

ANNEXE J

THE COMPLAINTS RULES

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THE COMPLAINTS RULES

Introduction

1. These Rules prescribe the manner in which
 - (a) all complaints about the conduct of barristers and
 - (b) all complaints about the conduct of persons who, at the time of such conduct, are serving a sentence of disbarment which is subsequently overturned on appealshall be processed. In these Rules, the expression “barristers” shall be interpreted as including persons falling within sub-paragraph 1(b) above.
2. In these Rules unless the context otherwise requires
 - (a) Any term defined in the Code of Conduct shall carry the same meaning as it does in Part X of the Code of Conduct.
 - (b) Reference to the “Professional Conduct Department” shall refer to the Professional Conduct Department of the Bar Standards Board (“the BSB”).
 - (c) Reference to ‘the regulatory objectives’ shall refer to the regulatory objectives as defined in section 1 of the Legal Services Act 2007.
 - (d) Any reference to a person includes any natural person, legal person and/or firm.
 - (e) Any reference to the masculine gender includes the feminine and the neuter, and any reference to the singular includes the plural, and in each case *vice versa*.
3. If a barrister is a member of more than one Inn, references in these Rules to his Inn shall mean the Inn by which he was called, unless he is a Bencher in which case his Inn shall mean the Inn of which he is a Bencher.
4. The Complaints Committee (“the Committee”) and the Chairman of the Committee shall each have the power to authorise any person, group or body to fulfil any function or exercise any power given to them by these Rules. Any authorisations under this paragraph must be in writing and may be both retrospective and prospective, and both general and for a particular purpose.
5. Save in respect of the matters dealt with at paragraphs 24 and 25 below (time limits for making a complaint), the Committee, the Chairman of the Committee, or any person authorised under paragraph 4 above, shall have the power to extend any time limits prescribed by these Rules, in his or their absolute discretion, whenever it appears to be appropriate to do so.

Powers and functions of the Committee

6. The membership of the Committee shall be as prescribed by the Standing Orders of the BSB as amended from time to time.
7. The powers of the Committee shall be as set out in these Rules, and shall include the power:
 - (a) to consider complaints made by persons other than the BSB;
 - (b) to raise complaints on behalf of the BSB, and to withdraw such complaints;
 - (c) to determine whether any complaint discloses a potential case of professional misconduct or a potential breach of the Code, and if so to deal with it in accordance with these Rules;
 - (d) to direct the investigation of complaints;
 - (e) to seek, in appropriate cases, to resolve complaints using the Determination by Consent procedure;

- (f) to bring charges of professional misconduct before Disciplinary Tribunals (as provided by the Disciplinary Tribunals Regulations at Annex K to the Code of Conduct) on behalf of the BSB, to refer to such tribunals any legal aid complaint relating to the conduct of a barrister and to be responsible for prosecuting any such charges or legal aid complaints before such Tribunals;
 - (g) to take such other actions in relation to complaints or infringements of the Code of Conduct as are permitted by these Rules, and in particular paragraph 31 below;
 - (h) to impose, or direct the imposition, of a fixed financial penalty or a written warning under paragraph 901.1 of the Code of Conduct, whether in connection with a complaint or otherwise;
 - (i) to make recommendations on matters of professional conduct to the BSB or to any of its committees, as the Committee may think appropriate;
 - (j) to make rulings on matters of professional conduct when the Committee considers it appropriate to do so; and
 - (k) to exercise the power of the BSB under paragraph 108 of the Code of Conduct to grant waivers of the provisions of that Code either generally or in particular cases.
8. In the period up to 31 March 2011, the Complaints Committee shall have the additional powers and functions in relation to complaints of inadequate professional service as are set out in Schedule 2 to these Rules.

Procedure for dealing with complaints – general

9. The Committee may at any time postpone consideration of a complaint, whether to permit further investigation of the complaint to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.
10. The Committee may at any time seek information or assistance, orally or in writing, as it thinks fit, from any person, group or body.
11. If at any time the Committee decides in accordance with these Rules:
- (a) to refer a complaint to another person or body for consideration; or
 - (b) to dismiss or take no further action on a complaint; or
 - (c) to postpone consideration of a complaint or part of it;
- it shall give written reasons for such decision, and provide such reasons to the barrister against whom the complaint was made and (where the complaint was made by a person other than the BSB) the complainant.
12. Any complaint raised by the BSB itself shall be considered by the Committee in accordance with paragraph 28 and following below.
13. Any complaint other than a complaint raised by the BSB itself shall be considered by the Committee in accordance with paragraphs 14 to 27 below.

