

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Professional Conduct Department	
Title: Categorisation of complaints and staff authority to take decisions	
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1. Introduction

1.1. All complaints referred to investigation must be categorised in order to determine who has authority to take the final decision on the complaint and also to which member of staff within the Investigations and Hearings Team (I&H Team) of the BSB's Professional Conduct Department (PCD) the case should be allocated. Therefore, this document sets out the policy and guidance on:

- a) The categories of complaint;
- b) The categorisation process; and,
- c) The criteria for categorisation and authority to take decisions.

2. The categories of complaint

2.1. There are **three** categories of complaint as set out in the table below¹:

Category	Types of complaint
1.	- Internal complaints relating to:

¹ The types of complaint that fall under each category will remain under review.

	<ul style="list-style-type: none"> • Breaches of practising/authorisation requirements (CPD, authorisation to practise, indemnity insurance and registration to conduct litigation); • Breaches of the QASA requirements; • Breaches of Equality and Diversity requirements for chambers to publish data; • Criminal convictions for offences of dishonesty or deception; • Criminal convictions for drink driving or drunk in charge of a vehicle; • Failures to co-operate with the regulator and/or respond to enquiries; • Failures to comply with: the imposition of administrative sanctions; orders of Tribunals; or sanctions imposed under the DBC procedure; • Failures to complete chambers monitoring or risk assessment process.
2.	<ul style="list-style-type: none"> - External complaints that do not fall into category 3; - Internal complaints that do not fall into category 1 or 3
3.	<ul style="list-style-type: none"> - External and internal complaints that: <ul style="list-style-type: none"> • Are complex either factually or legally; • That have or may attract media attention; • Involve wider implications for the public interest, the Bar or the BSB; • Have been referred by another approved regulator, as defined by the Legal Services Act 2007. • relate to entities.

3. The categorisation process

- 3.1. On receipt of a complaint referral from the Assessment Team, the I&H Manager will determine the category of complaint (taking into account the contents of this document), record that categorisation on the enforcement database, and allocate the case to an appropriate Case Officer in accordance with the requirements of Annex 1. Further information about the referral and allocation process can be found in “PG09 - Initial assessment of complaints” and “PG10 – Investigation of complaints”.
- 3.2. **Changing categorisations:** a categorisation can be changed at any stage during an investigation. In the main, re-categorisation will need to be considered where, during the course of an investigation, the issues become more complex than originally assessed and move the case from Category 2 into Category 3. Nevertheless, there will be other reasons for re-categorisation either up or down and this will depend on the individual circumstances of the case. The I&H Manager and the Casework Supervisors should keep categorisations under review throughout the course of an investigation and Case Officers should inform their Supervisor if any issues arise that might affect the categorisation.

4. The criteria for categorisation and authority to take decisions

General

- 4.1. Annex 1 provides details of the final decisions staff are authorised to take in relation each category. All decisions must be taken in line with “PG12 – Decision making criteria”. There is no requirement that the decisions listed in Annex 1 must be taken by staff. **Complaints placed in Category 1 and 2, always remain subject to referral to Experienced Members, Office Holders or the full Professional Conduct PCC (PCC) for a decision where staff are unsure about the appropriate course of action and/or the decision appears to be borderline.**
- 4.2. Staff do not have the authority to take decisions to dismiss, impose administrative sanctions or refer to disciplinary action any complaint placed in Category 3 (see Annex 1)².

Category 1:

- 4.3. Category 1 complaints are defined according to their subject matter and are internal only. Therefore no further criteria or factors are needed to assist with deciding which complaints should be put into this category. In relation to the subject matter of the complaints in Category 1, the following should be noted:
- a. “Failure to co-operate with the regulator or respond” covers any situation where the PCD or any other section of the BSB has requested a response from a “relevant person” (see definition 199 at Part 6 of the Handbook) and that person has failed to respond within the timescale set without good reason.
 - b. Criminal convictions for offences of dishonesty or deception cannot be dismissed and must, under Regulation rE37.5 of the Complaints Regulations, be referred to a Disciplinary Tribunal.
 - c. Criminal convictions for drink driving or drunk in charge (s.5 of the Road Traffic Act 1988) will only be suitable for disposal other than by disciplinary action of some form in extremely rare circumstances. Therefore, they are usually likely to be referred to the Determination by Consent procedure or Disciplinary Tribunal.
- 4.4. Staff have the ability to dismiss complaints in Category 1, impose administrative sanctions up to the maximums set out in the Complaints Regulations or the Complaints Rules 2011 and also refer complaints direct to disciplinary action (either the Determination by Consent procedure or a Disciplinary Tribunal where

