

**CBA Response to the Bar Standards Board Consultation on the Standard of Proof
in Disciplinary Proceedings**

1. The Executive Committee of the Criminal Bar Association discussed the BSB Consultation at its meeting on 19 July 2017. The majority opposed lowering the standard of proof and there was no appetite for change.
2. The main argument in favour of retaining the criminal standard, when other professions have moved away from it, was that barristers – and criminal practitioners most acutely – are unusually vulnerable to groundless and malicious complaints. The reasons given for that are (i) often those either convicted of or with previous convictions for dishonesty offences, and have few inhibitions about lying when aggrieved; (ii) allegations are relatively easy to make, especially now that solicitors frequently fail to attend conferences or Court, where they could act as witnesses to any conduct the subject of a complaint; (iii) convicted defendants have little to lose by making a false complaint; (iv) the analogy is with police officers, who are protected from such complaints by the higher standard of proof; (v) the above risks are higher in direct access cases. Therefore, a higher degree of protection is required than for other professions.
3. The minority view was that it is anomalous for Barristers (the only professionals apart from veterinarians) to retain the criminal standard. Many disciplinary offences are not criminal in character. The public perception may be that we are protecting vested interests and are unwilling to sanction breaches of professional conduct rules.
4. We note that the consultation paper gives little evidence of a specific problem that the proposed change may remedy. We are concerned that not enough research or forecasting have been done on the impact of changes, especially for those with protected characteristics under the **Equality Act 2010**.
5. We would welcome further evidence as to the need for the change.

Consultation questions

Q1: Do you consider, in principle, that the BSB should change its regulatory arrangements to allow for the civil standard to be applied to allegations of professional misconduct?



Q2: If your answer to (1) above is "yes", do you consider that the BSB should only change the standard of proof if and when the Solicitors Disciplinary Tribunal also does so?

Q3: Do you consider that a change in the standard of proof could create any adverse impacts for any of those with protected characteristics under the Equality Act?

Response

Q1: **No**

Q2: **N/A**

Q3: **UNKNOWN**