

THE BSB HANDBOOK

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THE BSB HANDBOOK

FOREWORD

Justice and the rule of law are fundamental to our society. So is public confidence in the administration of justice.

Barristers play a central part in our legal system. The effective and efficient running of our legal system relies on barristers using their independent judgment when advising their client, presenting their clients' cases effectively, and carrying out their duty to the court and their other professional duties. The trust and confidence which the public places in barristers, and the reputation of the Bar as a whole, depend on the behaviour of all barristers continuing to merit the trust reposed in them. Barristers therefore must act with integrity, honesty and independence. In their practice they must provide a competent and professional service, keep their knowledge fully up to date, give sound advice and deal frankly and courteously with clients, colleagues and others.

When acting as an advocate or conducting litigation, the role of a barrister is to present their client's case as effectively as possible. Justice requires that people appearing before a court should have a fair hearing. This in turn means that they should be able to have their case presented by skilled advocates who will do so fearlessly, independently and in the best interests of their client. The sound administration of justice also requires that those who are acting as an advocate, or conducting litigation, always observe their duty to the court, even where this conflicts with the interests of their client.

~~Barristers are now free, if they choose to do so, to offer their services through a range of different business structures, including structures jointly managed and owned by other types of lawyers, such as solicitors, and non-lawyers. The consumer can now choose different means of access to the services of the Bar. However, the public needs to be sure that the standards that apply will be no less rigorous and that access to justice will be safeguarded. So, this Handbook applies not only to barristers but also to alternative business structures, to legal disciplinary practices, barrister only entities which are authorised by the Bar Standards Board, to their managers and owners, and to those whom they employ to provide legal services to their clients. It is important that the same high standards are maintained by all those whom the Bar Standards Board regulates.~~

(To be signed by the Chair of the BSB)

THE BSB HANDBOOK

OVERVIEW

A, INTRODUCTION

A1. The Bar Standards Board

I.A1.1. The *Bar Standards Board* is a specialist regulator focussing primarily on the regulation of advocacy, litigation and legal advisory services. These legal services have a close relationship to access to justice and the rule of law. Our society is based on a rule of law. Everyone needs to be able to seek expert advice on their legal rights and obligations and to have access to skilled representation in the event of a dispute or litigation. Our system of justice depends on those who provide such services acting fearlessly, independently and competently, so as to further their clients' best interests, subject always to their duty to the Court.

I.A1.2. The regulatory objectives of the *Bar Standards Board* derive from the Legal Services Act 2007 and can be summarised as follows:

I.A1.2.1 protecting and promoting the public interest;

I.A1.2.2 supporting the constitutional principles of the rule of law;

I.A1.2.3 improving access to justice;

I.A1.2.4 protecting and promoting the interests of consumers;

I.A1.2.5 promoting competition in the provision of the services;

I.A1.2.6 encouraging an independent, strong, diverse and effective legal profession;

I.A1.2.7 increasing public understanding of the citizen's legal rights and duties; and

I.A1.2.8 promoting and maintaining adherence to the following professional principles:

(a) that *authorised persons* act with independence and integrity;

(b) that *authorised persons* maintain proper standards of work;

(c) that *authorised persons* act in the best interests of their clients;

- (d) that *authorised persons* comply with their duty to the court to act with independence in the interests of justice; and
- (e) that the affairs of clients are kept confidential.

I.A1.3. The BSB Handbook ("*this Handbook*" or "*the Handbook*") sets out the standards that the *Bar Standards Board* requires the *persons* it regulates to comply with in order for it to be able to meet its *regulatory objectives*.

I.A1.4. Although the *Handbook* is drafted with specific reference to those regulated by the BSB and for use by them, the *Handbook* should also act as a useful reference tool for all consumers of legal services regulated by the *Bar Standards Board*. In particular, the Core Duties and the outcomes set out in Part II of this Handbook should give consumers a useful indication of what they should expect from the *Bar Standard Board's* regulatory framework and those subject to it.

A2. Structure of the Handbook

I.A2.1. The *Handbook* consists of the following parts:

I.A2.1.1 this Part I: Overview;

I.A2.1.2 Part II: The Code of Conduct – this part includes the ten Core Duties which underpin the *Bar Standards Board's* entire regulatory framework, as well as the rules which supplement those Core Duties. Compliance with both the Core Duties and the rules is mandatory. The Code of Conduct also contains details of the outcomes which compliance with the Core Duties and the rules is designed to achieve. The *Bar Standards Board's* approach to regulation is risk-focused and so these outcomes have been defined by considering the risks which the profession needs to manage if the *regulatory objectives* are to be achieved;

