

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

<b>Title:</b>	Assessment of Reports	<b>Ref:</b>	ROD02
<b>Document type:</b>	Policy and Guidance	<b>Status:</b>	Internal
<b>Department:</b>	Regulatory Operations Department		
<b>Owner:</b>	Head of Conduct Assessment		
<b>Date of issue:</b>	15 October 2019		
<b>Past review dates:</b>			
<b>Version:</b>	1	<b>Date of next review:</b>	15 January 2021
<b>Distribution:</b>	Regulatory Operations Department (ROD) Investigations and Enforcement Team (I&ET)		

## Table of Contents

<b>Introduction .....</b>	<b>3</b>
<b>Registering a case on the CMS .....</b>	<b>3</b>
Information received through the online reporting form .....	4
Information received initially by telephone. ....	4
Information received by email or post that is clearly intended to be a report .....	5
Information received where it is unclear whether the provider intended to make a report .....	6
<b>Overview of the Assessment Process .....</b>	<b>7</b>
<b>Stage 1 – Screening .....</b>	<b>7</b>
Is the report a service complaint? .....	9
Is there any reason why the report requires special handling? .....	9
Can the report be assessed in its current format? .....	10
Does the report relate to a matter that is currently being considered within the BSB? .....	10
Is the matter more appropriately considered by another organisation? .....	11
47.    rE4 – Reference to Legal Ombudsman.....	12
48.    rE5 – Person acting in a part-time/temporary judicial or quasi-judicial capacity.....	12
51.    rE9 – Full-time judicial office.....	12

52. rE10 – Any other person .....	13
Does the report relate to an AETO (Authorised Education and Training Organisation) that delivers the academic/vocational component of training for prospective barristers? .....	13
Has the report been provided by an individual whom we have advised we will cease or limit communications?.....	14
Is there any reason that this report should not be assessed?.....	14
<b>Stage 2 – Identification of Issues and categorising the case .....</b>	<b>15</b>
Preliminary Enquiries.....	15
Categorisation of the case .....	16
Identification of Regulatory Issues .....	16
Regulatory Risks.....	17
Potential breach of the Handbook.....	18
Recording of Aspects and potential breaches .....	18
Concluding the Assessment or Proceeding to a Risk Assessment .....	19
<b>Stage 3 – Risk Assessment .....</b>	<b>19</b>
<b>Stage 4 – Allocation/Action taken in CAT .....</b>	<b>19</b>
Allocation to Enforcement.....	21
Allocation to Supervision/Training Supervision.....	24
Allocation to Authorisations and Examinations.....	25
Allocation to the Communications Team .....	26
Allocation to Strategy and Policy .....	27
Referral to any external bodies.....	27
Regulatory Action taken by CAT .....	28
<b>Stage 5 – Informing parties of the outcome .....</b>	<b>28</b>
Factors to consider on whether to inform the party .....	29
133. Reports made under reporting obligations .....	29
134. Requests for Anonymity/Confidentiality .....	29
136. Reports from external bodies .....	30
137. Allocation to Comms and Policy .....	30
Information to include when communicating outcomes of initial assessments.....	30
140. Person who made the report.....	30
141. Barrister subject to the report.....	30
<b>Stage 6 – Requests for review.....</b>	<b>31</b>
<b>Matters to consider at all stages of the CAT process.....</b>	<b>31</b>
Reasonable Adjustments .....	32
Wellbeing .....	32

Legal advice.....	33
Fitness to practise .....	33
Interim Suspension .....	34
Interventions.....	35
Putting an assessment on hold.....	35
Splitting cases.....	36
Money laundering and terrorist financing.....	37
<b>Annex 1 – Allocation flowchart.....</b>	<b>39</b>
<b>Annex 2 – Informing the parties .....</b>	<b>40</b>

## Introduction

1. The Contact and Assessment Team (CAT) is responsible for assessing all unsolicited information coming into the Bar Standards Board (BSB). CAT should consider all information and decide whether further action or consideration is necessary either within CAT or by other teams or departments within the BSB.
2. Part 5.A1 of the Enforcement Decision Regulations 2019 sets out the regulatory provisions for the assessment of reports. This document sets out the process undertaken by CAT when assessing reports and incoming information and gives guidance on how to record information on the Case Management System (CMS) It also gives decision making guidance to assessors when considering questions arising within the process. It should be read in conjunction with the following policies and guidance:
  - ROD03 – Putting assessments on hold
  - BSB05 – Barristers working for the BSB
  - Anti Money Laundering Policy
  - ROD05 – Referrals to Supervision from CAT/L&H/ROD
  - BSB12 - Supervision strategy
  - ROD03 – Guidance for LeO on referring cases
  - Operational Guidance on Interventions
  - Statutory Intervention Strategy
  - Requests for Reasonable Adjustments Under the Equality Act

## Registering a case on the CMS

3. Information can come into the BSB through email, post, telephone or through our Online Reporting Form. Wherever possible, to optimise efficiency, those providing information should be directed to the Online Reporting Form unless reasonable adjustments are needed. When new information is received via the Online Reporting Form by the BSB, a case record should be created in the Case Management System (CMS) and the information should be saved to the case.

4. The steps for registering a report on the CMS depend on the route by which it was received.

### **Information received through the online reporting form**

5. When a report is received through the Online Reporting Form, it will appear in the “CAT – All New Cases (without caseworker)” view of the CMS. CAT staff (normally the Assessment Assistant) should open the case and update the necessary fields to formally register the report against the barrister/chambers/entity and the person providing the information. This includes:
  - Change the status from “received” to “under assessment”
  - Complete all mandatory fields in the General tab
  - Check and confirm the contact records in the Contacts tab ensuring that the address and identity of the parties match.
  - Undertaking basic checks for linked/duplicate cases.
6. The Assessment Assistant should then change the case owner to the Head of Contact and Assessment (HoCA) or the Senior Assessment Officer (SAO). The HoCA or the SAO should either assess or assign the case to an Assessment Officer (AO) for assessment.
7. The AO should then:
  - Confirm contact information address and identity.
  - Complete all data fields in the CAT Categories tab and case information data fields.
  - Complete the assessment process explained below.

### **Information received initially by telephone.**

8. The BSB will not normally accept reports by telephone. However, we should do so in order to provide reasonable adjustments to those who require them or where it is clear that the person wanting to make the report will find it difficult to put their concerns in writing. If a caller requests an adjustment to allow the report taken by telephone or we consider taking the report over the telephone is reasonable, then the call handler should arrange for this to be done at a time convenient to the caller subject to availability of staff. It will not always be possible to do this at the time of the initial call. However, CAT should endeavour to arrange a time for this as soon as reasonably practicable.

9. A case should be opened in the CMS and the fields under the General and Case Contacts tab should be completed. The status should be recorded as “CAT Pending.”
10. All staff in CAT can take down reports over the telephone. The following process should normally be followed but may be altered to accommodate the specific needs of the caller. The call handler should:
  - 10.1. take down the concerns and type them into a word document.
  - 10.2. make a note of any supporting material that the person providing the report wants to provide.
  - 10.3. send the document detailing the concerns to the person providing the report for their confirmation along with a declaration for the person making the report to complete. They should be invited to provide any documentation they wish to support their report.
11. Once the confirmation, declaration and any supporting material are received, the Assessment Assistant should save all the documentation to the case. As the time recording for performance indicators states on the date the report was received, change the date received in the CMS to the date that the confirmation, declaration and supporting material are received.
12. When the further information is received, the Assessment Assistant should complete all steps in paragraph 13, below.

**Information received by email or post that is clearly intended to be a report**

13. While CAT staff should encourage submission of reports through the online form, simply because information is provided through other means, does not mean that we will not treat the matter as a report.
  - 13.1. If information is received through the post or email or by telephone, and it is clear that the person providing the report intended it to be treated and assessed as a report, Assessment Assistant will be responsible for registering the communication as new case in the CMS. This includes:
    - Creating a case in the CMS.
    - Complete all mandatory fields in the General tab.
    - Check and confirm the records in the Contacts tab ensuring that the address and identity match.
    - Saving all documents in the CMS.
    - Acknowledging the report and providing service information and GDPR notice.
    - Undertaking basic checks for linked/duplicate cases.
    - Completing the Equality and Diversity data fields in the CMS.

13.2. The Assessment Assistant should then change the case owner to the Head of Contact and Assessment (HoCA) or the Senior Assessment Officer (SAO). The HoCA or the SAO should either assess or assign the case to an Assessment Officer (AO) for assessment.

13.3. The assigned assessor should then:

- Confirm contact information address and identity.
- Complete all data fields in the CAT Categories tab and case information data fields.
- Complete the assessment process explained below.

**Information received where it is unclear whether the provider intended to make a report**

14. Some information will be received where it is unclear whether the person intended to make a report, or there is clearly not enough information to assess the concern. In these cases the process in the paragraphs below should be followed.

15. The Assessment Assistant should register a case in CMS and the fields under the General and Case Contacts tab should be completed. The status should be recorded as CAT – Pending.

16. The Assessment Assistant should write to the person and invite them to provide more information and/or confirm that they intended for the matter to be assessed as a report. A reasonable amount of time, normally not less than 14 days should be allowed for this further information.

