

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

ANNEX 4

CONSULTATION DOCUMENTS

FOR INFORMATION ONLY

SOLICITORS DISCIPLINARY TRIBUNAL

CONSULTATION ON THE MAKING OF PROCEDURAL RULES IN RELATION TO APPEALS TO THE TRIBUNAL

Introduction

1. The Solicitors Disciplinary Tribunal (“the Tribunal”) is constituted as a statutory tribunal under Section 46 of the Solicitors Act 1974. The Tribunal currently adjudicates upon alleged breaches of rules or the Solicitors Code of Conduct, which are designed to protect the public and maintain public confidence in the legal profession, by defining standards for honesty, probity, trustworthiness, independence and integrity. The Tribunal also adjudicates upon the alleged misconduct of recognised bodies, registered foreign lawyers and persons employed by solicitors. It also hears applications for restoration to the Solicitors’ Roll. The Tribunal currently has about 60 members.
2. Solicitor members are wholly independent of the Council of the Law Society and have no connection with the Solicitors Regulation Authority (“the SRA”), which instigates over 90% of the cases currently dealt with by the Tribunal.
3. Under provisions contained in the Legal Services Act 2007, the jurisdiction of the Tribunal has been extended. It is now empowered to deal with appeals of various kinds. Section 46 of the Solicitors Act 1974 enables the Tribunal to make rules about its procedures, and the power to make those rules has been extended so as to apply to its new appellate jurisdiction. The Tribunal already has rules in place (the Solicitors (Disciplinary Proceedings) Rules 2007) which are used in relation to the Tribunal’s disciplinary jurisdiction. The Tribunal considers that it needs to make new and separate rules fit for the purpose specifically of dealing with appeals.
4. The Tribunal’s appellate jurisdiction may be extended further under proposals being put forward by the Legal Services Board (“the LSB”), currently the subject of a separate consultation exercise. The existing appellate jurisdiction of the Tribunal, and the proposed jurisdiction which is subject to this separate consultation are described in more detail later.

Background to the Tribunal and its current activities

5. The Tribunal currently consists of 53 members, of whom 34 are solicitor members and 19 are lay members drawn from a variety of backgrounds. The Tribunal is staffed by the Clerk, together with a team of deputy clerks, based in offices in Farringdon Street, London, where it also holds hearings in custom-built court rooms.
6. The table below is taken from the Tribunal’s annual report of 2010, and sets out the number of applications received during the year to 30 April 2010 and the preceding year. In the year to 30 April 2010, the Tribunal sat on 232 hearing days, up from 226 in the previous year.

APPLICATIONS RECEIVED	To 30/4/10	To 30/4/09
Number of applications* involving practising solicitors – relating to 361 (417) solicitors, 12 (10) registered foreign lawyers and 5 (1) recognised bodies	249	247
Number of applications* in respect of solicitors' clerks – Relating to 13 (10) clerks, 7 clerks were included in applications against solicitors – a total of 20 clerks)	12	10
Number of applications for restoration to the Roll	2	4
Number of applications to revoke, quash, review or vary an Order under s.43** made either by the Tribunal or the SRA	4	3
Number of applications seeking determination of an indefinite period of suspension	4	3
Number of applications made in respect of former solicitors (i.e. no longer on the Roll)	2	1
TOTAL	273	268

*It should be noted that one application may be in respect of two or more solicitors or clerks. Previous year's figures appear in brackets.

**Section 43 (as amended by the Legal Services Act 2007) applies to those who are not admitted solicitors and who are employed or remunerated by solicitors.

An Order made pursuant to s.43 of the Solicitors Act 1974 (as amended) prevents a solicitor from employing the person to whom the Order relates without the consent of The Law Society.

7. In the year ending April 2010, 16 appeals were heard by the High Court against the findings of the Tribunal of which 9 were dismissed, 4 were allowed, 1 was partly upheld, 1 was withdrawn and 1 was resolved by agreement.
8. Since 1 July 2008, the Tribunal has been responsible for all of its administrative costs within a budget approved by the LSB.
9. The annual report of 2010 says that, according to a survey of all cases heard substantively during the period under review, it showed that 14% were concluded within six months of being filed with the Tribunal. A further 61% were concluded between 6 months and 1 year. Forty five cases in all were outstanding for more than 1 year.
10. A full analysis of the most recent year can be found on the Tribunal's website in its latest annual report at www.solicitortribunal.org.uk/annual_report_2010.pdf

The Tribunal's new appellate functions

11. The Tribunal has recently been given new jurisdiction in relation to appeals under two headings.

Section 44E Appeals (Appeals in relation to solicitors against written rebukes or financial penalties)

12. Section 44D of the Solicitors Act 1974 ("the 1974 Act") gives the Law Society the power to give written rebukes or direct the payment of financial penalties in the case

of solicitors, or solicitors' employees, in cases where the Society is satisfied that there has been a failure to comply with a requirement imposed by or by virtue of the 1974 Act or any rules made by the Society, or that there has been professional misconduct by a solicitor. The function is carried out on behalf of the Society by the SRA.

13. Section 44D enables the SRA to publish details of any written rebuke or financial penalty if it considers it to be in the public interest to do so. The rules which govern the exercise of the SRA's powers are set out in the SRA (Disciplinary Procedure) Rules 2010 which came into effect on 1 June 2010.
14. Section 44E of the 1974 Act makes provision about appeals against decisions by the SRA to rebuke a person, impose a penalty or to publish details of a rebuke or penalty under Section 44D and the appeal lies to the Tribunal. Section 44E(2) is the statutory provision which enables the Tribunal to make rules under section 46 of the 1974 Act in relation to appeals under section 44E.
15. Section 44E also makes provision to enable onward appeals from the Tribunal to be made to the High Court.
16. On an appeal under section 44E, the Tribunal has power to make such order as it thinks fit. Such an order may in particular –
 - (a) affirm the SRA's decision
 - (b) revoke the SRA's decision
 - (c) in the case of a penalty, vary the amount of the penalty
 - (d) in the case of a solicitor, contain provision for any of the matters mentioned in section 47(2)(a) to (d) of the 1974 Act (namely striking the name of a solicitor off the Roll, suspending a solicitor from practice indefinitely or for a specified period, revoking a solicitor's sole solicitor endorsement, suspending a solicitor from practice as a sole solicitor indefinitely or for a specified period, requiring payment by a solicitor or former solicitor of a penalty, or excluding a solicitor from providing representation funded by the Legal Services Commission as part of the criminal defence service)
 - (e) in the case of an employee of a solicitor, contain provision for any of the matters mentioned in section 47(2E) of the 1974 Act (directing the payment of a financial penalty, ordering the Society to consider taking such steps as the Tribunal may specify in relation to the employee, and other sanctions)
 - (f) make such provision as the Tribunal thinks fit as to payment of costs.

Appeals in relation to recognised bodies against written rebukes or financial penalties

17. The Legal Services Act 2007 inserted new provisions into the Administration of Justice Act 1985 relating to legal services bodies or practices, and in particular about the prescription of circumstances in which legal services bodies may be recognised by the Law Society as being suitable bodies to undertake the provision of solicitor services or other relevant legal services.
18. Under Schedule 2 (paragraph 14B) of the 1985 Act, the Law Society (again through the SRA) has similar disciplinary powers in relation to recognised legal services bodies, their managers and employees as those mentioned above in relation to

solicitors. There are similar powers to give written rebukes, direct financial penalties be paid, and publish details of action taken. Once again, there is a right of appeal (under paragraph 14C of Schedule 2) to the Tribunal in relation to any decision of the SRA to rebuke a person, impose a penalty or publish details of a rebuke or penalty. Similarly, power is given to the Tribunal to make rules in relation to such appeals, and power is also given to make orders of similar nature to those listed above in relation to section 44E appeals. The rules which govern the exercise of the SRA's powers are set out in the SRA (Disciplinary Procedure) Rules 2010.

Proposed further appellate jurisdiction: Alternative Business Structures

19. In addition to the relatively new appellate functions which are mentioned above, there are proposals in the immediate future to provide the Tribunal with additional appellate functions under Part 5 of the Legal Services Act 2007, which deals with alternative business structures. The Legal Services Board is currently undertaking a consultation exercise about making an order under section 80 of the 2007 Act which would give appellate responsibilities to the Tribunal in relation to appeals against financial penalties under section 96 of the 2007 Act, and in relation to a variety of decisions which could be taken by the Law Society (again through the SRA) in its proposed role as a licensing authority.
20. If the order were to be made, the Tribunal would have jurisdiction in relation to statutory rights of appeal against:
 - (a) an imposition of a penalty under section 95 of the 2007 Act
 - (b) an imposition of conditions in relation to an investor's holding of a notified interest in a body applying for a licence (paragraph 18, Schedule 13, 2007 Act)
 - (c) an objection to an investor's holding of a notified interest in a body applying for a licence (paragraph 20, Schedule 13)
 - (d) the imposition of conditions on the approval of an investor's holding of a notifiable interest in a licensed body (paragraph 29, Schedule 13)
 - (e) an objection to an investor's holding of a notifiable interest in relation to a licensed body (paragraph 32, Schedule 13)
 - (f) the imposition of conditions on a person's holding of a restricted interest in a licensed body under certain circumstances where there has been no change of interest (paragraph 34, Schedule 13)
 - (g) a notification given by the licensing authority to the Legal Services Board where it considers that the relevant share limit or voting limit has been breached (paragraph 50, Schedule 13).
21. In addition, the Legal Services Board has issued guidance to make it clear that they expect the licensing rules issued by licensing authorities to make appropriate provision for appeals against decisions made by licensing authorities which may amount to the determination of a person's civil rights for the purposes of Article 6(1) of the European Convention on Human Rights. The LSB's guidance sets out the expectation that the following decisions of licensing authorities will be appealable as they could affect a person's civil rights (the relevant sections of the Act are shown in brackets):
 - (a) refusal of application for a licence (s.84)

- (b) imposition of conditions on a licence (s.85)
 - (c) modification of licence (s.86)
 - (d) refusal to designate as Head of Legal Practice, or withdrawal of approval (Schedule 11, paragraph 12)
 - (e) refusal to designate as Head of Finance and Administration, or withdrawal of approval (Schedule 11, paragraph 14)
 - (f) disqualification from some or all roles within a licensed body (s.99)
 - (g) suspension and revocation of licence (s.101)
 - (h) power to modify application of licensing rules etc to special bodies (ss.106 and 107)
22. The relevant rules that the SRA has proposed to the LSB for approval as part of its application to become a Licensing Authority, namely the SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies [2011] (rules 30 and 31), reflect the LSB's guidance set out above. The Tribunal would therefore have jurisdiction in relation to these types of appeals as well. The SRA's rules would make provision for an internal appeals process in respect of some of its decisions, and the rules would provide that that process must be exhausted before an appeal may be made to the Tribunal.

The proposed new rules

23. The Tribunal has drafted new proposed rules ("the appeal rules") (**Appendix A**) which are the main subject matter of this consultation. The appeal rules have been drafted in consultation with the Legal Services Board and the Solicitors Regulation Authority. The appeal rules are based largely upon the rules which will be used in relation to appeals to the General Regulatory Chamber of the First-tier Tribunal from licensing decisions of the Council for Licensed Conveyancers in relation to their licensing functions under Part 5 of the Legal Services Act 2007. It was thought that there should be consistency between the procedures that will apply in relation to appeals made by different Licensing Authorities (such as the Council for Licensed Conveyancers and the SRA, if approved) in relation to the alternative business structures that they regulate.
24. Therefore, many of the provisions which appear in the draft appeal rules can also be found (although not always in identical form) in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (2009 No 1976).
25. Because of the distinct nature of the Tribunal and its existing procedures, some of the appeal rules have also been based on the Tribunal's existing rules (the Solicitors Disciplinary (Proceedings) Rules 2007 (2007 No. 3588)).
26. The appeal rules, if made in the form in Appendix A, will only apply to section 44E appeals and appeals under Schedule 2 of the Administration of Justice Act 1985 (ie where the Tribunal already has jurisdiction). These rules need to be implemented as soon as possible, so in order to safeguard against any delay in the Tribunal being given the further jurisdiction in relation to alternative business structures under Part 5 of the 2007 Act, it is intended that the appeal rules will be applied to that jurisdiction later by a separate amendment order (**Appendix B**).

Questions for consultees

27. Consultees are asked to respond to the following questions:-

- (1) Do you agree that the appeals rules in Appendix A should be made as soon as possible, with the amended rules (Appendix B) to follow afterwards?
- (2) Do you believe that the rules as drafted and appended to this consultation paper are fit for purpose?
- (3) Do you have any detailed comments on the drafting of the proposed rules?

28. A list of bodies which are being sent a copy of this paper is at **Appendix C**. The paper is also being published on the Tribunal's website.

29. Please note that the purpose of this consultation exercise is purely to hear views on the proposed rules themselves. The Tribunal will not take into consideration any comments made about the desirability in principle of the Tribunal hearing appeals. As mentioned in the body of this paper, the Tribunal already has jurisdiction to hear certain appeals, and the question of whether it should hear appeals in relation to Part 5 of the Legal Services Act 2007 is a matter for a separate consultation.

30. Responses to this consultation should be returned by **8th July 2011**

By email to: responses@solicitorsdt.com

By post to: The Clerk
Solicitors Disciplinary Tribunal
5th Floor
Gate House
1 Farringdon Street
London EC4M 7LG

By DX to:

The Clerk
Solicitors Disciplinary Tribunal
LDE 395

Published by the Solicitors Disciplinary Tribunal

10th June 2011

APPENDIX A

Draft Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

2011 No.

LEGAL PROFESSION (ENGLAND AND WALES)

**The Solicitors Disciplinary Tribunal (Appeals and amendment) Rules
2011**

Made - - - - - *[**[th/st] *****] 2011*

Coming into force - - - - - *[**[th/st] *****] 2011*

ARRANGEMENT OF RULES

PART 1

Introductory

1. Citation, commencement and application
2. Interpretation

PART 2

Constitution of appeal panels

3. Composition of panel
4. Appointment of chairman
5. Delegation

PART 3

Appeal procedure

Preliminary steps

6. Notice of appeal
7. Response to notice of appeal
8. Appellant's reply

Administration of appeals

9. Directions and case management
10. Practice directions
11. Failure to comply with rules, practice directions or tribunal directions

12. Striking out a party's case
13. Addition, substitution and removal of parties
14. Prevention of disclosure of documents and information
15. Lead cases
16. Withdrawal
17. Consent orders
18. General powers of tribunal

Disclosure, evidence and submissions

19. Disclosure, evidence and submissions
20. Written evidence
21. Witness summonses

Hearings, decisions and re-hearings

22. Decision with or without a hearing
23. Listing of appeal hearing
24. Public or private hearings
25. Decisions
26. Re-hearing where a party neither appears nor is represented

PART 4
Miscellaneous

27. Sending and delivery of documents
28. Calculating time
29. Representatives
30. Costs
31. Amendment of 2007 rules

SCHEDULE — FORMS

The Solicitors Disciplinary Tribunal in exercise of the powers conferred upon it by section 46 of the Solicitors Act 1974^(a) as applied by paragraph 14C(2) of Schedule 2 to the Administration of Justice Act 1985^(b) and section 44E(2) of the Solicitors Act 1974 makes the following Rules:

^(a) 1974 c. 47.