I.A2.1.3 Part III: Scope of Practice and Authorisation Rules, ~~Authorisation and Licensing Rules~~ – this part includes the requirements that must be met to become entitled to practise as a *barrister* or a *registered European lawyer* and ~~the process that must be followed in order to obtain authorisation to practise as a barrister only entity, legal disciplinary practice or a BSB licensed body.~~ It also provides a summary of the scope of activities that each type of *BSB authorised person* is permitted to undertake;

I.A2.1.4 Part IV: Qualification Rules – this part sets out the training which a person must complete, and other requirements which a person must satisfy, in order to be called to the Bar by an *Inn* and become qualified to practise as a *barrister*. It also includes details of the training requirements that *BSB authorised persons* are required to meet;

I.A2.1.5 Part V: Enforcement Regulations – this part sets out the enforcement procedures that apply if *BSB regulated persons* and/or *relevant persons* fail to act in accordance with the requirements of this *Handbook*;

I.A2.1.6 Part VI: Definitions – this part defines all the italicised terms used in this *Handbook*.

I.A2.2. The *Handbook* includes Core Duties, Outcomes, Rules, Guidance and Regulations. “CD” refers to Core Duties, “R” to Rules and “G” to Guidance. The Regulations form the basis upon which enforcement action may be taken and are set out in Part V of this Handbook.

The effect of something being classified as a Core Duty, Outcome, Rule, Guidance or Regulations is as follows:

I.A2.2.1 Core Duties - These underpin the entire regulatory framework and set the mandatory standards that all *BSB regulated persons* are required to meet. They also define the core elements of professional conduct. Disciplinary proceedings may be taken against a *BSB regulated person* if the *Bar Standards Board* believes there has been a breach by that person of the Core Duties set out in this *Handbook* and that such action would be in accordance with the *Enforcement Policy*.

I.A2.2.2 The Outcomes - These explain the reasons for the regulatory scheme and what it is designed to achieve. They are derived from the *regulatory objectives* as defined in the LSA and the risks which must be managed if those objectives are to be achieved. They are not themselves mandatory rules, but they are factors which *BSB regulated persons* should have in mind when considering how the Core Duties, Conduct Rules or Qualification Rules (as appropriate) should be applied in particular circumstances. The *Bar Standards Board* will take into account whether or not an Outcome has, or might have been, adversely affected when considering how to respond to alleged breaches of the Core Duties, Conduct Rules or Qualification Rules.

I.A2.2.3 The Rules – The Rules serve three purposes:

- (a) The Conduct Rules supplement the Core Duties and are mandatory. Disciplinary proceedings may be taken against a *BSB regulated person* if the *Bar Standards Board* believes there has been a breach by that person of the Conduct Rules set out in Part II of this *Handbook* and that it would be in accordance with the *Enforcement policy* to take such action. However, the Conduct Rules are not intended to be exhaustive. In any situation where no specific Rule applies, reference should be made to the Core Duties. In situations where specific Rules do apply, it is still necessary to consider the Core Duties, since compliance with the Rules, alone, will not necessarily be sufficient to comply with the Core Duties;
- (b) The Rules contained within Section III.B set out the requirements for authorisation and the scope of practice for different kinds of *BSB authorised person*. These rules are mandatory;

- (c) the rest of Part III and Part IV set out the requirements which must be met by a *relevant person* before they may undertake a specific role within those regulated by the *Bar Standards Board*. If a person fails to meet those requirements, they will not be permitted to undertake that role by the *Bar Standards Board*. Where requirements are continuing and a *BSB regulated person* fails to meet such requirements which are relevant to that *BSB regulated person*, the *Bar Standards Board* may take steps in accordance with Part III or Part V to have that *BSB regulated person* prevented from continuing within that role.

I.A2.2.4 Guidance –

- (a) Guidance serves a number of purposes:
- (i) To assist in the interpretation and application of the Core Duties or Rules to which such Guidance relates.
 - (ii) To provide examples of the types of conduct or behaviour that the Rules are intended to encourage or which would likely indicate compliance with the relevant Rule or, conversely, which may constitute non-compliance with the Rule to which such Guidance relates.
 - (iii) To explain how the Rule applies to a particular type of *BSB regulated person* and how that particular *BSB regulated person* could comply with that Rule.
 - (iv) To act as a signpost to other rules or to guidance on the *Bar Standard's Board website* or elsewhere which may be relevant when considering the scope of the Rule.
 - (v) In Part III, to give further information about the process of applying for authorisation ~~and about how the *Bar Standards Board* intends to exercise its discretionary powers in relation to the authorisation of entities.~~
- (b) The Guidance set out in this Handbook is not the only guidance which is relevant to *BSB regulated persons*. In addition to the Guidance, the *Bar Standards Board* has published and will publish from time to time various

guidance on its website which supplements this *Handbook*, including (but not limited to):

