



## Procedure for dealing with allegations of misconduct by members of the Bar Council

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**Review sequence:** General Management Committee > Bar Council

**Review schedule:** Triennially, unless earlier review required (last review 2023)

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### 1. Purpose:

- 1.1 The purpose of this document is to set out the Bar Council's process and procedure for dealing with allegations of inappropriate behaviour ("misconduct") made against a barrister member of the Bar Council ("a Bar Council Member"); and the responses it may make if misconduct by such a Member is established.
- 1.2 The Bar Council has separate policies and procedures in place concerning the conduct and discipline of its non-barrister salaried or remunerated staff.

### 2. Definitions

- 2.1 "Bar Council Member" means any barrister member of the Bar Council (as set out in Part II, paragraph 2 of the Constitution of the General Council of the Bar).
- 2.2 For the purposes of this document, an "*allegation of misconduct*" will be deemed to have been made where:
  - A Bar Council Member is the subject of a formal investigation by the Bar Standards Board in accordance with the provisions of the BSB Handbook; or
  - A Bar Council Member is the subject of a formal investigation by the Police; or
  - A Bar Council Member is under formal investigation under any organisation's whistleblowing procedures; or
  - A Bar Council Member is the subject of formal investigation by any organisation for gross misconduct, serious financial mismanagement, bribery or fraud; or
  - A Bar Council Member is under formal investigation by any organisation under its grievance procedures in respect of bullying, harassment or unlawful discrimination.

References in this paragraph 2.2 to “any organisation” means any organisation in respect of which the Bar Council Member in question has accepted, implicitly or explicitly, its authority to investigate, discipline, sanction and/or otherwise regulate his or her conduct.

- 2.3 By extension, an “*allegation of misconduct*” will also be deemed to have been made where information concerning supposed actions or behaviour of a Bar Council Member has come to the attention of the Bar Council, and those actions or that behaviour could, if proved, have, in the determination of the Chair, the Chair of the Ethics Committee and CEO (acting by a majority), a negative reputational impact on the Bar Council, or could negatively impact its ability to pursue its aims or to perform its representative functions.

### **3. Obligation to inform about investigations**

- 3.1 Bar Council Members must promptly inform the Chair and the CEO if they are subject to formal investigation of a type set out in paragraph 2.2.
- 3.2 Bar Council Members must promptly inform the Chair and the CEO if they become aware that another Bar Council Member is subject to formal investigation of a type set out in paragraph 2.2.

### **4. Suspension**

- 4.1 Following an allegation of misconduct (as defined in paragraphs 2.2 and 2.3 above), the Chair, the Chair of the Ethics Committee and the CEO, acting by a majority, may determine that the relevant Bar Council Member should be suspended from membership of the Bar Council, if necessary with immediate effect and without advance notice.
- 4.2 In determining whether or not to suspend a member account shall be taken of all the relevant circumstances including but not limited to
- The nature and seriousness of the allegations
  - Any safeguarding issues which arise or might arise.
- 4.3 Any suspension of a Bar Council Member from membership of the Bar Council will be reported, in confidence, to the General Management Committee at its next meeting.
- 4.4 Suspension of a Bar Council Member from membership of the Bar Council shall be a provisional measure, pending the outcome of investigation into that Member’s conduct.

- 4.5 Any Bar Council Member suspended from membership of the Bar Council pursuant to paragraph 4.1 above shall have a right of appeal as set out in Section 7 below.
- 4.6 The suspension of a Bar Council Member from membership of the Bar Council will not be publicly disclosed before any appeal under Section 7 below has been completed. It may thereafter be disclosed, on the authority of the Chair, but only if the relevant allegation of misconduct has become a matter of public knowledge, and not to do so could have a significant negative reputational impact on the Bar Council or could negatively impact its ability to pursue its aims or perform its representative functions.
- 4.7 While a Bar Council Member's membership is suspended, that Member may not attend meetings of the Bar Council, nor of its Committees, Panels or Working Groups; and may not hold himself or herself out as a Member of the Bar Council. Suspended Bar Council Members will not have the right to receive any Bar Council papers or documentation.
- 4.8 If, following investigation, an allegation of misconduct against a suspended Bar Council Member is not upheld, the suspended Bar Council Member's membership will be restored for the remainder of his or her constitutionally defined term of office.
- 4.9 If, following investigation, an allegation of misconduct against a Bar Council Member is upheld, the relevant Bar Council Member may be removed from membership of the Bar Council as set out in section 6 below.