^(b) 1985 c.61.

PART 1

Introductory

Citation, commencement and application

1.—(1) These Rules may be cited as the Solicitors Disciplinary Tribunal (Appeals and amendment) Rules 2011 and shall come into force on [**] [th/st] [***] 2011.

(2) These Rules (except rule 31) apply in relation to—

- (a) appeals to the Tribunal under paragraph 14C of Schedule 2 to the Administration of Justice Act 1985; and
- (b) appeals to the Tribunal under section 44E of the 1974 Act (appeals against disciplinary action under section 44D).

(3) Nothing in the following provisions of the 2007 rules applies in relation to an appeal—

- (a) rule 4 (constitution of Divisions);
- (b) Part 3 (applications);
- (c) Part 4 (procedure and rules of evidence);
- (d) rule 18 (costs);
- (e) rule 19 (re-hearing where respondent neither appears nor is represented);
- (f) rule 20 (adjournment for Law Society to investigate); and
- (g) rule 21 (miscellaneous).

Interpretation

2. In these Rules—

“the 1974 Act” means the Solicitors Act 1974;

“the 2007 Act” means the Legal Services Act 2007(c);

“the 2007 rules” means the Solicitors Disciplinary (Proceedings) Rules 2007(d);

“appeal” means a Schedule 2 appeal or a section 44E appeal;

“appellant” means—

- (a) a person who makes an appeal to the Tribunal; or
- (b) a person added or substituted as an appellant under rule 13(1);

“the Board” means the Legal Services Board;

“clerk” has the same meaning as in the 2007 rules;

“direction” means a direction given under rule 9;

“Panel” means a panel appointed under article 3 for the hearing of an appeal or any matter connected with an appeal;

“party” means the appellant or the respondent;

“practice direction” means a practice direction made under rule 10;

“the President” means the President of the Tribunal, appointed under rule 3 of the 2007 rules;

“respondent” means—

- (a) the person who made the decision in respect of which an appeal is made; or
- (b) a person added or substituted as a respondent under rule 13(1);

a “Schedule 2 appeal” means an appeal of the type mentioned in rule 1(2)(a);

a “section 44E appeal” means an appeal of the type mentioned in rule 1(2)(b);

(c) 2007 c. 29.

(d) S.I. 2007 No. 3588.

“the Society” means the Law Society and includes any duly constituted committee of the Law Society or any body or person exercising delegated powers of the Law Society;

“solicitor members” and “lay members” have the same meanings as in section 46 of the 1974 Act;

“the Tribunal” means the Solicitors Disciplinary Tribunal and where a Panel has been appointed for the hearing of an appeal or any matter connected with it, includes a Panel.

PART 2

Constitution of appeal panels

Composition of panel

3.—(1) A Panel of three members of the Tribunal shall be appointed by the Tribunal for the hearing of any appeal.

(2) Two of the Panel members shall be solicitor members and one shall be a lay member.

Appointment of chairman

4. The chairman of each Panel shall be appointed by the Tribunal and (unless the President determines otherwise) shall be a solicitor member.

Delegation

5.—(1) The duties to be performed by the clerks shall, in addition to the duties listed in rule 3(11) of the 2007 rules, include—

- (a) appointing panels under rule 3(1);
- (b) appointing a chairman of a Panel under rule 4; and
- (c) giving directions under rules 9, 13 and 19(1).

(2) Paragraph (1) is without prejudice to rule 3(11) of the 2007 rules.

(3) No later than the date on which expires the period of 14 days beginning with the date on which the Tribunal sends notice to a party of a decision made by a clerk in exercise of functions of a judicial nature under paragraph (1), that party may apply in writing to the Tribunal for that decision to be considered afresh by a Panel or a single solicitor member.

(4) A single solicitor member of a Panel may give directions under rules 9, 13, 15 and 19(1) in relation to the appeal in respect of which the Panel has been appointed.

PART 3

Appeal procedure

Preliminary steps

Notice of appeal

6.—(1) An appellant must start proceedings for an appeal by sending or delivering a notice of appeal to the Tribunal.

(2) In the case of a Schedule 2 appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision in question under paragraph 14B(4) of Schedule 2 to the Administration of Justice Act 1985.

(3) In the case of a section 44E appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the

date on which the appellant was notified in writing of the decision in question under section 44D(4) of the 1974 Act.

(4) The notice of appeal must set out—

- (a) the name and address of the appellant;
- (b) the name and address of the appellant's representative (if any);
- (c) an address where documents for the appellant may be sent or delivered;
- (d) the basis on which the appellant has standing to start proceedings before the Tribunal;
- (e) the name and address of the respondent;
- (f) details of the decision or act to which the proceedings relate;
- (g) the result the appellant is seeking;
- (h) the grounds on which the appellant relies;
- (i) whether the appellant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate; and
- (j) any further information or documents required by a practice direction.

(5) The appellant must send or deliver with the notice of appeal a copy of any written record of the decision in respect of which the appeal is made, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

(6) The appellant must send or deliver a copy of the notice of appeal and any accompanying documents to the respondent at the same time as it sends or delivers the notice of appeal to the Tribunal.

Response to notice of appeal

7.—(1) The respondent must send or deliver to the Tribunal a response to the notice of appeal so that it is received no later than the date on which expires the period of 28 days beginning with the date on which the respondent received the notice of appeal.

(2) The response must include—

- (a) the name and address of the respondent;
- (b) the name and address of the respondent's representative (if any);
- (c) an address where documents for the respondent may be sent or delivered;
- (d) any further information or documents required by a practice direction or direction; and
- (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document sent or delivered with the response.

(4) The respondent must send or deliver with the response—

- (a) a copy of any written record of the decision, in respect of which the appeal is made, and any statement of reasons for that decision, that the appellant did not send or deliver with the notice of appeal and the respondent has or can reasonably obtain; and
- (b) any documents relied upon by the respondent in making the decision in respect of which the appeal is made and which the respondent considers are relevant to the appeal.

(5) If the respondent sends or delivers the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 9(2)(a), the response must include a request for an extension of time and the reason why the response was not sent or delivered in time.

(6) The respondent must send or deliver a copy of the response and any accompanying documents to the appellant at the same time as it sends or delivers the response to the Tribunal.

Appellant's reply

8.—(1) The appellant may send or deliver to the Tribunal—

- (a) a reply to the respondent's response; and
- (b) any additional documents relied upon by the appellant in the reply.

(2) Any reply and additional documents must be sent or delivered to the Tribunal so that they are received no later than the date on which expires the period of 14 days beginning with the date on which the respondent sent the response to the appellant.

(3) If the appellant sends or delivers a reply to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 9(2)(a) the reply must include a request for an extension of time and the reason why the reply was not sent or delivered in time.

(4) The appellant may send or deliver with the reply a list of documents on which the appellant relies in support of the appeal, and which the appellant did not send or deliver with the notice of appeal.

(5) The appellant must send or deliver a copy of any reply and any accompanying documents to the respondent at the same time as it sends or delivers the reply to the Tribunal.

(6) If the appellant has sent or delivered a list of documents under paragraph(4), the appellant must within 7 days of receiving a request from the respondent or the Tribunal—

- (a) send or deliver to the respondent or Tribunal a copy of any document specified in the list; or
- (b) make such document available to the respondent or Tribunal to read or copy.

Administration of appeals

Directions and case management

9.—(1) The Tribunal may give a direction in relation to the conduct or disposal of appeal proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(2) In particular, and without restricting the general powers in paragraph (1) and rule 18, the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment (or of any rule made under another enactment) containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 15 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;
- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) require a party to provide a skeleton argument;
- (k) decide the place and time of any hearing;
- (l) make requirements about documentation and inspection;
- (m) stay proceedings;
- (n) suspend the effect of its own decision pending the determination by the High Court of an application for permission to appeal against, and any appeal of, that decision.

(3) A clerk may appoint a time and place for the review of the progress of the matter and shall notify the parties of the date, time and place of any such review.

(4) A clerk may refer to the Tribunal any matter for a decision or directions and the Tribunal may itself or on the application of any party make a decision on such terms as to the Tribunal shall appear just—

- (a) to adjourn any hearing listed for directions or for a substantive hearing;
- (b) to agree to the amendment of any document or the correction of any matter;
- (c) to make any directions which shall appear necessary or appropriate to secure the timely hearing of the appeal.

(5) Any hearing under this rule shall be held in public unless rules 24(2) or (3) apply.

Practice directions

10.—(1) The Tribunal (or a panel of Tribunal members consisting of not less than 5 members of whom no fewer than 2 shall be lay members) may give such notices or make such directions concerning the practices or procedures of the Tribunal as are consistent with these Rules and as shall seem appropriate.

(2) The Tribunal shall promulgate notices or directions given or made under paragraph (1) under the authority of the President.

Failure to comply with rules, practice directions or tribunal directions

11.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the appeal or any step taken in the appeal.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 12;
- (d) otherwise barring or restricting a party's participation in the appeal.

(3) The Tribunal may not bar or restrict a party's participation in the appeal under paragraph (2)(d) without first giving the party an opportunity to make representations in relation to the proposed striking out.

Striking out a party's case

12.—(1) The Tribunal must strike out the whole or a part of an appeal if the Tribunal does not have jurisdiction in relation to the appeal or that part of it.

(2) The Tribunal may strike out the whole or a part of an appeal if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the appeal or part of it;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the appeal fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(3) The Tribunal may not strike out the whole or a part of the appeal under paragraph (1) or (2)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(4) If the appeal, or part of it, has been struck out under paragraph (1) or (2)(a), the appellant may apply for the appeal, or part of it, to be reinstated.

(5) An application under paragraph (4) must be made in writing and received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent notification of the striking out to the appellant.

(6) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the whole or a part of the appeal is to be read as a reference to the striking out of the whole or a part of the response to the appeal; and
- (b) a reference to an application for the reinstatement of an appeal which has been struck out is to be read as a reference to an application for the reinstatement of a response to an appeal which has been struck out.

Addition, substitution and removal of parties

13.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to an appeal by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

Prevention of disclosure or publication of documents and information

14.—(1) The Tribunal may make a decision prohibiting the disclosure or publication of—

- (a) specified documents or information relating to any appeal proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be sent or delivered to the second party; and
- (b) send or deliver to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Tribunal's consent.

(6) The Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

(8) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send notice that a party has made an application for a direction under paragraph (6) to each other party.

(9) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of a decision made under paragraph (1) or a direction given under paragraph (2) or (6).

Lead cases

15.—(1) This rule applies if—

- (a) two or more appeals have been started before the Tribunal;
- (b) in each such appeal the Tribunal has not made a decision finally disposing of all issues in the proceedings; and
- (c) the appeals give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more appeals falling under paragraph (1) as a lead case or lead cases; and
- (b) staying the other appeals falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send or deliver a copy of that decision to each party in each of the related appeals; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) No later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent or delivered a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related appeal.

(5) The Tribunal must give directions in respect of appeals which are stayed under paragraph (2)(b), providing for the disposal of or further directions in those appeals.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another appeal or other appeals are to be specified as a lead case or lead cases; and
- (b) whether any direction affecting the related appeals should be set aside or amended.

Withdrawal

16.—(1) Subject to paragraph (2), an appellant may give notice of the withdrawal of its appeal, or any part of it, and the respondent may do likewise in respect of its case against the appeal—

- (a) at any time before a hearing to consider the disposal of the appeal (or, if the Tribunal disposes of the appeal without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal.

(3) A party which has withdrawn its appeal or case against the appeal may apply to the Tribunal for the appeal or case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal no later than the date on which expires the period of 28 days beginning with—

- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the appeal or case was withdrawn orally under paragraph (1)(b).

(5) The Tribunal must notify each party in writing of a withdrawal under this rule.

Consent orders

17.—(1) The Tribunal may, at the request of the parties and only if it considers it appropriate, make a consent order disposing of the appeal proceedings and making such other appropriate provision as the parties have agreed.

(2) Despite any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

General powers of Tribunal

18.—(1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

(2) The Tribunal may dispense with any requirements of these Rules in respect of notices, statements or other documents, witnesses, service or time in any case where it appears to the Tribunal to be just so to do.

Disclosure, evidence and submissions

Disclosure, evidence and submissions

19.—(1) Without restriction on the general powers in rule 9 and 18, the Tribunal may give directions in relation to an appeal as to—

- (a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;
- (e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
- (h) the time at which any evidence or submissions are to be sent or delivered.

(2) The Tribunal may—

- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker; or
- (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair, disproportionate or unnecessary in the interests of justice to admit the evidence.

(3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Written evidence

20.—(1) The Tribunal may in its discretion, in respect of a whole case or of any particular fact or facts, proceed and act upon evidence given by Statement.

(2) Every Statement upon which any party proposes to rely shall be sent or delivered to the Clerk and to all other parties no later than 21 days before the date fixed for the hearing of the appeal together with a notice in the form of Form 1 in the Schedule.

(3) Any party on whom a notice has been served under paragraph (2) and who requires the attendance, at the hearing, of the witness in question shall, no later than 9 days before the date of the hearing require, in writing, the other party to produce the witness at the hearing.

(4) If no party requires the attendance of a witness in accordance with the provisions of this rule, the Tribunal may accept the Statement in question in evidence.

(5) If any party intends to call as a witness any person who has not produced a Statement, he must, no later than 10 days before the date fixed for the hearing, notify the Clerk and any other party to the proceedings of his intention and forthwith send or deliver a copy of a written proof of evidence to the other party and lodge five copies of the proof with the Clerk.

(6) In this rule, “Statement” means a written statement (including a witness statement) containing a statement that the party putting forward or making the Statement believes the facts stated in the Statement are true.

Witness summonses

21. A party to an appeal may, pursuant to Section 46(11) of the Act, require the attendance at the hearing of any person or the production of any document relevant to the proceedings and any summons for that purpose shall be in the form of Form 2 in the Schedule.

Hearings, decisions and re-hearings

Decision with or without a hearing

22.—(1) The Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.

(2) Despite anything to the contrary in these Rules, if the Tribunal holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Tribunal may dispose of the proceedings without holding any further hearing.

