



The Bar Council

Personal issues and relationships

Purpose:	To advise barristers regarding their professional obligations in relation to personal issues and relationships
Overview:	Private disputes – use of status – chambers’ notepaper/e-mail signature – personal or sexual relationships – other parties – within chambers
Scope of application:	All practising barristers
Issued by:	The Ethics Committee
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Status and effect:	Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

Introduction

1. When considering the issues of personal relationships several of the Core Duties can be relevant. In particular:

CD3 – You must act with honesty and integrity.

CD4 – You must maintain your independence.

CD5 – You must not behave in a way which is likely to diminish the trust and confidence the public places in you or your profession.

CD8 – You must not discriminate unlawfully against any person.

CD10 - You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

2. These Core Duties can come into play in a number of different personal situations, such as:

a. Your personal interactions with others, outside your professional practice.

b. Your personal interactions with others, in the context of your professional practice.

Personal interactions outside the professional context

3. Unless you abuse your position as a barrister then in general your private conduct will not be treated as a breach of CD3 and/or CD5; breaches of CD3 and/or CD5 may occur only if your conduct involves non-minor criminal offences or an “*abuse of your professional position*”; see gC27. However, if you do act in a manner which brings your position as a barrister into play when this is irrelevant to the matter, then this may be an abuse of that position – and thereby be in breach of CD3 and/or CD5.

4. The Code of Conduct provides at rC8:

rC8 - You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).

5. The Guidance on rC8 points out at gC25:

gC25 - ... Other conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to): ... (7) abuse of your professional position.

gC26 - For the purposes of Guidance C25.7 above, referring to your status as a barrister, for example on professional notepaper, in a context where it is irrelevant, such as in a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD3 and/or CD5.

Reference to your status as a barrister

6. The key element in misconduct is “abuse” of your professional position. In the past, the safest advice that the Bar Council could give was that you should not disclose your status as a barrister in the course of a private dispute.

7. However, few people nowadays will use chambers’ headed paper in private disputes. We are far more likely to use email. Many people use a single e-mail account for convenience for all of their communications, business and personal. It is common for people to use their chambers’ email address when ordering goods online, expecting that the email address will be used only by the computerised system that confirms receipt of the order and dispatch of the goods. However, if the buyer ends up in dispute with the seller, the seller will have in his possession an email address and email correspondence that reveals the buyer to be a barrister.

8. The Bar Council is further conscious that ready access to the Internet and, in particular, social media, will tend to mean that anyone with whom you are in serious dispute can – and probably will – discover your profession through basic online research.

9. Further, there is no obligation on a barrister positively to conceal his or her profession. The mere use of an e-mail address which reveals the fact that the user is a barrister and/or a member of a particular set, without more, therefore may not be seen in the same light as the use of headed notepaper. The use of notepaper may be seen as a deliberate attempt to highlight the writer’s status as a barrister; use of email reflects the use of a day-to-day means of private communication.

10. The Bar Council is also mindful of the fact that leading counsel are entitled in all situations, including personal ones, to use the letters “QC” after their names; some choose to do so on personal headed paper. It would seem very harsh for a junior barrister to be accused of misconduct for having disclosed that he was a barrister, when leading counsel could achieve the same result with impunity.

11. However, it is important in all cases to consider the context. You will know whether your reference to your status as a barrister is incidental, deliberate but legitimate or a conscious attempt to apply improper pressure. Even if it is incidental or legitimate, you will need to think about the impression that your reference to your status may give. If an objective bystander might think that you were seeking unfair advantage and thereby abusing your position, you should avoid reference, if you can, to that status.

Examples

12. It will usually be inappropriate for you to use your status as an implied threat to those with whom you are in dispute.

13. For example, you should not attempt to gain an unfair advantage or put any pressure on a lay person by relying on your status as a barrister in a private dispute in which this status is irrelevant. However, there are contexts in which your status may be relevant. One (real life) example is that of a very wealthy individual seeking to bully a victim by threatening to bring proceedings and to force the victim to incur vast legal costs that the victim could not afford. In those circumstances, it may well be appropriate for the victim to inform the bully that he, the victim, is a barrister and so will not need to incur legal fees.

14. Similarly, if it appears that a dispute could readily be resolved if only the other person realised that his view of his legal rights was incorrect, it might be sensible for you to say that you are a barrister, that you practise in the relevant field and so you are sure that your interpretation of the law is right. However, in those circumstances you should also urge the other person to seek his own legal advice, and not to rely on your view. In doing so, you would be seeking legitimately to resolve a dispute, and ultimately to save the other person the time and cost involved in bringing a claim that he was likely to lose.

