

## ANNEX B – Amended Disciplinary Tribunal Regulations – Clean Copy

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### .B. THE DISCIPLINARY TRIBUNALS REGULATIONS 201X

#### B1. THE REGULATIONS

**rE101** These Regulations will apply following the referral of a matter by the *PCC* to a *Disciplinary Tribunal*, in accordance with Part 5 Section A.

#### *Service of Charges and/or Applications*

**rE102** The *Bar Standards Board* must ensure that a copy of the charge(s) and/or application(s):

- .1 is served on the relevant *respondent(s)*, together with a copy of these Regulations not later than ten weeks (or five weeks if the *PCC* has directed that the prosecution of the charges be expedited) after the date on which the *PCC* decides to refer the matter to a *Disciplinary Tribunal*; and
- .2 at the same time, ensure that copies of the charge(s) and/or application(s) are sent to *BTAS*.

#### *Documents to be served on the respondent*

**rE103** As soon as practicable after the issue of the charge(s) and/or application(s) to the *respondent(s)*, the *Bar Standards Board* must serve on the *respondent(s)* and file with *BTAS*:

- .1 a copy of the evidence of any witness intended to be called in support of any charge(s) or application(s) (which, for the avoidance of doubt, may be a formal witness statement or an informal document such as a letter or attendance note); and
- .2 a copy of any other documents intended to be relied on by the *Bar Standards Board*; and
- .3 the *standard directions* and/or *non-standard directions*, which, subject to rE111, the *Bar Standards Board* proposes to apply to the case and which must include such timetable as may be considered reasonable by the *Bar Standards Board*, having regard to the facts of that case.

**rE104** If the documents referred to in rE103.1 and/or rE103.2 are not sent to the *respondent(s)* within 28 days of the service of the charges on *the respondent(s)* in accordance with rE102 above, then the *Bar Standards Board* must provide to the *respondent(s)* within that period:

- .1 details of the evidence that is still being sought; and
- .2 details of when it is believed that it will be practicable to supply that evidence to the *respondent(s)*.

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**rE105** Nothing in rE103 or rE104 above shall prevent a *Disciplinary Tribunal* from receiving the evidence of a witness which has not been served on the *respondent(s)* in accordance with rE103 or rE104, provided that the *Disciplinary Tribunal* is of the opinion either that this does not materially prejudice the *respondent(s)*, or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

### **Directions**

**rE106** Within 21 days of the date of service of the directions under rE103.3, the *respondent(s)* must:

- .1 agree the *standard* and/or *non-standard directions*; or
- .2 provide to the *Bar Standards Board* written submissions explaining why the directions sought by the *Bar Standards Board*, should be amended, withdrawn or added to; and/or
- .3 indicate to the *Bar Standards Board* whether they intend to make any of the applications referred to in rE127.

**rE107** Within fourteen days of the date when the *Bar Standard Board* receives any written submissions from a respondent in accordance with rE106.2, the *Bar Standards Board* must consider them and must during that fourteen day period:

- .1 inform the *respondent(s)* of those changes to the *standard directions* or *non-standard directions* (as appropriate) which the *Bar Standards Board* is able to agree; and
- .2 seek to agree with the *respondent(s)* such other changes to the *standard directions* or *non-standard directions* (as appropriate) as may be acceptable to all parties.

### **No reply from respondent**

**rE108** Where *standard directions* are sought by the *Bar Standards Board* and the *respondent* does not reply to a request to agree directions within the relevant 21 day period referred to in rE106, the *respondent* will be deemed to have accepted the *standard directions* and they shall be deemed to apply to the particular matter, save and in so far as they may have been modified on the application of any other *respondent* to the same proceedings which was made within the relevant 21 day period. The *Bar Standards Board* must forthwith serve on the *respondent* and file with *BTAS* any directions which are deemed to apply to the matter.

**rE109** Where *non-standard directions* are sought by the *Bar Standards Board* and the *respondent* does not reply within the 21 day period referred to in rE106, the *Bar Standards Board* must send to the *President* a copy of the *non-standard directions* and invite him or her to appoint a *Directions Judge* to endorse the directions in accordance with rE114 to rE126.

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### **Agreement of directions**

**rE110** Where *standard directions* are sought in a case by the *Bar Standards Board* and the parties agree the directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, those directions will apply to the case and the *Bar Standards Board* must forthwith serve the agreed directions on the *respondent* and file them with *BTAS*.

**rE111** The parties may agree *non-standard directions*, save that where any *non-standard direction* would have the effect of preventing *BTAS* from carrying out any function given to it by these Regulations, the said direction cannot be agreed without endorsement of a *Directions Judge*. In these circumstances, the *Bar Standards Board* must send to the *President* a copy of the *non-standard directions* and invite him or her to appoint a *Directions Judge* to endorse the directions in accordance with rE114 to rE126.

**rE112** Where *non-standard directions*, which do not include matters under rE111, are sought by the *Bar Standards Board* in a case and the parties agree those directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, those directions will apply to the case. The *Bar Standards Board* must forthwith serve the agreed directions on the *respondent* and file them with *BTAS*.

### **Non-agreement of directions**

**rE113** Where *standard* and/or *non-standard directions* are sought in a case by the *Bar Standards Board* and the *respondent* does not agree those directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, the *Bar Standards Board* must write to the *respondent* to confirm that the directions have not been agreed and must send to the *President* the following (where relevant):

- .1 a copy of the directions, including any *standard directions* and/or *non-standard directions* which have been agreed;
- .2 any written submissions received from the *respondent(s)* in accordance with rE106.2;
- .3 any notice from the *respondent(s)* that they may be intending to make an application referred to at rE106.3; and
- .4 the *Bar Standards Board's* response to any such request(s) and/or submissions.

### **Agreement/endorsement of directions by a Directions Judge**

**rE114** When the *President* has received the documents referred to in rE109 or rE111 above, the *President* must designate either a Queen's

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Counsel or *Judge*, to be determined at *the President's* sole discretion ("the *Directions Judge*"), to exercise the powers and functions conferred on the *Directions Judge* in these Regulations.

**rE115** *The President* must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE109 or rE111 above, are sent to the *Directions Judge* once he or she has been designated.

**rE116** When he or she receives the relevant documents, the *Directions Judge* must consider any submissions about the directions and will determine whether an oral directions hearing is necessary.

**rE117** If the *Directions Judge* considers that no oral hearing is necessary, then:

- .1 he or she must make an order setting out those directions which are to apply in the case taking into account all the relevant circumstances, including any written submissions of the parties and his or her own findings; and
- .2 he or she may consider and decide any other issues which may be necessary in accordance with rE129.

**rE118** If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* must give written notice to the *Bar Standards Board* and the *respondent(s)* that an oral hearing is to be held for the purpose of giving directions and taking such other steps as he or she considers suitable for the clarification of the issues before the *Disciplinary Tribunal* and generally for the just and expeditious handling of the proceedings. The *Directions Judge* shall also provide the *Bar Standards Board* and the *respondent(s)* with a time estimate for the oral directions hearing.

**rE119** Within seven days of receiving the notice referred to in rE118, the *Bar Standards Board* and the *respondent(s)* must notify *the President* and the other party of their and, where relevant, their representative's available dates and times during the six week period immediately after the date of that notice.

**rE120** The *Directions Judge* must try to find a date and time within that six week period which is convenient for all parties. If that is not possible, the *Directions Judge* must fix a date and time for the oral directions hearing within that six week period and must notify the *Bar Standards Board* and the *respondent(s)* of that date and time.