Listing of appeal hearing

23.—(1) Unless the Tribunal has made directions in respect of the hearing of an appeal, a clerk shall appoint a date for the hearing by the Tribunal and shall give notice of the date to the parties.

(2) The hearing shall not, unless all the parties have agreed or the Tribunal has so ordered, take place sooner than the date on which expires the period of 28 days beginning with the date of service of the notice appointing the date of the hearing.

Public or private hearings

24.—(1) Subject to paragraphs (2) and (3) every appeal hearing shall take place in public.

(2) Any party and any person who claims to be affected by an appeal may seek a decision from the Tribunal that the hearing or part of it be conducted in private on the grounds of—

- (a) exceptional hardship; or
- (b) exceptional prejudice,

to a party, a witness or any person affected by the appeal.

(3) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private and make such decision as shall appear to it to be just and proper.

(4) The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private if—

- (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or
- (b) in the Tribunal's view a hearing in public would prejudice the interests of justice.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to the requirement at rule 14(9); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Decisions

25.—(1) The Tribunal may announce a decision orally at a hearing of or relating to an appeal or may reserve its decision for announcement at a later date. In either case the announcement shall be made in public.

(2) Subject to rule 14(9), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings—

- (a) an Order stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

(4) An Order under paragraph (2)(a) shall be signed by a member of the Tribunal upon the announcement of the decision and shall, subject to paragraph (5) be filed forthwith with the Society.

(5) The Tribunal may suspend the filing of the Order if it appears to the Tribunal that there is good reason to do so, in which event the decision shall not take effect until the Order is filed with the Society.

(6) Subject to rule 14(9), the Tribunal may publicise a decision in such manner as it thinks fit.

Re-hearing where a party neither appears nor is represented

26.—(1) At any time before the filing of the Tribunal's Order with the Society under rule 25(4) or before the date on which expires the period of 14 days beginning with the date of the filing of the order, a party may apply to the Tribunal for a re-hearing of an appeal if—

- (a) he neither attended in person nor was represented at the hearing of the appeal in question; and
- (b) the Tribunal determined the appeal in his absence.

(2) An application for a re-hearing under this rule shall be made in the form of Form 3 in the Schedule and shall be supported by a statement setting out the facts upon which the applicant wishes to rely.

(3) If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing shall be held before a Panel comprised of different members from those who heard the original appeal.

PART 4

Miscellaneous

Sending and delivery of documents

27.—(1) Any document to be sent or delivered to the Tribunal or to a party under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid post or by document exchange, or delivered by hand, to the address specified for the proceedings);
- (b) sent by fax (in the case of documents to be sent or delivered to the Tribunal, to the number specified for the proceedings); or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to send or deliver documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender send or deliver a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

(6) If a document submitted to the Tribunal is not written in English, it must be accompanied by an English translation.

Calculating time

28.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(e).

Representatives

29.—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal written notice of the representative's name and address.

(3) If the Tribunal receives notice that a party has appointed a representative under paragraph (2), it must send a copy of that notice to each other party.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(5) A person who receives due notice of the appointment of a representative—

- (a) must send or deliver to the representative any document which is required to be sent or delivered to the represented party, and need not send or deliver that document to the represented party; and

(e) 1971 c. 80.

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(6) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(7) Paragraphs (2) to (5) do not apply to a person who accompanies a party under paragraph (6).

(8) In this rule “legal representative” means a person who, for the purposes of the 2007 Act, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act, an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.

Costs

30.—(1) The Tribunal may, at any stage of an appeal, make such order as to costs as the Tribunal shall think fit, including an order—

(a) disallowing costs incurred unnecessarily; or

(b) that costs be paid by any party judged to be responsible for wasted or unnecessary costs, whether arising through failure to comply with time limits or otherwise.

(2) The Tribunal may order that any party bear the whole or a part or a proportion of the costs.

(3) The amount of costs to be paid may either be fixed by the Tribunal or be subject to detailed assessment by a Costs Judge.

(4) The Tribunal may also make an order as to costs under this rule where any appeal is withdrawn or amended.

Amendment of 2007 rules

31.—(1) The 2007 rules are amended as follows.

(2) In Form 6 in the Schedule, for “21 days” substitute “9 days”.

Signed by authority of the Solicitors’ Disciplinary Tribunal

Jeremy Barnecutt
President

[*][th][st] [Month] 2011

SCHEDULE

FORMS

Form 1

Rule 20(2)

FORM of NOTICE to accompany Statement of Evidence

Number.....

IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals) Rules 2011

AND IN THE MATTER OF

.....

TAKE NOTICE that the [appellant][respondent] proposes to rely upon the statement(s) listed below, copies of which are served herewith.

If you wish any person who has made one of these statements to be required to attend the hearing as a witness you must, not less than 9 days before the date set down for the hearing of the appeal, notify me and the Clerk to the Tribunal to that effect. In the event of your failure to do so the Tribunal may accept the statement in question in evidence.

LIST

- | | Date of Statement | Name of Person who made the Statement |
|----|-------------------|---------------------------------------|
| 1. | | |
| 2. | | |
| 3. | | |

Date:

Signed:

Address:

FORM of APPLICATION for a Rehearing

Number:.....

IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals) Rules 2011

AND IN THE MATTER OF

.....

Number of Tribunal case in respect of which a rehearing is requested

I APPLY under Rule 26(1) of the Solicitors Disciplinary Tribunal (Appeals) Rules 2011 that the above-mentioned case be reheard by the Tribunal. The facts upon which I rely in support of this application are set out below:

(set out here full details of the facts on which the applicant for a rehearing relies and include the reasons why the person applying for the rehearing did not appear or was not represented before the Tribunal at the earlier hearing and set out all matters which he wishes to place before the Tribunal in mitigation or otherwise).

Dated:
Signature:
Address:

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules regulate procedure for the making, hearing and determination of appeals made to the Solicitors' Disciplinary Tribunal in relation to decisions made by the Law Society under section 44D of the Solicitors Act 1974 and paragraph 14C of Schedule 2 to the Administration of Justice Act 1985. They also make a minor amendment to one of the forms in the Schedule to the Solicitors Disciplinary Tribunal Rules 2007.

In particular, the rules make provision about the following—

- (1) the constitution of appeals panels,
- (2) procedure and rules of evidence,
- (3) other miscellaneous matters.

APPENDIX B

Draft Solicitors Disciplinary Tribunal (Appeals) (Amendment) Rules 2011

2011 No.

LEGAL PROFESSION (ENGLAND AND WALES)

**The Solicitors Disciplinary Tribunal (Appeals) (Amendment) Rules
2011**

Made - - - - - *[Date] 2011*

Coming into force in accordance with rule 1

The Solicitors Disciplinary Tribunal in exercise of the powers conferred upon it by section 46 of the Solicitors Act 1974^(a) as applied by article 4(3) of the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (No. 2) Order 2011^(b) makes the following Rules:

PART 4

Introductory

Citation, commencement and interpretation

1. These Rules may be cited as the Solicitors Disciplinary Tribunal (Appeals) (Amendment) Rules 2011 and shall come into force on [[Date] 2011][the date on which an order comes into force designating the Law Society as a licensing authority under Part 1 of Schedule 10 to the Legal Services Act 2007 in relation to one or more reserved activities].

Amendments to the Principal Rules

2. The Solicitors Disciplinary Tribunal (Appeals and amendment) Rules 2011^(c) are amended as follows.

Amendment to rule 1

3. In rule 1 (citation, commencement and application)—

(a) in paragraph (2)(a), omit “and”; and

(b) after paragraph (2)(b), insert—

“; and

(c) appeals to the Tribunal in respect of decisions made by the Society which are appealable under Part 5 of the 2007 Act or the Society’s licensing rules and which, by virtue of article 34(1) of the Legal Services Act 2007 (Appeals from Licensing Authority Decisions) (No. 2) Order 2011 are appeals which may be heard and determined by the Tribunal.”.

(a) 1974 c. 47.

(b) S.I. 2011 No. [].

(c) S.I. 2011 No. [].

Amendment to rule 2

4. In rule 2 (interpretation)—

- (a) in the definition of “appeal”, for “or a section 44E appeal” substitute “, a section 44E appeal or a licensing appeal”;
- (b) insert the following after the definition of “direction”—
“a “licensing appeal” means an appeal of the type mentioned in rule 1(2)(c);”;
- (c) insert the following after the definition of “the Society”—
““the Society’s licensing rules” means licensing rules made by the Society under section 83 of the 2007 Act (licensing rules);”
- (d) insert the following after the definition of “solicitor members” and “lay members”—
“a “Stay” means a prohibition on the respondent implementing the decision in respect of which an appeal is made;”.

Amendment to rule 6

5. In rule 6 (notice of appeal)—

- (a) after paragraph (4)(h), insert—
“(ha) any application for an order for a Stay, if the appellant is allowed to make such an application under the Society’s licensing rules;”;
- (b) after paragraph (4), insert—
“(4A) In the case of a licensing appeal made under the Society’s licensing rules, if no time limit for the making of an appeal is prescribed under those rules, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision which is the subject of the appeal.”.

Amendment to rule 10

6. In rule 9 (directions and case management), after paragraph (b), insert—

- “(ba) hear any application for an Order for a Stay;”

Signed by authority of the Solicitors’ Disciplinary Tribunal

Jeremy Barnecutt
President

[*][th][st] [Month] 2011

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules amend the Solicitors Disciplinary Tribunal (Appeals and amendment) Rules 2011 (“the principal rules”) so as to extend their scope to include appeals made to the Solicitors Disciplinary Tribunal in respect of decisions of the Law Society under Part 5 of the Legal Services Act 2007 (alternative business structures) and licensing rules made by the Society under Part 5 of that Act. The principal rules already cover appeals made to the Tribunal in relation to decisions made by the Society under section 44D of the Solicitors Act 1974 and paragraph 14C of Schedule 2 to the Administration of Justice Act 1985.

The principal rules make provision about the following, in particular—

- (1) the constitution of appeals panels,
- (2) procedure and rules of evidence,
- (3) other miscellaneous matters.

APPENDIX C
List of Consultees

The Law Society

Solicitors Regulation Authority

Legal Services Board

Legal Ombudsman

Court Services: Administrative Court of the High Court

Ministry of Justice

Council for Licensed Conveyancers

General Regulatory Chamber, First-tier Tribunal

The Bar Standards Board

ILEX

ILEX Professional Standards

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

IDENTITY OF THOSE RESPONDING TO CONSULTATION

Identity	Date of Response	Consent To Publication Received	Response Attached
Richard Bamford SDT Solicitor Member	25.06.11	Yes	Yes
Richard Bullock Head of Legal Practice Employment Freeth Cartwright LLP	08.07.11	Yes	Yes
Ashok Ghosh SDT Solicitor Member	11.07.11	Yes	Yes
Andrew Hopper QC Solicitor Advocate	24.06.11	Yes	Yes
Stephen Howe SDT Solicitor Member	21.06.11	Yes	Yes
Legal Ombudsman	Not dated	Yes	Yes
Jon Pitt Vice-President Kent Law Society	08.07.11	Yes	Yes
Matthew Sibley SDT Solicitor Member	04.07.11	Yes	Yes
Richard Silver Policy Officer SRA	12.07.11	Not yet	Yes
Martin Smith Chairman Practice Sub-Committee Solicitors Sole Practitioners Group	18.07.11	Yes	Yes
Roger Woolfe SDT Solicitor Member	16.06.11	Yes	Yes
Total Responses	11		

Liz Aldred

From: Richard Bamford [REDACTED]
Sent: 25 June 2011 12:58
To: responses
Subject: SDT (Appeals and amendments) Rules 2011

Dear Sue,

I hope that these comments may help:

1. I have the impression that, at present, the Applicant in our proceedings serves at least 4 copies of any application and the accompanying Rule 5 statement on the SDT. The new Rules 6,7,8 & 29(3) do not provide for more than the original to be so served. Is the SDT to be responsible for all the copying and its cost? If so, is there any way a fee can be required to be paid on initial lodgement whereby those costs could be recovered?
2. In 29(3) surely the appointing party should be responsible for notifying all the other parties.
3. Rule 27(6) should the translation not be accompanied by an appropriate certificate of accuracy. I am not certain how this is done; but have seen it on translations in the past.
4. Surely there should be no obligation on anyone to send any document already served on a party to a representative if that document was served before the appointment was made. This is not quite clear, in my view.
5. Form 2: In the last line, should not the last word be "tribunal" rather than "court"?
6. In all Forms: In their headings "IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals) Rules 2011" should it not read "... (Appeals and amendment) Rules...."

Yours sincerely

Richard Bamford



**Freeth
Cartwright
LLP**

Solicitors Disciplinary Tribunal

Freeth Cartwright LLP
Solicitors

Cumberland Court
80 Mount Street
Nottingham NG1 6HH
United Kingdom

DX 10039 Nottingham 1

8 July 2011

Our Ref: RB/0604/23797/1/klb

By Email only: responses@solicitorsdt.com

Dear Sirs

**CONSULTATION ON DRAFT RULES - SOLICITORS DISCIPLINARY
TRIBUNAL (APPEALS AND AMENDMENT) RULES 2011**

I have had the opportunity of reviewing the consultation paper and the draft rules in this matter and in relation to the questions for consultees at paragraph 27 of the paper I would respond on behalf of this firm as follows:-

1. It is important for the proper Governance of the legal profession that consistent rules for each individual practitioner, entity or body should be made as soon as possible including those attached at appendix A and appendix B.
2. I believe that the rules as drafted in isolation are fit for purpose but I have not had the opportunity of considering similar rules related to other branches of the legal profession, individuals or entities. Relying on the assumption stated within the consultation paper that by and large the rules follow those applicable to the Council for Licensed Conveyances I believe that the rules are fit for purpose.
3. I am not entirely convinced that the timescales laid down in the draft are workable in complex cases and to avoid the need for applications for extensions of time it may have been wiser to give rather longer time spans.
4. In relation to the provision for witness attendance it may have been preferable to include rules on how such applications to set aside a witness summon should be made and the level of payment or

Direct dial: +44 (0)845 274 6948
Direct fax: +44 (0)845 050 3253
Switchboard: +44 (0)115 9369369
Email: richard.bullock@freethcartwright.co.uk
www.freethcartwright.co.uk
Doc Ref: 10633757.doc



Lexcel
Practitioner Management Standard
Law Society Accredited

Freeth Cartwright LLP is a limited liability partnership, registered in England and Wales, partnership number OC304688.

Registered Office - Cumberland Court,
80 Mount Street, Nottingham NG1 6HH.

Regulated by the Solicitors Regulation Authority.
Authorised and regulated by the Financial
Services Authority.

