

BAR STANDARDS BOARD

REGULATING BARRISTERS

Enforcement Strategy

Introduction

1. The Bar Standards Board is committed to taking an outcomes focused, risk-based and proportionate approach to all its regulatory activities, which includes its approach to taking enforcement action.
2. This document sets out our strategy in relation to the enforcement of the regulatory requirements set out in our Handbook. In the context of this strategy, enforcement action means the application of sanctions to address non-compliance with the provisions of our Handbook. The strategy seeks to provide clear information and guidance about our approach to taking enforcement action as well as:
 - a) the outcomes we are trying to achieve through enforcement action;
 - b) to whom this strategy applies;
 - c) the role of enforcement in promoting regulatory compliance; and
 - d) how we will determine what action to take.
3. This strategy will be applied in conjunction with our Supervision Strategy and is underpinned by the detailed provisions of Part 5 of our Handbook (the Enforcement Regulations). Nothing in this strategy is intended to override the contents of the Handbook or limit any discretion which it confers.
4. All the regulations and procedures referred to in this strategy are available on our website at <https://www.barstandardsboard.org.uk>.

Intended outcomes of this strategy

5. The main objective of this strategy is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions. Enforcement action is intended to meet the objectives of:
 - a) protecting and promoting the public interest and the interests of consumers;
 - b) promoting adherence to our regulatory arrangements as set out in our Handbook;
 - c) supporting the constitutional principle of the rule of law;
 - d) promoting and maintaining adherence to the professional principles;
 - e) providing a credible deterrence to non-compliance with our regulatory arrangements; and
 - f) preventing further breaches.

6. These objectives will be taken into account when determining what enforcement action to take in an individual case.

Scope of the strategy and our enforcement powers

7. We are able, under the terms of the Legal Services Act 2007 (“the Act”), and our Handbook to take enforcement action against:
 - a) barristers (including unregistered barristers);
 - b) Registered European lawyers;
 - c) BSB authorised bodies; and
 - d) BSB regulated managers.

The standards of professional conduct

8. The BSB’s Code of Conduct, Part 2 of our Handbook, requires those we regulate to comply with the following core duties:

- You must observe your duty to the court in the administration of justice.
 - You must act in the best interests of each client.
 - You must act with honesty and integrity.
 - You must maintain your independence.
 - You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.
 - You must keep the affairs of each client confidential.
 - You must provide a competent standard of work and service to each client.
 - You must not discriminate unlawfully in relation to any person.
 - You must be open and co-operative with your regulators.
 - You must take reasonable steps to manage your business, or carry out your role within your business, competently and in such a way as to achieve compliance with your legal and regulatory obligations.
9. The core duties underpin the entire regulatory framework, define the core elements of professional conduct and set the mandatory standards that all BSB regulated persons are required to meet. The core duties are supported by a number of mandatory rules. In addition, the Code sets out the outcomes which compliance with the core duties and rules are intended to achieve. Enforcement action will be considered where BSB regulated persons fail to meet these requirements or breach the rules covering practising requirements set out in Part 3 of the Handbook: Scope of Practice.

Promoting regulatory compliance through enforcement

10. The hallmarks of our enforcement strategy are as follows:
- a) **Risk-based** – We will focus our enforcement action on the issues that have been, or have potential to be, most harmful to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what action, if any, we should take.

- b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.
- c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
- d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime. Typically, we will take action against an individual but action will be targeted at an entity alone or at an entity and individuals as appropriate.
- e) **Flexibility** – We will use a range of regulatory tools to promote compliance with our regulatory arrangements, of which this enforcement strategy covers one part. Enforcement, supervisory and other regulatory approaches (such as setting education standards) will be used together where appropriate to address issues in a proportionate and effective way.
- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated persons a reasonable opportunity to respond;
- g) **Timeliness** – we will take enforcement action, where necessary, in a timely and prompt way, having regard to the circumstances and complexity of the matter

Sources of information that may result in enforcement action

- 11. The potential need to take enforcement action may be identified from a range of information sources including, but not limited to, the following:
 - a) reports made to us from external sources such as clients, members of the public, lawyers or judges, law enforcement agencies or other regulators;

