

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Professional Conduct Department	
Title: Complaints about barristers working for or on behalf of the BSB	
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1. Introduction

1.1. This document sets out the approach the Bar Standards Board takes when dealing with formal regulatory complaints about barristers who are either employed by the BSB or are working on behalf of the BSB. Such complaints could either arise directly from their work for the BSB or from circumstances unconnected with that work.

1.2. This document covers barristers who are:

- members of the BSB's Committees or Board;
- members of the BSB Prosecution Panel who represent the BSB at disciplinary tribunals and
- members of staff employed by the BSB.

2. General principle

2.1. All barristers called to the Bar, whether practising or not, are subject to the obligations set out in the BSB Handbook as applicable to their status. Members of the public and

others are entitled to make complaints about those working for, or on behalf, of the BSB in the same ways as complaints can be made about any other barrister.

- 2.2. In order to ensure equality of treatment and consistency in approach across the Bar, the general principle is that all formal complaints received from external sources about barristers working for, on behalf of, the BSB should be addressed and processed under the Complaints Regulations, Part 5, Section A of the Handbook in the same way as any other regulatory complaint.
- 2.3. However, the decision at the preliminary assessment stage as to what action should be taken on such complaints should take into account the factors and issues covered in the paragraphs below.

3. Complaints about matters unconnected with the barrister's work for the BSB

- 3.1 Where a formal regulatory complaint is received about a barrister who the Professional Conduct Department knows works for, or on behalf of, the BSB and the matter of complaint is unconnected to the barrister's role at the BSB, there are no particular factors that should be taken into account when considering what action to take: the complaint should be processed applying the relevant decision making criteria. Examples of such complaints are matters arising from a barrister's self-employed practice or, in the case of staff, matters arising from their personal life.

4. Complaints about matters connected to the barrister's work for the BSB

- 4.1 Where a complaint arises from the barrister's BSB role, the first consideration should be whether the matter could more appropriately be dealt with by the BSB in its role as an employer, or in its role in monitoring the performance of Committee/Board members, and therefore whether it should be referred, under rE28 of the Complaints Regulations¹, to the BSB to deal with under its internal processes.
- 4.2 When considering the issue of referral under rE28, the factors set out in the following paragraphs should be taken into account. However, it should be emphasised that each complaint must be taken on its merits according to the circumstances. Further once the decision has been made on whether or not to make a referral under rE28, the procedure to be followed will be dictated by the relevant agreed procedures which can be found elsewhere and are not covered in this document.
 - 4.2.1. Consideration should be given to whether the complaint arises directly from activities directly associated with the role of a barrister or whether it relates to the barrister's operational role within the BSB. An example of the former would be representing the BSB at a Tribunal as an advocate and an example of the latter would be a Committee or staff member taking actions or decisions on a regulatory complaint as part of the complaints process.

¹ Regulation rE28 provides: "If it appears to the PCC that a complaint received in respect of a relevant person related to a matter which might more appropriately be dealt with an Inn, Circuit, employer or any other professional or regulatory body (including, for the avoidance of doubt, any other approved regulator), it may refer the complaint to such body. If having referred a complaint to another body under rE28, the PCC subsequently considers that the complaint has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the PCC may in its discretion then choose to consider the complaint in accordance with [the other relevant provisions of the Complaints Regulations]."

4.2.2. If the matter arises directly from the performance of tasks normally associated with the work of a barrister, then it is unlikely that the BSB's internal procedures would be an appropriate avenue by which to address the complaint and a referral under rE28 will probably be inappropriate. As members of the BSB Prosecution Panel are at all times acting under formal instructions from the BSB, they will by definition be providing their services as a barrister and therefore complaints about Prosecution Panel members should be dealt with under the regulatory complaints procedure.

