

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

**REGULATORY ASSURANCE DEPARTMENT
AUTHORISATIONS TEAM**

**CRITERIA AND GUIDELINES FOR APPLICATIONS FOR AUTHORISATION TO
CONDUCT LITIGATION**

These Notes are divided into two sections:

- A. Guidance Notes – General Procedure for applications and appeals**
- B. Criteria for applications**

| <i>Nature of Application</i> | <i>Brief Summary</i> |
|--|---|
| 1 Authorisation to conduct litigation | This covers applications for barristers in self-employed, employed, or dual capacity practice for an extension to their practising certificate to enable them to conduct litigation |

A. Guidance Notes – General Procedure for applications and appeals

1 General

- 1.1 In these Notes, the Bar Standards Board and its staff are referred to as the “the BSB”. The BSB Handbook is referred to as “the Handbook”. The Bar Qualification Rules, which constitute Section 4B of the Handbook, are referred to as “BQR”.
- 1.2 These Notes set out the criteria and guidelines which the BSB applies in considering applications and should be read carefully and in conjunction with the Handbook.

2 How applications are dealt with

- 2.1 Applications must be made on the current designated application, available from the BSB’s website, and accompanied by the relevant application fee.
- 2.2 Applications may either be submitted as hard-copies by post or as scanned copies by email. All applications must contain a hand-written signature.
- 2.3 The application fees for each type of application are listed on the BSB website. The preferred method of payment is bank transfer (BACS), the details for which are:

| | |
|---------------------------------------|----------------------------|
| Bank Name: | Royal Bank of Scotland |
| Branch Name: | Childs, Fleet Street |
| Sort Code: | 15-80-00 |
| Account No: | 62428522 |
| Account Name/Alias: | General Council of the Bar |
| Currency: | GBP |
| Bank Identifier Code (BIC): | RBOSGB2L |
| International Bank Account No (IBAN): | GB60RBOS15800062428522 |

When paying by BACS, you must ensure that the BSB receives the full amount in Sterling: i.e. **you must pay all charges of your bank and agents charges, including those of the BSB.** This may include a handling charge levied by RBS if the issuing bank does not pay all bank charges.

- Please put a reference of “**AUTH**” against your name on the transaction to help identify the payment.
- Please provide proof of payment/a copy of your payment receipt with your application.
- If someone else is paying the fee on your behalf, please confirm the name of the person making the payment and any reference quoted.

If you are unable to pay by BACS, you may submit payment by cheque (made payable to the ‘Bar Standards Board’) or by credit/debit card. Please call the Authorisations Team on 020 7611 1444 to make a card payment.

Details of the Fee Waiver Policy are available on the BSB website.

- 2.4 All applications contain a declaration that the applicant has read, understood and complied with these Criteria and Guidelines.
- 2.5 Applications are considered and determined under the powers of the Bar Standards Board. The Bar Standards Board has delegated to BSB staff the ability to take decisions within the criteria and guidelines set out in this document.
- 2.6 An applicant must ensure that all supporting evidence is sent with the application form. Where original certificates or certified copies are required, these must be sent in hard-copy or emailed directly to the BSB by the awarding institution.
 - Any hard-copy documents will be scanned upon receipt. To facilitate this process, please ensure that documents supplied with an application are not stapled or submitted in individual plastic wallets.
 - If an applicant requires their original documents to be returned, they must provide a prepaid envelope for this purpose. If the documents are to be returned by courier, it is the applicant’s responsibility to arrange for courier and pay any necessary charges.

- 2.7 An application will not be treated as “complete” until the application form, required supporting documentation and application fee have been received. The BSB may request further information or documentation be supplied in support of an application, but applicants should note that it is the primary responsibility of the applicant to provide all relevant information and supporting evidence.
- Applicants should exercise judgement when selecting supporting evidence and ensure that only documentation that is relevant to the criteria set out in this document is supplied.
 - It is usually **not** appropriate to supply examples of work with an application. Any applicant who does supply such examples should ensure that documents that refer to third parties (e.g. clients) are suitably redacted so as to ensure anonymity. Any application that is supported by unredacted material will be returned to the applicant.
- 2.8 The BSB will take into account all the circumstances of the particular application and will apply the guidelines set out in these Notes.
- 2.9 All applications will be acknowledged in writing within seven days of receipt of the complete application form.
- 2.10 The BSB normally deals with all applications within eight weeks of receipt and notifies applicants of its decision within 10 days of a decision.
- 2.11 The BSB will treat all applications and any supporting documentation provided in the strictest confidence.
- 2.12 All enquiries about applications whether proposed or pending should be addressed to the BSB.

