

THE BSB HANDBOOK
ENFORCEMENT REGULATIONS

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A THE COMPLAINTS REGULATIONS

A1 Powers and Functions of the PCC

rE1 The membership of the PCC shall be as prescribed by the Standing Orders of the *Bar Standards Board* from time to time.

rE2 The powers of the PCC shall be as set out in this Part 5, and shall include (but not be limited to) the power:

- .1 to consider *complaints* made by *persons* other than the *Bar Standards Board*;
- .2 to raise *complaints* on behalf of the *Bar Standards Board*, and to withdraw such *complaints*;
- .3 to determine whether any *complaint*:
 - .a discloses a potential breach of the *Handbook*; and/or
 - .b discloses a potential case of *professional misconduct*; and/or
 - .c potentially satisfies the *disqualification condition*,and if so to deal with it in accordance with this Section 5.A;
- .4 to direct the investigation of *complaints*;
- .5 to seek, in appropriate cases, to resolve *complaints* using the *determination by consent procedure*;
- .6 to bring and prosecute charges of *professional misconduct* or make an application for *disqualification* before *Disciplinary Tribunals* (as provided by Section 5.B);
- .7 to seek an immediate interim *suspension* or immediate *disqualification order* in accordance with Section 5.D of this *Handbook*;
- .8 to seek an interim suspension or disqualification order in accordance with Section 5.D of this Handbook;
- .9 to refer *practising barristers* to a Fitness to Practise panel in accordance with Section 5.E of this *Handbook*;

New text in bold

Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A1: Powers and Functions of the PCC

- .10** to refer to *disciplinary tribunals* any *legal aid complaint* relating to the conduct of a *BSB regulated person* and to be responsible for prosecuting any such charges or *legal aid complaints* before such *disciplinary tribunals*;
 - .11** to refer any *complaint* for supervisory action by the *supervision team*;
 - .12** to take such other actions in relation to *complaints* or infringements of the *handbook* as are permitted by this Section 5.A;
 - .13** to impose, or direct the imposition, of an *administrative sanction* in accordance with the provisions of rE37.3 below;
 - .14** to make recommendations on matters of professional conduct to the *Bar Standards Board* or to any of its committees, as the *PCC* may think appropriate; and
 - .15** to make rulings on matters of professional conduct in accordance with the *determination by consent procedure*.
- rE3** The *PCC* and the Chairman of the *PCC* shall each have the power to authorise any *person*, group or body to fulfill any function or exercise any power given to them by this Section 5.A. Any authorisations given under rE3 must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.
- rE4** Save in respect of the matters dealt with at rE29.2 (time limits for making a *complaint*), the *PCC* or the Chairman of the *PCC* shall have the power to extend any time limits prescribed by this Section 5.A, in their absolute discretion, whenever it appears to be appropriate to do so.
- rE5** In determining which of its powers under this Section 5.A to use the *PCC* will take into account all the circumstances, including:
- .1** the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant; and
 - .2** any other factor relevant to the issue including whether it is appropriate, sufficient, proportionate and effective, in the public interest, to proceed in that manner.
- rE6** The *PCC* may at any time postpone consideration of a *complaint*, whether to permit further investigation of the *complaint* to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.

New text in bold

Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A1: Powers and Functions of the PCC

rE7 The PCC may at any time seek information or assistance, orally or in writing, as it thinks fit, from any *person*, group or body.

rE8 If at any time the PCC decides in accordance with this Section 5.A:

.1 to refer a *complaint* to another *person* or body for consideration; or

.2 to dismiss or take no further action on a *complaint*; or

.3 to postpone consideration of a *complaint*;

it must give written reasons for that decision, and provide those reasons to the *relevant person* against whom the *complaint* was made and (where the *complaint* was made by a *person* other than the *Bar Standards Board*) the complainant.

rE9 Any *complaint* received from a *person* other than the *Bar Standards Board* shall first be dealt with by the PCC in accordance with Section 5.A2 and, where relevant, shall then be considered by the PCC in accordance with Section 5.A3 below.

rE10 Any *complaint* raised by the *Bar Standards Board* itself shall be considered by the PCC in accordance with Section 5.A3 below.

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the
Bar Standards Board

A2 Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the *Bar Standards Board*

Referral of complaints to other persons or to the supervision team

rE11 When it receives a *complaint*, the *PCC* must first consider whether it is appropriate to refer the *complaint* to another *person* or to the *supervision team*, accordance with rE13 to rE28 below. If at any time the *PCC* decides to refer a *complaint* to another *person* or body for consideration or to the *supervision team* it must give written reasons for that decision, and provide such reasons to the *relevant person* against whom the *complaint* was made and the complainant.

rE12 The *PCC*'s decision under rE11 is final and no one has the right to appeal against it.

Reference to the Legal Ombudsman

rE13 If a *complaint* is made by or on behalf of a *client* of a *BSB regulated person* (excluding for the purposes of this rE13 only, *unregistered barristers*) against that *BSB regulated person* **(or, in the case of a *BSB authorised body*, such a *complaint* is made against any individual working as an *employee or manager of such BSB authorised body*)**, the *PCC* must refer such *complaint* without further consideration to the *Legal Ombudsman*, or will signpost the complainant to the *Legal Ombudsman* and must in the case of a referral notify the complainant of the referral, unless it is clear on the face of the *complaint* that the matter falls outside the jurisdiction of the *Legal Ombudsman*.

rE14 If a *complaint* is made by or on behalf of a *client* of an *unregistered barrister* against that *unregistered barrister*, the *PCC* may refer such *complaint* to the *Legal Ombudsman* if it is satisfied that the *Legal Ombudsman* may have jurisdiction in relation to such *complaint*, and the *PCC* shall notify the complainant of the referral.

rE15 For the avoidance of doubt, such a referral does not prevent the immediate operation of the *Interim Suspension and Disqualification Regulations* or the *Fitness to Practise Regulations*, where appropriate.

rE16 When a *complaint* is referred, or referred back, to the *Bar Standards Board* by the *Legal Ombudsman*, rE29 and following, below, apply.

Reference to chambers/BSB authorised bodies

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the
Bar Standards Board

rE17 If it appears to the *PCC* that a *complaint* against a *relevant person* (which is not a *complaint* made by or on behalf of *BSB regulated person's client* against that *BSB regulated person*) may appropriately be resolved by:

- .1 *chambers* (where the *complaint* is against a *self-employed barrister* who is a *member of*, or other *relevant person* who is working at, such *chambers* at the relevant time); or
- .2 **a *BSB authorised body* (where the *complaint* is against a *BSB authorised body* or the *complaint* is against a *relevant person* acting in their capacity as a *manager* or *employee* of such *BSB authorised body* at the relevant time),**
- .3 the *PCC* may refer the *complaint* to the *chambers* or ***BSB authorised body*** for investigation and resolution. For the avoidance of doubt, where a *complaint* is made against an *employed barrister (authorised non-BSB body)* or an *employed barrister (non-authorised body)*, the provisions of rE28 apply.

rE18 When deciding whether to refer a *complaint* in accordance with rE16 above, the *PCC* must take into account all the circumstances, including the factors referred to at rE4 above, and the relationship (if any) between the complainant and the relevant *chambers/BSB authorised body* and whether such a relationship continues.

rE19 The *PCC* must consider whether the *complaint* should be dismissed on the grounds that it has not been made within the period identified in rE29.2 below before it decides whether to refer the *complaint* to the relevant *chambers/BSB authorised body* in accordance with rE17 above.

rE20 Where a *complaint* is referred to the relevant *chambers/BSB authorised body* in accordance with rE17 above, the *PCC* will send any information held by it relating to the *complaint* to the head of *chambers* or to the *person* nominated by the *chambers* as being responsible for such issues (in the case of a referral to *chambers*) or to the ***HOLP (in the case of a referral to a BSB authorised body)***.

rE21 Following a referral to a *chambers/BSB authorised body* in accordance with rE17 above, the *PCC* must inform the complainant of the complainant's rights under rE22.2 below.

rE22 If:

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the
Bar Standards Board

- .1 the *PCC* considers that progress made by the *chambers/BSB authorised body*—in investigating and resolving the *complaint*, or the outcome of such an investigation, is unsatisfactory; or
- .2 a complainant informs the *PCC* that he is dissatisfied with the progress or outcome of the *chambers/BSB authorised body's* investigation, giving reasons for such dissatisfaction,

then the *PCC* must consider the *complaint* in accordance with rE29 and following below.

Reference where BSB regulated individual acting in judicial or quasi-judicial capacity

rE23 If it appears to the *PCC* that the *complaint* arises out of a *relevant person's* actions in a part-time or temporary judicial or quasi-judicial capacity, it must act as follows:

- .1 if it appears to the *PCC* that the *complaint* would otherwise fall to be dismissed under this Section 5.A, the *PCC* must dismiss it; or
- .2 if it appears to the *PCC* that the *complaint* would otherwise not fall to be dismissed, the *PCC* must refer the *complaint* without further consideration to the Office of Judicial Complaints and/or *person* or body responsible for the appointment of the *relevant person* to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other *person* or body as appropriate) ("the appropriate body"), requesting the appropriate body to notify the *PCC* when the *complaint* has been dealt with and of any action taken by it. Where the appropriate body is a *person* other than the Lord Chancellor or a Minister of the Crown, and where the *PCC* considers it inappropriate to refer the *complaint* to the appropriate body, or where the appropriate body refuses to deal with a *complaint*, the *PCC* must consider the *complaint* and, subject to rE25 below, direct it to be proceeded with in accordance with rE29 and following below.

rE24 If the appropriate body, having dealt with a *complaint*, believes that it may be appropriate for it to be considered further by the *Bar Standards Board*, the *appropriate body may*, subject to rE25 below, refer the matter back to the *Bar Standards Board* and, following such referral, the *PCC* may reconsider the *complaint* and may, if it sees fit, direct it to be proceeded with in accordance with rE29 and following below.

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the
Bar Standards Board

rE25 No such reference to the *Bar Standards Board* as is mentioned in rE24 above by the appropriate body shall be acted upon by the *PCC*, nor shall the *PCC* exercise the powers under the last sentence of rE23.2 above, in respect of a *complaint* relating to anything said or done by the *BSB regulated individual* in the exercise of his judicial functions or affecting the independence of the *BSB regulated person* in his judicial or quasi-judicial capacity.

Reference to the Lord Chancellor or appropriate body

rE26 If it appears to the *PCC* that the *complaint* relates to the conduct of a *BSB regulated individual* who, since the events giving rise to the *complaint* took place, has been appointed to and continues to hold full-time judicial office and has ceased *practice*, the *PCC* shall not consider the *complaint* further and must inform the complainant that his *complaint* should be directed to the Lord Chancellor or the Office of Judicial Complaints or to such other *person* or appropriate body with responsibility for addressing complaints about judges.

Reference to the supervision team

rE27 If it appears to the *PCC* that a *complaint* received in respect of a *relevant person* relates to a matter which might more appropriately be dealt with by the *supervision team* rather than investigation in accordance with rE29 onwards, it may refer the *complaint* to the *supervision team*. If, the *supervision team* then concludes that the *complaint* is best dealt with more formally by the *PCC* in accordance with rE29 onwards, then the *supervision team* may refer the *complaint* back to the *PCC*. The *PCC* must then deal with the *complaint* in accordance with rE29 and following below.

Reference to any other person

rE28 If it appears to the *PCC* that a *complaint* received in respect of a *relevant person* relates to a matter which might more appropriately be dealt with by an *Inn*, Circuit, *employer* or any other professional or regulatory body (including, for the avoidance of doubt, any other *approved regulator*), it may refer the *complaint* to such other body. If, having referred a *complaint* to another body under rE28, the *PCC* subsequently considers that the *complaint* has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the *PCC* may in its discretion then choose to consider the *complaint* in accordance with rE11 above and/or rE29 and following below.

PCC's powers before investigation of complaints

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the
Bar Standards Board

rE29 In determining whether a *complaint* raised by a *person* other than the *Bar Standards Board* potentially discloses a breach of the *Handbook*, a potential case of *professional misconduct* or a breach of the *Handbook* satisfying the *disqualification condition*, and whether, if it does, it is apt for further consideration, the *PCC* must first consider:

- .1 whether the *complaint* concerns a *relevant person*; and
- .2 whether the *complaint* has been made:
 - .a within twelve months of the conduct of which *complaint* is made, or
 - .b where a complainant has indicated to the *PCC* his dissatisfaction with the outcome of a ***chambers/BSB authorised body's*** investigation in accordance with rE22 above, within three months of the end of the investigation by ***chambers/BSB authorised body***, whichever is the later; and

in either case, where the conduct of which a *complaint* is made is (or was) continuing or consisted of a series of related acts or omissions, the conduct must for the purposes of this rule be treated as having taken place at the time when the continuing conduct ceased or at the date of of the last of any such acts or omissions.

rE30 Where the *PCC* decides that the *complaint* does not relate to a *relevant person* or that it relates to a *non-authorised person* in circumstances where the nature of the *complaint* is unlikely to satisfy the *disqualification condition*, it must dismiss the *complaint*.

rE31 Where the *PCC* decides that the *complaint* has not been made within the period identified in rE29.2 above it must dismiss the *complaint* unless it decides that further consideration of the *complaint* is justified in the public interest, having regard to the *regulatory objectives*.

rE32 Where the *PCC* has not dismissed a *complaint* in accordance with rE30 or rE31 above, the *PCC* must next consider, having regard to the *enforcement strategy*, whether further consideration of the *complaint* is justified. If the *PCC* considers that:

- .1 the *complaint* for any reason lacks substance; or
- .2 the *complaint* cannot be properly or fairly investigated; or

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the
Bar Standards Board

- .3 the *complaint* or its consequences are insufficiently serious to justify further action;
or
- .4 for any other reason the *complaint* is not apt for further consideration,

then the *PCC* must dismiss the *complaint*, although it may also elect in such circumstances to refer the matter for to the *supervision team* in accordance with rE27 above (except that the *supervision team* can not refer the matter back to the *PCC* unless and until further evidence comes to light such that the matter would warrant further consideration by the *PCC*). The *PCC* must give written reasons for referring the matter to the *supervision team*.

rE33 If a *complaint* is not dismissed by the *PCC* after its initial consideration, it must be investigated and dealt with in the manner set out in Section 5.A3 below and the complainant and *barrister* must be informed, in writing, that such an investigation is to take place.

A3 Procedure for dealing with complaints to be handled by the PCC - general

Investigation of complaints

rE34 The investigation of *complaints* must be conducted by the Professional Conduct Department under the direction of the PCC.

rE35 When an investigation into a *complaint* is complete, the PCC must exercise the powers given to it by rE36 and following below.

Additional potential breaches of the Handbook

rE36 If in the course of its investigation or consideration of a *complaint* ("*the original complaint*") the PCC considers that there is any matter other than that originally complained of which might give rise to a potential breach of this *Handbook*, and/or a potential case of *professional misconduct*, and/or potentially satisfy the *disqualification condition*, the PCC may raise a *complaint* about that matter on behalf of the *Bar Standards Board* ("*the new complaint*").

.1 Then, unless the new matter falls within rE36.2 below:

- .a** *the new complaint* must be investigated in the manner set out in rE34 and following above;
- .b** the PCC must not consider whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect of the disqualification condition being satisfied* in respect of *the new complaint* unless and until the *relevant person* has been given the opportunity to comment in writing on the matter complained of in *the new complaint*. The PCC must take any comments made by the *relevant person* into account when it decides whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect that the disqualification condition will be satisfied* in respect of *the new complaint*;
- .c** the PCC may defer further consideration of *the original complaint* until the *the new complaint* has been investigated.

.2 No further investigation or opportunity to respond is required where the subject matter of *the new complaint* has already been investigated in the course of

A3: Procedure for dealing with complaints to be handled by the *PCC* - general investigations into *the original complaint* and the *relevant person* has already been given an opportunity to comment thereon.

PCC consideration of complaints

rE37 When any investigation is complete, the *PCC* must consider the *complaint*, together with the results of any investigation thereof, and may conclude (having regard to the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant) in respect of *complaints* made against a *relevant person* (but subject always to rE37 and rE40 below):

- .1 that the conduct did not constitute a breach of the *Handbook*, in which case the *PCC* must dismiss the *complaint* and rE43 to rE45 apply; or
- .2 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) but that, in all the circumstances, no further action should be taken in respect of the breach in which case rE46 to rE49 apply; or
- .3 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) and that that breach should be dealt with by an *administrative sanction* in which case rE50 to rE55 apply; or
- .4 that the conduct may constitute a breach of the *Handbook*; and (ii) if such breach were to be proved, that an *administrative sanction* pursuant to rE37.3 would not be appropriate in all the circumstances, in which case rE38, rE41, rE42 and rE56 to rE66 apply; or
- .5 that the subject matter of the *complaint* against a *BSB regulated person* involves a *conviction* for an offence of dishonesty or deception, in which case the *PCC* must direct that the *complaint* should form the subject matter of a charge before a *Disciplinary Tribunal* in which case rE42 and rE56 to rE66 shall apply.

rE38 Where the *PCC* has concluded that rE37.4 is applicable, it must refer the *complaint* to a *Disciplinary Tribunal*, subject to rE40, provided that no *complaint* shall be referred unless the *PCC* is satisfied that:

- .1 there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*; and

.2 that it is in the public interest, having regard to the *regulatory objectives* to pursue disciplinary proceedings.

rE39 For the avoidance of doubt, where the *relevant person* is a *non-authorised individual* the PCC may not impose an *administrative sanction* or make a referral to a *Disciplinary Tribunal* on charges of *professional misconduct*. The PCC may only decide to dismiss the *complaint*, take no further action or make an application to the *Disciplinary Tribunal* that the *non-authorised individual* be subject to a *disqualification order*.

rE40 The PCC must not conclude that any conduct alleged by an external complainant did constitute a breach of the *Handbook* (on the balance of probabilities) if the *relevant person* has not had a reasonable opportunity to respond in writing to the allegation on which the *complaint* is based unless the matter has already been investigated by the *Legal Ombudsman*. For the avoidance of doubt, complaints referred to the PCC by the *supervision team* are not caught by this requirement.

rE41 Where the PCC is minded to refer the matter to a *Disciplinary Tribunal* for determination it may, in appropriate cases and with the consent of the *defendant*, instead direct that the *complaint* be subject to the *determination by consent procedure* (under Section 5.A4 below).

rE42 Where the *BSB regulated person* referred to a *Disciplinary Tribunal* is a *registered European Lawyer*, the PCC shall:

.1 inform the professional body of which the registered *European lawyer* is a member in his home *Member State*;

.2 offer the professional body the opportunity to make representations to the *Disciplinary Tribunal* to which the *complaint* has been referred or (where the *determination by consent procedure* is used) to the PCC; and

.3 inform the professional body of findings made by the *Disciplinary Tribunal*, the PCC or any other *Bar Standards Board Panel*.