17. The Assessment Assistant should then either retain the case in their name or put it in the name of an Assessment Officer. These types of cases should be distributed evenly between staff in CAT. The Assessment Assistant will decide to whom to assign the case to and overall numbers of this type of case will be monitored by the SAO/HoCA.

18. When the further information and/or clarification is received, and it is clear that the person intended to make a report, then the case holder should change the status of the case to “under assessment” and update the CMS with the date the information was received. The case holder should follow the steps at paragraphs 11, 12 and 13, above.

19. If, after a reasonable time, no further information is received, the assessor should assess the case on the information available.

20. It is important that we are clear about whether the person intended to make a report, because this will impact on who should be informed about what action, if any, we have taken. For more detail, see paragraph 132 on informing the parties.

## **Overview of the Assessment Process**

21. The assessment process is embedded in the functionality of the Case Management section (CMS) of the CRM. This means that at each of the main stages of the process, the CMS will prompt users as to what they should do.

22. There are five stages to the process of assessing reports

- 22.1. Stage 1 – Screening / Pre-Assessment
- 22.2. Stage 2 – Identification of issues and Categorising the case
- 22.3. Stage 3 – Risk Assessment
- 22.4. Stage 4 – Allocation/Action in CAT
- 22.5. Stage 5 – Informing the relevant people
- 22.6. Stage 6 – Requests for Review

23. Each of these stages are set out in more detail below.

24. Additionally, there are several issues related to reports that can arise at any time in the process, which may need to be considered. The CMS does not prompt assessors to consider these issues, so assessors need to keep them in mind throughout the process. The issues are:

- 24.1. Reasonable adjustments (see paragraph 148)
- 24.2. Wellbeing (see paragraph 150)
- 24.3. Legal Advice (see paragraph 154)
- 24.4. Fitness to practise (see paragraph 157)
- 24.5. Interim suspension (see paragraph 162)
- 24.6. Interventions (see paragraph 167)
- 24.7. Putting the assessment on hold (see paragraph 171)
- 24.8. Splitting cases (see paragraph 175)
- 24.9. Money laundering and terrorist financing (see paragraph 177)

25. These topics are discussed in more detail below.

## **Stage 1 – Screening**

26. The screening stage involves a series of questions that need to be answered to establish if the report should be risk assessed. If any of the answers indicate that the report should not continue to be assessed, the assessment will be complete

and decision letters should be sent out if appropriate (see paragraph 129, below). The case should then be closed on the CRM.

27. The screening questions will also assess if there are any issues that need to be addressed in handling the report.

28. The questions posed in this stage are:

- 28.1. Is the report about a person or organisation that we regulate.?
- 28.2. Is the report a service complaint?
- 28.3. Is there any reason why the report requires special handling?
- 28.4. Can the report be assessed in its current format?
- 28.5. Does the report relate to a matter that is currently being considered within the BSB?
- 28.6. Is the matter more appropriately considered by another body (such as LeO or the JCIO)?
- 28.7. Does the report relate to an AETO that delivers the academic/vocational component of training for prospective barristers?
- 28.8. Has the report been provided by an individual whom we have advised that we will cease or limit communications?
- 28.9. Is there any reason that this should not be assessed?

29. Each of these questions are discussed in more detail below.

### **Is the report about a person or organisation that we regulate?**

30. This question is designed to establish if the report is about someone we regulate. The CMS provides the following options:

- A barrister
- Pupil
- Chambers
- A BSB entity
- Manager/Employee of chambers/BSB entity
- Authorised Education & Training Organisation (AETO)
- Other subject in which the BSB has a regulatory interest
- None

31. If the report is about a barrister, entity, chambers, pupil, or AETO then this indicates that the report is potentially about something we can look at subject to the other screening questions.

32. However, there may be subjects which do not fall into these categories but we nonetheless have a regulatory interest. If this is the case, "Other subject in which the BSB has a regulatory interest" should be selected. For example, a report may be about a concern with the BSB Handbook. This would not relate to any of



the named types of subjects, however, it is clearly something that may need to be considered further in the assessment process.

33. It may be that report could be about more than one subject. An example of this may be a concern of bullying which names specific individuals within a Chambers, but which also relates to the culture of the Chambers. Assessors should undertake separate assessments for each named individual and against the Chambers. In most cases, the need for separate cases and assessments will have been identified before Stage 1. However, if it becomes apparent during the assessment that the report is about more than one subject, then additional cases should be opened to allow for separate assessments of each subject and the cases linked.

### **Is the report a service complaint?**

34. The assessment process only applies to regulatory concerns and not to concerns about the service provided by staff. We have tried on the website, to direct those who want to complain about the BSB's service to the appropriate procedure. However, the CAT team may receive service complaints via the Online Reporting Form. If the report amounts to a complaint about the service we have provided, the should not be assessed further. Instead, the report will be considered in line with our Service Complaints Policy and the person should be informed of this.

35. If the report is about a barrister working for the BSB, then it will require special handling. Whether or not the report will be assessed under this process or whether it should be treated as a service complaint will be determined in accordance with the policy on Barristers Working for the BSB.

### **Is there any reason why the report requires special handling?**

36. This question is not designed to determine whether we can look at a report but is intended to flag up if there is need to handle the report in a particular way. Special handling simply means that there is something about the case that indicates that there are potential sensitivities with the report.

37. Examples of when a case may require special handling

37.1. Barristers working for the BSB

37.2. Sexual harassment

37.3. Information that is subject to reporting restrictions such as:

- Family Court Documents
- Court documents where there is an order restricting their use
- Other documents of a sensitive nature that should be handled with care

- 37.4. Any information that the HoCA directs should be handled differently. For example, the HoCA, may decide where numerous reports are received about a barrister for the same, or very similar conduct, that they should all be assessed together.

### **Can the report be assessed in its current format?**

38. This question is limited to whether the report is a format that we cannot understand and/or access so are not able to progress with further with the assessment immediately. This may include:

- Information in a different language;
- Electronic files that cannot be opened or are corrupted;
- Information that is incomplete.

39. If the report cannot be assessed, then the assessor should make reasonable enquiries to see if there is anything that can be done to get the information in a usable format to allow the assessment to continue. This could include asking the person providing the information in a different format, seeking translations, and requesting further information.

40. If reasonable efforts have been made and the report still cannot be understood or accessed, then the assessment will come to an end and the case should be closed.

### **Does the report relate to a matter that is currently being considered within the BSB?**

41. This question is designed to filter out reports that relate to cases or issues that are already being considered either by CAT or elsewhere in the BSB. Normally, this will have been identified at the time the report is received and the Assessment Assistant will have directed it to the right owner without registering it as report. However, the early checks by the Assessment Assistant are only preliminary and it may not be immediately apparent that the report relates to something already under consideration.

42. At the screening stage, the assessor will consider whether the issue of concern highlighted in the report is one that is already being considered (or has already been considered) by the BSB.

- 42.1. If the report is a **substantial duplicate** of another case within CAT, the assessor should link the case to the original case. The new case should then be closed.

- 42.2. If it is report relating to a matter already **assessed by CAT but not allocated**, the assessor should consider whether there is information in the new report which could change the original risk assessment or allocation decision.
- 42.3. If it relates to a **matter currently being assessed**, or currently ‘on hold’, the assessor should consider whether the report should be incorporated into the ongoing assessment. If it should be incorporated, the assessment should not continue, and the case should be closed but linked to the existing case. The allocated Assessment Officer for the existing case should be informed so that they can ensure that the additional information is considered. If the decision is that the report should not be incorporated into the existing assessment, then the assessment will continue as a separate case.
- 42.4. If the report relates to an allegation that has been or is being investigated or to an ongoing or closed disciplinary case, the assessor should not proceed to the next stages of the assessment. Instead, the Case Officer in the Investigations and Enforcement Team or the Head of Investigations and Enforcement should be informed, the new case closed and linked to the already existing case.

43. If the assessor is in any doubt about the action to take, they should seek advice from the person assigned to the already existing case in the CMS, or from the SAO or the HoCA.

#### **Is the matter more appropriately considered by another organisation?**

44. This question is designed to screen out cases that are clearly more appropriate for another organisation to consider because our regulations indicate that may not be able to deal with the concerns. Under the Enforcement Decision Regulations, the BSB has the power (and in some instances, the duty) to refer reports to other organisations. The relevant regulations are:

- rE4 – Legal Ombudsman
- rE5 – Person acting in a part-time/temporary judicial or quasi-judicial capacity
- rE9 – Full-time judicial office
- rE10 – Reference to any other person

45. At this stage, a referral to another body should be limited to matters where it is clear that the matter should be referred elsewhere under the regulations. However, some information that could potentially be referred to another organisation in line with rE4, rE5, rE9 or rE10 may still need to be fully assessed and it may be the assessor will decide, at the allocation stage (Stage 4), that the report should be referred to another organisation.

