



## **Joining and leaving chambers, and internal disputes: obligations on chambers and barristers**

<b>Purpose:</b>	To draw barristers' and chambers' attention to some practical issues which may arise, and some potential professional obligations that may be engaged, when a barrister joins or leaves a set of chambers or when an internal dispute arises
<b>Overview:</b>	Purpose of document – terms of tenancy – notice periods – terminating membership – payments on leaving chambers – fee collection – aged debt and cheque payments – Data Protection Act - disputes
<b>Scope of application:</b>	All practising self-employed barristers
<b>Issued by:</b>	The Ethics Committee
<b>First issued:</b>	December 2003
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<b>Status and effect:</b>	<b>Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.</b>

### **Introduction**

1. It is common for members of the Bar to move to different chambers in the course of their careers. Such moves give rise to questions about the responsibilities owed by both barristers and chambers, which are frequently referred to the Bar Council. Many of the questions involve issues of law on the detailed facts of the situation on which the Bar Council cannot advise. The BSB Handbook envisages that all chambers will have a constitution and the mutual responsibilities of chambers and departing members should be addressed in this document. However, it may also be useful to set out some principles of good practice when barristers do depart from chambers.

2. This document will address those areas that appear to cause the most difficulty when a barrister leaves chambers. As some of the issues which arise are the result of a barrister having accepted onerous terms when joining chambers, the document will also deal with this area.

3. It is largely a matter for each set of chambers as to how it chooses to run its affairs, subject to the duties in rC89 in the BSB Handbook to take reasonable steps to ensure that chambers are administered competently and efficiently, and many of the internal issues and disputes that arise will not engage barristers' professional ethical obligations.

4. On the other hand, it is important to be aware that some situations may engage ethical duties; and particular note should be taken of the possible impact of rC110 in the BSB Handbook. These provisions place a personal obligation on all self-employed barristers to take reasonable steps to ensure that they have appropriate policies which are enforced. In particular, under rC110, barristers must take reasonable steps to ensure that:

4.1 the affairs of their chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees (as appropriate);

4.2 chambers has in force a written statement of policy on equality and diversity; and

4.3 chambers has a written anti-harassment policy, a flexible working policy and a reasonable adjustments policy.

5. These obligations are in addition to the equality and diversity obligations imposed by the general law. They go further than the law, and the obligation to conduct affairs in a manner which is fair and equitable may be of much wider application.

## **Joining chambers:**

### **Terms of tenancy**

6. If you intend to join a new set of chambers you should consider carefully, before accepting an offer of tenancy, whether the prospects of the tenancy justify committing yourself to the terms of membership of the new set.

7. It is incumbent on members of a set of chambers to ensure that prospective members are fully aware of the terms of membership of chambers (including the constitution or any other documents setting out liabilities). In addition, new members should be made aware of any liabilities or other issues which might affect their decision to join chambers. Failure to disclose these may cause problems in enforcing these obligations and could potentially amount to professional misconduct.

8. If you discover, after joining chambers that, in addition to the standard payments that were agreed at the time you joined, you are also being asked to pay additional amounts to pay off existing debts owed by chambers, then you should in the first instance consider the chambers' constitution, and contact the Head of chambers and/or Recruitment Committee to clarify the position.

9. If the issue cannot be resolved to the satisfaction of all those affected, your remedy (if any) will more often be legal one rather than one arising under the BSB Handbook. However, as noted above, the Handbook does impose a duty on all members of chambers to ensure that chambers are run in a way which is fair and equitable (rC110.3.i), in addition to the legal and

ethical equality duties. If there are significant liabilities about which you were not informed on joining chambers, then it is possible that there could be a collective breach of the BSB Handbook on the part of the other members of chambers, and it might thus be open to you to complain to the Bar Standards Board (subject to the words of caution in paragraph 25 below).

## **Leaving chambers**

### **Notice periods**

10. When you leave a set of chambers it is usual for notice to be given. Either you should serve the required period of notice or you should agree a figure for compensation in lieu of notice (see paragraphs 15 and 16 below).

11. It is understood that many chambers have adopted a three month notice period. However, there is nothing to prevent chambers having a notice period which is lesser or greater than that. Periods of notice are not in themselves a matter for the BSB Handbook, but there might be a concern if the length of notice period was so great that it amounted to unreasonable constraint on the barrister's ability to leave chambers and there was no good reason to justify it. Chambers should have regard to what is "fair and equitable", and to any impact notice periods might have on issues of equality and diversity.

12. In order to provide clarity, and to minimise the scope for dispute, barristers are strongly advised to include a minimum notice period in their chambers' constitution.

### **Terminating the membership of a member of chambers**

13. In some circumstances, chambers may decide that it no longer wishes an individual to be a member. The BSB Handbook makes clear at gC127 that the constitution of chambers should enable members to take steps to terminate another barrister's membership. This need not happen purely because a member of chambers is found to have breached the BSB Handbook, "*provided that he or she is not disbarred and complies with such sanctions as may be imposed for such breach.*" However, chambers' constitution should be drafted so as to allow the exclusion of a member "*whose conduct is reasonably considered such as to diminish the trust the public places in you and your profession and you should take such steps as are reasonably available to you under your constitution to exclude any such member*".

14. In all cases, chambers should have a proper procedure for dealing with such grievances and it is generally appropriate to involve all, or at least a representative proportion of chambers in reaching such a decision. In deciding whether to expel a member, chambers should act fairly towards the individual, make a proper investigation, and also bear in mind the consequences of such an expulsion on the individual.