A4 Possible outcomes of an investigation of a *complaint* under Section 5.A3

Dismissal

rE43 Where a decision to dismiss a *complaint* in accordance with rE37.1 is being taken at a meeting of the *PCC* and not by some other *person*, group or body authorised in accordance with rE3 of this Section 5.A, the majority of the *lay members* present at the meeting must consent to such dismissal.

rE44 Where the *PCC* takes the decision to dismiss a *complaint*, but the *BSB regulated person's* conduct is nevertheless such as to give cause for concern, the *PCC* may in those circumstances, and either before or after any disposal of the *complaint*, do any or both of the following:

- .1 draw to the *BSB regulated person's* attention in writing the *PCC's* concerns;
- .2 advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the *PCC* or on some other *person* nominated by the *PCC*, to receive such advice.

rE45 Any decision by the *PCC* to dismiss a *complaint* must only be disclosed in accordance with rE92 and rE93.

No further action

rE46 Where the *PCC* decides to take *no further action* in respect of a *complaint* in accordance with rE37.2, the *PCC* shall write to the relevant *BSB regulated person*:

- .1 notifying him of the provisions of the *Handbook* which the *PCC* has concluded were breached by him and that the *PCC* has decided in this instance to take no further action; and
- .2 informing him of the consequences of its decision (including that the decision will be formally recorded and will be disclosable to third parties, where relevant, that it will be notified to the *supervision team* and, where relevant in accordance with rE47, that it will be notified to the *Barrister's Inn*); and

- .3 confirming that if the *BSB regulated person* objects to the decision taken by the *PCC* that he may ask for that the matter to be referred for resolution by a *Disciplinary Tribunal* in accordance with rE49; and
- .4 where the *PCC* considers it appropriate in all the circumstances, advising him on to his future conduct either in writing or by directing him to attend on the Chairman of the *PCC* or on some other *person* nominated by the *PCC*, to receive such advice.

rE47 If, when deciding to take no further action on a *complaint* in respect of a *Barrister*, the *PCC* nonetheless considers that the circumstances of the *complaint* are relevant to the *Barrister's* position as a *pupil supervisor*, it may notify the *Barrister's Inn* of its concern in such manner as it sees fit.

rE48 Any decision by the *PCC* to take no further action will be formally recorded, will be disclosable to certain third parties (in accordance with the *Bar Standards Board's* policy on publication and disclosure) and may, where appropriate, be referred to the *supervision team* for continuing monitoring and supervision, but will not be made public.

rE49 The *BSB regulated person* shall have the right to object to a decision of the *PCC* to take no further action in accordance with Section 5.A5 by asking for that the matter to be referred for resolution by a *Disciplinary Tribunal*.

Administrative fines and warnings

rE50 Pursuant to rE37.3 above, the *PCC* may impose an *administrative sanction* on a *BSB regulated person* only where:

- .1 there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by that *person*; and
- .2 the *PCC* considers that to impose an *administrative sanction* is a proportionate and sufficient in the public interest.

rE51 In determining the level of *administrative sanction* to be imposed, the *PCC* must have due regard to the *enforcement strategy* and may have regard to such other matters as the *Bar Standards Board* may consider relevant from time to time.

rE52 The maximum level of a fine which can be imposed by the *PCC* under rE51 is:

~~.1~~ £1,000 (one thousand pounds) where the fine is to be imposed on a *BSB regulated individual*; and

.2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on a *BSB authorised body*.

rE53 Any decision by the *PCC* to impose an administrative fine or warning will be formally recorded and may, where appropriate, be referred to the *supervision team* for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with rE92 and rE93.

rE54 Any failure by the *BSB regulated person* to pay the administrative fine within the relevant time is likely to be treated as *professional misconduct* and shall entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.

rE55 The *BSB regulated person* may appeal a decision of the *PCC* to impose an *administrative sanction* in accordance with Section 5.A5.

Disciplinary charges

rE56 If the *PCC* directs under rE37.5 or rE38 above that a *complaint* shall form the subject matter of a charge of *professional misconduct* before a *Disciplinary Tribunal* and/or that an application should be made to a *Disciplinary Tribunal* for a *disqualification order*, the following rules apply.

rE57 At the same time as the *PCC* directs that a *complaint* shall form the subject matter of a disciplinary charge and/or *disqualification* application before a *Disciplinary Tribunal*, the *PCC* must also decide whether a three-person panel or a five-person panel is to be constituted.

rE58 Where the direction is made pursuant to rE37.5 (*complaint* involving *conviction* for dishonesty or deception), the *PCC* must direct that a five-person panel is to be constituted.

rE59 In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the *PCC* shall consider the sanction which it considers is likely to be imposed on the *relevant person* if the charge or application is proved, having regard to:

.1 any applicable sentencing policy and guidelines issued by the *Bar Standards Board* and/or the *Council of the Inns of Court* from time to time; and

- .2 the previous disciplinary record of the *relevant person*; and
- .3 any deferred sentence which would be activated if the *relevant person* were to be found guilty of the charges alleged.

rE60 The *PCC*:

- .1 shall direct that a five-*person* panel is to be constituted if the *PCC* considers that:
 - .a the *BSB authorised individual* would be likely to be disbarred or *suspended* from *practice* for more than twelve months; or
 - .b that the *relevant person* would be likely to be *disqualified* indefinitely or for a defined term of more than twelve months;~~or~~
 - .c **that the *BSB authorised body* would be likely to have its authorisation or licence revoked or *suspended* for a period of more than twelve months;**
- .2 may refer to a five *person* panel where it considers it desirable to have a broader range of expertise available, having regard to the subject matter of the complaint.

Otherwise, the *PCC* must direct that a three-*person* panel is to be constituted

rE61 The *PCC* must inform the *BSB regulated person* and the complainant (if any) of the direction that it has made pursuant to rE57. No one may appeal against the decision taken by the *PCC* under that **RULE** (and those following).

rE62 Where the *PCC* directs that a three-person panel is to be constituted, the *PCC* may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chairman of the Panel, giving reasons for any such recommendation.

rE63 The *PCC* may :

- .1 refer to the same *Disciplinary Tribunal* any charges and/or *disqualification* applications which the *PCC* considers may conveniently be dealt with together;
- .2 refer any additional charges or *disqualification* applications relating to the same *BSB regulated person* to the *Disciplinary Tribunal* which is dealing with the original disciplinary charge or *disqualification* application (as the case may be), even if the

additional charge or application, by itself, may be regarded as insufficiently serious to merit disposal by a *Disciplinary Tribunal* of that level.

rE64 The *PCC*:

- .1 may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions is satisfied:
 - .a the facts of the *complaint* are unlikely to be disputed (for example because it involves a criminal *conviction*); or
 - .b witnesses are unlikely to be called for the hearing; or
 - .c the case should be resolved urgently; or
 - .d there is some other good reason for expedition; and
- .2 must direct that the prosecution of the charges be expedited if the *defendant* has requested an expedited hearing under Section 5.D.

rE65 When the *PCC* has directed that a *complaint* shall form the subject matter of a charge or application before a *Disciplinary Tribunal*, the *PCC* must be responsible for bringing the charge or application on behalf of the *Bar Standards Board* and prosecuting that charge before such *Disciplinary Tribunal*. If so:

- .1 the *PCC* may arrange for the appointment of counsel to settle the charge and to present the case before the *Disciplinary Tribunal*; and
- .2 any charges shall be brought in the name and on behalf of the *Bar Standards Board*.

rE66 Section 5.B applies in respect of the procedure to be followed by the *Disciplinary Tribunal*.

A5 Determination by consent

rE67 A *complaint* which the *PCC* is otherwise intending to refer to the *Disciplinary Tribunal* in accordance with rE38 above may, with the consent of the *relevant person* against whom the *complaint* is made, be finally determined by the *PCC*. This is referred to as the “*determination by consent procedure*”.

rE68 The circumstances in which the *determination by consent procedure* is to be used, and how it is to be used, are set out below.

rE69 The *PCC* must, in deciding whether to make a *complaint* subject to the *determination by consent procedure*, consider all the circumstances. The *PCC* may make the *complaint* subject to the *determination by consent procedure* only if:

- .1 the *relevant person* submits to the jurisdiction of the *PCC*; and
- .2 the *PCC* considers that:
 - .a there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied* in respect of the *complaint*; and
 - .b there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
 - .c there are no exceptional circumstances which would warrant no further action being taken on the *complaint* or the *complaint* being dismissed; and
 - .d having regard to the *regulatory objectives*, it is in the public interest to resolve the *complaint* under the *determination by consent procedure*; and
 - .e the potential *professional misconduct or disqualification condition*, if proved, combined with:
 - .i the *relevant person’s* previous disciplinary history, and
 - .ii any deferred sentences which would be activated if the breach or breaches were proved,

do not appear to be such as to warrant a period of *suspension* or disbarment, **the withdrawal of an *authorisation or licence*** (as appropriate) or the imposition of a *disqualification order* (or equivalent by another *Approved Regulator*).

- rE70** The *determination by consent procedure* will be conducted in accordance with such procedures as the *PCC* may prescribe from time to time.
- rE71** The *PCC* may terminate the *determination by consent procedure* at any time if it no longer considers that the requirements of rE69 are satisfied, or for any other good reason.
- rE72** If the *determination by consent procedure* ends other than by a finding and sentence to which the *relevant person* consents, then the *complaint* may be referred to a full *Disciplinary Tribunal*.
- rE73** The *PCC* must publish any finding and sentence resulting from the *determination by consent procedure* to the same extent as such publication would have taken place on a finding and sentence by a *Disciplinary Tribunal*, as provided for in the *Disciplinary Tribunal Regulations*.
- rE74** If the *relevant person* accepts a *determination by consent*, no one may appeal against it.
- rE75** In determining what sanction, if any, to impose under the *determination by consent procedure*, the *PCC* shall have regard to the relevant *enforcement strategy* and to any sentencing policy or guidelines issued by the *Bar Standards Board* and/or by the *Council of the Inns of Court* from time to time.
- rE76** The *PCC* may impose on a *relevant person* against whom a charge of *professional misconduct* has been found proved under the *determination by consent procedure* any one or more the following sanctions:
- .1 An order to pay a fine to the *Bar Standards Board* (the amount of such fine to be determined in accordance with the relevant fines policy);
 - .2 **the imposition of any conditions on his ~~licence~~ or authorisation (where appropriate);**
 - .3 a reprimand by the *PCC* or an order to attend on a nominated *person* to be reprimanded;

- .4 advice by the *PCC* as to his future conduct or an order to attend on a nominated *person* to be given advice as to his future conduct;
- .5 an order to complete **(or, in the case of a *BSB* authorised *body*, an order to procure that any relevant *managers* or *employees* complete)** continuing professional development of such nature and duration as the *PCC* shall direct and to provide satisfactory proof of compliance with this order to the *PCC*.

- rE77** Where the *PCC* has imposed a fine, the confirmation letter to the *relevant person* must indicate that the *relevant person* must pay the fine within 28 days of the date when that letter is received, subject to any representations that the *relevant person* needs extra time to pay. Any application to pay a fine in instalments is to be decided in his discretion by the Chairman of the *PCC*.
- rE78** Any failure by the *BSB regulated person* to pay a fine within the relevant timescale is likely to be treated as *professional misconduct* and will entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.
- rE79** Where a sanction imposed by the *PCC* includes a fine, that element of the sentence may be directed by the *PCC* to have deferred effect. A sentence may be deferred for a period which is no less than six months and no more than two years long (the “*period of deferral*”).
- rE80** A deferred sentence is liable be activated where the *relevant person* is later found (whether during the *period of deferral* or afterwards) to have committed *professional misconduct* during the *period of deferral*.
- rE81** Where the *PCC* finds that there has been *professional misconduct* during the *period of deferral*, it must (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, save in exceptional circumstances.
- rE82** For the avoidance of doubt, the *PCC* may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a *Disciplinary Tribunal*, so long as the total sanction imposed does not exceed the powers of the *PCC* set out in rE76 above.
- rE83** The *PCC* may not make an award of costs when dealing with a *complaint* under the *determination by consent procedure*.

A6 Appeals

BSB regulated person's right to appeal from a decision to take no further action or from a decision to impose an administrative sanction

- rE84** A *BSB regulated person* has a right to appeal from a decision to impose an *administrative sanction*. That appeal is to an *appeal panel* constituted under the auspices of the *Council of the Inns of Court* in the same composition as a three-person panel constituted under rE133 of the *Disciplinary Tribunal Regulations*.
- rE85** An appeal, if made, shall be made by the *BSB regulated person* sending to the Chairman of the *PCC* a notice identifying the decision of the *PCC* appealed against, the decision the *BSB regulated person* contends for, the grounds of such appeal and a statement whether the *BSB regulated person* requires his appeal to be disposed of at an oral hearing. If the *BSB regulated person* does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.
- rE86** The notice must be accompanied by such sum as may be prescribed by the *Bar Standards Board* from time to time, such sum being payable to the *Bar Standards Board* to defray expenses.
- rE87** Where the appeal is to be dealt with at an oral hearing then:
- .1 at least 5 working days before the time set for the appeal, the *PCC* will provide each member of the *appeal panel* and the *BSB regulated person* with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and
 - .2 the *BSB regulated person* may be represented at the hearing.
- rE88** The *appeal panel* must decide whether to set aside or to vary the original decision.
- rE89** If the *appeal panel* allows the appeal in whole or in part, the *appeal panel* may direct that any administrative fine or appeal fee already paid by the *BSB regulated person* be refunded either in whole or in part: but the *appeal panel* has no power to award costs.

A7 Reopening or reconsidering complaints which have been disposed of

rE90 The *PCC* may reopen or reconsider a *complaint* which has been disposed of, unless it has been disposed of by a *Disciplinary Tribunal*:

- .1 where new evidence becomes available to the *PCC* which leads it to conclude that it should do so, or
- .2 for some other good reason.

rE91 Following such reopening or reconsideration, the *PCC* may take any further or different action it thinks fit, as if any earlier decision had not been made, provided that if the *complaint* has already been referred to a *Disciplinary Tribunal* and charges have been served on the *defendant* or the application has been served on the *Respondent* (as the case may be) then the *PCC*'s may only instruct counsel for the *Bar Standards Board* to:

- .1 offer no evidence on a charge or application, or
- .2 apply to the *Directions Judge* for:
 - .a the making of amendments to the charge or application; or
 - .b leave to bring additional charges or applications.

A8 Confidentiality

rE92 The *Bar Standards Board* must keep *complaints* confidential. The *Bar Standards Board* must not disclose the fact that a *complaint* has been made or details of the *complaint*, or of its disposal save as specified in this **Section 5.A8** or as otherwise required by law.

rE93 Disclosure may be made:

- .1 for the purpose of investigating the *complaint*; or
- .2 for the purpose of keeping the complainant and the relevant *person* informed of the progress of the *complaint*; or
- .3 for the purpose of publicising any forthcoming public hearing of charges arising from the *complaint*; or
- .4 where the complainant and the relevant *person* consent; or
- .5 for the purposes of rE42 of this **Section 5.A**; or
- .6 where the publication of a finding is required by the provisions of the *Disciplinary Tribunals* Regulations or the *Disqualification Panel* Regulations; or
- .7 subject to rE94, in response to a request from the selection panel or a member of its secretariat in respect of an application by a *barrister* for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the *authorised individual* for a *certificate of good standing* in respect of a *barrister*; or from one of the Inns of Court in respect of an application from a *barrister* to become a *pupil supervisor*; or
- .8 for the purposes of providing examples of the types of behaviour that may constitute breaches of the *Handbook* either externally or internally within the *Bar Standards Board*, provided that where disclosure occurs in these circumstances although details of the individual complaints may be published, any relevant party's identities will remain anonymous; or
- .9 with the approval of the *PCC*, for any other good reason.

rE94 Where a disclosure is made pursuant to rE93.7 above, if any *complaint* has been made against the *barrister* concerned which has not been disposed of by the *PCC* under these

Rules, or dismissed by any *Disciplinary Tribunal* or by any other body to which it may have referred by the *PCC*, the *Bar Standards Board* shall simply indicate that a *complaint* has been received which has not been dismissed.

- rE95** Where any finding of *professional misconduct* has been made (whether by a *Disciplinary Tribunal*, *the Visitors*, or the *PCC* in the course of a *determination by consent*), the *Bar Standards Board* and/or *the Council of the Inns of Court* must publish on the relevant website(s) the name of the *BSB regulated person* against whom that finding was made, the nature of that finding, the sentence imposed and any other information about the finding and sentencing which the *Bar Standards Board* considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.
- rE96** Where any *disqualification order* has been made (whether by a *Disciplinary Tribunal* or *the Visitors*), *the Bar Standards Board* and/or *the Council of the Inns of Court* shall publish on the relevant website(s) the name of the relevant *person* against whom the order has been made and its terms.
- rE97** Where any interim *suspension* or interim *disqualification order* has been made or interim conditions imposed, the *Bar Standards Board* must publish on the *Bar Standards Board's* website the name of the *relevant person* against whom the order has been made and its terms.

A9 Interpretation

- rE98** In these *Complaints Regulations* all italicised terms shall be interpreted in accordance with the definitions in Part 4.
- rE99** If a *barrister* is a member of more than one Inn, references in these Regulations to his *Inn* shall mean the *Inn* by which he was called, unless he is a Bencher in which case his *Inn* shall mean the *Inn* of which he is a Bencher.

A10 Commencement

rE100 This Section 5.A shall come into force in accordance with the provisions of Part 1 of this *Handbook*.