46. How the powers listed in paragraph 44 above should be used are discussed in the paragraphs below.
47. rE4 – Reference to Legal Ombudsman – if the report is from a person entitled to complain to the Legal Ombudsman then the assessor must refer the report to the Legal Ombudsman. This is because regulation rE4 prohibits the BSB from looking at complaints that fall within the Legal Ombudsman’s jurisdiction. The assessor should consider the Legal Ombudsman Scheme Rules in establishing whether the person is entitled to complain to the Legal Ombudsman, Generally, a client (or potential client) of a barrister is entitled to complain to the Legal Ombudsman but a person cannot normally complain to the Legal Ombudsman about a barrister who was unregistered at the time the problem occurred.
48. rE5 – Person acting in a part-time/temporary judicial or quasi-judicial capacity
- 48.1. Part time/temporary judicial capacity – Some barristers hold part-time or temporary judicial appointments. For example, some barristers will sit as deputy district judges whilst still practising as a barrister. If the report relates to a barrister’s conduct in the context of their actions while sitting as a judge, then the assessor must refer the matter to the Judicial Conduct Investigations Office and request notification of any outcome of the consideration of the matter.
- 48.2. Quasi-judicial capacity – Some barristers will also sit in decision making positions such as if they are sitting as an arbitrator or on a regulatory disciplinary panel. The BSB Handbook defines quasi-judicial capacity as: “acting in any capacity which requires an approach of a judicial nature and compliance with the basic requirements of natural justice; and/or, as an arbitrator; or, as a neutral evaluator between parties; or, as a mediator.”
49. If the report relates to the barrister’s conduct while sitting in a part-time judicial capacity, then the report must be referred to the body overseeing those proceedings, along with a request for notification of any outcome of the consideration of the matter.
50. These referrals must be made unless there appears to be no appropriate body, or the appropriate body identified refuses to deal with the report (rE6.1 and 2).
51. rE9 – Full-time judicial office – If a report relates to a person that has, since the time of the conduct referred to in the report, been appointed to and continues to hold full-time judicial office and has ceased to practise, then the person making the report must be directed to the Lord Chancellor or the Office of Judicial Complaints or to a body with responsibility for assessing complaints about judges.

52. rE10 – Any other person – It will be less likely that this option will be exercised at the screening stage of the CAT process. This is because the risk rating may be a relevant factor in determining whether the report would more appropriately be dealt with by another body. However, an example of a referral at this stage to another person may be if the barrister working in an employed capacity and not providing legal services, such as a person working as a Case Officer for another regulator. A concern arising out of conduct in that role may be most appropriately dealt with by the employer.

53. **General information about referring to other bodies** - If, for any of the reasons outlined above, the assessor determines that the information should be referred to another body, then once the referral is made, the case should be closed on the CMS and the person who made the report should be told of the outcome.

54. If the report is referred to the appropriate body. The case will be closed on the CMS. However, if we decide that the body has not dealt with it satisfactorily or within a reasonable time, we may decide to assess the matter in line with the rest of the assessment process. (rE7)

**Does the report relate to an AETO (Authorised Education and Training Organisation) that delivers the academic/vocational component of training for prospective barristers?**

55. This question is designed to screen out reports about AETOs (training providers) that deliver the academic component of training for prospective barrister. Concerns about the academic part of the training do not fall within the BSB's remit to deal with and need to be referred to the relevant provider. Therefore, if the report is about such issues, the assessment will not go any further. The person providing the report will need to be signposted to the relevant AETO. For example, if the AETO is a university delivering the academic component of training, the person providing the report should be signposted to the university or the Office of the Independent Adjudicator for Higher Education. If the assessor does not know where to signpost, then the person providing the report will be directed to the Authorisations team or the Supervision team.

56. Some AETOs also provide vocational training i.e. the work-based learning component of the course (pupillage). Concerns about this aspect of the AETOs work, do fall within the BSB's remit. Therefore, if the report relates to an AETO providing pupillage training, then, subject to any other screening questions, the assessment of the report should continue.

57. However, if the report relates to an applicable person working at the AETO, then this is a factor to consider when deciding whether the assessment should continue. For example, if the report is about the conduct of a teacher who is also a barrister, then the report should be assessed.

**Has the report been provided by an individual whom we have advised we will cease or limit communications?**

58. The BSB has the right to restrict communications with some individuals (see the Dignity at Work Policy). Such restrictions can be imposed for a number of reasons but quite often it will be because the concerns have previously been addressed or the person has made repeated reports about very similar, or the same, issues. We therefore may decide not to formally assess further reports that they provide.
59. Assessors should consider carefully any reports made by a person subject to restrictions. Restrictions do not mean that we will not deal with new concerns that present a regulatory risk so assessors need to be careful to avoid closing cases where there is a legitimate issue of concern that should be addressed.
60. The assessor should consider the nature of the new report to see if assessment is necessary. If the assessor considers it appropriate not to assess the report, then they should refer the report to a SAO or the HoCA to confirm this decision.
61. If the assessor, in conjunction with the SAO or HoCA, decides that the matter should not be assessed, the case should be closed on the CMS. In such cases, the person providing the report does not need to be informed of the decision if it is clear from previous correspondence that responses will not be given. However, in deciding whether the person who made the report should be informed of the outcome, the assessor should take in account the length of time since the restriction was put in place. If it has been more than a year since the last communication from the BSB, the assessor should consider writing to the person repeating the previous restriction.

**Is there any reason that this report should not be assessed?**

62. If a report has not been screened out as a result of the answers to the other questions, it will normally proceed through the rest of the assessment stages. However, the BSB may receive some information that would otherwise satisfy the questions posed above but that still should not proceed past the screening stage. This will usually be where the report clearly raises no issues that could be of regulatory concern to the BSB or arise from the person's misunderstanding of our role, the regulated person's role, the professional requirements placed on those we regulate or of the legal system.
63. For example, if someone informs the BSB that they do not like the colour of a Chamber's logo, this is not a matter in which the BSB would have any regulatory interest. A consumer misunderstanding of the BSB's function may have led to

the report. Another example may be information from the neighbour of a barrister alleging that a barrister's car was parked too close to their drive.

64. If there is a reason that the report should not be assessed, then the assessment of the report should stop, and the case be closed. The reason will be recorded in a free text box and the assessor will select in the appropriate field in CMS if there has been a consumer misunderstanding. Data on cases marked "consumer misunderstanding" will be reviewed periodically to identify any topics that could be addressed more generally, such as the BSB website or stakeholder networks, to promote better public understanding.

## **Stage 2 – Identification of Issues and categorising the case**

65. This stage covers the identification of the regulatory issues in the report and any potential breaches of the Handbook as well the risks in the BSB's Risk Index that are potentially affected. Assessors may need to make further enquiries this stage in order to determine what the issues are. If the report provided does not disclose a potential breach or does not engage any of the BSB's regulatory risks, then the assessor should close the case and record whether the concerns in the report are as a result of a "consumer misunderstanding".

66. In this stage, the assessor should

- 66.1. Make any necessary enquiries on the case;
- 66.2. Complete the categorisation data fields
- 66.3. Identify any regulatory issues
- 66.4. Identify the Regulatory Risks
- 66.5. Identify any potential breaches of the Handbook
- 66.6. Record Aspects and potential breaches
- 66.7. Conclude the assessment or proceed to the Risk Assessment

67. Each of these steps is explained below.

### **Preliminary Enquiries**

68. If the assessor considers that further information is necessary in order to identify whether there is a potential breach of the Handbook or in order to undertake a meaningful assessment of risk, then they can undertake preliminary enquiries. The Enforcement Decision Regulations give the Commissioner power to gather information from any source for the purposes of assessing whether there has been a potential breach of the Handbook (rE2.1). Assessment Officers have been authorised by the Commissioner to exercise this power.

69. In most cases where enquiries are necessary, the enquiries will be limited to clarifying issues and obtaining enough documentation from the person who made

the report to enable the assessment to proceed. But in some cases, it may be necessary to contact the applicable person(s) or make more substantial enquiries. Any enquiries of an applicable person(s) should be limited to factual matters and should not stray into “investigating” the report. This will be rare. However, if the applicable person is approached for information, the assessor may need to provide that information to the person making the report for comment.

70. Where further enquiries are needed, the assessor should write to, or telephone, the person asking for the relevant information and ensure a record of the enquiry is made on the CMS. If the report is received by telephone the assessor should also make a full written note of the response received. This note will be saved as a document in the CMS.

### **Categorisation of the case**

71. The assessor should complete the “CAT Categories” tab in the CMS. It is not mandatory that the assessor completes this tab at this stage. However, the data fields in this tab must be completed at some stage during the assessment process. The CMS will not allow allocation or closure of the case until these fields are completed. The fields in this tab do not determine the outcome of the assessment. However, they enable us to capture the nature of the case, the subject, and the person providing the information. They are necessary so that we can analyse trends in the future.

72. The categories captured within the CMS are:

- Who/What is the information about?
- Date of conduct
- Nature of the report
- Setting/Context of the activity giving rise to the report
- Area of law
- Topic

73. There also a number of tags that help us further categorise the report. These are

- Sexual harassment
- Public Access
- Litigant in Person
- Conduct towards pupil.

### **Identification of Regulatory Issues**

74. The assessor should identify the regulatory issues that arise from the report. Information provided to the BSB may cover a wide range of matters. Some of that information may be of great concern to the person who reported it but may



not involve any regulatory issues. This step of the process requires the assessor to distil the regulatory issues from other concerns that may be included in the report. If a concern raised by the person does not involve any regulatory issues, then it will not be necessary to risk assess that concern. However, the concerns that do raise a regulatory issue will be risk assessed. There is a free text box in which to the assessor can make a note of the specific regulatory issues that are being assessed. This report will have already been recorded elsewhere. However, the box functions as a place for the assessor to make notes to assist in completing the fields for the regulatory objectives, aspects, and regulatory risks.