**rE121** Once the *Directions Judge* has set a date for the oral hearing, *BTAS* must appoint a *person(s)* in accordance with rE136 to act as Clerk at the hearing to take a note of the proceedings; draw up a record of the directions given and/or any admissions made at it.

**rE122** *BTAS* must arrange for a record of the oral hearing before a *Directions Judge* to be made.

**rE123** The oral hearing before a *Directions Judge* will be in private.

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**rE124** After the oral directions hearing (or, if one was not required, after the review of the papers by the *Directions Judge*) *BTAS* must ensure that copies of the directions order are served on the *Bar Standards Board* and on the *respondent(s)*.

**rE125** The directions order served under rE124 is final, and there is no appeal against it.

**rE126** Any variation sought by a party to an order for *standard directions* made and served under rE108 or rE110, or to an order for *non-standard directions* made and served under rE112, must be endorsed by a *Directions Judge*, who shall be designated by the *President* in accordance with the requirements of rE114.

### **Applications**

**rE127** At any time before the hearing, either party can make any of the following applications and thereafter file with *BTAS* and serve on the opposing party written submission in support of the applications, namely:

- .1 an application to sever the charges and/or applications;
- .2 an application to strike out the charges and/or applications which relate to the respondent who makes the application;
- .3 an application to stay the proceedings;
- .4 an application about the admissibility of documents;
- .5 an application for disclosure of documents;
- .6 an application to extend or abridge any relevant time limits;
- .7 an application for the hearing to be held in private;
- .8 an application for separate hearings or an application that proceedings pending against separate *respondents* be dealt with at the same hearing; or
- .9 any other application to vary *standard or non-standard directions* (which either party considers reasonable, having regard to the facts of the case).

**rE128** The *Directions Judge* or Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* will consider how any of the applications referred to rE127 are to be dealt with.

### **Extent of powers to order directions**

**rE129** The *Directions Judge* or the Chair of the *Disciplinary Tribunal* designated in the *Convening Order* (or failing the *Directions Judge* or the Chair of the *Disciplinary Tribunal*, any other *Judge* nominated by the *President*) may, at any stage, make such directions for the

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management of the case or the hearing as he or she considers will expedite the just and efficient conduct of the case.

### **Setting the hearing date**

**rE130** This regulation applies where, after the deemed acceptance or later agreement of directions, or the service of a directions order by *the President*, the date of the hearing has not been fixed. Where this Regulation applies, each party must submit details of their availability for the substantive hearing to *BTAS* in accordance with the directions. After he or she receives such details, or, where no such details are provided once the time for providing such details has expired, *the President* must fix the date of the substantive hearing, having regard to the availability of the parties (if provided) and the need for the prompt determination of any charges and/or application(s) made against the *respondent(s)*, in accordance with the provisions of these Regulations.

**rE131** *BTAS* must inform all parties of the date fixed for the hearing as soon as reasonably practicable after *the President* has fixed the date.

### **Appointing a Disciplinary Tribunal and issuing a Convening order**

**rE132** On

- .1 the deemed acceptance or later agreement of the directions by the parties;  
or
- .2 the service of the directions order by *BTAS*; or
- .3 the fixing of the date of the hearing in accordance with rE130 above,

*the President* must, in all cases,

- .a appoint an appropriate *Disciplinary Tribunal* to sit on the relevant date(s), taking into account the requirements of these Regulations;
- .b appoint a *person* or *persons* to act as Clerk or Clerks to the *Disciplinary Tribunal* in accordance with rE136;
- .c not less than fourteen days before the date of the substantive hearing, serve an order on the *respondent(s)* ("the *Convening Order*") specifying:
  - .i the name of the respondent(s) to the proceedings and such other information as may be relevant to the *respondent(s)*, for example:
    - (1) where any *respondent* is a *barrister*, details of the *barrister's* Inn, his or her date of call and (if appropriate) the date of his or her appointment as Queen's Counsel, and details of whether or not the *barrister* was acting as a

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*self-employed barrister* or an *employed barrister* (and, in the latter case, details of his or her *employer*, including whether or not it is a *BSB authorised body*) and if the *barrister* was acting as a *HOLP* or *manager* of an *authorised body*, identifying this fact and identifying the *authorised body* and whether or not it is a *BSB authorised body*;

- (2) where any *respondent* is a *BSB authorised body*, details of the date when that body was so authorised or licensed with a summary of the number of *barristers* and other individuals working within that *BSB authorised body*;
  - (3) where any *respondent* is another type of *BSB regulated person*, details of whether or not the *BSB regulated person* is an *authorised (non-BSB) person* or is otherwise subject to regulation by any other regulator and, if so, the identity of that regulator, and the role of that individual, including whether he or she was acting as a *HOLP*, *HOFA*, *manager* or *employee* of an *authorised body* and identifying that *authorised body* and its Approved Regulator; and
  - (4) where any *respondent* is a *non-authorised individual* employed by a *BSB authorised person*, details of the role of that individual and identifying the *BSB authorised person* who directly or indirectly employs the *respondent*;
- .ii the date, time and venue of the sitting of the *Disciplinary Tribunal* at which it is proposed the charge(s) and/or application(s) should be heard;
  - .iii the names and status (that is, as Chair as *lay member*, as *barrister* or other) of those *persons* who it is proposed should constitute the *Disciplinary Tribunal* to hear the case; and
  - .iv the name of the Clerk,

and send copies of that *Convening Order* to the nominated members of the *Disciplinary Tribunal*, the *Bar Standards Board*, and the Clerk. In the Order the attention of the *respondent(s)* will be drawn to:

- (1) their right to represent themselves or be represented professionally, with or without instructing a *solicitor*, as they shall think fit; and

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- (2) their right to inspect and be given copies of documents served pursuant to rE103 above; and
- (3) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

**rE133** The *respondent(s)* may, when they receive the *Convening Order*, give notice to *the President* objecting to any one or more of the proposed members of the *Disciplinary Tribunal*. The *respondent* must give this notice as soon as is reasonably practicable and must specify the grounds for his or her objection.

**rE134** When *the President* receives such an objection, he or she must, if satisfied that it is justified (but subject to rE135), exercise the power conferred on him or her by rE148 to nominate a substitute member or members of the *Disciplinary Tribunal*, and must notify the *respondent(s)* accordingly. When they receive that notification, the *respondent(s)* may object to any substitute member or members, in the same way as they may object under rE133.

**rE135** No objection to any member of the *Disciplinary Tribunal* may be made, or if made, may be upheld, on the grounds only that he or she knows, or might have known, about a charge of *professional misconduct*, or of breach of proper professional standards, or a previous application to disqualify, or a charge consisting of a *legal aid complaint*, against the *respondent(s)*, or any finding on any such application or charge, or any sanction imposed on the *respondent(s)* in connection with any such application or charge.

### **Appointment of Clerk(s)**

**rE136** *BTAS* shall appoint a Clerk(s) to perform the functions specified in these Regulations and such other functions as the *President*, *Directions Judge* or the Chair of any *Disciplinary Tribunal* may direct.

**rE137** The *President* may publish qualifications or other requirements for those appointed to be Clerks.

**rE138** No person who has been engaged in the investigation of a complaint or application against a respondent in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that complaint or application.

### **The Disciplinary Tribunal**

#### **Composition of Disciplinary Tribunals**

**rE139** A *Disciplinary Tribunal* must consist of either three persons or five persons.

**rE140** A five-person panel must include the following *persons* nominated by *the President*:



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- .1 as Chair, a *Judge*; and
- .2 two *lay members*; and
- .3 two *practising barristers* of not less than seven *years' standing*.

**rE141** A three-person panel shall include the following *persons* nominated by *the President*:

- .1 as Chair, a Queen's Counsel or a *Judge*; and
- .2 one *lay member*; and
- .3 one *practising barrister* of not less than seven *years' standing*.