Procedure for dealing with complaints by persons other than the BSB

Reference of complaints to other persons

Reference to Legal Ombudsman

14. If a complaint is made by or on behalf of a barrister's client against that barrister, the Committee shall refer such complaint without further consideration to the Legal Ombudsman, and shall notify the complainant of the referral.
- (a) For the avoidance of doubt, such referral shall not prevent the immediate operation of the Interim Suspension Rules or the Fitness to Practise Rules, where appropriate.

- (b) On a complaint being referred, or referred back, to the BSB by the Legal Ombudsman, paragraphs 15 and following below shall apply.

Reference to Chambers

15. If it appears to the Committee that a complaint against a self-employed barrister (not being a complaint made by or on behalf of a barrister's client against that barrister) may appropriately be resolved by that barrister's Chambers, the Committee may refer the complaint to the barrister's Chambers for investigation and resolution.
16. When deciding whether to refer a complaint in accordance with paragraph 15 above, the Committee shall take into account all the circumstances, including:
- (a) the seriousness of the complaint;
 - (b) the complexity of the complaint;
 - (c) the relationship (if any) between the complainant and the barrister or the barrister's Chambers;
 - (d) any other factor relevant to the issue of whether it is appropriate and potentially effective to refer the complaint to Chambers.
17. Where a complaint relates to conduct which occurred more than twelve months prior to the complaint being made, the Committee shall consider whether the complaint should be dismissed in accordance with paragraph 25 below prior to deciding whether to refer the complaint to Chambers in accordance with paragraph 15 above.
18. Where a complaint is referred to Chambers, the Committee will send any information held by it relating to the complaint to the Head of Chambers, or the individual(s) responsible for administration of Chambers, who will be responsible for ensuring that the complaint is investigated in accordance with Annex S of the Code.
19. Following a referral to Chambers, the Committee shall inform the complainant of the complainant's rights under paragraph 21(b) below.
20. The Committee's decision under paragraph 15 is final and no party shall have the right to appeal against it.
21. If:
- (a) the Committee considers that progress made by Chambers in investigating and resolving the complaint, or the outcome of such investigation, is unsatisfactory; or
 - (b) a complainant informs the Committee that he is dissatisfied with the progress or outcome of the Chambers' investigation, giving reasons for such dissatisfaction,
- then the Committee shall consider the complaint in accordance with paragraph 24 and following below.

Reference to any other person

22. If it appears to the Committee that a complaint relates to a matter which might more appropriately be dealt with by the barrister's Inn, Circuit, employer or some other regulatory body, it may refer the complaint without further consideration to that other body.

Reference where barrister acting in judicial or quasi-judicial capacity

23. (a) If it appears to the Committee that the complaint arises out of a barrister's actions in a part-time or temporary judicial or quasi-judicial capacity, it shall act as follows:

- (i) If it appears to the Committee that the complaint would otherwise fall to be dismissed under these Rules, the Committee shall dismiss it.
 - (ii) If it appears to the Committee that the complaint would otherwise not fall to be dismissed, the Committee shall refer the complaint without further consideration to the person or body responsible for the appointment of the barrister to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other person or body as appropriate) ('the appointing body'), requesting the appointing body to notify the Committee when the complaint has been dealt with and of any action taken. Where the appointing body is a person other than the Lord Chancellor or a Minister of the Crown and where the Committee considers it inappropriate to refer the complaint to the appointing body, or where the appointing body refuses to deal with a complaint, the Committee shall consider the complaint and, subject to (iv) below, direct it to be proceeded with in accordance with paragraph 28 and following below.
 - (iii) If the appointing body, having dealt with a complaint, believes that it may be appropriate for further consideration by the Bar Standards Board, the appointing body may, subject to (iv) below, refer the matter to the Committee which may reconsider the complaint and may, if it sees fit, direct it to be proceeded with in accordance with paragraph 28 and following below.
 - (iv) No such reference to the Committee as is mentioned in (iii) above by the appointing body shall be acted upon by the Committee, nor shall the Committee exercise the powers under the last sentence of paragraph (ii) above in respect of any part of the complaint relating to anything said or done by the barrister in the exercise of his judicial functions or affecting the independence of the barrister in his judicial or quasi-judicial capacity.
- (b) If it appears to the Committee that the complaint relates to the conduct of a barrister who, since the events giving rise to the complaint took place, has been appointed to and continues to hold full-time judicial office and has ceased practice, the Committee shall not consider the complaint further and shall inform the complainant that his complaint should be directed to the Lord Chancellor or to such other person or body as may hereafter assume the responsibilities of the Lord Chancellor in this regard.