75. For example: A person writes to the BSB about the barrister prosecuting in the Crown Court. They tell us that they found the prosecuting barrister's wig and gown to be distracting. They also say that the barrister left a bundle of papers in the café next to the court. There are two concerns raised by the person providing the report – court dress and leaving papers behind in public. The concern about wearing a wig and gown in court is not a regulatory issue as that is something set by the courts. However, leaving papers in a café is a regulatory issue. Amongst other things, barristers are required to keep the affairs of their clients confidential; losing papers puts this confidentiality at risk. Additionally, barristers are required to comply with legal obligations; there may be data protection concerns in losing papers. The first issue would not be covered by the risk assessment but the second would.

### **Regulatory Risks**

76. In all cases where there is a regulatory issue(s), the assessor must identify which of the BSB's regulatory risks appear to be impacted by the identified regulatory issues. The assessor should select the relevant regulatory risks from the Risk Index that are engaged by the information in the report. The assessor should normally select no more than four of the most prominent regulatory risks that are engaged by the information disclosed.

77. The regulatory risks are as follows:

- Failure to provide a proper standard of service
- Unethical conduct
- Lack of professional competence
- Failure in the management of an individual practice or chambers
- Failure in training provision
- Profession fails to reflect the diversity of society
- Access to justice failures
- Commercial and other external pressure are detrimental to the consumer and/or the public interest.

78. The Board has set a tolerance for each of the regulatory risks. These tolerances have been embedded into the CMS and influence the Allocation decision in Stage 4, below.

### **Potential breach of the Handbook**

79. Where there is potential breach of the Handbook, the assessor must identify and record the potential breach at this stage. For there to be a potential breach, the report must be supported by appropriate evidence. This does not mean that the breach should be fully evidenced at this stage. However, a potential breach of the Handbook should not be based on rumour, gossip or speculation. Those making reports are encouraged to submit any relevant documentary evidence with their report. However, as noted in the section above, the assessor may need to make further enquiries to clarify the report and determine whether there is more evidence available to substantiate any potential breach of the Handbook.

80. The assessor should consider not only what may be alleged by the person who made the report, but also the wider context in which the conduct occurred. In assessing whether there has been a potential breach, the assessor should ensure they refer to the Handbook provisions. For example, if the report states that the barrister misled the court, but from the evidence and context provided it appears that the barrister was simply putting his or her client's case, then whilst "misleading the court" is a potential breach of the Handbook, the conduct described does not amount to misleading the court so there would not be a potential breach of the Handbook.

81. If one or more potential breaches of the Handbook are identified, then this needs to be recorded on the CMS. Each potential breach should be recorded as an aspect (see paragraphs 83 to 84 below).

82. Regardless of whether there is a potential breach of the Handbook, the case will still be assessed. However, for the matter to be allocated to Investigations and Enforcement Team for formal investigation, there must be an identified potential breach of the Handbook (see Allocation starting at paragraph 90 below).

### **Recording of Aspects and potential breaches**

83. If the report raises concerns about the conduct of a barrister, the assessor should to record these concerns in the CMS. This is done in the CAT Categories and Identification of Issues tabs. The assessor should, follow the following steps:

- In the CAT Categories tab, select a topic of "conduct concern";
- Select all relevant aspects from the list of aspects in the "Identification of Issues" tab in the CMS;

- Record whether they consider each of the aspects amounts to a potential breach of the handbook as described above.

84. The list covers all the potential breaches of the Code, although some aspects may cover a range of Handbook provisions. If an assessor is unsure which aspect(s) to select, they should seek advice from the SAO or HoCA.

85. The assessor should complete the data fields in the CAT categories tab of the CMS. This needs to be done before completing the case but it will normally be best to complete these fields when identifying issues.

### **Concluding the Assessment or Proceeding to a Risk Assessment**

86. If there are no regulatory issues or risks from the Risk Index engaged, then the report should not proceed any further and the case should be closed. If the assessor considers that the report provided relates to a misunderstanding on the part of the person who reported the concern, then this should be recorded as a “consumer misunderstanding” and the case closed. For example, if the concern is that a barrister misled the court, but the report suggests that he or she was actually just putting his or her client’s case,

### **Stage 3 – Risk Assessment**

87. The next stage in the process is the risk assessment. The assessor should have regard to the Risk Assessment Policy for guidance in completing the risk assessment.

88. To carry out the risk assessment, the assessor should create a new risk assessment in the Risk Assessment tab of CMS. If it is an initial risk assessment the assessor should select initial risk assessment. If it is a further risk assessment based on new information, or if it is to amend a previous risk assessment, the assessor should select the appropriate value for the type of risk assessment.

89. The assessor should then complete the substance and impact fields of the risk assessment form on CMS, applying the Risk Assessment Policy. Once completed, the assessor will need indicate on the CMS if they agree with the final risk rating. The final rating can be overridden. The assessor should consult the Risk Assessment Methodology for guidance on whether the risk should be overridden.

### **Stage 4 – Allocation/Action taken in CAT**

90. This stage covers the allocation of the case, if any, to allow regulatory action to be taken. It is designed to ensure that reports which have substance, and which has evidence of impact/potential impact on our regulatory objectives, is passed to the relevant team(s) to act. All reports that have reached this stage have the potential to be allocated to more than one team.
91. To allocate a case, the CMS will display the available options based on the risk score and the risk tolerance. The risk score will have been set during Stage 3 – Risk Assessment. The regulatory risks, selected in Stage 2, each have tolerances that are set by the Board. The tolerances are embedded in the CMS so depending on the risk rating and the tolerance associated with the risks, the system will display the appropriate Allocation options. The assessor should consider the topic of the report along with whether there is a potential breach of the Handbook, to determine to which team the report should be allocated.
92. The table below sets out the allocation action CAT will take according to risk score and tolerance. Annex 1 sets out a flow-chart that provides an overview of the process.

<b>Allocation</b>	<b>Risk Score (tolerance)</b>	<b>Explanation</b>
<b>Enforcement</b>	Red (all tolerances) Amber (all tolerances) Yellow (very low risk tolerance).	Reports where a potential breach of the Handbook is identified, and that have one of these risk ratings will always be considered for Enforcement allocation.  However, there are a number of questions that will need to be answered (discussed below) to decide whether the report should be allocated to Enforcement.  Green risks, and Yellow risks that are described as “low tolerance” or “tolerate if justified”, will not be considered for Enforcement allocation.
<b>Supervision</b>	Red (all tolerances) Amber (all tolerances) Yellow (all tolerances)	All reports with these risk scores will be considered for allocation to Supervision either in conjunction with an allocation to Enforcement/another team or by itself.
<b>Other teams</b>	Red (all tolerances) Amber (all tolerances)	All reports that pass through the risk assessment with one of these risk scores will be considered for allocation to other teams, or for action within CAT. A series of questions (discussed below) will help the

	Yellow (all tolerances)	assessor determine this. A report can be allocated to multiple teams.
<b>External</b>	Red (all tolerances) Amber (all tolerances) Yellow (all tolerances)	<p>If a report was not referred externally at the screening stage, then an external referral will be considered again in the allocation stage. This may have been the case if the matter appeared to disclose regulatory issues that required a risk assessment prior to deciding whether an external referral was appropriate.</p> <p>A referral to an external stakeholder can be made in conjunction with an internal allocation. However, this would not normally happen with an allocation to enforcement.</p>
<b>No Action or action taken in CAT</b>	Green Yellow (generally high tolerance)	<p>Reports assessed as Green will not be allocated to Enforcement or Supervision and will normally only be to be acted on by CAT if action is appropriate.</p> <p>However, if the allocation process results in a Yellow or higher report not being allocated, the matter will be escalated to the HoCA for a review. The HoCA may consult with colleagues from different teams to determine whether it should be allocated to any team.</p>

### **Allocation to Enforcement**

#### **All Red and Amber or Yellow (with a very low tolerance) risk ratings**

93. If the risk is Red, Amber, or Yellow (with a very low tolerance), the assessor should consider whether there is a potential breach of the Handbook, or whether the disqualification condition is potentially satisfied. Cases cannot be allocated to Enforcement unless there is a potential breach.

94. All risks with these ratings should also be considered for allocation to Supervision (see paragraph 0) and/or other teams Whether or not an allocation to one of these teams is appropriate will depend on the nature of the report.

