

10. Costs

When can they be awarded?

- 10.1. Costs can be awarded at different stages of the disciplinary process:
- a) following a successful application at a Directions Hearing
 - b) at a Disciplinary Tribunal
 - c) at an Appeal.
- 10.2. The decision as to whether a costs award will be made is taken by the Directions Judge or the Tribunal Panel and the Visitors/High Court and can be made either against or in favour of a defendant barrister as it shall think fit.
- 10.3. It is the BSB's usual practice to resist all applications for costs. This is based on the general principle, supported by case law, that regulators should not be deterred from performing their functions by the threat of large costs claims. Therefore, costs of Disciplinary Tribunals do not necessarily follow the event and should only be awarded against the BSB where there is a good reason and there has been "dishonesty or lack of good faith" on behalf of the BSB.
- 10.4. A Disciplinary Tribunal may make an Order for costs whether against or in favour of the defendant as it shall think fit (rE211). The Tribunal must either decide itself the amount of the cost or appoint a suitably qualified person.
- 10.5. The leading case on costs is *Baxendale-Walker v Law Society* [2007] 3 All ER 330, (the full judgment can be found in section 15, Annex 4), which sets out the above principles and should be used as the basis for resisting costs applications made by defendants. However, on an appeal to the High Court, the usual principle is that costs follow the event ([CPR 44.2](#)). Legal advice has been obtained and a copy has been sent to you.

Costs Orders for the Bar Standards Board

- 10.6. The Bar Standards Board does not usually seek a costs order at a Tribunal but may make an application where witness expenses have been incurred. All costs incurred

by the PCC preparatory to the hearing before the Tribunal must be borne by the BSB. (rE214). The BSB also does not claim the costs of staff time.

Costs Applications

10.7. In the event that a costs application is to be made by the BSB, the Case Officer will be able to provide you with a costs schedule. An example Costs Schedule can be found at the back of this section. Applications for costs are made, in the normal way, after the relevant Panel/Judge has made a decision on the final outcome of the case.

Determination of costs claims against the Bar Standards Board

10.8. Where a costs award is made against the BSB, it is normal practice that the amount of the final payment will be negotiated and, if no agreement is reached, the matter will be referred to a Cost Assessor. It is unlikely that you will be involved in this process, the Case Officer will usually deal with this part of the matter and instruct specialists if necessary. However, you may be asked to provide evidence in relation to the costs claim or comment on submissions made by the barrister or his/her representative.