A full list of the members of
Freeth Cartwright LLP is available for inspection
at the registered office.

compensation for lost time i.e. a maximum figure should be established so that there could be no argument at a later stage that a witness in receipt of a summons could refuse to attend because the amount tendered for loss of income whilst attending a Tribunal was insufficient.

5. Matters such as the cost of travelling to the Tribunal are readily calculable by reference to bus or train fares but loss of income is not an easy matter to ascertain.

I am glad of the opportunity to respond to the consultation on behalf of my firm.

Yours faithfully

This document is unsigned as it is electronically forwarded. If you require a signed copy then please contact the sender.

Freeth Cartwright LLP
Please respond by e-mail where possible

Susan Humble

From: Ashok Ghosh [redacted]
Sent: 11 July 2011 08:16
To: Jem Barnecutt
Cc: Susan Humble
Subject: RE: PROCEDURAL RULES RELATING TO APPEALS TO THE SDT**CORRECTED VERSION**

Importance: High

I HAVE CORRECTED A TYPOGRAPHICAL SLIP IN MY PREVIOUS E-MAIL. PLEASE SUBSTITUTE THIS VERSION FOR THE ONE SENT LAST NIGHT.

KIND REGARDS
ASHOK

From: Ashok Ghosh
Sent: Mon 11/07/2011 00:34
To: Jem Barnecutt
Cc: Susan Humble
Subject: PROCEDURAL RULES RELATING TO APPEALS TO THE SDT

Our ref:

Your ref:

Dear Jem

I have set out below my response to the consultation on the draft procedural rules in relation to appeals to the Tribunal. Each recommendation is numbered sequentially.

Paragraphs 4 and 5(b) - Appointment of chairman

1. I am unable to conceive of any circumstance in which it would be appropriate for a lay member to chair a Panel and the discretion given to the President in paragraph 4 to permit a lay member to chair a Panel should, therefore, in my view be deleted.
2. The appointment of chairmen of Panels should not be delegated to clerks. There does not appear to me to be any reason why each Panel should not elect its chairman.

Paragraph 5 (3)- Delegation and appeals from clerk's decisions

The reference in paragraph 5(3) to a clerk exercising "functions of a judicial nature" begs the question as to which function is of a judicial as opposed to an administrative nature.

Furthermore, paragraph 5(3) merely says that a party may apply to the Tribunal for the clerk's decision to be reviewed by a Panel or a single solicitor member. Nothing is said as to what is happen to such an application.

3. Paragraph 5(3) should be amended to give any party the right to have any decision of a clerk - irrespective of whether or not it is considered to be "judicial" in nature - reviewed initially by a single solicitor member on paper and subsequently, if so requested by that party, by a full Panel. A costs warning in respect of an unsuccessful application to a Panel could be inserted here. This would then be analogous to the civil procedure rules ("cpr") where case management directions of District Judges are subject to review on appeal by a circuit judge - initially on paper and subsequently, is so requested by a party, at a hearing.

Paragraph 6 - Notice of Appeal

4. There should be a requirement for permission to appeal to be obtained from a single solicitor member with a right to have that decision reviewed by a full Panel. This would be consistent with the requirement under paragraph 6 of the 2007 Rules for certification of a case to answer; it would also be analogous with the requirement in cpr 52 for permission to appeal. Applications with little or no chance of success could then be weeded out.

Paragraph 7(1) - Response to notice of appeal

5. Paragraph 7(1) says that a respondent “must” send or deliver a response but nothing is said as to the consequence of a respondent not complying with this requirement. The word “must” should be replaced with “may”. There is, in my view, no reason to compel a respondent to file a response if it chooses not to do so. At the same time it should be stated that if a respondent does not file a response in accordance with the Rules it will be barred from making submissions at the hearing without the consent of the appellant.

Paragraph 14(1) - Prevention of disclosure of documents and information

6. The safeguard of proportionality which qualifies paragraph 14 (2) does not apply to paragraph 14(1). It should be made to apply. Care should be taken to ensure that there is no infringement of rights under Articles 6 - open justice - and 10 - press freedom- of the European Convention on Human Rights.

Paragraph 24 (2) - Public or private hearings

7. As in the case of paragraph 14(1), there should be greater safeguard against any risk of infringement of Articles 6 and 10 rights. The paragraph should be redrafted so that it is similar to cpr part 39 and its practice direction, with the relevant words of Article 6(1) expressly set out - that the press or public may only be excluded “in the interest of morals, public order or national security..., where the interests of minors or the protection of the private life of the parties so require or to the extent strictly necessary in the opinion of the tribunal in special circumstances where publicity would prejudice the interests of justice.”

I would be grateful if this submission were to be placed in the members section of the SDT website.

Kind regards

Yours sincerely

Ashok Ghosh

For further information about McClure Naismith click here:- <http://www.mcclurenaismith.com>

To view details of McClure Naismith's fixed price employment law service resource please visit <http://www.mcclurenaismith.com/resource>

Please note that the contents of this email and any attachments are privileged and/or confidential. If delivery to the intended recipient is not possible for any reason, please email us to that effect and delete this email from your system.

McCLURE NAISMITH

Solicitors

GLASGOW EDINBURGH LONDON

Equitable House
47 King William Street
London EC4R 9AF
DX: 764 CDE London
Tel: 020 7929 3770
Fax: 020 7929 3466

McClure Naismith is the trading name of McClure Naismith LLP. McClure Naismith LLP is a limited liability partnership incorporated in Scotland with registered number SO301685 and having its registered office at 292 St Vincent Street, Glasgow G2 5TQ. McClure Naismith LLP is regulated by both the Law Society of Scotland and the Solicitors Regulation Authority and is authorised and regulated by the Financial Services Authority. We use the word partner to refer to a member of McClure Naismith LLP. A list of members is available at any of our offices

✉

This email has been scanned by Scotland Online for viruses.

Powered by MessageLabs Email Security System.

For more information please visit <http://www.messagelabs.com/email>

Liz Aldred

From: Liz Aldred
Sent: 28 June 2011 17:02
To: responses
Subject: FW: Appeals consultation

regards,
Liz Aldred
Operations Manager

From: Andrew Hopper QC [REDACTED]
Sent: 24 June 2011 15:38
To: Liz Aldred
Subject: Appeals consultation

There is not a lot of scope for disagreement bearing in mind the philosophy of remaining consistent with the First-tier Tribunal.

Save for one point I have only minor drafting stuff:

Appeals and amendment Rules:

Rule 2, interpretation, definition of "Panel" – reference to "article 3" when "rule 3" is intended.

Rule 8(5) "it" in the second line reads strangely as a neutral pronoun for the appellant; repeating "the appellant" may read more naturally than "he she or it" or other variants.

Rule 11(3) I think the sub-rule should end with "order" rather than "strike out" as striking out is only one of the options considered in this rule.

Rule 27(1)(a) the closing bracket sign at the end of the paragraph is surplus.

In the forms, all the references to the rules, in the heading and in the text of form 3 are inconsistent in referring only to the "Appeals" rules rather than "Appeals and amendment".

In the explanatory note there is a surplus apostrophe in the reference to the Tribunal and the 2007 Rules are incorrectly described.

I have no comments on the "(Appeals) (Amendment)" rules in terms of drafting points but I do have one point of substance – no-one knows how the ABS market will develop or what kind of businesses we will encounter, or what regulatory complications there may be, save that we can be sure that there will be some that have not been predicted. In my view therefore it would be prudent for the Tribunal not to tie itself absolutely to the current, two solicitors and one lay person quorum, but to give itself a discretion to expand or reconstitute panels to avoid the need for expert evidence in place of relevant panel experience. There seems to be no obviously good reason not to give yourselves that extra discretion. An ABS-specific version of rule 3 of the principal rules could include a discretion by inserting: "Unless the President otherwise directs" and adjusting the syntax.

Regards, AH

CONFIDENTIALITY

This message is intended only for the named addressee. It is confidential and may also be subject to legal professional privilege. If you have received this message in error please notify me by e-mail or telephone (0144 323 7788) and then delete the message and any copies. Unauthorised use, copying or distribution of the message or any information in it is prohibited.
Andrew Hopper QC is regulated by the Solicitors Regulation Authority; registered number 71587.

Liz Aldred

From: [REDACTED]
Sent: 21 June 2011 21:59
To: Liz Aldred
Subject: Consultation- Tribunal Appeals Rules

Dear Liz,

I've made a few comments below from a lay perspective but I'm sure there are legal precedents and procedures that make the suggested procedures correct.

My concerns are around time scales for actions.

Part 2 5 (3) [page11] '14 days beginning with the date on which the Tribunal sends notice' I presume this is posting date. 'that party may apply in writing' does this mean must have been posted or received by the Tribunal within the 14 days?

Part 3 8 (2) and (6) [page13]. (2) has a time scale starting when the respondent sends a response and (6) has a time scale that starts when the appellant receives correspondence.

There appears no consistency in the method of measuring these time scales resulting in opportunities for there to be argument as to whether or not actions were taken within the stated time window.

Regards,

Steve Howe

Consultation Response

Procedural Rules in Relation to Appeals to the Solicitors Disciplinary Tribunal

Introduction

The Legal Ombudsman's vision is that everyone can access legal services in which they can have confidence.

We are an independent Ombudsman scheme that resolves complaints about lawyers in a fair and effective way. Our role is an important part of the justice system, and we hope that what we learn from complaints will help enable people to access justice with more confidence.

We welcome the opportunity to respond to the Solicitors Disciplinary Tribunal's consultation on the making of procedural rules in relation to the appellate function of the tribunal.

While the proposed rules will not have a direct impact on our service delivery, we are keen to ensure that all changes made as a result of the Legal Services Act 2007 and amendments to the Solicitors Act 1974 achieve their aims.

We respond to each consultation question in turn.

Do you agree that the appeals rules in Appendix A should be made as soon as possible, with the amended rules (Appendix B) to follow afterwards?

The Legal Ombudsman agrees that it is desirable to implement the rules in Appendix A as soon as possible. In order to safeguard against any delay in the Tribunal being given further jurisdiction in relation to Alternative Business Structures under Part 5 of the Legal Services Act 2007, it is reasonable that appeal rules will be applied to that jurisdiction later by a separate amendment order (Appendix B).

Do you believe that the rules as drafted and appended to this consultation are fit for purpose?

We conclude that the rules are fit for purpose save for our comments below.

Do you have any detailed comments on the drafting of the proposed rules?

We refer the Tribunal to Part 3, S19 (2) of Appendix A.

It may be desirable to ensure that the Tribunal may only admit evidence that is otherwise admissible in civil proceedings of the High Court.

Under Part 6 of the Legal Services Act 2007, a similar rule is applied to the investigations of the Legal Ombudsman.

Section S147 (6) of the Legal Services Act 2007 states:

No person may be required under this section—

(a) to provide any information which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court, or

(b) to produce any document which that person could not be compelled to produce in such proceedings

The reason for our comment is that that under Section 44E of the Solicitors Act 1974 onward appeals from the Tribunal are to be heard in the High Court.

If you would like to discuss any aspect of our response with you in further detail, please contact Sian Lewis, Policy and Research Officer, Legal Ombudsman at sian.lewis@legalombudsman.org.uk.

The logo for the Legal Ombudsman, featuring the word "LEGAL" in a serif font above the word "OMBUDSMAN" in a larger, bold, sans-serif font. A stylized signature or flourish is written over the word "LEGAL".



The Invicta Press
Queens Road
Ashford
Kent
TN24 8HH

www.kentlawsociety.com

Tel: 01233 623131
Fax: 01233 612345

The Clerk
Solicitors Disciplinary Tribunal
5th Floor
Gate House
Farringdon Street
London
EC4M 7LG

8th July 2011

From The Vice-President

Dear Sir

Consultation on the making of procedural rules in relation to appeals to the Tribunal

Please accept this letter as a response by the Kent Law Society through its Consultations Sub-Committee to the above consultation paper.

Founded in 1818 Kent Law Society is one of, if not the oldest law society, in England and Wales. We have over 600 members who are practicing solicitors living or working within the county. Our members work in both the public and private sectors working in all areas and disciplines of law, undertaking both privately and publicly funded legal services.

Subject to the drafting points listed below, the Society agrees that the appeals rules in Appendix A should be made as soon as possible, with amended rules (Appendix B) to follow afterwards.

Subject to the same drafting points, the Society believes that the rules as drafted and appended to the consultation paper are fit for purpose, with one specific reservation. In appendix B, the revised set of rules relating to ABS's puts in place a power to stay (to prohibit the respondent implementing the decision) pending an appeal. We note that there is no equivalent right contained in the rules contained in appendix A. While the licensing jurisdiction is different, are there not circumstances where the appellant will seek a stay of the impact of a previous order of the Tribunal which is the subject of the appeal?

The drafting points we would raise are as follows:

7(3) It would be useful if there was a requirement for the statement to summarise grounds for opposition to the appellant's case even if those grounds are contained or set out in detail in another document sent or delivered with the response.

9(2)(d) There is no definition of 'another person' in these rules, but by construction it is someone other than a party. Is it intended that the Tribunal has the power to compel any person whatsoever to provide documents, information or submissions? Elsewhere in these rules (paragraph 21 for example) the words 'any person' and 'any document' are modified by the phrase 'relevant to the proceedings'.

12 Is it intended that a striking out of the whole or part of an appeal under paragraph (1) [the jurisdictional ground] is subject to both paragraph 12(3) and 12(4), which in other respects have the appearance of being 'either – or' provisions?

14(5) We consider that there may need to be further clarity in the drafting of this paragraph to ensure it is understood that the order to a representative not to disclose a document to 'any other person' can include, where directed, the representative's own representee. We would express the hope that such a direction would be used extremely sparingly, as it tends to undermine the confidence between advocate and client.

27(1) We note the use of the phrase 'pre-paid post' which is not further defined in clause 1 of the Rules and which would, it seems, include the use of 2nd class post. Such use would at certain times and parts of the country considerably shorten the time available to respond given – for example to a replying appellant in clause 8.

Yours faithfully,

Jon Pitt
Vice-President

A handwritten signature in blue ink, appearing to read 'Jon Pitt', is written over the typed name and title.

Liz Aldred

From: Matthew Sibley [REDACTED]
Sent: 04 July 2011 11:08
To: responses
Subject: Consultation on the making of procedural rules in relation to Appeals to the Solicitors Disciplinary Tribunal

Susan

Please see below my responses in capitals and bold to the three questions set out in paragraph 27 of the consultation document (I have repeated the questions below for ease of reference):

(1) Do you agree that the appeals rules in Appendix A should be made as soon as possible, with the amended rules (Appendix B) to follow afterwards?

YES

(2) Do you believe that the rules as drafted and appended to this consultation paper are fit for purpose?