- b) information that comes to our attention via other external sources, including the Legal Ombudsman;
 - c) information that comes to us from BSB regulated persons as a result of their duty to report certain matters as required by the Code of Conduct;
 - d) information from the Supervision Department concerning breaches, particularly by chambers or entities; and,
 - e) information from other departments within the BSB.
12. We will only consider taking enforcement action in relation to information that discloses a potential breach of our regulatory arrangements and which has been assessed as reaching the necessary threshold of risk. Some types of information are less likely to result in consideration of enforcement action such as, for example:
- a) information about conduct in the private life which has no impact on their the professional life of an individual regulated by the BSB; and
 - b) internal disputes within an entity or chambers.
13. Where information received is inconclusive, or relates to a matter such as those set out in paragraph 12, we would not normally conduct an investigation. However, in such cases we may retain the information for purposes of risk assessment and, in the case of chambers and entities, assess the risk posed by those bodies in order to determine whether supervisory action is required. .

Options other than enforcement

14. On receipt of information that raises concerns about a person we regulate as outlined at paragraph 11 above, the options listed below are available to us, as well as the enforcement tools described in paragraph 16:
- a) to refer the matter for supervisory action;
 - b) to refer a report submitted from an external source to another, more appropriate, body for consideration, for example referring an authorised (non-BSB) individual to their approved regulator;

- c) to take action at the initial assessment stage of our process rather than consider formal enforcement action, for example, by making an informal request that a person we regulate puts something right such as inaccurate information on a website;
- d) to refer the matter to another team within the BSB; and,
- e) to decide not to take any action because:
 - i. the information does not reveal a potential breach of the Handbook
 - ii. the conduct disclosed or its consequences do not present sufficient risk to the regulatory objectives to justify further action
 - iii. the conduct disclosed cannot be properly and fairly investigated
 - iv. the conduct disclosed could be more appropriately be dealt with by another body.
- f) Following an investigation, where the outcome is that there is no evidence of a breach of the Handbook but there is cause for concern, give the person we regulate formal advice in relation to the concern.

15. As stated above, we may decide to that to address non-compliance through supervision tools as opposed to enforcement tools. We may choose to do this either during our initial assessment of the information or at some later stage. When deciding whether this approach would be appropriate, we will consider:

- a) the seriousness and nature of the non-compliance identified;
- b) whether the matter can be addressed through supervision without the application of sanctions; and,
- c) whether applying supervision tools will be a proportionate response to the non-compliance identified.

Enforcement tools

16. The enforcement tools available to us include:

- a) Issuing formal advice;

- b) imposing a non-disciplinary administrative sanction in the form of a warning or a fine;
- c) referring a case to disciplinary action by the Determination by Consent Procedure with powers to impose sanctions up to the maximum of a fine;
- d) referring a case to disciplinary action by a Disciplinary Tribunal with powers ranging from a reprimand to disbarment; and
- e) imposition of a disqualification order preventing a person working for a BSB regulated person.

Circumstances in which enforcement action will be taken

- 17. We will only take enforcement action where we have investigated a matter.

- 18. In determining which of the enforcement tools, if any, to apply, we will consider, in line with our risk methodology¹, the risk posed to, or the impact on, one or more of the regulatory objectives. We will consider the reliability and extent of the evidence we have to support any potential enforcement action and the harm that may have been caused to people, legal rights and public confidence. In doing so, we will take into account a range of factors including but not limited to:
 - a) whether any of the outcomes in our Code of Conduct have been adversely affected;
 - b) the impact of the act or omission taking into account our regulatory priorities as stated from time to time;
 - c) the impact on clients or others if we take action compared with the impact of not taking action including the number of individuals affected and the seriousness of the adverse impact (or potential adverse impact) on those individuals (particularly if vulnerable persons are affected);
 - d) the impact on public confidence in the profession and the administration of justice;

¹ Regulatory Risk Assessment Methodology

- e) evidence or a record of insufficient care being taken over compliance or of recklessness, deliberate breaches, or dishonest behaviour;
- f) whether the breach is an isolated incident or part of a pattern of repeated breaches and the period of time over which the act or omission took place;
- g) whether the regulated person self-reported and has taken, or intends to take, steps to correct the breach and to provide appropriate redress;
- h) whether the breach, if proved, would amount to a criminal offence; and/or,
- i) whether the regulatory resources required are disproportionate to the likely sanction.

