

THE BSB HANDBOOK
PART V – ENFORCEMENT RULES

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A. INTRODUCTION

1. This Part V prescribes the manner in which the *Bar Standards Board* shall process all *complaints* about the conduct of *relevant persons*.
2. The *Bar Standards Board*:
 - 2.1 shall from time to time publish its Enforcement Policy for the purposes of Part V (which will be identified as such); and
 - 2.2 may also from time to time publish other policies relevant to this Part.

B THE COMPLAINTS RULES**B1 Interpretation**

1. In these *Complaints Rules*:
 - 1.1 *administrative sanction* means the imposition of an administrative warning, fixed penalty fine or other administrative fine up to the prescribed maximum, or any combination of the above;
 - 1.2 *a realistic prospect of a finding of professional misconduct being made* means that the *PCC* 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 a finding of *professional misconduct* will be made;
 - 1.3 *a realistic prospect of the disqualification condition being satisfied* means that the *PCC* 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 it shall be determined that the *disqualification condition* has been satisfied;
 - 1.4 *Disciplinary Tribunal* means a tribunal convened pursuant to Regulation 25 of the Disciplinary Tribunal Regulations to consider an allegation of *professional misconduct* against a *BSB regulated person* (for which the sanctions may include disqualification, where Part V so provides) and/or to consider an application for disqualification against a non-authorised *employee*;
 - 1.5 *disqualification condition* means that, in their capacity as a *HOLP*, *HOFA*, *manager* or *employee* of a *BSB authorised body* or as an *employee* of a *BSB authorised person* (as the case may be), the *relevant person* has (intentionally or through neglect):
 - (a) (if a *BSB regulated person*) breached a relevant duty to which the *BSB regulated person* is subject under this *Handbook* or under applicable rules of another *Approved Regulator*, or

- (b) (if either a *BSB regulated person* or a non-*authorised employee* of a *BSB authorised person*) caused, or substantially contributed to, a *BSB regulated person* breaching a relevant duty to which the *BSB regulated person* is subject under this *Handbook* or under applicable rules of another *Approved Regulator*; and
- (c) in either case, that it is undesirable that the *relevant person* should engage in the *relevant activity* in respect of which the disqualification order is made;

1.6 *disqualification order* means an order:

- (a) made by the *PCC* under the *Determination by Consent procedure* or made by a Disciplinary Tribunal in disposing of a disciplinary charge or disqualification application referred to it by the *PCC*; and
- (b) made on the basis that the *disqualification condition* is satisfied in respect of the *relevant person* who is the subject of the disqualification order; and
- (c) either indefinitely or for a stated period, disqualifying a *relevant person* from one or more *relevant activities* and prohibiting any *BSB authorised person* from appointing them or directly or indirectly employing them in respect of such *relevant activities*, namely acting as a *HOLP*, *HOFA*, *manager* or *employee* of a *BSB authorised body* or as an *employee* of a *BSB authorised individual* (as the case may be);

1.7 *Enforcement Policy* means the policy from time to time published by the *Bar Standards Board* pursuant to paragraph 2.1 of Section A to this Part V, in effect as at the date the *complaint* is made to the *Bar Standards Board* or raised by the *Bar Standards Board* of its own motion under this Part V;

1.8 *professional misconduct* means an alleged breach of this *Handbook* by a *BSB regulated person* which the *PCC* does not either dismiss or consider appropriate for disposal by way of administrative sanctions, pursuant to paragraph 33.1 below;

1.9 *relevant person* means:

- (a) persons who were *BSB regulated persons* at the time of the conduct complained of (including, for the purposes of Part V of the *Handbook* only,

persons who would have fallen within the definition of *BSB regulated persons* but for the fact that, at the time of the conduct complained of, they had their authorisation or licence *suspended* or revoked, or were subject to a sentence of suspension or disbarment, or were subject to a disqualification order (as the case may be) that has subsequently been overturned on appeal); and

(b) *non-authorised persons* who are directly or *indirectly employed* by a *BSB authorised person* or who were so employed at the time of the conduct complained of (indirect employment, for the purposes of this Section B, means employment by a non-authorised person that in turn is owned or controlled by a *BSB authorised person*).

