

# BAR STANDARDS BOARD

REGULATING BARRISTERS

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## 1. Introduction

- 1.1. This document sets out the approach the Bar Standards Board takes when dealing with reports about barristers who are either employed by the BSB or are working on behalf of the BSB. Such reports 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, bodies, pools, panels or Board;
  - barristers 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 reports about those working for, or on behalf, of the BSB in the same ways as reports 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 reports received from external sources about barristers working for, or on behalf of, the BSB should be addressed and processed under the Enforcement Decision Regulations in the same way as any other regulatory report.
- 2.3. However, the decision at the assessment stage as to what action should be taken on such reports should take into account the factors and issues covered in the paragraphs below.

### **3. Reports about matters unconnected with the barrister's work for the BSB**

- 3.1 Where a report is received about a barrister who works for, or on behalf of, the BSB and the matter of the report 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 report should be processed in the normal way, applying the relevant decision making criteria. Examples of such reports are matters arising from a barrister's self-employed practice or, in the case of staff, matters arising from their personal life.

### **4. Reports about matters connected to the barrister's work for the BSB**

- 4.1 Where a report 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/body members, and therefore whether it should be referred, under rE10 of the Enforcement Decision Regulations<sup>1</sup>, to the BSB to deal with under its internal processes.
- 4.2 When considering the issue of a potential referral under rE10, the factors set out in the following paragraphs should be taken into account. However, it should be emphasised that each report must be taken on its merits according to the circumstances.
  - 4.2.1. Consideration should be given to whether the report arises directly from activities directly associated with the normal role of a barrister, or whether it relates specifically 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 member of the Independent Decision-making Body or BSB staff member taking actions or decisions on an allegations as part of the post-investigation process.
  - 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 report and a referral

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<sup>1</sup> Regulation rE10 provides: "If it appears to the Commissioner that a report in respect of an applicable person might more appropriately be dealt with by another body (e.g. an Inn, Circuit, employer, a complaint handling body or any other professional or regulatory body), the Commissioner may refer the report to such other body."

under rE10 will probably be inappropriate. As BSB Tribunal representatives are at all times acting under formal instructions from the BSB they will, by definition, be providing their services as a barrister and therefore reports about BSB Tribunal representatives should be dealt with under the Enforcement Decision Regulations (EDRs) in the usual way.

4.2.3. On the other hand, reports 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 report is effectively a challenge to a previous decision taken under the EDRs.

4.3 A referral to the BSB's internal processes could include one or more of the following:

- a) Referring the matter to the BSB's service complaint procedure, under which the option is available for redress to be provided (redress is prohibited under the BSB's regulatory arrangements) and also for improvements to be made to the BSB's processes;
- b) Referring the matter to the BSB in its role as regulator where the report is, in essence, a challenge to a previous enforcement decision, which could result in a decision being made to reopen or reconsider the original decision under rE61;
- c) Referring the matter 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;
- d) Referring the matter to the BSB's Director General for consideration of what action should be taken in relation to the conduct of an APEX member, which could result in the person being removed from APEX; and/or
- e) Referring the matter to the Chair of the relevant BSB Committee, the Chair of the BSB or the Chair of the Independent Decision-Making Body (IDB) for enquiries to be made into the alleged behaviour of the Committee/Board member which could result in a formal investigation and termination of an appointment.

4.4 **Reports about staff members:** in general, reports about barrister staff working in the BSB will arise from operational activities and not be related directly to the normal activities associated with a practising barrister. Such matters are likely to be more appropriately dealt with under the BSB's internal processes, by way of a referral under rE10 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 should more appropriately be dealt with under the regulatory enforcement system. An example of this would be allegations about BSB employees who provided representative advocacy services at a Disciplinary Tribunal.

4.5 Where the decision is taken to refer a matter to any of the internal BSB processes and during the course of or at the conclusion of that process, it becomes apparent that it should be considered under the BSB's regulatory enforcement framework, then the Commissioner or delegated staff can exercise their discretion, under rE11, to consider the report again under the regulatory reports system.

- 4.5 In some cases, the issues raised in the report 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 EDRs. 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 report under the EDRs
- 4.6 Following consideration of the issue, if a decision is taken that it would be inappropriate to refer the regulatory report or part of it, to the BSB's internal processes under rE10, the report should be dealt with in accordance with the other relevant provisions of the EDRs. 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 report 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 as to who should take the decisions on progressing reports 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 report, the information provider should be informed of the person's role within the BSB. In most cases the person reporting 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:

### **CAT decisions**

- 5.4. Subject to the paragraphs below, initial decisions in CAT on reports about barristers working on behalf of the BSB can be taken by CAT staff where there is no apparent conflict of interest or reasons for perception/actual bias. If there are concerns about potential bias or conflict, the allegation should be referred to the Commissioner to consider who would be the most appropriate person to carry out the initial assessment: this may include authorising someone outside the BSB to carry out the task e.g. the Independent Reviewer, a member of another BSB Committee or an external party.
- 5.5. CAT staff can make the following decisions:
- 5.5.1. AOs can make the initial decision to allocate the matter to the BSB's service complaints procedure after applying this guidance. They can also refer the matter to the BSB in its role as a regulator.

- 5.5.2. The HOCA can, after applying this guidance refer the matter to the Director General for arrangements to be made for an internal investigation which could result in action under the BSB's staff grievance and disciplinary procedure. Similarly, the HoCA can decide to refer the matter to the relevant Chair or the Director General in the case of APEX members.
- 5.5.3. Any decisions not to take any action, or to resolve the matter within CAT can only be taken by the HoCA.

#### **Enforcement decisions**

- 5.5.4. Decisions on regulatory allegations about staff employed by the BSB should not be taken by staff members and such allegations should be referred to the Commissioner for the appointment of a suitable person or persons to carry out the assessment, and if necessary, the investigatory functions normally performed by BSB staff. This may require the Commissioner to put in place temporary authorisations under regulation E3 of the EDRs.