YES SUBJECT TO (3) BELOW

(3) Do you have any detailed comments on the drafting of the proposed rules?

YES BUT MAINLY ONLY DRAFTING POINTS:

- At rule 2 (Interpretation) within "the 2007 rules" the opening bracket should be before the word "Disciplinary" not before "Proceedings";
- At rule 2 (Interpretation) within the definition of "Panel" it should not refer to "article 3" but rather "rule 3";
- At rule 20(2), (5) references to "Clerk" should be to "clerk" for consistency elsewhere in these Rules;
- At rule 21 in the first line it should refer to "the 1974 Act" not just to "the Act";
- At rule 25(2)(a) and 25(4) "Order" should be "order" as it's not a defined term and elsewhere is used without a capital letter. Following on from those amendments and for clarity rule 25(5) should read: "The Tribunal may suspend the filing of an order with the Society if it appears to the Tribunal that there is good reason to do so, in which event the decision the subject of that order shall not take effect until that order is filed with the Society." A further consequential amendment is to rule 26(1) in the first line with the removal of "the Tribunal's Order" and its replacement with "an order";
- Each of the scheduled forms incorrectly cites the name of these Rules as "the Solicitors Disciplinary Tribunal (Appeals) Rules 2011" after "IN THE MATTER OF". The Rules are "the Solicitors Disciplinary Tribunal (Appeals **and amendment**) Rules 2011". The same amendment needs to be made within the application ("I APPLY...") text of Form 3.

I hope the above are of some use.

Regards

Matthew Sibley

Susan Humble

From: Richard Silver [REDACTED]
Sent: 12 July 2011 10:47
To: Enquiries
Subject: Consultation response from SRA

Follow Up Flag: Follow up
Flag Status: Completed

Dear Sir / Madam,

This email is just to confirm that the Solicitors Regulation Authority has reviewed your recent consultation document 'THE MAKING OF PROCEDURAL RULES IN RELATION TO APPEALS TO THE TRIBUNAL', and has no specific comments to provide. A letter confirming this has also been posted across to you today.

Please accept my apologies for not sending this consultation response to you by the consultation close date of 8th July.

Best regards
Richard

Richard Silver
Policy Officer
Tel: 01926 439749
Email: [REDACTED]

Solicitors Regulation Authority

This email, and any attachment, is intended for the attention of the addressee only. Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return email and send a copy to postmaster@sra.org.uk. Thank you for your co-operation.

Please note the author of this email is not authorised to conclude any contract on behalf of the Solicitors Regulation Authority by email.

Liz Aldred

From: feedback
Sent: 11 July 2011 10:58
To: responses
Subject: FW: Contact us email

regards,
Liz Aldred
Operations Manager

From: [REDACTED]
Sent: 08 July 2011 19:05
To: feedback
Subject: Contact us email

Email: [REDACTED]

Name: Martin Smith

JobTitle: Chairman Practice Sub-Committee

Organisation: Solicitors Sole Practitioners Group

Phone number: 01525 374183

Message: On behalf of the SPG I am responding to your consultation concerning making of procedural rules in relation to appeals to the tribunal closing today. The only comment the Group has is that, regarding the proposed rule 15 there should be provision for the elected "lead" case to consult with other cases and for the other cases to object being bound by the result in the "lead" case if their advisors consider that the points the "lead" case intends to argue are fewer or different from those applying to the other cases. The Group has no other comments to make. Please acknowledge receipt Martin Smith, Solicitor Leighton Buzzard, Beds.

Liz Aldred

From: Roger Woolfe [REDACTED]
Sent: 16 June 2011 15:59
To: Liz Aldred
Cc: [REDACTED]
Subject: Appeals Rules

Follow Up Flag: Follow up
Flag Status: Completed

I have reviewed the Rules. I met Jem the other day and he suggested that I should write to you direct with a few comments upon the drafting of the Rules.

1. I find Rule 1(3) slightly confusing, if only because reference to the 2007 Rules comes before the definition of those Rules.

I would have thought that it might be better to state specifically that the 2007 Rules apply to Appeals other than the Rules listed in 1(3).

2. Rule 5(4). I recommend that a single Solicitor Member should have power to give directions, but not limited to a Member who has been appointed to the Panel. [REDACTED]

[REDACTED] I agree that there should be this power for Appeals but I do not think that it should be limited to a Solicitor who has been appointed to a Panel, simply because the Panel is unlikely to be appointed until a hearing is due to take place. I do not think that this restriction is needed.

I think that a Solicitor Member should have power to give directions not only under Rules 9, 13, 15 and 19(1) but also in relation to Rules 11, 14 and 16.

3. Rule 7(4)(a) requires the relevant party to supply specified documents but the consequences of not doing so are not made clear.
4. Rules 7(5) and 8(3) refer to requests by the relevant parties for an extension of time. It is not clear how such a request will be dealt with by the Tribunal nor what the consequences are if the request is not granted.
5. Under Rule 9(2) I query whether this should include reference to requests under 7(5) and 8(3) and also to consents to withdraw under 16(2).
6. Rule 10(1) gives power for a Panel of five members to make practice directions. This does not apply to the 2007 Rules and so there would be inconsistency. I would have thought that the Tribunal as a whole should make practice directions.
7. Rule 11(3) refers at the end to striking off and seems to have been copied from Rule 12(3). The reference to striking off is incorrect because 11(2) cannot deal with striking off. Perhaps the language at the end should be "the proposed action to be taken by the Tribunal".
8. Rule 12(3) refers to the Appellant being given an opportunity to make representations. It is not clear how that opportunity is to be given nor how representations made by an Appellant will be dealt with.
9. Rule 14 deals with prevention of disclosure or publication. This does not apply to the 2007 Rules and I do not see the logic of it applying to Appeals but not first instance hearings before the Tribunal.

10. Rule 15 deals with lead cases. Might there be an argument for having the power to amalgamate appeals and hear them together, rather than dealing with the matter by way of lead case?
11. Rule 16 permits withdrawal. I think that this Rule is taken from the First Tier Tribunal Rules which, of course, does not require payment of costs. If there is withdrawal then it will be necessary to deal with costs, and it is not clear how in practice this would be done.
12. Rule 22 does need to be considered in the context of costs. If the Tribunal disposes of a matter without hearing then, surely, it will need to consider representations on costs.
13. Rule 25(1) gives the power to announce decisions at a later date. However this would require both the Panel and the parties to reassemble in order that representations about costs can be made.
14. Rule 26(1) refers to two possible timescales, namely filing of the order with the Law Society or 14 days beginning with the date of filing of the order. This is clearly inconsistent, and in any event does not specify whether it is the shorter or the longer period which applies.

I hope these comments are helpful.

Regards,

Roger

Roger Woolfe
Partner

Collyer Bristow LLP solicitors
4 Bedford Row, London WC1R 4DF
DX 163 London Chancery Lane

www.collyerbristow.com
Switchboard +44 (0)20 7242 7363



Collyer Bristow LLP is a limited liability partnership registered in England under number OC318532, registered office 4 Bedford Row, London WC1R 4DF. It is regulated by the Solicitors Regulation Authority. Any reference to a partner means a member of the LLP or an employee with equivalent standing and qualifications. A list of the members is available for inspection at the above address.

This email may contain confidential or privileged information. If you have received it by mistake please notify us immediately and delete it from your system. Collyer Bristow LLP may monitor email traffic data and the content of emails for the purposes of security.

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

Draft Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

Comments by SDT on Consultation Responses

Roger Woolfe	
Comment	Response
I find Rule 1(3) slightly confusing, if only because reference to the 2007 Rules comes before the definition of those Rules.	No amendment proposed. There is no reason for a definition to appear after the term defined.
I would have thought that it might be better to state specifically that the 2007 Rules apply to Appeals other than the Rules listed in 1(3).	No amendment proposed. We do not think there is any need to restate the fact that the 2007 Rules apply.
Rule 5(4). I recommend that a single Solicitor Member should have power to give directions, but not limited to a Member who has been appointed to the Panel. I agree that there should be this power for Appeals but I do not think that it should be limited to a Solicitor who has been appointed to a Panel, simply because the Panel is unlikely to be appointed until a hearing is due to take place. I do not think that this restriction is needed.	Policy Issue Amendments have been drafted which would meet this point, but this is an issue for the SDT Board in principle. The point will be discussed at the SDT's next Board meeting in September.
I think that a Solicitor Member should have power to give directions not only under Rules 9, 13, 15 and 19(1) but also in relation to Rules 11, 14 and 16.	Policy Issue Amendments have been drafted which would meet this point, but this is another issue for the SDT Board in principle. It is questionable whether it would be right that a clerk should have the power to strike out or bar participation under rule 11(2)(c) and (d), so the suggested amendment would not allow that. The point will be discussed at the SDT's next Board meeting in September.
Rule 7(4)(a) requires the relevant party to supply specified documents but the consequences of not doing so are not made clear.	No amendment proposed. Rule 11 sets out the possible consequences.
Rules 7(5) and 8(3) refer to requests by the relevant parties for an extension of time. It is not clear how such a request will be dealt with by the	No amendment proposed. See rules 9(2)(a) and 11

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

Tribunal or what the consequences are if the request is not granted.	
Under Rule 9(2) I query whether (a) this should include reference to requests under 7(5) and 8(3); and (b) also to consents to withdraw under 16(2).	(a) No amendment proposed. We do not think it is necessary. (b) No amendment proposed. We think this would be unnecessary duplication
Rule 10(1) gives power for a Panel of five members to make practice directions. This does not apply to the 2007 Rules and so there would be inconsistency. I would have thought that the Tribunal as a whole should make practice directions.	Policy Issue No amendments have been drafted in this case but words have been square bracketed that would be deleted if the SDT Board agreed with this point. There is wide discretion for delegation to officers under the Regulatory Chamber rules. The point will be discussed at the SDT's next Board meeting in September.
Rule 11(3) refers at the end to striking off and seems to have been copied from Rule 12(3). The reference to striking off is incorrect because 11(2) cannot deal with striking off. Perhaps the language at the end should be "the proposed action to be taken by the Tribunal".	Amendment made – we have preferred "the proposed action."
Rule 12(3) refers to the Appellant being given an opportunity to make representations. It is not clear how that opportunity is to be given nor how representations made by an Appellant will be dealt with.	No amendment made.
Rule 14 deals with prevention of disclosure or publication. This does not apply to the 2007 Rules and I do not see the logic of it applying to Appeals but not first instance hearings before the Tribunal.	Policy Issue For the SDT to consider whether the 2007 rules need further amendment on a separate occasion. No amendment made
Rule 15 deals with lead cases. Might there be an argument for having the power to amalgamate appeals and hear them together, rather than dealing with the matter by way of lead case?	No amendment made. Here, we are following the Regulatory Chamber rules.
Rule 16 permits withdrawal. I think that this Rule is taken from the First Tier Tribunal Rules which, of course, does not require payment of costs. If there is withdrawal then it will be necessary to deal with costs, and it is not clear how in practice this would be done.	We have suggested an amendment here, although we think the position would be covered because the SDT would have to give consent, and could make an order for costs under what is now rule 29.

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

Rule 22 does need to be considered in the context of costs. If the Tribunal disposes of a matter without hearing then, surely, it will need to consider representations on costs.	If the parties have consented to the matter being disposed of without a hearing, cannot it be assumed that they will have agreed the position on costs? If the parties have not agreed the position on costs, then surely they will not have consented to disposal without a hearing, if only to hear arguments on costs?
Rule 25(1) gives the power to announce decisions at a later date. However this would require both the Panel and the parties to reassemble in order that representations about costs can be made.	Agreed, but we do not think an amendment is required.
Rule 26(1) refers to two possible timescales, namely filing of the order with the Law Society or 14 days beginning with the date of filing of the order. This is clearly inconsistent, and in any event does not specify whether it is the shorter or the longer period which applies.	Amendment made

Steve Howe	
Comment	Response
Part 2 5 (3) [page11] '14 days beginning with the date on which the Tribunal sends notice' I presume this is posting date. 'that party may apply in writing' does this mean must have been posted or received by the Tribunal within the 14 days?	Rule 5(3) amended so as to read "send an application in writing" which makes it clearer (tying in with rule 26 (sending and delivery of documents))
Part 3 8 (2) and (6) [page13]. (2) has a time scale starting when the respondent sends a response and (6) has a time scale that starts when the appellant receives correspondence.	For consistency, rule 8(2) amended so as to refer to the date on which the appellant received the response.

Richard Bamford	
Comment	Response
I have the impression that, at present, the Applicant in our proceedings serves at least 4 copies of any application and the accompanying Rule 5 statement on the SDT. The new Rules	We do not think that the rules can provide for a fee, without specific statutory authority. So rules 6, 7, 8 and what is now 28 have been amended to require copies.

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

6,7,8 & 29(3) do not provide for more than the original to be so served. Is the SDT to be responsible for all the copying and its cost? If so, is there any way a fee can be required to be paid on initial lodgement whereby those costs could be recovered?	
In 29(3) surely the appointing party should be responsible for notifying all the other parties.	Amendment made to what is now rule 28(3)
Rule 27(6) should the translation not be accompanied by an appropriate certificate of accuracy. I am not certain how this is done; but have seen it on translations in the past.	This is taken from the Regulatory Chamber rules where there is no provision for a certificate. We have not been able to find another precedent (after limited research).
Surely there should be no obligation on anyone to send any document already served on a party to a representative if that document was served before the appointment was made. This is not quite clear, in my view.	We have amended what is now rule 28(5)(a) to make it clearer
Form 2: In the last line, should not the last word be "tribunal" rather than "court"?	Form 2 (witness summons) has been deleted.
In all Forms: In their headings "IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals) Rules 2011" should it not read "... (Appeals and amendment) Rules...."	Amendments made throughout.