*Is there a potential breach of the Handbook?*

- 94.1. If there is **not a potential breach** of the Handbook, the assessor should not allocate to Enforcement, and should consider whether the report should be allocated to Supervision (discussed below) and other teams.
- 94.2. If there **is a potential breach**, and the risk is either **red or amber with very low tolerance**, then the assessor should consider whether there is any reason which indicates that the case should **not** be referred for consideration of Enforcement action (see paragraph 95 below)
- 94.3. If there **is a potential breach**, and the risk is **Amber (low tolerance), Amber (tolerate if justified), or Yellow (very low tolerance)**, the assessor must consider whether certain additional criteria have been met that would support a referral for consideration of Enforcement action. (see paragraph 99 below)

*Is there any reason why the case should not be referred for consideration of enforcement action?*

95. If there **is a potential breach**, and the risk is either **red or amber with very low tolerance**, then the assessor should, before making the allocation, consider whether there is any reason which would indicate that the case should not be referred for Enforcement action.
96. Even though the risk level and the presence of a potential breach suggests a matter should be allocated to Enforcement, there may be occasions where it may not be appropriate to do so. The following list is not exhaustive but provides an indication of the reasons there may be for not making the allocation.
- Necessary evidence is unlikely to be available or key witnesses are not contactable or willing to assist;
  - The barrister has died or is unable to participate in any proceedings due to ill health;
  - The reporter is not contactable, and the potential breach could not be proven without their evidence.
  - The lapse of time since the events would clearly impact on the memories of relevant witnesses to the conduct to the extent that it would be unfair to expect them to recall the matters or it would be impossible to rely on the evidence provided by them;
  - It does not appear that any Handbook Outcome has been adversely affected;

- The same matter is being considered or has been considered elsewhere. An example of this may be where another regulator has looked at the report in detail, the same issues are involved, and the other regulator decided not to take action for reasons that are relevant to the BSB's jurisdiction;
- The person providing the report has repeatedly made or reiterated allegations which have previously been found to lack substance and which appear to be vexatious in nature, or which are very similar or related and have been considered not previously as not appropriate for further consideration;
- The report amounts to a challenge to a decision of a court; or
- Whether, despite the risk score, the potential breach of the Handbook is trivial and taking any further action would be disproportionate in light of the risk to the Regulatory Objectives and professional principles. This may be where several concerns are raised that increase the risk score, but the potential breach itself is minor.

97. If the assessor decides that the case should not be referred to Enforcement despite the risk rating, the reasons for this decision must be recorded.

98. If the answers to the questions above do not indicate any reason why the case should not be referred for enforcement action, the assessor must make the allocation.

*Additional criteria for referring amber or yellow rated cases for consideration of Enforcement action*

99. If there is a potential breach, and it is an **Amber (low tolerance)**, **Amber (tolerate if justified)** or **Yellow (very low tolerance)**, then there will normally need to be certain additional factors that need to be present for the case to be referred to Enforcement. These factors indicate that the conduct or its consequences present sufficient risk to the regulatory objectives to justify Enforcement action.

100. If the report involves the one or more of the following, it will normally present sufficient risk to justify Enforcement action:

- There is evidence that the breach was intentional or reckless;
- Previous failure to comply with enforcement action;
- Failure to mitigate breaches;
- There is evidence of a lack of insight by the barrister or relevant person;
- Failure to self-report under rC65;
- The report is a self-report under rc65.1- 5 or rC65.7;
- The report is a report of serious misconduct under rC66;
- The breach occurred over a long period or was repeated; or
- There is evidence that the barrister was working outside normal specialisms or beyond competence when this breach occurred.

101. All risks with these ratings should also be considered for allocation to Supervision (see paragraphs 0 to 107 below) and/or other teams (see paragraphs from 108) in conjunction with an allocation to Enforcement

### **Yellow risks (low tolerance and tolerate if justified)**

102. If the risk is either Yellow (low tolerance) or Yellow (tolerate if justified) then an allocation to Enforcement will not normally be appropriate. as the risk to the regulatory objectives is low. However, it may still be appropriate to allocate the case to Supervision and/or other teams.

### **Formal decision on the allocation**

103. Assessors should note that an allocation to Enforcement is only a recommendation that the potential breaches should be investigated with a view to taking enforcement action. The formal decision on whether the case is appropriate for investigation will be taken by staff in the Investigations and Enforcement Team. It is therefore possible that a case might be referred back to CAT for reconsideration of the referral.

### **Allocation to Supervision/Training Supervision**

#### **All Red, Amber or Yellow risk ratings**

104. In deciding whether the case should be allocated to Supervision, the assessor should consider whether the report relates to individual barristers, pupils, chambers, BSB entities or AETOs. It is with these types of organisations and individuals that Supervision can work. Typically, Supervision's focus is to review the control environment and risk management procedures in chambers/entities/AETOs, set actions and monitor follow-up. The Supervision Team do not normally carry out supervision of individuals but there may be circumstances where this is appropriate.

105. Supervision particularly focus on:

- Governance arrangements
- Risk management and internal controls
- Compliance with BSB regulations and other obligations
- Organisational culture
- Effective administration and practice management
- The way services are delivered to lay clients/client care
- Whether training meets the criteria in the Authorisation Framework
- Equality and diversity
- Viability/sudden cessation of practice/disorderly closure
- Money Laundering and Terrorist Financing



106. Supervision can take action alone, or after enforcement action is complete (to ensure that controls are in place to prevent recurrence). They can also refer matters for Enforcement or work in tandem with enforcement activity to ensure that the public, pupils or other vulnerable persons are protected whilst disciplinary action is in progress. Supervision may also work in tandem with the Authorisations team where there is concern about the authorised status of a BSB entity or AETO. Details of supervisions work can be found in the Supervision Strategy.

107. A case will be suitable for allocation to supervision if the report relates to one or more of the issues listed in paragraph 105. Assessors should take in account whether the Supervision team would be able to take any action in relation to the report, such as carrying out a chambers visit or contacting relevant people in chambers to address the concern. Assessors should consult staff in the Supervision Team if they are unsure about whether a matter is suitable for supervisory action. The assessor may also have regard for policy ROD05 – Referrals to Supervision from CAT/L&H/ROD and the Supervision Strategy.

### **Allocation to Authorisations and Examinations**

108. The Authorisations team is responsible for considering applications for waivers, exemptions, and authorisations. Since the Authorisations team's work is mainly application based, most information coming into the BSB for Authorisations, will come directly to them. However, CAT may receive reports that would be relevant to the work of Authorisations.

109. Information that should normally be allocated to Authorisations includes:

- Concerns about an AETO and the standard of training.
- Concerns about an individual's eligibility. For example, if information is received about a person applying for an exemption, and that information may impact their eligibility for the exemption, the information should be allocated to Authorisations.
- Concerns about whether someone has provided the correct information on their application.
- Concerns about the Authorisations process.
- Concerns about paying fees for applications.

110. If a report involves any of those topics, it should be allocated to Authorisations. However, the assessor should be aware that the list is not exhaustive. If the report contains information that may impact on the work of the Authorisation team, then it should be allocated to Authorisations.

111. The Examinations team is responsible for setting the Ethics exam and working with AETOs who provide the academic portion of training to be a barrister. They oversee courses and audit AETOs.
112. Matters which could be allocated to Examinations are wide ranging. However, if the assessor is of the view that the contents of the report may have an impact on the work of the Examinations team, the report should be allocated to them.

### **Allocation to the Communications Team**

113. Allocations to the Communications Team (Comms) can be made regardless of the risk level and can be in addition to allocations other teams except Enforcement.
114. A formal allocation to Comms should only be made where there is some action that the team can take that may assist with addressing the issues of concern. For example, including an article in the Regulatory Update to the profession about a particular issue or adding to/changing some information on the BSB website.
115. An allocation to Comms should **not** be made where a case has been referred for consideration of enforcement action. This is because any action by Comms could compromise or prejudice the investigation and/or any subsequent enforcement proceedings.
116. **Cases that may attract or have attracted media attention:** A formal allocation should also not be made where the reason for informing Comms is to assist them in managing potential press enquiries about a report. However, Comms must be informed if the matters of concern in a report have attracted or are likely to attract media attention. This should be done immediately on receipt of a relevant report because it is important that Comms are in position to deal with any press enquiries and they may want to prepare a potential response in advance of enquiries
117. The circumstances where reports might attract media attention are numerous but the most common are:
- Serious criminal offences committed by a barrister or a barrister being charged with such an offence;
  - The barrister involved has a high public profile, such as a politician or a person holding high office;

- The allegations relate to issues that have high public prominence and involve a prominent barrister, such as allegations of sexual harassment.

### **Allocation to Strategy and Policy**

118. Allocations to the Strategy and Policy department can be made regardless of the risk level and can be in addition to allocations other teams including Enforcement.
119. An allocation, normally to the Policy Team, should be made where the matters of concern in the report relate to an issue regarding wider policy or a concern about the contents of the Handbook. For example, the person has provided credible evidence that one of the BSB's policies is wrong or out of step with good practice or they have identified a gap/error in the Handbook. It may be that the report does not directly refer to such issues but the assessor's consideration of it reveals that such issues may exist.
120. A report can be allocated to Policy and another team. For example, if a concern about a barrister is allocated to Enforcement, but the report tangentially raised an issue with the BSB Handbook. Allocation to both teams is appropriate. However, where there is a need for an allocation to both Enforcement and the Policy Team, the assessor should ensure that the relevant managers in each team are aware of the allocations.

### **Referral to any external bodies**

121. Referrals to external bodies are not strictly allocations. Regulation E10 states that, if it appears to the Commissioner that a report might more appropriately be dealt with by another body (e.g. an Inn, Circuit, employer, a complaint handling body or any other professional regulatory body), then the Commissioner may refer the report to such other body. The decision to refer to external body is can be taken at the screening stage. However, depending on the nature of the information, it may be appropriate to risk assess it. The decision to refer to an external body should be considered again in the allocation stage.
122. The BSB works with other agencies to ensure effective regulation of the Bar in the public interest. We have formalised our relationship with many of them by signing Memoranda of Understanding (MOUs). The MoU's that are currently in place are listed here: <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-governance/memoranda-of-understanding/>
123. Examples of when it may be appropriate to refer to a case to an external body are:
- Referral to the Crown Prosecution Service where the matter concerns deficient performance of a CPS prosecutor

- Referral to another approved regulator where the barrister is dual qualified, and the concern relates to matters that fall more appropriately within the jurisdiction of the other regulator e.g. referral to the Solicitor's Regulatory Authority where the person is practising as solicitor but is also called to the Bar.
- Referral to an employer where the barrister's conduct relates to their role as an employee and is not related to the provision of legal services to the public e.g. a caseworker working in another regulator.

