

Statement on deliberately failing to attend court

In exercising its regulatory responsibilities, the Bar Standards Board will be guided by the regulatory objectives and, in particular, by the impact of any action by a barrister on the interests of clients and the administration of justice.

Barristers who are not already instructed to appear at a hearing and who wish to refuse to work on a particular day or for a particular period are in general free to do so. Therefore, in principle, barristers can book a day in their professional diary as unavailable because they wish to participate in a protest on that day.

However, a barrister who is already instructed in a matter must carefully consider any duties that are owed to the court or the client before making themselves unavailable. If a barrister wishes to return instructions the circumstances in which this may be done are outlined at rC26 in the BSB Handbook. The BSB takes the view that none of these are likely to apply in circumstances where a barrister deliberately fails to attend a hearing at which they are due to represent a client. Refusing to attend court in pursuit of a protest will not be regarded as “some other substantial reason” under rC26.8. Any barrister seeking to rely on a client consenting to their absence from a hearing should be prepared to demonstrate that the client gave the consent on a fully informed basis and was made aware of the potential consequences of doing so, which might result in very severe harm to the interests of the client. Any failure to attend court might have further serious consequences for the administration of justice or the interests of third parties.

If a barrister has indicated in their diary that they will be unavailable on a particular day and a hearing is subsequently listed for an ongoing case on that day (for example, an urgent hearing at short notice) rC26.3.a envisages that the barrister will make “all reasonable efforts” to avoid the clash. In these exceptional circumstances, the barrister should consider whether such efforts oblige them to be available, to avoid detriment to the client.

Barristers who deliberately fail to attend a hearing at which they are due to represent a client may face regulatory action. In deciding whether to take action, the BSB will consider all the circumstances, but will have particular regard to any harm caused by the barrister’s actions.