

BAR STANDARDS BOARD

REGULATING BARRISTERS

1. Prosecutors Information and Guidance Pack Introduction

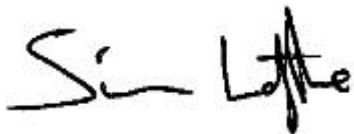
- 1.1. This edition has been revised in light of the implementation of the BSB Handbook in 2014 which signifies the move of the Bar Standards Board to a more risk-based, outcomes focused regulatory body.
- 1.2. In early 2012, the Legal Services Board published its Regulatory Standards Framework (RSF) which represented a significant shift in expectations: albeit that the fundamental terms of the RSF represent an approach that the BSB was already moving towards. In the main the RSF requires approved regulators to adopt a risk-based and outcomes focused approach to regulation which includes appropriate supervision of the relevant regulated community, effective enforcement regimes and the capacity and capability to carry out the regulatory functions.
- 1.3. In parallel with the introduction of the RSF, the Bar Standard Board (BSB) had already committed to producing more outcomes-focussed professional obligations. After a series of public consultations, the new “BSB Handbook” was approved by the Legal Services Board in July 2013: its terms are applicable from 6 January 2014 onwards but the provisions of the old “Code of Conduct” remain applicable to conduct occurring before 6 January 2014.
- 1.4. The BSB Handbook sets out for the first time, the outcomes the professional obligations contained in the Handbook are intended to achieve. The revised Code of Conduct is included at Part 3 of the Handbook and it includes ten Core Duties which apply to all those who are called to the Bar not just those who are practising as barristers. These are supplemented by more detailed Rules as well as guidance on how to interpret the Core Duties and Rules. The BSB now also regulates those employed by a regulated individual.
- 1.5. The main changes introduced by the BSB Handbook are:

- **Definition of professional misconduct:** the Handbook includes a new definition of professional misconduct which effectively means that no breach of the Handbook can be treated as professional misconduct unless it is not appropriate for the imposition of administrative sanctions. This extends the concept of “breaches of the Code” which only previously applied to specific types of breaches referred to in paragraph 901.1 of the old Code.
- **Enforcement Strategy:** the decision on what action to take in relation to a complaint is now, under the terms of the Complaints Regulations, subject to a publically available Enforcement Strategy which the Committee is required to take into account when determining what action to take. The strategy seeks to provide clear information and guidance about the approach to take to enforcement action but most importantly requires us to take a risk based approach to enforcement decisions. In practical terms, this will include conducting a risk assessment at two stages of the complaints process. Depending on the outcome of the risk assessment, the complaint may be referred to disciplinary action. It should be read in conjunction with the Supervision Strategy, as the combination of the two is designed to achieve compliance with the regulatory arrangements in a proportionate manner that represents the most effective use of the BSB’s resources.
- **Disciplinary Tribunal Regulations:** the Regulations have been updated and changes made, particularly to the Regulations 7 – 29 in relation to Directions.
- **New Sentencing Guidance:** the Sentencing Guidance, issued by BTAS (The Bar Tribunals and Adjudication Service) has been produced. A copy will be sent to you, but is also available on the BTAS website.
- **Unregistered barristers:** the Core Duties in the Handbook apply to all barristers, including unregistered barristers, where the provision of legal services is involved.
- **Supervision:** the Handbook has introduced a new regime for supervising chambers, individual barristers (where appropriate) and entities, when the extension to the BSB jurisdiction is approved. The supervision regime, like the enforcement regime is subject to a written Supervision Strategy which is publicly available.

- **Administrative sanctions:** under the terms of the new BSB Handbook, all breaches of the professional obligations (occurring after 6 January 2014) are capable of being dealt with by means of administrative sanctions as opposed to taking disciplinary action: both types of action fall under the heading of “enforcement action”. The sanctions comprise either a formal warning or fine of up to £1,000.
- **Reporting serious misconduct:** the terms of the Handbook require barristers to self-report, and report others, in relation to ‘serious misconduct’ (although a specific exemption applies to those barristers giving advice via the Bar Council ethics helpline).
- **Introduction of a disqualification power:** via the route of the power to disqualify, the Handbook covers those who are non-regulated persons but are directly or indirectly employed by a regulated person: amongst others this includes employees of barristers/chambers. The disqualification power means that such people may be referred to a Tribunal (Interim Panel) for a disqualification order to be made that prevents them carrying out certain activities or prohibits any regulated person from employing them.
- **Interim Suspension:** these Regulations have been updated and now include a power for the Professional Conduct Committee to suspend barristers immediately prior to a formal referral to an Interim Panel and pending the outcome of such a referral.
- **Fitness to Practise Regulations:** the old “Rules” have been updated and the format of the new Regulations is substantially different. The main changes relate to the conduct of proceedings following a referral. The Regulations allow the Professional Conduct Committee to refer the case to a Medical Panel, where information has been received, against a barrister holding a practising certificate, which indicates that the barrister might be unfit to practise.
- **Appeals from decisions of Disciplinary Tribunals:** as of 6 January 2014, decisions made by Disciplinary Tribunals will no longer to be subject to the appeal jurisdiction of the Visitors to the Inns of Court but will fall under the jurisdiction of the High Court and the Civil Procedure Rules apply. The Visitors jurisdiction has been abolished under the terms of the Crimes and Courts Act 2013 except in relation to any outstanding appeals lodged before 6 January 2014 or any appeals related to decisions taken before that date. Other than

these cases, all appeals in future will need to be submitted to the High Court and will be subject to the Civil Procedure Rules in relation to appeals.

- 1.6. Although the new BSB Handbook currently makes provision only for the regulation of individuals, an application for the regulation of entities has been made to the Legal Services Board and it is expected that this will be introduced in the first half of 2014.
- 1.7. Aside from the new BSB Handbook, following the Browne Report, which made 82 recommendations for improving the disciplinary tribunals system, the year 2013 saw the formation of the Bar Tribunals Adjudication Service (BTAS). Set up as an independent body by the Council of the Inns of Court (COIC), BTAS appoints and administers Disciplinary Tribunals and other relevant panels on behalf of the Bar Standards Board.
- 1.8. Whilst 2013 has been a year of consolidation, so far as procedure is concerned, the major changes to the BSB's regulatory regime will ensure that 2014 is somewhat more eventful. The BSB remains ever grateful for the work of prosecutors on the prosecution panel and recognises that the Bar is fortunate to be able to call on such expertise from inside its ranks. The skills and professionalism of those of you on the Prosecution Panel are clearly evident and there is no doubt that the Prosecution Panel will proficiently meet any forthcoming challenges this year.



Simon Lofthouse QC

Chair of the Professional Conduct Committee

Note: if you have any questions about the issues outlined above or the contents of this Pack please contact Sara Down, Head of Professional Conduct at sdown@barstandardsboard.org.uk or Gillian Seager, Investigations and Hearings Team Manager gseager@barstandardsboard.org.uk. I hope you find the revised pack useful. Feedback on its contents or suggestions for amendments or additions would be welcome and should be sent to the Head of Professional Conduct.