

BAR STANDARDS BOARD

REGULATING BARRISTERS

Making a complaint about a barrister

1. Introduction

Most barristers provide a very high standard of service and you can have confidence in the work they do, but sometimes things go wrong or a barrister's service to you is not up to the required standards. When this happens you can complain to the Bar Standards Board.

The Bar Standards Board

The Bar Standards Board was created in 2006 to carry out the regulatory functions of the Bar Council. The Board is independent from the Bar Council and is responsible for ensuring that high standards are maintained. It publishes a Code of Conduct that barristers must abide by, and takes action where there is evidence that the Code has been breached and/or professional standards have not been maintained. The Code of Conduct sets demanding standards for barristers to meet and we rely on members of the public to bring to our attention any potential breaches.

2. Making a complaint

How do I complain about a barrister?

Before complaining to the Bar Standards Board, you should first try to raise your concerns direct with the barrister by complaining to the "chambers" from which the barrister works. All chambers are required, under the Code of Conduct, to have a complaints procedure and this may be a quicker and more effective way of resolving your concerns. If you feel you need assistance to do this, your solicitor may be able to help or you could get help from a Citizens Advice Bureau, or other advice agency.

If you are unable to resolve your complaint with the barrister's chambers, you can contact us by letter or telephone. If you have first contacted the barrister's chambers and are not happy with the results, you must contact us within three months of the date of the chambers' decision. We will ask you to fill in a complaints form and will provide guidance notes about how to do this. To obtain a form or discuss your complaint please contact us at:

Complaints Team
Bar Standards Board
289-293 High Holborn
London WC1V 7HZ
Telephone: 020 7611 1444
Fax: 020 7611 1342
www.barstandardsboard.org.uk

What can I complain about?

We can investigate your complaint if there is evidence that a barrister has breached the Code of Conduct or has provided inadequate professional service. We will not be able to decide this until we have studied your complaint.

Examples of the types of behaviour we can deal with include:

Professional Misconduct

- Misleading the court
- Failing to keep information confidential
- Dropping a case at short notice without good reason
- Acting against your instructions or best interests
- Causing serious delay
- Acting dishonestly or in a way that damages the profession's reputation.

Inadequate professional service

This is service to a client of a barrister that has fallen significantly below the standard normally expected. Only people who are direct clients of the barrister can make a complaint of inadequate professional service. Examples include:

- Delay in dealing with papers
- Poor or inadequate work on a case
- Being rude to a client
- Not knowing a relevant point of law, which a reasonably competent barrister should have known.

What can't I complain about?

If your complaint includes an element of professional negligence then, depending on its complexity, we may be limited as to how far we can deal with it and it may be more appropriate to take action through the courts. We will advise you if this is the case.

We do not usually deal with complaints about a barrister's behaviour when they are acting outside their professional role. This means that only exceptionally do we take action where a complaint is about something the barrister has done in his/her private life.

We do not usually take action against barristers who are in debt to members of the public. We have no power to enforce repayment; legal action can be taken to recover the debt through the courts.

Who can I complain about through the Bar Standards Board?

We only deal with complaints about barristers and it does not matter if they are practising or not. However, our powers to take action against non-practising barristers are limited.

Who can't I complain about through the Bar Standards Board?

You can't complain to us about the following groups:

- Solicitors. A complaint against a solicitor should be addressed to: the Legal Complaints Service: Email enquiries@legalcomplaints.org.uk, Legal Complaints Service, Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE. Website: www.legalcomplaints.org.uk
- **People who offer legal services to the public but who are not qualified barristers**
- **Judges** (even if they used to be barristers)
- **Recorders** (part-time judges, when they are acting as such, even if they are also barristers)
- **Tribunal Chairmen**

If you have a complaint against a Judge, a Recorder or a Tribunal Chairman contact:

The Office for Judicial Complaints, 4th Floor, Clive House, Petty France, London SW1H 9HD, telephone 020 7189 2937. Email: customer@ojc.gsi.gov.uk. Website: www.judicialcomplaints.gov.uk