**rE142** With the exception of judicial Chairs, the persons nominated by *the President* to sit on a *Disciplinary Tribunal* must be selected from the pool appointed by the *Tribunal Appointments Body*.

**rE143** In deciding who will sit on the panel, *the President* may have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the *respondent(s)* against whom the charges have been made. When constituting the panel, *the President* shall take into account the requirements of rE140 and rE141 above, and rE144 and rE145 below.

**rE144** A person must not be nominated to serve on a *Disciplinary Tribunal* if they:

- .1 are a member of the *Bar Council* or of any of its committees; or
- .2 are a member of the *Bar Standards Board* or of any of its committees; or
- .3 were a member of the *Bar Standards Board* or of any of its committees at any time when the matter was being considered by the *Bar Standards Board*.

**rE145** The person nominated by *the President*, in accordance with rE140 and rE141, to be Chair of the *Disciplinary Tribunal*, may be the *Directions Judge* as appointed under rE114, unless the *Directions Judge* considers there to be any reason why he or she should not Chair the hearing.

**rE146** *The President* may publish qualifications or other requirements made for those appointed to serve on a *Disciplinary Tribunal*.

**rE147** If a vacancy in the *Disciplinary Tribunal* arises before the substantive hearing of the charge, *the President* must nominate another member of the relevant class to fill that vacancy.

**rE148** At any time before the substantive hearing of the charge starts, *the President* may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as, in the exercise of his or her discretion, he or she deems

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necessary or expedient, provided always that *the President* notifies the *respondent(s)* of the identity of such substitutes as soon as is reasonably practicable after he or she has chosen them. The *respondent(s)* may object to such substitute members in the same way as they may object under rE133.

**rE149** The proceedings of a five-person panel will not be invalidated on the sole ground that after the *Convening Order* has been issued (in accordance with rE132 above), one or more of the members becomes unable to act or is disqualified from acting, provided that:

- .1 the Chair and at least one *lay member* and one barrister member are still able to act and are present throughout the substantive hearing; and
- .2 the number of members present throughout the substantive hearing of the charge is not reduced below three.

**rE150** A member of a *Disciplinary Tribunal* who has been absent for any time during a sifting shall take no further part in the proceedings.

### ***Provision of documents to the Disciplinary Tribunal***

**rE151** The *Bar Standards Board* and the *respondent* must send to *BTAS*, at least fourteen days before the hearing:

- .1 in the case of a *five-person Disciplinary Tribunal*, six copies of the evidence they intend to rely on at the hearing;
- .2 in the case of a *three-person Disciplinary Tribunal*, four copies of the evidence they intend to rely on at the hearing.

**rE152** The evidence referred to in rE151 must be indexed and paginated.

**rE153** *BTAS* shall provide to each member of the *Disciplinary Tribunal* before the start of the substantive hearing copies of the following documents:

- .1 the *Convening Order*,
- .2 the charge(s) and/or application(s) and any particulars of them;
- .3 any documents which the *Bar Standards Board* or the *respondent(s)* propose to rely on, unless a direction has been made that copies of such documents be withheld;
- .4 any written answer to the charge(s) and/or application(s) submitted by or on behalf of the *respondent(s)*;
- .5 such other documents as have been agreed or directed to be laid before the *Disciplinary Tribunal* before the start of the hearing; and

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- .6 all orders for directions which have been made in relation to the case.

### ***Applications for adjournment before the commencement of the hearing***

**rE154** Any application by a party for an adjournment of the substantive hearing before the date on which the hearing is scheduled to commence must be in writing and accompanied by any evidence upon which the party relies in support of his or her application.

**rE155** An application under rE154 must be submitted to the Chair of the *Disciplinary Tribunal* which has been convened to hear the case and served upon the other party. The Chair must make reasonable attempts to seek any representations in response to the application from the other party. The Chair must consider the application for adjournment taking into account any response submitted by the other party and may:

- .1 grant the adjournment; or
- .2 direct that the application must be renewed before the *Disciplinary Tribunal* on the first day fixed for the hearing; or
- .3 refuse the application; and
- .4 may make such directions as he or she considers appropriate for the further conduct of the case.

### ***Hearing in public***

**rE156** The hearing before a *Disciplinary Tribunal* must be in public, unless it has been directed that all or part of the hearing is not to be held in public, and that direction has not been over-ruled by the *Disciplinary Tribunal*.

### ***Recording of proceedings***

**rE157** BTAS must arrange for a verbatim record of the proceedings before a *Disciplinary Tribunal* to be made.

### ***Joinder***

**rE158** Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine charges against two or more respondents at the same hearing where:

- .1 the charge(s) against each respondent arises out of the same circumstances; or
- .2 in the view of the *Disciplinary Tribunal*, a joint hearing is necessary or desirable.

**rE159** Where a joint hearing is held:

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- .1 these Regulations are to have effect in relation to the hearing with the necessary modifications as directed by the Chair; and
- .2 each *respondent* concerned is to be able to exercise any of the rights granted to that *respondent* under these Regulations whether or not any other *respondent* concerned wishes to exercise that right.

**rE160** Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine at a single hearing two or more matters which have been separately referred to the *Disciplinary Tribunal* in respect of the same *respondent*, whether or not those matters arise from the same circumstances.

### ***Amendment and addition of charge(s) and/or application(s)***

**rE161** A *Disciplinary Tribunal* may at any time before or during the hearing grant permission to the *Bar Standards Board* to amend the charge(s) and/or application(s) against any *respondent*, or grant permission for new charge(s) and/or application(s) be added, provided that:

- .1 the *Disciplinary Tribunal* is satisfied that no *respondent* will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of his or her defence; and
- .2 the *Disciplinary Tribunal* will, if so requested by a *respondent*, adjourn for such time as the *Disciplinary Tribunal* considers reasonably necessary to enable that *respondent* to meet the amended charge(s) or application(s).

### ***Adjournment of the hearing***

**rE162** Subject to rE163, the *Disciplinary Tribunal* must sit from day to day until it has made a finding and, if any charge or application is found proved, until sanction has been determined.

**rE163** A *Disciplinary Tribunal* may, if they decide an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

### ***Standard of proof***

**rE164** The *Disciplinary Tribunal* must apply the criminal standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

### ***Rules of natural justice***

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rE165 The rules of natural justice apply to proceedings of a *Disciplinary Tribunal*.

### **Evidence**

rE166 The *Disciplinary Tribunal* may:

- .1 (subject to rE167 below) admit any evidence, whether oral or written, whether given in person, or over the telephone, or by video link, or by such other means as the *Disciplinary Tribunal* may deem appropriate, whether direct or hearsay, and whether or not it would be admissible in a *court* of law;
- .2 give such directions with regard to the admission of evidence at the hearing as it considers appropriate, ensuring that a *respondent* has a proper opportunity of answering the charge(s) and/or application(s) made against him or her;
- .3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.

rE167 Any party may refer to the fact (if relevant) that the *determination by consent* procedure was used before the *complaint* was referred as a charge before a *Disciplinary Tribunal*. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the *determination by consent* procedure ended), unless and until the *respondent* refers to the substance of the procedure in the course of presenting his or her case, or when he or she is being sanctioned.

rE168 Where a party has previously failed to comply with any direction made by the *Directions Judge*, or has failed to do any act, including the submission of evidence, within the time period specified in a direction, the *Disciplinary Tribunal* may, at its discretion:

- .1 decide to exclude the relevant evidence; or
- .2 draw an adverse interference against that party.