Andrew Hopper QC	
Comment	Response
Appeals and amendment Rules: Rule 2, interpretation, definition of "Panel" – reference to "article 3" when "rule 3" is intended.	Agreed
Rule 8(5) "it" in the second line reads strangely as a neutral pronoun for the appellant; repeating "the appellant" may read more naturally than "he she or it" or other variants.	Agreed
Rule 11(3) I think the sub-rule should end with "order" rather than "strike out" as striking out is only one of the options considered in this rule.	Instead we are altering to "proposed action"

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

Rule 27(1)(a) the closing bracket sign at the end of the paragraph is surplus.	Agreed
In the forms, all the references to the rules, in the heading and in the text of form 3 are inconsistent in referring only to the "Appeals" rules rather than "Appeals and amendment".	Agreed
In the explanatory note there is a surplus apostrophe in the reference to the Tribunal and the 2007 Rules are incorrectly described.	Agreed
I have no comments on the "(Appeals) (Amendment)" rules in terms of drafting points but I do have one point of substance – no-one knows how the ABS market will develop or what kind of businesses we will encounter, or what regulatory complications there may be, save that we can be sure that there will be some that have not been predicted. In my view therefore it would be prudent for the Tribunal not to tie itself absolutely to the current, two solicitors and one lay person quorum, but to give itself a discretion to expand or reconstitute panels to avoid the need for expert evidence in place of relevant panel experience. There seems to be no obviously good reason not to give yourselves that extra discretion. An ABS-specific version of rule 3 of the principal rules could include a discretion by inserting: "Unless the President otherwise directs" and adjusting the syntax.	<p>We are a little confused about whether Mr Hopper is suggesting that the 2007 rules or the appeals rules be altered, or perhaps both.</p> <p>Our suggested revised drafting in the appeals rules is:</p> <p>3.—(1) A Panel of <u>at least</u> three members of the Tribunal shall be appointed by the Tribunal for the hearing of any appeal.</p> <p>(2) <u>Unless the President otherwise directs, the majority of</u> the Panel members shall be solicitor members.</p> <p>This is a policy issue for the SDT Board. The point will be discussed at the SDT's next Board meeting in September.</p>

Legal Ombudsman	
Comment	Response
<p>We refer the Tribunal to Part 3, S19 (2) of Appendix A.</p> <p>It may be desirable to ensure that the Tribunal may only admit evidence that is otherwise admissible in civil proceedings of the High Court. Under Part 6 of the Legal Services Act 2007, a similar rule is applied to the investigations of the</p>	<p>Partly Policy issue</p> <p>The precedent is again the Regulatory Chamber Rules 2009 (rule 15(2)(a)(i)) from which there is a right of appeal to the Upper Tribunal and from there to the Court of Appeal.</p>

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

<p>Legal Ombudsman. Section S147 (6) of the Legal Services Act 2007 states: <i>No person may be required under this section—</i> <i>(a) to provide any information which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court, or</i> <i>(b) to produce any document which that person could not be compelled to produce in such proceedings</i> The reason for our comment is that that under Section 44E of the Solicitors Act 1974 onward appeals from the Tribunal are to be heard in the High Court.</p>	<p>It seems to us that it does not necessarily follow that the ability to allow a wide range of evidence should be constrained by the nature of the court to which an appeal lies. So our inclination is not to amend, subject to any policy views to the contrary.</p>
---	--

Matthew Sibley	
Comment	Response
At rule 2 (Interpretation) within "the 2007 rules" the opening bracket should be before the word "Disciplinary" not before "Proceedings";	Agreed
At rule 2 (Interpretation) within the definition of "Panel" it should not refer to "article 3" but rather "rule 3";	Agreed
At rule 20(2), (5) references to "Clerk" should be to "clerk" for consistency elsewhere in these Rules;	Agreed
At rule 21 in the first line it should refer to "the 1974 Act" not just to "the Act";	Rule 21 (witness summonses) is to be deleted
At rule 25(2)(a) and 25(4) "Order" should be "order" as it's not a defined term and elsewhere is used without a capital letter.	Agreed
Following on from those amendments and for clarity rule 25(5) should read: "The Tribunal may suspend the filing of an order with the Society if it appears to the Tribunal that there is good reason to do so, in which event the decision the subject of that order shall not take effect until that order is filed with the Society."	<p>We understand the point but suggest the following alternative:</p> <p>(5) The Tribunal may suspend the filing of <u>an order under paragraph (2)(a)</u> if it appears to the Tribunal that there is good reason to do so, in</p>

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

	which event the decision shall not take effect until the order is filed with the Society.
A further consequential amendment is to rule 26(1) in the first line with the removal of "the Tribunal's Order" and its replacement with "an order";	Agreed
Each of the scheduled forms incorrectly cites the name of these Rules as "the Solicitors Disciplinary Tribunal (Appeals) Rules 2011" after "IN THE MATTER OF". The Rules are "the Solicitors Disciplinary Tribunal (Appeals and amendment) Rules 2011" . The same amendment needs to be made within the application ("I APPLY...") text of Form 3.	Agreed

Freeth Cartwright	
Comment	Response
I am not entirely convinced that the timescales laid down in the draft are workable in complex cases and to avoid the need for applications for extensions of time it may have been wiser to give rather longer time spans.	The timescales reflect those in the Regulatory Chamber
In relation to the provision for witness attendance it may have been preferable to include rules on how such applications to set aside a witness summons should be made and the level of payment or compensation for lost time i.e. a maximum figure should be established so that there could be no argument at a later stage that a witness in receipt of a summons could refuse to attend because the amount tendered for loss of income whilst attending a Tribunal was insufficient.	Witness summons provisions to be removed
Matters such as the cost of travelling to the Tribunal are readily calculable by reference to bus or train fares but loss of income is not an easy	Witness summons provisions to be removed

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

matter to ascertain.	
----------------------	--

Kent Law Society	
Comment	Response
Queries why there is no power to stay for all types of appeals.	This is because the enabling legislation does not allow it
Rule 7(3) It would be useful if there was a requirement for the statement to summarise grounds for opposition to the appellant's case even if those grounds are contained or set out in detail in another document sent or delivered with the response.	There is no similar requirement in the Regulatory chamber
Rule 9(2)(d): No definition of "another person" in these rules, but by construction it is someone other than a party. Is it intended that the Tribunal has the power to compel any person whatever to provide documents, information or submissions? Elsewhere in these rules,(paragraph 21 for example) the words "any person" and "any document" are modified by "relevant to the proceedings"	Although the wording is taken from the Regulatory Chamber Rules, we think there is a point here and we have included an amendment along the lines suggested.
Rule 12: Is it intended that a striking out of the whole or part of an appeal under paragraph (1) (the jurisdictional ground) is subject to both paragraph 12(3) and 12(4) which in other respects have the appearance of being "either – or" provisions?	The Regulatory Chamber rules do not allow the appellant to seek reinstatement – this appears to be an error in the consultation draft and we have deleted the reference to paragraph (1) in rule 12(4)
Rule 14(5): We consider that there may need to be further clarity in the drafting of this paragraph to ensure it is understood that the order to a representative not to disclose a document to "any other person" can include, where directed, the representative's own representee. We would express the hope that such a direction would be used extremely sparingly, as it tends to undermine the confidence between advocate and client.	We disagree. We think the drafting is clear.
Rule 27(1): we note the use of the phrase "pre-paid post" which is not further defined in clause 1 of the Rules and which would, it seems, include the use of 2 nd class post. Such use would at certain times and parts of the country considerably shorten the time available to respond given - for example to a replying appellant in clause 8	Agreed (subject to policy approval) – we have inserted reference to first class post

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

Ashok Gosh	
Comment	Response
<p>Paragraphs 4 and 5(b) – Appointment of chairman</p> <p>I am unable to conceive of any circumstance in which it would be appropriate for a lay member to chair a Panel and the discretion given to the President in paragraph 4 to permit a lay member to chair a Panel should, therefore, in my view be deleted.</p>	<p>Policy issue</p> <p>We have not made an amendment. This is for the SDT Board to decide, but the Regulatory Chamber Rules provide a very wide power to delegate to staff, including functions of a judicial nature.</p>
<p>The appointment of chairmen of Panels should not be delegated to clerks. There does not appear to me to be any reason why each Panel should not elect its chairman.</p>	<p>Policy issue</p> <p>We have not made an amendment. This is for the SDT Board to decide, but the drafting mirrors the 2007 rules. There are practical issues concerning the effective and expeditious disposal of cases if divisions of the Tribunal are to elect their own chairman.</p>
<p>Paragraph 5 (3)– Delegation and appeals from clerk’s decisions</p> <p>The reference in paragraph 5(3) to a clerk exercising “functions of a judicial nature” begs the question as to which function is of a judicial as opposed to an administrative nature.</p>	<p>We suggest that this can be dealt with by the Tribunal on a case by case basis, but we would have thought that it was clear that the following are functions of a judicial nature:</p> <ul style="list-style-type: none"> - Giving directions - Taking action under rule 11(2)(a) or (b) - Making a decision under rule 14(1) - Giving consent under rule 16(2) <p>Whereas the following are not:</p> <ul style="list-style-type: none"> - appointing panels - appointing chairmen - other general administrative duties that are required and authorised under the 2007 rules
<p>Furthermore, paragraph 5(3) merely says that a party may apply to the Tribunal for the clerk’s decision to be reviewed by a Panel or a single solicitor member. Nothing is said as to what is happen to such an application.</p>	<p>We are not convinced that the rules need to say anything more. The precedent is rule 4(3) of the Regulatory Chamber Rules. Further detail could be provided in practice directions, if necessary</p>

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

<p>Paragraph 5(3) should be amended to give any party the right to have any decision of a clerk – irrespective of whether or not it is considered to be “judicial” in nature – reviewed initially by a single solicitor member on paper and subsequently, if so requested by that party, by a full Panel. A costs warning in respect of an unsuccessful application to a Panel could be inserted here. This would then be analogous to the civil procedure rules (“cpr”) where case management directions of District Judges are subject to review on appeal by a circuit judge – initially on paper and subsequently, if so requested by a party, at a hearing.</p>	<p>As above, we refer to the precedent, and the desire to achieve proximity to the Regulatory Chamber rules.</p>
<p>Paragraph 6 – Notice of Appeal</p> <p>There should be a requirement for permission to appeal to be obtained from a single solicitor member with a right to have that decision reviewed by a full Panel. This would be consistent with the requirement under paragraph 6 of the 2007 Rules for certification of a case to answer; it would also be analogous with the requirement in cpr 52 for permission to appeal. Applications with little or no chance of success could then be weeded out.</p>	<p>Policy Issue</p> <p>We wish to move away from a two stage procedure for appeals, in line with the Regulatory Chamber procedure. In any event, we do not think there is vires to introduce a permission stage in the rules.</p>
<p>Paragraph 7(1) – Response to notice of appeal</p> <p>Paragraph 7(1) says that a respondent “must” send or deliver a response but nothing is said as to the consequence of a respondent not complying with this requirement. The word “must” should be replaced with “may”. There is, in my view, no reason to compel a respondent to file a response if it chooses not to do so. At the same time it should be stated that if a respondent does not file a response in accordance with the Rules it will be barred from making submissions at the hearing without the consent of the appellant.</p>	<p>We disagree that the rules do not set out the possible consequences. See rule 11.</p> <p>Essentially the question of whether a respondent should be compelled to put in a response is a policy issue but we would have thought it would be helpful for the SDT to provide the information required by rule 7. Furthermore, neither the SRA nor the LSB has disagreed with this.</p>
<p>Paragraph 14(1) – Prevention of disclosure of</p>	<p>Again, this is taken from the Regulatory Chamber Rules, which have passed scrutiny. See rule 14.</p>

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

<p>documents and information</p> <p>The safeguard of proportionality which qualifies paragraph 14 (2) does not apply to paragraph 14(1). It should be made to apply. Care should be taken to ensure that there is no infringement of rights under Articles 6 – open justice – and 10 – press freedom- of the European Convention on Human Rights.</p>	
<p>Paragraph 24 (2) – Public or private hearings</p> <p>As in the case of paragraph 14(1), there should be greater safeguard against any risk of infringement of Articles 6 and 10 rights. The paragraph should be redrafted so that it is similar to cpr part 39 and its practice direction, with the relevant words of Article 6(1) expressly set out – that the press or public may only be excluded “in the interest of morals, public order or national security..., where the interests of minors or the protection of the private life of the parties so require or to the extent strictly necessary in the opinion of the tribunal in special circumstances where publicity would prejudice the interests of justice.”</p>	<p>Rule 24 actually goes a little further than the equivalent (rule 35) in the Regulatory Chamber rules by requiring exceptional hardship or prejudice to be established for a hearing to be held in private. Rule 24 is equivalent to the 2007 rules (rule 12(4)).</p>

Solicitors Sole Practitioners Group	
Comment	Response
<p>The only comment the Group has is that, regarding the proposed rule 15 there should be provision for the elected "lead" case to consult with other cases and for the other cases to object being bound by the result in the "lead" case if their advisors consider that the points the "lead" case intends to argue are fewer or different from those applying to the other cases.</p>	<p>The rule is taken from rule 18 of the General Regulatory Chamber Rules.</p> <p>The Tribunal could give directions under rule 15 (5) or under rule 9(1) to provide for consultation.</p> <p>Rule 15(4) enables parties to apply for a direction that the lead cases direction does not apply to them.</p>

STATUTORY INSTRUMENTS

2011 No.

LEGAL PROFESSION (ENGLAND AND WALES)

**The Solicitors Disciplinary Tribunal (Appeals and
aA amendment) Rules 2011**

Made - - - - - *[**[th/st] *****] 2011*

Coming into force - - - - - *[**[th/st] *****] 2011*

ARRANGEMENT OF RULES

PART 1

Introductory

1. Citation, commencement and application
2. Interpretation

PART 2

Constitution of appeal panels

3. Composition of panel
4. Appointment of chairman
5. Delegation

PART 3

Appeal procedure

Preliminary steps

6. Notice of appeal
7. Response to notice of appeal
8. Appellant's reply

Administration of appeals

9. Directions and case management
10. Practice directions
11. Failure to comply with rules, practice directions or tribunal directions
12. Striking out a party's case
13. Addition, substitution and removal of parties
14. Prevention of disclosure of documents and information
15. Lead cases

- 16. Withdrawal
- 17. Consent orders
- 18. General powers of Tribunal

Disclosure, evidence and submissions

- 19. Disclosure, evidence and submissions
- 20. Written evidence
- ~~21. Witness summonses~~

Hearings, decisions and re-hearings

- ~~21~~22. Decision with or without a hearing
- ~~22~~23. Listing of appeal hearing
- ~~23~~24. Public or private hearings
- ~~24~~25. Decisions
- ~~25~~26. Re-hearing where a party neither appears nor is represented

PART 4
Miscellaneous

- ~~26~~27. Sending and delivery of documents
- ~~27~~28. Calculating time
- ~~28~~29. Representatives
- ~~29~~30. Costs
- ~~30~~31. Amendment of 2007 rules

SCHEDULE — FORMS

The Solicitors Disciplinary Tribunal in exercise of the powers conferred upon it by section 46 of the Solicitors Act 1974(a) as applied by paragraph 14C(2) of Schedule 2 to the Administration of Justice Act 1985(b) and section 44E(2) of the Solicitors Act 1974 makes the following Rules:

PART 1
Introductory

Citation, commencement and application

1.—(1) These Rules may be cited as the Solicitors Disciplinary Tribunal (Appeals and ~~a~~Amendment) Rules 2011 and shall come into force on ~~1~~¹ January 2011.

(2) These Rules (except rule ~~30~~31) apply in relation to—

(a) 1974 c. 47.
(b) 1985 c.61.