B. THE DISCIPLINARY TRIBUNALS REGULATIONS

B1. Arrangement of Regulations

These *Disciplinary Tribunal* Regulations are organised as follows:

- Definitions
- Service of Charges and/or Applications
- Documents to be served on the defendant
- Directions etc
- Setting the date, appointing a tribunal and issuing a Convening Order
- The *Disciplinary Tribunal*
- Provision of documents to the *Disciplinary Tribunal*
- Procedure at the hearing
- Decision of a court or tribunal
- Absence of defendant
- Recording of proceedings
- Amendment of charge(s) and/or application(s)
- Adjournment
- The finding
- The sentence
- Sentence of suspension from practice **or from authorisation** ~~or licensing~~
- Power to order that a sentence has deferred effect
- Power to activate a deferred sentence
- Wording of the sentence when defendant not present
- Report of finding and sentence
- Appeal to the Visitors
- Appeal: sum payable
- Action to be taken by the Inn (in circumstances where a Barrister has been sentenced to be disbarred or suspended)
- Action to be taken by the Council of the Inns of Court (in all other circumstances)
- Publication of finding and sentence
- Suspension/withdrawal of practising rights pending the hearing of any appeal
- Costs
- Miscellaneous
- Exclusion from providing representation funded by the Legal Aid Agency – Application for termination
- Citation, commencement and revocation
- Annex 1: Sentencing powers against Barristers
- **Annex 2: Sentencing powers against BSB authorised bodies** ~~other than BSB licensed bodies~~
- ~~Annex 3: Sentencing powers against licensed bodies~~
- Annex 4: Sentencing powers against registered European Lawyers
- Annex 5: Sentencing powers against all other BSB regulated persons
- Annex 6: Standard Directions

B2. THE REGULATIONS

Service of Charges and/or Applications

rE101 Once the *PCC* has decided to refer a matter to a *Disciplinary Tribunal* in accordance with Section 5.A, the *Bar Standards Board* must appoint a *person* or *persons* to represent the *Bar Standards Board* in respect of the charge(s) and or application(s).

rE102 The *BSB Representative*, once appointed, must ensure that a copy of the charge(s) and/or application(s) is served on the relevant *defendant(s)*, together with a copy of these Regulations not later than 10 weeks (or 5 weeks if the *PCC* has directed that the prosecution of the charges be expedited) after the date on which by the *PCC* decides to refer the matter to a *Disciplinary Tribunal*.

rE103 The *BSB Representative* must at the same time ensure that copies of the charge(s) and/or application(s) are sent to the *President*.

Documents to be served on the defendant

rE104 As soon as practicable after the issue of the charges and/or applications to the *defendant(s)*, the *BSB representative* must give the *defendant(s)*:

- .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 *BSB Representative*; and
- .3 either:
 - .a the *standard directions* which, subject to rE107, automatically apply to the case and must include such timetable as may be considered reasonable by the *BSB representative*, having regard to the facts of that case; or
 - .b the *standard directions*, together with any proposed amendments to the *standard directions* that the *BSB representative* considers reasonable; and

- .4 details of any *special directions* for which the *BSB Representative* proposes, in default of agreement, to apply for (which may include, but are not limited to):
 - .a any of the matters listed at rE107.2 below; or
 - .b an application for leave to amend and/or add charges and/or applications.

rE105 If the documents referred to in rE104.1 and/or rE104.2 are not sent to the *defendant(s)* within 28 days of the service of the charges on *the defendant(s)* in accordance with rE102 above, then the *BSB representative* must provide to the *defendant(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 *defendant(s)*.

rE106 Nothing in rE104 or rE105 above shall prevent a *Disciplinary Tribunal* from receiving the evidence of a witness which has not been served on the *defendant(s)* in accordance with s rE104 or rE105, or of a document not included in the list of documents referred to at rE104.2 above, provided that the Tribunal is of the opinion either that this does not materially prejudice the *defendant(s)*, or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

Directions etc

rE107 Within 21 days, after they receive the *standard directions* (or, where relevant, the special direction of which the *BSB Representative* has given notice in accordance with rE104.4) the *defendant(s)* must:

- .1 provide to the *BSB representative* written submissions explaining why the *standard directions* and, where relevant, any special directions of which the *BSB representative* gave notice under rE104.4 above, should be amended, withdrawn or added to; and
- .2 confirm whether they intend, if no of agreement is reached, to make any of the following applications for special directions, namely:
 - .a an application to sever the charges and/or applications;

- .b an application to strike out the charges and/or applications which relate to the *defendant* who makes the application;;
- .c an application to stay the proceedings;
- .d an application about the admissibility of documents;
- .e an application for disclosure of documents in accordance with rE116.2.c;
- .f an application to extend or abridge any relevant time limits;
- .g an application to adjourn the substantive hearing;
- .h an application for the hearing to be held in private;
- .i an application for separate hearings or an application that proceedings pending against separate *defendants* be dealt with at the same hearing; or
- .j any other application for special directions [which the *defendant* considers reasonable, having regard to the facts of the case].

rE108 If, in a case where the *BSB representative* has not suggested any amendments to the *standard directions* pursuant to rE104.3.b above or proposed any special directions in accordance with rE104.4 above, a *defendant* does not provide the information referred to in rE107.1 within the relevant twenty one day period, the *defendant* 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 *defendant* to the same proceedings which was made within the relevant twenty one day period. The *BSB representative* must forthwith serve on *the President* any directions which are deemed to apply to the matter in accordance with this rE108.

rE109 If, in a case where the *BSB representative* has suggested amendments to the *standard directions* pursuant to rE104.3.b above and/or has proposed some special directions in accordance with rE104.4 above, a *defendant* does not provide the information referred to in rE107.1 within the relevant twenty one day period, the *BSB representative* must invite *the President* to appoint a *Directions Judge* in accordance with rE113 below and, once a *Directions judge* has been appointed, the *BSB representative* must apply to him to endorse the proposed amendments to the *standard directions* or the proposed special directions (as appropriate), in accordance with the procedure in rE114 to rE123 below.

rE110 Within fourteen days of the date when he receives any written submissions from a *defendant* in accordance with rE107.1 and/or rE107.2 above, the *BSB representative* must consider them and must during that fourteen day period:

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

rE111 Where the parties, pursuant to rE110 above, agree the directions and special directions which are to apply to the case, those directions will apply to the case and the *BSB representative* must forthwith serve those directions on *the President*.

rE112 If, after the end of the fourteen day period referred to in rE110 above the parties have not agreed any of the *standard directions* or special directions (as appropriate) the *BSB representative* must send to the *President* the following (where relevant):

- .1 a copy of the *standard directions* and/or special directions which have been agreed;
- .2 any written submissions received from the *defendant(s)* in accordance with rE107.1;
- .3 any notice from the *defendant(s)* that they may be intending to make an application referred to at rE107.2; and
- .4 the *BSB Representative's* response to any such request(s) and/or submissions.

rE113 When the *President* has received the documents referred to in rE112 above, the *President* must designate a Judge or Queen's Counsel ("the *Directions judge*") to exercise the powers and functions conferred on the *Directions Judge* in the following Regulations the *Directions Judge* must not be the *person who Chairs the Disciplinary Tribunal*, once convened subject to rE217.

rE114 The *President* must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE112 above, are sent to the *Directions Judge* once he has been designated.

rE115 When he receives the relevant documents, the *Directions Judge* must consider any submissions about directions. In an appropriate case, the *Directions Judge* may decide that an oral directions hearing is necessary.

rE116 If the *Directions Judge* considers that no oral hearing is necessary, then:

- .1 he 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 own findings; and
- .2 he may consider and decide any other issues which may be necessary including but not limited to:
 - .a how any of the applications referred to at rE104.4 and/or rE107.2 are to be dealt with;
 - .b what documents are to be admitted ;
 - .c what documents which are in the *Bar Standards Board's* possession or control, and/or documents which later come into the possession of the *Bar Standards Board* , and which may support a defence or undermine the *Bar Standards Board's* case should be disclosed;
 - .d what facts should be made the subject of admissions;
 - .e the provision of a statement that the *defendant* has been duly served (in accordance with rE215 of these Regulations) with the documents required by rE102 and rE104;
 - .f the extension or abridgement of any time limit governing the proceedings;
 - .g fixing the date for the hearing;
 - .h such other matters as he consider are expedient for the efficient conduct of the hearing.

rE117 If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* must give written notice to the *BSB representative* and the *defendant(s)* that an oral hearing is to be held for the purpose of giving directions and taking such other steps as he considers suitable for the clarification of the issues before the tribunal and generally for the just and expeditious handling of the proceedings. The *Directions Judge* shall also provide

the *BSB representative* and the *defendant(s)* with a time estimate for the oral directions hearing.

- rE118** Within 7 days of receiving the notice referred to in rE117 above the *BSB representative* and the *defendant(s)* must notify the *President* and the other party of their and, where relevant, their Counsel's available dates and times during the six week period immediately after the date of that notice.
- rE119** The *President* must try to find a date and time within that six week period which are 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 *BSB representative* and the *defendant(s)* of that date and time.
- rE120** At the hearing when convened the *Directions Judge* may deal with, amongst other things, all of the issues referred to at rE116 above.
- rE121** A Clerk must take a note of the proceedings at any oral directions hearing and must draw up a record of the directions given and/or any admissions made at it.
- rE122** After the oral directions hearing (or, if one was not required, after the review of the papers by the *Directions Judge*) the *President* must ensure that copies of the directions order are served on the *BSB representative* and on the *defendant(s)*.
- rE123** The directions order served by the *President* under rE122 is be final, and there is no appeal against it..

Setting the date, appointing a tribunal and issuing a convening order

- rE124** This regulation applies where, after the deemed acceptance, 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 its availability for the substantive hearing to the *Council of the Inns of Court* in accordance with the directions. After he 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 *defendant(s)* , in accordance with the provisions of these Regulations. *The President* must also inform all

parties of the date fixed for the hearing as soon as reasonably practicable after he has fixed the date.

rE125 On

- .1 the deemed acceptance or later agreement of *the standard directions* by the parties; or receipt of the directions order from the *President*, or
- .2 where the date of the hearing has not been fixed in the directions referred to in rE125.1 above, the fixing of the date of the hearing in accordance with rE124 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 Tribunals* to perform the functions specified in these Regulations and such other functions as the *President*, *Directions Judge* or the Chairman of any Tribunal may direct. No *person* who has been engaged in the investigation of a *complaint* or application against a *defendant* in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that *complaint*;
- .c not less than fourteen days before the date of the substantive hearing, serve an order on the *defendant(s)* ("the *convening order*") specifying:
 - .i the name of the *defendant(s)* to the proceedings and such other information as may be relevant to the *defendant(s)*, for example:
 - (1) where any *defendant* is a *barrister*, details of the *barrister's* Inn, his date of *call* and (if appropriate) the date of his appointment as Queen's Counsel, and details of whether or not the *barrister* was acting as a *self-employed barrister* or an *employed barrister* (and, in the latter case, details of his *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 *defendant* 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**; and**
 - ~~(3)~~ **where any *defendant* 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 was acting as a **HOLP, HOFA, manager or employee of an authorised body** and identifying that **authorised body** and its **Approved Regulator**;**
 - (4) *where any *defendant* is a non-authorised individual employed by a **BSB authorised person**, details of the role of by that individual and identifying the **BSB authorised person** who directly or indirectly employs the *defendant*;*
- .ii the date and time of the sitting of the *Disciplinary Tribunal* at which it is proposed the charge(s) and/or application(s) should be heard; and
 - .iii the names and status (that is, as Chairman, 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 BSB Representative, and the Clerk. In the Order the attention of the *defendant(s)* will be drawn to:

- (1) their right to represent themselves or be represented by counsel, with or without instructing a *solicitor*, as they shall think fit; and
- (2) their right to inspect and be given copies of documents referred to in the list served pursuant to rE104 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.

rE126 The *defendant(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*. He must give this notice as soon as is reasonably practicable and must specify the grounds for his objection.

rE127 When the *President* receives such an objection, he must, if satisfied that it is justified (but subject to rE128), exercise the power conferred on him by rE139 to nominate a substitute member or members of the Tribunal, and must notify the *defendant(s)* accordingly. When they receive that notification, the *defendant(s)* may object to any substitute member or members, in the same way as they may object under rE126 above.

rE128 No objection to any member of the Tribunal may be made, or if made, may be upheld, on the grounds only that he knows, or might have known, about a previous application to *disqualify*, or a charge of *professional misconduct*, or of breach of proper professional standards, or a charge consisting of a *legal aid complaint*, against the *defendant(s)*, or any finding on any such application or charge, or any sentence imposed on the *defendant(s)* in connection with any such application or charge.

rE129 The Convening Order must inform the *defendant(s)* of the rights conferred by rE126.

The Disciplinary Tribunal

Hearing in private

rE130 The hearing before a *Disciplinary Tribunal* must be in public, unless it has been directed that it is not to be held in public, and that direction has not been over-ruled by the tribunal.

Composition of Disciplinary Tribunals

rE131 A *Disciplinary Tribunal* must consist of either three persons or five persons.

rE132 A five-person panel must include the following *persons* nominated by the *President*:

- .1 as chairman, a Judge; and
- .2 at least one *lay member*; and
- .3 at least one *practising barrister* of not less than seven years' standing.

rE133 A three-person panel shall include the following *persons* nominated by *the President*:

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

rE134 In deciding who will sit on the panel the *President* must have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the *defendant(s)* against whom the charges have been made. When constituting the panel, as well as taking into account the requirements of rE132 and rE133 above and rE135 below, the *President* must also have regard to (but shall not be bound by) any recommendations by the *PCC*, which may include a recommendation that a Judge rather than a Queen's Counsel be appointed to act as Chairman of a three-person panel.

rE135 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 was 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*.

rE136 *The President* may publish qualifications or other requirements made for those appointed to serve on a *Disciplinary Tribunal* and those appointed to be Clerks.

rE137 For the purposes of rE132 and rE133, a Judge includes:

- .1 a puisne judge of the High Court;
- .2 a judge of the Court of Appeal;
- .3 a Circuit judge;
- .4 a Recorder who has been authorised to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;
- .5 a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and
- .6 a *person* who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that he remains permitted by virtue of section 9 of the Supreme Court Act 1981 to be requested to act as a judge of the High Court, or is eligible for appointment as a deputy Circuit judge under section 24 of the Courts Act 1971.

rE138 If a vacancy in the *Disciplinary Tribunal* arises before the substantive hearing of the charge, the *President* must choose another member of the relevant class to fill that vacancy.

rE139 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 discretion, he deems necessary or expedient, provided always that *the President* notifies the *defendant(s)* of the identity of such substitutes as soon as is reasonably practicable after he has chosen them. The *defendant(s)* may object to such substitute members in the same way as they may object under rE126.

rE140 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 rE125 above), one or more of the members becomes unable to act or is *disqualified* from acting, provided that:

- .1 the chairman and at least one *lay 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.

rE141 A member of a *Disciplinary Tribunal* who has been absent for any time during a sitting shall take no further part in the proceedings.

Provision of documents to the Disciplinary Tribunal

rE142 There shall be provided 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 *BSB representative* or the *defendant(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 *defendant(s)*;
- .5 such other documents as have been agreed or directed to be laid before the Tribunal before the start of the hearing; and
- .6 the *standard directions* (as amended by the parties) and any agreed special directions, or failing such agreement, the directions order served by the *President* pursuant to rE122.

Procedure at the hearing

rE143 The Tribunal must apply the criminal standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

rE144 The rules of natural justice apply to proceedings of a *Disciplinary Tribunal*. Subject to those, the Tribunal may:

- .1 (subject to rE145 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 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 conduct of, and procedure at, the hearing, and, with regard to the admission of evidence at the hearing, as it considers appropriate for securing that a *defendant* has a proper opportunity of answering the charge(s) and/or application(s) made against him, or otherwise as shall be just;
- .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.

rE145 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 *defendant* refers to the substance of the procedure in the course of presenting his case, or when he is being sentenced, once the facts have been found.

Decision of a court or tribunal

rE146 In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *defendant* was a party, the following rules shall apply:

- .1 a copy of the certificate of *conviction* relating to the offence shall be conclusive proof that the *defendant* committed the offence;
- .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 sentence 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 sentence and the findings of fact upon which that finding or sentence 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.

rE147 In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *defendant* was not a party, the provisions of rE146 do not apply.

Absence of Defendant

rE148 If a *Disciplinary Tribunal* is satisfied that the relevant procedure has been complied with and the *defendant* has been duly served (in accordance with rE215 of these **Regulations**) with the documents required by rE102, rE104, and rE125.2.c (as appropriate) but that *defendant* has not attended at the time and place appointed for the hearing, the Tribunal may nevertheless proceed to hear and determine the charge(s) or application(s) relating to that *defendant* if it considers it just to do so, subject to compliance with rE180.1 in respect of that *defendant* if the *Disciplinary Tribunal* finds any charge or application proved.

rE149 If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with it, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that *defendant*, if it considers it just to do so, subject to compliance with rE180.2 in respect of that *defendant* if the *Disciplinary Tribunal* finds any charge or application proved.

rE150 If the procedure under rE149 has been followed, the *defendant* may apply to the *Directions judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

Recording of proceedings

rE151 The Clerk must arrange for a record of the proceedings before a *Disciplinary Tribunal* to be made, either by a shorthand writer, or by a recording machine.