2. 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.
3. The *PCC* and the Chairman of the *PCC* shall each have the power to authorise any person, group or body to fulfill any function or exercise any power given to them by these *Complaints Rules*. Any authorisations given under this paragraph 3 must be in writing and may be both retrospective and prospective, and both general and for a particular purpose.
4. Save in respect of the matters dealt with at paragraphs 27.2 and 27.4 below (time limits for making a *complaint*), the *PCC*, the Chairman of the *PCC*, or any person authorised under paragraph 3 above, shall have the power to extend any time limits prescribed by these *Complaints Rules*, in his absolute discretion, whenever it appears to be appropriate to do so.

B2 Powers and Functions of the PCC

5. The membership of the *PCC* shall be as prescribed by the Standing Orders of the *Bar Standards Board* as amended from time to time.
6. The powers of the *PCC* shall be as set out in these *Enforcement Rules*, and shall include (but not be limited to) the power:
 - 6.1 to consider *complaints* made by persons other than the *Bar Standards Board*;

- 6.2 to raise *complaints* on behalf of the *Bar Standards Board*, and to withdraw such *complaints*;
- 6.3 to determine whether any *complaint*:
- (a) discloses a potential breach of the *Handbook*; and/or
 - (b) discloses a potential case of *professional misconduct*; and/or
 - (c) potentially satisfies the *disqualification condition*,
- and if so to deal with it in accordance with these *Complaints Rules*;
- 6.4 to direct the investigation of *complaints*;
- 6.5 to seek, in appropriate cases, to resolve *complaints* using the *Determination by Consent procedure*;
- 6.6 to bring and prosecute charges of *professional misconduct* or make an application for disqualification before Disciplinary Tribunals (as provided by the *Disciplinary Tribunals Regulations*);
- 6.7 to seek an interim suspension or disqualification order in accordance with Section E of Part V of this *Handbook*.
- 6.8 to refer to *Disciplinary Tribunals* any *legal aid complaint* relating to the conduct of a *BSB regulated person* and to be responsible for prosecuting any such charges or *legal aid complaints* before such Disciplinary Tribunals;
- 6.9 to take such other actions in relation to *complaints* or infringements of the *Handbook* as are permitted by these *Complaints Rules*;
- 6.10 to impose, or direct the imposition, of an administrative sanction in accordance with the provisions of paragraph 33.1(c) below;
- 6.11 to make recommendations on matters of professional conduct to the *Bar Standards Board* or to any of its committees, as the *PCC* may think appropriate;

- 6.12 to make rulings on matters of professional conduct in accordance with the *Determination by Consent procedure*; and
- 6.13 to exercise the power of the *Bar Standards Board* under Part 1 of the *Handbook* to grant waivers of the provisions of the *Handbook* either generally or in particular cases.

B3 Procedure for dealing with complaints - general

- 7. In determining which of its powers under this Section B to use the *PCC* will take into account all the circumstances, including:
 - 7.1 the seriousness of the *complaint*;
 - 7.2 the complexity of the *complaint*;
 - 7.3 the *Bar Standards Board's enforcement policy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant;
 - 7.4 any other factor relevant to the issue of whether it is appropriate, sufficient, proportionate and effective, in the public interest, to proceed in that manner.
- 8. The *PCC* may at any time postpone consideration of a *complaint*, whether to permit further investigation of the *complaint* to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.
- 9. The *PCC* may at any time seek information or assistance, orally or in writing, as it thinks fit, from any person, group or body.
- 10. If at any time the *PCC* decides in accordance with these *Complaints Rules*:
 - 10.1 to refer a *complaint* to another person or body for consideration; or
 - 10.2 to dismiss or take no further action on a *complaint*; or
 - 10.3 to postpone consideration of a *complaint* or part of it;

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

11. Any *complaint* raised by the *Bar Standards Board* itself shall be considered by the *PCC* in accordance with paragraphs 30 and 31 and following below.
12. Any *complaint* other than a *complaint* raised by the *Bar Standards Board* itself shall be considered by the *PCC* in accordance with paragraphs 13 to 29 below.

