

BAR STANDARDS BOARD

REGULATING BARRISTERS

Enforcement Strategy

Introduction

1. The Bar Standards Board is committed to taking an outcomes focused, risk-based and proportionate approach to all its regulatory activities, which includes its approach to taking enforcement action.
2. This document sets out our strategy in relation to the enforcement of the regulatory requirements set out in our Handbook. In the context of this strategy, enforcement action means the application of sanctions to address non-compliance with the provisions of our Handbook. The strategy seeks to provide clear information and guidance about our approach to taking enforcement action as well as:
 - a. the outcomes we are trying to achieve through enforcement action;
 - b. to whom this strategy applies;
 - c. the role of enforcement in promoting regulatory compliance; and
 - d. how we will determine what action to take.
3. This strategy will be applied in conjunction with our Supervision Strategy and is underpinned by the detailed provisions of Part V of our Handbook (the Enforcement Regulations). Nothing in this strategy is intended to override the contents of the Handbook or limit any discretion which it confers.

Intended outcomes of this strategy

4. The main objective of this strategy is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions. Enforcement action is intended to meet the objectives of:
 - a. promoting adherence to the regulatory objectives as set out in section 1 of the Legal Services Act 2009 (the Act) and to our regulatory arrangements as set out in our Handbook;
 - b. providing a credible deterrence to non-compliance with our regulatory arrangements;
 - c. preventing further breaches; and
 - d. preventing those who represent a serious risk to the public from practising.
5. These objectives will be taken into account when determining what enforcement action to take in an individual case.

Scope of the strategy and our enforcement powers

6. We are entitled under the terms of the Act and our Handbook to take enforcement action against:
 - a) individual barristers whether registered or not; and
 - b) Registered European lawyers.

The standards of professional conduct

7. The BSB's Code of Conduct, Part II of our Handbook, requires those we regulate to comply with the following core duties:
 - You must observe your duty to the court in the administration of justice.
 - You must act in the best interests of each client.
 - You must act with honesty and integrity.
 - You must maintain your independence.
 - You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.
 - You must keep the affairs of each client confidential.
 - You must provide a competent standard of work and service to each client.
 - You must not discriminate unlawfully in relation to any person.
 - You must be open and co-operative with your regulators.
 - You must take reasonable steps to manage your business, or carry out your role within your business, competently and in such a way as to achieve compliance with your legal and regulatory obligations.
8. The core duties underpin the entire regulatory framework, define the core elements of professional conduct and set the mandatory standards that all BSB regulated individuals are required to meet. The core duties are supported by a number of mandatory rules. In addition, the Code sets out the outcomes which compliance with the core duties and rules are intended to achieve. Enforcement action will be considered where BSB regulated individuals fail to meet these requirements.

Promoting regulatory compliance through enforcement

9. The hallmarks of our enforcement strategy are as follows:
 - a) **Risk-based** – We will focus our enforcement action on the issues that pose the greatest risk to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what enforcement action we should take.
 - b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.

- c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
- d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime.
- e) **Flexibility** – We will use a range of enforcement tools to promote compliance with our regulatory arrangements.
- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated individuals a reasonable opportunity to respond.

Sources of information that may result in enforcement action

- 10. The potential need to take enforcement action may be identified from a range of information sources including, but not limited to, the following:
 - a. complaints made to us from external sources such as clients, members of the public, lawyers or judges, law enforcement agencies or other regulators;
 - b. information that comes to our attention via other external sources, including the Legal Ombudsman;
 - c. information from the Supervision Department concerning breaches.
 - d. information from other departments within the BSB.
- 11. We will only consider taking enforcement action in relation to information that discloses a potential breach of our regulatory arrangements. Some types of information are unlikely to result in consideration of enforcement action such as, for example:
 - a. information about a barrister's private life;
 - b. internal disputes within chambers.
- 12. Where information received is inconclusive, or relates to a matter such as those set out in paragraph 11, we would not normally conduct an investigation. However, in such cases we may retain the information for purposes of risk assessment.

Options other than enforcement

- 13. On receipt of information as outlined at paragraph 10 above, the options listed below are available to us, as well as the enforcement tools described in paragraph 15:
 - a. to refer the matter for supervisory action;
 - b. to refer a complaint submitted from an external source to another, more appropriate, body for consideration;

- c. to dismiss a complaint, with or without advice, because it does not reveal a potential breach of the Code or there is no realistic prospect of securing a finding of professional misconduct and it is not in the public interest to pursue disciplinary proceedings; or
 - d. to decide that No Further Action should be taken in line with the relevant provisions of the Complaints Regulations.
- 14. As stated in paragraph 13, we may decide to refer a case to our Supervision Department to address non-compliance through supervision tools as opposed to enforcement tools. When deciding whether this approach would be appropriate, we will consider:
 - a. the seriousness and nature of the non-compliance identified;
 - b. whether the matter can be addressed through supervision without the application of sanctions; and
 - c. whether applying supervision tools will be a proportionate response to the non-compliance identified.

Enforcement tools

- 15. The enforcement tools available to us include:
 - a. imposing an administrative sanction;
 - b. referring a case to the Determination by Consent Procedure; and
 - c. referring a case to a Disciplinary Tribunal.