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

rE152 A *Disciplinary Tribunal* may at any time before or during the hearing direct the charge(s) and/or application(s) against any *defendant* to be amended, or that new charge(s) and/or application(s) be added, provided that:

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

Adjournment

rE153 Subject to the provisions of rE154, 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 sentence has been pronounced.

rE154 A *Disciplinary Tribunal* may, if the Tribunal decides an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

The finding

rE155 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 chairman and by all members of the Tribunal. 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 *defendant*. The chairman 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.

rE156 In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the *defendant* about his future conduct

The sentence

rE157 If the *Disciplinary Tribunal* finds any of the charges or applications proved against a *defendant*, it may hear evidence of any previous *disqualification order*, or finding of *professional misconduct*, or of breach of proper professional standards by the *Bar Standards Board*, or by any other regulator, or any finding on a charge consisting of a *legal*

aid complaint against that *defendant*, or of the outcome of any previous *determination by consent procedure*. After hearing any representations by or on behalf of the *defendant(s)*, the *Disciplinary Tribunal* must decide what sentence to impose on a *defendant*, taking into account the *sentencing guidelines*, must record its sentence in writing, together with its reasons. If the members of the Tribunal do not agree on the sentence to be imposed on a *defendant*, the sentence to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sentence to be imposed on a *defendant*, the sentence to be recorded must be that which is the most favourable to the *defendant*. The chairman of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* decision on sentence and state whether the decision was unanimous or by a majority.

rE158 Subject to rE159 below:

- .1 a *defendant* against whom a charge of *professional misconduct* has been found proved may be sentenced 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 authorised 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 2 to these Regulations;
 - .e in the case of all other *BSB regulated persons*, in accordance with Annex 3 to these Regulations;
- .2 in the case of a *defendant* 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 sentence in respect of a *relevant person* who is a *non-authorised individual* directly or *indirectly employed* by a *BSB authorised person*).

rE159 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 *defendant*.

rE160 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 sentence 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 rE161 below.

rE161 In the event that a three-*person* panel considers that a case before it merits (in conjunction with any deferred sentence) the imposition on a *defendant* of any of the sentences referred to in rE160 above or the three-*person* panel otherwise considers that the case of a particular *defendant* 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 sentence that *defendant* (but may proceed to sentence any other *defendants* to the proceedings in respect of whom this rE161 does not apply);
- .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 *defendants* to the proceedings). The *defendant* 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 *parites* to provide the *President* with their dates of availability.
- rE162** Following a referral by a three-person panel under rE161, the five-*person* panel must be constituted in accordance with rE132. The *defendant* must be informed as soon as practicable of the names and status (that is, as Chairman, as *lay member*, as *barrister* or other) of those *persons* who it is proposed will constitute the five-*person* panel. The *defendant* may, when he 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 rE127 and rE128.
- rE163** 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 has fixed the sentencing hearing, the *President* must inform all the parties of that date .
- rE164** If the five-person panel is satisfied that the requirements of rE162 and rE163 above have been complied with, and the *defendant* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sentence the *defendant*, provided that it complies with rE180.3.
- rE165** If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE162 and rE163, above, and the *defendant* has not attended at the time and place appointed for the sentencing hearing, the five-*person* panel may nonetheless sentence the *defendant*, provided that it complies with rE180.4.
- rE166** If the procedure under rE165 has been followed, the *defendant* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel.
- rE167** 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

Community Legal Service or Criminal Defence Service and to the exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service) 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 *defendant* who is a *barrister* may if it thinks fit (and whether or not it sentences the *defendant* in accordance with rE158.1 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 *defendant* who is a *barrister* it may (in addition to, or instead of, sentencing that *defendant* in accordance with rE158.1) order that he 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 arising from (i) his conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or (ii) his professional conduct generally.

rE168 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 *defendant* in his capacity as a *pupil supervisor*, it may notify the *defendant's Inn* of those concerns in such manner as it sees fit.

rE169 If a *barrister* is a member of more than one *Inn*, each *Inn* of which he is a member must be mentioned in the sentence imposed on him.

Sentence of suspension from practice ~~or from authorisation or licensing~~ or imposition of conditions

rE170 For the purposes of rE171 to rE173:

- .1 The effect of a sentence of *suspension* for a *BSB authorised individual* is that:
 - .a the *defendant's practising certificate* is *suspended* for the period of the *suspension*;

- .b** any and all enjoyment of all rights and privileges as a member of the *Inn(s)* of which he is a member are *suspended* for the period of the *suspension*; and
 - .c** the *defendant* is prohibited from practising as a *barrister*, or holding himself 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 as a *Barrister* in providing services other than *legal services* (whether or not for reward) unless he discloses the *suspension*);
- .2** the effect of a sentence of *suspension* for a *registered European lawyer* shall mean that the *defendant* is *suspended* from the *register of European lawyers* maintained by the *Bar Standards Board* and is, for so long as he remains *suspended*:
 - .a** prohibited from holding himself out as registered with the *Bar Standards Board*; and;
 - .b** not authorised to *practice*.
- .3** **The effect of a sentence 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 *defendant* is not an *authorised person* for that period;**
- .4** 70.3 The effect of a sentence on a *BSB authorised individual* or a *registered European lawyer* requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this *Handbook*.

rE171 The period for which a sentence of *suspension* from *practice* is expressed to run may be:

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

rE172 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.

rE173 Conditions may (depending on the circumstances) include conditions limiting the scope of the *defendant'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 imposing requirements that the *defendant*, **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 prohibiting the *defendant* from accepting or carrying out any *public access instructions*; and/or such other matters as the Tribunal may consider appropriate for the purpose of protecting *the public* and/or preventing a repetition of the conduct in question.

Power to order that a sentence has deferred effect

rE174 Where a sentence imposed by a *Disciplinary Tribunal* includes a fine, condition and/or a *suspension from practice*, the *Disciplinary Tribunal* may direct that those elements of the sentence are to have deferred effect.

rE175 A sentence may be directed to have deferred effect for a minimum of six months or a maximum of two years (the "*period of deferral*").

Power to activate a deferred sentence

rE176 A deferred sentence must be activated if the *defendant* is later found (whether during the period of *suspension* or afterwards) to have committed *professional misconduct* during the *period of deferral*.

rE177 Where a *Disciplinary Tribunal* finds that there has been *professional misconduct* during the *period of deferral*, it shall (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, unless there are exceptional circumstances.

rE178 A *Disciplinary Tribunal* may (where the conditions for activation of a deferred sentence are satisfied) activate a sentence which has been deferred when imposed by the *PCC* pursuant to the *determination by consent* procedure.

rE179 Where a deferred sentence is activated pursuant to this Regulation, the sentence must then be pronounced, and any action as may be required to give effect to the sentence must be taken, in accordance with rE189 to rE197 below.

Wording of the sentence when defendant not present

rE180 If a *defendant* has not been present throughout the proceedings, the sentence in respect of that *defendant* must include one or more of the following statements:

- .1 if the relevant procedure under rE148 has been complied with, that the finding and sentence were made in the absence of the *defendant* in accordance with rE148;
- .2 if the procedure under rE149 has been complied with, that the finding and the sentence were made in the absence of the *defendant* and that he 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 rE163 has been complied with, that the sentence was made in the absence of the *defendant* in accordance with rE164;
- .4 if the procedure under rE165 has been complied with, that the sentence was made in the absence of the *defendant* and that he may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

Report of Finding and Sentence

rE181 As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal*, the chairman must prepare a report in writing of the finding(s) on the charges of *professional misconduct* and/or on any applications, and the reasons for those findings and the sentence, if any. At the discretion of the chairman, 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 must send copies of the report to:

- .1 the *defendant*;
- .2 the Director of the *Bar Standards Board*;
- .3 the Treasurers of the *defendant's Inn of Call* and of any other *Inns* of which he is a member.

rE182 He must also send copies of the report to:

- .1 those of the following whom he deems, in his absolute discretion, to be appropriate taking into account the circumstances:
 - .a the Lord Chancellor;
 - .b the Lord Chief Justice;
 - .c the Attorney General;
 - .d the Director of Public Prosecutions;
 - .e the Chairman of the *Bar Council*; and
 - .f the Chairman of the *PCC*; and
- .2 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 sentence includes an order under rE167, the *Legal Aid Agency*.

Appeal to the Visitors

rE183 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 Visitors* in accordance with the *Hearings Before the Visitors* rules 2010:

- .1 by the *defendant* against *conviction* and/or sentence;
- .2 with the consent of the Chairman of the *Bar Standards Board* or the Chairman of the *PCC*, by the *Bar Standards Board* against sentence on any of the grounds in rE185 below.

rE184 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 Chairman of the *Bar Standards Board* or of the Chairman of the *PCC*) lodge an appeal with *the Visitors*, in accordance with the *Hearings Before the Visitors* Rules 2010, on any of the grounds in rE185 below.

rE185 The *Bar Standards Board* may only lodge an appeal (against sentence or dismissal) where the *Bar Standards Board* considers the *Disciplinary Tribunal* has:

- .1 taken into account irrelevant considerations;
- .2 failed to take into account relevant considerations;
- .3 reached a decision that is wrong in law; and/or
- .4 reached a decision which no reasonable Tribunal could properly have reached.

rE186 Where a *defendant* lodges an appeal against a disbarment, *Disqualification order* or the **revocation of a licence or authorisation**, he may at the same time lodge with *the Visitors* an appeal against any requirement imposed pursuant to rE203 to rE205 as appropriate.

rE187 A complainant (other than the *Bar Standards Board*) has no right of appeal.

Appeal: sum payable

rE188 Where an appeal is lodged with *the Visitors* by the *defendant*, the Notice of Appeal must be accompanied by the sum of £250 (or such other amount as may be specified by the *Bar Standards Board* from time to time), payable to the *Bar Standards Board*, to defray its expenses, such sum to be refunded in the discretion of *the Visitors* in the event of an appeal which is successful wholly or in part.

Action to be taken by the Inn (in circumstances where a barrister has been sentenced to be disbarred or suspended)

rE189 When the Treasurer of the *defendant's Inn of Call* receives a report prepared in accordance with rE181, he must, not fewer than 21 days after the end of the Tribunal's proceedings (or, where the *defendant* has given notice of appeal to *the Visitors* against the finding and/or sentence, once the time for appeal to *the Visitors* has expired and any appeal to *the Visitors* has been disposed of) pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry the sentence into effect. The Treasurer must inform the *persons* specified in rE181 of the date on which the sentence is to take effect, (which must be no later than two working days after the date when that sentence is pronounced).

- rE190** Similar action must be taken by the Treasurer of any other *Inn* of which the *defendant* is a member, in conjunction with the Treasurer of the *defendant's Inn* of Call.
- rE191** In any case in which the *defendant* has given notice of appeal to *the Visitors* against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in rE189 and rE190 may be taken until the appeal has been heard by *the Visitors*, or otherwise disposed of without a hearing.
- rE192** Where, pursuant to rE203, a Tribunal has required the *Bar Standards Board* to suspend the *defendant's practising certificate* or not to issue a *practising certificate* to the *defendant* pending an appeal ("the Interim Measure"), the Treasurer must direct that any period of *suspension* to which the *defendant* has been sentenced will be deemed to have taken effect on the date on which the Interim Measure came into effect, or on the date on which the *defendant* would otherwise have been eligible to be issued with a *practising certificate*, whichever is later.

Action to be taken by the Council of the Inns of Court (in all other circumstances)

- rE193** If the *Disciplinary Tribunal* has imposed a sentence (other than disbarring or suspending a *barrister* see rE189 to rE192, above), the *Council of the Inns of Court*, when it receives the report prepared in accordance with rE181, must, not fewer than 21 days after the end of the Tribunal's proceedings, pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry that sentence into effect. The *Council of the Inns of Court* shall inform the *persons* specified in rE181 of the date on which the sentence is to take effect. That date must be no later than two clear days after the date when the sentence is pronounced.
- rE194** In any case in which a *BSB regulated person* has given notice of appeal to *the Visitors* against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in rE193 may be taken until the appeal has been heard by *the Visitors*, or otherwise disposed of without a hearing.
- rE195** The *Council of the Inns of Court* must take all such steps as may be necessary or expedient to give effect to any requirement made by the Tribunal pursuant to rE189 above.

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

rE196 Subject to rE197, below, after the sentence has been pronounced in accordance with rE189, above, , the *Bar Council/Bar Standards Board* must, as appropriate, in accordance with the finding and/or sentence of the Tribunal: :

- .1 remove the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake public access work (as appropriate),
- .2 impose conditions on the relevant *BSB authorised person's authorisation* and/or licence (as appropriate);**
- .3 either include a note on the *Bar Standards Board's* register of *BSB authorised persons* that the *BSB authorised person* is *disqualified, suspended or is otherwise subject to certain conditions on the terms of his authorisation/licence* or that the *relevant person* is the subject of a *disqualification order*,**

except that in any case in which a *BSB regulated person* has given notice of appeal to *the Visitors* against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in this rE196 may be taken until the appeal has been heard by *the Visitors* or otherwise disposed of without a hearing.

rE197 Where the finding and/or sentence of the Tribunal is that the *BSB authorised person* should be subject to an immediate *suspension and/or immediate imposition of conditions* in accordance with rE202 below, the *Bar Council/Bar Standards Board* must immediately:

- .1 remove the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to do public access work (as appropriate),
- .2 impose conditions on the relevant *BSB authorised person's authorisation* and/or licence (as appropriate);**
- .3 either include a note on the *Bar Standards Board's* register of *BSB authorised persons* that the *BSB authorised person* is *suspended or is otherwise subject to certain conditions on the terms of his authorisation/licence*,**

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 Visitors* against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*.

rE198 The *Bar Standards Board* and/or *the Council of the Inns of Court* also:

- .1 must publish the finding and sentence of the Tribunal on the relevant website(s) within fourteen (14) days of the date when the Tribunal's proceedings end, unless the Chairman of the Tribunal directs that publication shall be delayed until *the President* has published the finding under rE198; and
- .2 may where charges have been dismissed publish the decision of the Tribunal on their websites at any time provided that in this case all details of the relevant parties involved in the hearing are anonymised.

Publication of finding and sentence

rE199 The following procedures apply to the publication of the finding and sentence of a *Disciplinary Tribunal*:

- .1 When the Tribunal has found that one or more charges of *professional misconduct* are proved, then, as soon as it has heard from the Inn. or from the *Council of the Inns of Court* (as the case may be), of the date that any sentence is to take effect, *the President* must publish those charges, the sentence, and the date when that sentence is to take effect.
- .2 When the Tribunal has found that the *disqualification condition* is established and has made a *Disqualification order*, as soon as it has heard from the *Council of the Inns of Court* on what date that order is to take effect, *the President* must publish the findings on which that order was based, the terms of the *Disqualification Order*, and the date when that order is to take effect.
- .3 When the Tribunal has found that any charge of *professional misconduct* has not been proved *the President* must not publish that charge, or the finding unless the *defendant* asks him to subject to rE197.2.

rE200 When publishing any finding, sentence or decision in accordance with rE198, *the President* must communicate it in writing to:

- .1 the *defendant*,
- .2 the Chairman of the *Bar Standards Board*;
- .3 the *defendant's* head of *chambers*, *HOLP*, or *employer* (as appropriate);

- .4 in the case of a *registered European lawyer*, his *home professional body*;
- .5 the Treasurers of the *defendant's Inn of Call* and of any other Inns of which he is a member;
- .6 other *Approved Regulators* and the *LSB*; and
- .7 one or more press agencies or other publications.
- .8 the following *persons* only where *the President* deems, in his absolute discretion, to be appropriate, taking into account the circumstances:
 - .a the Lord Chancellor;
 - .b the Lord Chief Justice;
 - .c the Attorney General;
 - .d the Director of Public Prosecutions;
 - .e the Chairman of the Bar Council;

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

rE201 rE202 to rE209 below apply to any *defendant* who:

- .1 Is a *barrister*, who has been sentenced to be *disbarred* or to be *suspended* or to be prohibited from accepting or doing any public access work or *instructions* for more than one year;
- .2 Is a *BSB authorised individual*, who has been sentenced to be *disqualified* or to be *suspended* for more than one year;
- .3 **is a *BSB authorised body*, which has been sentenced to have its authorisation or licence revoked or *suspended* for more than one year; or**
- .4 is a *BSB authorised person*, who has been sentenced to have conditions placed on his *practising certificate*, **authorisation or licence (as appropriate)** prohibiting him from accepting any *public access instructions* or *conducting any litigation* or for more than one year.

rE202 Where **rE201** applies the Tribunal must seek representations from the *defendant* and from the *BSB representative* on the appropriateness or otherwise of taking action under **rE203** below.

rE203 Having heard any representations under **rE201** above, the Tribunal must (unless in the circumstances of the case it appears to the Tribunal to be inappropriate to do so), either:

- .1 in relation to **rE201.1** and **rE201.2**, require the *defendant* to suspend his *practice* immediately, in which case the Bar Standards Board must suspend that *defendant's practising certificate* with immediate effect; or
- .2 in relation to **rE201.3**, decide that the condition prohibiting the *defendant* from accepting *public access instructions* or conducting any litigation, shall take effect immediately; or
- .3 where the *defendant* has been sentenced to be disbarred or to be *suspended*, and where that *defendant* does not currently hold a *practising certificate*, require the Bar Standards Board not to issue any *practising certificate* to him.

rE204 If the 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 *defendant* to suspend his *practice* or to impose conditions, from such date as the Tribunal may specify.

rE205 Where the *defendant* is permitted to continue to practise for any period before being *suspended* under **rE204**, the Tribunal may require the *Bar Standards Board* to impose such terms on the *defendant's practice* as the Tribunal deems necessary to protect *the public* until the *suspension* comes into effect.

rE206 Where an order is made in respect of a *defendant* under **rE203** above and that *defendant* 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.

rE207 When *the President* receives an application made pursuant to **rE206** above, he must refer it to the Chairman and to one of the *lay members* of the Tribunal which originally made the order.

rE208 Any application made pursuant to rE206 above must be sent by the applicant, on the day that it is made, to the *PCC* and the *PCC* may make such representations as they think fit on that application to those to whom the application has been referred by *the President*.

rE209 The *persons* to whom an application made pursuant to rE206 above is referred may vary or confirm the order in relation to which the application has been made.

rE210 References in rE206 to the ***Bar Standards Board*** shall be treated as referring to such body as may from time to time have the power to issue or suspend ***practising certificates*** or to impose conditions on ***practising certificates*** and the authorisations and licences of ***BSB authorised bodies***.

Costs

rE211 A *Disciplinary Tribunal* may make such Orders for costs, whether against or in favour of a *defendant*, as it shall think fit.

rE212 It makes such an Order a *Disciplinary Tribunal* must either itself decide the amount of such costs or appoint a suitably qualified *person* to do so on its behalf.

rE213 Any costs ordered to be paid by or to a *defendant* must be paid to or by the *Bar Standards Board*.

rE214 All costs incurred by the *PCC* preparatory to the hearing before the Tribunal must be borne by the *Bar Standards Board*.

Miscellaneous

Representation of complainant's interests

rE215 The *BSB representative* must keep the complainant (if any) informed of the progress of the *complaint*.

Service of documents

rE216 Any documents required to be served on a *defendant* in connection with proceedings under these Regulations shall be deemed to have been validly served:

- .1 If sent by registered post, or recorded delivery post, or receipted hand delivery to:

- .a in the case of a *BSB authorised individual*, the address notified by him pursuant to the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing it) as his *practising address*; or
- .b **in the case of a *BSB regulated person or non-authorised individual* acting as a ~~manager~~ or *employee* of a *BSB authorised body*, the address provided by the *BSB authorised body* as his home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified pursuant to the requirements of Part 2 of this *Handbook*; or**
- .c **in either case**, an address to which the *defendant* may have asked in writing that such documents be sent; or
- .d in the absence of any of the above, to his last known address **or; in the case of a *BSB regulated person or non-authorised individual* acting as a ~~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 *defendant's* e-mail address is known to the *Bar Standards Board*; and
- .b the *defendant* 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 Chairman of the *Disciplinary Tribunal*.

rE217 For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *defendant* or by a relevant representative

of the *defendant* (including, for example, his clerk, **a *manager or employee of the BSB authorised body at which he works***).