B4 Procedure for dealing with complaints by persons other than the *Bar Standards Board*

Referral of complaints to other persons

13. On receipt of a *complaint*, the *PCC* shall first consider whether it is appropriate to refer the *complaint* to another person, taking into account the factors set out in paragraphs 15 to 26 below. If at any time the *PCC* decides to refer a *complaint* to another person or body for consideration it shall give written reasons for such decision, and provide such reasons to the *relevant person* against whom the *complaint* was made and (where the *complaint* was made by a person other than the *Bar Standards Board*) the complainant.
14. The *PCC*'s decision under paragraph 13 is final and no party shall have the right to appeal against it.

Reference to Legal Ombudsman

15. If a *complaint* is made by or on behalf of a client of a *BSB regulated person* (excluding for the purposes of this paragraph 15 only, *unregistered barristers*) against that *BSB regulated person* (or, in the case of a *BSB authorised body*, such *complaint* is made against any individual working as an *employee* or *manager* of such *BSB authorised body*), the *PCC* shall refer such *complaint* without further consideration to the *Legal Ombudsman*, and shall notify the complainant of the referral, unless it is clear on the face of the *complaint* that the matter falls outside the jurisdiction of the *Legal Ombudsman*.
16. If a *complaint* is made by or on behalf of a client of an *unregistered barrister* against that *unregistered barrister*, the *PCC* may refer such *complaint* to the *Legal Ombudsman* if it is

satisfied that the *Legal Ombudsman* may have jurisdiction in relation to such *complaint*, and the *PCC* shall notify the complainant of the referral.

17. For the avoidance of doubt, such referral shall not prevent the immediate operation of the *Interim Suspension and Disqualification Rules* or the *Fitness to Practise Rules*, where appropriate.
18. On a *complaint* being referred, or referred back, to the *Bar Standards Board* by the *Legal Ombudsman*, paragraphs 27 and following below shall apply.

Reference to Chambers/BSB authorised bodies

19. If it appears to the *PCC* that a *complaint* against a *relevant person* (not being a *complaint* made by or on behalf of *BSB regulated person's client* against that *BSB regulated person*) may appropriately be resolved by:
 - 19.1 *Chambers* (where the *complaint* is against a *self-employed barrister* who is a *member* of, or other relevant person who is working at, such *Chambers* at the relevant time); or
 - 19.2 a *BSB authorised body* (where the *complaint* is against such *BSB authorised body* or the *complaint* is against a relevant person acting in their capacity as a *manager* or *employee* of such *BSB authorised body* at the relevant time),

the *PCC* may refer the *complaint* to the *Chambers* or *BSB authorised body* for investigation and resolution. For the avoidance of doubt, where a *complaint* is made against an *employed barrister (authorised non-BSB body)* or an *employed barrister (non-authorised body)*, the provisions of paragraph 24 shall apply.

20. When deciding whether to refer a complaint in accordance with paragraph 18 above, the *PCC* shall take into account all the circumstances, including the factors referred to at paragraph 7 above and the relationship (if any) between the complainant and the relevant *Chambers/BSB authorised body* and whether such relationship is continuing.
21. The *PCC* shall consider whether the *complaint* should be dismissed on the basis that it has not been made within the period identified in paragraph 27.2 below prior to deciding whether to refer the *complaint* to the relevant *Chambers/BSB authorised body* in accordance with paragraph 19 above.

22. Where a *complaint* is referred to the relevant *Chambers/BSB authorised body* in accordance with paragraph 19 above, the *PCC* will send any information held by it relating to the *complaint* to the head of *Chambers* (in the case of a referral to *Chambers*) or to the *HOLP* (in the case of a referral to a *BSB authorised body*) or to such other individual at the *Chambers/BSB authorised body* as appears appropriate in all the circumstances.
23. Following a referral to a *Chambers/BSB authorised body* in accordance with paragraph 19 above, the *PCC* shall inform the complainant of the complainant's rights under paragraph 23 below.
24. If:
- 24.1 the *PCC* considers that progress made by the *Chambers/BSB authorised body* in investigating and resolving the *complaint*, or the outcome of such investigation, is unsatisfactory; or
- 24.2 a complainant informs the *PCC* that he is dissatisfied with the progress or outcome of the *Chambers/BSB authorised body's* investigation, giving reasons for such dissatisfaction,

then the *PCC* shall consider the *complaint* in accordance with paragraph 27 and following below.

