

CURRENT GUIDANCE

Pilot Harassment Support Schemes Waiver Guidance

Outline requirements for the granting of waivers from rC66 (duty to report serious misconduct) to barristers who seek to support and advise other barristers who may have experienced harassment

Introduction

1. rC66 in the BSB Handbook requires any barrister offering help or advice to another barrister to disclose certain information to the regulator, where that information relates to potentially “serious misconduct”¹. The purpose of this rule is to ensure that the regulator is aware of unacceptable behaviour, so that it can take action in the public interest and avoid such behaviour being kept confidential by barristers who may know that a serious breach of the Handbook has occurred.
2. However, the BSB is aware of concerns that the reporting requirement overall may be unhelpful in relation to dealing with allegations of sexual or other harassment, as those affected may not want to involve the regulator and may be unwilling to seek help from colleagues if they know that colleagues are under an obligation to report matters to the regulator. It has been suggested that facilitating ‘harm reduction’ and management of issues at a local level may be a more effective means of addressing problematic behaviour. In order to test whether this is the case, the BSB will accept applications for waivers from rC66 in defined circumstances and for a specified time. This will be done in accordance with our powers under r15 of the Handbook:

r15 ...the Bar Standards Board shall have the power to waive or modify:
.1 the duty imposed on a BSB regulated person to comply with the provisions of this Handbook; or
.2 any other requirement of this Handbook
.3 in such circumstances and to such extent as the Bar Standards Board may think fit and either conditionally or unconditionally.

3. Our aim in doing so is to be able to test out schemes that will allow the Bar to provide support services to those who may have experienced sexual harassment or bullying without the serious misconduct reporting obligations

¹ For the purposes of this rule, ‘serious misconduct’ includes (amongst other things) harassment

being engaged. This would be on an interim basis in order to provide the BSB with an evidence base to determine whether a change to the rules on reporting requirements would be helpful or necessary. Any scheme in which barristers are granted waivers under these arrangements would need to run for six months to a year in order to generate useful evidence.

4. When the BSB might act on the evidence gathered will depend on the volume of data we obtain, eg if numerous schemes are set up and all prove successful, then we may be able to assess the position after 6 months but if there is low take up and few schemes, the BSB might wait for at least a year to make any assessment based on the data collected.

How will this pilot work?

5. Organisers of prospective schemes of assistance (eg Bar Council, Circuits, Inns, SBA's, other Bar special interest groups) should submit to the BSB details of their proposed scheme, and individual barristers wishing to provide services to other barristers in the scheme should make specific applications for waivers from rC66 (see also *How to Apply* below).
6. If the scheme is approved for participation in the pilot and the individual barristers have been granted a waiver, the scheme will proceed for the duration of the approval and associated individual waivers, with both organisation and barristers complying with undertakings given to the BSB. A barrister who has been granted a waiver will be able to associate themselves with more than one approved scheme, provided the BSB has been notified of that. However, the waiver will be granted only in reference to activity within approved schemes: it will not release the barrister from the reporting obligation in other contexts, e.g. when handling any matter generally in chambers, an Inn, on Circuit or elsewhere.

Requirements for schemes to be approved

7. In order for a scheme to be approved so that the BSB may grant the necessary waivers, any proposed scheme must meet the following criteria:
 - Involve identified and named people (to whom the waivers will be applied);
 - Those involved must be suitably trained to perform the functions of the scheme;
 - The outcomes of that training must be agreed with the BSB and so should be set out in any application; as a guide, at a minimum we would expect to see outcomes consistent with those of an appropriately framed listening skills course and Bar Council advanced equality and diversity training (or equivalent);
 - Access to support and wellbeing services should be provided for those involved in providing the support to service users;
 - Anonymised summary records of service users must be kept and reports sent to the BSB quarterly – this must include: date of contact; means of contact; timeframe of incident/s (if possible); nature of the issue; summary of any signposting; outcome; and any further support needed; and
 - A named barrister or barristers must be responsible for the scheme and they must give the BSB undertakings to comply with these minimum criteria at all times.

Restrictions on schemes

8. Schemes and the named barristers working in them should not:
 - investigate the issues raised with them;
 - contact the person allegedly responsible for the conduct;
 - act as a mediation/arbitration service or attempt to negotiate an outcome between the parties involved; or
 - adjudicate on issues.

9. The BSB reserves the right to rescind waivers granted and / or withdraw approval for a scheme in the event of proven non-compliance with the above criteria; and to amend the criteria for the granting of the waiver or approval of the scheme at any time during the pilot where there are reasonable grounds to do so.

How to apply

10. Organisers of schemes should submit written details of the scheme demonstrating how it will comply with the above criteria. This submission should be accompanied by individual requests for waivers from the named barristers seeking temporary release from the obligations of rC66 in connection with the scheme. There is no required format for the submission but the organisation's application and the individual barrister applications must include a written undertaking in the form:

"I / we undertake to comply with the requirements set out by the Bar Standards Board in its Pilot Harassment Support Schemes Waiver Guidance, to comply with any reasonable request in relation to the Scheme and to report immediately to the BSB any breach of the terms of the waiver"

11. In handling the application, the BSB will use its best endeavours to reach a decision swiftly but may need to seek further information from applicants. Applicants should be aware that the BSB Supervision and Professional Conduct Departments will be consulted to determine whether there are any other circumstances known to the BSB which are relevant to the consideration of the application.
12. Those designing schemes are strongly advised to discuss their proposed scheme with the BSB before applying for approval: we want to assist in ensuring well designed schemes that have the best chance of approval and of achieving the intended aims. Submissions should be made to:
professionalstandards@barstandardsboard.org.uk