Personal interactions in the professional context

15. Personal relationships or interactions in the professional sphere can clearly be caught by the Code of Conduct. Although too numerous to list, such relationships can include:

Relationships in chambers, with colleagues, staff and/or pupils;

Relationships with professional or lay clients;

Relationships with other parties' lawyers, or other parties.

Relationships within chambers

16. Relationships within chambers can give rise in particular to a risk of breaching CD8, the duty not to discriminate unlawfully. Positively discriminating in favour of one person can be an unlawful discrimination against another. As the Bar Council's Fair Recruitment Guide advises:

“Check that no-one on the panel has any special relationship or conflict of interest with any of the candidates. If possible they should not be involved in the assessment of anyone closely connected to them (family, friend) as this can cause difficulties for both candidate and interviewer, and affect either objectivity or the appearance of objectivity in the interview process.”

17. Equally, a relationship between a clerk and a tenant could result (or be perceived to result) in unfairly beneficial treatment of that barrister, for example by reference to access to work. Whilst it may not be obvious that the member themselves is in breach of any duty, as they are not allocating work unfairly, they are still under a duty under CD10 to ensure that their practice is managed in accordance with their legal and regulatory obligations. This includes rC110.3(i):

Fair access to work - if you are a self-employed barrister, the affairs of your chambers are conducted in a manner which is fair and equitable for all members of chambers, pupils and/or employees (as appropriate). This includes, but is not limited to, the fair distribution of work opportunities among pupils and members of chambers.

Equally other members of chambers have the same obligation.

18. In such cases it will therefore be appropriate for the member concerned to draw the situation to the attention of the Head of Chambers and chambers’ senior clerk or chief executive. If they fail to do so they should be invited to do so, and if they still decline to do so you may decide that, in all the circumstances, it is your professional duty to ensure that such communication takes place.

19. If thereafter serious concerns arise within chambers about this, then it may be appropriate that one or other should leave but, in any case, the other members of chambers will need to ensure that there is sufficient monitoring of the allocation of work to ensure that any perceptions are unfounded.

20. A sexual relationship between a pupil and pupil supervisor, or between a pupil and any member of chambers or clerk who could be perceived to have any influence over that pupil’s professional future, is strongly discouraged. The risk of a breach of CD3, CD4, CD5 and/or CD8 is very high indeed. The risk may take the form of apparent or actual discrimination against the pupil concerned (particularly if the relationship breaks down before a tenancy decision is made) or against other pupils in Chambers, who may perceive themselves to be at a disadvantage. There will always be the risk of a perception that, for example, X was given a tenancy or better work because of the influence of the senior person with whom X was in a relationship.

21. The pupil is inevitably in a very vulnerable position. There is a very real risk that a pupil will feel under pressure to enter into a sexual relationship with a

supervisor or other member of chambers, at a time when that pupil's future lies in the hands of members of those chambers.

Relationships with clients

22. Relationships with professional or lay clients can give rise in particular to a risk of a breach of CD4 – the duty to maintain independence. Relationships with the other side, or their lawyers, clearly gives rise to a serious risk of conflicts of interest and duty, or breaches of confidentiality – see CD2 and CD6.

23. The existence of any relevant past or pre-existing relationship with another party in the case will almost inevitably prohibit the acceptance of instructions – see rC21.2. It is extremely unwise to start such a relationship during a case, but if this does occur it may be a reason to withdraw from the case – see rC26.8.

Relationships with opponents

24. The existence of any relevant past or pre-existing relationship in any case in which the parties to a sexual or other close relationship are solicitors and/or barristers instructed on opposite sides of a dispute, ought promptly to be disclosed to clients (and your opponent if he/she is unaware). If, for some reason, one of you is, or both of you are, unwilling for this disclosure to be made, you should consider carefully whether it is proper for you to act. If appropriate, you may wish to discuss the particular circumstances with the Ethical Enquiries Service.

25. It is generally unwise to start a relationship with a lawyer on the other side during a case in which you are involved. Perception is important, as well as reality, and clients (or, in a case which attracts publicity, the press and wider public) might justifiably perceive in a sexual or other close relationship in those circumstances a danger of breach of confidence or conflict of interest, or the risk that you may not act in the best interests of your client. If a relationship is commenced during a case, this should be promptly disclosed to clients and the other side if they are unaware of it.

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,

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