

## **Regulatory framework (prior to 6 January 2014)**

### **The Code of Conduct**

1. The Code of Conduct of the Bar Council of England and Wales sets out the professional obligations to which barristers are subject. Its general purpose is to stipulate the requirements for practice as a barrister and the rules and standards of conduct applicable to barristers. The large majority of failures to comply with the Code will constitute professional misconduct and leave the barrister open to disciplinary action. However, there are now some types of breaches, mainly concerned with issues like Continuing Professional Development, Practising Certificates and insurance, which are not automatically treated as misconduct unless certain conditions apply.
2. The Code does not have statutory force but if the BSB fails to comply with the processes outlined in the Code, it could provide a basis for judicial review.

### **Structure of the Code**

3. The Code is divided into three sections. The first section sets out the rules and standards of conduct and is divided into 11 parts. This section of the Code provides the basis for any disciplinary charges that might be laid against a barrister. If the barrister's behaviour cannot be said to breach one or more of the paragraphs of Section 1 of the Code, it will not be considered to be professional misconduct and disciplinary action cannot be taken.
4. The second section of the Code contains approximately 20 Annexes setting out the processes and procedures that should be followed when dealing with various aspects of Section 1. The Annexes which apply to handling complaints and disciplinary action are:

Annex J – The Complaints Rules

Annex K – The Disciplinary Tribunal Regulations

Annex M – The Hearings before the Visitors Rules

Annex N – Interim Suspension Rules

Annex O – Fitness to Practise

Annex S – Chambers Complaints Handling

5. As a member of the Committee, you should be familiar with all the above Annexes: Annex J (The Complaints Rules) being the most important.
6. The third section of the Code sets out the Written Standards for the Conduct of Professional Work. It only provides guidance and is not treated as part of “the Code”; however, it may be used to form the particulars of charges.

### **Regulatory responsibilities in relation to disciplinary hearings**

7. The Bar Standards Board is responsible for deciding whether or not to bring disciplinary proceedings against a barrister. It is also responsible for preparing and presenting the “prosecution” case. However, the final determination of a case is the responsibility of independent disciplinary panels appointed and convened by the Council of the Inns of Court (COIC). This ensures that the final determination process is independent of the Bar Standards Board and compliant with the Human Rights Act.
8. COIC is a small body that works under the auspices of the four Inns of Court. Responsibility for disciplinary matters rotates round the Inns on a three yearly basis and until December 2012, responsibility lies with Gray’s Inn.
9. As well as appointing Directions Judges and panel members and providing hearing rooms, COIC is also responsible for providing the Clerks to the Tribunal and the shorthand writers.
10. COIC is also responsible for convening and appointing all other types of panels including Fitness to Practise and Interim Suspension Panels as well as their associated appeal panels.