

Regulatory Update October 2018

[Tessa's blog for the email content of this month's Regulatory Update]

We have recently updated our guidance on the reporting of serious misconduct. The update makes it clear that our policy is not to take enforcement action against barristers who fail to comply with their duty to report discrimination, harassment (whether of a sexual nature or otherwise) or victimisation where they themselves have been the subject of these types of misconduct.

This follows a roundtable event that we held in July on reducing bullying and harassment. At the event, we received feedback from barristers that the duty to report may prevent the Bar from offering support to those affected by these types of misconduct. Along with issuing the updated guidance, we have therefore also introduced a new system whereby certain groups of properly trained barristers can participate in formal pilot support schemes. Participation means barristers may seek our permission for the requirement to report harassment to the BSB to be waived in certain clearly defined situations. We have recently published guidance [LINK TO WEB RU ARTICLE] for the operation of this waiver scheme. It is designed to allow individual barristers to participate in identified support programmes in order to provide advice and support to those who may have experienced harassment. The programmes themselves need to be approved by the BSB too.

Later this month, we will be issuing new guidance for barristers on the use of non-disclosure arrangements (NDAs) in cases of alleged sexual harassment.

In collaboration with the Solicitors Regulation Authority and the Office of the Immigration Services Commissioner, we have also published new guidance for professional clients when instructing immigration barristers.

You may have seen that we recently published our annual Enforcement Report for 2017-18 which shows the efficiency improvements we have made in parts of our system for handling complaints about barristers.

You can also read the following articles in our website version of this month's Regulatory Update:

- Come to an FBT roadshow to find out more about how the training and qualification process for barristers is changing; [LINK]
- BSB seeks up to two new barrister Board members; and
- Update for the New Authorisations Framework – Are you a Pupillage Training Organisation (PTO)?

[RU articles to appear only on the website – ie not in the email]

Updated guidance about the reporting of serious misconduct of others

We have recently updated our guidance regarding reporting serious misconduct of others to make it clear that our policy is not to take enforcement action against barristers who fail to comply with their duty to report discrimination, harassment (whether of a sexual nature or otherwise) or victimisation where they themselves have been the subject of these types of misconduct.

The full guidance is available on [our website](#). Paragraph 16 relates to the reporting of discrimination, harassment and victimisation. As it is the only section that has been updated, here is the relevant paragraph in full:

16. If the matter relates to conduct which affects you personally, you still remain under an obligation to report serious misconduct to the BSB. However, the BSB will treat any report of discrimination, harassment (whether of a sexual nature or otherwise), or victimisation as sensitively as possible and will not act without first consulting the person who has been affected. Given the sensitivity of this issue, the BSB has a policy of not taking enforcement action for failing to comply with the duty to report if you may have been the subject of these types of misconduct. Nevertheless, we would encourage you to report matters to the BSB and we will always treat such reports sensitively.

Pilot harassment support scheme waiver guidance

We have recently published new guidance to allow pilot schemes under which groups of properly trained barristers can seek permission for the requirement to report harassment directly to the BSB to be waived in certain clearly defined situations. This is in response to concerns that the reporting requirement may prevent the provision of support and guidance to those who may have experienced harassment.

Under the new arrangements, being granted a waiver from the duty to report exempts individual barristers – but only if they are properly trained and participate in identified support programmes – so that they can provide advice and support to a person who may have experienced harassment.

Organisations whose individual advisers have been granted the waiver have to put in place anonymised records collection to share with us at regular intervals to inform our understanding of the risks and outcomes of these pilots.

New guidance for professional clients when instructing immigration barristers

After input from practising immigration barristers, the Solicitors' Regulation Authority (SRA) and the Office of the Immigration Services Commissioner (OISC), we have

published new guidance for professional clients of barristers and advisers regulated by OISC, to provide them with useful information when instructing immigration barristers.

This guidance is the latest in a series of immigration guidance documents we have published following our [2016 Immigration Thematic Review](#). The review identified three key risks in the way that the market for immigration legal services operates: access to justice, poorly informed consumers, and the quality of advice and standards of service.

In June 2017, we published [guidance for the public](#) and [for professionals](#) on immigration and asylum related legal issues. In April 2018, we published an [online guide for barristers working with vulnerable immigration clients](#).

The latest guidance aims to ensure that professional clients, OISC advisors and barristers understand their respective roles and that all parties work together in a way that delivers an effective service to the client.

BSB improves efficiency in complaint handling

We have published our [Enforcement Report](#) for 2017-18.

The report provides an overview of our enforcement work during the year and includes statistics about the volume, trends and outcomes of complaints about barristers, including disciplinary proceedings.