² For an initial period of one year from the receipt of the first entity-related complaint, all complaints which concern an entity, regardless of its category, will be referred to the Committee to make a final decision on that complaint. This period of review may be subject to extension or reduction, in light of the number and complexity of entity-related complaints received.

appropriate). Such decisions must be taken in accordance with “PG 12 – Decision making criteria”. Complaints in Category 1 can be allocated to any Officer.

Category 2

- 4.5. This Category is defined by reference to the other two categories therefore specific criteria are not necessary in order to place complaints in this category. If a complaint does not fall into category 1 or 3, then by definition it should be categorised as Category 2.
- 4.6. Both staff and the PCC can dismiss complaints in Category 2 and impose administrative sanctions but only the PCC can refer complaints to disciplinary action. The question as to whether the PCC or staff should dismiss the complaint or impose an administrative sanction will only arise at the end of an investigation and is therefore not an issue to take into account on initial categorisation.
- 4.7. Staff can only dismiss Category 2 complaints post-investigation where the investigation reveals that there is no credible evidence of a breach of the Code of Conduct/Handbook or the risk is low and it would clearly be disproportionate to take enforcement action and/or the evidence is so weak that it is obvious that any attempt to take enforcement action would not meet the standard of proof based on the balance of probabilities.
- 4.8. Cases should still be referred to the PCC for a decision in ‘borderline’ situations or where there is any uncertainty, as well as in instances where it is more appropriate for the PCC to take the decision given the individual circumstances and facts of the case. All other Category 2 complaints must be referred to the PCC.
- 4.9. Complaints in Category 2 can be allocated to any Officer and allocation will depend on the I&H Manager’s assessment of the capacity and capability of the individual Case Officers.

Category 3

- 4.10. Only the PCC can take final decisions in relation to Category 3 complaints and Category 3 complaints can only be allocated to a legally qualified member of the I&H Team. If any of the following factors apply, the complaint should be placed in Category 3:
 - a. The complaint is complex either factually or legally;
 - b. The allegations have attracted or are likely to attract media attention;
 - c. The allegations have wider implications for the public, the Bar, a section of the Bar or the BSB; and/or
 - d. The complaint has been referred by another approved regulator, as defined by the Legal Services Act 2007.

5. Administrative sanctions

- 5.1 Under rE37.3 of the Complaints Regulations, all breaches of the BSB Handbook can be dealt with by means of administrative sanctions. All PCD managers from Casework Supervisor level up to the Director of Professional Conduct have the authority to impose administrative sanctions in relation to Category 1 complaints and the discretion to do so in relation to Category 2. No staff member has the authority to impose an administrative sanction in relation to Category 3 complaints. For further information on the application of administrative sanctions see “PG10 – Investigations of complaints” and “G02 – Administrative Sanctions and Appeals”.

6. Transitional arrangements

- 6.1. The first edition of the BSB Handbook came into force on 6 January 2014. The power to impose administrative sanctions for all breaches of the Handbook only applies to conduct that occurred on or after 6 January 2014. Where the conduct occurred before 6 January 2014, the BSB is limited to imposing administrative sanctions only in relation to breaches of the previous provisions of the Code of Conduct i.e. breaches falling under paragraph 901.1 of the previous Code. Staff authority to impose administrative sanctions in relation to conduct occurring before 6 January 2014 is therefore limited to the parameters of the previous version of this document and the terms of paragraph 901.1 of the 8th Edition of the Code of Conduct.
- 6.2. The second edition of the BSB Handbook came into force on 30 April 2015 encompassing similar powers in respect of entities.
- 6.2 The contents of this document will be kept under review and the categories may change in light of the BSB’s experience of the practical operation of the Handbook. Where this is the case, this document will be revised and reissued.