



Bar Council response to the Bar Standards Board's (BSB) consultation on proposed amendments to powers to take interim action, part 5 of the BSB Handbook

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bar Standards Board's consultation on proposed amendments to powers to take interim action, part 5 of the BSB Handbook.¹
2. The Bar Council represents over 17,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society.
4. The Bar makes a vital contribution to the efficient operation of criminal and civil courts and tribunals. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Question 1: Do you agree that a Disciplinary Tribunal should be able, in the public interest, to order a suspension of a barrister's practice, or impose conditions on their practice, following a finding of professional misconduct and pending a decision on sanction? Please give reasons for your answer.

5. Yes, for the reasons outlined in the BSB's consultation paper. Where there has been a finding of professional misconduct at a tribunal but there is a gap between the

¹<https://www.barstandardsboard.org.uk/uploads/assets/a227f867-d960-4685-9269d09523cd9a5d/230621-Interim-suspension-Consultation-paper-final-draft-with-Annex-C-pdf.pdf>

finding and sanction decision, it seems proportionate for there to be powers for the tribunal panel to impose an interim suspension or conditions on practise where one of the criteria for doing so is met. In addition to protection of the public, it protects the reputation of the profession. It also supports the Bar Council's key objective of addressing sexual harassment and discrimination at the Bar.

Question 2: Do you agree that the BSB should be able to refer a barrister to an interim suspension panel because it is necessary for the protection of the public or in the public interest to do so? Please give reasons for your answer.

6. Yes, we also agree with this widening of the criteria for referral, for the reasons outlined in response to question 1 above and in the BSB's consultation paper.

Question 3: Do you have any comment to make on our analysis of the regulatory objectives or wish to raise any potential equality impacts of these proposals?

7. We note that through the Equality Impact Assessment (EIA) the BSB was able to identify, "that barristers aged 65+, barristers from minority ethnic backgrounds, and male barristers may be slightly more likely to be subject to these interim measures".² As the BSB acknowledges, the data pool they used for the EIA was small. However, the trend identified is actually one seen across employment in all sectors. This, along with the fact that suspension is quite a severe measure underlines the importance of close monitoring of data and disparate outcomes by the BSB. Any issues that arise should be addressed. There should also be adequate training being put in place about these new measures and equality and diversity for BSB Staff and tribunal members to ensure that suspensions are applied appropriately and in a non-discriminatory way.

Question 4: Do you wish to make any further comment on the proposals?

8. No.

**The Bar Council
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² <https://www.barstandardsboard.org.uk/uploads/assets/a227f867-d960-4685-9269d09523cd9a5d/230621-Interim-suspension-Consultation-paper-final-draft-with-Annex-C-pdf.pdf>, paragraph 21