-_guidance_for_barristers_-_live.pdf).

Are administrative sanctions published?

Administrative sanctions are imposed for breaches of the Handbook which do not pose a high risk to the regulatory objectives. The imposition of an administrative sanction does not amount to a disciplinary finding, and the BSB does not publish information about cases where an administrative sanction has been imposed. However, the fact that an administrative sanction has been imposed is recorded on and will be taken into account if further breaches of the Handbook by the regulated person occur.

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.*