124. Where a referral to an external body is made, assessors should be aware of the terms of rE11. If the external body has not dealt with the referral satisfactorily or has not done so within a satisfactory amount of time, then the matter can be considered again by the BSB. Assessors should seek guidance from the SAO or HoCA if this arises.

### **Regulatory Action taken by CAT**

125. The CAT team can take regulatory action without allocation to another team. This can be done where the issue can be easily rectified, and no other regulatory action is needed. Regulatory action by CAT will usually only be appropriate where the risk score is green or yellow.

126. Action in CAT will normally be restricted to circumstances where the action can address the issue of concern without the need for another team to be involved. For example, if a barrister has ceased to practise, but Chambers' website still lists them as practising, and it appears that this is an administrative error. While this is a potential breach of the Handbook in that there is potential holding out, the risk could be satisfactorily mitigated by the assessor asking Chambers to correct their website and confirm that they have.

127. **Informal advice:** CAT has no power to issue formal advice. However, it may be appropriate in some circumstances for informal advice to be given to the barrister. This would normally be appropriate where a potential breach of the Handbook has been identified but the risk assessment results in a green rating and informal advice might assist in clarifying the barrister's obligations and/or preventing the situation occurring again.

128. Informal advice should only be given with the agreement of the Head of Conduct Assessment.

### **Stage 5 – Informing parties of the outcome**

129. At the conclusion of a case, which might be at any stage of the assessment process, but will usually be after the allocation stage, the person who made the

report will normally need to be informed by the BSB of the outcome of the assessment. The question of whether the person who made the report should be informed of the outcome, and by whom is dependent on several factors.

130. If the report is allocated to another team, then the responsibility to inform the parties is as set out in Annex 2. If a matter is not allocated, or action is taken in CAT, then the person who made the report will be informed of this by CAT (save for some exceptions detailed below).
131. A table showing who should inform the barrister and the person who made the report of the outcome appears is set out at Annex 2

### **Factors to consider on whether to inform the party**

132. Reports will be received from a number of sources. The default position is that anyone making a report, and the barrister subject to the report, should be informed of the outcome of the initial assessment, although there are some exceptions. The paragraphs below, and Annex 2, detail when outcomes should be communicated, to whom and by which team in the BSB.
133. Reports made under reporting obligations – self reports - where a barrister has reported serious professional misconduct on their own behalf, the BSB will let them know the outcome of the assessment. If no action is going to be taken on the report, then CAT should inform the barrister of the outcome. If the matter is referred to Enforcement, it will be for the Investigations and Enforcement Team to communicate the outcome.

Reports of misconduct by another – for confidentiality reasons we do not normally inform barristers who make reports of misconduct by another of the outcome of the assessment. This is because, disclosing such information would normally involve disclosing personal data and would also run contrary to the confidentiality provisions in the EDRs (see rE63). The standard letter sent to barristers on receipt of such reports, explains this.

134. Requests for Anonymity/Confidentiality Where a person who has made a report presents good reasons for why the report should remain confidential, we will try to respect the request. In some cases, this will mean that we cannot progress very far with the assessment. The person who made the report, should be informed of the outcome but we may decide that the barrister should not be informed of the report particularly where doing so would involve identifying the person who made the report. Such a course of action should be rare and can only be taken with the approval of the HoCA.
135. Unclear information: CAT will receive reports from time to time where it is unclear whether the person intended to make a report and/or who the barrister is

they are concerned about. The assessor may only be able to make limited progress with the report and, if no action is taken, the apparent barrister(s) subject to the concerns do not need to be informed of the report. However, the assessor should inform the person who made the report of what action has been taken.

136. Reports from external bodies – CAT will normally inform external bodies of what actions have been taken on referrals received from them even if the matter is referred to Enforcement. The assessor will need to take into account both data protection issues and our confidentiality provisions when deciding on the extent of the report that can be provided to the external body. In some cases, we will have an MOU in place covering what information we can disclose and assessors should refer to these when deciding what information should be communicated.
137. Allocation to Comms and Policy – If a matter is allocated to these teams, the person who made the report and the barrister in question will only be informed if the report directly relates to the work of those teams as opposed to the work of those teams being tangential to the report.
138. For example, a report raises concerns about an error in published guidance, then on referral to the policy team, the person providing the report would be informed. On the other hand, if the report about the conduct of the barrister, and it only tangentially is related to the work of the policy team, the person who made the report and the barrister subject to the report would not normally be informed of the referral to Policy Team.
139. Another example would be if a report raises a concern about the BSB website. The person who made the report should be informed that the concern has been passed to Comms. However, where we inform Comms of reports to assist them in dealing with press enquiries, the person who made the report does not need to be informed of this.

### **Information to include when communicating outcomes of initial assessments**

140. Person who made the report - The assessor should generate the outcomes letter where applicable and delete fields and add content as appropriate. The template letter is a guide only and assessors must ensure that they amend it to suit the circumstances of the case. Failures to do this can result in inaccurate reasons being given for outcomes.
141. Barrister subject to the report - the assessor should generate the template outcome letter to the barrister and ensure that its contents are applicable to the circumstances of the case. A copy of the outcome letter to the person who made the report should be enclosed with the letter to the barrister. The original report should also be enclosed unless it has previously been sent to the barrister.

However, personal data of the person who made the report should be redacted from the original report and any other correspondence sent to the barrister. This means that contact details, of the person who made the report and any witnesses they refer to, should be redacted, such as postal and email addresses.

## **Stage 6 – Requests for review**

142. Decisions may, in certain circumstances, be reviewed by an Independent Reviewer. A mere expression of dissatisfaction or disagreement with a decision is not sufficient for a review. There should be something further, such as a factual dispute, a potential misinterpretation of the situation, or new information.
143. The decision about whether to refer a case to the Independent Reviewer must be taken by the HoCA. However, where it is obvious that a mistake has been made, or new information has been provided that clearly indicates that the original decision on the case was not appropriate, there is no need for a case to be referred for review by the Independent Reviewer. In these circumstances, the HoCA can decide what action should be taken.
144. After receiving an expression of dissatisfaction or a direct request for a review, the assessor may consider that more information is needed from the person who made the report to assist with determining whether a request for review should be made to the Independent Reviewer. The assessor should make these enquiries before forwarding the case to the HoCA for consideration of referral to the Independent Reviewer.
145. If new information independently becomes available (i.e. without an indication of dissatisfaction from the person who made the report or a specific request for a review), the case can still be referred to the Independent Reviewer by the HoCA.
146. The Independent Reviewer does not have powers to take decisions and can only make recommendations as the action to take. The decision as to whether recommendations are accepted, must be taken by the HoCA or the Director of Regulatory Operations. The expectation is that recommendations from the Independent Reviewer will be accepted unless there are good and demonstrable reasons not to do so. For more information on the Independent Reviewer and the referral process, see the Role and function of the Independent Reviewer.

## **Matters to consider at all stages of the CAT process**

147. The following sections outline issues that should be considered at all stages of the process and the actions that should be taken. If an assessor is unsure

about whether of the issues apply to a report, they should seek advice from the SAO or the HoCA.

### **Reasonable Adjustments**

148. The Equality Act 2010 requires that the BSB) make reasonable adjustments for disabled people in the provision of our services, to ensure that disabled people are not put at a substantial disadvantage in accessing BSB services. Therefore, where any information provided by a person (in writing or on the telephone), indicates that the person may have a disability, enquiries should be made of the person as to whether he/she requires reasonable adjustments to assist with providing a report and if so, what type of adjustments are required.

149. The nature and extent of any reasonable adjustments should be approached on a case by case basis and staff should refer to the BSB's policy on requests for reasonable adjustments. If reasonable adjustments are required, the details of them should be clearly noted on the CMS. This is very important as it ensures that all members of BSB staff involved in the case, both in CAT and other teams, are aware of the adjustments needed and can make sure that they are provided.

### **Wellbeing**

150. The reports made to CAT are often from people who are facing difficult challenges in their lives and have been involved in litigation arising from those challenges. The court process can be bewildering for the public and very stressful. Barristers on the receiving end of reports about their conduct will also find the situation very stressful and will be anxious about the action the BSB might take.

151. Assessors should be always be aware of these stresses and the impact they are likely to have on the way that both members of the public and the profession engage with us. In some cases, people we engage with may express suicidal thoughts or make comments/statements that cause us to be concerned about their wellbeing. The person may need support in handling the process of making a report or being subject to one. Assessors should provide details of any support that may be available but need to be very sensitive to making references to such support as it may not always be welcome. If the assessor thinks that support should may be appropriate, they should discuss this with the SAO or the HoCA before communicating with the person who made the report or the barrister.