### **Decisions of courts or tribunals**

rE169 In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was a party, the following Regulations shall apply:

- .1 a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the *respondent* committed the offence;

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- .2 any *court* record of the findings of fact upon which the *conviction* was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate;
- .3 the finding and sanction of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sanction and the findings of fact upon which that finding or sanction was based shall be proof of those facts, unless proved to be inaccurate; and
- .4 the judgment of any civil *court* may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be proof of those facts, unless proved to be inaccurate.

**rE170** In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was not a party, the provisions of rE169 do not apply.

### ***Witness evidence at the Disciplinary Tribunal***

**rE171** Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.

**rE172** Subject to rE176, witnesses:

- .1 if giving oral evidence-in-chief, shall first be examined by the party calling them;
- .2 may be cross-examined by the opposing party;
- .3 may be re-examined by the party calling them; and
- .4 may at any time be questioned by the *Disciplinary Tribunal*.

**rE173** Any further questioning of the witnesses by the parties shall be at the discretion of the *Disciplinary Tribunal*.

**rE174** The *Disciplinary Tribunal* may, upon the application of a party, agree that the identity of a witness should not be revealed in public.

**rE175** A witness of fact shall be excluded from the hearing until he or she is called to give evidence, failing which he or she will not be entitled to give evidence without leave of the *Disciplinary Tribunal*.

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### ***Vulnerable Witnesses***

**rE176** For the purpose of these Regulations, any person falling into one or more of the following categories may be treated by the *Disciplinary Tribunal* as a vulnerable witness in proceedings before it:

- .1 any witness under the age of 18 at the time of the hearing;
- .2 any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- .3 any witness who is significantly impaired in relation to intelligence and social functioning;
- .4 any witness with physical disabilities who requires assistance to give evidence;
- .5 any witness, where the allegation against the *respondent* is of a sexual or violent nature and the witness was the alleged victim; and
- .6 any witness who complains of intimidation.

**rE177** Subject to hearing representations from the parties, the Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

**rE178** Any witness who is not regarded as a vulnerable witness under rE176 may apply for one or more of the measures set out in rE179 to be put into place on the ground that the measure(s) is desirable to enable the Disciplinary Tribunal to receive his or her evidence.

**rE179** Measures adopted by the *Disciplinary Tribunal* for receiving evidence from a vulnerable witness may include, but are not to be limited to:

- .1 use of video links;
- .2 use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such a witness is available at the hearing for cross-examination and questioning by the *Disciplinary Tribunal*;
- .3 use of interpreters (including signers and translators) or intermediaries;
- .4 use of screens or such other measures as the *Disciplinary Tribunal* consider necessary in the circumstances in order to prevent:
  - .a the identity of the witness being revealed to the press or the general public; or
  - .b access to the witness by the respondent.
- .5 the hearing of evidence (either whole or in part) by the *Disciplinary Tribunal* in private.

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**rE180** No *respondent* charged with an allegation of a sexual or violent nature may cross-examine in person a witness who is the alleged victim, either:

- .1 in connection with that allegation, or
- .2 in connection with any other allegation (of whatever nature) with which the said *respondent* is charged in the proceedings.

**rE181** In the circumstances set out in rE180, in the absence of the respondent's written consent, *BTAS* must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on the respondent's behalf.

**rE182** A witness who is not regarded as a vulnerable witness under rE177 may apply for one or more of the measures set out in rE179 to be put in place on the ground that the measure(s) is desirable to enable the *Disciplinary Tribunal* to receive his or her evidence.

### **Absence of respondent**

**rE183** Where the *respondent* has not attended at the time and place appointed for the hearing, the *Disciplinary Tribunal* may nevertheless, subject to compliance with rE234.1 in respect of that *respondent*, proceed to hear and determine the charge(s) or application(s) relating to that *respondent*, if it considers it just to do so and it is satisfied that the relevant procedure has been complied with (that is, the respondent has been duly served (in accordance with rE249 of these Regulations) with the documents required by rE102, rE103, and rE132.3.c (as appropriate)).

**rE184** If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that *respondent*, if it considers it just to do so, subject to compliance with rE234.2 in respect of that *respondent* if the *Disciplinary Tribunal* finds any charge or application proved.

### **Application for a fresh hearing**

**rE185** Where the *Disciplinary Tribunal* proceed in the *respondent's* absence, in accordance with rE183 or rE184, the *respondent* may apply to *BTAS* for a *Directions Judge*, appointed by the *President*, to consider an application for a fresh hearing before a new *Disciplinary Tribunal*.

**rE186** The *respondent's* application under rE185 must be supported by a statement setting out the facts and/or circumstances upon which the *respondent* relies in support of his or her application.

**rE187** The *Directions Judge* may grant a new hearing if he or she considers it just to do so and if he or she is satisfied that:



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- .1 the *respondent* submitted his or her application for a new hearing promptly upon becoming aware of the decision of the *Disciplinary Tribunal*; and
- .2 the *respondent* had good reason for not attending the hearing.

### **Order of proceedings at a hearing**

- rE188** The order of proceedings at a hearing shall be as set out in these regulations unless the *Disciplinary Tribunal* decides, having considered the interests of justice and fairness to the parties, that the procedure should be varied. The *Disciplinary Tribunal* may then give such directions with regard to the conduct of, and procedure at, the hearing as it considers appropriate.
- rE189** At any time during the hearing when it considers it desirable, the *Disciplinary Tribunal* may retire into private to deliberate.
- rE190** The *Disciplinary Tribunal* shall consider any submissions from the parties in relation to objection(s) to the charge(s) or preliminary applications, following which the *Disciplinary Tribunal* will retire into private session to consider the submissions and shall thereafter announce its determination.
- rE191** After the *Disciplinary Tribunal* has dealt with any submissions or applications under rE190, the Clerk shall read the charge(s) in public.
- rE192** The Clerk shall ask the respondent(s) whether the charge(s) is admitted or denied. The respondent(s) plea to the charge(s) will be entered on the record.
- rE193** Where the *respondent(s)* admit the charges(s), the Chair of the *Disciplinary Tribunal* shall announce the charge(s) proved and the *Disciplinary Tribunal* shall record in writing its finding on the charge(s) and it reasons. The matter shall then continue in accordance with the procedure set out at paragraph rE199 onwards.
- rE194** Where the *respondent(s)* denies the charge(s), the *Bar Standards Board* will present the case against the *respondent(s)*, which may include producing any evidence and calling any witness in person.
- rE195** After the evidence against the *respondent* has been called, the *respondent* shall be entitled to submit that he or she has no case to answer. The *Bar Standards Board* shall be entitled to respond to such a submission. If such a submission is upheld the *Disciplinary Tribunal* shall dismiss the charge(s), either in whole or in part. If the entirety of the case against the *respondent* is not dismissed and some charges remain the proceedings shall continue as set out at rE196 to rE198.
- rE196** The *respondent* shall then be entitled to call any witness, give evidence on his or her own behalf and adduce any other evidence in support of the *respondent's defence*.
- rE197** The *Bar Standards Board* shall be entitled to call witnesses and adduce evidence in rebuttal of any part of the defence case.

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**rE198** After the *respondent* has called any witness in person and adduced any evidence, the *Bar Standards Board* may address the *Disciplinary Tribunal*, and thereafter the *respondent*.

### **The finding**

**rE199** At the end of the hearing, the *Disciplinary Tribunal* must record in writing its finding(s) on each charge or application, and its reasons. That record must be signed by the Chair and by all members of the *Disciplinary Tribunal*.

**rE200** If the members of the *Disciplinary Tribunal* do not agree on any charge or application, the finding to be recorded on that charge or application must be that of the majority. If the members of the *Disciplinary Tribunal* are equally divided on any charge or application, then, as the burden of proof is on the *Bar Standards Board*, the finding to be recorded on that charge or application must be that which is the most favourable to the *respondent*.