Delegation

rE218 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 designated in the *convening order* as Chairman of the Tribunal appointed to hear and determine the charge or charges against the *defendant*, if the *Directions judge* is unable to act due to absence, or to any other reason.

rE219 Any duty or function or step which, pursuant to the provisions of these regulations, is to be discharged or carried out by *the President* may, if he is unable to act due to absence or to any other reason, be discharged or carried out by any other member of the *Council of the Inns of Court*, the Treasurer of any Inn, or by any other *person* nominated in writing by *the President* for any specific purpose.

rE220 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) subject to rE218.

Other

rE221 When the Treasurer of an *Inn* is a Royal Benchler, references in these Regulations to the Treasurer shall be read as references to his deputy.

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

rE222 A *defendant* who has been excluded from legal aid work under Section 42 of the Administration of Justice Act 1985 may apply for an order ending his exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service in accordance with this rE222 and rE223 below.

rE223 Any such application must be in writing and addressed to *the President*.

- rE224** *The President* may dismiss the application, or may decide that the *defendant's* exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service be ended forthwith, or on a specified future date.
- rE225** *The President* must notify his decision in writing to all those *persons* who received copies of the report of the *Disciplinary Tribunal* which ordered that the *defendant* be excluded from providing such representation.
- rE226** When the Treasurer of the applicant's *Inn* of Call, and of any other *Inn* of which he is a member, receives any such report, he shall take action equivalent to that which he took in respect of the report of the *Disciplinary Tribunal* which sentenced the *defendant* to be excluded from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service.
- rE227** The procedures about the publication of the decision of *the President* on any such application as is referred to in this Regulation are those which applied to the publication of the finding and sentence by which the applicant was excluded from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service.
- rE228** *The President* may make such order for costs as he thinks fit and rE211 to rE214 apply with all necessary modifications.

Interpretation

- rE229** In Section 5.B2 all italicised terms shall be interpreted in accordance with the definitions in Part 4.

B3 Citation and commencement

rE230 These Regulations may be cited as “The *Disciplinary Tribunal* Regulations”.

rE231 These Regulations come into force in accordance with the provisions of Part 1 of this *Handbook*.

B4 Annexes to the *Disciplinary Tribunals* Regulations

ANNEX 1 – SENTENCING POWERS AGAINST BARRISTERS

When a charge of *professional misconduct* has been found proved against a *barrister*¹ by a *Disciplinary Tribunal*, the *Disciplinary Tribunal* may decide:

1. to disbar him;
2. to suspend his *practising certificate* and suspend his rights and privileges as a member of his *Inn* for a prescribed period (either unconditionally or subject to conditions);
3. not to renew his *practising certificate*;
4. to impose conditions on his *practising certificate*;
5. 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. to remove or to suspend his authorisation to *conduct litigation* or to impose conditions on it;
7. to order him 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 time as an employee or manager of a licensed body~~);
8. to order him to complete continuing professional development of such nature and duration as the Tribunal may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
9. to order him to be reprimanded by the Treasurer of his *Inn*;
10. to order him to be reprimanded by the Tribunal;
11. to give him advice about his future conduct;
12. to order him to attend on a nominated *person* to be reprimanded; or
13. to order him to attend on a nominated *person* to be given advice about his future conduct.

¹ 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 6.

ANNEX 2 – SENTENCING POWERS AGAINST BSB AUTHORISED BODIES

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

1. remove its authorisation to practise as a *BSB authorised body*;
2. impose conditions on its authorisation to practise as a *BSB authorised body*;
3. suspend its authorisation to *practise* for a prescribed period (either unconditionally or subject to conditions);
4. withdraw, or suspend its authorisation to *conduct litigation* or to impose conditions on it;
5. order a fine of up to £250,000 to the *Bar Standards Board*;
6. order that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal may direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
7. reprimand it;
8. give it advice 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.

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.~~

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. remove him from the *register of European lawyers*;
2. suspend him from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);
3. impose a condition on him prohibiting him, 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 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 time as an *employee* or *manager of a licensed body*);
5. order him to complete continuing professional development of such nature and duration as the Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
6. reprimand him;
7. give him advice about his future conduct;
8. order him to attend on a nominated *person* to be reprimanded; or
9. order him to attend on a nominated *person* to be given advice about his future conduct.

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*², the *Disciplinary Tribunal* may decide to:

1. order him 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. reprimand him;
3. give him advice about his future conduct;
4. order him to attend on a nominated *person* to be reprimanded;
5. order him to attend on a nominated *person* to be given advice about his future conduct.

² 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.

ANNEX 6 - STANDARD DIRECTIONS

Pursuant to the *Disciplinary Tribunal* Regulations:

1. The hearing will be in public;
2. That by [] the *defendant* is required to specify:
 - (a) whether he admits the charges;
 - (b) whether any of the facts relied on by the *Bar Standards Board* and set out in the documents provided pursuant to rE104 are admitted;
3. That the *defendant* provide by [] a list of the documents, rely and of the witnesses, on which and on whom he intends to rely, and copies of any witness statements on which he intends to rely;
4. That on or before [] both the *BSB representative* and the *defendant* serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;
5. That the *defendant* provide to the *Bar Standards Board* at least fourteen days before the date fixed for the substantive hearing [] copies of any defence bundle already provided pursuant to direction (3) above for circulation to the Tribunal members;
6. That the estimated length duration of the hearing is [] days/hours;
7. That the substantive hearing shall take place on [];

OR

8. By [] all parties I provide *the President* with dates when they are available for the substantive hearing, failing which *the President* may fix the hearing without reference to the availability of any party;
9. Any skeleton argument to be relied on at the hearing be served on *the President* and on the other parties at least 48 hours before the time fixed for the hearing.
10. That there be liberty for the parties to agree in writing to vary these directions;
11. That there be liberty to apply to the *Directions judge* for further directions.

C. THE HEARINGS BEFORE *THE VISITORS* RULES

C1 The Rules

We, the Judges of Her Majesty's High Court of Justice, in the exercise of our powers as Visitors to the Inns of Court, hereby make the following rules for the purpose of appeals to *the Visitors* from *Disciplinary Tribunals* of the *Council of the Inns of Court* and certain other appeals to *the Visitors*:

rE232 Service of Documents

- .1 Where pursuant to these Rules any document is to be served on any of the *persons* specified in the first column of Table 1 in the Annexe to these Rules, that document shall be served on that *person* by sending it to the *person* specified and the address specified in the second column of that table against the *person* to be served.
- .2 Such documents shall be served
 - .a by recorded delivery post, or
 - .b by hand delivery, if a written confirmation of receipt is obtained, or
 - .c (save where any fee is payable on the service of a document) by fax or other electronic means in accordance with rE232.4 below.
- .3 Where, in accordance with Table 1, the address for service on a *respondent* is his last known address, service by first class post shall constitute good service.
- .4 Where a document is to be served by fax or other electronic means, the party who is to be served must previously have indicated in writing to the party serving:
 - .a that the party to be served is willing to accept service by fax or other electronic means; and
 - .b the fax number, e-mail address or other electronic identification to which it must be sent.
- .5 Documents shall be deemed to be served on the date set out in Table 2 in the Schedule to these Rules.

- .6 For the purpose of this rule, a "written confirmation of receipt" means a receipt signed by or on behalf of the intended recipient.

rE233 Notice of Intention to Appeal

- .1 Written notice of intention to appeal against the *relevant decision* must be served by the *appellant* on the Clerk to *the Visitors* within the period of 21 days beginning with the date of the *relevant decision* or within such further time as may be allowed by the *Directions judge*.
- .2 A copy of the notice of intention to appeal should also be served by the *appellant* on the *respondent* and (when the appeal is against a decision of a *Disciplinary Tribunal*) on the *Council of the Inns of Court*.
- .3 When serving a notice of intention to appeal, an *appellant* (other than the BSB) shall give notice of a current address at which service is to be made on the *appellant*.
- .4 An *appellant* (other than the BSB) must ensure that the Clerk to *the Visitors* is informed of any change to the *appellant's* address.

rE234 Directions Judge

- .1 The Lord Chief Justice shall nominate judges of the High Court or the Court of Appeal to exercise the functions conferred by this Rule.
- .2 No *person* shall act as a *Directions judge* in relation to any appeal if they were a member of any committee of the BSB at any time when the matter was being considered by that committee.
- .3 A *Directions Judge* shall consider the course of any appeal and may at any time prior to the appointment of a panel to hear the appeal give such directions and take such steps as appear to him to be necessary or desirable for the purpose of securing the just, expeditious and economical disposal of the appeal.
- .4 Any applications to be heard by a *Directions Judge* must be served on the Clerk to *the Visitors*.
- .5 Any applications to the *Directions Judge* will be heard on paper and without an oral hearing, unless there is good reason for an oral hearing.

- .6** The directions that may be given and the steps that may be taken by the *Directions Judge* may relate to (but shall not be limited to) the following matters:
- .a** the anticipated duration of the hearing (which shall not, absent good reason, exceed one day);
 - .b** the variation of any timetable specified in these Rules;
 - .c** further procedural steps that should be taken before the hearing;
 - .d** the failure by either party to comply with any timetable specified in these Rules or directed by him;
 - .e** the adjournment of the hearing; and
 - .f** where (in the case of an appeal against a decision of a *Disciplinary Tribunal*) the sentence of the original *Disciplinary Tribunal* has been pronounced, whether it should be stayed pending the outcome of the appeal.
- .7** The *Directions Judge* may, on application made by the *appellant* (which must be served on the BSB at the time of making the application) and after giving the BSB the opportunity to respond to the application, vary or set aside an order made against the *appellant* under Regulations [30(3) or (4)] of the *Disciplinary Tribunal Regulations 2009* (Code of Conduct of the Bar Council of England and Wales 8th Edition) on such terms and subject to such conditions (if any) as he considers appropriate.
- .8** If, at any time, the *Directions Judge* concludes that a party has failed to comply with any obligation imposed by, or timetable specified in, these Rules or directed by him in exercise of his functions and powers (as the case may be), he may also
- .a** make a final order for compliance by the party in default;
 - .b** direct that that party may not serve a *petition* or *answer*;
 - .c** dismiss or strike out the *petition* or *answer* of that party;
 - .d** order that any further step that appears to him to be necessary or desirable in order to provide for a fair and expeditious hearing of the matter be undertaken within a specified period;

- .e direct an expedited hearing where the party in default has been prohibited from serving an *answer* or the *answer* has been struck out.

rE235 *No appeal from Directions Judge*

There shall be no appeal against an order of the *Directions Judge*.

rE236 *Service of Petition*

- .1 A written *petition* of appeal containing the information required by rE238.1 below must be served by the *appellant* on the *persons* specified in rE236.2 below within the period of 42 days beginning with the date of the *relevant decision* or within such further time as may be allowed by the Lord Chief Justice or the *Directions Judge*.
- .2 The *persons* to be served are
 - .a the Clerk to *the Visitors*; and
 - .b the *respondent*.
- .3 Service of the *petition* will be valid only if
 - .a the *petition* is served on both *persons* identified in rE236.2 above, and
 - .b where the *appellant* is a *defendant*,
 - .c the *petition* served on the Clerk to *the Visitors* is accompanied by any fee payable in accordance with rE237.1 below, or by an application pursuant to rE237.2, and
 - .d a copy of such fee or such application is served on the BSB.
- .4 If an application for an extension of the period of 42 days specified in rE236.1 above is made, the *Directions Judge* may, if he sees fit, extend the period within which the *petition* must be served.

rE237 *Fees*

- .1 Where an appeal is lodged with *the Visitors* by the *defendant*, the *petition* must (subject to the provisions of this rule) be accompanied by the sum of £250 payable

to the BSB to defray expenses, such sum to be refunded in the discretion of *the Visitors* in the event of an appeal which is successful wholly or in part.

- .2 Where payment of the sum required by rE237.1 above would cause undue hardship to the *appellant*, the *appellant* may apply to the *Directions Judge* for an order reducing the amount payable.
- .3 If the *Directions Judge* is satisfied that payment of the sum required by rE237.1 above would cause undue hardship to the *appellant*, he shall:
 - .a direct that some lesser (or nil) amount be paid; and
 - .b (where applicable) direct by when such amount be paid.

rE238 *Petition of Appeal*

- .1 Where the appeal is against a decision of a *Disciplinary Tribunal*, the *petition* shall state whether the appeal is against the findings or sentence of the *Disciplinary Tribunal*, or both, and shall contain the following particulars
 - .a the charges;
 - .b a summary of the facts on which the charges were based;
 - .c the findings of the *Disciplinary Tribunal*;
 - .d the sentence;
 - .e any finding against which the *appellant* appeals (if any);
 - .f the grounds for appeal, including for each matter appealed against the specific evidence on which the *appellant* will place reliance;
 - .g the relief sought; and
 - .h if the hearing is estimated to last longer than one day, an estimate of the time required for the hearing and the reasons for that estimation.
- .2 In the case of an appeal against sentence the *petition* may also refer to

- .a** any factors which it is contended make the sentence unduly severe (or lenient) in relation to the *appellant's* (or the *defendant's*) record; and
 - .b** sentences in other similar cases.
- .3** Where the appeal is against a Qualification Decision, the *petition* shall contain the following particulars:
 - .a** the decision, on review, of the BSB against which the appeal is being made;
 - .b** a summary of the facts giving rise to that decision;
 - .c** the grounds for appeal; and
 - .d** the relief sought.
- .4** Subject to rE240.5, the *appellant* may not, without the permission of the *Directions Judge*, support the appeal on a ground not relied upon before the body which took the *relevant decision*.

rE239 Service of other documents

- .1** Subject to rE239.2 below, the *appellant* against a decision of a *Disciplinary Tribunal* shall, at the same time as serving the *petition*, serve on the Clerk to *the Visitors* the number of copies specified in rE239.4 below of the transcript of the proceedings before the *Disciplinary Tribunal* whose decision is being appealed.
- .2** If any transcript to be served pursuant to rE239.1 above is not available when the *petition* is served, the copies of that transcript shall be served on the Clerk to *the Visitors* as soon as practicable thereafter.
- .3** Not less than 14 days before the date set for the hearing of an appeal
 - .a** a copy of every document intended to be produced at the hearing by any party shall be served by that party on every other party; and
 - .b** the number of copies of any such document specified in rE239.4 below shall be served on the Clerk to *the Visitors*.
- .4** The number of copies required to be served on the Clerk to *the Visitors* is

- .a if the appeal is of a type falling within rE241.2 below, three copies; and
- .b in any other case, two copies.

rE240 Answer

- .1 The *respondent* may (or, if so directed by the *Directions Judge*, shall) serve on the Clerk to *the Visitors* an *answer* to the *petition* within the period of 28 days starting with the date on which the *petition* is served or on which the transcript of the lower hearing is provided pursuant to rE239.2 (whichever is the later) or such further time as may be allowed by the *Directions Judge*.
- .2 Where an *answer* is served pursuant to rE240.1 the *respondent* shall also serve forthwith a copy of that *answer* on the *appellant*.
- .3 The *answer* shall follow the form of the *petition* and shall state which points in the *petition* are accepted and which are rejected.
- .4 If, in the view of the *person* serving an *answer*, the hearing is likely to last longer than one day, the *answer* shall include an estimation of the time required for the hearing and the reasons for that estimation.
- .5 The BSB may, in any *answer* it serves in respect of an appeal against a decision of a *Disciplinary Tribunal*, refer to any factors which it is contended make the sentence unduly lenient in relation to the *appellant's* record or to sentences in other cases.

rE241 Appointment of panel to hear appeal

- .1 When a *petition* is served upon the Clerk to *the Visitors* (whether or not served in time), and after the period for service of any *answer* in accordance with rE240.1 above has elapsed, the Lord Chief Justice shall nominate the *persons* who are to hear the appeal.
- .2 An appeal against a decision of a *Disciplinary Tribunal* presided over by a Judge of the High Court shall be heard by a panel comprised of
 - .a a Judge of the Court of Appeal;
 - .b a Queen's Counsel; and

- .c *a lay representative.*
- .3 Subject to rE241.4 below, an appeal that is not of a type mentioned in rE241.2 and is an appeal against a decision of a *Disciplinary Tribunal* shall be heard by a panel comprised of
 - .a a Judge of the High Court;
 - .b a *Barrister* (who, where the *defendant* is a Queen’s Counsel, shall himself be a Queen’s Counsel); and
 - .c *a lay representative.*
- .4 An appeal that is not of a type mentioned in rE241.2 and that is an appeal against a decision of a *Disciplinary Tribunal* may be heard by a Judge of the High Court or of the Court of Appeal sitting alone, if the Lord Chief Justice or the *Directions Judge* directs that the appeal relates solely to a point of law and is appropriate to be heard by a judge sitting alone.
- .5 Any other appeal shall be heard by a Judge of the High Court or the Court of Appeal.
- .6 No *person* shall be nominated to serve on a panel if they
 - .a are a member of the *Bar Council* or of any of its committees; or
 - .b are a member of the BSB or of any of its committees; or
 - .c were a member of any committee of the BSB at any time when the matter was being considered by that committee.

rE242 Date of Hearing

- .1 Unless the *Directions Judge* orders otherwise, the time allocated for the hearing of an appeal shall be one day.
- .2 The appeal shall be listed by the Clerk to *the Visitors* for a hearing on the first available date after the expiry of a period of four weeks beginning with the date of service on the Clerk to *the Visitors* of the *answer* (or, where no *answer* is served, beginning with the last date for service of the *answer* under rE240.1 above).

