

CURRENT GUIDANCE

Media Comment Guidance

Introduction

1. Prior to the introduction of the BSB Handbook, the old Code of Conduct was updated in April 2013 to remove the prohibition on media comment.
2. The Bar Standards Board believes that, consistent with the rights of freedom of expression that are enjoyed by all, the starting point is that barristers are free to make comments to or in the media (this includes both conventional media - speaking to newspapers or broadcasters - and new media - social media, blogs and websites). However, because of the special position they occupy, certain rules will continue to limit the circumstances in which it will be appropriate for barristers to comment on cases in which they have been instructed and what they can properly say.
3. The purpose of this guidance is to clarify the remaining ethical obligations in relation to media comment and to suggest some of the issues that the barrister should bear in mind whilst exercising professional judgment about whether and how to comment. This will require an assessment of many factors, including the nature and type of proceedings, the stage they have reached, the need to ensure that media comment does not prejudice the administration of justice and the nature of the comment that is proposed to be made. More generally, barristers need to consider carefully whether commenting on individual cases in which they have acted would be appropriate and whether the proposed comment would require any individual client's consent. Ill-judged comments on an individual case may cause unintended harm to the interests of the client. The rule change does not, of course, oblige the barrister to make comments. Indeed, many barristers will decline to do so on the basis that they lack experience in speaking to the press and/or commenting in other media.

Ethical obligations

4. The ethical obligations that apply in relation to your professional practice generally continue to apply in relation to media comment. In particular, barristers should be aware of the following:
 - a. **Client's best interests:** Core Duty 2 and Rules C15.1-.2 of the BSB Handbook require a barrister to promote fearlessly and by all proper and lawful means the lay client's best interests and to do so without regard to his or her own interests.

b. **Independence:** Core Duties 3 and 4 provide that you must not permit your absolute independence, integrity and freedom from external pressures to be compromised.

c. **Trust and confidence:** Core Duty 5 provides that you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.

d. **Confidentiality:** Core Duty 6 and Rule C15.5 require you to preserve the confidentiality of your lay client's affairs and you must not undermine this unless permitted to do so by law or with the express consent of the lay client.

Legal issues

5. Media comment which causes a substantial risk of serious prejudice of current or pending proceedings may lead to proceedings for contempt of court.

6. Barristers should also be aware of the risk of personal liability for claims in defamation or malicious falsehood against the barrister, or even against the client (if the barrister is speaking on the client's behalf). Barristers' professional indemnity insurance does not usually cover liability for such claims.