Committee's powers before investigation of complaints

24. In determining whether a complaint raised by a person other than the BSB discloses a potential case of professional misconduct or a potential breach of the Code, and whether, if it does, it is apt for further consideration, the Committee shall first consider whether the complaint has been made:

- (a) within twelve months of the conduct of which complaint is made, or
- (b) (where a complainant has indicated to the Committee his dissatisfaction with the outcome of a Chambers' investigation in accordance with paragraph above) within three months of the conclusion of the investigation by Chambers,

whichever is the later. Where the conduct of which complaint is made is (or was) ongoing or consists of a series of related acts or omissions, then the conduct shall for the purposes of this paragraph be treated as having taken place at the time when the ongoing conduct ceased or at the time of the last of such acts or omissions.

25. Where the Committee considers that the complaint has not been made within the period identified in paragraph 24 above, then it shall dismiss the complaint unless it considers that further consideration of the complaint is justified, despite the lapse of time, by reason of the regulatory objectives. The Committee shall give written reasons for any decision made under this paragraph.

26. The Committee shall next consider whether further consideration of the complaint is justified. If the Committee considers that:

- (a) the complaint for any reason obviously lacks substance;

- (b) the complaint cannot be properly or fairly investigated, or the barrister is for any reason unable fairly to respond to it;
- (c) the complaint or its consequences are insufficiently serious to justify further action; or
- (d) for any other reason whatsoever the complaint is not apt for further consideration;

then the Committee shall dismiss the complaint.

27. If a complaint is not dismissed by the Committee following its initial consideration, it shall be investigated and dealt with in the manner set out in paragraph 28 and following below.

Investigation of complaints

28. The investigation of complaints shall be conducted by the Professional Conduct Department under the direction of the Committee.
29. Following the completion of any investigation into a complaint, the Committee shall exercise the powers given to it by paragraph 30 and following below.

Committee consideration of complaints

30. The Committee shall consider complaints, together with the results of investigations thereof, in such manner as it shall see fit, provided that (save in the case of complaints falling within paragraph 31(b) below), the Committee shall not conclude that there is a realistic prospect of a finding of professional misconduct being made against a barrister on the basis of any allegation by a complainant to which the barrister has not had a reasonable opportunity to respond.

31. If in the course of its consideration of a complaint ("the original complaint") the Committee considers that there is any matter other than that complained of which might give rise to a potential case of professional misconduct, the Committee may raise a complaint about that matter on behalf of the BSB ("the new complaint").

- (a) In such event, unless the new matter falls within sub-paragraph (b) below:

- (i) The new complaint shall be investigated in the manner set out in paragraph 28 and following above.
- (ii) The Committee shall not proceed to consider whether there is a realistic prospect of a finding of professional misconduct being made in respect of the new complaint unless and until the barrister concerned has been given the opportunity to comment in writing on the matter complained of in the new complaint. The Committee shall take any comments made by the barrister into consideration when it determines whether there is a realistic prospect of a finding of professional misconduct being made in respect of the new complaint.
- (iii) The Committee may defer further consideration of the original complaint pending the results of any investigation of the new complaint.

- (b) No further investigation will be required where:

- (i) the subject matter of the new complaint has already been investigated in the course of investigations into the original complaint, or
- (ii) the new complaint is a complaint made by the BSB of a breach of paragraphs 901.2, 901.4, 901.5, 901.6 or 905(b)(c) or (f) of the Code of Conduct.

32. Upon considering any complaint, and subject to the provisions of paragraph 38 below, the Committee may take any of the following steps:

- (a) Dismiss the complaint, provided that (where the decision is taken at a meeting of the Committee, and not by some other person, group or body authorised in accordance with

paragraph 4 of these Rules) the majority of the lay members present at the meeting consent to such dismissal.