The report shows that our timeliness in handling complaints has generally improved. Over 84% of cases were completed within our service standards, the highest performance since records began in 2013-14. The average time it took to conclude cases of all types also decreased from 2.8 months in 2016-17 to 1.8 months this year, which is a reduction of 60% since 2014-15.

Other statistical information in the report includes:

- the volume of enquiries and reports about possible misconduct by barristers (known as "pre-complaints") received by the BSB rose to 1,024 in 2017-18 from 963 in 2016-17;
- the number of complaints about barristers increased significantly in 2017-18, up 29% on last year with 475 formal complaints being made - the highest number of new complaints opened in one year since 2013-14;
- reports from the profession about serious misconduct increased to 133 this year compared to 110 in 2016-17. 44% of all such reports were assessed as not requiring regulatory action, indicating that the Bar is still erring on the side of caution when making reports;
- reports of sexual harassment by barristers increased from none in 2016-17 to eight in 2017-18. Of those eight, three resulted in formal complaints being raised by the BSB. Two of these resulted in referrals to disciplinary action and one is awaiting consideration by our Professional Conduct Committee (PCC).

- of all the complaints received or raised during the year, fewer were referred to disciplinary action this year compared to last year - down from 62 in 2016-17 to 47 in 2017-18; and
- the number of barristers disbarred in 2017-18 went down substantially from 20 in 2016-17 to six in 2017-18.

In July, we published our [full Annual Report](#), which contains a summary of our other regulatory work during 2017-18.

BSB seeks up to two new barrister Board members

The Bar Standards Board (BSB) has begun the process to recruit up to two new barrister Board members.

The successful applicants will work with others on the Board to govern and oversee the regulator's work.

The Board seeks members with a wide variety of practice experience, but it would particularly welcome applications from barristers practising at the Criminal Bar, the Family Bar, the Young Bar and from those practising outside London or the south-east, who would complement the skills and experience of its current Board members.

The closing date for applications for the position is 9am on Monday 22 October 2018. Interviews will be held in central London on the morning of Monday 19 November.

More information about the vacancies and the application process can be found on the [BSB website](#).

Come to an FBT roadshow to find out more about how the training and qualification process for barristers is changing.

From this month we are launching a series of roadshows across the circuits (insert link to event webpage) to raise awareness about our plans to [change the training and qualification process](#) for becoming a barrister. Roadshows and events are planned as follows:

- Park Square Chambers, Leeds, 6 Park Square East, Leeds LS1 2LW, 6pm – 7pm, 18 October 2018;
- Bar Council Pupillage Fair, Bush House, Strand, London WC2R 1ES, 10am - 4pm, 27 October 2018
- Midland Circuit roadshow, St Ives Chambers, 1-3 Whittall Street, Birmingham, B4 6DH, 6pm – 7pm, 7 November 2018;
- The BSB, 289-293 High Holborn, London, WC1V 7HZ, 6pm – 7pm, 15 November 2018;
- Deans Court Chambers, 24 St. John Street, Greater Manchester, M3 4DF, 6pm – 7pm, 20 November 2018;
- Bar Conference, 61-65 Great Queen St, London WC2B 5DA, 2pm-3pm, 24 November 2018, [book your place online](#);

- Western Circuit roadshow, venue TBC, 6pm – 7pm, 28 November 2018;
- National Pupillage Fair, Gray's Inn, 8 South Square, London, WC1R 5ET, 10.30am-3pm, 1 December
- Wales and Chester circuit, time tbc, 9 Park Place Chambers, 9 Park Place, Cardiff, CF10 3DP, 5 December 2018

To book a place at a roadshow please email contactus@barstandardsboard.org.uk

Ahead of the roadshows why not familiarise yourself with the [2018 Pupillage Handbook](#) to see what changes Future Bar Training is bringing in 2019?

Reminder: Update for the New Authorisations Framework – Are you a Pupillage Training Organisation (PTO)?

In March 2017, we announced proposed changes to the way in which we regulate qualification as a barrister, these proposals have now been agreed.

From January 2019, we will introduce a new [Authorisation Framework](#), which will govern the authorisation of Approved Education and Training Organisations (AETOs). This means that providers of any element of training, including pupillage, will need to have been authorised explicitly by the BSB under the new Authorisation Framework.

Although the new arrangements come into effect in January 2019 they will affect pupilages starting in the autumn of 2018. We will be contacting you to ask whether you intend to continue to take pupils under the new framework.

If you are not authorised under the new scheme you will be unable to continue as a Pupillage Training Organisation or AETO.

For further details, please [see our website](#).

Have we got correct details of your practice address?

Please ensure that you have given us of your correct practice address in accordance with rS69 of our Handbook. If your practice address changes, you must tell our Records Department within 28 days.

Give us your feedback

If you have any thoughts about how we can improve the Regulatory Update or what content you would like to read, please email contactus@barstandardsboard.org.uk.