3 Reviews and Appeals

- 3.1 Any applicant who is dissatisfied with a decision may request a review of the decision.
- 3.2 Any request for a review must be made on the designated application form and accompanied by the relevant application fee within one month of notification of the relevant decision and must be accompanied by the appropriate application fee. All requests will be acknowledged in writing within seven days of receipt.

- 3.3 Review Panels deal with reviews of decisions as if the application was being dealt with afresh, applying the guidelines set out in these Notes. A Review Panel shall be entitled to have such regard to the original decision, and to uphold, vary or take into account such decision, as in its absolute discretion it feels appropriate.
- 3.4 Applications for review are normally determined within 10 weeks of receipt. Should it not be possible to deal with a review within this timescale, the applicant will be notified.
- 3.5 All enquiries about reviews whether proposed or pending should be addressed to the BSB.
- 3.6 Where a Review Panel has determined a review of a decision, there is no procedure under the BQR for a further review. A Review Panel may review its own decisions under section B10 of the BQR but is not obliged to carry out such a further review. Any person dissatisfied with a determination of a Review Panel is advised to take independent legal or other appropriate advice.
- 3.7 Rule Q39 provides that where the BQR provide for a review by the BSB of a decision, no appeal may be made to the High Court unless such a review has taken place.
- 3.8 Rule Q40 provides that subject to Rule Q39, a person or organisation who is adversely affected by a decision of the BSB may appeal to the High Court, in accordance with the Civil Procedure Rules.

Online Resources

BSB website: www.barstandardsboard.org.uk

Applications forms and guidance notes: www.barstandardsboard.org.uk/qualifying-as-a-barrister/bar-training-requirements/forms-and-guidelines/applications-authorisations,-exemptions,-waivers-and-reviews/

Contact details

authorisations@barstandardsboard.org.uk

Authorisations Team
Regulatory Assurance Department
Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ

DX: 240 LDE

Tel: 020 7611 1444

B. Criteria for applications

| 1 | Authorisation to conduct litigation |
|---|-------------------------------------|
| <p>Introduction</p> <p>1.1 As of 22 January 2014, the Bar Standards Board Handbook permits barristers in self-employed, employed, or dual capacity practice to apply for an extension to their practising certificate to enable them to conduct litigation.</p> <p>1.2 Authorisation to conduct litigation is an optional extension to a practising certificate and it is for the individual barrister to decide whether it is necessary for their practice or employment.</p> <p>1.3 Employed barristers who were authorised to conduct litigation prior to 22 January 2014 will retain their authorisation provided that they remain in employed practice.</p> <p>1.4 If an employed barrister with prior authorisation wishes to move into self-employed or dual capacity practice, they will need to apply to be authorised to conduct litigation in their new practice.</p> <p>1.5 The application for authorisation to conduct litigation should be completed in typescript. Please note that applications will only be processed if made using the version of the appropriate application form current at the time the application is made. The completed application form should be accompanied by any relevant supporting documentation.</p> <p>1.6 For details of the application fee and payment methods for authorisation to conduct litigation, please refer to the Bar Standards Board website: www.barstandardsboard.org.uk/qualifying-as-a-barrister/bar-training-requirements/forms-and-guidelines/applications-authorisations,-exemptions,-waivers-and-reviews/</p> | |
| <p>Definition</p> <p>1.7 The conduct of litigation is a ‘reserved legal activity’ in the terms of the Legal Services Act 2007¹. This meant that it can only be undertaken legally by a person who is authorised to undertake that activity. The Bar Standards Board,</p> | |

¹ <http://www.legislation.gov.uk/ukpga/2007/29/part/3/crossheading/reserved-legal-activities>

as the relevant approved regulator, can authorise barristers to conduct litigation.

