

**PUPILLAGE DISCIPLINARY POLICY AND PROCEDURE**

**Disciplinary rules**

**Policy statement**

1. The aim of the Disciplinary Policy and Procedure is to set out the standards of conduct expected of all pupils and to provide a framework within which Pupil Supervisors can work with pupils to maintain those standards and encourage improvement where necessary.
2. It is our policy to ensure that any disciplinary matter is dealt with fairly and in accordance with the Disciplinary Procedure. If you are in any doubt as to your responsibilities or the standards of conduct expected you should speak to your pupil supervisor.
3. These Disciplinary Rules may be amended by at any time following consultation between the Management Committee and the Head of Pupillage.

**Rules of conduct**

1. During pupillage you should at all times maintain professional and responsible standards of conduct. In particular you should.
2. Observe the terms and conditions of your pupillage agreement.
3. Act in accordance with your obligations as set out in the most current edition of the BSB Handbook.
4. Observe all our policies, procedures and regulations which are included on chambers website or notified to you from time to time by means of email, through your pupil supervisor, through the clerks or otherwise.
5. Take reasonable care in respect of the health and safety of colleagues and third parties and comply with our Health and Safety Policy.
6. Comply with all reasonable instructions given by your pupil supervisor; and
7. Act at all times in good faith and in the best interests of Chambers.

1. Failure to maintain satisfactory standards of conduct may result in action being taken under our Disciplinary Procedure.

**Misconduct**

1. The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Procedure:
2. Minor breaches of our policies including the Sickness Absence Policy, (see pupillage policy) and Health and Safety provisions.
3. Minor breaches of your pupillage agreement.
4. Minor breaches of the BSB Handbook.
5. Damage to, or unauthorised use of, our property.
6. Poor timekeeping.
7. Unauthorised absence from work.
8. Refusal to follow instructions.
9. Excessive use of our telephones for personal calls and/or international calls.
10. Obscene language or other offensive behaviour.

This list is intended as a guide and is not exhaustive.

**Gross Misconduct**

1. Gross misconduct is a serious breach of the pupillage agreement and includes misconduct which, in our opinion, is likely to prejudice our business or reputation or irreparably damage the working relationship and trust between Chambers. Gross misconduct will be dealt with under our Disciplinary Procedure and will normally lead to the termination of pupillage.

1. The following are examples of matters that are normally regarded as gross misconduct:
2. Serious breaches of the Pupillage Agreement.
3. Serious breaches of the BSB Handbook.
4. A disciplinary finding from the BSB.
5. Theft or fraud.
6. Actual or threatened violence, or behaviour which provokes violence.
7. Deliberate damage to our buildings, fittings, property or equipment, or the property of a member of Chambers, contractor, fellow pupil or member of the public.
8. Serious misuse of our property or name.
9. Deliberately accessing internet sites containing pornographic, offensive or obscene material.
10. Repeated or serious failure to obey instructions, or any other serious act of insubordination.
11. Unlawful discrimination or harassment.
12. Bringing Chambers into serious disrepute.
13. Serious incapability at work brought on by alcohol or illegal drugs.
14. Causing loss, damage or injury through serious negligence.
15. Serious or repeated breach of health and safety rules or serious misuse of safety equipment.
16. Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure.
17. Accepting or offering a bribe or other secret payment.
18. Conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, solicitors or the public, or otherwise affects your suitability to continue to work for Chambers.
19. Possession, use, supply or attempted supply of illegal drugs.
20. Unauthorised use, processing or disclosure of personal data contrary to GDPR
21. Harassment of, or discrimination against, fellow pupils, members of chambers, clients or members of the public, related to gender, marital or civil partner status, gender reassignment, race, colour, nationality, ethnic or national origin, disability, religion or belief or age contrary to our Equal Opportunities Policy or our Anti-harassment and Bullying Policy.
22. Giving false information as to qualifications or entitlement to work (including immigration status) in order to gain pupillage or other benefits;
23. Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child.
24. Making untrue allegations in bad faith against a colleague.
25. Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of email and the internet)

This list is intended as a guide and is not exhaustive.