### **Payments on leaving chambers**

15. While it is open to you to work out the notice period, it is common, particularly if you are joining another set, to leave immediately. If you leave chambers immediately on notifying chambers of your intention to do so, you may be liable to chambers for a sum equivalent to the chambers rent and expenses that you would have had to pay during the required notice

period. If clerks within chambers are paid separately, this may also have a bearing on the position.

16. Where chambers' expenses are paid as a percentage of fee income, you should take care to try to ensure that you are not required to pay a percentage of any of your fees to your former chambers and a further percentage *of the same fees* to your new chambers. Typically this situation can arise (i) if you leave your former chambers before expiry of the notice period without clarifying whether your obligation to pay expenses terminates upon your departure or continues until expiry of the notice period, or (ii) if your former chambers charges a percentage of fees received from work done as a member of chambers even if you have ceased to be a member of chambers by the date of receipt of those fees. Ideally, chambers' constitution will deal with this situation, but that will not necessarily be the case. In some circumstances, you may find yourself having to agree to this, but if you are at least aware of the risk, you will be in a position to try to avoid this.

17. It is open to you to negotiate with your former chambers an agreed amount in settlement, or some other way of accounting for commission. In agreeing such arrangements, chambers should be aware that they may become precedents for dealing with future situations.

18. If agreement cannot be reached you are recommended to take advantage of the Bar Council's [Arbitration and Mediation Service](#).

### **Fee collection**

19. Unlike the previous Code of Conduct, the BSB Handbook does not impose a duty on the Head of chambers or members of chambers, in the absence of an agreement to the contrary, to ensure that outstanding fees owed to former members are collected. As a result, it is recommended that this area should be covered fully in your chambers' constitution, and that this should include the position when a barrister leaves chambers and wishes to arrange for fees to be collected by the barrister's new chambers (or by the barrister personally).

### **Aged debt and cheque payments**

20. Unless there is an agreement in advance between chambers and a barrister on departure, it is considered good practice for chambers to supply the barrister with full details of the barrister's aged debt. Fee records belong to a barrister rather than to chambers, and it is not considered acceptable for chambers to withhold this information in lieu of any outstanding monies owed by a barrister. In the past, some fee software providers to the Bar have made significant charges for enabling an electronic copy of a barrister's fee records to be made. Before requesting such an electronic copy from chambers, you should clarify the amount of the charge (if any) and who is to pay it.

21. Unless the chambers' constitution provides otherwise, chambers do not have a lien over cheques payable to a former member of chambers in respect of fees for work done and should not withhold such cheques to secure payment of outstanding monies.

## Data Protection Act

22. Information held on a computer by a set of chambers about an individual barrister, whether as a present or former member, is data for the purposes of the Data Protection Act 1998. This would include aged debt information retained by chambers. Therefore, under section 7 of the 1998 Act, a departing barrister or former member of chambers would, on request, and payment of a prescribed fee, be entitled to receive within 40 days a copy of that information in intelligible form.

23. Both chambers and individual barristers will need to give careful consideration to their obligations under the Data Protection Act 1998 as regards the treatment and protection of relevant data relating both to themselves and to the barrister's clients, and access to that data. Significant penalties can be imposed for failures to comply with the obligations that the Act imposes.

24. Private law rights are also likely to apply to relevant information and data. For example, some of the information held by chambers will be information which is the property of chambers, such as business plans, marketing strategy documents, and a client database. Other information, such as a barrister's own individual client list, is likely to belong to the barrister). Neither chambers nor a departing barrister should interfere with private law rights of this nature.

## Disputes

25. Disputes often arise over money owed to chambers by a member on departure. It is obviously sensible to see whether they can be resolved by agreement. If this is not possible, then it is open to chambers to use any remedies at civil law that it considers appropriate. You should consider taking legal advice before this arises.

26. As an alternative, the Bar Council offers an [Arbitration and Mediation Service](#) to barristers who are in dispute with their chambers. Parties must come to arbitration or mediation voluntarily and the Bar Council will not oblige any party to take part in any alternative dispute resolution. Both sides must agree to be bound by the findings or to assist the mediation. The decision of an arbitrator may be binding under the Arbitration Act and failure to abide by such a decision could amount to professional misconduct. This service is free to those who have paid the voluntary Bar Representation Fee to the Bar Council.

27. The Bar Standards Board (BSB) is unlikely to take action in response to complaints against barristers which arise from disputes as to the constitution or running of chambers unless there is a clear breach of one or more duties under the BSB Handbook. To give just one example, failure to pay outstanding chambers dues is unlikely to amount to misconduct in itself, but breach of a court order or non-compliance with the an arbitrator's award could do so. On the other hand, a record of poor handling of disputes within chambers could lead to greater scrutiny or supervision of chambers' affairs by the BSB, particularly where this reflects on whether chambers are being administered competently and efficiently (see rC89). All those involved in an internal disagreement should also take care to ensure that they behave responsibly and reasonably, so as to ensure that they comply at all times with Core Duty 5 (duty not to behave in a way which is likely to diminish the trust and confidence which the

public places in you or in the profession) and with Core Duty 3 (duty to act with honesty and integrity).

## **Conclusion**

28. This document addresses the main issues that arise when a barrister leaves chambers. It also highlights some of the problems that may occur if there is no clear chambers' policy to deal with the situation. It is therefore strongly recommended that all chambers have in place a constitution which clearly sets out the terms on which barristers join chambers, and makes clear the responsibilities of the departing barrister to chambers and the obligations that chambers owe in return.

## **Important Notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council's website [here](#).