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16 September 2011

Barristers lash "out of touch" BSB over disciplinary cases

The Bar Standards Board (BSB) will face a "storm of protest" over its "ridiculous" review of whether to lower the burden of proof in disciplinary cases against barristers, it has been warned.



Disciplinary proceedings: PABA accuses BSB of wasting time and money

The Public Access Bar Association said changing the burden of proof from the criminal to civil standard would make it easier to convict barristers facing professional misconduct allegations where, for example, their word is contradicted by a client.

The association claimed it is "a fatuous and wrong-headed waste of time and precious Bar Council funds" for the BSB to pursue the change given the Privy Council ruling in *Campbell v Hamlet* [2005] UKPC 19. Lord Simon Brown, delivering the decision, said: "That the criminal standard of proof is the correct standard to be applied in all disciplinary proceedings concerning the legal profession, their Lordships entertain no doubt."

In its response to a preliminary observation paper sent out by the BSB in July, the association said the Solicitors Disciplinary Tribunal is not acceding to a Solicitors Regulation Authority's request for a similar change. "Here, solicitors set up a most laudable example of resisting ridiculous ideas."

It also challenged the BSB to provide evidence that "a single guilty barrister won a case by abusing the test of 'beyond reasonable' doubt", noting too that the BSB says most barristers it prosecutes are convicted anyway.

The association concluded: "If the BSB seriously thinks that the Bar will accept such a change with equanimity, it must really be out of touch: there will be a storm of protest, just as there was when the BSB proposed the absurd idea of prosecutions for 'improper behaviour'."

The BSB expects to make a final decision on the issue next March.

There has been an [ongoing debate](#) among legal regulators about switching to the civil burden of proof in disciplinary matters.

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