- .3 A notice of the hearing of the appeal shall be served on the *appellant* and on the *respondent* at least 14 days before the date fixed for hearing of the appeal.

rE243 Procedure at hearing

- .1 Subject to the following paragraphs of this Rule, *the Visitors* may give any directions with regard to the conduct of, and procedure at, a hearing of an appeal they consider appropriate.
- .2 *The Visitors* may give such directions before or during the hearing.
- .3 The hearing shall be held in public unless either party has made an application that the hearing shall not be in public and the public interest does not require that it shall be held in public.
- .4 A hearing may proceed in the absence of an *appellant* (or *defendant*), but not in the absence of a representative of the BSB.
- .5 No witness may be called at the hearing without the consent of *the Visitors*.
- .6 Evidence that was not before the *Disciplinary Tribunal* whose decision is being appealed may be given at the hearing only in exceptional circumstances and with the consent of *the Visitors*.
- .7 Grounds of appeal based on issues that were not relied upon before the body making the *relevant decision* may be relied upon only with the permission of the *Directions Judge* in accordance with rE238.4 above or, in exceptional circumstances, with the consent of *the Visitors*.
- .8 An *appellant* or *defendant* (as the case may be) may only challenge before *the Visitors* a decision of a court of law on which the *relevant decision* was based in exceptional circumstances and with the consent of *the Visitors*.
- .9 The proceedings of *the Visitors* shall continue to be valid notwithstanding that one or more of the members of the panel becomes unable to continue or is or becomes *disqualified* from continuing to act, if the remaining members of the panel include a judge (other than a retired judge) and a *lay representative*.
- .10 A full record shall be made of the hearing.

- .11 A transcription of the audio recording shall be provided upon request to either party to the hearing but at his own expense.

rE244 Findings of the Visitors

- .1 The findings of *the Visitors* shall be pronounced in a single decision. The decision shall state whether it has been reached unanimously or by a majority.
- .2 The findings may be pronounced in public or in private but should normally be pronounced in public unless a party to the hearing requests otherwise and the public interest does not require that the findings be pronounced in public.
- .3 In respect of an appeal against a decision of a *Disciplinary Tribunal*, *the Visitors* may
- .a dismiss the appeal;
 - .b allow an appeal in whole or in part;
 - .c confirm or vary an order of the *Disciplinary Tribunal* whose decision is being appealed;
 - .d order a re-hearing on such terms as they may deem appropriate in the circumstances;
 - .e in the case of an appeal brought by the BSB against a decision of a *Disciplinary Tribunal*, issue a declaration, but only where this will have no consequences whatsoever for the *defendant*.
- .4 In respect of an appeal against a Qualification Decision, *the Visitors* may:
- .a allow an appeal in whole or in part;
 - .b confirm or vary the decision of the BSB;
 - .c order the BSB to reconsider its decision on such terms as the panel appointed to hear the panel may determine to be appropriate in the circumstances.

- .5 *The Visitors* shall give reasons for their decision. These reasons may be given orally or in writing.
- .6 *The Visitors* may order, in the event of an appeal against a decision of a *Disciplinary Tribunal* by the *defendant* which is successful wholly or in part, a refund to the *appellant* of any sum paid to the BSB in accordance with rE237.1 above.
- .7 There is no appeal against a decision of *the Visitors*.

rE245 *Barrister's Exclusion from providing representation funded by the Legal Aid Agency as part of the Community Legal Service or Criminal Defence Service*

- .1 These Rules shall apply in relation to an appeal against an order of the *Disciplinary Tribunal* that a *Barrister's* exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service pursuant to section 42(3) of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and amended by section 24, Schedule 4, s 32 and 35 of the Access to Justice Act 1999) is not to be terminated, subject to the following modifications set out in the following paragraphs of this rule.
- .2 The *petition* shall contain the following particulars
 - .a the date of the order of the *Disciplinary Tribunal* that excluded the *appellant* from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service;
 - .b the charges in respect of which that order was made;
 - .c a summary of the facts on which those charges were based;
 - .d the findings of the *Disciplinary Tribunal*;
 - .e the findings against which the appeal is brought; and
 - .f the grounds for appeal.
- .3 An order of the *Disciplinary Tribunal* to terminate a *Barrister's* exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service only from a date that is subsequent to

that order shall, for the purposes of any appeal, be treated as an order that the *Barrister's* exclusion from such work is not to be terminated.

rE246 Costs

- .1 *The Visitors* may make such order for costs of the appeal as they consider appropriate.
- .2 Any order for costs made may include an order for payment of the cost of any transcript required for the purposes of the appeal.

rE247 Transition

Where any appeal has been commenced before 1 September 2010 but has not been completed by that date, these rules shall apply to that appeal from that date but any steps that have been taken in relation to that appeal pursuant to any provision of the Hearings Before *the Visitors* Rules 2005 shall be regarded as having been taken pursuant to the equivalent provisions of these Rules.

rE248 Revocation

The Hearings before *the Visitors* Rules 2005 are hereby revoked.

rE249 Citation and Commencement

These rules may be cited as the Hearings before *the Visitors* Rules 2010 and shall come into effect on 1 September 2010.

rE250 Interpretation

- .1 The Interpretation Act 1978 shall apply in relation to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.
- .2 These Rules shall be interpreted in accordance with Part 6.
- .3 Where a *Disciplinary Tribunal* has made a finding and imposed sentence in two separate decisions, whether in accordance with [regulation 19(5)] of the *Disciplinary Tribunal* Regulations 2009 (Code of Conduct of the Bar Council of England and

Wales 8th Edition) or otherwise, the date of the *relevant decision* shall be deemed to be the date of the later decision.

- .4 Where the *relevant decision* is a decision, on review, under [Part X of the *Bar Training Regulations*], the date of the *relevant decision* shall be deemed to be the date upon which notice of the decision was sent by the BSB to the *person* affected by the decision.
- .5 Any term defined in this Section 5.C shall carry the same meaning as it does in Part 6 of this *Handbook*.
- .6 The powers conferred upon the Lord Chief Justice by these Rules can be exercised on his behalf by a Judge of the Court of Appeal or a Judge of the High Court who is selected by him to act in this capacity. This delegation does not prevent the Lord Chief Justice from exercising these powers.
- .7 In these Rules a period of time expressed as a number of days shall be computed as clear days.

On behalf of the Judges of Her Majesty's
High Court of Justice

Lord Chief Justice
President of the Queen's Bench Division
President of the Family Division
The Chancellor of the High Court

C2 Annexes to the Hearings Before *the Visitors* Rules

ANNEX 7 – ADDRESSEE AND PLACE FOR SERVICE OF DOCUMENTS

Person to be served	Addressee and place of service
The Clerk to the Visitors	Addressed to the Clerk to the Visitors at the Royal Courts of Justice, Strand, London WC2A 2LL.
The Council of the Inns of Court	Addressed to the President of the Council of the Inns of Court, c/o The Honourable Society of the Inner Temple, c/o 10 Fleet Street, London EC4Y 1AU.
The BSB	<i>In respect of a decision of a Disciplinary Tribunal:</i> Addressed to the Secretary to the Complaints Committee of the BSB at 289-293 High Holborn, London WC1V 7HZ. <i>In respect of a Qualification Decision:</i> Addressed to the Secretary to the Qualifications Committee of the BSB at 289-293 High Holborn, London WC1V 7HZ.
<i>An appellant other than the BSB</i>	Addressed to him at the address specified by him pursuant to rE233.3.
<i>A defendant</i>	Addressed to him at - (a) the address notified by him pursuant to [paragraphs 202(d) or 206.1(a)(i) of the Code of Conduct of the <i>Bar</i> of England and Wales 8 th Edition] (or any provisions amending or replacing those paragraphs); (b) if he has specified in writing an address to which documents may be sent, that address; or (c) where no address has been notified pursuant to the provisions mentioned in paragraph (a) above or specified as mentioned in paragraph (b) above, to his last known address.

ANNEX 8 – DEEMED DATE OF SERVICE OF DOCUMENTS

Method of service	Deemed date of service of document
First-class post	The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that day.
Hand delivery	If the document is served <i>personally</i> before 4.30 pm on a business day, on that day; or in any other case, on the next business day after that day.
Recorded delivery	If it is delivered to or left at the permitted address on a business day before 4.30 pm, on that day; or in any other case, on the next business day after that day.
Fax	If the transmission of the fax is completed on a business day before 4.30 pm, on that day; or in any other case, on the next business day after the day on which it was transmitted.
E-mail or other electronic transmission	If the e-mail or other electronic transmission is sent on a business day before 4.30p.m., on that day; or in any other case, on the next business day after the day on which it was sent.

D. THE INTERIM SUSPENSION AND *DISQUALIFICATION* REGULATIONS

D1. APPLICATION

rE251 This Section 5.D prescribes the manner in which the BSB may seek to take interim action to:

- .1 suspend a *BSB authorised person* (excluding, for the avoidance of doubt, any *unregistered barrister*); or
- .2 *disqualify* any *relevant person* from acting as an **a *HOLP* or a *HOFA* or from working as a *manager* or employee of a *BSB authorised person***;

subject to the criteria outlined at rE257 and rE258 below, and pending consideration by a *Disciplinary Tribunal* under Section 5.B.

rE252 In addition to the above, this Section 5.D sets out the basis upon which the *PCC* may impose an immediate interim *suspension* or *disqualification* on any *relevant person* subject to the criteria outlined at rE259 to rE261 below, and pending consideration by an *interim panel* in accordance with this Section 5.D.

rE253 Anything required by this Section 5.D 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, or given to, any *person* authorised by the *President* (either prospectively or retrospectively and either generally or for a particular purpose).

D2. THE REGULATIONS

Composition of panels

rE254 An *interim panel* shall consist of three members nominated by the *President* being a Chairman (who shall be a Queen's Counsel) and two others, of whom at least one must be a *lay member*. Provided that:

- .1 the proceedings of an *interim panel* shall be valid notwithstanding that one of the members becomes unable to act or is *disqualified* from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one *lay member*;
- .2 no *person* shall be appointed to serve on a panel if s/he:
 - .a is a member of the *Bar Council* or of any of its committees; or
 - .b is a member of the *Bar Standards Board* or of any of its committees; or
 - .c was a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*.

rE255 A *review panel* shall consist of three members nominated by *the President* being a Chairman (who shall be a Queen's Counsel) and two others, of whom at least one must be a *lay member*. Provided that:

- .1 the proceedings of a *review panel* shall be valid notwithstanding that one of the members becomes unable to act or is *disqualified* from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one *lay member*;
- .2 no *person* shall be appointed to serve on a panel if s/he:
 - .a is a member of the *Bar Council* or of any of its committees; or
 - .b is a member of the *Bar Standards Board* or of any of its committees; or
 - .c was a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*;
- .3 no individual who is intended to sit on the *review panel* shall have sat on either the *interim panel* or the *appeal panel* considering the same matter.

rE256 An *appeal panel* shall consist of three members nominated by *the President* being:

- .1 two Queen's Counsel, each of whom is entitled to sit as a Recorder or a Deputy High Court Judge or who has been Queen's Counsel for at least ten years. Unless the *appeal panel* otherwise decides, the senior *barrister* member will be the Chairman of the *appeal panel*; and
- .2 a *lay member*.

Provided that:

- .a the proceedings of an *appeal panel* shall be valid notwithstanding that one of the members, becomes unable to act or is *disqualified* from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and the *lay member*;
- .b no *person* shall be appointed to serve on an *appeal panel* if s/he:
 - .i is a member of the *Bar Council* or of any of its committees; or
 - .ii is a member of the *Bar Standards Board* or of any of its committees; or
 - .iii was a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*;
- .3 no individual who is intended to sit on the *appeal panel* shall have sat on either the *interim panel* or the *review panel* considering the same matter.

Referral to an interim panel

rE257 On receipt of a *complaint* or any other information, the *PCC* may refer a *defendant* to an *interim panel* if:

- .1 subject to rE258:
 - .a the *defendant* has been convicted of, or charged with, a *criminal offence* in any jurisdiction other than a *minor criminal offence*; or

- .b** the *defendant* has been convicted by another *Approved Regulator*, for which they have been sentenced to a period of suspension or termination of the right to practise; or
- ~~**.c** the *defendant* is a *BSB licensed body* and has been intervened into by the *Bar Standards Board*; or~~
- .d** the *defendant* is a ***BSB authorised body*** and the ***grounds for intervention*** would have been met in relation to it had the ***BSB authorised body*** been a ***BSB licensed body***; or
- ~~**.e** the referral is necessary to protect the interests of *clients* (or former or potential *clients*); and~~

.2 the *PCC* decides having regard to the *regulatory objectives* that pursuing an interim *suspension* or an interim *disqualification order* is appropriate in all the circumstances.

rE258 No matter shall be referred to an *interim panel* on any of the grounds of referral set out in rE257.1.a to rE257.1.b unless the *PCC* considers that, whether singly or collectively, the relevant grounds of referral would warrant, in the case of a *BSB authorised person*, a charge of *professional misconduct* and referral to a *Disciplinary Tribunal*, or, in the case of a *relevant person*, an application to a *Disciplinary Tribunal* for *disqualification* (in each case such referral or application to be made in accordance with Section 5.B).

rE259 If the *PCC* refers a *defendant* to an *interim panel* under rE257, the *PCC* (or the Chair on its behalf) shall go on to consider whether or not the *defendant* should be subject to an immediate interim *suspension* or *disqualification* under rE261 pending disposal by the *interim panel*.

rE260 An immediate interim *suspension* or *disqualification* may only be imposed if the *PCC* is satisfied that such a course of action is justified having considered the risk posed to the *public* if such interim *suspension* or *disqualification* were not implemented and having regard to the *regulatory objectives*.

rE261 Any immediate interim *suspension* or *disqualification* imposed by the *PCC* shall:

- .1** take immediate effect;

- .2 be notified in writing by the *PCC* to the *defendant*;
- .3 remain in force until the earlier of:
 - .a such time as an *interim panel* has considered the matter; or
 - .b the date falling four weeks after the date on which the immediate interim *suspension* or *disqualification* is originally imposed;
- .4 where relevant, result in the removal of the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake public access work (as appropriate);
- .5 where relevant, result in the imposition of conditions on the relevant *BSB authorised person's* authorisation**~~and/or licence (as appropriate)~~
- .6 be published on the *Bar Standards Board's* website; and
- .7 be annotated on the *Bar Standards Board's* register of *BSB authorised persons* which is to be maintained by the *Bar Standards Board* in accordance with S123r or be included on the *Bar Standards Board's* register of individuals that are the subject of a *disqualification order* (as appropriate).

Guidance

gE1 If an immediate interim *suspension* or *disqualification* has been imposed by the *PCC* it must be considered by an *interim panel* within four weeks of the date that that the immediate interim *suspension* or *disqualification* is originally imposed. If it is not considered by an *interim panel* within that period, it shall automatically fall away and no further period of interim *suspension* or *disqualification* may be imposed on the *defendant* until the matter is considered by an *interim panel*.

gE2 If, subsequent to the imposition of an immediate *suspension* or *disqualification* under rE260, the *relevant person* agrees to provide to the *PCC* an undertaking in written terms in accordance with the provisions of rE263.4 below which is satisfactory to the *PCC* and which is subject to such conditions and for such period as the *PCC* may agree, the *PCC* may elect to remove or qualify the immediate interim *suspension* or *disqualification* pending

the disposal of any charges or application by a *Disciplinary Tribunal*. For the avoidance of doubt, in these circumstances the referral to the *interim panel* shall also be withdrawn in accordance with the provisions of rE264 below.

Procedure after referral to an Interim Panel and, where relevant, the decision to impose an immediate interim suspension or disqualification

rE262 As soon as practicable after the *PCC* has made a decision to refer a *defendant* to an *interim panel*, the *Bar Standards Board* shall write to the *President* notifying him of the decision and informing him about whether or not an immediate interim *suspension* or *disqualification* has also been imposed on such *defendant*.

rE263 As soon as practicable after receipt of the notice referred to in rE262, the *President* shall write to the *defendant* notifying him of the decision, together with a copy of these *Enforcement Regulations*, and briefly setting out the details that have caused the referral to the *interim panel*. The letter of notification shall:

- .1 where relevant, inform the *defendant* that he is the subject of an immediate interim *suspension* or *disqualification* (as appropriate) together with a summary of the consequences of that decision;
- .2 lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;
- .3 invite the *defendant* to accept one or other of the dates proposed or to provide a written representation to the *President*, which should be copied to the Chairman of the *PCC*, objecting to both dates with reasons and providing two further alternative dates which shall be not more than:
 - .a four weeks after the date of the imposition of the immediate interim *suspension* or *disqualification*, where relevant; or
 - .b in all other cases, twenty-one days from the date of the letter of notification;

Any such representation must be received by the *President* not more than ten days from the date of the letter of notification. The *President* shall consider any such representation together with any representations from the Chairman of the *PCC*,

and either confirm one of the original dates or re-fix the hearing. If no such representation is received within ten days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rE263.2 above. The *President's* decision, which shall be notified in writing to the *defendant* by the *President*, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the *President*:

- .4 inform the *defendant* that he may by letter to the Chairman of the *PCC* undertake, pending the disposal of any charge(s) or application(s) by a *Disciplinary Tribunal*:
- .a to be immediately *suspended* or *disqualified* (in which case the consequences set out at rE261.4 to rE261.7 would apply);
 - .b not to accept or carry out any *public access instructions*; and/or
 - .c to inform his professional and/or lay *clients* about any *convictions*, charges or other matters leading to a referral, in written terms satisfactory to the Chairman of the *PCC*;

and summarising the consequences of the *defendant* electing to make such an undertaking (which for the avoidance of doubt, may include those set out at rE261.4 to rE261.7 above);

- .5 shall inform the *defendant* that he is entitled to make representations in writing or orally, by himself or by others on his behalf; and
- .6 shall inform the *defendant* that he is entitled to request an expedited hearing of any charges of *professional misconduct* or applications for *disqualification orders* by a *Disciplinary Tribunal*.

rE264 If a *defendant* sends a letter in accordance with rE263.3 above which is satisfactory to the Chairman of the *PCC*, the Chairman shall accept the undertaking contained in the letter in lieu of the *interim panel* imposing any period of *interim suspension* or *interim disqualification* pending the disposal by a *Disciplinary Tribunal* of any charges of *professional misconduct* or applications for a *disqualification order* (as the case may be).