**Disciplinary procedure**

**About this procedure**

1. It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give pupils the opportunity to respond before taking any formal action.
2. This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence or poor performance. In those cases reference should be made to the appropriate policy or procedure in the pupillage handbook.
3. This procedure does not form part of the pupillage agreement and it may be amended at any time. Chambers may also vary this procedure, including any time limits, as appropriate in any case.

**Minor conduct issues**

1. Minor conduct issues can often be resolved informally between the pupil and their pupil supervisor. These discussions should be held in private and without undue delay whenever there is cause for concern. In some cases an informal verbal warning may be given, which will not form part of a pupil’s disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

1. If a pupil has difficulty at any stage of the procedure because of a disability, they should discuss the situation with their pupil supervisor, the Head of Pupillage or Chambers’ Equal Opportunities Officer as soon as possible.

**Confidentiality**

1. Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All pupils must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
2. The pupil, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
3. The pupil will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless Chambers believe that a witness's identity should remain confidential.

**Investigations**

1. The purpose of an investigation is for Chambers to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the pupils and any witnesses, and/or reviewing relevant documents. The Head of Pupillage will usually appoint an Investigating Officer to carry out the investigation.
2. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

1. The pupil do not normally have the right to bring a companion to an investigative interview. However, Chambers may allow a pupil to bring a companion if it helps them to overcome any disability.
2. The pupil must co-operate fully and promptly in any investigation. This will include informing Chambers of the names of any relevant witnesses, disclosing any relevant documents to Chambers and attending investigative interviews if required.

**Criminal allegations**

1. Where your conduct is the subject of a criminal investigation, charge or conviction Chambers will investigate the facts before deciding whether to take formal disciplinary action.

1. Chambers will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the pupil unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, Chambers may have to take a decision based on the available evidence.

1. A criminal investigation, charge or conviction relating to conduct outside work will be treated as a disciplinary matter if Chambers consider that it is relevant to your employment.

**Suspension**

1. In some circumstances Chambers may need to suspend you from pupillage. The suspension will be for no longer than is necessary to investigate the allegations and Chambers will confirm the arrangements to you in writing. While suspended you should not visit our premises unless authorised to do so by your pupil supervisor or the Head of Pupillage.
2. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your pupillage grant and/or guaranteed earnings.
3. Any suspension will be for the shortest time possible. Extended periods of suspension may lead to an extension of pupillage being required to ensure that the pupil has met the competencies set out in the Professional Statement.

**Notification of a hearing**

1. Following any investigation, if Chambers consider there are grounds for disciplinary action, the pupil will be required to attend a disciplinary hearing. Chambers will inform the pupil in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences will be if Chambers decide after the hearing that the allegations are true. Chambers will also include the following where appropriate:
2. a summary of relevant information gathered during the investigation;
3. a copy of any relevant documents which will be used at the disciplinary hearing; and
4. a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case Chambers will give you as much information as possible while maintaining confidentiality.

1. Chambers will give the pupil written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but the pupil will be given a reasonable amount of time usually 5 working days to prepare their case based on the information Chambers have given them.

**The right to be accompanied**

1. A pupil may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion must be a member of the Bar. The Pupil must tell the Head of Pupillage who their chosen companion is, in good time before the hearing.

1. If a companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, Chambers may ask the pupil to choose someone else.

**Procedure at disciplinary hearings**

1. If a pupil or their companion cannot attend the hearing the pupil should inform Chambers immediately and Chambers will arrange an alternative time. The pupil must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If the pupil fails to attend without good reason, or are persistently unable to do so (for example for health reasons), Chambers may have to take a decision based on the available evidence.

