

BAR STANDARDS BOARD

REGULATING BARRISTERS

Appeals against decisions of Disciplinary Tribunals and the Qualifications Committee of the Bar Standards Board

Guidance on the application of the Hearings before the Visitors Rules 2010

1. Introduction

- 1.1. This document is issued by the Bar Standards Board (the BSB) to provide guidance on the application of the Hearings before the Visitors Rules 2010 (the Rules), which can be found at Part 5, Section C of the [BSB Handbook](#). It should be read in conjunction with those Rules and is designed to assist appellants who are not familiar with the Rules to identify the key sections, and understand the appeal process. However, it should be noted that the appeals process is completely independent of the BSB and all decisions in relation to it are taken by the Visitors to the Inns of Court (the Visitors). Therefore all documents and formal applications under the Rules should be addressed to the Clerk to the Visitors who has been consulted about the content of this guidance. (Contact names and addresses are provided at the end of this guidance).
- 1.2. **Expiration of Rules:** It should also be noted that the Hearings before the Visitors Rules cease to have effect in respect of appeals against relevant decisions made on or after 7 January 2014 (where the appellant serves notice on the Clerk to the Visitors before 18 April 2014). This Guidance is therefore only applicable to any appeals in respect of decisions made before 7 January 2014. **All decisions in respect of appeals made on or after 7 January 2014 will be taken by the High Court¹, rather than the Visitors to the Inns of Court (the Visitors).**

¹ Guidance on the process for dealing with appeals to the High Court against decisions of Disciplinary Tribunals and the Qualifications Committee of the Bar Standards Board will be published in due course.

- 1.3. **Reasonable adjustments:** any barristers who wish to submit an appeal and requires reasonable adjustments to assist them with making, or progressing, an appeal due to a disability should contact the Clerk to the Visitors as soon as possible to discuss their needs. Adjustments for barristers with a disability can be made at any stage of the appeal process and will depend on the needs of the individual, but could include extending the time periods for submission of documents and/or allowing information to be submitted in alternative formats to the standard written form.
- 1.4. It is important to note that the guidance is not exhaustive and therefore appellants should ensure they refer to the detailed Rules at each stage of the process.

2. Rights of appeal to the Visitors

- 2.1. All defendant barristers have the right to appeal against the findings and/or the sentence of a Disciplinary Tribunal of the Council of the Inns of Court (COIC). Also, all Qualifications Committee appellants subject to decisions of the BSB's Qualifications Committee have a right of appeal to the Visitors.
- 2.2. The BSB also has a right to appeal Disciplinary Tribunal findings and/or sentences. If the BSB decides to submit an appeal, the BSB will inform the barrister involved. The appeal process will be exactly the same as described in this guidance but the BSB will be the appellant and the barrister the respondent.

3. Jurisdiction of the Visitors

- 3.1. Appeals are made to the Visitors to the Inns of Court and are conducted in accordance with the Rules (Part 5, Section C of the BSB Handbook). The power conferred on the Lord Chief Justice by the Rules includes the power to appoint the panels of Visitors which hear these appeals (these powers can be delegated by him to a Judge of the Court of Appeal or the High Court). The Judges who chair these panels are not acting in their capacity as High Court Judges (or Judges of the Court of Appeal) but solely in their capacity as Visitors within the terms of the Rules. The term "Visitors" is applied to the panel convened to hear the substantive appeal or to a single Judge (usually referred to as "the Directions Judge") nominated to deal with preliminary directions whether by way of an oral hearing or on paper.

- 3.1. The day to day administrative aspects of appeals are handled by the Clerk to the Visitors who is a member of staff at the Judicial Office of the Royal Courts of Justice. The Clerk to the Visitors is the main point of contact in relation to all appeals and relevant contact details can be found at end of this guidance.
- 3.2. All parties are entitled to be represented at the appeal hearing, and in nearly all cases the BSB will appoint a barrister to represent the BSB at the hearing and assist with the pre-hearing preparation.

4. The Appeal Process

- 4.1. The process described below applies to all appeals to the Visitors including appeals by Qualifications Committee appellants from decisions of the BSB's Qualifications Committee. However, students are not required to pay the fee of £250 to the BSB and therefore students reading this guidance should ignore any references to that fee.

5. Summary of the appeal process

- 5.1. In order to lodge an appeal, a barrister or Qualifications Committee appellant must submit a Notice of Intention to Appeal to the Visitors within 21 days of the original decision of the Tribunal or the Qualifications Committee.
- 5.2. The barrister or student has a maximum of 42 days from the date of the original decision to serve the detailed Petition of Appeal along with a transcript of the original proceedings. Once the Petition has been served, the BSB has 28 days from that date to serve its "Answer" in response to the Petition. At this stage, the case is usually ready to be listed and the Clerk to the Visitors' will seek the parties' dates of availability in order to schedule a date for the full appeal hearing.
- 5.3. The appeal is usually heard by a panel of the Visitors comprising a Judge of the High Court, a barrister and a lay member. The majority of Appeals to the Visitors are concluded in a single day, often in a half day (the process is described in further detail below).

