THE CRIMINAL BAR ASSOCIATION

CBA GUIDANCE · COMPLAINTS PROCEDURE

Complaining About a Barrister

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1. The CBA is a Specialist Bar Association that exists to represent the views and interests of the practising members of the Criminal Bar in England and Wales.
2. All members of the Criminal Bar Association are regulated by the independent arm of the General Council of the Bar, the Bar Standards Board.
3. The BSB Barristers' Code of Conduct sets out the duties and obligations of individual barristers who are members of the Criminal Bar Association.
4. In particular barristers themselves are obliged to report serious misconduct to the BSB's Contact and Assessment Team by completing the online form on 'reporting concerns' section of the BSB's website.
5. This Complaints Procedure applies when a complaint is made to the CBA about a barrister by another barrister or about a barrister by a member of the public and is subject to the Bar Council Complaints Policy.
6. When any complaint is made to the CBA about a barrister the complaint will be forwarded to the Secretary and Assistant Secretary of the CBA. The complaint will remain confidential and no record will be kept of the complaint nor any enquiry made into the complaint. This is because members of the profession cannot investigate another member of the profession.
7. The Secretary and Assistant Secretary of the CBA will signpost the complainant using the attached Organogram and confirm that they are not permitted to record the complaint, discuss the complaint or investigate the complaint because they are not permitted to investigate another member of the profession.
8. This Organogram shows the signposts the CBA will confirm to any complainant in the event of receiving a complaint about a barrister including barristers who are members of the CBA. Access the Organogram with links here.

Serious Misconduct

9. If the CBA receive a report or complaint of a barrister's serious misconduct the CBA will report this matter immediately to the Bar Council and BSB.

10. Barristers should not report or complain of serious misconduct by another barrister to the CBA. This is because a barrister's obligation is to act according to the Bar Code of Conduct Rule C66. Rule C66 states that, "subject to a barrister's duty to keep the affairs of each client confidential and subject also to Rules C67 and C68, a barrister must report to the Bar Standards Board if they have reasonable grounds to believe that there has been serious misconduct by a barrister or a registered European lawyer."

11. The list at Guidance C96 gives examples of serious misconduct including:

- Dishonesty,
- Assault or harassment,
- Attempting to gain access without consent to instructions or other confidential information relating to the opposing party's case,
- Attempting to gain access without consent to confidential information relating to another member of chambers, member of staff or pupil,
- Encouraging a witness to give evidence which is untruthful or misleading,
- Knowingly or recklessly misleading or attempting to mislead the court or an opponent,
- Being drunk or under the influence of drugs in court
- Failure by a barrister to report serious misconduct by others promptly
- Refusing the BSB access to your practice for inspection purposes
- Failure to report promptly to the BSB disqualification/winding up proceedings/ administration proceedings,
- Reporting or threatening to report another person as a litigation tactic or otherwise abusively or merely to please a client or other person or for improper motive
- Conduct that poses a serious risk to the public.

12. This is not a closed list and breaches of other provisions may also amount to serious misconduct.

13. Barristers should report directly to the Bar Council and the BSB's Contact and Assessment Team by completing the online form on the 'reporting concerns' section of the BSB's website – there is an option on the online form for reports of serious misconduct.

14. Whilst barristers are under an obligation to report serious misconduct to the Bar Council and the BSB we understand that the Bar Council and the BSB will treat any report of discrimination, harassment (whether of a sexual nature or otherwise) or victimisation as sensitively as possible and will not act without first consulting the person who has been affected. Given the sensitivity of this issue, the BSB does have a policy of not taking enforcement action for failing to comply with the duty to report if you may have been the subject of these types of misconduct. Nevertheless, complainants are encouraged to report matters directly to the Bar Council and the BSB and reports will be treated sensitively.

15. If a complainant would like to make a confidential report, the Bar Council Talk to Spot Application provides anonymity. For further advice on the reporting process, please contact the Bar Council BSB Information Line on 020 7611 1445.

16. On becoming aware of serious misconduct, a barrister should make a report to the Bar Council or BSB as soon as reasonably practicable and will receive an acknowledgement of receipt of the report, including an explanation of how the Bar Council/BSB will handle the information they receive. The Bar Council or BSB Contact and Assessment Team will assess the report you have made and decide what the initial regulatory response should be. This may include sending for enforcement action, or passing the information to the Supervision Team.

17. If a barrister wishes to provide information confidentially, the BSB may be able to take reasonable steps to protect your identity. However, depending on the facts of the case, it may be difficult to take enforcement action without identifying you.

If you experience harassment or bullying

Speak to someone

18. If subjected to bullying or harassment we suggest a little time should be taken to consider what has occurred, speak to someone about it, someone trusted. A person bullied or harassed should not suffer in silence. These issues are widely understood today and there are now avenues which individuals can go down without the need to feel there will be repercussions or their future career compromised.

Talk to Spot

19. If an individual does not have a person to confide in they should not worry, barristers can utilise the Bar Council Application 'Talk to Spot'. This is a secure online tool, it is confidential and counsel can raise concerns about inappropriate comments or behaviour, harassment or discrimination. This is a vital support for practitioners. Counsel can make a record of exactly what happened and if later they decide to take the matter further that record can be used to support a complaint about the incident.

Speak to your Head of Chambers

20. Counsel should speak to their Head of Chambers. They will be able to talk the complaint through and Chambers should have a specific policy on bullying and harassment. Above all counsel must speak out.

Making a formal complaint

21. Serious incidents of bullying and persistent bullying are likely to justify a formal complaint about a judge. The Judicial Conduct and Investigations Office (JCIO) deal with formal complaints about judicial behaviour.

Support from the CBA

22. Whilst the CBA cannot be involved in receiving, investigating or adjudicating on complaints, we recognised that being the subject of any bullying behaviour or harassment is debilitating and upsetting. Please report your experience using the channels on the Organogram. If you wish to have support from the CBA in order to make the complaint please do not hesitate to contact us and your complaint will be passed to the Secretary and Assistant Secretary of the CBA in the first instance. We will then devise a plan in order to provide you with the assistance you need.