

**Memorandum of Understanding**

**made between**

**the Queen's Counsel Appointment body**

**and**

**the Bar Standards Board**

## **Memorandum of Understanding**

### **The Parties**

1. This Memorandum of Understanding (MOU) is made between:
  - a. Queen's Counsel Appointments ("the QCA"); and
  - b. The Bar Standards Board (BSB) in its role as the regulatory arm of the Bar Council.
  
2. The terms "QCA" and "BSB" include the relevant bodies and any staff, other persons, panels or groups acting on the parties' behalf or under their jurisdiction.

### **Purpose and status**

3. The purpose of this MOU is to set out the arrangements between the QCA and the BSB in relation to the exchange of information regarding complaints and disciplinary findings for professional misconduct, made against barristers who have applied for, or hold, the award of Queen's Counsel (QC).
  
4. This MOU is not intended to be legally binding and no enforceable contract is being entered into by the parties.

### **Functions of the QCA and the BSB**

5. The Bar Standards Board (BSB) has responsibility for regulating barristers, which includes, where appropriate, referring allegations of professional misconduct to:
  - a. the BSB's Professional Conduct Committee (PCC) for determination under the BSB's Determination by Consent procedure; or,
  - b. an independent Disciplinary Tribunal convened by the Bar Disciplinary and Adjudication Service (BTAS).

6. Either process may lead to a formal finding against a barrister of professional misconduct.
7. The Queen's Counsel Selection Panel ('the Panel') administers on behalf of QCA the process for considering applications to be appointed Queen's Counsel (QC) under the scheme agreed between the General Council of the Bar and the Law Society and approved by the Lord Chancellor (Summary of Revised Process for QC Award for England and Wales 23 November 2006 – 'the Process'). QCA is responsible for assessing whether an applicant is suitable to hold the award of QC, and whether the award should be removed from an existing QC, both of which include taking into consideration complaints and findings of professional misconduct.

#### **Professional conduct checks on applicants for appointment as Queen's Counsel**

8. As part of the QCA's appointment arrangements, the agreed Process (paragraph 4) provides for professional conduct checks to be requested from the relevant professional regulatory bodies to ensure that any findings, or undecided complaints, of misconduct are identified and can be taken into account. This section of the MOU covers the arrangements with the BSB for dealing with such requests.
9. Each year, at an early stage in the QC Competition, the QCA Secretariat will send a list of barrister applicants confidentially to the designated member of staff at the BSB, requesting that disciplinary history checks are made. The BSB will, in response, carry out the checks and provide in writing the following "relevant information", subject to the BSB disclosure policy applicable at the date of the request:
  - a. Summary details of any disciplinary findings for professional misconduct made against each barrister and, where applicable, information about whether the finding is open to, or subject to, appeal;
  - b. Relevant reports which are in the public domain that support the findings in (a);

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- c. Summary details of any pending allegations/complaints which have been referred to disciplinary action but have not yet been determined; and,
  - d. Details of any findings of inadequate professional conduct (IPS) by the BSB or the Bar Council;
  - e. Summary of cases where the Professional Conduct Committee (or its predecessors or successors) have taken No Further Action (NFA).<sup>1</sup>
10. The information in paragraph 9 above will be provided by the BSB within a reasonable time-scale agreed between the QCA and the BSB. Where there is no relevant information recorded against a barrister, the BSB will ensure that this is recorded in its written return to the QCA.
11. In response to a further request from the QCA later in the QC Competition process, the BSB will update information provided previously under paragraph 10, including informing QCA of any new relevant information that has arisen during the intervening period.

**Checks in relation to removal of the award of Queen's Counsel for cause**

12. In addition to assessing applications for QC, the QCA also has the power to recommend to the Lord Chancellor the removal of the award of Queen's Counsel for cause. By agreement with the Ministry of Justice this power only applies to Queen's Counsel appointed under the agreed Process in or after July 2006.
13. The BSB and the Panel have agreed the following arrangements to assist the Panel in considering whether to recommend to the Lord Chancellor that the award be removed where a disciplinary finding for professional misconduct is involved.
14. The BSB will inform the QCA Secretariat of any finding against any Queen's Counsel of professional misconduct and any sanction imposed within 28 days of the expiry of any appeal period (if applicable). In doing so, it will provide the same information as outlined in paragraph 9 (a) and (b) above.

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<sup>1</sup> Under the Legal Services Act 2009, the BSB's jurisdiction over issues of IPS ceased on 31 March 2011

#### **Response times**

15. The BSB and the QCA Secretariat will each use their best endeavours to deal promptly with any requests for information or further information. Generally, all requests for information will be addressed within 20 working days unless otherwise agreed by the parties.

#### **QCA use of information provided by the BSB**

16. QCA agrees to use the information provided by the BSB only for the purposes of assessing a barrister's suitability for the award of QC or for assessing whether a recommendation should be made to remove that award and will not disclose the information to third parties for any other purposes. For the sake of clarity, the QCA agrees to keep all information provided by the BSB confidential subject to the terms of this MOU and handle it in accordance with any relevant applicable legislation including the Data Protection Act 1998.

#### **BSB use of information provided by the QCA**

17. The BSB will treat the fact of an application for appointment as QC as confidential, including any year(s) in which the applicant applies.

#### **Conduct complaints about Queen's Counsel or applicants for QC**

18. QCA will refer any third party seeking to make a complaint about a barrister holding the title of Queen's Counsel, or barrister applicant for Queen's Counsel, to the BSB.

#### **Amendments to the MOU**

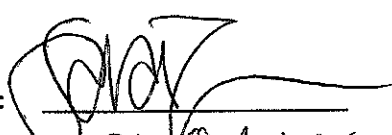
19. This MOU is applicable from the date of its final signature until such time as it is amended by agreement between the parties. However, the terms of this MOU are subject to the provisions of the Bar's Code of Conduct and any relevant BSB disclosure policy applicable at the date of any request for information from the

BSB made by the QCA. Where there is a conflict, the Code of Conduct and/or the BSB's disclosure policies will take precedence over the terms of this MOU, but the BSB agrees to consult in advance with the QCA in relation to any material changes to its Code or disclosure policies that may affect the terms of this MOU.

Signature: 

Date: 14 October 2013

**Russell Wallman**  
Head of QC Appointments Secretariat  
On behalf of the QCA

Signature: 

Date: 21 October 2013

**Sara Down**  
Head of Professional Conduct  
On behalf of the BSB