



Bar Council and Bar Standards Board

Protocol for ensuring regulatory independence

Introduction

1. This protocol is designed to fulfil undertakings made jointly by the Bar Council (BC) and Bar Standards Board (BSB) to the Legal Services Board (LSB) in relation to ensuring regulatory independence.
2. The LSB Internal Governance Rules (IGRs) are designed to ensure that structures or persons with representative functions do not exert, or are not permitted to exert, undue influence or control over the performance of regulatory functions, or any persons discharging those functions. This protocol is designed to supplement the IGRs so that the BC and the BSB are able to give assurance that regulatory independence is being achieved.
3. This protocol has been agreed and adopted by the BC and BSB, and will be reviewed from time to time.
4. The Chief Executive of the BC, working with the Director General of the BSB, shall be responsible for ensuring the effective implementation and operation of this protocol, and maintaining documentary evidence of that.
5. The Chief Executive of the BC and the Director General of the BSB shall report to the LSB any material failure to comply with this protocol.

Principles

6. This protocol applies across the whole of the BC and the BSB and is based on the following principles:
 - a. the BC should not ordinarily be involved in the discharge of regulatory actions or obligations;
 - b. the BC is entitled to make representations to the BSB;
 - c. as Approved Regulator, the BC is entitled to be provided with assurance by the BSB that the BSB is fulfilling undertakings made to the LSB;

- d. in exceptional circumstances the BSB is entitled to seek expert advice from the BC;
- e. in such cases the decision to seek BC advice should take into account the risk of undue influence and there should be an assessment as to whether the BSB should develop in-house expertise or use other sources in future;
- f. such BC involvement should only proceed with the express approval of the BSB, under clear terms of reference and governance that are approved by the BSB;
- g. the BSB should lead all such work, and arrangements and actions should be recorded and transparent;
- h. individuals providing input to the BSB must do so independently of their responsibilities as staff of the BC.

General working arrangements

- 7. The following working arrangements apply in general.
- 8. No person exercising a representative function shall attend non-public sessions of the BSB Board or its committees other than in exceptional circumstances. Any such attendance should be by specific invitation relating to a relevant piece of business, and should be documented and made public.
- 9. No person exercising a regulatory function shall attend meetings of the Bar Council or BC committee meetings with a representative function other than by specific invitation relating to a relevant piece of business. Any such attendance should be documented and made public.
- 10. Where the BC wishes to give advice to the BSB in relation to a regulatory function from a representational point of view, this should be set out in writing and copied to the Chief Executive of the BC, making clear that this is a representational input. Once the advice has been provided and considered, the Director General of the BSB should confirm that she/he is content that this has been done in conformity with the IGRs and this protocol.
- 11. This protocol does not preclude meetings between the BSB and the BC to enable the BC to represent or promote the interests of barristers. Nor does it constrain the normal professional exchange of information between the BC and BSB, but in both cases the independence of the BSB must be unaffected.
- 12. It is the responsibility of the Director General of the BSB to provide the Chief Executive of the Bar Council with assurance that the BSB is fulfilling undertakings made to the LSB.

Working arrangements which will apply when the BSB assesses that the BC is the most appropriate source of external expert advice

13. The following arrangements supplement the general working arrangements set out above and apply when, in exceptional circumstances, the BSB considers it appropriate to seek expert advice from the BC.
14. The Chief Executive of the BC, working with the Director General of the BSB, is responsible for delivering awareness at all levels of the BC and BSB of the appropriate governance and behavioral action needed in these circumstances.
15. The risk of undue influence lies with those structures and persons with representative functions. For the BC, this will normally mean the Officers, members of representational committees and associated working groups, and staff in the Representation and Policy (R&P) Directorate.
16. It is the responsibility of the Director General of the BSB and her/his senior managers and of senior managers in the R&P Directorate to ensure that their respective staffs have a detailed understanding of the IGRs and this protocol, and are clear about their specific responsibility for abiding by them.
17. Where the BSB decides to seek advice or assistance in relation to a regulatory function, the Director General of the BSB should make a request in writing to the Chief Executive of the BC. It should set out what is required, from whom, over what timescale.
18. When those identified as contributing to advice and assistance are engaged on this work, they shall as far as reasonably practical set aside their representative work. Other than in exceptional circumstances, and then only with the express approval of the Chief Executive of the BC, they should not contribute to representative work on the same issue or issues.
19. Once the advice or assistance has been provided:
 - a. the senior member of staff responsible in R&P should confirm this in writing to the Chief Executive of the BC and the Director General of the BSB, providing assurance that this has been done in conformity with the IGRs and this protocol; and
 - b. the Director General of the BSB should confirm that she/he is content with that assurance.
20. Where the advice or assistance is of an on-going nature, interim reports may be required.
21. No person exercising a representative function should contribute to the drafting of papers to the BSB Board or its committees on regulatory matters. They may

however contribute to drafting supporting material for papers for these bodies, in which case the papers should make that contribution clear.

22. No person exercising a representative function should be invited to contribute to discussion in the BSB Board or its Committees in a matter on which advice or assistance has been sought or provided without a specific invitation from the Director General of the BSB and the agreement of the Chief Executive. The reason for their attendance should be made clear and minuted at the relevant meeting.