Reference to any other person

25. If it appears to the *PCC* that a *complaint* received in respect of a *relevant person* relates to a matter which might more appropriately be dealt with by an Inn, Circuit, employer or any other professional or regulatory body (including, for the avoidance of doubt, any other *Approved Regulator*), it may refer the *complaint* without further consideration to such other body. If, having referred a *complaint* to another body under this paragraph 24, the *PCC* subsequently considers that the *complaint* has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the *PCC* may in its discretion then choose to consider the *complaint* (or such part or parts of the *complaint* as the *PCC* considers fit) in accordance with paragraph 13 above and/or paragraph 27 and following below.

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

26. If it appears to the *PCC* that the *complaint* arises out of a *relevant person's* actions in a part-time or temporary judicial or quasi-judicial capacity, it shall act as follows:
- 26.1 if it appears to the *PCC* that the *complaint* would otherwise fall to be dismissed under *Complaints Rules*, the *PCC* shall dismiss it;
- 26.2 if it appears to the *PCC* that the *complaint* would otherwise not fall to be dismissed, the *PCC* shall refer the *complaint* without further consideration to the person or body responsible for the appointment of the *relevant person* to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other person or body as appropriate) ("*the appointing body*"), requesting *the appointing body* to notify the *PCC* 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 *PCC* considers it inappropriate to refer the *complaint* to *the appointing body*, or where *the appointing body* refuses to deal with a *complaint*, the *PCC* shall consider the *complaint* and, subject to 25.4 below, direct it to be proceeded with in accordance with paragraphs 30 and 31 and following below.
- 26.3 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 25.4 below, refer the matter back to the *Bar Standards Board* and, following such referral, the *PCC* may reconsider the *complaint* and may, if it sees fit, direct it to be proceeded with in accordance with paragraphs 30 and 31 and following below.
- 26.4 no such reference to the *Bar Standards Board* as is mentioned in 25.3 above by *the appointing body* shall be acted upon by the *PCC*, nor shall the *PCC* exercise the powers under the last sentence of paragraph 25.2 above, in respect of any part of the *complaint* relating to anything said or done by the *BSB regulated individual* in the exercise of his judicial functions or affecting the independence of the *BSB regulated person* in his judicial or quasi-judicial capacity.
27. If it appears to the *PCC* that the *complaint* relates to the conduct of a *BSB regulated individual* who, since the events giving rise to the *complaint* took place, has been appointed to and continues to hold full-time judicial office and has ceased practice, the *PCC* shall not consider the *complaint* further and 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.

B5 PCC's powers before investigation of complaints

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

27.1 whether the *complaint* is made in respect of a *relevant person*; and

27.2 whether the *complaint* has been made:

- (a) within twelve months of the conduct of which *complaint* is made, or
- (b) where a complainant has indicated to the *PCC* his dissatisfaction with the outcome of a *Chambers/BSB authorised body's* investigation in accordance with paragraph 18 above, within three months of the conclusion of the investigation by *Chambers/BSB authorised body*, whichever is the later; and
- (c) in either case, where the conduct of which *complaint* is made is (or was) ongoing or consists of a series of related acts or omissions, 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; and

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

27.4 Where the *PCC* determines that the *complaint* has not been made within the period identified in paragraph 27.2 above it shall dismiss the *complaint* unless it decides that further consideration of the *complaint* is justified in the public interest, having regard to the regulatory objectives.

28. Where the *PCC* has not dismissed a *complaint* in accordance with paragraph 27.3 or 27.4 above, the *PCC* shall next consider whether further consideration of the *complaint* is justified. If the *PCC* considers that:
- 28.1 the *complaint* for any reason obviously lacks substance; or
 - 28.2 the *complaint* cannot be properly or fairly investigated, or the *relevant person* is for any reason unable fairly to respond to it; or
 - 28.3 the *complaint* or its consequences are obviously insufficiently serious to justify further action; or
 - 28.4 for any other reason whatsoever the *complaint* is not apt for further consideration,
- then the *PCC* shall dismiss the *complaint* and give written reasons for its decision to dismiss the *complaint* under this paragraph 28 to the complainant.
29. If a *complaint* is not dismissed by the *PCC* following its initial consideration, it shall be investigated and dealt with in the manner set out in paragraph 30 and following below and the complainant shall be informed, in writing, that such investigation is to take place.

