

THE BSB HANDBOOK

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THE BSB HANDBOOK

FOREWARD

Justice and the rule of law are fundamental to our society. So is public confidence in the administration of justice.

Barristers play a central part in our legal system. The effective and efficient running of our legal system relies on barristers using their independent judgment when advising their client, presenting their clients' cases effectively, and carrying out their duty to the court and their other professional duties. The trust and confidence which the public places in barristers, and the reputation of the Bar as a whole, depend on the behaviour of all barristers continuing to merit the trust reposed in them. Barristers therefore must act with integrity, honesty and independence. In their practice they must provide a competent and professional service, keep their knowledge fully up to date, give sound advice and deal frankly and courteously with clients, colleagues and others.

When acting as an advocate or conducting litigation, the role of a barrister is to present their client's case as effectively as possible. Justice requires that people appearing before a court should have a fair hearing. This in turn means that they should be able to have their case presented by skilled advocates who will do so fearlessly, independently and in the best interests of their client. The sound administration of justice also requires that those who are acting as an advocate, or conducting litigation, always observe their duty to the court, even where this conflicts with the interests of their client.

Barristers are now free, if they choose to do so, to offer their services through a range of different business structures, including structures jointly managed and owned by other types of lawyers, such as solicitors, and non-lawyers. The consumer now has a greater range of choice as to the ways in which the services of the Bar can be accessed. However, the public needs to be sure that the standards that apply will be no less rigorous and that access to justice will be safeguarded. Therefore, this Handbook applies not only to barristers but also to alternative business structures, legal disciplinary practices and barrister only entities which are authorised by the BSB. It is important that the same high standards are maintained by such entities and by those who own, manage or work for them.

The BSB's regime for regulation of entities aims to meet the need for choice, whilst keeping down the cost of regulation, and maintaining a clear emphasis on the individual responsibility which has always characterised the Bar.

(To be signed by the Chair of the BSB)

THE BSB HANDBOOK

INTRODUCTION

The Bar Standards Board

1. The *Bar Standards Board* is a specialist regulator focussing primarily on the regulation of advocacy and litigation services. These legal services are marked out by their close relationship to access to justice and the rule of law. Our system of justice depends on those who provide such services acting fearlessly, independently and competently, so as to further their clients' best interests, subject always to their duty to the Court.

The Handbook

2. The *regulatory objectives* of the Bar Standards Board derive from the Legal Services Act 2007 and can be summarised as follows:
 - 2.1 protecting and promoting the public interest;
 - 2.2 supporting the constitutional principles of the rule of law;
 - 2.3 improving access to justice;
 - 2.4 protecting and promoting the interests of consumers;
 - 2.5 promoting competition in the provision of the services;
 - 2.6 encouraging an independent, strong, diverse and effective legal profession;
 - 2.7 increasing public understanding of the citizen's legal rights and duties; and
 - 2.8 promoting and maintaining adherence to the following professional principles:
 - (a) that *authorised persons* act with independence and integrity;
 - (b) that *authorised persons* maintain proper standards of work;
 - (c) that *authorised persons* act in the best interests of their clients;
 - (d) that authorised persons comply with their duty to the court to act with independence in the interests of justice; and
 - (e) that the affairs of clients are kept confidential.

