



The Bar Council

## Advertising and website profiles

<b>Purpose:</b>	To assist barristers in considering how they can describe and advertise themselves on websites (personal and chambers) or through other means of marketing, including email and social media
<b>Scope of application:</b>	All practising barristers
<b>Issued by:</b>	The Ethics Committee
<b>First published:</b>	February 2017
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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. In a competitive market for legal services, it is only right that barristers are permitted to market themselves through websites (whether run personally or through chambers) and through other methods such as social media or advertisements. In many cases, lay and professional clients are likely to be interested in researching barristers who they are, or who they are considering, instructing – or barristers who are known to be on the other side of the case. Other people connected with litigation, such as judges, lay or expert witnesses or even jurors,<sup>1</sup> may choose to find out more about the barristers in a particular case, as may members of the public and the press.

2. The old Code of Conduct included specific provisions about advertising and promotion. The BSB Handbook does not deal with these areas in the same way, but

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<sup>1</sup> It is an offence for a juror to research a case during the trial, which includes seeking information about the judge or any person (including a lawyer) involved in the case: see s.20A Juries Act 1974.

this does not mean that advertising and marketing is not within the scope of regulation at all.

## **BSB Handbook**

3. Counsel should follow the applicable provisions of the BSB Handbook and ensure that their marketing material and website, etc, complies.

4. The relevant core duties in the Handbook are likely to be these:

⊗ *CD3 – You must act with honesty, and with integrity*

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

⊗ *CD6 – You must keep the affairs of each client confidential*

⊗ *CD2 – You must act in the best interests of each client*

Additionally, you must comply with the transparency rules which concern the upfront provision of information to clients on price, service and redress mechanisms. The rules were implemented by the Bar Standards Board (BSB) in May 2019 in response to recommendations by the Competition and Markets Authority, following their market study into the Legal Services Market. Section D6 Rules C159 – C163 of the Handbook sets out the transparency rules applicable to all self-employed barristers, chambers and BSB entities. Section D6 Rules C164 – C169 sets out a subset of rules applicable to self-employed barristers undertaking public access work and BSB entities supplying legal services directly to the public in a limited number of areas of law. The relevant legal areas are detailed in the BSB’s guidance on the transparency rules, which can be found on their website [here](#).

### **CD3: Honesty and integrity**

5. It would be a breach of the duty to act with honesty and integrity to make false claims on a personal or chambers website. Rule rC9 states that the duty under CD3 includes a requirement not to mislead, or to attempt to mislead, anyone knowingly or recklessly. “Bending the truth” in claims about one’s knowledge, experience or abilities is unacceptable.

6. Rule C19 requires that barristers do not mislead (or cause or permit to be misled) anyone to whom they supply or offer to supply legal services about the terms on which legal services are supplied, the nature and scope of legal services offered, the extent to which you are covered by insurance against professional negligence claims etc. This rule would cover any marketing material or website covering such issues.

7. Guidance about this rule at gC57 says that *“Knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead could also result in you being in breach of Rule C19. You should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.”*

8. Where claims of comparative quality or ability are made, it is better to make statements that can be justified objectively: “[Name] has been ranked as a leading junior in [field of work] by [name of directory]” is acceptable, whereas an assertion without evidence that “[Name] is one of the best barristers in the country in [field of work]” needs very careful consideration as to how it could be supported if challenged, lest it be considered a misleading claim. “[Name] is experienced / very experienced in [field of work]” is acceptable where this can be demonstrated if required by involvement in previous cases. “[Name or chambers] is better than [name of rival barrister or chambers] in this area of law” is unacceptable, as is “[Name or chambers] is the best in this area of law.”

9. It is perfectly acceptable for counsel to use quotations or descriptions from legal directories about themselves and / or their chambers, providing that this is not done in a misleading way – for example, by selective quotation or quotation out of context – or in a way that would offend other regulatory provisions.