- (b) Determine that no further action shall be taken on the complaint.
- (c) Direct that the complaint should be subject to the Determination by Consent procedure (under paragraphs 43 and 44 of these Rules) or form the subject matter of a charge before a Disciplinary Tribunal.

33. A direction shall be made by the Committee under paragraph 32(c) above only where:

- (a) the Committee considers that there is a realistic prospect of a finding of professional misconduct being made; and
- (b) the Committee decides that the regulatory objectives would be best served by pursuing disciplinary proceedings.

34. For the purpose of these Rules a 'realistic prospect of a finding of professional misconduct being made' means that the Committee considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of a complaint, that it is more likely than not that such a finding will be made.

35. Where the Committee decides to take no further action on a complaint, or dismisses a complaint, but the barrister's conduct is nevertheless such as to give cause for concern, the Committee may in those circumstances, and either before or after any disposal of the complaint, do any or all of the following:

- (a) draw to the barrister's attention in writing the Committee's concerns;
- (b) direct the barrister to apologise in writing to the complainant;
- (c) advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the Committee or on some other person nominated by the Committee, to receive such advice;
- (d) in a case where there has been an infringement of the provisions of paragraph 901.1 of the Code, direct the Professional Conduct Department to administer a formal written warning and/or a financial penalty for the infringement.

If the complaint of professional misconduct was not dismissed before any such direction or advice was made or given, the Committee may thereafter dismiss that complaint.

36. If, when dismissing or deciding to take no further action on a complaint, the Committee nonetheless considers that the circumstances of the complaint are relevant to the barrister's position as a pupil supervisor, it may notify the barrister's Inn of its concern in such manner as it sees fit.

37. Where a barrister is directed to apologise to the complainant pursuant to paragraph 35(b) above, the Committee may direct that such apology is to be approved by the Chairman of the Committee, or a person nominated by the Chairman of the Committee, prior to being sent to the complainant.

38. If the subject matter of the complaint involves a conviction for an offence of dishonesty or deception the Committee shall direct that the complaint should form the subject matter of a charge before a Disciplinary Tribunal.

39. In all other cases where the Committee considers that there is a realistic prospect of a finding of professional misconduct being made, in determining what is the appropriate means of disposal under paragraph 32 above, the Committee shall be entitled to take into consideration any matters which it considers relevant, including but not limited to:

- (a) the barrister's previous conduct (including any disciplinary findings made against him as a student by his Inn, or any disciplinary findings made against him by any other professional or regulatory body);

- (b) the means by which any previous complaints against him have been disposed of; and
 - (c) the means by which complaints of a similar nature against other barristers have been disposed of.
40. If the Committee considers that there is a realistic prospect of a finding of professional misconduct being made against a registered European lawyer in respect of the complaint, the Professional Conduct Department shall:
- (a) inform the professional body of which the registered European lawyer is a Member in his home Member State;
 - (b) offer that professional body the opportunity to make representations to the Disciplinary Tribunal to which the complaint has been referred or (where the Determination by Consent procedure is used) to the Committee; and
 - (c) inform that professional body of findings made by any panel under these Rules or under Annexes K, M or N of this code.
41. The Committee may reopen or reconsider a complaint which has been disposed of, unless it has been disposed of by a Disciplinary Tribunal,
- (a) where new evidence becomes available to the Committee which leads it to conclude that it should do so, or
 - (b) for some other good reason.
42. Following such reopening or reconsideration, the Committee may take any further or different action it thinks fit, as if the former decision had not been made, provided that if the complaint has already been referred to a Disciplinary Tribunal and charges have been served on the Defendant then the Committee's actions shall be confined to instructing counsel for the BSB to:
- (a) offer no evidence on a charge, or
 - (b) apply to the Directions Judge for the making of additions to or amendments of a charge.

Determination by consent

43. A complaint may, with the consent of the barrister against whom the complaint is made, be finally determined by the Committee. This is referred to as the "Determination by Consent procedure".
44. The circumstances in which the Determination by Consent procedure is to be used, and how it is to be used, are set out in Schedule 1 to these Complaints Rules.