1. The hearing will be chaired by a member of the Management Committee. The Investigating Officer, the relevant pupil supervisor, the Head of Pupillage and a suitable member of Chambers may also be present. The panel will consist of at least two individuals. You may bring a companion with you to the disciplinary hearing.

1. At the disciplinary hearing Chambers will go through the allegations against the pupil and the evidence that has been gathered. The pupil will be able to respond and present any evidence of their own. The companion may make representations to Chambers and ask questions, but should not answer questions on the pupil’s behalf. The pupil may confer privately with their companion at any time during the hearing.

1. The pupil may ask relevant witnesses to appear at the hearing, provided you give Chambers sufficient advance notice to arrange their attendance. The pupil will be given the opportunity to respond to any information given by a witness. However, the pupil will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, Chambers decide that a fair hearing could not be held otherwise.

1. Chambers may adjourn the disciplinary hearing if Chambers need to carry out any further investigations such as re-interviewing witnesses in the light of any new points raised at the hearing. The pupil will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

1. Chambers will inform the pupil in writing of our decision and our reasons for it, usually within 5 working days of the disciplinary hearing. Where possible Chambers will also explain this information to the pupil in person.

**Disciplinary penalties**

1. The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. Chambers aim to treat all pupils fairly and consistently, and a penalty imposed on another pupil for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

1. Pupillage will not normally be terminated for a first act of misconduct, unless Chambers decide it amounts to gross misconduct.
2. Stage 1 - First written warning. A first written warning may be authorised by a pupil supervisor or the Head of Pupillage. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.

1. Stage 2 - Final written warning. A final written warning may be authorised by the Head of Pupillage. It will usually be appropriate for:
2. misconduct where there is already an active written warning on your record; or
3. misconduct that Chambers consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

1. Stage 3 - Dismissal. Dismissal may be authorised by the Management Committee. It will usually only be appropriate for:
2. further misconduct where there is an active final written warning on your record; or
3. any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in the immediate termination of pupillage. dismissal without notice or payment in lieu of notice (summary dismissal).

**The effect of a warning**

1. Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

1. A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months.

1. After the active period, the warning will remain permanently on the pupil’s file but will be disregarded in deciding the outcome of future disciplinary proceedings.

**Appeals**

1. If a pupil feels that disciplinary action taken against them is wrong or unjust they should appeal in writing, stating your full grounds of appeal, to the Head of Pupillage within one week of the date on which they were informed of the decision.

1. If a pupil is appealing against the termination of pupillage, the date on which the termination of pupillage takes effect will be delayed for a period no longer than 14 days pending the outcome of the appeal.

1. If a pupil raises any new matters in their appeal, Chambers may need to carry out further investigation. If any new information comes to light Chambers will provide the pupil with a summary including, where appropriate, copies of additional relevant documents and witness statements. The pupil will have a reasonable opportunity to consider this information before the hearing, and they or their companion may comment on any new evidence arising during the appeal before any decision is taken.

1. Chambers will give the pupil written notice of the date, time and place of the appeal hearing. This will normally be two days after you receive the written notice.

1. The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

1. Where possible, the appeal hearing will be conducted impartially by at least 3 members of the Management Committee, none of which were involved in the original decision. The appeal will be attended by the Investigating Officer.

1. Chambers may adjourn the appeal hearing if Chambers need to carry out any further investigations in the light of any new points raised at the hearing. The pupil will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

1. Following the appeal hearing Chambers may:
	1. confirm the original decision;
	2. revoke the original decision; or
	3. substitute a different penalty.

1. Chambers will inform the pupil in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible Chambers will also explain this to the pupil in person. There will be no further right of appeal.

**Recoupment of Pupillage Grant/Guaranteed Earnings**

1. In circumstances where Pupillage is terminated following a finding of gross misconduct Chambers reserve the right to request repayment of any monies paid under the pupillage grant in 1st six or in guaranteed earnings in 2nd six. (rC115 of the BSB Handbook).

**PUPILLAGE COMMITTEE**

**REVISED MARCH 2023**