3. Your obligations as a complainant

Time limits

You must submit your complaint within six months of the events that you are complaining about unless there are exceptional circumstances (eg a serious illness) for the delay. If you have first contacted the barrister's chambers and are not happy with the results, you must contact us within three months of the date of the chambers'

decision. Where cases are continuing, or there is a relevant appeal in progress we usually put complaints 'on hold' until the case or appeal has ended. **It is nevertheless important to submit your complaint within six months of the events concerned, or within three months of the chamber's decision, whether or not there is a continuing case or appeal.**

Evidence

For our complaints procedure to work effectively, we need your help. When filling in the complaints form, please set out your complaint as clearly and concisely as possible. Please attach copies of **relevant** documents you might have, such as court transcripts and judgements, instructions given to your barrister and advice received from him or her. **Never send original documents with your complaint unless we request this.** Ultimately, it is your responsibility to provide the Bar Standards Board with all the relevant evidence that supports your complaint. We ask that all your evidence is provided at the beginning of the complaints procedure rather than disclosed in a piecemeal fashion during the process. Where additional evidence emerges or is needed, we rely upon you, as the complainant, to send it to us as quickly as you can. This will prevent unnecessary delays in decision-making. In fairness to the barrister complained against, we will usually copy to him or her your full complaint form, including any attachments, letters, documents or other information that you have provided.

Contact details

It is important that you tell us if your address or other personal contact details change.

Acceptable behaviour

The staff at the Bar Standards Board will treat you with respect. We expect you to treat our staff with the same respect.

4. How your complaint is being dealt with

Stage 1 – Initial handling

The Complaints Commissioner, Dr Ann Barker, oversees our complaints procedure. She is not a lawyer. She reports to the Bar Standards Board, and is independent of the Bar, enabling her to make impartial decisions.

The Commissioner reviews complaints as they are received. Under the Code of Conduct, she can:

- Dismiss a complaint where it does not show evidence of either misconduct or inadequate professional service, or because the events referred to are more

than six months old or are not sufficiently serious. (You should be aware that many complaints fall at this stage because of a lack of evidence.);

- Investigate further by gathering information from relevant sources such as solicitors and other witnesses;
- After investigation, dismiss the complaint where there is insufficient evidence of misconduct or inadequate professional service;
- After investigation, refer the complaint to the Complaints Committee where the evidence indicates possible misconduct or inadequate professional service.

Where the Commissioner decides that further enquiries should be made, staff in the Complaints Team conduct the investigation. This is done by writing to the barrister for his or her comments as well as to other relevant people such as solicitors, judges or witnesses. You will be given an opportunity to comment on all the relevant evidence that we receive. The Commissioner then looks at the case again and decides whether the case should be referred to the Complaints Committee for consideration of further action.

Stage 2 – The Complaints Committee

Under the Complaints Rules, the Complaints Committee decides, on the basis of the evidence gathered during the investigation, whether disciplinary action should be taken against the barrister.

The Complaints Committee is made up of a combination of practising barristers and independent lay members (non-lawyers, who are appointed by open competition and on merit). The lay members of the Complaints Committee play an important part in making decisions. They come from a wide variety of backgrounds and professions and are broadly representative of the wider community.

The Committee can decide to:

- Dismiss the complaint (but only if the majority of independent lay members present agree);
- Refer the case for disciplinary action on the basis that there is evidence that the barrister may be guilty of misconduct or providing inadequate professional service, or both. (This is not a judgment about whether the barrister is in fact guilty; this comes later.)