4.2.3. On the other hand, complaints arising from BSB operational activities are more likely to be appropriately addressed by the BSB taking action under its internal processes rather than via the regulatory system. This is because the BSB has more appropriate powers to address such issues. This is particularly so where the nature of the complaint is effectively a challenge to a previous decision taken under the enforcement procedures. A referral to the BSB's internal processes could consist of one or more of the following:

- a. Referring the complaint to the BSB's service complaint procedure under which the option is available for redress to be provided to the complainant in the form of an apology and compensation (redress is prohibited under the regulatory complaints procedure) and also for improvements to be made to the BSB's processes;
- b. Referring the complaint to the BSB in its role as regulator on the basis that the complaint represents a challenge to a previous enforcement decision which could result in a decision being made to reopen or reconsider the original decision under regulation 90 of the Complaints Regulations;
- c. Referring the complaint to the BSB's Director General for arrangements to be made for an investigation of the employee's alleged behaviour in line with the Bar Council's agreed procedures which could result in action under the BSB's staff grievance and disciplinary procedure; and
- d. Referring the complaint to the Chair of the relevant BSB Committee and/or the Chair of the BSB for enquires to be made into the alleged behaviour of the Committee/Board member which could result in a formal investigation and termination of an appointment.

4.3 In general, complaints against barristers working in the BSB will arise from operational activities and not be related directly to the normal activities associated with a practising barrister. Such complaints are likely to be more appropriately dealt with under the BSB's internal processes via a referral under rE28 to the BSB as an employer. However, in some circumstances, the actions of a BSB barrister employee may cross over into activities associated with a barrister's role and thereby should more appropriately be dealt with under the regulatory complaints system. An example of this would include complaints arising from BSB employees providing representative advocacy services at Disciplinary Tribunals.

4.4 Where the decision is taken to refer a matter to any of the internal BSB processes, the progress and outcome of the referral should be monitored and, in accordance with rE28, if necessary the PCC can exercise its discretion to consider the complaint again under the regulatory complaints system.

- 4.5 In some cases, the issues of complaint may cover both operational matters and matters associated with the activities of a barrister. In such circumstances, consideration should be given to whether it is appropriate, and possible, to deal with the different issues in parallel by referring relevant matters to the BSB internal processes and addressing the others under the regulatory complaints system. If it is not possible to do this it is likely that the appropriate course of action will be to deal with the totality of the complaint under the regulatory complaints process. However, consideration should be given to whether, action, outside the terms of the Complaints Regulations, should be taken under the BSB's internal processes.
- 4.6 If following consideration of the issue, a decision is taken that it would inappropriate to refer the regulatory complaint, or part of it, to the BSB's internal processes under rE28, the complaint should be dealt with in accordance with the other relevant provisions of the Complaints Regulations. Such a decision does not preclude the matter also being addressed as an employment issue under the BSB's internal processes. The Director General of the BSB should be informed of the regulatory complaint and it will be for the Director General to determine whether, and at what stage, any action should be taken by the BSB in its role as an employer.

5. Notification and decision makers

- 5.1. Careful consideration needs to be given by staff in the PCD as to who should take the decisions on progressing complaints about those working for and on behalf of the BSB to avoid the perception of, and the potential for, bias.
- 5.2. In all cases, where someone working for or on behalf of the BSB is the subject of a regulatory complaint, the complainant should be informed of the person's role within the BSB. In most cases the complainant will already be aware of this but nevertheless it is important that the BSB formally acknowledges and confirms the role played by the person.
- 5.3. To avoid any perceived, or indeed actual, bias in the decision making process the following principles will apply:
- 5.3.1. Decisions on regulatory complaints about staff employed by the BSB should not be taken by staff members in the PCD and such complaints should be referred to the Chair of the PCC for the appointment of two suitable members (one lay and one barrister) of the PCC to carry out the assessment, and if necessary, the investigatory functions normally performed by PCD staff. This may require the Chair to put in place temporary authorisations under regulation E3 of the Complaints Regulations.
- 5.3.2. Initial decisions on complaints about barristers working on behalf of the BSB, such as Committee members, can be taken by PCD staff members where there is no apparent conflict of interest or reasons for perception/actual bias. If there are concerns about potential bias or conflict, the complaint should be referred to the

Chair of the PCC to consider who would be the most appropriate person to carry out the initial assessment: this may include authorising someone outside the PCC/PCD to carry out the task e.g. a member of another BSB Committee or an external party.