Disciplinary charges

45. If the Committee directs under paragraphs 33 or 38 above that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the following paragraphs shall have effect.
46. At the same time as the Committee directs that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the Committee shall also direct whether a three-person panel or a five-person panel is to be constituted.
- (a) Where paragraph 38 above applies (complaint involving conviction for dishonesty or deception), the Committee shall direct that a five-person panel is to be constituted.
 - (b) In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the Committee shall only consider the sentence which it considers is likely to be imposed if the barrister is found guilty of the charges alleged, having regard to
 - (i) any applicable Sentencing Guidance issued by the Council of the Inns of Court; and
 - (ii) the previous disciplinary record of the barrister; and

- (iii) any deferred sentence which would be activated if the barrister were to be found guilty of the charges alleged.
 - (c) If the Committee considers that the barrister is likely, if convicted, to be disbarred or suspended from practice for more than three months then the Committee shall direct that a five-person panel is to be constituted; otherwise, the Committee shall direct that a three-person panel is to be constituted.
 - (d) The Committee shall inform the barrister and the complainant (if any) of the decision taken under this paragraph. The decision taken by the Committee under this paragraph shall not be subject to any appeal.
47. Where the Committee directs that a three-person panel is to be constituted, the Committee may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chairman of the Panel, giving reasons for any such recommendation.
48. In the event that another charge of professional misconduct is pending or to be brought against the barrister concerned, the Committee shall have the power to direct that the additional charge be brought before the same Tribunal or panel as is disposing of the original charge, even if the additional charge, by itself, may be regarded as insufficiently serious to merit disposal by a Tribunal of that level.
49. The Committee may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions are satisfied:
- (a) the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction),
 - (b) witnesses are unlikely to be called for the hearing,
 - (c) the case needs to be resolved urgently, or
 - (d) there is some other good reason for expedition.
50. When the Committee has directed that a complaint shall form the subject matter of a charge before a Disciplinary Tribunal, the Committee shall be responsible for bringing the charge on behalf of the BSB. In this regard:
- (a) The Committee may arrange for the appointment of counsel to settle the charge and to present the case before the Tribunal, and may arrange for the appointment of a solicitor or such other person as may be necessary to assist counsel and prepare the case.
 - (b) Any charges shall be brought in the name and on behalf of the BSB.

Confidentiality

- 51.
- (a) The BSB shall respect the confidentiality of complaints. The BSB shall not disclose the fact that a complaint has been made or details of the complaint or its disposal save as specified in this paragraph or otherwise required by law.
 - (b) Disclosure may be made:
 - (i) for the purpose of investigating the complaint;
 - (ii) for the purpose of keeping the complainant and the barrister informed of the progress of the complaint;
 - (iii) for the purpose of publicising any forthcoming public hearing of charges arising from the complaint;
 - (iv) where the complainant and the barrister consent;

- (v) for the purposes of paragraph 40 of these Rules;
 - (vi) where the publication of a finding is required by the provisions of the Disciplinary Tribunals Regulations 2009;
 - (vii) subject to paragraph (c) below, in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body for a Certificate of Good Standing in respect of a barrister; or from one of the Inns of Court in respect of an application from a barrister to become a pupil supervisor; or
 - (viii) with the approval of the Committee, for any other good reason.
- (c) Where a disclosure is made pursuant to paragraph (b)(vii) above:
- (i) If any complaint has been made against the barrister concerned which has not been disposed of by the Committee under paragraph 32(a), (d) or (e) of these Rules, or dismissed by any Disciplinary Tribunal or by any other body to which it may have referred by the Committee, the BSB shall simply indicate that a complaint has been received which has not been dismissed; and
 - (ii) if a finding of professional misconduct has been recorded against the barrister concerned, the BSB shall disclose the finding and the penalty;
 - (iii) if the request is from the selection panel or a member of its secretariat in respect of an application by a barrister for silk or if the request is from one of the Inns of Court in respect of an application by a barrister to become a pupil supervisor if a finding of inadequate professional service has been recorded against the barrister concerned, the BSB shall disclose the finding and penalty.
- (d) Where any finding of professional misconduct has been made (whether by a Disciplinary Tribunal, the Visitors, or the Committee in the course of a Determination by Consent), the BSB shall publish on the BSB's website the name of the barrister against whom that finding was made, the nature of that finding, and the sentence imposed, unless the body making the finding directs otherwise.