Procedure and powers of interim panels

rE265 At any hearing of an *interim panel* the proceedings shall be governed by the rules of natural justice, subject to which:

- .1 the procedure shall be informal, the details being at the discretion of the Chairman of the *interim panel*;
- .2 the *defendant* shall be entitled to make representations in writing or orally, by himself or by another on his behalf, as to:
 - .a why a period of interim *suspension* or interim *disqualification* should not be imposed; or
 - .b why the *interim panel* should not direct the *defendant* to notify his professional *clients* and/or lay *clients* about any *convictions*, charges or other matters leading to a referral; or
 - .c any further or alternative direction which the *interim panel* is empowered to make in relation to the *defendant* under rE267.3 below;pending the disposal of any charges or applications by a *Disciplinary Tribunal*;
- .3 no witnesses may be called without the prior consent of the Chairman of the Panel and without the submission of a proof of evidence;
- .4 the attendance of the *defendant* shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence subject to the *interim panel* being satisfied that this course is appropriate. Should the *interim panel* not be so satisfied, it shall have the power to adjourn the hearing;
- .5 the hearing shall not be in public unless so requested by the *defendant* and a record shall be taken electronically; and
- .6 if the *interim panel* decides an adjournment is necessary for any reason, it may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.

rE266 If the members of the *interim panel* are not unanimous as to any decision, the decision made shall be that of the majority of them. If the members of the *interim panel* are equally divided the decision shall be that which is most favourable to the *defendant*.

rE267 At the conclusion of the hearing the *interim panel*:

- .1 may decide not to impose any period of interim *suspension*, interim *disqualification* or other order;
- .2 may impose a period of interim *suspension* or interim *disqualification* (in each case, either unconditionally or subject to conditions) pending the hearing before a *Disciplinary Tribunal*, provided that no interim *suspension* or interim *disqualification* may be imposed unless the *interim panel* considers that:
 - .a were a *Disciplinary Tribunal* to find a related charge of *professional misconduct* proven, it would be likely to impose a sentence of disbarment (with respect to *barrister defendants*), a sentence of *suspension* (with respect to *barrister defendants* or *registered European lawyer defendants* or **BSB authorised body defendants**), **revocation of the licence or authorisation (with respect to BSB authorised body defendants)** or a *disqualification order* (with respect to *relevant person defendants*); and
 - .b such interim *suspension* or interim *disqualification* is in the public interest;
- .3 in lieu of imposing a period of interim *suspension* or interim *disqualification*, the *interim panel* may either:
 - .a where the *defendant* is a *BSB authorised person*, direct the *defendant* to carry out his or its future activities in accordance with such interim conditions on the *defendant's* authorisation or licence as the *interim panel* may think fit pending final disposal of the charges or application against him or them; or
 - .b where the *defendant* is a **manager or**—employee of a *BSB authorised person*, direct such *person* (after affording the *BSB authorised person* an opportunity to be heard) to take such steps in relation to the *defendant* as the *interim panel* may think fit, which may include limits on the type of work the *defendant* is to be permitted to do, or requirements as to his supervision or training, pending final disposal of the charges or application against him;
 - .c accept from the *defendant* an undertaking in written terms satisfactory to the *interim panel* (and subject to such conditions and for such period as the *interim panel* may agree):

- .i to be immediately *suspended* or *disqualified*; or
- .ii not to accept or carry out any *public access instructions* or to *conduct litigation*; or
- .iii to inform his professional and lay *clients* about any *convictions*, charges or other matters leading to a referral;

pending the disposal of any charges or application by a *Disciplinary Tribunal* provided always that the *defendant* accepts that the following consequences may arise as a result of such undertaking being provided depending on the nature of the undertaking being provided:

- (1) the removal of the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake *public access work* (as appropriate);
 - (2) **the imposition of conditions on the relevant BSB authorised person's authorisation** ~~and/or licence~~ (as appropriate);
 - (3) publication of the details of such interim *suspension* or ***disqualification*** on the *Bar Standards Board's* website; and
 - (4) either the inclusion of a note on the *Bar Standards Board's* register of *BSB authorised persons* to the effect that such *BSB authorised person* is temporarily *suspended* from *practice* or **the inclusion of the details of such interim *disqualification* on the Bar Standards Board's register of individuals that are the subject of a *disqualification order***;
- .4 shall set down in writing signed by the Chairman of the *interim panel* the decision of the *interim panel* and the terms of any period of interim *suspension*, interim *disqualification* or interim condition imposed under these *Interim Suspension and Disqualification Regulations* or accepted (in the form of an undertaking) under rE267.3.c above.

- .a** Where the *defendant* is a *BSB authorised individual*, the imposition of any period of *suspension* shall be recorded as follows:

“That.....be *suspended* from *practice* as a and be prohibited from holding himself out as being a for a period expiring on [the day of...../[insert applicable condition/event on which expiry is contingent] or such earlier date as a *Disciplinary Tribunal* shall have disposed of any charges that have caused the interim *suspension* or such *Disciplinary Tribunal* may otherwise direct.” (Note: If the Panel decides that the *suspension* should apply to only part of the *defendant’s practice* or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

- .b** Where the *defendant* is a *BSB authorised body*, the imposition of any period of *suspension* shall be recorded as follows:

“That have its **BSB licence/authorisation** *suspended* for a period expiring on [the day of...../[insert applicable condition/event on which expiry is contingent] or such earlier date as a *Disciplinary Tribunal* shall have disposed of any charges that have caused the interim *suspension* or such *Disciplinary Tribunal* may otherwise direct.” (Note: If the Panel decides that the *suspension* should apply to only part of the *defendant’s practice* or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

- .c** Where the *defendant* is a *relevant person*, the imposition of any period of *disqualification* shall be recorded as follows:

“That be *disqualified* from [*specify here the relevant capacities in respect of which the order applies, which may be some or all of: acting as a **HOLP, HOFA or manager of any BSB authorised body** or being an employee of any *BSB authorised person**] and that any *BSB regulated person* is prohibited from permitting the *defendant* to work in any such capacity for a period expiring on [the day of...../[insert applicable condition/event on which expiry is contingent] or such earlier date as a *Disciplinary Tribunal* shall have disposed of any charges that have

caused the interim *disqualification* or such *Disciplinary Tribunal* may otherwise direct“;

- .5** shall, if a period of interim *suspension* or interim ***disqualification*** or an interim condition is imposed or a written undertaking is accepted under these *Interim Suspension and Disqualification Rules*:
- .a** inform the *defendant* of his right to request a *review panel* to review the matter as provided in rE268 below;
 - .b** inform the *defendant* of his right of appeal as provided in rE272 below;
 - .c** inform the *defendant* that he is entitled to request an expedited hearing of any charges or applications by a *Disciplinary Tribunal* and, if so requested, the Chairman of the Panel may so direct;
- .6** may, if it has not already been referred to a *Disciplinary Tribunal*, refer the matter to a *Disciplinary Tribunal*.

Review

- rE268** In the event of a significant change in circumstances or other good reason the *defendant* may at any time while on interim *suspension*, interim *disqualification* or subject to interim conditions make a request in writing to *the President* for a *review panel* to be convened to review the matter.
- rE269** The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the *President* may seek representations from the Chairman of the *PCC* and may in his discretion convene a *review panel* or refuse the request. In either case *the President* shall notify the *defendant* in writing of the decision. If the *President* decides to convene a *review panel* the procedure to be followed for fixing the time and date of the hearing shall be as set out in rE263.2 and rE263.3.
- rE270** The proceedings before a *review panel* shall be by way of a rehearing and the provisions of rE265 above shall apply as if for references therein to the *interim panel* and the Chairman of the *interim panel* there were substituted references respectively to the *review panel* and the Chairman of the *review panel*.

- rE271** Unless in the meantime the hearing before a *Disciplinary Tribunal* of any charges or applications arising from and/or related to the referral to an *interim panel* has commenced, a hearing by a *review panel* convened pursuant to rE268 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the *review panel* which may reconsider the matter as if there had been no previous hearing.
- rE272** If the hearing before a *Disciplinary Tribunal* of any charges or applications arising from and/or related to the referral to an *interim panel* has commenced before the date fixed for a rehearing by a *review panel*, the date fixed for the rehearing shall be vacated and any interim *suspension*, interim *disqualification* or interim conditions made or undertaking accepted by the *interim panel* shall continue until such charges or applications have been disposed of by the *Disciplinary Tribunal*.

Appeals

- rE273** A *defendant* may by letter served on the *President* and on the Chair of the *PCC* not more than fourteen days after the date of the *relevant decision* of an *interim panel* give notice of his wish to appeal against the decision.
- rE274** As soon as practicable after receipt of a letter in accordance with rE273 above the *President* shall convene an *appeal panel* and write to the *defendant* notifying him of a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The *defendant* may make a written representation, addressed to the Chairman of the proposed *appeal panel*, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chairman of the *appeal panel* not more than fourteen days from the date of the letter of notification. The Chairman shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the *defendant*. The Chairman's decision, which shall be notified in writing to the *defendant* shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the *appeal panel*.
- rE275** The proceedings before an *appeal panel* shall be by way of a rehearing and the provisions of rE265 above shall apply as if for references therein to the *interim panel* and the

Chairman of the *interim panel* there were substituted references respectively to the *appeal panel* and the Chairman of the *appeal panel*.

rE276 At the conclusion of the hearing the *appeal panel*:

- .1 may remove the period of interim *suspension* or interim *disqualification* and/or any interim conditions imposed under this Section 5.D;
- .2 may confirm the period of interim *suspension* or interim *disqualification* or impose further or alternative interim conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;
- .3 in lieu of confirming or imposing a period of interim *suspension* or interim *disqualification* or imposing interim conditions, may accept from the *defendant* in terms satisfactory to the Chairman of the Panel an undertaking in writing to continue to be *suspended, disqualified* and/or to submit to such conditions and for such period as the *appeal panel* may agree, pending the disposal of any charges by a *Disciplinary Tribunal*;
- .4 shall set down in writing signed by the Chairman of the *appeal panel* the decision of the *appeal panel* and the terms of any interim *suspension, interim disqualification* or interim conditions confirmed or imposed under rE276.2 above or undertaking accepted under rE276.3 above;
- .5 may, if it has not already been referred to a *Disciplinary Tribunal*, refer the matter to a *Disciplinary Tribunal*;

If the members of the *appeal panel* are not unanimous as to the decision, the decision made shall be that of the majority of them. If the members of the *appeal panel* are equally divided, the decision shall be that which is most favourable to the *defendant*. Any period of interim *suspension* or interim *disqualification* or interim conditions having been set, which is confirmed or imposed, shall be recorded as set out in rE267.4 above.

rE277 A pending appeal to an *appeal panel* shall not operate as a stay of any period of interim *suspension* or interim *disqualification* or interim conditions having been set or the terms of any direction or undertaking which is/are the subject of the appeal.

rE278 There shall be no right of appeal from the decision of an *appeal panel*.

Suspension or disqualification ceases to have effect

rE279 Unless a *Disciplinary Tribunal* shall otherwise direct, any period of interim *suspension* or *disqualification* and any interim conditions imposed by the *interim panel* or *appeal panel* under this Section 5.D shall cease and the *defendant* shall cease to be bound by the terms of any direction made or undertaking accepted by a *interim panel* or an *appeal panel* immediately upon:

- .1 a *Disciplinary Tribunal* dismissing or making an order disposing of all charges of *professional misconduct* or applications for *disqualification* based on the referral from the *interim panel* or the *PCC* (as appropriate);
- .2 any appeal by the *defendant* against the *conviction* or all the *conviction(s)* which had caused the referral to a *interim panel* being successful;
- .3 the acquittal of the *defendant* of the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to a *interim panel*;
- .4 the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to an *interim panel* being withdrawn.

Costs

rE280 An *interim panel*, *review panel* and an *appeal panel* shall have no power to award costs.

Report and Publication of Decisions

rE281 As soon as practicable after the conclusion of an *interim panel* hearing or an *appeal panel* hearing, the *President* shall confirm the decision to the *defendant* in writing.

rE282 In any case where a period of interim *suspension* or interim *disqualification* is imposed or an interim condition is imposed under this Section 5.D or a direction is made requiring notification to lay and/or professional *clients* or an undertaking from a *defendant* is accepted, the *President* shall communicate brief details in writing of the fact that the *defendant* is on an interim basis *suspended*, *disqualified* and/or subject to conditions (as the case may be) to:

- .1 the *defendant*;

- .2 the Chairman of the Bar Standards Board;
- .3 the *defendant's* head of *chambers*, *HOLP*, or *employer* (as appropriate);
- .4 in the case of a *registered European lawyer*, his *home professional body*;
- .5 the Treasurers of the *defendant's Inn of Call* and of any other Inns of which he is a member;
- .6 other *Approved Regulators* and the *LSB*; and
- .7 those of the following whom he deems, in his absolute discretion, to be appropriate taking into account the particular circumstances:
 - .a the Lord Chancellor;
 - .b the Lord Chief Justice;
 - .c the Attorney General;
 - .d the Director of Public Prosecutions;
 - .e the Chairman of the Bar Council;
 - .f the Leaders of the six circuits;
 - .g the Chairman of the *PCC*; and
 - .h such one or more press agencies or other publications, as the Chairman of the *PCC* may direct.

rE283 The *Bar Standards Board* shall keep a record of those who are subject to *suspension* orders or *disqualification orders* or conditions imposed on their authorisation made under the procedures in this *Handbook* and shall publish details of any interim *suspension*, interim *disqualification* or interim conditions on its website and in such of its registers as it considers appropriate, for as long as they remain in effect.

Service of documents

rE284 Any documents required to be served on a *defendant* arising out of or in connection with proceedings under these Regulations shall be deemed to have been validly served:

- .1 If sent by registered post, or recorded delivery post, or receipted hand delivery to:
- .a in the case of a *BSB authorised individual*, the address notified by such *defendant* pursuant to the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing the same) as being his *practising address*; or
 - .b **in the case of a *BSB regulated person or non-authorised individual* acting as a ~~manager or~~ *employee* of a *BSB authorised body*, the address provided by the *BSB authorised body* as being his home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified pursuant to the requirements of Part 2 of this *Handbook*; or**
 - .c in either case, an address to which the *defendant* may request in writing that such documents be sent; or
 - .d in the absence of any of the above, to his last known address **or; in the case of a *BSB regulated person or non-authorised individual* acting as a ~~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 day after it was posted, left with, delivered to or collected by the relevant service provider, (provided that that day is a business day, or, if not, the next business day after that day) or on the next working day after receipted hand delivery;

- .2 If served by e-mail, where:
- .a the *defendant's* e-mail address is known to the *Bar Standards Board*; and
 - .b the *defendant* has requested 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 of sending the e-mail;

- .3 if actually served;

.4 if served in any way which may be directed by the *President* of the *Council of the Inns of Court*.

rE285 For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *defendant* or a relevant representative of such *defendant* (including, for example, his clerk **and a *manager or employee of the BSB authorised body at which he works***).

D3 INTERPRETATION

rE286 In this Section 5.D unless the context otherwise requires all italicized terms shall be defined and all terms shall be interpreted in accordance with the definitions in Part 6.

D4 COMMENCEMENT

rE287 These rules shall come into force in accordance with the provisions of Part 1 of this *Handbook*.

E THE FITNESS TO PRACTISE REGULATIONS

These Regulations, commencing 6 January 2014, are made by the *Bar Standards Board*, in liaison with the *Council of the Inns of Court*, under section 21 (regulatory arrangements) Legal Services Act 2007, under authority delegated by the General Council of the Bar as the Approved Regulator of the Bar under Part 1 of Schedule 4 to the Legal Services Act 2007, and with the approval of the *Legal Services Board* under Paragraph 19 of Schedule 4 to the Legal Services Act 2007.

E1 Preliminaries

Commencement and application

rE288 These Regulations will come into effect on 6 January 2014 and shall apply to all cases referred to a *Fitness to Practise Panel* or an *Appeal Panel* prior to that date under the Regulations then applying, and any step taken in relation to any *Fitness to Practise Panel* or *Appeal Panel* pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

rE289 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* of the Council of the Inns of Court or the *PCC*, may be done or exercised by, or given to, any *person* or body authorised by the *President* or by the *PCC* as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

rE290 Any term defined in *Definitions Section* of the *Handbook* shall carry the same meaning in these Regulations. For the purpose of the Fitness to Practise Regulations, “Individual” means any *‘BSB authorised individual’*

E2 Constitution of Panels

rE291 The *President* shall constitute *Fitness to Practise Panels* and *Appeal Panels* (Panels) to exercise the functions afforded to those Panels under these Regulations, in accordance with the provisions set out Schedule 1.

E3 The Fitness to Practise Procedure

Referral to a Fitness to Practise Panel

rE292 Where the *PCC* receives information suggesting that an *Individual* is *unfit to practise*, the matter shall be considered under Regulation E294.

rE293 The *PCC* may carry out any investigation, appropriate to the consideration of whether the *Individual* may be *unfit to practise*, prior to consideration of any referral under Regulation E295.

rE294 Where the *PCC* receives information under Regulation E292, the Chair of the *PCC* shall, subject to Regulation 6, as soon as reasonably practicable, write to the *Individual* concerned:

- .1 notifying him or her that information has been received which appears to raise a question of whether he or she is *unfit to practise*; and,
- .2 providing him or her with copies of any information received under Regulation 5 or obtained under Regulation E293.

rE295 Where the *PCC*, following receipt of information under Regulation E292 or during its consideration of a complaint of professional misconduct under the *Complaints Regulations*, considers that an *Individual* may be *unfit to practise*, it shall refer the matter to a *Fitness to Practise Panel* for determination (Regulation E298).

rE296 No decision to refer shall be taken under Regulation E295 without the *Individual* having been provided with a reasonable opportunity (as to the circumstance) to make representations on the matter.

rE297 In reaching a decision under Regulation E295, the *PCC* shall take into account any information received under Regulation E292 or obtained under Regulation E293, and any representations submitted by the *Individual*.

Preliminary Hearings

rE298 As soon as reasonably practicable after referral of a matter by the *PCC* to a *Fitness to Practise Panel*, the Chair of the Panel shall send a notice in writing of the referral to the *Individual* which shall:

- .1 contain a summary of the case and the reasons why it has been referred to a *Fitness to Practise Panel*;
- .2 inform the *Individual* of the time and date for a preliminary hearing before the Panel;
- .3 inform the *Individual* of his or her right to attend and be represented at the preliminary hearing, and to produce evidence at the preliminary hearing, in accordance with Regulations E324.2 and E324.3 below;
- .4 inform the *Individual* of the Panel's powers at a preliminary hearing under Regulations E299 and rE302 to rE305 below; and,
- .5 inform the *Individual* of his or her right to appeal under Regulation E317 below.