3. The BSB Handbook ("*this Handbook*" or "*the Handbook*") sets out the standards that the *Bar Standards Board* requires its regulated community to achieve and observe in order for it to be able to meet its *regulatory objectives*.
4. The *Handbook* consists of the following parts:
 - 4.1 this Part I: Introduction;
 - 4.2 Part II: The Code of Conduct – this part includes the ten Core Duties which underpin the *Bar Standards Board's* entire regulatory framework, as well as the rules which supplement those Core Duties. Compliance with both the Core Duties and the rules is mandatory. The Code of Conduct also contains details of the outcomes which compliance with the Core Duties and the rules is designed to achieve. The *Bar Standards Board's* approach to regulation is risk-focussed and so these outcomes have been defined by considering the risks which the profession needs to manage if the *regulatory objectives* are to be achieved;
 - 4.3 Part III: Scope of Practice, Authorisation and Licensing Rules – this part includes the requirements that must be met to become entitled to practise as a *barrister* or a *registered European lawyer* and the process that must be followed in order to obtain authorisation to practise as a *barrister only entity*, *legal disciplinary practice* or a *BSB licensed body*. It also provides a summary of the scope of activities that each type of *BSB authorised person* is permitted to undertake;
 - 4.4 Part IV: Qualification Requirements – this part includes details of the training requirements that *BSB authorised persons* are required to meet;
 - 4.5 Part V: Enforcement Rules – this part sets out the enforcement procedures that apply if *BSB regulated persons* and/or *relevant persons* fail to act in accordance with the requirements of this *Handbook*;
 - 4.6 Part VI: Definitions – this part comprises the definition of all of the italicised terms used throughout this *Handbook*.
5. Although this *Handbook* is drafted with specific reference to the regulated community and for use by them, this *Handbook* should also act as a useful reference tool for all consumers of legal services regulated by the *Bar Standards Board*. In particular, the outcomes set out in Part II of this Handbook should give consumers a useful indication of what they should expect from the *Bar Standard Board's* regulatory framework and those subject to it.

Application

6. Subject to paragraphs 7, 8 and 9 below, this *Handbook* applies to the following categories of person:
- 6.1 all *barristers*, that is to say:
- (a) barristers who hold a practising certificate in accordance with Section C of Part III ("*practising barristers*");
 - (b) barristers who are undertaking either the first non-practising six months of pupillage or the second practising six months of pupillage, or a part thereof and who are registered with the Bar Standards Board as a pupil ("*pupils*"); and
 - (c) all other barristers who do not hold a practising certificate but who have been called to the Bar by one of the Inns and have not ceased to be a member of the Bar ("*unregistered barristers*"),
- 6.2 European lawyers registered as such by the Bar Council and by an Inn in accordance with Section D of Part III ("*registered European lawyers*");
- 6.3 entities which have been licensed or authorised by the *Bar Standards Board* in accordance with Section E of Part III of this Handbook which means *barrister only entities* and *legal disciplinary practices* authorised by the *Bar Standards Board* and *BSB licensed bodies* ("*BSB authorised bodies*");
- 6.4 individuals that are authorised to provide *reserved legal activities* by another *Approved Regulator* where such individuals are directly or *indirectly employed* by a *BSB authorised person* ("*authorised (non-BSB) individuals*");
- 6.5 all partners, members or directors of a partnership, limited liability partnership or company respectively where such partnership, limited liability partnership or company is a *BSB authorised body* ("*BSB regulated managers*") and, to the extent that this *Handbook* is expressed to apply to them in their capacity as such, owners of a *BSB authorised body* ("*BSB regulated owners*");
- 6.6 solely as regards provisions in this Handbook relating to disqualification from performing a *relevant activity* or *relevant activities* and not otherwise, any *non-*

authorised individuals who are directly or *indirectly employed* by a *BSB authorised person*,

and persons within paragraphs 6.1 to 6.5, when taken together, are referred to as "*BSB regulated persons*" throughout this *Handbook*, whilst persons in those categories when taken together with persons referred to in paragraph 6.6 are referred to as "*relevant persons*".

7. If you are a *BSB authorised individual* who is employed by or a manager of an *authorised (non-BSB) body* and is subject to the regulatory arrangements of the *Approved Regulator* of that body, and the requirements of that other *Approved Regulator* conflict with a provision within this *Handbook*, then that conflicting provision within this *Handbook* shall not apply to you. You will instead be expected to comply with the requirements of that other *Approved Regulator* and, if you do so, you will not be considered to be in breach of the relevant provision of this *Handbook*.
8. If you are a *pupil* and are:
 - 8.1 the *pupil* of an *employed barrister (non-authorised body)*; or
 - 8.2 the *pupil* of a manager or employee of a *BSB authorised body*; or
 - 8.3 the *pupil* of a manager or employee of an *authorised (non-BSB) body*; or
 - 8.4 spending a period of external training with a *BSB authorised body* or an *authorised (non-BSB) body*,

this *Handbook* will apply to you as though you were an employee of the *barrister's* employer or the body concerned.