Appeals from written warnings and financial penalties

52. A barrister's appeal in accordance with paragraph 901.3 of the Code from a written warning or financial penalty imposed by the BSB for any failure to comply with the provisions identified in paragraph 901.1 of the Code shall lie to an Appeal Panel constituted under the auspices of the Council of the Inns of Court in the same manner as a three-person panel constituted under Regulation 2(3) of the Disciplinary Tribunal Regulations.
53. An appeal shall be made by the barrister sending to the Chairman of the Committee, within the time provided by paragraph 901.3 of the Code, a notice identifying the warning or financial penalty appealed against, the decision the barrister contends for, the grounds of such appeal and a statement of whether or not the barrister requires his appeal to be disposed of at an oral hearing. The appeal shall be by way of a re-hearing.
54. The notice shall be accompanied by the sum of £100 (or such other sum as may be prescribed by the BSB from time to time) payable to the BSB to defray expenses.
55. At least 5 working days before the time set for the appeal, the Professional Conduct Department will provide each member of the Panel and the barrister with a paginated bundle of the correspondence and other documents on its files relating to the imposition of the written warning and financial penalty.
56. On such an appeal:
- (a) the barrister may be represented;

- (b) the Appeal Panel shall decide whether to set aside the written warning or financial penalty or both, or to replace a written warning with a financial penalty or *vice versa*, as appropriate;
- (c) if the Appeal Panel shall allow the appeal in whole or in part, the Panel may direct that the sum paid under paragraph 54 above shall be refunded: but the Appeal Panel shall have no power to award costs.

Commencement and Transitional Provisions

57.

- (a) These Rules will come into effect on 1st January 2011. They shall apply to all complaints whenever raised.
- (b) Any step taken in relation to any complaint prior to 1st January 2011 pursuant to the provisions of the Rules then applying shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of these Rules.

SCHEDULE 1: Determination by Consent

1. The Committee shall, in deciding whether to make a complaint subject to the Determination by Consent procedure under paragraph 43 of the Complaints Rules, consider all the circumstances. The Committee may make the complaint subject to the Determination by Consent procedure only if it considers that:
 - (a) there is a realistic prospect of a finding of professional misconduct being made in respect of the complaint; and
 - (b) there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
 - (c) the breach or breaches of the Code, if proved, combined with
 - (i) the barrister's previous disciplinary history, and
 - (ii) any deferred sentences which would be activated if the breach or breaches were proved,do not appear to be such as to warrant a period of suspension from practice or disbarment; and
 - (d) there are no exceptional circumstances which would warrant no further action being taken on the complaint or the complaint being dismissed; and
 - (e) there are no other public interest considerations which warrant a full hearing.
2. A decision taken under paragraph 43 of the Complaints Rules shall be final and neither the barrister nor the complainant (if applicable) may appeal against such a decision.
3. The Determination by Consent procedure shall be conducted in accordance with such procedures as the Committee may prescribe from time to time.
4. The Committee may terminate the Determination by Consent procedure at any time if it no longer considers that the requirements of paragraph 1 of this Schedule are satisfied, or for any other good reason.
5. If the Determination by Consent procedure terminates other than by a finding and sentence to which the barrister consents, then the complaint shall be disposed of by the Committee in accordance with paragraph 30 and following of the Complaints Rules.
6. The Committee shall publish any finding and sentence resulting from the Determination by Consent procedure to the same extent as such publication would have taken place following a finding and sentence resulting from a Disciplinary Tribunal, as provided for in paragraph 29 of Annex K to the Code of Conduct.
7. Once accepted by the barrister, no appeal may be made against a determination by consent, whether by the barrister or by the complainant (if applicable).
8. In determining any sanction to be imposed under the Determination by Consent procedure, the Committee shall have regard to any applicable Sentencing Guidance published by the Council of the Inns of Court.
9. A barrister against whom a charge of professional misconduct has been found proved under the Determination by Consent procedure may be subject to the following sanctions:
 - (a) ordered to pay a fine of up to £15,000 to the Bar Standards Board (save that no fine may be ordered in excess of £5,000 unless the relevant conduct occurred after 31st March 2009);
 - (b) ordered to complete continuing professional development of such nature and duration as the Committee shall direct and to provide satisfactory proof of compliance with this order to the Committee;

