

CURRENT GUIDANCE

Clash of Hearing Dates (listings)

Introduction

1. This guidance provides further explanation of the application of the BSB Handbook in the event that you have a clash of hearing dates (listings).
2. Rule c18 in the BSB Handbook states that your duty to provide a competent standard of work and service to each client (CD7) includes a duty to inform your professional client, or your client if instructed directly by a lay client, as far as reasonably possible in sufficient time to enable appropriate steps to be taken to protect the client's interests, if:
 - it becomes apparent to you that you will not be able to carry out the instructions within the time requested, or within a reasonable time after receipt of instructions; or
 - there is an appreciable risk that you may not be able to undertake the instructions.
3. Rule c26 states that you may cease to act on a matter on which you are instructed and return your *instructions* if you are a *self-employed barrister* and despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available. This may include a prior arranged hearing relating to another case.

Preventing clashes

4. You should make all reasonable efforts to prevent a clash of dates. This involves communicating effectively with the Court and managing and diarising your cases effectively.

What to do if there is a clash

5. In some instances it may be impossible to prevent a clash of hearing dates. Where there is a clash, you must exercise your professional judgement in deciding which hearing is most important to attend.
6. In addition particular types of hearings may have to take precedence as a matter of law or procedure. You should take direction from the Court and have regard to any relevant case management rules.

7. Where an order of precedence is not clear, you should consider your duty to act in the best interests of each of your clients and, in particular, which of your clients is likely to be most prejudiced by alternative representation being arranged at short notice. You should take particular care to consider the needs of vulnerable clients and the impact of your decision on access to justice.
8. You should consider all the relevant circumstances relating to each case including the following issues:
 - the length of time that you have been instructed on each case;
 - the complexity and difficulty of each case;
 - the amount of work you have already done on the case;
 - relevant access to justice considerations and the likely impact on your client.

What to do in respect of the missed hearing

9. You should at all times take reasonable steps to keep all parties concerned informed of any clash of hearing dates. In particular you should ensure that your clients are informed of any clash as soon as possible.
10. You should take all reasonable steps to assist clients to find alternative representation where you are unable to attend a hearing date.