Circumstances in which enforcement action will be taken

- 16. We will only take enforcement action where we have investigated a matter, or have received information from another regulator or ombudsman whose own investigation of the matter indicates that a breach of our regulatory requirements may have occurred, or where a finding has been made pursuant to another regulator's enforcement processes which has established on a balance of probability (or to a higher standard) that such a breach has in fact occurred.
- 17. In determining which of the enforcement tools, if any, to apply, we will consider a range of factors including but not limited to:
 - a. the risk posed to, or the impact on, one or more of the regulatory objectives;
 - b. whether any of the outcomes in our Code of Conduct have been adversely affected;
 - c. the seriousness of any potential breach;
 - d. whether the breach is an isolated incident or part of a pattern of repeated breaches;
 - e. whether the breach, if proved, would amount to a criminal offence;
 - f. the impact of the act or omission taking into account our regulatory priorities as stated from time to time;

- g. the impact on clients or others if we take action compared with the impact of not taking action;
- h. the impact on public confidence in the profession and the administration of justice;
- i. the period of time over which the act or omission took place;
- j. the number of individuals affected and the seriousness of the adverse impact (or potential adverse impact) on those individuals (particularly if vulnerable clients are affected);
- k. evidence or a record of insufficient care being taken over compliance or of recklessness, deliberate breaches, or dishonest behaviour;
- l. whether the regulated individual self-reported and has taken, or intends to take, steps to correct the breach and to provide appropriate redress; and/or
- m. whether the resources required are disproportionate to the likely sanction.

Applying our enforcement tools

18. In relation to the enforcement tools set out in paragraph 15, we will consider by reference to the factors at paragraph 18 whether a matter should be:
 - a. treated as a breach of the Handbook not amounting to professional misconduct and referred for consideration of the imposition of administrative sanctions (the Complaints Regulation at Part V of our Handbook identify the administrative sanctions that can be imposed including warnings and fines), in which case the standard of proof applied will be the balance of probabilities; or
 - b. referred to disciplinary action as potential professional misconduct, whether via Determination by Consent or Disciplinary Tribunal, where:
 - i. the imposition of an administrative sanction would not be appropriate or proportionate, and
 - ii. there is a realistic prospect of securing a finding on the criminal standard of proof and pursuing disciplinary action is in the public interest (the Complaints Regulations at Part V of our Handbook set out the range of sanctions available, including disbarment, suspension, disqualification or the imposition of a significant fine.)

19. We may impose an interim suspension, disqualification or condition on a BSB regulated individual to prevent them from practising until their case is considered by a Disciplinary Tribunal. In very urgent and serious cases an interim suspension or disqualification may be imposed immediately where we are satisfied this is necessary to protect the public. The regulations relating to Interim Panels, including the available sanctions, are in the Interim Suspension and Disqualification Regulations at Part V of our Handbook.

20. In all instances where enforcement action has been taken, the Supervision Department will consider whether follow-up supervision would be effective in reducing the likelihood of future issues of non-compliance.

Decision-makers

21. Decisions to take enforcement action under this strategy can be taken by any of the following depending on the nature of the case and the relevant decision making authorities given under Part V of the Handbook:
 - a. our Professional Conduct Committee or authorised groups or individuals of that Committee;
 - b. staff within our Professional Conduct Department as authorised by the Professional Conduct Committee and/or its Chair; and
 - c. members of Disciplinary Tribunals.
22. All those involved in taking decisions under this strategy and the relevant provisions of the Handbook will be trained and given guidance so that decisions are made consistently and appropriate sanctions applied. Decisions will be monitored to promote consistency.

Openness and transparency

23. **Right of appeal or review** – Where we have decided to take enforcement action the regulated individual concerned will always have an opportunity to appeal the decision or have it reviewed. The precise nature of the appeal will depend on the type of enforcement action taken.
24. **Publication of outcomes** – We will publish general statistics about the types of complaint received and all outcomes so that the levels of compliance by BSB regulated individuals can be understood. We will also:
 - a. publish findings as a result of disciplinary action on our website, and/or the website of the independent body that administers Disciplinary Tribunals, including decisions on disqualifications;
 - b. ensure that members of the public who search our on-line register will be able to access any published disciplinary findings/disqualifications against a BSB regulated individual;
 - c. provide details of any disqualification to the LSB and all other Approved Regulators;
 - d. Formally record administrative sanctions but not make them public otherwise than in accordance with Regulations 90 and 91 of the Complaints Rules;
 - e. publish the details of any conditions imposed on an authorisation or licence.

Strategy Consultation, Review & Evaluation

25. This strategy came into effect XXXX 2013. We shall consult with stakeholders to evaluate its effectiveness two years from its initial application and amend where appropriate. In the meantime, we welcome any feedback on the strategy's content, implementation and effectiveness.
26. All the regulations and procedures referred to in this strategy are available on our website at [include url].

Equality considerations

27. We are committed to ensuring the application of this strategy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. BSB regulated individuals subject to this strategy should advise us of any reasonable adjustment or specific requirements they have. These will be accommodated as far as is reasonably practicable and in line with our obligations under the Equalities Act 2010.

28. We will monitor any enforcement action under this strategy to ensure there is no disproportionate impact on any equalities groups within the community we regulate.