B6 Investigation of complaints

30. The investigation of *complaints* shall be conducted by the Professional Conduct Department under the direction of the *PCC*.
31. Following the completion of any investigation into a *complaint*, the *PCC* shall exercise the powers given to it by paragraph 32 and following below.

B7 Additional potential breaches of the Handbook

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

may raise a *complaint* about that matter on behalf of the *Bar Standards Board* ("*the new complaint*").

32.1 In such event, unless the new matter falls within paragraph 32.2 below:

- (a) *the new complaint* shall be investigated in the manner set out in paragraph 30 and following above;
- (b) the *PCC* shall not proceed to consider whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect of the disqualification condition being satisfied* in respect of *the new complaint* unless and until the *relevant person* has been given the opportunity to comment in writing on the matter complained of in *the new complaint*. The *PCC* shall take any comments made by the *relevant person* into consideration when it determines whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect of the disqualification condition being satisfied* in respect of *the new complaint*;
- (c) the *PCC* may defer further consideration of *the original complaint* pending the results of any investigation of *the new complaint*.

32.2 No further investigation or opportunity to respond will be required where the subject matter of *the new complaint* has already been investigated in the course of investigations into *the original complaint* and the *relevant person* has already been given an opportunity to comment thereon.

B8 PCC consideration of complaints

33. Following the completion of any investigation, the *PCC* shall consider the *complaint*, together with the results of any investigation thereof, and may conclude (having regard to the *enforcement policy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant)

33.1 in respect of *complaints* made against a *relevant person*:

- (a) that the conduct did not constitute a breach of the *Handbook*, in which case the *PCC* shall dismiss the *complaint* or determine that no further action should be taken in respect of it;

- (b) that the conduct did constitute a breach of the *Handbook* but that in all the circumstances the breach should appropriately be dealt with by way of dismissal or no further action;
- (c) that the conduct did constitute a breach of the *Handbook* and that such breach should appropriately be dealt with by the way of *administrative sanction*.
- (d) that the conduct did constitute a breach of the *Handbook* and is potentially *professional misconduct* and/or potentially satisfies the *disqualification condition* and that an administrative sanction pursuant to 33.1(b) is not appropriate in all the circumstances.

33.2 Where the *PCC* has concluded that 33.1(d) is the appropriate course of action it shall refer the *complaint* to a Disciplinary Tribunal, provided that no *complaint* shall be referred unless the *PCC* is satisfied that:

- (a) there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*; and
- (b) that it is in the public interest, having regard to the regulatory objectives to pursue disciplinary proceedings.

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

34. The *PCC* shall not conclude that there is a *realistic prospect of a finding of professional misconduct being made* or that there is a *realistic prospect of the disqualification condition being satisfied* against a *relevant person* on the basis of any allegation by a complainant to which the *relevant person* has not had a reasonable opportunity to respond in writing.

35. Where the *PCC* is minded to refer the matter to a Disciplinary Tribunal for determination it may, in appropriate cases and with the consent of the defendant, instead direct that the *complaint* be subject to the *Determination by Consent procedure* (under paragraph 51 and following below).
36. If the subject matter of the *complaint* against a *BSB regulated person* involves a conviction for an offence of dishonesty or deception the *PCC* shall direct that the *complaint* should form the subject matter of a charge before a Disciplinary Tribunal.
37. Where the *BSB regulated person* referred to a *Disciplinary Tribunal* is a *registered European Lawyer*, the *PCC* shall:
- (a) Inform the professional body of which the register European lawyer is a member in his home Member state;
 - (b) Offer the professional body the opportunity to make representations to the Disciplinary Tribunal to which the *complaint* has been referred or (where the *Determination by Consent procedure* is used) to the *PCC*; and
 - (c) Inform the professional body of findings made by the Disciplinary Tribunal, the *PCC* or any other *Bar Standards Board Panel*.