Stage 3 – Disciplinary Action

Where the Complaints Committee decides that a barrister should face disciplinary action arising from your complaint, it has the power to refer cases to a range of panels including:

- **Adjudication Panels** which consider allegations of inadequate professional service only and can require the barrister to apologise, reduce fees or pay up to £5,000 or £15,000 in compensation. The limit of £5,000 compensation is in place where the act of omission complained of took place *before* 1 July 2008. If the actions complained of took place *on or after* 1 July 2008, then the compensation limit is £15,000. The average compensation award in 2006 was £1,100. However, compensation is not always ordered, even where the barrister is found to have provided an inadequate professional service;
- **Summary Procedure Panels** which deal with relatively simple cases, where the facts are not in dispute and would not be likely to lead to the disbarment of a barrister;
- **Disciplinary Tribunals**, which deal with the most serious cases, or cases where the facts are in dispute. Tribunals can impose fines, suspend the barrister from practice for a limited period and exceptionally, disbar the barrister.

All panels are appointed by an independent body (the Council of the Inns of Court) and include both barristers and lay members (non-lawyers). A Judge or a Queens Counsel (a senior barrister) will chair the panel and will be accompanied by at least one barrister and one lay member. The panel will consider all the evidence and decide whether the barrister has breached the Code or provided inadequate service.

Where your complaint is referred to a Disciplinary Tribunal, we may ask you to be a witness. Should this happen we will tell you what to expect before the hearing.

Stage 4 – Review of decision

There is no formal appeal against decisions of either the Complaints Commissioner or the Complaints Committee. However, the Commissioner or the Committee may be prepared to look at the matter again if you have some further evidence to support your complaint, and good reasons to explain why this was not included in the original complaint. You should not rely on the possibility that you might be able to reopen a complaint. It is very important to make all the points about your complaint when you first complain.

If you are not satisfied with the way we dealt with your complaint, you have a right to contact the Legal Services Ombudsman who has powers to investigate how we

handled your complaint, to require reconsideration, and to require that the Bar Standards Board or the barrister concerned pay compensation for a failure to handle the complaint properly.

The Ombudsman can be contacted at:

Legal Services Ombudsman,
3rd Floor, Sunlight House,
Quay Street,
Manchester M3 3JZ
Telephone 0161 839 7262
Lo-call number 0845 6010794
www.olso.org

5. Our commitment to a high quality service

How long will it take to deal with your complaint?

We aim to deal with complaints as quickly as possible. The average length of time taken to consider a complaint is less than six months. More than half of all complaints are dealt with within three months. However, you should remember that some complaints are complicated and it may take some time to get the information we need to make a fair decision.

If the Complaints Commissioner decides to dismiss your complaint without further investigation, we will try to write to you within **six weeks** of receiving your complaints form.

If the Commissioner investigates your complaint, it will take about **three months** to gather evidence, show it to you and assess your response.

If your complaint is referred to the Complaints Committee, it will usually take a further **two months** for the Committee to reach a decision, but this depends on the complexity of the issues.

We try to make sure that disciplinary and other panels are set up as soon as possible after the Complaints Committee has reached its decision. It usually takes at least **three to four months from referral for** a disciplinary case to be heard but can take considerably longer where the case is complex.

Keeping you informed

We will try to keep you informed by letter of the progress of your complaint and of the decisions that are made. There will be periods when we have to wait for information or for a decision by the Complaints Committee. If you have any queries or want a case update please contact the official in charge of your case and we will do our best to help.

Data Protection Act 1998

We are registered as a data controller under the Data Protection Act 1998 and must comply with legal requirements in handling personal information. The Act allows you to find out what information is held about you on computer and (some) paper records. You may need to pay a small fee to cover the cost of making that information available to you.

Equality of opportunity

The Bar Standards Board is fully committed to ensuring that all users of the complaints service are treated with respect, fairly, and without discrimination based on race, colour, ethnicity, nationality, citizenship, gender, sexual orientation, marital status, disability, age, religious affiliation, political persuasion, or any irrelevant ground.

We are determined to be accessible to all interested parties. We can provide information about our services in different formats (eg large print and Braille). We can also make reasonable adjustments if you need help in making your complaint. Please let the Complaints Team know what your particular needs are and we will try to help.

**Bar Standards Board
July 2008**