Applying our enforcement tools

19. In relation to the enforcement tools set out in paragraph 16, we will consider by reference to the factors at paragraph 18 whether a matter should be:
- a) treated as a breach of the Handbook not amounting to professional misconduct and referred for consideration of the imposition of administrative sanctions (the Enforcement Decision Regulations at Part 5 of our Handbook identify the administrative sanctions that can be imposed including warnings and fines), in which case the standard of proof applied will be the balance of probabilities; or,
 - b) referred to disciplinary action as potential professional misconduct, whether via Determination by Consent or Disciplinary Tribunal, where:
 - i. the imposition of an administrative sanction would not be appropriate or proportionate, and,
 - ii. there is a realistic prospect of securing a finding on the applicable standard of proof². standard of proof and pursuing disciplinary action is in the public interest (the Enforcement Regulations at Part 5 of our Handbook set out the range of sanctions available, including disbarment, suspension, disqualification or the imposition of a - fine.)

² That is, the criminal standard for conduct that commenced prior to 1 April 2019, or the civil standard for conduct that commenced after 31 March 2019 - see '*LED19 – Guidance on applying the correct standard of proof*'

20. We may impose an interim order, in the form of a suspension, disqualification or condition on a BSB regulated person, to prevent them from practising until their case is considered by a Disciplinary Tribunal. In very urgent and serious cases an interim suspension or disqualification may be imposed immediately where we are satisfied this is necessary to protect the public. The regulations relating to Interim Panels, including the available sanctions, are in the Interim Suspension and Disqualification Regulations at Part 5 of our Handbook.
21. In all instances where enforcement action has been taken, the BSB will consider whether follow-up supervision would be effective in reducing the risk of non-compliance.

Decision-makers

22. Decisions to take enforcement action under this strategy can be taken by any of the following depending on the nature of the case and the relevant decision-making authorities given under Part 5 of the Handbook:
 - a) Independent Decision-Making Panels of our Independent Decision Making Body;
 - b) executive staff within our Legal and Enforcement Department as authorised by the Commissioner;
 - c) any persons/bodies authorised by the Commissioner from time to time to take decisions; and
 - d) independent Disciplinary Tribunals.
23. All those involved in taking decisions under this strategy and the relevant provisions of the Handbook are trained and are given guidance so that decisions are made consistently, and appropriate sanctions applied. Decisions are monitored to promote consistency.

Openness and transparency

24. **Right of appeal or review** – Where we have taken enforcement action the regulated person concerned will always have an opportunity to appeal the decision or have it reviewed. The precise nature of the appeal or review will depend on the type of decision and enforcement action taken.
25. **Publication of information on decision making** – We publish our written policies and guidance documents to ensure that the details of our decision-making processes are transparent and available to the public.
26. **Publication of outcomes** – We will publish general statistics about the types of reports and allegations received and all outcomes so that the levels of compliance by BSB regulated persons can be understood. We will also:
 - a) publish findings as a result of disciplinary action on our website (these are also published on the website of the independent body that administers Disciplinary Tribunals (the Bar Tribunals and Adjudications Service), including decisions on disqualifications;
 - b) ensure that members of the public who search our on-line register will be able to access any published disciplinary findings/disqualifications against a BSB regulated persons;
 - c) provide details of any disqualification to the LSB and all other Approved Regulators;
 - d) formally record administrative sanctions but not make them public otherwise than in accordance with Regulations 63 and 64 of the Enforcement Decision Regulations; and,
 - e) publish the details of any conditions imposed on an authorisation or licence.

Equality considerations

27. We are committed to ensuring the application of this strategy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. BSB regulated persons subject to this strategy should advise us of any reasonable adjustment or specific requirements they have. These will be accommodated as far as is reasonably practicable and in line with our obligations under the Equalities Act 2010.

28. We will monitor any enforcement action under this strategy to ensure there is no disproportionate impact on any equalities groups within the community we regulate.

First version: January 2014
Reviewed: October 2019