- 1.8 The Bar Standards Board does not itself define what is meant by conducting litigation, as this is a matter of law. The conduct of litigation has a statutory definition in Schedule 2 of the Legal Services Act:

4(1) The 'conduct of litigation' means –

- (a) The issuing of proceedings before any court in England and Wales,*
- (b) The commencement, prosecution and defence of such proceedings, and*
- (c) The performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)*

- 1.9 The term 'ancillary functions' has been defined further in relation to civil litigation by *Agassi v Robinson* [2005] EWCA Civ 1507. The definition of ancillary functions is construed narrowly and is limited to the formal steps required in the conduct of litigation.

- 1.10 *O'Connor v Bar Standards Board* [2012] All ER (D) 108 (Aug) (which addressed the scope of the meaning of the conduct of litigation, citing *Agassi*) established that signing a declaration of truth did not amount to conducting litigation, and has further underlined that litigation is narrowly defined. Further guidance on the role of barristers in non-solicitor cases (including the conduct of litigation) may be found on the Bar Council's website².

- 1.11 The conduct of criminal litigation is more limited in scope than the conduct of civil litigation because of the role of the prosecuting authorities. For example, prosecution disclosure is undertaken by the police and is overseen by the CPS (who are already authorised to conduct litigation by virtue of provisions in the Prosecution of Offences Act 1985). In addition, there are limited duties to disclose for the defence beyond drafting defence statements (a task already undertaken by barristers).

- 1.12 Other formal steps involved in criminal litigation may also be more limited because the prosecution process is shorter than the equivalent civil procedure, and is largely the responsibility of the prosecution.

- 1.13 Barristers may already undertake many of the drafting tasks, such as completing

Criminal Procedure Rules forms, as these do not constitute the conduct of litigation. These forms include the Plea and Case Management Form at the Crown Court, notices and grounds of appeal to the appellate courts, etc.

1.14 Restrictions on activities associated with the conduct of litigation for barristers who are not authorised to conduct litigation include:

- issuing any claim or process or application notice;
- signing off on a list of disclosure; and
- any of the 'formal steps' in the litigation of a sort that are currently required to be taken either by the client personally, or by the solicitor on the record.

A barrister seeking to undertake any of these activities for their clients, must apply for a litigation extension to their practising certificate.

Rules

1.15 The rules governing litigation practising certificate extensions are set out in section 3C of the Bar Standards Board Handbook.

1.16 It is important to distinguish the conduct of litigation from the exercise of rights of audience and other reserved legal activities. A barrister's entitlement to exercise rights of audience does not entitle him or her to conduct litigation.

1.17 In considering applications for authorisation to conduct litigation, the Bar Standards Board will have regard to:

1.17.1 the training in, and experience of, litigation that the applicant has previously undertaken;

1.17.2 the policies and procedures that the applicant has in their place of practice in respect of the conduct of litigation; and

1.17.3 the applicant's insurance arrangements.

Information and documentation

1.18 When making an application for authorisation to conduct litigation, you will be required to provide the following information and documentation:

Knowledge and training in litigation

You should provide details of your prior knowledge and training in litigation, and be able to demonstrate that this knowledge/training is up-to-date (eg by completion of more recent training or practical experience).

1.18.1 Completion of the BPTC or equivalent: you should confirm whether you have completed the Bar Professional Training Course, or an equivalent qualification, within the last three years.

1.18.2 Other litigation training: you should provide details of any other training in litigation that you have completed within the last three years (eg formal courses on litigation, in-house training, self-directed learning, relevant CPD, etc). Please note that currently, the Bar Standards Board does not accredit individual litigation courses, and has no preference for any one course or provider over another.

1.18.3 Public Access training: if you are intending to conduct litigation in self-employed or dual capacity practice, you must have completed the public access training course. You should give the date(s) on which you completed the training, and confirm the provider of your training course.

Prior experience of litigation

You should provide details of your prior experience of litigation, as an overview of the sort of work you have undertaken, and how this is relevant to the litigation work you expect to take on once you are authorised. You should be prepared to provide specific examples, if asked to do so.

1.18.4 Conducting litigation: if you have conducted litigation within the last three years, by virtue of authorisation by another approved regulator (eg as a practising solicitor), or by virtue of a statutory right to do so, you should provide details of this litigation. You should confirm the date on which you were authorised to conduct litigation, the approved regulator which granted your authorisation, and the time period during which you have been conducting litigation.