B9 Dismiss or no further action

38. Where a decision to dismiss a *complaint* is being taken at a meeting of the *PCC* and not by some other person, group or body authorised in accordance with paragraph 3 of these Rules, the majority of the lay members present at the meeting must consent to such dismissal.
39. Where the *PCC* decides to take no further action on a *complaint*, or dismisses a *complaint*, but the *BSB regulated person's* conduct is nevertheless such as to give cause for concern, the *PCC* may in those circumstances, and either before or after any disposal of the *complaint*, do any or both of the following:
- 39.1 draw to the *BSB regulated person's* attention in writing the *PCC's* concerns;

39.2 advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the *PCC* or on some other person nominated by the *PCC*, to receive such advice.

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

B10 Administrative fines and warnings

41. Pursuant to 33.1(c) above, the *PCC* may impose an *administrative sanction* on a *BSB regulated person* only where:

41.1 a breach of the *Handbook* by that person is proved on a balance of probability; and

41.2 the *PCC* considers that imposition of an *administrative sanction* is a proportionate and sufficient outcome in the public interest.

42. In determining the level of *administrative sanction* to be imposed, the *PCC* shall have due regard to the *enforcement policy* or other such guidance as may be published by the *Bar Standards Board* or the *Council of the Inns of Court* from time to time.

43. The maximum level of a fine capable of being imposed by the *PCC* under paragraph 40 is:

43.1 £3,000 where the fine is to be imposed on a *BSB regulated individual*; and

43.2 £5,000 where the fine is to be imposed on *Chambers* or a *BSB authorised body*.

44. Any decision by the *PCC* to impose an administrative fine or warning will be formally recorded but will not be made public.

B11 BSB regulated person's right to appeal from an administrative sanction

45. A *BSB regulated person* has a right to appeal from any decision of the *PCC* to impose an *administrative sanction* in accordance with these *Complaints Rules* 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.

46. An appeal shall be made by the *BSB regulated person* sending to the Chairman of the *PCC* a notice identifying the administrative fine or warning appealed against, the decision the *BSB regulated person* contends for, the grounds of such appeal and a statement of whether the *BSB regulated person* requires his appeal to be disposed of at an oral hearing. If the *BSB regulated person* does not expressly request an oral hearing, the appeal shall be dealt with by a review of the papers. The appeal shall be by way of a review of the original decision.
47. The notice shall be accompanied by such sum as may be prescribed by the *Bar Standards Board* from time to time, such sum being payable to the *Bar Standards Board* to defray expenses.
48. Where the appeal is to be dealt with at an oral hearing then:
 - 48.1 at least 5 working days before the time set for the appeal, the *PCC* will provide each member of the *Appeal Panel* and the *BSB regulated person* with a paginated bundle of the correspondence and other documents on its files relating to the imposition of the administrative sanction; and
 - 48.2 at the oral hearing, the *BSB regulated person* may be represented-
49. The *Appeal Panel* shall decide whether to set aside or vary the administrative sanction.
50. If the *Appeal Panel* shall allow the appeal in whole or in part, the *Appeal Panel* may direct that any administrative fine or appeal fee already paid by the *BSB regulated person* be refunded either in whole or in part: but the *Appeal Panel* shall have no power to award costs.
51. Any failure by the *BSB regulated person* to pay the administrative fine within the relevant timescale is likely to be treated as *professional misconduct* and shall entitle the *PCC* to refer the matter to a full Disciplinary Tribunal for disposal.