10. Counsel may use quotations from feedback from lay and professional clients, with the client’s consent. It would be advisable to keep copies of the feedback and the consent in case any issues arise later.

11. Counsel must also ensure that they do not use quotations from clients to make claims that they would be prohibited from making themselves.

12. Guidance about rC19 at gC62 states that pupils must not be held out as members of chambers and must not permit themselves to be held out as such, and this provision includes any description of pupil barristers on a website or in marketing material.

#### **CD5: Trust and confidence**

13. In addition to CD5, rC8 prohibits doing anything which could reasonably be seen by the public to undermine counsel’s honesty, integrity and independence. These two provisions will also restrict what counsel can say about themselves and their work.

14. Counsel could not, for example, advertise a willingness to accept instructions directly from members of the public outside the scope of the Public Access rules, nor advertise a willingness to breach the cab-rank rule (e.g. “I will only ever act for tenants”).

15. Websites and marketing material must not state or imply a willingness to act contrary to the core duty towards the court in the administration of justice.

#### **CD6: Confidentiality and CD2: Best interests of client**

16. Subject to compliance with the other provisions of the Handbook, there is nothing objectionable about websites or marketing materials referring to reported cases in which counsel has appeared, or to cases that have been heard in open court. These are in the public domain.

17. Where Counsel has appeared in a criminal case that results in an acquittal, careful thought should be given as to whether it is appropriate and relevant to use the defendant's name on a website or in marketing material, not least because of the potential ongoing effect for an acquitted defendant of such mention. There may be rare occasions when it will be appropriate and relevant – for example, where the acquittal comes after an appeal to the Court of Appeal Criminal Division and follows a decision on the law on a particular point. It would be unrealistic in such circumstances to require counsel involved in the case to refer to it in an anonymised form when everyone else refers to the defendant's name without restriction. In most cases it is unlikely to be in a client's best interests to be named in respect of a criminal charge. If counsel wishes to refer to an acquitted defendant on a website or in marketing material, counsel should determine whether it is appropriate in all of the circumstances to obtain and retain the client's consent to the use of their name.

18. Care should be taken when referring to ongoing cases (including cases where the appeal process has not been exhausted), to avoid saying anything that would be prejudicial to a client's interests.

19. Care is also needed as to what can be said about cases that are heard in private or conclude without a hearing, e.g. at a mediation, whether or not the terms of the settlement are expressly said to be confidential. The possibility of "jigsaw" identification of a client's identity or affairs must be avoided.

20. The Bar Council Ethics Committee has also published guidance about counsel expressing personal opinions in or to the media, particularly about cases in which they are or have been instructed. It can be found [here](#) and the points made there apply as much to the expressions of personal opinion on a website or in marketing material as they do to interviews with journalists, publications in newspapers and the like. The Bar Standards Board have issued guidance on social media use and the applicable ethical duties in the BSB Handbook, which can be found [here](#).

#### **Other provisions**

21. Rule rC14 provides that if soliciting work in any jurisdiction outside England and Wales, this must not be done in a manner which would be prohibited to members

of the local Bar. If counsel practises in other jurisdictions, it is their responsibility to know what those local rules are and that websites / marketing materials do not breach them.

### **Advertising regulations and codes of practice**

22. Advertising to consumers is governed by the Consumer Protection from Unfair Trading Regulations 2008, and advertising to businesses is governed by the Business Protection from Misleading Marketing Regulations 2008. Counsel must ensure that their websites, marketing material etc comply with these provisions as applicable.

23. Counsel should also follow any applicable provisions of the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing, enforced by the Advertising Standards Authority.

24. Explanation of the regulations and the code is outside the remit of this document. An introduction to the principles can be found [here](#). By way of overview, that guidance states that all marketing and advertising must be:

- an accurate description of the product or service
- legal
- decent
- truthful
- honest
- socially responsible (not encouraging illegal, unsafe or anti-social behaviour)

### **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 see [here](#).