- (a) appeals to the Tribunal under paragraph 14C of Schedule 2 to the Administration of Justice Act 1985; and
- (b) appeals to the Tribunal under section 44E of the 1974 Act (appeals against disciplinary action under section 44D).

~~(3) Nothing in the following provisions of the 2007 rules applies in relation to an appeal—~~

- ~~(a) rule 4 (constitution of Divisions);~~
- ~~(b) Part 3 (applications);~~
- ~~(c) Part 4 (procedure and rules of evidence);~~
- ~~(d) rule 18 (costs);~~
- ~~(e) rule 19 (re hearing where respondent neither appears nor is represented);~~
- ~~(f) rule 20 (adjournment for Law Society to investigate); and~~
- ~~(g) rule 21 (miscellaneous).~~

Interpretation

2. In these Rules—

“the 1974 Act” means the Solicitors Act 1974;

“the 2007 Act” means the Legal Services Act 2007(a);

“the 2007 rules” means the Solicitors (Disciplinary Proceedings) Rules 2007(b);

“appeal” means a Schedule 2 appeal or a section 44E appeal;

“appellant” means—

- (a) a person who makes an appeal to the Tribunal; or
- (b) a person added or substituted as an appellant under rule 13(1);

“the Board” means the Legal Services Board;

“clerk” has the same meaning as in the 2007 rules;

“direction” means a direction given under rule 9;

“Panel” means a panel appointed under ~~article~~rule 3 for the hearing of an appeal or any matter connected with an appeal;

“party” means the appellant or the respondent;

“practice direction” means a practice direction made under rule 10;

“the President” means the President of the Tribunal, appointed under rule 3 of the 2007 rules;

“respondent” means—

- (a) the person who made the decision in respect of which an appeal is made; or
- (b) a person added or substituted as a respondent under rule 13(1);

a “Schedule 2 appeal” means an appeal of the type mentioned in rule 1(2)(a);

a “section 44E appeal” means an appeal of the type mentioned in rule 1(2)(b);

“the Society” means the Law Society and includes any duly constituted committee of the Law Society or any body or person exercising delegated powers of the Law Society;

“solicitor members” and “lay members” have the same meanings as in section 46 of the 1974 Act;

“the Tribunal” means the Solicitors Disciplinary Tribunal and where a Panel has been appointed for the hearing of an appeal or any matter connected with it, includes a Panel.

(a) 2007 c. 29.

(b) S.I. 2007 No. 3588.

PART 2

Constitution of appeal panels

Composition of panel

3.—(1) A Panel of at least three members of the Tribunal shall be appointed by the Tribunal for the hearing of any appeal.

(2) [Unless the President otherwise directs, Two the majority of the Panel members shall be solicitor members and one shall be a lay member.]

Appointment of chairman

4. The chairman of each Panel shall be appointed by the Tribunal and (unless the President determines otherwise) shall be a solicitor member.

Delegation

5.—(1) The duties to be performed by the clerks shall, in addition to the duties listed in rule 3(11) of the 2007 rules, include—

- (a) appointing panels under rule 3(1);
- (b) appointing a chairman of a Panel under rule 4; and
- (c) giving directions under rules 9, 13 and 19(1).

(2) Paragraph (1) is without prejudice to rule 3(11) of the 2007 rules.

(3) No later than the date on which expires the period of 14 days beginning with the date on which the Tribunal sends notice to a party of a decision made by a clerk in exercise of functions of a judicial nature under paragraph (1), that party may send an application~~apply~~ in writing to the Tribunal for that decision to be considered afresh by a Panel or a single solicitor member.

(4) The following powers of the Tribunal may be exercised by Aa single solicitor member—of a Panel may

- (a) givegiving directions under rules 9, 13,~~14(2), (4) and (6).~~ 15 and 19(1);~~in relation to the appeal in respect of which the Panel has been appointed.~~
- (b) [taking action under rule 11(2)][(a) and (b)];
- (c) making a decision under rule 14(1);
- ~~(a)~~(d) giving consent under rule 16(2).

PART 3

Appeal procedure

Preliminary steps

Notice of appeal

6.—(1) An appellant must start proceedings for an appeal by sending or delivering a notice of appeal to the Tribunal.

(2) In the case of a Schedule 2 appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the appellant was notified in writing of the decision in question under paragraph 14B(4) of Schedule 2 to the Administration of Justice Act 1985.

(3) In the case of a section 44E appeal, the notice of appeal must be sent or delivered so that it is received by the Tribunal no later than the date on which expires the period of 28 days beginning

with the date on which the appellant was notified in writing of the decision in question under section 44D(4) of the 1974 Act.

- (4) The notice of appeal must set out—
- (a) the name and address of the appellant;
 - (b) the name and address of the appellant's representative (if any);
 - (c) an address where documents for the appellant may be sent or delivered;
 - (d) the basis on which the appellant has standing to start proceedings before the Tribunal;
 - (e) the name and address of the respondent;
 - (f) details of the decision or act to which the proceedings relate;
 - (g) the result the appellant is seeking;
 - (h) the grounds on which the appellant relies;
 - (i) whether the appellant would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate; and
 - (j) any further information or documents required by a practice direction.

(5) The appellant must send or deliver with the notice of appeal a copy of any written record of the decision in respect of which the appeal is made, and any statement of reasons for that decision that the appellant has or can reasonably obtain.

~~(5)~~(6) The appellant must send or deliver three additional copies of the notice of appeal and any accompanying documents to the Tribunal at the same time as the appellant sends or delivers the notice of appeal to the Tribunal.

~~(6)~~(7) The appellant must send or deliver a copy of the notice of appeal and any accompanying documents to the respondent at the same time as ~~the appellant~~ sends or delivers the notice of appeal to the Tribunal.

Response to notice of appeal

7.—(1) The respondent must send or deliver to the Tribunal a response to the notice of appeal so that it is received no later than the date on which expires the period of 28 days beginning with the date on which the respondent received the notice of appeal.

- (2) The response must include—
- (a) the name and address of the respondent;
 - (b) the name and address of the respondent's representative (if any);
 - (c) an address where documents for the respondent may be sent or delivered;
 - (d) any further information or documents required by a practice direction or direction; and
 - (e) whether the respondent would be content for the case to be dealt with without a hearing if the Tribunal considers it appropriate.

(3) The response must include a statement as to whether the respondent opposes the appellant's case and, if so, any grounds for such opposition which are not contained in another document sent or delivered with the response.

- (4) The respondent must send or deliver with the response—
- (a) a copy of any written record of the decision, in respect of which the appeal is made, and any statement of reasons for that decision, that the appellant did not send or deliver with the notice of appeal and the respondent has or can reasonably obtain; and
 - (b) any documents relied upon by the respondent in making the decision in respect of which the appeal is made and which the respondent considers are relevant to the appeal.

(5) If the respondent sends or delivers the response to the Tribunal later than the time required by paragraph (1) or by any extension of time under rule 9(2)(a), the response must include a request for an extension of time and the reason why the response was not sent or delivered in time.

(6) The respondent must send or deliver three additional copies of the response and any accompanying documents to the Tribunal at the same time as the respondent sends or delivers the response to the Tribunal.

~~(6)~~(7) The respondent must send or deliver a copy of the response and any accompanying documents to the appellant at the same time as it sends or delivers the response to the Tribunal.

Appellant's reply

8.—(1) The appellant may send or deliver to the Tribunal—

- (a) a reply to the respondent's response; and
- (b) any additional documents relied upon by the appellant in the reply.

(2) Any reply and additional documents must be sent or delivered to the Tribunal so that they are received no later than the date on which expires the period of 14 days beginning with the date on which the appellant received the notice from the respondent~~respondent sent the response to the appellant.~~

(3) If the appellant sends or delivers a reply to the Tribunal later than the time required by paragraph (2) or by any extension of time under rule 9(2)(a) the reply must include a request for an extension of time and the reason why the reply was not sent or delivered in time.

(4) The appellant may send or deliver with the reply a list of documents on which the appellant relies in support of the appeal, and which the appellant did not send or deliver with the notice of appeal.

(5) The appellant must send or deliver three additional copies of the reply and any accompanying documents to the Tribunal at the same time as the appellant sends or delivers the reply to the Tribunal.

~~(5)~~(6) The appellant must send or deliver a copy of any reply and any accompanying documents to the respondent at the same time as the appellant~~it~~ sends or delivers the reply to the Tribunal.

~~(6)~~(7) If the appellant has sent or delivered a list of documents under paragraph (4), the appellant must within 7 days of receiving a request from the respondent or the Tribunal—

- (a) send or deliver to the respondent or Tribunal a copy of any document specified in the list (and in the case of the Tribunal, any additional copies of the document requested by the Tribunal, up to a maximum of four in number); or-
- (b) make such document available to the respondent or Tribunal to read or copy.

Administration of appeals

Directions and case management

9.—(1) The Tribunal may give a direction in relation to the conduct or disposal of appeal proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

(2) In particular, and without restricting the general powers in paragraph (1) and rule 18, the Tribunal may—

- (a) extend or shorten the time for complying with any rule, practice direction or direction, unless such extension or shortening would conflict with a provision of another enactment (or of any rule made under another enactment) containing a time limit;
- (b) consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (whether under rule 15 or otherwise);
- (c) permit or require a party to amend a document;
- (d) permit or require a party or another person to provide documents, information or submissions which are relevant to the proceedings to the Tribunal or a party;
- (e) deal with an issue in the proceedings as a preliminary issue;
- (f) hold a hearing to consider any matter, including a case management issue;

- (g) decide the form of any hearing;
- (h) adjourn or postpone a hearing;
- (i) require a party to produce a bundle for a hearing;
- (j) require a party to provide a skeleton argument;
- (k) decide the place and time of any hearing;
- (l) make requirements about documentation and inspection;
- (m) stay proceedings;
- (n) suspend the effect of its own decision pending the determination by the High Court of an application for permission to appeal against, and any appeal of, that decision.

(3) A clerk may appoint a time and place for the review of the progress of the matter and shall notify the parties of the date, time and place of any such review.

(4) A clerk may refer to the Tribunal any matter for a decision or directions and the Tribunal may itself or on the application of any party make a decision on such terms as to the Tribunal shall appear just—

- (a) to adjourn any hearing listed for directions or for a substantive hearing;
- (b) to agree to the amendment of any document or the correction of any matter;
- (c) to make any directions which shall appear necessary or appropriate to secure the timely hearing of the appeal.

(5) Any hearing under this rule shall be held in public unless rules ~~23~~24(2) or (3) apply.

Practice directions

10.—(1) The Tribunal[(or a panel of Tribunal members consisting of not less than 5 members of whom no fewer than 2 shall be lay members)] may give such notices or make such directions concerning the practices or procedures of the Tribunal as are consistent with these Rules and as shall seem appropriate.

(2) The Tribunal shall promulgate notices or directions given or made under paragraph (1) under the authority of the President.

Failure to comply with rules, practice directions or tribunal directions

11.—(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the appeal or any step taken in the appeal.

(2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied;
- (c) exercising its power under rule 12;
- (d) otherwise barring or restricting a party's participation in the appeal.

(3) The Tribunal may not bar or restrict a party's participation in the appeal under paragraph (2)(d) without first giving the party an opportunity to make representations in relation to the proposed ~~action striking out~~.

Striking out a party's case

12.—(1) The Tribunal must strike out the whole or a part of an appeal if the Tribunal does not have jurisdiction in relation to the appeal or that part of it.

(2) The Tribunal may strike out the whole or a part of an appeal if—

- (a) the appellant has failed to comply with a direction which stated that failure by the appellant to comply with the direction could lead to the striking out of the appeal or part of it;
- (b) the appellant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the appeal fairly and justly; or
- (c) the Tribunal considers there is no reasonable prospect of the appellant's case, or part of it, succeeding.

(3) The Tribunal may not strike out the whole or a part of the appeal under paragraph (1) or (2)(b) or (c) without first giving the appellant an opportunity to make representations in relation to the proposed striking out.

(4) If the appeal, or part of it, has been struck out under paragraph ~~(1)~~ or (2)(a), the appellant may apply for the appeal, or part of it, to be reinstated.

(5) An application under paragraph (4) must be made in writing and received by the Tribunal no later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent notification of the striking out to the appellant.

(6) This rule applies to a respondent as it applies to an appellant except that—

- (a) a reference to the striking out of the whole or a part of the appeal is to be read as a reference to the striking out of the whole or a part of the response to the appeal; and
- (b) a reference to an application for the reinstatement of an appeal which has been struck out is to be read as a reference to an application for the reinstatement of a response to an appeal which has been struck out.

Addition, substitution and removal of parties

13.—(1) The Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent.

(2) If the Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may apply to the Tribunal to be added or substituted as a party.

(4) If a person who is entitled to be a party to an appeal by virtue of another enactment applies to be added as a party, and any conditions applicable to that entitlement have been satisfied, the Tribunal must give a direction adding that person as a respondent or, if appropriate, as an appellant.

Prevention of disclosure or publication of documents and information

14.—(1) The Tribunal may make a decision prohibiting the disclosure or publication of—

- (a) specified documents or information relating to any appeal proceedings; or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

(2) The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if—

- (a) the Tribunal is satisfied that such disclosure would be likely to cause that person or some other person serious harm; and
- (b) the Tribunal is satisfied, having regard to the interests of justice, that it is proportionate to give such a direction.

(3) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (2) prohibiting the disclosure of a document or information to another party (“the second party”), the first party must—

- (a) exclude the relevant document or information from any documents that will be sent or delivered to the second party; and

- (b) send or deliver to the Tribunal the excluded document or information, and the reason for its exclusion, so that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (2).

(4) If the Tribunal gives a direction under paragraph (2) which prevents disclosure to a party who has appointed a representative, the Tribunal may give a direction that the documents or information be disclosed to that representative if the Tribunal is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative will act in accordance with paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not be disclosed either directly or indirectly to any other person without the Tribunal's consent.

(6) The Tribunal may, on its own initiative or on the application of a party, give a direction that certain documents or information must or may be disclosed to the Tribunal on the basis that the Tribunal will not disclose such documents or information to other persons, or specified other persons.

(7) A party making an application for a direction under paragraph (6) may withhold the relevant documents or information from other parties until the Tribunal has granted or refused the application.

(8) Unless the Tribunal considers that there is good reason not to do so, the Tribunal must send notice that a party has made an application for a direction under paragraph (6) to each other party.

(9) The Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of a decision made under paragraph (1) or a direction given under paragraph (2) or (6).

Lead cases

15.—(1) This rule applies if—

- (a) two or more appeals have been started before the Tribunal;
- (b) in each such appeal the Tribunal has not made a decision finally disposing of all issues in the proceedings; and
- (c) the appeals give rise to common or related issues of fact or law.

