

6. Advice on charges, evidence, the bundle and directions

Introduction

- 6.1. If you receive a request to prosecute a disciplinary case and you cannot provide the advice within 3 weeks or you cannot accept the case e.g. there is a conflict, please telephone or email our Administration Team or the Case Officer responsible for the matter as soon as possible. The Disciplinary Tribunal Regulations set a strict timetable for processing cases and extensions will only be granted in exceptional circumstances by a Directions Judge. Contact details for staff in the Department are included in section 11 of this pack.
- 6.2. You will be sent the original BSB file, which usually contains the complaint form, information gathered during the investigation into the complaint and in some cases a Committee Report. We do not retain copies of the file so please ensure the file is returned by hand, traceable post or contact an Assistant in the Investigations and Hearings Team, who can arrange for files to be collected from Chambers in central London.
- 6.3. Advice can be provided by email and should include:
- (i) the final charges;
 - (ii) details of any further evidence to be obtained, e.g. transcripts, witness statements,
 - (iii) details of which, if any, witnesses are required
 - (iv) the contents of the BSB bundle of documents; and
 - (v) the standard directions and the need for any further or “special” directions.

(See Annex 1 for examples of advices on charges, evidence and the bundle).

Advice on charges

- 6.4. The Committee Report will contain any draft charges proposed by the Committee. rE65 of the Complaints Regulations permits you to settle the charges as you consider appropriate on the facts or evidence from which the complaint arose or any further matters that have been revealed in the investigation. You are therefore free to amend or add to the charges depending on the evidence.

- 6.5. If you consider the charge(s) should be amended, please advise accordingly and give reasons for your amendments. If the charges are substantially different to those referred by the Committee, the Investigations and Hearings Team may decide to seek the approval of the Committee.
- 6.6. If, having reviewed the papers, you consider there is no reasonable prospect of proving the charge(s) and/or it is not in the public interest, having regard to the regulatory objectives, to proceed you should advise in writing giving clear reasons for your view based on the evidence. The case will then be put back to the Professional Conduct Committee for reconsideration.
- 6.7. If the Committee accepts your advice, and the charges have not been served on the barrister, the Committee is able to dismiss the complaint or decide to take no further action. If the charges have been served on the defendant, the Committee is limited by rE91 of the Complaints Regulations to instructing prosecuting counsel to offer no evidence on a charge by applying to a Directions Judge to withdraw the charge(s). This is normally a paper exercise undertaken by the Investigations and Hearings Team but in some cases the barrister may wish to make an application for costs, you will be asked to advise on the application, and if necessary to draft a reply and attend any hearing.

Advice on evidence

- 6.8. The role of the committee is to consider whether on the evidence available the case against the defendant barrister has a realistic prospect of success. This is a lower charge than is required to prove the charges at Tribunal. It may be the case that you consider further evidence is required in order to prove the charge(s) to the criminal standard.. The Investigations and Hearings Team will endeavour to gather all the evidence you consider necessary. If some of the evidence cannot be obtained but you consider it crucial to proving the case, you are free to advise that the case should not continue. In these circumstances, the matter will be put back to the Committee for consideration.

Witness statements

- 6.9. Under rE144 of the Disciplinary Tribunal Regulations, the Tribunal may admit any evidence whether oral or written in person or by telephone. In practice, if witnesses are to be called witness statements will be served. Please let the Case Officer know as soon as possible if witness statements are required so we can make arrangements to take the statement.
- 6.10. The BSB has no power to compel witnesses to provide evidence or attend disciplinary hearings, though Rule 34.4 of the Civil Procedure Rules provides that a Court may issue a witness summons in aid of an inferior court or Tribunal that does not have its own power to issue a witness summons.
- 6.11. If a complaint is based on concerns originally raised by a Judge in his or her judicial capacity, the BSB will raise the complaint as an own motion complaint, the Judge is not named as the complainant. The BSB will rely on the transcript of the proceedings or judgment without seeking to adduce oral evidence from the Judge.

Advice on the Bar Standards Board bundle of documents

- 6.12. The Bar Standards Board presents its case via a “bundle” of documents. It is your responsibility to ensure that this bundle includes all the evidence needed to prove the charge(s) but also gives the Disciplinary Tribunal a comprehensible overview of the case and its history.
- 6.13. The standard format for presenting bundles is to present them in sections denoted by numbered divider tabs as follows:
1. Charges; code extracts and guidance; Certificate of Call;
 2. Complaint form
 3. Documentary evidence to support the case (in chronological order of the events)
 4. Witness statements
 5. Procedural/routine/other complaint correspondence (only to the extent that it relevant to giving a broad overview of the history of the case or to highlight special issues e.g. to indicate where delays have occurred and why)

- 6.14. When you provide your advice, you should indicate which letters and/or documents from the files should be included in the documentary evidence section and in the procedural correspondence section. The ordinary rules of evidence do not apply, documents that may not be admissible in civil or criminal proceedings can be included in the bundle.
- 6.15. The bundle should include enough documentation for the Panel to obtain an overview of the case and you should consider whether it will assist the Panel to have a chronology and/or case summary. It is for you to advise which documents are required in the bundle to present a fair picture of the case: there may be cases where economy in relation to the documentation is preferable to a detailed account. The most important factor is that the panel can fully understand the case presented against the barrister.
- 6.16. Although the method of organising the bundle described above has been adopted as the standard format, disciplinary panel members have been advised that particular cases may warrant a different method of organisation. If you consider the bundle should be organised differently, please discuss your proposals with the Case Officer or provide a description of the bundle organisation you require with your advice.
- 6.17. In many cases the Committee will have dismissed parts of the complaint and will recommend that charges are only preferred in relation to specific aspects of the complaint. If this is the case, you should consider whether any parts of the documentation should be redacted to avoid prejudice to the defendant and advise accordingly.

Service of the charges and the bundle

- 6.18. rE101 of the Disciplinary Tribunal Regulations require that charges must be served a maximum of 10 weeks after the Professional Conduct Committee has referred the matter to a Tribunal (or 5 weeks where the matter has been directed to be expedited). Charges are therefore usually served on the defendant (also copied to the lay complainant, if any) at the 8 week point and bundles are normally served at the same time.

- 6.19. If it is not possible to serve the bundle with the charge sheet it may be appropriate to include a direction for service of additional information e.g. witness statements. rE104- 106 set out the requirements for the documents to be served on the defendant.
- 6.20. The defendant may serve a defence bundle which will contain any witness statements and documentation. It will be the defendant's responsibility to index and prepare sufficient copies of his bundle to be circulated in accordance with the Directions. A copy of the defence bundle will be sent to you, upon receipt, usually with a request for a further advice on evidence and confirmation the charges can still be proved to the requisite standard.

Advice on proposed Directions

- 6.21. All requests to give advice will include the "Standard Directions". In many cases the standard directions will be sufficient. However, in some cases, further or "special" directions will be needed and you are asked to advise whether any special directions will be needed in the individual case.
- 6.22. Detailed information about the Directions phase can be found in section 7.