- (i) the *Pupillage Handbook*; and
 - (ii) the Equality and Diversity Code Good Practice Guidelines.
- (c) In carrying out their obligations or meeting the requirements of this *Handbook*, *BSB regulated persons* must have regard to any relevant guidance issued by the *Bar Standards Board* which will be taken into account by the *Bar Standards Board* if there is an alleged breach of or otherwise non-compliance with of the obligations imposed on a *BSB regulated person* under this *Handbook*. Failure to comply with the guidance will not of itself be proof of such breach or non-compliance but the *BSB regulated person* will need to be able to show how the obligation has been met notwithstanding the departure from the relevant guidance.

I.A2.2.5 Regulations – Part V of this *Handbook* sets out the regulations which bind the *Bar Standards Board* when it considers alleged breaches of the *Handbook* and subsequent enforcement action. These Regulations also bind, the various Tribunals and panels referred to in that Part and all regulated persons who are subject to the enforcement process. When considering enforcement action under Part V, the *Bar Standards Board's* response to any alleged breach of or non-compliance with the Core Duties or the Rules will be informed by the impact of the alleged breach or non-compliance on the achievement of the relevant Outcomes, as well by as its own *Supervision and Enforcement Policies* and any other policies published from time to time which the *Bar Standards Board* regards as relevant (taking into account the nature of the alleged breach or non-compliance).

A3 Amendments to the Handbook

- I.A3.1. Subject to Rules I.A3.2 and I.A3.3, the *Bar Standards Board* may make amendments and/or additions to this *Handbook* by resolution and any such amendments and/or additions will take effect on such date as the *Bar Standards Board* appoints or, if no such date is appointed, on the date when notice of the amendment is first published on the *Bar Standard Board's* website following approval under Schedule 4 of the Legal Services Act 2007.
- I.A3.2. The *Bar Standards Board* has no power without the unanimous consent of the *Inns* to amend or waive Rule IV.B1.R2.1 or this Rule I.A3.2 so as to permit a person who has not been called to the Bar by an Inn to practise as a barrister.
- I.A3.3. Any amendments to Section V.C must be made in accordance with the requirements of that Section.
- I.A3.4. Amendments and additions will be published on the *Bar Standards Board's* website.

A4 Waivers

I.A4.1. Subject to I.A3.3, the *Bar Standards Board* shall have the power to waive or modify:

I.A3.1.1 the duty imposed on a *BSB regulated person* to comply with the provisions of this *Handbook*; or

I.A3.1.2 any other requirement of this *Handbook*,

in such circumstances and to such extent as the *Bar Standards Board* may think fit and either conditionally or unconditionally.

I.A4.2. Any application to the *Bar Standards Board* for a waiver of any of the mandatory requirements or to extend the time within which to complete any of the mandatory requirements must be made in writing, setting out all relevant circumstances relied on and supported by all relevant documentary evidence.

B. APPLICATION

I.B.1. Subject to paragraphs I.B.2 to I.B.5 below, this *Handbook* applies to the following categories of person:

I.B.1.1 all *barristers*, that is to say:

- (a) barristers who hold a practising certificate in accordance with Section III.C ("*practising barristers*");
- (b) barristers who are undertaking either the first non-practising six months of *pupillage* or the second practising six months of *pupillage*, or a part thereof and who are registered with the *Bar Standards Board* as a *pupil* ("*pupils*"); and
- (c) all other barristers who do not hold a practising certificate but who have been called to the Bar by one of the *Inns* and have not ceased to be a member of the Bar ("*unregistered barristers*"),

I.B.1.2 European lawyers registered as such by the *Bar Council* and by an *Inn* in accordance with Section III.D but only in connection with professional work undertaken by them in England and Wales ("*registered European lawyers*");

I.B.1.3

~~I.B.1.4 entities which have been authorised or licensed by the *Bar Standards Board* in accordance with Section III.E of this *Handbook*, which means *barrister only entities* and *legal disciplinary practices* authorised by the *Bar Standards Board* and *BSB licensed bodies* ("*BSB authorised bodies*");~~

~~I.B.1.5 individuals who are authorised to provide *reserved legal activities* by another *Approved Regulator* where such individuals are directly or *indirectly employed* by a *BSB authorised person* ("*authorised (non-BSB) individuals*");~~

~~I.B.1.6 all partners, members or directors of a partnership, limited liability partnership or company respectively where such partnership, limited liability partnership or company is a *BSB authorised body* ("*BSB regulated managers*") and, to the extent that this *Handbook* is expressed to apply to them in their capacity as such, owners of a *BSB authorised body* ("*BSB regulated owners*");~~