Directions

rE299 At a preliminary hearing, the *Fitness to Practise Panel* may give directions for the full hearing before the Panel, which may include that:

- .1 the *Individual*, within a specified period of time, submit to a relevant medical examination to be carried out by a *Medical Examiner* nominated by the Panel;
- .2 the *PCC* instruct a *Medical Examiner* to conduct such examination and to provide a report setting out an opinion as to whether the *Individual* is *unfit to practise* and as to any other matters as may be specified by the Panel;
- .3 the *Individual* authorise disclosure to the *PCC* and the *Medical Examiner*, of such of his or her relevant medical records as may be reasonably required for the purposes of the medical examination and subsequent report; and,
- .4 the *PCC* carry out such other investigations or seek such advice or assistance as the Panel considers appropriate to the matters for consideration at the full hearing, and where it gives a direction under Paragraph .1 or .3 above, it shall inform the *Individual* that failure to comply with the direction may be taken into account by the Panel in accordance with Regulation E308.2

Medical Examinations

rE300 Where a *Medical Examiner* is nominated by a Panel under Regulation E299.1 or E309.2.a, the *Medical Examiner* shall:

- .1 within the period specified by the Panel, undertake a relevant medical examination of the *Individual* in accordance with any directions from the Panel;
- .2 prepare a report which shall express an opinion as to:
 - .a whether the *Individual* has a physical or mental condition;
 - .b whether the *Individual* is fit to practise either generally or on a restricted basis; and
 - .c any other matters which he or she has been instructed to address, in accordance with any directions of the Panel; and
- .3 where requested by the *PCC* to do so, attend a hearing to present his or her findings.

rE301 An *Individual's* medical records and any report prepared by a *Medical Examiner* under these Regulations shall not be used for any other purpose than is provided for in these Regulations and shall not be disclosed to any other *person* or body without the consent in writing of the *Individual*.

Interim Restrictions

rE302 At a preliminary hearing, a *Fitness to Practise Panel* may, where it is satisfied that it is necessary to protect the public, is otherwise in the public interest or is in the *Individual's* own interests to do so, direct that the *Individual* is subject to an interim *restriction*.

rE303 An interim *restriction* may be imposed subject to such conditions as the Panel may consider appropriate, and shall have effect pending the determination of the matter at a full hearing before the *Fitness to Practise Panel* for a specified period, which shall not, save in exceptional circumstances, exceed 3 months.

rE304 In lieu of imposing an interim *restriction* under Regulation E302 above, the Panel may accept from the *Individual* an undertaking in writing on terms satisfactory to the Panel:

- .1 agreeing to an immediate interim *restriction* for such period as may be agreed; or,
- .2 as to the *Individual's* conduct or behaviour pending the conclusion of the full hearing.

rE305 Where it has directed an interim *restriction* under Regulation E302 or accepted undertakings under Regulation E304, a Panel may, at any point during the period of an interim restriction:

- .1 at the request of the Chair of the *PCC*, or at the request of the *PCC* or of the *Individual*, direct that the interim *restriction* or undertaking be reviewed at a further hearing of the Panel, on such date as the Panel shall specify, or on an unspecified date provided that the *Individual* is served with no less than 14 days' notice in writing of the hearing;
- .2 at the request of the *Individual*, direct an expedited full hearing of the *Fitness to Practise Panel*;

and, shall:

- .a inform the *Individual* of his or her right to request a *Fitness to Practise Panel* to review the interim *restriction* or undertaking under Regulation E313 below;
- .b inform the *Individual* of his or her right of appeal under Regulation E317 below.

rE306 The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made, interim *restriction* imposed or undertakings accepted.

Full Hearings before a Fitness to Practise Panel

rE307 As soon as reasonably practicable after receipt of any report prepared by a *Medical Examiner* or, where no report has been prepared, the *PCC* considers that the case is ready for hearing, the Chair of the Panel shall send a notice in writing of hearing to the *Individual* which shall:

- .1 contain a summary of the case and a copy of the report, where applicable;
- .2 inform the *Individual* of the time and date of the full hearing;

- .3 inform the *Individual* of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E324.2 and .3 below;
- .4 inform the *Individual* of the Panel's powers at a full hearing under Regulations E308 to E310 below; and,
- .5 inform the *Individual* of his or her right to appeal under Regulation E317 below.

Decisions of a Fitness to Practise Panel

rE308 At a full hearing, the *Fitness to Practise Panel* shall decide whether the *Individual* is *unfit to practise* and, in reaching its decision, shall be entitled to take into account:

- .1 the *Individual's* current physical or mental condition, any continuing or episodic condition experienced by the *Individual*, or any condition experienced by the *Individual* which, although currently in remission, may be expected to cause impairment if it recurs; and
- .2 any failure by the *Individual* to comply with a direction to undergo a relevant medical examination made under Regulation E300.1.

rE309 Where a *Fitness to Practise Panel* has decided that an *Individual* is *unfit to practise*, the Panel may direct:

- .1 that the *Individual* be subject to a *restriction* which may be subject to such conditions as the Panel may consider appropriate, and which may be imposed indefinitely or for such period, not exceeding six months, as shall be specified in the direction;
- .2 that the *Individual's* right to continue to practise, or to resume practice after any period of *restriction* shall be subject to such conditions as the Panel may think fit, including that the *Individual*:
 - .a submit for regular examination before one or more *Medical Examiners* nominated by the Panel,
 - .b authorise disclosure to the *PCC* and the *Medical Examiner* such of his or her medical records as may be reasonably required for the purposes of the medical examination and subsequent report,
 - .c is reviewed by a registered medical practitioner and shall follow the treatment they recommend in respect of any physical or mental condition,

which the Panel consider may be a cause of the Individual being unfit to practice.

rE310 In lieu of imposing any direction under Regulation E309 above, the Panel may accept from the *Individual* one or more undertakings in writing in which the *Individual* agrees to such period of *restriction*, or such conditions, as the Panel would otherwise have imposed.

rE311 Where it has made a direction under Regulation E309 or agreed undertakings under Regulation E310, the Panel shall inform the *Individual*:

- .1 of his or her right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation E313 below;
- .2 of his or her right of appeal under Regulation E317 below; and
- .3 that a failure to comply with the direction or undertakings would be likely to result in a charge of professional misconduct being brought against the *Individual* before a Disciplinary Tribunal.

rE312 The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made or undertakings accepted.

E4 Reviews and Appeals

Review of decisions made by a Fitness to Practise Panel

rE313 At any time during which an *Individual* is subject to a period of *restriction* or conditions, directed or undertaken pursuant to these Regulations, the Chair of the *PCC* may, of his or her own motion, or at the request of the *PCC* or of the *Individual*, refer the matter to be reviewed before a *Fitness to Practise Panel*, where he or she considers there has been a significant change in the *Individual*'s circumstances or that there is some other good reason for a review to be undertaken.

rE314 Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation E313, Regulations E298 to E312 and E324 shall apply, save that the Chair of the Panel and the *Individual* may agree in writing that no preliminary hearing shall be held.

rE315 At the conclusion of a review hearing, the *Fitness to Practise Panel* may:

- .1 confirm or revoke the direction made or undertakings agreed;
- .2 extend or vary (or further extend or vary) the period for which the direction has effect, or agree with the *Individual* concerned an extension or variation of the period for which an undertaking has been agreed;
- .3 replace the direction or undertakings, exercising any of the powers of a *Fitness to Practise Panel* under Regulations E302, E304, E309 or E310 above.

rE316 Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation 26 above and the review hearing cannot be concluded before the expiry of any period of *restriction* imposed under Regulation E302 or E309.1, or agreed under Regulation E304.1 or E310, the Panel may extend the *restriction* for such period as it considers necessary to allow for the conclusion of the review hearing.

Appeals before an Appeal Panel

rE317 An *Individual* may appeal a decision of a *Fitness to Practise Panel* to impose, extend, vary or replace a period of *restriction* by notifying the *President* in writing that he or she wishes to do so, no more than 14 days after the date of the decision subject to appeal.

rE318 As soon as reasonably practicable after receipt of an appeal under Regulation E317, the Chair of the *Appeal Panel* shall send a notice in writing of the appeal hearing to the *Individual*, which shall:

- .1 inform the *Individual* of the time and date of the appeal hearing;
- .2 inform the *Individual* of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E324.2 and .3 below; and
- .3 inform the *Individual* of the Panel's powers under Regulation E320 below.

rE319 A pending appeal to an *Appeal Panel* shall not operate as a stay of the decision subject to appeal.

Decisions of an Appeal Panel

rE320 At the conclusion of an appeal hearing, the *Appeal Panel* may:

- .1 allow the appeal;
- .2 confirm the decision that is subject to appeal;
- .3 exercise any of the powers of a *Fitness to Practise Panel* under Regulations E309 or E310 above;

rE321 The *Appeal Panel* shall inform the *Individual*:

- .1 of his or her right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation E313 above; and
- .2 that failure to comply with a *restriction* or condition imposed under Regulation E320.3 above would be likely to result in a charge of professional misconduct being brought before a *Disciplinary Tribunal*.

rE322 The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons, and the terms of any *restriction* imposed or undertakings accepted.

rE323 There shall be no right of appeal from a decision of an *Appeal Panel*.

E5 Conduct of Fitness to Practise and Review Panel Hearings

Procedure before a Panel

rE324 At any hearing before a *Fitness to Practise* or *Appeal Panel*, the proceedings shall be governed by the rules of natural justice, subject to which:

- .1 the procedure shall be informal, the details being at the discretion of the Chair of the Panel;
- .2 the *Individual* shall attend the hearing and may be represented by another member of the bar or a solicitor, save that where the *Individual* does not attend and is not represented, the hearing may nevertheless proceed if the Panel is satisfied that it is appropriate to do so and that all reasonable efforts have been made to serve the *Individual* with notice in writing of the hearing in accordance with these Regulations;
- .3 the *Individual* may, on his or her own behalf or through his or her representative:
 - .a make representations in writing or orally,
 - .b produce evidence, provided (but subject to the discretion of the Chair) that a proof of such evidence has been submitted no less than 24 hours prior to the hearing, and
 - .c put questions to any *Medical Examiner* whose report is in evidence before the Panel;
- .4 the hearing shall be in private, unless the *Individual* requests a public hearing, and shall be recorded electronically;
- .5 decisions shall be taken by simple majority;
- .6 where the votes are equal the issue shall be decided, at a hearing before a *Fitness to Practise Panel*, in the *Individual* 's favour and, in an appeal case, against the *Individual*.

rE325 If at any time it appears to a Panel that it would be appropriate to do so, the Panel may refer the case to the *PCC* for consideration of whether to refer any matter for a hearing before a *Disciplinary Tribunal*.

rE326 Where it considers it necessary, a Panel may appoint a practising barrister or solicitor to assist it on any question of law or interpretation of these Regulations, by providing an independent advice either orally or in writing, such advice to be tendered in the presence of the parties, or, where the parties are not present at the hearing, copied to the parties as soon as reasonably practicable.

rE327 A Panel shall have no power to award costs.

rE328 The proceedings before an *Appeal Panel* shall be by way of a rehearing.

rE329 At any review hearing before a *Fitness to Practise Panel* or appeal hearing before an *Appeal Panel*, copies of the report of any expert or any proof of evidence referred to at any previous hearing of the Panel in respect of the same case may be referred to by the Panel.

rE330 In the arrangements that it makes to perform its functions, and in undertaking its functions, in particular, in reaching any decision concerning an *Individual's* fitness to practise, a Panel shall:

- .1 take into account its duties to make reasonable adjustments which arise under the Equality Act 2010; and
- .2 have due regard to the need to:
 - .a eliminate unlawful discrimination and other conduct prohibited by the Equality Act 2010, and
 - .b advance equality of opportunity and foster good relations between *persons* who share a relevant protected characteristic as set out in Section 149 of the Equality Act 2010 and those who do not.

Postponement, adjournment and cancellation

rE331 Before the opening of any hearing in which notice has been served in writing in accordance with these Regulations, the Chair of the Panel may, of his or her own motion or on the application of the *PCC* or the *Individual*, postpone the hearing until such time and date as he or she thinks fit.

rE332 Where any hearing under these Regulations has commenced, the Panel considering the matter may, at any stage in the proceedings, whether of its own motion or on the application of the *PCC* or the *Individual*, adjourn the hearing until such time and date as it thinks fit.

rE333 No hearing shall be postponed or adjourned under Regulations E335 or E336 unless the *Individual* has been given reasonable opportunity to make representations on the matter.

rE334 Where a hearing has been postponed or adjourned, the parties shall be notified as soon as reasonably practicable of the time, of the date and place at which the hearing is to take place or to resume.

rE335 Where notice of hearing has been served in writing under these Regulations, the Chair of the Panel may, on application of the *PCC* or the *Individual*, cancel the hearing where the Chair considers that there are no reasonable grounds for questioning whether the *Individual* is *unfit to practise*.

Notice and publication of Decisions

rE336 Where a decision has been taken by *Fitness to Practise Panel* or an *Appeal Panel* under these Regulations, the Chair of the Panel shall, as soon as reasonably practicable, serve notice in writing of the decision on the *Individual* concerned.

rE337 Where a decision is taken at a full hearing of a *Fitness to Practise Panel* or at an *Appeal Panel* hearing, unless the decision is to take no action and the *Individual* is permitted to continue to practise without *restriction*, the Chair shall provide notice in writing of the decision to any *person* to whom he or she considers it to be in the public interest to do so.

Service of documents

rE338 Regulation rE216 of the Disciplinary Tribunals Regulations (section 5B) shall apply for the purposes of the service of any notices or documents under these Regulations save that, for the reference in Regulation rE216.2.d to the “*Directions Judge* or the Chairman of the *Disciplinary Tribunal*”, there shall be substituted the “Chair of the Panel”.

rE339 Where a Panel directs that an *Individual’s* ability to practise be subject to *restrictions*, conditions or agreed undertakings, the *President* shall always communicate brief details of the decision, in writing to:

- .1 the *Individual*;
- .2 the Chair of the *PCC*;
- .3 the Director of the *Bar Standards Board*;
- .4 the Barrister’s Head of Chambers, where relevant;
- .5 the Treasurers of the Barrister’s Inn of Call and of any other Inns of which he is a member, where relevant; and

.6 other regulators, where relevant.

rE340 The following shall have details of the decision of the Panel communicated to them in writing, at the discretion of the *President*:

- .1** the Chair of the *Bar Council*;
- .2** the Lord Chancellor;
- .3** the Lord Chief Justice;
- .4** the Attorney General;
- .5** the Director of Public Prosecutions; and,
- .6** the Leaders of the six circuits.

Schedule 1

Constitution of Fitness to Practise and Appeal Panels

1. The *President* shall appoint and maintain:
 - (a) a list of barristers and *lay persons* eligible to be members of *Fitness to Practise Panel*;
 - (b) a list of barristers and *lay persons* eligible to be members of an *Appeal Panel*; and,
 - (c) from the lists at (a) and (b), lists of Queen's Counsel eligible to act as Chairs of a *Fitness to Practise Panel* and an *Appeal Panel* respectively.
2. The *President* shall remove from the lists at Paragraph 1 *persons*:
 - (a) whose term of appointment has come to an end, unless that term is renewed;
 - (b) who resign from the relevant list by giving notice in writing to that effect to the *President*; or
 - (c) who in the opinion of the *President* have ceased to be eligible for appointment.
3. The *President* shall appoint, and ensure that arrangements are in place to be able to access suitably qualified *medical members* to sit on Fitness to Practise and Appeal Panels.
4. A *Fitness to Practise Panel* shall consist of five members selected by the *President* from the list of *persons* under Paragraph 1(a) and in line with the arrangements arising from paragraph 3, being:
 - (a) a Chair whose name appears on the relevant list at Paragraph 1(c);
 - (b) two practising barristers;
 - (c) a *medical member*; and
 - (d) a *lay member*.
5. An *Appeal Panel* shall consist of four members selected by the *President* from the list of *persons* under Paragraph 1(b) and in line with paragraph 3, being:

- (a) two practising barristers, including a Chair whose name appears on the relevant list at Paragraph 1(c), and who shall, unless the *Appeal Panel* decide otherwise, be the most senior of the barrister members;
 - (b) a *medical member*; and
 - (c) a *lay member*.
6. No *person* shall be selected to sit on a *Fitness to Practise Panel* or an *Appeal Panel* if:
- (a) they are a member of the *PCC* or of the *PCC* or any of its other Committees; or
 - (b) they were a member of the *PCC* when the matter being dealt with by the Panel was considered by the *PCC*.
7. No *person* shall sit on a *Fitness to Practise Panel* or an *Appeal Panel* for the hearing of a case that they have previously considered or adjudicated upon in any other capacity.
8. The proceedings of a *Fitness to Practise Panel* or an *Appeal Panel* shall be valid notwithstanding that one or more members of the Panel become unable to sit or disqualified from sitting on the Panel, or are replaced by another member from the appropriate list or by the arrangement at paragraph 3, subject to there being a minimum of three Members which shall include a Chair from the relevant list held under Paragraph 1(c), a *medical member* and a *lay member*.
9. The validity of the proceedings of a Panel shall not be affected by any defect in the appointment of a member.

F INTERVENTIONS AND DIVESTITURE

F1. INTERVENTIONS

~~rE341~~ The *Bar Standards Board* has the statutory power under Schedule 14 of the Legal Services Act 2007 to intervene into a *BSB licensed body*.

~~rE342~~ The *Bar Standards Board* may authorise an intervention into a *BSB licensed body* where:

~~.1~~ in relation to the *BSB licensed body*, one or more of the intervention conditions (as such term is defined in the Legal Services Act 2007) is satisfied; or

~~.2~~ the licence granted to the *BSB licensed body* has expired and has not been renewed or replaced by the *Bar Standards Board*.

~~rE343~~ In circumstances where the *Bar Standards Board* authorises an intervention under ~~rE342~~ above, such intervention shall be carried out in accordance with the provisions of the Legal Services Act 2007

F2. DIVESTITURE

~~rE344~~ The *Bar Standards Board* has the statutory power under Schedule 13 of the Legal Services Act 2007 to make an application for divestiture in relation to a *non-authorised person* and a *BSB licensed body*.

~~rE345~~ The *Bar Standards Board* may make an application for divestiture if the divestiture condition (as such term is defined in the Legal Services Act 2007) is satisfied in relation to such *non-authorised person* and a *BSB licensed body* (as the case may be).

~~rE346~~ In circumstances where the *Bar Standards Board* elects to make an application for divestiture under rE345 above, such application shall be carried out in accordance with the provisions of the Legal Services Act 2007.