**rE201** The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* finding on the charge(s) or application(s), and state whether each such finding was unanimous or by a majority. The *Disciplinary Tribunal* is free to reserve its judgment.

**rE202** In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the *respondent* about his or her future conduct

### **The sanction**

**rE203** If the *Disciplinary Tribunal* finds any of the charges or applications proved against a *respondent*, it may hear evidence of any previous:

- .1 finding of *professional misconduct* by a *Disciplinary Tribunal* or under the determination by consent procedure; or
- .2 disqualification order; or
- .3 finding of a breach of proper professional standards by the *Bar Standards Board* or any other regulator; or
- .4 adverse finding on a charge consisting of a *legal aid complaint*;

made in respect of the *respondent*, or, where the proved *charge(s)* concerns a *BSB authorised body*, in respect of that body or any person employed in the *BSB authorised body* directly implicated by the charges.

**rE204** After hearing any representations by or on behalf of the respondent(s), the *Disciplinary Tribunal* must decide what sanction to impose on a *respondent*, taking into account the sentencing guidance and must record its sanction in writing, together with its reasons.

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**rE205** If the members of the *Disciplinary Tribunal* do not agree on the sanction to be imposed on a *respondent*, the sanction to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sanction to be imposed on a *respondent*, the sanction to be recorded must be that which is the most favourable to the *respondent*.

**rE206** The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunals* decision on sanction and state whether the decision was unanimous or by a majority.

**rE207** Subject to rE208 below:

- .1 a *respondent* against whom a charge of *professional misconduct* has been found proved may be sanctioned by the *Disciplinary Tribunal* as follows:
  - .a in the case of *barristers*, in accordance with Annex 1 to these Regulations;
  - .b in the case of a *BSB legal services body*, in accordance with Annex 2 to these Regulations;
  - .c ~~in the case of a licensed body, in accordance with Annex 3 to these Regulations;~~
  - .d in the case of *registered European lawyers*, in accordance with Annex 4 to these Regulations;
  - .e in the case of all other *BSB regulated persons*, in accordance with Annex 5 to these Regulations;
- .2 in the case of a *respondent* who is a *relevant person* in respect of whom the *Disciplinary Tribunal* finds the *disqualification condition* to be established, the *Disciplinary Tribunal* may make a *Disqualification Order* if the *Disciplinary Tribunal* considers that the making of such a *Disqualification Order* is a proportionate sanction and is in the public interest (there being no other available sanction in respect of a *relevant person* who is a *non-authorised individual* directly or *indirectly employed* by a *BSB authorised person*).

**rE208** In any case where a charge of *professional misconduct* has been found proved, the *Disciplinary Tribunal* may decide that no further action should be taken against the *respondent*.

**rE209** In any case where a charge of *professional misconduct* has not been found proved, the *Disciplinary Tribunal* may direct that the matter(s) be referred to *Bar Standards Board* for it to consider whether an *administrative sanction* should be imposed in accordance with the provisions of rE37.3 of the *Complaints Regulations*, where:

- .1 The *Disciplinary Tribunal* is satisfied there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by the respondent; and

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- .2 The *Disciplinary Tribunal* considers that such referral to the *Bar Standards Board* is proportionate and in the public interest.

**rE209A** A direction made under rE209 is not a disposal or a finding for the purposes of the BSB Handbook.

**rE210** A three-person panel must not:

- .1 disbar a *barrister* or suspend a *barrister's practising certificate* for a period longer than twelve months; or
- .2 revoke the authorisation or licence ~~(as appropriate)~~ of a *BSB authorised body* or suspend it for a period longer than twelve months; or
- .3 remove a *registered European lawyer* from the *register of European lawyers*; or
- .4 impose a sanction of suspension on any *BSB regulated person* for a prescribed period longer than twelve months; or
- .5 impose a *Disqualification Order* for more than twelve months.

This Regulation does not prevent a three-person panel making an order in accordance with rE211 below.

**rE211** In the event that a three-person panel considers that a case before it merits the imposition on a *respondent* of any of the sentences referred to in rE210 or the three-person panel otherwise considers that the case of a particular *respondent* is complex enough to warrant sentencing by a *five-person* panel:

- .1 the three-person panel must refer the case to a five-person panel for it to sanction that *respondent* (but may proceed to sanction any other *respondents* to the proceedings in respect of whom this regulation does not apply); and
- .2 the three-person panel must, in order to help the *five-person* panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other *respondents* to the proceedings). The *respondent* cannot challenge the facts found by the three-person panel; and
- .3 the three-person panel must direct within what period of time the sentencing hearing before the *five-person* panel is to be held and make appropriate directions for the parties to provide *the President* with their dates of availability.

**rE212** Following a referral by a three-person panel under rE211, the *five-person* panel must be constituted in accordance with rE140. *The President* must fix the date for the sentencing hearing and in so doing shall have regard to the availability of the parties, save that *the President* may disregard the availability of any party where that party has failed to provide any, or any reasonable dates of availability. As soon as is reasonably practicable after he or she has fixed the sentencing hearing, *the President* must inform all the parties of that date.

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**rE213** The *respondent* must be informed by *BTAS* as soon as practicable of the names and status (that is, as Chair, as *lay member*, as *barrister* or other) of those *persons* who it is proposed will constitute the *five-person* panel. The *respondent* may, when he or she is so informed, give notice to *the President* objecting to any one or more of the proposed members of the panel. That notice must be given as soon as is reasonably practicable, must specify the ground of objection, and must be dealt with in accordance with rE134 and rE135.

**rE214** If the five-person panel is satisfied that the requirements of rE212 and rE213 have been complied with, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sanction the *respondent*, provided that it complies with rE234.1.

**rE215** If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE212 and rE213 above, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the *five-person* panel may nonetheless sanction the *respondent*, provided that it complies with rE234.2.

**rE216** If the procedure under rE215 has been followed, the *respondent* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel and the procedure for the *respondent's* application shall be as set out at rE185 to rE187 in these Regulations.

**rE217** Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and as amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the *Legal Aid Agency* in connection with services provided as part of the Criminal Legal Aid or Civil Legal Aid and to the exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid) on a *Disciplinary Tribunal* in the cases to which those Sections apply). Accordingly:

- .1 any *Disciplinary Tribunal* which hears a charge consisting of a *legal aid complaint* relating to the conduct of a *respondent* who is a *barrister* may if it thinks fit (and whether or not it sentences the *respondent* in accordance with rE206.1 in respect of any conduct arising out of the same *legal aid complaint*) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;
- .2 where a *Disciplinary Tribunal* hears a charge of *professional misconduct* against a *respondent* who is a *barrister* it may (in addition to, or instead of, sentencing that *respondent* in accordance with rE206.1) order that he or she be excluded from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service, or Criminal Defence Service, either temporarily, or for a specified period, if it determines that there is a good reason to exclude him or her arising from:

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- .a his or her conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or
- .b his or her professional conduct generally.

**rE218** Whether or not a *Disciplinary Tribunal* finds any charge or application proved against a *barrister* who is a *pupil supervisor*, if the *Disciplinary Tribunal* considers that the circumstances of the *complaint* are relevant to the *respondent* in his or her capacity as a *pupil supervisor*, it may notify the *respondent's Inn* of those concerns in such manner as it sees fit.

**rE219** If a *barrister* is a member of more than one *Inn*, each *Inn* of which he or she is a member must be mentioned in the sanction imposed on him or her.