152. Sources of support are listed below.

152.1. For legal professionals – [Lawcare and the Bar Council's wellbeing website](#)



152.2. For members of the public - the Citizens Advice Bureau, the Samaritans and MIND may be able to provide support

153. Assessors should also be aware of the support that is available to them. Employees of the Bar Standards Board can access the Lawcare helpline. They also have access to the Employee Assistance Programme.

### **Legal advice**

154. At any stage during the assessment process the assessor may consider that legal advice is required in order to assess the report. If such advice is needed, the assessor should discuss this with the SAO or HoCA. It may be that they can answer the query.

155. Formal legal advice can only be obtained with the approval of the SAO or HoCA and all requests for legal advice must be made via the Legal Support Team (LST). The LST may be able to provide the advice, but if they cannot do so, they will refer where the external advice should be obtained. This includes seeking advice from a member of the BSB's Advisory Panel of Experts (APEX).

156. Any legal advice received should be recorded as 'privileged' on the CMS and should not be disclosed beyond those involved in the case for which it was requested without the approval of the SAO or HoCA.

### **Fitness to practise**

157. From time to time a report will reveal issues in relation to the barrister's health that may indicate that they are not fit to practise<sup>1</sup>. For example, information about addiction to drugs including alcohol.

158. A barrister is not fit to practise if:

- they are incapacitated due to their physical or mental condition (including any addiction); and
- as a result, the individual's fitness to practise is impaired; and,
- the imposition of restrictions, or the acceptance of undertakings in lieu, is necessary for the protection of the public, is otherwise in the public interest or is in the individual's own interest.

159. If a report indicates that a barrister is not fit to practise, the assessor should refer the case to the HoCA, who will consider whether it is appropriate for the

---

<sup>1</sup> The Fitness to Practise regulations only apply to barristers with current practising certificates.

barrister to be referred to the Fitness to Practise process and/or whether an undertaking should be obtained from the barrister not to practise

160. The assessor can make enquiries to obtain more information from the barrister about whether they are fit to practise but should only do so with the agreement of the HoCA. Such enquiries may include requesting medical information, such as a medical report, from the barrister.

161. It is important to note that just because an individual is unwell, it does not mean that they are not fit to practise. There must be some evidence of a link between any apparent illness and the barrister's ability to practise without restriction. Assessors should only act on the basis of clear evidence that there is a medical problem and should not make unsupported assumptions that concerns raised are related to health issues.

### **Interim Suspension**

162. Where the report received indicates that there is substantial risk to the barrister in question continuing to provide legal services to the public, the BSB has powers to refer the barrister to an Interim Suspension Panel for consideration of restrictions on their practise or a complete suspension of their practising certificate. The Chair of the Independent Decision-Making Body (IDB) also has the power to impose an immediate interim suspension pending consideration by an Interim Suspension Panel.

163. The regulations on interim suspension are set out in Part 5: Section C of the BSB Handbook. As set out in rE268 of those regulations, an interim suspension may be imposed if the subject of a report:

- Has been convicted or charged with a criminal offence in any jurisdiction (other than a minor criminal offence); or
- Has been convicted by another Approved Regulator and sentenced to a period of suspension or termination of the right to practise; or
- Has been intervened into by the BSB;
- Is an entity and the grounds for intervention would have been met if it were a BSB licensed body; or
- An interim suspension is otherwise necessary to protect the interests of clients (including former and potential clients).

164. If a report or any other information received, suggests that an interim suspension could be necessary, the assessor should refer the case to the HoCA to decide whether the barrister should be subject to an immediate interim

suspension, referred to an Interim Suspension Panel, or whether the risk posed by the barrister's conduct can be addressed by a voluntary undertaking to restrict their practise.

165. A referral to interim suspension should be taken at the earliest point that it is recognised that such a referral is necessary. Where the interim suspension is based on criminal charges/convictions or convictions by other regulators, the assessor/HoCA must complete the assessment as soon as possible and be sure that the case warrants a referral to Enforcement for consideration of potential charges of professional misconduct (see rE269).
166. For more information on the interim suspension process, please see the Policy and Guidance on Interim Suspension and Disqualification.

### **Interventions**

167. The BSB has the power to intervene in barristers' practises where the circumstances warrant it. It is likely to be rare that an intervention will necessary, but assessors should always keep in mind that such action is available.
168. The statutory grounds for intervention are set out at Schedule 14 to the Act (see attached Annex A) but can be broadly summarised as:
- Failure to comply with one or more terms of the licence;
  - The appointment of a receiver or another defined insolvency event;
  - Suspected dishonesty by a manager or employee;
  - Undue delay in dealing with a matter; or
  - It is necessary to exercise the power for the benefit of clients (including former or potential clients).
169. If an assessor to considers that consideration should be given to making an intervention, they should immediately alert the HoCA who will consider the available information and, if necessary, activate the intervention process. Activation of process does not mean that the assessment should be discontinued – it should be concluded, and the relevant allocations made taking into account any outcomes from the intervention process if they are available and applicable.
170. For more guidance on the interventions process, see the Operational Guidance on Interventions and the Statutory Interventions Strategy

### **Putting an assessment on hold**

171. There may be times where it is appropriate to put an assessment on hold. This can be done at any stage of the assessment process and potentially could be done on more than one occasion during an assessment. It may be

appropriate to close the case rather than put it on hold and reopen it a future date.

172. There are numerous reasons why an assessment may not be able to be completed immediately and needs to be put on hold. The most common reasons are:

- further information which is relevant to the assessment is not available but will become available later.
- The report may arise from ongoing legal proceedings and a full assessment of the issues cannot be made until the proceedings are concluded;
- The person making the request does not want us to proceed with the assessment immediately for a good reason, such as ill-health or personal difficulties

Decisions to put assessments on hold should be approved by the SAO or the HoCA. In some cases, it may be more appropriate to proceed with the assessment and for the case to put on hold after allocation. In others it may be more appropriate to close the case and ask the person who made the report to contact us again when the relevant event has occurred, or the information is available. In such circumstances, the case can be reopened, if necessary, at a future date.

173. If a case is put on hold, it will formally remain open in the CMS and will be included in various reporting statistics on the timeliness of handling reports. Periodic reviews should be undertaken to determine whether the case should remain on hold. How often these reviews are carried out, will depend on the circumstances of the case but no case should remain on hold for longer than three months without a review taking place.

174. More detailed guidance on putting cases on hold can be found in the Putting Assessments On Hold Policy.

### **Splitting cases**

175. Reports that relate to more than one subject (for example, both a Chambers and an individual barrister) should be considered separately and separate cases on the CMS opened. The Online Reporting Form allows those making reports to indicate whether their report relates to more than one person that we regulated. If this happens, the CMS will generate two or more case records relating to the one report.

176. However, there may be times where it only becomes apparent during the assessment process that a case should be split. This may be because it was not registered properly or because enquiries reveal that more than one person we regulate is involved. If this is the case, the assessor should “clone” (duplicate”) the existing case to create a new case in the CMS and copy all relevant documents to the new case but change the details related to the subject. Where a case is split and new cases arising from one report are created, they should be linked but assessed separately.

### **Money laundering and terrorist financing**

177. Assessors need to be aware throughout an assessment of any report revealing information that gives rise to a suspicion that a barrister, a BSB entity or their employees have been involved in money laundering and/or terrorist financing (ML/TF).

178. Money laundering is the process whereby the proceeds of crime are changed or disguised to hide their unlawful origin. This includes any activity relating to the proceeds of crime, even mere possession.

179. Terrorist financing is the raising, moving, storing and using of financial resources for the purposes of terrorism.

180. The BSB is a designated Supervisor under the [Money Laundering Regulations](#). This means we have an obligation to report any suspicions of money laundering to the National Crime Agency (NCA). More information about this can be found in the BSB’s Anti Money Laundering Policy.

181. The following are some red flags that assessors should be alert to when assessing a report which may give rise to the need to make a report to the NCA:

- The person making the report has said that they have a suspicion of ML/TF.
- The person making the report has said that they have a suspicion that [government financial sanctions](#) have been ignored.
- A barrister/BSB entity is holding client money or managing a clients’ affairs (neither of which are permitted in the BSB Handbook).
- A barrister is a director of a company over which they have no control, or they are unaware of what the company does.
- A barrister/BSB entity has an unusual relationship with third parties who are not connected to their practice, particularly where those individuals appear to be exerting control over the barrister’s/entity’s practice.
- A barrister is involved in activity that is not related to their normal practice or where they do not appear to have expertise, particularly in relation to a property or asset transaction.

- A barrister is engaged in activity with an individual from a [high risk jurisdiction](#), particularly where that individual is politically important.
- A barrister is dealing with an off-shore intermediary.
- A barrister has a business acting as a company formation agent that is not already recorded on the CMS as a Trust or Company Service Provider (TCSP). This can be found under the Authorisation to Practise section of the CMS.
- A barrister is instructed on a private basis where the client previously received Legal Aid and the reason is unclear.

182. If the assessor considers that any the red flags listed in paragraph 180 are present in the information provided in a report, they should discuss their concern with the HoCA in the first instance. It will be for the HoCA to decide whether the report should be referred to the Head of Supervision using the reporting form in the Anti Money Laundering Policy.