I.B.1.7 solely as regards provisions in this *Handbook* relating to disqualification from performing a *relevant activity* or *relevant activities* and not otherwise, any *non-authorised individuals* who are directly or *indirectly employed* by a *BSB authorised person*; and

I.B.1.8 solely as regards Section IV.B of the *Handbook*, students and *approved training organisations*.

and persons within paragraphs I.B.1.1 to I.B.1.5, when taken together, are referred to as "*BSB regulated persons*" throughout this *Handbook*, while persons in those categories when taken together with persons referred to in paragraph I.B.1.6 are referred to as "*relevant persons*". For the avoidance of doubt, students, and *approved training organisations* are neither *BSB regulated persons* nor *relevant persons*.

I.B.2. If you are a *BSB authorised individual* who is employed by or a *manager* of an *authorised (non-BSB) body* and is subject to the regulatory arrangements of the *Approved Regulator* of that body, and the requirements of that other *Approved Regulator* conflict with a provision within this *Handbook* then the conflicting provision within this *Handbook* shall not apply to you. You will instead be expected to comply with the requirements of that other *Approved Regulator* and, if you do so, you will not be considered to be in breach of the relevant provision of this *Handbook*.

I.B.3. If you are a *pupil* and are:

I.B.3.1 the *pupil* of an *employed barrister (non-authorised body)*; or

~~I.B.3.2 the *pupil* of a *manager* or *employee* of a *BSB authorised body*; or~~

I.B.3.3 the *pupil* of a *manager* or *employee* of an *authorised (non-BSB) body*; or

I.B.3.4 spending a period of external training with a *BSB authorised body* or an *authorised (non-BSB) body*,

this *Handbook* will apply to you as though you were an employee of the *barrister's* employer or the body concerned.

I.B.4. If you are a *registered European lawyer*, then, except where otherwise provided, the provisions of this *Handbook* which apply to *barristers* shall apply to you, in connection with all professional work undertaken by you in England and Wales, as if you were a *self-employed barrister* or an *employed barrister (non-authorised body or a manager or*

~~employee of an authorised (non BSB) body or a manager or employee of a BSB authorised body~~ (as the case may be) depending on the way in which you practise.

- I.B.5. In addition to the above, each Part to this Handbook has its own application section which sets out the more detailed application of that particular Part. In the event of any inconsistency, the application section specific to the particular Part shall prevail over these general provisions.

C. COMMENCEMENT AND TRANSITIONAL PROVISIONS

I.C.1. This first edition of the *Handbook* came into force on [date] and replaced the eighth edition of the Code of Conduct including its various Annexes (which came into effect from 31st October 2004).

I.C.2. Subject to I.C.3 and I.C.4 below, in respect of anything done or omitted to be done or otherwise arising before [date]:

I.C.2.1 Parts II, III and IV of this Handbook shall not apply;

I.C.2.2 the edition of the Code of Conduct or relevant Annexe in force at the relevant time shall apply; and

I.C.2.3 any reference to Part II, Part III or Part IV of this *Handbook* shall include reference to the corresponding Part of the edition of the Code of Conduct or relevant Annexe which was in force at the relevant time.

I.C.3. Where:

I.C.3.1 a matter is being dealt with under Annexe J (The Complaints Rules 2011), Annexe K (The Disciplinary Tribunals Regulations (2009) (Reissued 1 February 2012)), Annexe M (Hearings before the Visitors Rules), Annexe N (Interim Suspension Rules) or Annexe O (Fitness to Practise Rules) as at [date]; or

I.C.3.2 anything done or omitted to be done or otherwise arising before [date] required referral for consideration in accordance with any of the above Annexes,

then Part V of this *Handbook* shall apply to all such cases and any step taken pursuant to the Annexes then applying (if any) shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of Part V of this *Handbook*, save that no fine in excess of £15,000 may be imposed by a *Disciplinary Tribunal* in respect of conduct before [date] and no financial *administrative sanction* in excess of £300 may be imposed by the *PCC* in respect of conduct before [date].

D INTERPRETATION

I.D.1. In this *Handbook*:

I.D.1.1 words and phrases in italics shall have the meaning given to them in Part VI;

I.D.1.2 any reference to the masculine shall be deemed to include the feminine and any reference to the singular shall include the plural;

I.D.1.3 any reference to another provision in this *Handbook* shall be a reference to that provision as amended from time to time; and

I.D.1.4 where references are made to an enactment, it is a reference to that enactment as amended, and includes a reference to that provision as extended or applied by or under any other enactment.