### **Sanction of suspension from practice or from authorisation ~~or licensing~~ or imposition of conditions**

**rE220** For the purposes of rE222 to rE224:

- .1 The effect of a sanction of suspension for a *BSB authorised individual* is that:
  - .a the *respondent's practising certificate* is *suspended* by the *Bar Standards Board* for the period of the suspension;
  - .b the *respondent* is prohibited from practising as a *barrister*, or holding himself/herself out as being a *barrister* when providing legal *services* or as otherwise being authorised by the *Bar Standards Board* to provide *reserved legal activities* or when describing himself/herself as a *barrister* in providing services other than *legal services* (whether or not for reward) unless he or she discloses the suspension.
- .2 The effect of a sanction of suspension for a *registered European lawyer* shall mean that the *respondent* is *suspended* from the *register of European lawyers* maintained by the *Bar Standards Board* and is, for so long as he or she remains *suspended*:
  - .a prohibited from holding himself/herself out as registered with the *Bar Standards Board*; and
  - .b not authorised to *practise*.
- .3 The effect of a sanction of suspension for a *BSB authorised body* shall mean that the body's authorisation or licence is *suspended* for the period of the suspension such that the *respondent* is not an *authorised person* for that period;
- .4 The effect of a sanction on a *BSB authorised individual* or a *registered European lawyer* requiring completion of continuing professional development shall be

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In addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this *Handbook*.

**rE221** In exceptional circumstances, where the total suspension is three months or less, the Tribunal may postpone the commencement of the suspension for a period as it deems fit.

**rE222** The period for which a sanction of suspension from *practice* is expressed to run may be:

- .1 a fixed period; or
- .2 until the *respondent* has complied with any conditions specified in the order imposing the sanction of suspension.

**rE223** Conditions may be imposed on a *barrister's practising certificate* or on the authorisation or licence of a *BSB authorised body*

- .1 without its being *suspended*; or
- .2 to take effect on a *barrister's practising certificate* or on the authorisation or licence of a *BSB authorised body* when a period of suspension ends.

**rE224** Conditions may (depending on the circumstances) include:

- .1 conditions limiting the scope of the *respondent's* practice (after the end of any suspension, if relevant) to such part as the *Disciplinary Tribunal* may determine, either indefinitely or for a defined period; and/or
- .2 imposing requirements that the *respondent*, or in the case of a *BSB authorised body*, its managers or employees, undergo such further training as the *Disciplinary Tribunal* may determine; and/or
- .3 prohibiting the *respondent* from accepting or carrying out any public access instructions; and/or
- .4 such other matters as the *Disciplinary Tribunal* may consider appropriate for the purpose of protecting the public and/or preventing a repetition of the conduct in question.

### **Suspension/withdrawal of practising rights pending the hearing of any appeal**

**rE225** rE226 to rE233 below apply to any *respondent* who:

- .1 is a *barrister*, who has been sanctioned to be disbarred or to be *suspended* or to be prohibited from accepting or carrying out any public access work or *instructions* for more than twelve months;
- .2 is a *BSB authorised individual*, who has been sanctioned to be *disqualified* or to be *suspended* for more than twelve months;

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- .3 is a *BSB authorised body*, which has been sanctioned to have its authorisation or licence-revoked or *suspended* for more than twelve months; or
- .4 is a *BSB authorised person*, who has been sanctioned to have conditions placed on his or her *practising certificate*, authorisation ~~or licence~~ (as appropriate) prohibiting him or her from accepting any *public access instructions* or *conducting any litigation* or for more than twelve months.

**rE226** Where rE225 applies, the *Disciplinary Tribunal* must seek representations from the *respondent* and from the *Bar Standards Board* on the appropriateness or otherwise of taking action under rE227 below.

**rE227** Having heard any representations under rE225 the *Disciplinary Tribunal* must (unless in the circumstances of the case it appears to the *Disciplinary Tribunal* to be inappropriate to do so), either:

- .1 in relation to rE225.1 to rE225.3, require the *respondent* to suspend his or her *practice* immediately, in which case the *Bar Standards Board* must suspend that *respondent's practising certificate* with immediate effect; or
- .2 in relation to rE225.4 decide that the condition prohibiting the *respondent* from accepting *public access instructions* or conducting any litigation, shall take effect immediately; or
- .3 where the *respondent* has been sanctioned to be disbarred or to be *suspended*, and where that *respondent* does not currently hold a *practising certificate*, require the *Bar Standards Board* not to issue any *practising certificate* to him or her.

**rE228** If the *Disciplinary Tribunal* decides that it would be inappropriate to require immediate *suspension* or immediate imposition of conditions (as the case may be) it may nonetheless require the *respondent* to suspend his or her *practice* or to impose conditions, from such date as the *Disciplinary Tribunal* may specify.

**rE229** Where the *respondent* is permitted to continue to practise for any period before being *suspended* under rE228 the *Disciplinary Tribunal* may require the *Bar Standards Board* to impose such terms on the *respondent's practice* as the *Disciplinary Tribunal* deems necessary to protect *the public* until the suspension comes into effect.

**rE230** Where an order is made in respect of a *respondent* under rE225 and that *respondent* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, he may apply to *the President* in writing for it to be varied.



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**rE231** When *the President* receives an application made under rE230, he must refer it to the Chair and to one of the *lay members* of the *Disciplinary Tribunal* which originally made the order to make a decision on the application.

**rE232** Any application made under rE230 must be sent by the applicant, on the day that it is made, to the *Bar Standards Board*. The *Bar Standards Board* may make such representations as they think fit on that application to those to whom the application has been referred by the *President*.

**rE233** The persons to whom an application made under rE230 above is referred may vary or confirm the order in relation to which the application has been made.

### **Wording of the sanction when respondent not present**

**rE234** If a *respondent* has not been present throughout the proceedings, the sanction in respect of that *respondent* must include one or more of the following statements:

- .1 if the relevant procedure under rE183 has been complied with, that the finding and sanction were made in the absence of the *respondent* in accordance with rE183;
- .2 if the procedure under rE184 has been complied with, that the finding and the sanction were made in the absence of the *respondent* and that he or she has the right to apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*;
- .3 if the relevant procedure under rE213 has been complied with, that the sanction was made in the absence of the *respondent* in accordance with rE214;
- .4 if the procedure under rE215 has been complied with, that the sanction was made in the absence of the *respondent* and that he or she may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

### **Report of Disciplinary Tribunal Decisions**

**rE235** As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal*, the Chair must prepare a report in writing of the finding(s) on the charge(s) of *professional misconduct* and/or on any applications, and the reasons for those findings and the sanction. At the discretion of the Chair, the report may also refer to matters which, in the light of the evidence given to the *Disciplinary Tribunal*, appear to require investigation or comment. He or she must send copies of the report to:

- .1 the *respondent*; and
- .2 the Director General of the *Bar Standards Board*; and

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- .3 the Chair of the *Bar Standards Board*; and
- .4 where a *barrister* has been disbarred, the *respondent's Inn of Call* and of any other Inns of which he or she is a member; and
- .5 where a *HOLP* or *HOFA* or *manager* or *employee* of a *licensed body* has been disqualified, the *LSB*; and
- .6 in cases where one or more charges of professional misconduct have been found proved:
  - .a the respondent's head of chambers, *HOLP*, or employer (as appropriate); and
  - .b in the case of a registered European lawyer, his or her home professional body; and
- .7 in cases where one or more charges of *professional misconduct* have been found proved and any such charge constitutes, or arises out of, a *legal aid complaint*, and/or the sanction includes an order under rE217, the *Legal Aid Agency*; and
- .8 any other person or bodies that *the President* deems, in his or her absolute discretion, to be appropriate, taking into account the circumstances.