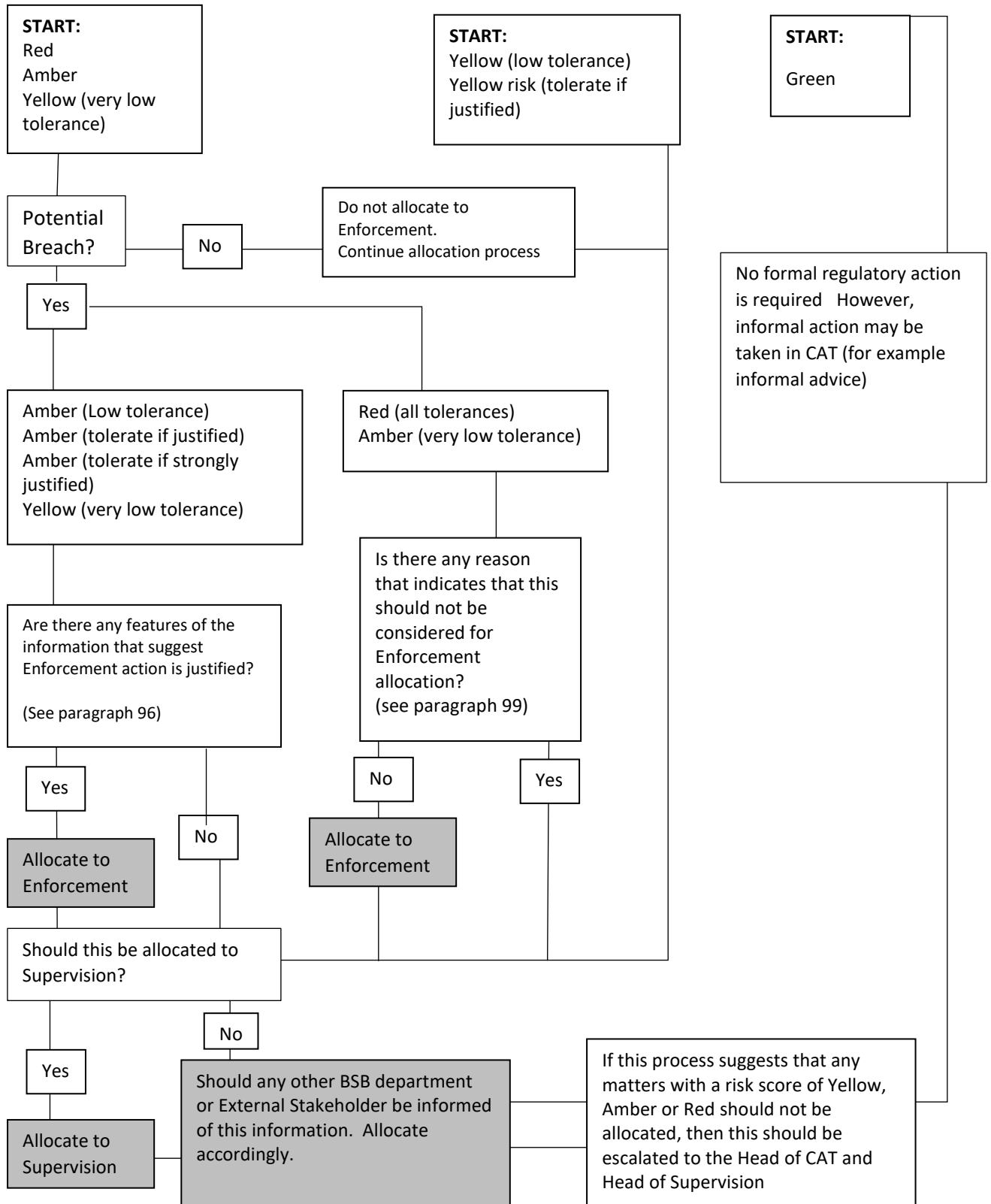
183. The fact that a case has been reported to the Head of Supervision as part of the ML/FT process, does not automatically mean that the assessment should be put on hold. In most cases, it will important to conclude the assessment swiftly and, if appropriate, make a referral to Enforcement. However, assessors should also be aware of the risks associated with “tipping off”. This involves the barrister/BSB entity who is the subject of a suspicious activity report to the NCA being made aware of the report. “Tipping off” is a criminal offence and carries the potential of 5 to 14 years term of imprisonment. Therefore, assessors should only progress assessments that involve money laundering reports under the guidance and direction of the HoCA and/or Head of Supervision. Prior to assessing such cases assessors should also not speak to anyone outside CAT and the Supervision Team about such cases.

184. If the report involves issues related to Money Laundering, it should be marked as requiring special handling in the CMS. The assessor should also select the topic of Money Laundering in the CAT Categories tab.

185. For more guidance on the above, refer to the Anti Money Laundering Policy.

## Annex 1 – Allocation flowchart

The risk score in the risk assessment, along with the tolerance of the selected risk(s) gives the starting point for allocation.



## Annex 2 – Informing the parties

Type of Report		Should the Barrister/subject be informed?			Person who reported informed?		
		If the report is allocated:		If No Action is Taken on the report	If the report is allocated:		If No Action is Taken on the report
General Reports	Informant clearly intended to make a report	Enforcement	Yes (by receiving team)	Yes	Enforcement	Yes (by receiving team)	Yes
		Supervision	CAT does not inform decision to inform lies with receiving team.		Supervision	Yes (CAT informs)	
		Authorisations/Exams	CAT does not inform decision to inform lies with receiving team.		Authorisations/ Exams	Yes (CAT informs)	
		Policy	No (unless context suggests they should. For most Policy Allocations, there will not be a “subject” as the information will relate to the BSB as the subject)		Policy	No (unless report was specific to Policy e.g. if it was about a lacuna in the Handbook then the informant will be told of the referral with appropriate expectation management. However, if it is a report that tangentially necessitated allocation to policy, then they will not be told)	
		Comms	No (Most of these will simply be informing comms of cases that may create media interest. However, if there is likely		Comms	No (unless report was specific to comms e.g. the report is about our comms)	



			to be external action by comms directly relating to a named subject, then comms should be consulted)				
		External	Yes (except if context dictates no)		External	Yes	
		CAT action	Yes		CAT action	Yes	
<b>Unclear whether there was an intent to make a report</b>	Enforcement	Yes (by receiving team)	No	Enforcement	No (if request is received then that request should be forwarded to Enforcement for a decision on whether to add as an interested party)	No (but CAT will inform on request)	
	Supervision	CAT does not inform decision to inform lies with receiving team.		Supervision	No (if request is received then that request should be passed to Supervision for a decision on whether to inform)		
	Authorisations/Exams	CAT does not inform decision to inform lies with receiving team.		Authorisations/Exams	No (if request is received then that request should be passed to Authorisations/Exams for a decision on whether to inform)		
	Policy	No (unless context suggests they should. For most Policy Allocations, there will not be a "subject" as the information will relate to the BSB as the subject)		Policy	No (unless report was specific to Policy e.g. if it was about a lacuna in the Handbook then the informant will be told of the referral with appropriate		

						expectation management. However, if it is a report that tangentially necessitated allocation to policy, then they will not be told)	
		Comms	No		Comms	No	
		External	Yes (except if context dictates no)		External	No (consideration on request)	
		CAT action	Yes		CAT action	No (consideration on request)	
	<b>Informant requested anonymity/ confidentiality</b>	Enforcement	Yes (by receiving team)	No	Enforcement	Yes (by receiving team)	Yes
		Supervision	CAT does not inform decision to inform lies with receiving team.		Supervision	Yes (CAT informs)	
		Authorisations/Exams	CAT does not inform decision to inform lies with receiving team.		Authorisations/Exams	Yes (CAT informs)	
		Policy	No (doing so may compromise confidentiality)		Policy	No (unless report was specific to Policy e.g. if it was about a lacuna in the Handbook then the informant will be told of the referral with appropriate expectation management. However, if it is a report that tangentially necessitated allocation to policy, then they will not be told)	

		Comms	No		Comms	No (unless report was specific to comms e.g. the report is about our comms)		
		External	Yes (except if context dictates no)		External	No		
		CAT action	Yes (if action is relevant to the subject and doing so will not unnecessarily compromise anonymity/confidentiality)		CAT action	Yes		
<b>Reports made pursuant to Reporting Obligations</b>	<b>Self report (rC65)</b>	Enforcement	Yes (by receiving team)		Enforcement	n/a	n/a	
		Supervision	CAT does not inform decision to inform lies with receiving team.		Supervision	n/a		
		Authorisations/Exams	CAT does not inform decision to inform lies with receiving team.		Authorisations/Exams	n/a		
		Policy	No (unless context suggests they should. For most Policy Allocations, there will not be a "subject" as the information will relate to the BSB as the subject)		Policy	n/a		
		Comms	No		Comms	n/a		
		External	Yes (except if context dictates no)		External	n/a		
		CAT action	Yes		CAT action	n/a		
		<b>Reports of another (rC66)</b>	Enforcement	Yes (by receiving team)	No	Enforcement		No
			Supervision	CAT does not inform decision to inform lies with receiving team.		Supervision		No

		Authorisations/Exams	CAT does not inform decision to inform lies with receiving team.			Authorisations/Exams	No	
		Policy	No (unless context suggests they should. For most Policy Allocations, there will not be a "subject" as the information will relate to the BSB as the subject)			Policy	No	
		Comms	No			Comms	No	
		External	Yes (except if context dictates no)			External	No	
		CAT action	Yes			CAT action	No	