

Direction 117 issued under Part 3 of Schedule 4 to the Legal Services Act 2007 to the Bar Standards Board (BSB)

1. This is a direction issued pursuant to paragraph 19(3) of Schedule 4 to the Legal Services Act 2007 (the Act).
2. Unless stated otherwise, words in this direction are used as they are defined in the Act.
3. In accordance with paragraph 19(3) of Schedule 4 to the Act, the Board has directed that the following alterations to regulatory arrangements be treated as exempt alterations for the purposes of paragraph 19(2)(c) of Schedule 4:

BSB Duty to report serious misconduct

Proposed changes

4. The BSB Handbook outlines situations where a regulated person would not be required to report serious misconduct 'events' by another regulated person, for example, legal professional privilege. However, the BSB consider that this provision captured in rC68 is not drafted with sufficient clarity to cover situations where 'events' are subject to somebody else's legal professional privilege. Using the term 'events' also has the potential to cause confusion as events themselves would not be subject to privilege, rather information or documents would be. Consequently, the BSB would like to amend 'events' to 'documents or information' to provide greater and so it is more in line with case law.
5. Specifically the amendments to rC68.3 are as follows:

"rC68 You are not under a duty to report serious misconduct by others if:

.3 the **events** **information or documents** which led to you becoming aware of that other person's serious misconduct are subject to ~~their~~ legal professional privilege."

6. There are also proposed consequential clarification amendments:

Requirement for unregistered barristers to inform inexperienced clients that their advice may not benefit from legal advice privilege, in line with case law (*Part 2, Section D, Rule rC144.1.f*); and

Clarification of situations where a barrister employed by a non-authorised body is required to have a 'qualified person' (*Part 3, Section B, Rule rS21*)

Reason for exemption direction

7. The amendments to the BSB Handbook are mostly for clarification purposes only and do not represent a significant change in regulatory policy with regards to reporting serious misconduct.

Minor amendment following assessment

8. The BSB made one minor amendment to the drafting of the changes to Part 2, Section D, Rule rC144.1.f, following LSB assessment. Altering the term "legal advice privilege" to "legal professional privilege".

9. A copy of the alteration was submitted to the Board on 31 August 2017.
10. This direction is to be deemed made on and to be effective from 19 September 2017.

For and on behalf of the Legal Services Board
19 September 2017