### Appeals

rE236 In cases where one or more charges of *professional misconduct* have been proved, and/or a *disqualification order* has been made, an appeal may be lodged with the High Court in accordance with the Civil Procedure Rules:

- .1 by the *respondent* against *conviction* and/or sanction;
- .2 with the consent of the Chair of the *Bar Standards Board* or the Chair of the *PCC*, by the *Bar Standards Board* against sanction.

rE237 In any case where any charge of *professional misconduct* or application to *disqualify* has been dismissed, the *Bar Standards Board* may (with the consent of the Chair of the *Bar Standards Board* or of the Chair of the *PCC*) lodge an appeal with the High Court, in accordance with the Civil Procedure Rules.

rE238 Where a *respondent* lodges an appeal against a disbarment or *disqualification order* or the revocation of a ~~license~~ or authorisation, he or she may at the same time lodge with the High Court an appeal against any requirement imposed under rE227 to rE229 as appropriate.

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### **Action to be taken by the Inn (in circumstances where a barrister has been sanctioned to be disbarred)**

**rE239** The Treasurer of the respondent's *Inn of Call* must not fewer than 21 days, or more than 35 days, after the end of the *Disciplinary Tribunal's* proceedings (or, where the respondent has given notice of appeal to High Court against the finding and/or sanction, once the time for appeal to the High Court has expired and any appeal to the High Court has been disposed of) pronounce the sanction of disbarment decided on by the *Disciplinary Tribunal*, and take such further action as may be required to carry the sanction into effect. The Treasurer must inform the *persons* specified in rE235 of the date on which the sanction is to take effect, (which must be no later than two working days after the date when that sanction is pronounced).

**rE240** In any case in which the *respondent* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct*, no action referred to in rE239 may be taken until the appeal has been heard by High Court, or otherwise disposed of without a hearing.

### **Action to be taken by the Bar Council/Bar Standards Board**

**rE241** Subject to rE242, the *Bar Council/Bar Standards Board* must take the appropriate steps to put the finding and/or sanction of the *Disciplinary Tribunal* into effect, except that in any case in which a *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct* or *disqualification order*, no action may be taken until the appeal has been heard by the High Court or otherwise disposed of without a hearing.

**rE242** Where the finding and/or sanction of the *Disciplinary Tribunal* is that the *BSB authorised person* should be subject to an immediate suspension and/or immediate imposition of conditions in accordance with rE226 the actions of the *Bar Council/Bar Standards Board* must not be deferred even if the *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct*.

### **Publication of finding, sanction and report of the Disciplinary Tribunal**

**rE243** The following procedures apply to the publication of the finding and sanction of a *Disciplinary Tribunal*:

- .1 *BTAS*:
  - .a must, where charges are proved, publish the finding and sanction of the *Disciplinary Tribunal* on its website within fourteen days of the date when the *Disciplinary Tribunal's* proceedings end, unless, on application by the

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*respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the finding and/or sanction; and

- .b must, where charges have been dismissed, including following an application under rE127.2, not publish the finding on its website, unless the *respondent* so requests; and
- .2 The *Bar Standards Board* is free to publish the findings and sanction of a *Disciplinary Tribunal* on its website in accordance with rE243.1.

**rE243A** The following procedures apply to the publication of the report of the *Disciplinary Tribunal* Decision:

- .1 *BTAS*:
  - .a must, where charges are proved, publish the report of the *Disciplinary Tribunal* decision on its website within a reasonable time after the date when the *Disciplinary Tribunal's* proceedings end, unless, on application by the *respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the report; and
  - .b must, where charges have been dismissed, including following an application under rE127.2, not publish the report on its website, unless the *respondent* so requests; and
  - .c must, where charges have been dismissed, including following an application under rE127.2, published an anonymised summary of the report on its website, unless on application by the *respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the anonymised summary; and
  - .d may, where charges have been dismissed, publish the report of the *Disciplinary Tribunal* on their websites at any time, provided that in this case all details of the relevant parties involved in the hearing are anonymised.

### Costs

**rE244** A *Disciplinary Tribunal* may make such orders for costs, whether against or in favour of a *respondent*, as it shall think fit.

**rE245** A party who wishes to make an application for costs must, no later than 24 hours before the commencement of the hearing, serve upon any other party and file with *BTAS* a schedule setting out the costs he or she seeks.

**rE246** Where it exercises its discretion to make an Order for costs, a *Disciplinary Tribunal* must either itself decide the amount of such costs or direct *BTAS* to appoint a suitably qualified *person* to do so on its behalf.

**rE247** Any costs ordered to be paid by a *respondent* must be paid to the *Bar Standards Board*.

**rE248** All costs incurred by the *Bar Standards Board* preparatory to the hearing before the *Disciplinary Tribunal* must be borne by the *Bar Standards Board*.

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***Service of documents***

**rE249** Any documents required to be served on *a respondent* in connection with proceedings under these Regulations shall be deemed to have been validly served:

- .1 If sent by guaranteed delivery post or other guaranteed or acknowledged delivery, or receipted hand delivery to:

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- .a in the case of a *BSB authorised individual*, the address notified by him or her in accordance with the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing it) as his or her *practising address*,
- .b in the case of a *BSB authorised body*, its registered office address or its principal office; or
- .c in the case of a *BSB regulated person* or *non-authorised individual* acting as an ~~manager~~ or employee of a *BSB authorised body*, the address provided by the *BSB authorised body* as his or her home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified in accordance with to the requirements of Part 2 of this *Handbook*; or
- .d in either case, an address to which the *respondent* has asked in writing that such documents be sent; or
- .e in the absence of any of the above, to his or her last known address; or
- .f in the case of a *BSB regulated person* or *non-authorised individual* acting as an ~~manager~~ or employee of a *BSB authorised body*, the last known address of the relevant *BSB authorised body*,

and such service shall be deemed to have been made on the second working day after the date of posting or on the next working day after receipted hand delivery;

.2 If served by e-mail, where:

- .a the *respondent's* e-mail address is known to the *Bar Standards Board*; and
- .b the *respondent* has asked for or agreed to service by e-mail, or it is not possible to serve by other means;

and such service shall be deemed to have been made on the second working day after the date the e-mail is sent;

.3 If actually served;

.4 If served in any way which may be directed by the Directions Judge or the Chair of the *Disciplinary Tribunal*.

**rE250** For the purpose of rE249.1, "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *respondent* or by a relevant representative of the *respondent* (including, for example, his or her Clerk, a *manager* or *employee* of the *BSB authorised body* at which he or she works).

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### **Delegation**

**rE251** The powers and functions conferred by these Regulations on a *Directions Judge* may be exercised by any other *Judge* or Queen's Counsel nominated by *the President*, including the *Judge* or Queen's Counsel designated in the *Convening Order* as Chair of the *Disciplinary Tribunal* appointed to hear and determine the charge or charges against the *respondent*, if the *Directions Judge* is unable to act due to absence, or for any other reason.

**rE252** Any duty or function or step which, under these Regulations, required to be discharged or carried out by *the President* may, if he or she is unable to act due to absence or to any other reason, be discharged or carried out by the Registrar of *BTAS*, the Chair of the *Tribunal*, or by any other *person* nominated in writing by *the President* for any specific purpose.

**rE253** Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* may be done or exercised by, or given to, any person authorised by the *President*, either prospectively or retrospectively and either generally or for a particular purpose. Any authorisations given by the *President* under this regulation must be in writing.

### **Exclusion from providing representation funded by the Legal Aid Agency - Application for termination**

**rE254** A *respondent* who, under rE217, has been excluded from legal aid work in accordance with Section 42 of the Administration of Justice Act 1985 may apply for an order ending his or her exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid in accordance with rE256 below.