B11 Determination by consent

52. A *complaint* which the *PCC* is otherwise intending to refer to the Disciplinary Tribunal in accordance with paragraph 33.2 may, with the consent of the *relevant person* against whom the *complaint* is made, be finally determined by the *PCC*. This is referred to as the “*Determination by Consent procedure*”.
53. The circumstances in which the *Determination by Consent procedure* is to be used, and how it is to be used, are set out below.
54. The *PCC* shall, in deciding whether to make a *complaint* subject to the *Determination by Consent procedure*, consider all the circumstances. The *PCC* may make the *complaint* subject to the *Determination by Consent procedure* only if:
- 54.1 the *relevant person* submits to the jurisdiction of the *PCC*; and
- 54.2 if the *PCC* considers that:
- (a) where relevant, there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied* in respect of the *complaint*; and
 - (b) there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
 - (c) there are no exceptional circumstances which would warrant no further action being taken on the *complaint* or the *complaint* being dismissed; and
 - (d) having regard to the regulatory objectives, it is in the public interest to resolve the *complaint* under the *Determination by Consent procedure*; and
 - (e) the potential *professional misconduct or disqualification condition*, if proved, combined with:
 - (i) the *relevant person’s* previous disciplinary history, and
 - (ii) any deferred sentences which would be activated if the breach or breaches were proved,do not appear to be such as to warrant:

- (iii) in the case of a *barrister*, a period of suspension from practice or disbarment;
- (iv) in the case of a *BSB authorised body*, suspension or revocation of its authorisation or licence;
- (v) in the case of a *non-BSB authorised individual*, referral to that individual's Approved Regulator for that regulator to consider whether to suspend or revoke their authorisation;
- (vi) a sanction other than those set out in paragraph 61 below.

55. The *Determination by Consent procedure* shall be conducted in accordance with such procedures as the *PCC* may prescribe from time to time.
56. The *PCC* may terminate the *Determination by Consent procedure* at any time if it no longer considers that the requirements of paragraph 54 are satisfied, or for any other good reason.
57. If the *Determination by Consent procedure* terminates other than by a finding and sentence to which the *relevant person* consents, then the *complaint* shall be referred to a full Disciplinary Tribunal.
58. The *PCC* 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 the Disciplinary Tribunal Regulations.
59. Once accepted by the *relevant person* no appeal may be made against a *Determination by Consent*, whether by the *BSB regulated person* or by the complainant (if applicable).
60. In determining any sanction to be imposed under the *Determination by Consent procedure*, the *PCC* shall have regard to the relevant *enforcement policy* and any sentencing policy or guidelines issued by the *Bar Standards Board* and/or the *Council of the Inns of Court* from time to time.
61. A relevant person in respect of whom the *disqualification condition* has been found to be satisfied under the *Determination by Consent procedure* may be made subject to a *disqualification order*, and

62. A *relevant person* against whom a charge of *professional misconduct* has been found proved under the *Determination by Consent procedure* may be subject to the following sanctions:

62.1 in the case of a *BSB regulated person*;

- (a) ordered to pay a fine to the *Bar Standards Board* (in the case of a *BSB licensed body*, a fine of up to £250,000,000 - in the case of a manager or authorised *employee* of a *BSB licensed body*, a fine of up to £50,000,000 in the case of any other *BSB regulated person*, a fine of up to £1,000,000);
- (b) where the *relevant person* is a *BSB authorised body* or a *BSB authorised individual*, impose any conditions on the licence or authorisation (as appropriate);
- (c) reprimanded by the *PCC* or ordered to attend on a nominated person to be reprimanded;
- (d) given advice by the *PCC* as to his future conduct or ordered to attend on a nominated person to be given advice as to his future conduct;

62.2 Further to the sanctions available under 62.1, in the case of a *BSB regulated individual*, ordered to complete (or procure that any relevant managers or *employees* complete) continuing professional development of such nature and duration as the *PCC* shall direct and to provide satisfactory proof of compliance with this order to the *PCC*;

63. Where the *PCC* has imposed a fine, the confirmation letter to the *relevant person* shall indicate that the *relevant person* 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 installments shall be left to the discretion of the Chairman of the *PCC*.

64. Where a sanction imposed by the *PCC* includes a fine, that element of the sentence may be directed by the *PCC* to have deferred effect. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the "*period of deferral*").

64.1 A deferred sentence shall be activated where the *relevant person* 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 this *Handbook* amounting to *professional misconduct*.

64.2 Where the *PCC* 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.

64.3 For the avoidance of doubt, the *PCC* may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a Disciplinary Tribunal, so long as the total sanction imposed does not exceed the powers of the *PCC* set out in paragraph 60 above.