## **5. Investigation**

- 5.1 The Bar Council need not itself investigate any "*allegation of misconduct*" set out in paragraph 2.2 above; but may accept the findings of fact of the investigating organisation, recorded in writing, relevant to whether any misconduct has been established.
- 5.2 Concerning an "*allegation of misconduct*" falling not within paragraph 2.2 above, but only within paragraph 2.3 above, the Bar Council will undertake its own investigation into whether the supposed actions or behaviour of the Bar Council Member are established. The CEO will appoint an Investigating Officer, who will be the Chair of one of the Bar Council's representative Committees (but not the Chair of the Ethics Committee). The appointed Investigating Officer must have no involvement in the facts under review and must act impartially to achieve a fair and balanced view of those facts. At the end of the investigation, the Investigating Officer must provide an outcome report outlining the steps undertaken in the investigation process, the findings of fact made, and a recommendation to the Chair, the Chair of the Ethics

Committee and the CEO as to whether the Bar Council Member should be removed from membership of the Bar Council.

**6. Removal from the membership of the Bar Council**

- 6.1 A Bar Council Member may be removed from the Bar Council on the basis of any established misconduct which, in the determination of the Chair, the Chair of the Ethics Committee and the CEO, acting by a majority, would have a significant negative reputational impact on the Bar Council or would negatively impact its ability to pursue its aims or perform its representative functions.
- 6.2 Any removal of a Bar Council Member from the Bar Council will be reported, in confidence, to the General Management Committee at its next meeting.
- 6.3 Any Bar Council Member removed from the Bar Council on the basis of misconduct (pursuant to paragraph 6.1 above) shall have a right of appeal as outlined in Section 7 below.
- 6.4 The removal of a Bar Council Member from the Bar Council will not be publicly disclosed before any appeal under Section 7 below has been completed. It may thereafter be disclosed

**7. Right of appeal**

- 7.1 A Bar Council Member whose membership of the Bar Council has been suspended (pursuant to paragraph 4.1 above) may make written appeal representations as to why his or her membership should not be suspended.
- 7.2 A Bar Council Member who has been removed from the Bar Council (pursuant to paragraph 6.1 above) may make written appeal representations as to why he or she should not be removed.
- 7.3 The written appeal representations referred to in paragraphs 7.1 and 7.2 must be submitted to the Head of Strategy, Planning and Governance, marked for the attention of the Vice-Chair of the Bar Council. The written appeal representations should include all the facts and evidence which the Bar Council Member wishes to be considered in support of the appeal, the grounds of appeal, and any further explanation considered necessary as to why the decision to suspend or remove is wrong or unfair.
- 7.4 Written appeal representations should normally be received within fifteen working days of the appellant Bar Council Member having been informed of the suspension or

removal. Extensions to this period for exceptional circumstances may be considered by the Vice-Chair of the Bar Council.

7.5 An appeal will be heard by an *ad-hoc* Appeal Committee constituted only for the purpose of hearing and determining the appeal. The Appeal Committee shall meet as soon as is reasonably practicable on receipt of the written appeal representations, but normally within ten working days. The Appeal Committee shall be composed as below:

- The Vice-Chair of the Bar Council; and
- Two other Members of the Bar Council determined by the Vice-Chair, who shall be Chairs or Vice Chairs of the Bar Council's representative Committees, (but not the Chair of the Ethics Committee) one of whom shall, save in exceptional circumstances, be the Chair of the Equality, Diversity and Social Mobility Committee;

and shall make its determinations independently of the Chair, the Chair of the Ethics Committee and the CEO.

7.6 At the Appeal hearing, the appellant Bar Council Member may represent himself or herself or may be represented by another subscriber (as defined in in Part I, paragraph 1 of the Constitution of the General Council of the Bar).

7.7 The Appeal Committee may overrule a decision taken to suspend a Bar Council Member's membership, or to remove a Bar Council Member from the Bar Council, if it considers that the decision was wrong or unfair.

7.8 A confidential summary record of the Appeal Committee hearing will be made by an administrator nominated by the Head of Strategy, Planning and Governance, and provided to the Appeal Committee for its correction and approval.

7.9 The decision of the Appeal Committee will be communicated by formal letter from the Vice-Chair of the Bar Council to the appellant Bar Council Member, within five working days of the Appeal hearing.

7.10 The decision of the Appeal Committee will be reported, in confidence, to the General Management Committee at its next meeting.

**End.**