- (c) reprimanded by the Treasurer of his Inn;
 - (d) reprimanded by the Committee;
 - (e) given advice by the Committee as to his future conduct;
 - (f) ordered to attend on a nominated person to be reprimanded;
 - (g) ordered to attend on a nominated person to be given advice as to his future conduct;
 - (h) ordered to provide the complainant with an apology (save that such order may be made only in respect of conduct which took place after 1st July 2008);
 - (i) ordered to take and pass a test in professional conduct and ethics by a stated date, failing which the barrister shall be suspended from practice until such test has been passed, provided that no such sentence shall be imposed unless and until the Bar Standards Board has prescribed procedures by which such tests are to be conducted.
10. Where a barrister is directed to apologise to the complainant pursuant to paragraph 9(h) above, the Committee may direct that such apology is to be approved by the Chairman of the Committee, or a person nominated by the Chairman of the Committee, prior to being sent to the complainant.
11. Where the Committee has imposed a fine, the confirmation letter to the barrister shall indicate that the barrister must pay the fine within 28 days, subject to any representations made regarding the need for extra time to pay. Any application to pay a fine in instalments shall be left to the discretion of the Chairman of the Committee.
12. Where a sanction imposed by the Committee includes a fine, that element of the sentence may be directed by the Committee to have deferred effect. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the "period of deferral").
- (a) A deferred sentence shall be activated where the barrister is subsequently found (whether during the period of deferral or afterwards) to have committed a Relevant Breach during the period of deferral. For the purpose of this Regulation, a Relevant Breach would be a breach of the Code of Conduct amounting to professional misconduct.
 - (b) Where the Committee finds that there has been a Relevant Breach during the period of deferral, it shall (at the same time as imposing sentence for the Relevant Breach) activate the sentence which had been deferred, save in exceptional circumstances.
 - (c) For the avoidance of doubt, the Committee may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a Disciplinary Tribunal, so long as the total sanction imposed does not exceed the powers of the Committee set out in paragraph 9 above.
13. For the avoidance of doubt, any sanction imposed by the Committee under the Determination by Consent procedure shall be treated as a sentence imposed by a tribunal for the purpose of paragraph 905(f) of the Code of Conduct.

SCHEDULE 2: Inadequate professional service

1. Subject to the paragraphs below, in the period up to 31 March 2011, in respect of any complaint made by or on behalf a barrister's lay client before 6 October 2010:
 - (1) The Committee shall have the same powers in relation to complaints of inadequate professional service as it has in relation to complaints of professional misconduct or other failures to comply with the Code.
 - (2) References to 'professional misconduct' in paragraphs 24, 30, 34, 35, 39, and 40 these Rules shall be read as if they referred to 'professional misconduct or inadequate professional service'.
 - (3) Paragraph 14 of these Rules shall not apply.
2. Paragraph 33 of these Rules shall read as follows
 - (i) If the Committee considers that there is a realistic prospect of a finding of inadequate professional service being made but (if the complaint also involves professional misconduct) there is no realistic prospect of a finding of professional misconduct being made or the matter is in the opinion of the Committee not serious enough to warrant reference to a Disciplinary Tribunal, the Committee may direct that the complaint be referred to an Adjudication Panel to be dealt with as a case of inadequate professional services alone in accordance with the Adjudication Panel Rules (Annex P to the Code of Conduct).
 - (ii) If the Committee considers that there is a realistic prospect of a finding of professional misconduct being made (whether with or without inadequate professional service) in circumstances where the Committee decides that the regulatory objectives would be best served by pursuing disciplinary proceedings and thus the matter should not be disposed of under sub-paragraphs 32(a) or 32(b) above, direct that the complaint should be subject to the Determination by Consent procedure (under paragraphs 43 and 44 of these Rules) or form the subject matter of a charge before a Disciplinary Tribunal."

3. From 31 March 2011, the Bar Council shall cease to have jurisdiction in respect of any aspects of any complaints involving inadequate professional service. Accordingly, on that date:
 - (1) The Committee shall cease any investigation or consideration of any aspect of any complaint involving allegations of inadequate professional service.
 - (2) The Committee shall discontinue any proceedings before any panel or tribunal in respect of any aspect of any complaint involving allegations of inadequate professional service.
 - (3) The Committee shall transfer to the Legal Services Ombudsman any files relating to any complaints involving inadequate professional service which have not been disposed of.
 - (4) The Committee shall thereafter not reopen or reconsider any aspect of any complaint involving allegations of inadequate professional service.
4. Nothing in this Schedule shall affect the continued acceptance, consideration and pursuit of complaints alleging professional misconduct, even where the behaviour complained of might also constitute inadequate professional service.