1.18.5 Other prior experience of litigation: you should provide details of any other prior experience of litigation you have that did not constitute the conduct of litigation, itself. This may include your involvement in preparing cases for court or tribunals, providing advice on aspects of litigation procedure, drafting documents concerned with litigation (eg

particulars of claim), etc. Some of the areas of litigation procedure which you may wish to consider include:

- Pre-action
- Issue and acknowledgement of proceedings
- Statements of case
- Interim remedies
- Judgment without trial
- Track allocation and case management
- Disclosure
- Part 36 offers to settle
- Preparations for trial and evidence
- Costs
- Enforcement of judgments

Administration and management of litigation

You should confirm that there are appropriate administrative and management procedures in your place of practice in respect of the conduct of litigation, and that all persons involved with the conduct of litigation are familiar with these procedures.

1.18.6 Outcomes: You are expected to have policies and procedures in place to deal with the following outcomes:

- Clients understand the service they will receive and how fees will be charged
- Clients receive a timely and consistent service
- Clients receive a service when they need it
- All litigation cases are managed effectively
- All matters relating to litigation cases are recorded fully and accurately
- Support staff are adequately trained and supervised

In the checklist section of the application form, you should tick off each item to confirm that your practice has relevant procedures in place. If there is an existing policy document/procedure at your place of practice relating to the above outcomes, you should provide a document reference (ie page number(s)/paragraph number(s)) to the relevant

section. Unless prohibited from doing so (eg for reasons of confidentiality of proprietary documents), you should provide a copy of these documents, or of the relevant extracts, with your application.

Alternatively, if you are unable to provide a copy of an existing policy document/procedure, you should provide a brief explanation of how you believe each outcome is otherwise addressed.

- 1.18.7 If your place of practice already has an individual barrister(s) who has been authorised to conduct litigation, and you will be adopting the same procedures, you should state this clearly. If this is the case, you will not need to complete the checklist section of the application form; however, you should confirm that you are familiar with the relevant procedures.

Insurance

You should describe your current, or proposed, insurance arrangements in respect of the conduct of litigation.

- 1.18.8 Self-employed barristers: your insurance cover must include litigation. You should confirm that you have made arrangements to add this to your existing cover, if you have not already done so.
- 1.18.9 Employed barristers (authorised body): you will be covered for the conduct of litigation by your employer's insurance.
- 1.18.10 Employed barristers (non-authorised body): you should review your insurance position. If you will not be covered for the conduct of litigation by your employer's insurance, you should confirm what other arrangements you have made/will make.

Criteria

- 1.19 An application for authorisation to conduct litigation will be granted where the Bar Standards Board is satisfied:
- 1.19.1 that you have, or are due to be granted, a practising certificate (other than a provisional practising certificate) (Rule S47.1);
- 1.19.2 that you have appropriate systems in your place of practice to enable you to conduct litigation (Rule S47.3);
- 1.19.3 that you have the requisite skills and knowledge of litigation procedure to

enable you to provide a competent service to clients (Rule S47.4); and
1.19.4 that you have adequate insurance (Rule C76).

- 1.20 In addition to the criteria above, there is a requirement for you to nominate a 'qualified person' in your place of practice who is readily available to provide guidance to you when conducting litigation. This requirement applies to:
- self-employed barristers of less than three years' standing;
 - employed barristers of less than three years' standing who supply legal services to the public via an authorised body; and
 - employed barristers of less than one year's standing who supply legal services only to their employer.

The definition of a 'qualified person' in respect of the conduct of litigation is set out at Rule S22.3 of the Bar Standards Board Handbook.

Guidelines

- 1.21 It is important to distinguish the conduct of litigation from the exercise of rights of audience and other reserved legal activities. A barrister's entitlement to exercise rights of audience does not entitle him or her to conduct litigation.
- 1.22 If you are authorised to conduct litigation, this authorisation extends to both civil and criminal litigation. You will however, need to ensure that you meet the Core Duty set out in Part B of the Bar Standards Board Handbook to act within your competence in undertaking any litigation activity.