(2) The Tribunal may give a direction—

- (a) specifying one or more appeals falling under paragraph (1) as a lead case or lead cases; and
- (b) staying the other appeals falling under paragraph (1) (“the related cases”).

(3) When the Tribunal makes a decision in respect of the common or related issues—

- (a) the Tribunal must send or deliver a copy of that decision to each party in each of the related appeals; and
- (b) subject to paragraph (4), that decision shall be binding on each of those parties.

(4) No later than the date on which expires the period of 28 days beginning with the date on which the Tribunal sent or delivered a copy of the decision to a party under paragraph (3)(a), that party may apply in writing for a direction that the decision does not apply to, and is not binding on the parties to, a particular related appeal.

(5) The Tribunal must give directions in respect of appeals which are stayed under paragraph (2)(b), providing for the disposal of or further directions in those appeals.

(6) If the lead case or cases lapse or are withdrawn before the Tribunal makes a decision in respect of the common or related issues, the Tribunal must give directions as to—

- (a) whether another appeal or other appeals are to be specified as a lead case or lead cases; and

- (b) whether any direction affecting the related appeals should be set aside or amended.

Withdrawal

16.—(1) Subject to paragraph (2), an appellant may give notice of the withdrawal of its appeal, or any part of it, and the respondent may do likewise in respect of its case against the appeal—

- (a) at any time before a hearing to consider the disposal of the appeal (or, if the Tribunal disposes of the appeal without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; or
- (b) orally at a hearing.

(2) Notice of withdrawal will not take effect unless the Tribunal consents to the withdrawal, which may be given subject to such order relating to costs as the Tribunal shall think fit.

(3) A party which has withdrawn its appeal or case against the appeal may apply to the Tribunal for the appeal or case to be reinstated.

(4) An application under paragraph (3) must be made in writing and be received by the Tribunal no later than the date on which expires the period of 28 days beginning with—

- (a) the date on which the Tribunal received the notice under paragraph (1)(a); or
- (b) the date of the hearing at which the appeal or case was withdrawn orally under paragraph (1)(b).

(5) The Tribunal must notify each party in writing of a withdrawal under this rule.

Consent orders

17.—(1) The Tribunal may, at the request of the parties and only if it considers it appropriate, make a consent order disposing of the appeal proceedings and making such other appropriate provision as the parties have agreed.

(2) Despite any other provision of these Rules, the Tribunal need not hold a hearing before making an order under paragraph (1), or provide reasons for the order.

General powers of Tribunal

18.—(1) Subject to the provisions of these Rules, the Tribunal may regulate its own procedure.

(2) The Tribunal may dispense with any requirements of these Rules in respect of notices, statements or other documents, witnesses, service or time in any case where it appears to the Tribunal to be just so to do.

Disclosure, evidence and submissions

Disclosure, evidence and submissions

19.—(1) Without restriction on the general powers in rule 9 and 18, the Tribunal may give directions in relation to an appeal as to—

- (a) the exchange between parties of lists of documents which are relevant to the appeal, or relevant to particular issues, and the inspection of such documents;
- (b) the provision by parties of statements of agreed matters;
- (c) issues on which it requires evidence or submissions;
- (d) the nature of the evidence or submissions it requires;
- (e) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (f) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;

- (g) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
 - (h) the time at which any evidence or submissions are to be sent or delivered.
- (2) The Tribunal may—
- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker; or
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction or a practice direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction or a practice direction; or
 - (iii) it would otherwise be unfair, disproportionate or unnecessary in the interests of justice to admit the evidence.
- (3) The Tribunal may consent to a witness giving, or require any witness to give, evidence on oath, and may administer an oath for that purpose.

Written evidence

20.—(1) The Tribunal may in its discretion, in respect of a whole case or of any particular fact or facts, proceed and act upon evidence given by Statement.

(2) Every Statement upon which any party proposes to rely shall be sent or delivered to the ~~€~~clerk and to all other parties no later than 21 days before the date fixed for the hearing of the appeal together with a notice in the form of Form 1 in the Schedule.

(3) Any party on whom a notice has been served under paragraph (2) and who requires the attendance, at the hearing, of the witness in question shall, no later than 9 days before the date of the hearing require, in writing, the other party to produce the witness at the hearing.

(4) If no party requires the attendance of a witness in accordance with the provisions of this rule, the Tribunal may accept the Statement in question in evidence.

(5) If any party intends to call as a witness any person who has not produced a Statement, he must, no later than 10 days before the date fixed for the hearing, notify the ~~€~~clerk and any other party to the proceedings of his intention and forthwith send or deliver a copy of a written proof of evidence to the other party and lodge five copies of the proof with the ~~€~~clerk.

(6) In this rule, “Statement” means a written statement (including a witness statement) containing a statement that the party putting forward or making the Statement believes the facts stated in the Statement are true.

~~Witness summonses~~

~~21.—A party to an appeal may, pursuant to Section 46(11) of the Act, require the attendance at the hearing of any person or the production of any document relevant to the proceedings and any summons for that purpose shall be in the form of Form 2 in the Schedule.~~

Hearings, decisions and re-hearings

Decision with or without a hearing

22-21.—(1) The Tribunal must hold a hearing before making a decision which disposes of proceedings unless—

- (a) each party has consented to the matter being determined without a hearing; and
- (b) the Tribunal is satisfied that it can properly determine the issues without a hearing.

(2) Despite anything to the contrary in these Rules, if the Tribunal holds a hearing to consider a preliminary issue, and following the disposal of that preliminary issue no further issue remains to be determined, the Tribunal may dispose of the proceedings without holding any further hearing.

Listing of appeal hearing

23-22.—(1) Unless the Tribunal has made directions in respect of the hearing of an appeal, a clerk shall appoint a date for the hearing by the Tribunal and shall give notice of the date to the parties.

(2) The hearing shall not, unless all the parties have agreed or the Tribunal has so ordered, take place sooner than the date on which expires the period of 28 days beginning with the date of service of the notice appointing the date of the hearing.

Public or private hearings

24-23.—(1) Subject to paragraphs (2) and (3) every appeal hearing shall take place in public.

(2) Any party and any person who claims to be affected by an appeal may seek a decision from the Tribunal that the hearing or part of it be conducted in private on the grounds of—

- (a) exceptional hardship; or
- (b) exceptional prejudice,

to a party, a witness or any person affected by the appeal.

(3) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private and make such decision as shall appear to it to be just and proper.

(4) The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private if—

- (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or
- (b) in the Tribunal's view a hearing in public would prejudice the interests of justice.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
- (c) any person who the Tribunal considers should be excluded in order to give effect to the requirement at rule 14(9); or
- (d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Decisions

25-24.—(1) The Tribunal may announce a decision orally at a hearing of or relating to an appeal or may reserve its decision for announcement at a later date. In either case the announcement shall be made in public.

(2) Subject to rule 14(9), the Tribunal must provide to each party as soon as reasonably practicable after making a decision which finally disposes of all issues in the proceedings—

- (a) an ~~Order~~ stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and manner in which, such right of appeal may be exercised.

(3) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

(4) An ~~Order~~ under paragraph (2)(a) shall be signed by a member of the Tribunal upon the announcement of the decision and shall, subject to paragraph (5) be filed forthwith with the Society.

(5) The Tribunal may suspend the filing of ~~an~~~~the Order under paragraph (2)(a)~~ if it appears to the Tribunal that there is good reason to do so, in which event the decision shall not take effect until the ~~Order~~ is filed with the Society.

(6) Subject to rule 14(9), the Tribunal may publicise a decision in such manner as it thinks fit.

Re-hearing where a party neither appears nor is represented

~~26.25.~~—(1) At any time before ~~the filing of the Tribunal's Order with the Society under rule 25(4) or before~~ the date on which expires the period of 14 days beginning with the date on which an order was provided to the party under rule 24(2) of the filing of the order, a party may apply to the Tribunal for a re-hearing of an appeal if—

- (a) he neither attended in person nor was represented at the hearing of the appeal in question; and
- (b) the Tribunal determined the appeal in his absence.

(2) An application for a re-hearing under this rule shall be made in the form of Form 32 in the Schedule and shall be supported by a statement setting out the facts upon which the applicant wishes to rely.

(3) If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing shall be held before a Panel comprised of different members from those who heard the original appeal.

PART 4

Miscellaneous

Sending and delivery of documents

~~27.26.~~—(1) Any document to be sent or delivered to the Tribunal or to a party under these Rules, a practice direction or a direction must be—

- (a) sent by pre-paid first class post or by document exchange, or delivered by hand, to the address specified for the proceedings);
- (b) sent by fax (in the case of documents to be sent or delivered to the Tribunal, to the number specified for the proceedings); or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(3) If a party informs the Tribunal and all other parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to send or deliver documents to that party, that form of communication must not be so used.

(4) If the Tribunal or a party sends a document to a party or the Tribunal by email or any other electronic means of communication, the recipient may request that the sender send or deliver a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Tribunal and each party may assume that the address provided by a party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

(6) If a document submitted to the Tribunal is not written in English, it must be accompanied by an English translation.

Calculating time

~~28.27.~~—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(a).

Representatives

~~29.28.~~—(1) A party may appoint a representative (whether a legal representative or not) to represent that party in the proceedings.

(2) If a party appoints a representative, that party (or the representative if the representative is a legal representative) must send or deliver to the Tribunal written notice of the representative's name and address, together with a copy of the notice.

(3) ~~A party who sends or delivers a notice under paragraph (2) must, at the same time, if the Tribunal receives notice that a party has appointed a representative under paragraph (2), it must send or deliver~~ a copy of ~~the~~that notice to ~~each~~the other party.

(4) Anything permitted or required to be done by a party under these Rules, a practice direction or a direction may be done by the representative of that party, except signing a witness statement.

(5) A person who receives due notice of the appointment of a representative—

(a) must send or deliver to the representative any document which, at any time after the appointment, is required to be sent or delivered to the represented party, and need not send or deliver that document to the represented party; and

(b) may assume that the representative is and remains authorised as such until they receive written notification that this is not so from the representative or the represented party.

(6) At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may act as a representative or otherwise assist in presenting the party's case at the hearing.

(7) Paragraphs (2) to (5) do not apply to a person who accompanies a party under paragraph (6).

(8) In this rule “legal representative” means a person who, for the purposes of the 2007 Act, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation within the meaning of that Act, an advocate or solicitor in Scotland or a barrister or solicitor in Northern Ireland.

(a) 1971 c. 80.

Costs

~~30.29~~.—(1) The Tribunal may, at any stage of an appeal, make such order as to costs as the Tribunal shall think fit, including an order—

- (a) disallowing costs incurred unnecessarily; or
- (b) that costs be paid by any party judged to be responsible for wasted or unnecessary costs, whether arising through failure to comply with time limits or otherwise.

(2) The Tribunal may order that any party bear the whole or a part or a proportion of the costs.

(3) The amount of costs to be paid may either be fixed by the Tribunal or be subject to detailed assessment by a Costs Judge.

(4) The Tribunal may also make an order as to costs under this rule where any appeal is withdrawn or amended.

Amendment of 2007 rules

~~31.30~~.—(1) The 2007 rules are amended as follows.

(2) In Form 6 in the Schedule, for “21 days” substitute “9 days”.

Signed by authority of the Solicitors' Disciplinary Tribunal

Jeremy Barnecutt
President

[*][th][st] [Month] 2011

SCHEDULE

FORMS

Form 1

Rule 20(2)

FORM of NOTICE to accompany Statement of Evidence

Number.....

| IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

AND IN THE MATTER OF

.....

TAKE NOTICE that the [appellant][respondent] proposes to rely upon the statement(s) listed below, copies of which are served herewith.

If you wish any person who has made one of these statements to be required to attend the hearing as a witness you must, not less than 9 days before the date set down for the hearing of the appeal, notify me and the Clerk to the Tribunal to that effect. In the event of your failure to do so the Tribunal may accept the statement in question in evidence.

LIST

- | | Date of Statement | Name of Person who made the Statement |
|----|-------------------|---------------------------------------|
| 1. | | |
| 2. | | |
| 3. | | |

Date:

Signed:

Address:

WITNESS SUMMONS

Number.....

IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals) Rules 2011
AND IN THE MATTER OF

To

[Empty rectangular box for name and address]

~~You are summoned to attend at the Solicitors' Disciplinary Tribunal at (Tribunal address)
on _____ of _____ at _____ (am)(pm)
(and each following day of the hearing until the Tribunal tells you that you are no longer
required.)~~

~~_____ to give evidence in respect of the above appeal~~

~~_____ to produce the following document(s) (give details)~~

~~The sum of £ _____ is paid or offered to you with this summons. This is to cover your
travelling expenses to and from the Tribunal and includes an amount by way of compensation for
loss of time.~~

~~This summons was issued on the application of the [appellant][respondent] or the [appellant's]
[respondent's] solicitor whose name, address and reference number is:~~

~~**Do not ignore this summons**~~

~~If you were offered money for travel expenses and compensation for loss of time, at the time it
was served on you, you must —~~

- ~~• attend the Tribunal on the date and time shown and/or produce documents as required by
the summons; and~~
- ~~• take an oath or affirm as required for the purposes of answering questions about your
evidence or the documents you have been asked to produce.~~

~~Disobeyance of a witness summons is a contempt of court and you may be fined or imprisoned for
contempt. You may also be liable to pay any wasted costs that arise because of your non-
compliance.~~

~~**If you wish to set aside or vary this witness summons,** you may make an application to the
court.~~

FORM of APPLICATION for a Rehearing

Number:.....

| IN THE MATTER OF the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011

AND IN THE MATTER OF

.....

Number of Tribunal case in respect of which a rehearing is requested

| I APPLY under Rule 2526(1) of the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 that the above-mentioned case be reheard by the Tribunal. The facts upon which I rely in support of this application are set out below:

(set out here full details of the facts on which the applicant for a rehearing relies and include the reasons why the person applying for the rehearing did not appear or was not represented before the Tribunal at the earlier hearing and set out all matters which he wishes to place before the Tribunal in mitigation or otherwise).

Dated:
Signature:
Address:

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules regulate procedure for the making, hearing and determination of appeals made to the Solicitors' Disciplinary Tribunal in relation to decisions made by the Law Society under section 44D of the Solicitors Act 1974 and paragraph 14C of Schedule 2 to the Administration of Justice Act 1985. They also make a minor amendment to one of the forms in the Schedule to the Solicitors (Disciplinary ~~Tribunal~~Proceedings) Rules 2007.

In particular, the rules make provision about the following—

- (1) the constitution of appeals panels,
- (2) procedure and rules of evidence,
- (3) other miscellaneous matters.