65. The *PCC* shall have no power to award costs when dealing with a *complaint* under the *Determination by Consent procedure*.

B12 Disciplinary charges

66. If the *PCC* directs under paragraph 33.1(d) above that a *complaint* shall form the subject matter of a charge of *professional misconduct* before a Disciplinary Tribunal and/or that an application should be made to a Disciplinary Tribunal for a disqualification order, the following paragraphs shall have effect.

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

68. Where paragraph 36 above applies (*complaint* involving conviction for dishonesty or deception), the *PCC* shall direct that a five-person panel is to be constituted.

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

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

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

70. The *PCC*:

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

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

71. The *PCC* shall inform the *BSB regulated person* and the complainant (if any) of the decision taken under this paragraph. The decision taken by the *PCC* under this paragraph shall not be subject to any appeal.

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

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

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

73. The *PCC*:

73.1 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); or
- (b) witnesses are unlikely to be called for the hearing; or
- (c) the case needs to be resolved urgently; or
- (d) there is some other good reason for expedition; and

73.2 shall direct that the prosecution of the charges be expedited if the defendant has requested an expedited hearing under the Interim Suspension and Disqualification Rules.

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

74.1 *the PCC* may arrange for the appointment of counsel to settle the charge and to present the case before the Disciplinary Tribunal;

74.2 any charges shall be brought in the name and on behalf of the *Bar Standards Board*.

B13 Reopening or reconsidering complaints which have been disposed of

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

75.1 where new evidence becomes available to the *PCC* which leads it to conclude that it should do so, or

75.2 for some other good reason.

76. Following such reopening or reconsideration, the *PCC* 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 or the application has been served on the Respondent (as the case may be) then the *PCC*'s actions shall be confined to instructing counsel for the *Bar Standards Board* to:

76.1 offer no evidence on a charge or application, or

76.2 apply to the Directions Judge for:

(a) the making of amendments to the charge or application; or

(b) leave to bring additional charges or applications.

B14 Confidentiality

77. The *Bar Standards Board* shall respect the confidentiality of *complaints*. The *Bar Standards Board* 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.

78. Disclosure may be made:

78.1 for the purpose of investigating the *complaint*; or

78.2 for the purpose of keeping the complainant and the relevant person informed of the progress of the *complaint*; or

78.3 for the purpose of publicising any forthcoming public hearing of charges arising from the *complaint*; or

78.4 where the complainant and the relevant person consent; or

- 78.5 for the purposes of paragraph 37 of these *Complaints Rules*; or
- 78.6 where the publication of a finding is required by the provisions of the Disciplinary Tribunals Regulations or the Disqualification Panel Regulations; or
- 78.7 subject to paragraph 79 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
- 78.8 with the approval of the *PCC*, for any other good reason.
79. Where a disclosure is made pursuant to paragraph 78.7 above, if any *complaint* has been made against the *barrister* concerned which has not been disposed of by the *PCC* under these Rules, or dismissed by any Disciplinary Tribunal or by any other body to which it may have referred by the *PCC*, the *Bar Standards Board* shall simply indicate that a *complaint* has been received which has not been dismissed.
80. Where any finding of *professional misconduct* has been made (whether by a Disciplinary Tribunal, the Visitors, or the *PCC* in the course of a Determination by Consent), the *Bar Standards Board* shall publish on the *Bar Standards Board's* website the name of the *BSB regulated person* against whom that finding was made, the nature of that finding, and the sentence imposed and any other information about the finding and sentencing that the *Bar Standards Board* considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.
81. Where any disqualification order has been made (whether by a Disciplinary Tribunal, the Visitors or by consent), the *Bar Standards Board* shall publish on the *Bar Standards Board's* website the name of the *relevant person* against whom the order has been made and the terms thereof.
82. Where any interim suspension or interim disqualification order has been made or interim conditions imposed, the *Bar Standards Board* shall publish on the *Bar Standards Board's* website the name of the *relevant person* against whom the order has been made and the terms thereof.

Commencement

83. This Section B of Part V shall come into force in accordance with the provisions of Part I of this *Handbook*.