**rE255** Any such application must be in writing and addressed to the Chair of the *Disciplinary Tribunal* that made the original order.

**rE256** The Chair of the *Disciplinary Tribunal* may dismiss the application, or may decide that the *respondent's* exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date.

**rE257** The Chair of the *Disciplinary Tribunal* must notify his or her decision in writing to all those *persons* who received copies of the report of the *Disciplinary Tribunal* under rE235.

**rE258** The *Disciplinary Tribunal* may make such order for costs in relation to an application under rE244, as it thinks fit and rE244 to rE248 apply with all necessary modifications.

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***Interpretation***

**rE259** In this Part 5 Section B1 of the Handbook, all italicised terms shall be interpreted in accordance with the definitions in Part 6.



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### B2 Citation and commencement

**rE260** These Regulations may be cited as "The Disciplinary Tribunal Regulations 201X".

**rE261** These Regulations will come into effect on [ ] and shall apply to all cases referred to a *Disciplinary Tribunal* prior to that date under the Regulations then applying, and any step taken in relation to any *Disciplinary Tribunal* pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

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### B3 Annexes to the *Disciplinary Tribunals* Regulations 2015

#### ANNEX 1 — SENTENCING POWERS AGAINST BARRISTERS

Where a charge of *professional misconduct* has been found proved against a *barrister*<sup>1</sup> by a *Disciplinary Tribunal*, the *Disciplinary Tribunal* may decide to:

1. order that he or she be disbarred;
2. order that his or her *practising certificate* be suspended for a prescribed period;
3. order that his or her *practising certificate* should not be renewed;
4. order that conditions be imposed on his or her *practising certificate*;
5. order that he or she be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;
6. order that his or her authorisation to *conduct litigation* be removed or suspended, or be subject to conditions imposed;
7. order him or her to pay a fine of up to £50,000 to the Bar Standards Board (~~or up to £50,000,000 if the charges relate to his or her time as an employee or manager of a licensed body~~);
8. order him or her to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
9. reprimanded him or her;
10. give him or her advice about his or her future conduct;
11. order him or her to attend on a nominated *person* to be reprimanded; or
12. order him or her to attend on a nominated *person* to be given advice about his or her future conduct.

<sup>1</sup> If an application to disqualify the *Barrister* from acting as *HOLP*, manager or employee of an *authorised person* is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify the *Barrister* in accordance with the provisions of Annex 5.

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### ANNEX 2 — SENTENCING POWERS AGAINST BSB LEGAL SERVICES BODIES

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *BSB legal services body*, the *Disciplinary Tribunal* may decide to:

1. order that its authorisation to practise as a *BSB legal services body* be removed;
2. order that conditions be imposed on its authorisation to practise as a *BSB legal services body*;
3. order that its authorisation to *practise* for a prescribed period be suspended (either unconditionally or subject to conditions);
4. order that it, as a *licensed body*, be re-classified (either unconditionally or with conditions imposed on its licence to practise as a *licensed body*);
5. order that its authorisation to *conduct litigation* be withdrawn or suspended, or be subject to conditions on it;
6. order it to pay a fine of up to £250,000 to the *Bar Standards Board*;
7. order that its *managers* or *employees* complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* may direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
8. reprimanded it;
9. give it advice about its future conduct; or
10. order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.

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### **ANNEX 3 – SENTENCING POWERS AGAINST LICENSED BODIES**

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved, against a *licensed body* the *Disciplinary Tribunal* may decide to:-

1. — revoke its licence to practise revoked;
2. — suspend its licence to practise for a prescribed period (either unconditionally or subject to conditions);
3. — impose conditions on its licence to practise;
4. — withdraw or suspend its *right to conduct litigation* or to impose conditions on it;
5. — order it to pay a fine of up to £250,000,000 to the *Bar Standards Board*;
6. — order it to ensure that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
7. — reprimand it;
8. — give advice to it about its future conduct; or
9. — order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.

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### ANNEX 4 — SENTENCING POWERS AGAINST REGISTERED EUROPEAN LAWYERS

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *registered European lawyer*, the *Disciplinary Tribunal* may decide to:

1. order the he or she be removed from the *register of European lawyers*;
2. order that he or she be suspended from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);
3. order a condition to be imposed on him or her prohibiting him or her, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;
4. order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or of up to £50,000,000 if, the charges relate to his or her time as an *employee* or *manager of a licensed body*);
5. order him or her to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
6. reprimanded him or her;
7. give him or her advice about his or her future conduct;
8. order him or her to attend on a nominated *person* to be reprimanded; or
9. order him or her to attend on a nominated *person* to be given advice about his or her future conduct.

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### ANNEX 5 — SENTENCING POWERS AGAINST ALL OTHER *BSB REGULATED PERSONS*

if a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against any other *BSB regulated person*<sup>2</sup>, the *Disciplinary Tribunal* may decide to:

1. order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to their time as an *employee* or *manager* of a *licensed body*);
2. reprimanded him or her;
3. give him or her advice about his or her future conduct;
4. order him or her to attend on a nominated *person* to be reprimanded;
5. order him or her to attend on a nominated *person* to be given advice about his or her future conduct.

<sup>2</sup> If an application to disqualify is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify a *BSB regulated person* in accordance with these Regulations.

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### ANNEX 6 - STANDARD DIRECTIONS

The *standard directions* as referred to in rE103.3 are as follows:

1. The hearing will be in public;
2. This timetable will commence on the second working day after filing of these directions with the *BTAS* and all time limits will run from that date, unless stated otherwise.
3. Within 28 days, ie by [date]:
  - a. all parties will provide to *BTAS* with dates when they are available for the substantive hearing in the period between [month/year] and [month/year], failing which *BTAS* may fix the hearing without reference to the availability of any party;
  - b. the *respondent* will specify:
    - i. whether he or she admits the charges;
    - ii. if not, which areas of fact and/or law are in dispute.
4. Within 42 days, ie by [date], the *respondent must* provide a copy of the documents and a list of witnesses, on which and on whom he or she intends to rely, and copies of any witness statements on which he or she intends to rely. The BSB is to provide copies of any witness statements on which it intends to rely within 42 days, i.e. by [date], if required;
5. Within 56 days, ie by [date], both the *Bar Standards Board* and the *respondent must*:
  - a. serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;
  - b. provide a schedule setting out details of the witnesses he or she intends to call and a time estimate for the evidence of each of his or her witnesses.
6. At least fourteen days before the date fixed for the substantive hearing:
  - a. the *respondent* will provide to *BTAS* [four/six] copies of any defence bundle already provided under direction (5) for circulation to the *Disciplinary Tribunal* members, and at the same time send a copy to the *Bar Standards Board*;
  - b. where the *respondent* has indicated an intention to admit the charge(s), the *respondent* will provide to *BTAS* [four/six] copies of any financial documents or

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other documentation the *respondent* wishes to rely on in mitigation, in the event that the charge(s) is found proved;

- c. the *Bar Standards Board* will provide to *BTAS* [four/six] copies of any bundle of evidence as originally served under rE103 for circulation to the *Disciplinary Tribunal* members;
7. If either party seeks reasonable adjustments, to enable a person with a disability to participate in the hearing, or measures under rE179 to rE184, they must notify *BTAS* as soon as possible and no later than 21 days before the date fixed for the substantive hearing.
8. The estimated duration of the hearing is [number] days/hours;
9. Any skeleton argument to be relied on at the hearing be filed with *BTAS* and served on the other parties at least 48 hours before the time fixed for the hearing.
10. There is liberty to apply to the *Directions Judge* for further directions.