9. If you are a *registered European lawyer*, then, except where otherwise provided, the provisions of this *Handbook* which apply to *barristers* shall apply to you, in connection with all professional work undertaken by you in England and Wales, as if you were a *self-employed barrister*, an *employed barrister (non-authorised body)*, or a manager or employee of a *BSB authorised body* (as the case may be) depending on the way in which you practise.

Guidance

10. The *Bar Standards Board* has published and will publish from time to time guidance as to the interpretation and application of this *Handbook*, consisting of:

- 10.1 the guidance contained in this *Handbook*;
 - 10.2 the Pupillage Handbook;
 - 10.3 the Equality and Diversity Code Good Practice Guidelines;
 - 10.4 such other guidance as may be published from time to time on the Bar Standard's Board website.
11. In carrying out their obligations under this *Handbook*, *BSB regulated persons* must have regard to any relevant guidance issued by the *Bar Standards Board*, which will be taken into account by the *Bar Standards Board* if there is an alleged breach of any of the obligations imposed on a *BSB regulated person* under this *Handbook*. Failure to comply with the guidance will not of itself be proof of failure to comply with an obligation but the *BSB regulated person* will need to be able to demonstrate how the obligation has been met.
12. Disciplinary proceedings may be taken against a *BSB regulated person* if the *Bar Standards Board* believes there has been a breach of this *Handbook*. Similarly, the *Bar Standards Board* may apply for a *disqualification order* in respect of a *relevant person* if it appears as though the *disqualification condition* has been satisfied. The *Bar Standards Board's* response to any alleged breach will be informed by the provisions of Part V of this *Handbook*, together with the *Enforcement Policy* and any other policies published from time to time which the *Bar Standards Board* regards as relevant.

Commencement

13. This first edition of the *Handbook* came into force on [date] and replaced the eighth edition of the Code of Conduct (which became effective from 31st October 2004) including its various Annexes.
14. Subject to paragraphs 15 and 16 below, in respect of anything done or omitted to be done or otherwise arising before [date]:
- 14.1 Part II of this Handbook shall not apply;
 - 14.2 the edition of the Code of Conduct in force at the relevant time shall apply; and
 - 14.3 any reference to Part II of this *Handbook* shall include reference to the edition of the Code of Conduct in force at the relevant time.

15. Where:
- 15.1 a matter is being dealt with under Annexe J (The Complaints Rules 2011), Annexe K (The Disciplinary Tribunals Regulations (2009) (Reissued 1 February 2012)), Annexe M (Hearings before the Visitors Rules), Annexe N (Interim Suspension Rules) or Annexe O (Fitness to Practise Rules) as at [date]; or
- 15.2 anything done or omitted to be done or otherwise arising before [date] required referral for consideration in accordance with any of the above Annexes,
- then Part V of this *Handbook* shall apply to all such cases and any step taken pursuant to the Annexes then applying (if any) shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of Part V of this *Handbook*, save that no fine may be ordered in excess of £15,000 in respect of conduct before [date].
16. Part D of Section V shall not be applied:
- 16.1 in respect of any conviction or charge prior to [date]; or
- 16.2 in respect of any conviction by an *Approved Regulator* prior to [date].

Amendment

17. Save in the case of Section B of Part V (which shall be amended in accordance with the requirements of that Section), amendments and additions to this *Handbook* may be made by resolution of the *Bar Standards Board* which shall be operative upon such date as the resolution shall appoint or if no such date is appointed on the later of:
- 17.1 the date of the resolution; and
- 17.2 the date when approval of the amendment or addition, if required, is given by the Legal Services Board under Schedule 4 of the *LSA*.
18. Amendments and additions will be published from time to time in such manner as the *Bar Standards Board* may determine.

Waiver

19. The *Bar Standards Board* shall have the power to waive the duty imposed on a *BSB regulated person* to comply with the provisions of this *Handbook* in such circumstances and

to such extent as the *Bar Standards Board* may think fit and either conditionally or unconditionally.

Interpretation

20. In this *Handbook*:
 - 20.1 words and phrases in italics shall have the meaning given to them in Part VI;
 - 20.2 any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural;
 - 20.3 any reference to another provision in this *Handbook* shall be a reference to that provision as amended from time to time; and
 - 20.4 where references are made to an enactment, it is a reference to that enactment as amended, and includes a reference to that provision as extended or applied by or under any other enactment.