6. Notice of Intention to Appeal (rE233)

- 6.1. The first step in the appeal process is for the barrister or student to submit a written Notice of Intention to Appeal (Notice) against a relevant decision. This must be served on the Clerk to the Visitors within the period of 21 days beginning with the date of the decision which is the subject of the appeal. No conditions are placed on submitting an appeal and therefore both barristers and Qualifications Committee appellants have a right to appeal as long as they do so within 21 days of the original decision.
- 6.2. A copy of the Notice should also be served on the Bar Standards Board, as should all other appeal papers and correspondence. The Bar Standards Board are also required to copy to the appellant any correspondence which they send to the Clerk to the Visitors.
- 6.3. There is no standard form for the Notice and it merely needs to include a clear indication that the barrister or student intends to appeal and, if the appeal is by a barrister, whether or not the appeal is against a finding or sentence of a Disciplinary Tribunal. A current contact address should be included and the Clerk to the Visitors should be notified immediately if this changes. No other information is required at the Notice stage and the Notice is not binding i.e. the barrister or student can withdraw the Notice at any stage before the Petition is served. Once a Notice is withdrawn the appeal cannot be subsequently resurrected if the 21 day period for notice has elapsed.
- 6.4. If the Notice is not served within the 21 day period, an application will need to be made to the Visitors to appeal “out of time” which will require the permission of a Directions Judge, in accordance with rE234.6.b. Please note, where an application is made to appeal “out of time” the Bar Standards Board is invited to make submissions about whether it is reasonable to allow the appeal to proceed. The final decision will be taken by a Directions Judge.
- 6.5. In the case of appeals against Disciplinary Tribunal decisions, any application to submit an application to appeal “out of time” should be accompanied by the £250 fee payable in accordance with rE237. However, in the event that the application is unsuccessful the BSB will return the fee.

7. Petition of Appeal (rE236, rE238 and rE239)

- 7.1. The Petition of Appeal should be served within 42 days beginning with the date of the decision which is being appealed. The Directions Judge has the power to extend the period within which the Petition must be served and any application for an extension should be made at the earliest opportunity and addressed to the Clerk to the Visitors.
- 7.2. rE239 sets out the information which the Petition should include and barristers and students should refer to this Rule before submitting a Petition to ensure that it covers all the necessary information. It is important to note that, without the prior permission of a Directions Judge or the Visitors appointed to hear the appeal, appellants cannot include in the Petition any grounds of appeal that are based on arguments, issues or evidence that were not put forward at the at the original Tribunal or panel hearing. If you wish to rely on new evidence you will need to include in your Petition an application to do so giving reasons. The decision as to whether to admit new evidence, or allow new arguments to be presented, will be for the Directions Judge or the Visitors panel to decide.
- 7.3. In the case of appeals against Disciplinary Tribunal decisions, the Petition must be accompanied by the sum of £250 payable to the Bar Standards Board (see rE237 and below).

8. Payment of the £250 fee

- 8.1. The £250 fee should be sent to the Bar Standards Board, not to the Clerk to the Visitors.
- 8.2. It is recognised that in certain cases, the payment of the £250 fee in relation to appeals against Disciplinary Tribunal decisions could cause undue hardship. Therefore, the barrister may apply to the Directions Judge for a direction reducing or waiving the payment of the fee. The Bar Standards Board would be invited to comment upon the application.
- 8.3. Where the Directions Judge is satisfied that payment would cause undue hardship, he/she can direct that a lesser (or nil) amount be paid and set a date for payment.
- 8.4. The Barristers' Benevolent Association may be approached for assistance to pay the appeal fee or for assistance towards the cost of obtaining a transcript (see below).

Please note that the Barristers' Benevolent Association can only provide assistance to those barristers who have been a tenant in chambers at some stage in their career for at least six months. Contact details for the Benevolent Association are set out at the end of this guidance.

9. Transcripts

- 9.1. Barristers appealing against decisions of Disciplinary Tribunals are required to submit 3 copies of the transcript of the original proceedings with their Petition to the Clerk to the Visitors. It is important to order the transcript as soon as possible in view of the requirement for this to be served at the same time as the Petition or as soon as is practicable thereafter. This also has the benefit of enabling you to refer to the relevant sections in your Petition (see "Transcripts" below). You may be asked to furnish a receipt or other evidence of the transcript having been ordered in the event that this can not be produced in time to meet the deadline for service of the Petition.
- 9.2. Shorthand writers attend five person disciplinary Tribunal proceedings to take a record of the proceedings. Three person Disciplinary Tribunal proceedings are recorded using digital equipment. Transcripts of 5 person disciplinary hearings can be obtained from the transcription company appointed by the Council of the Inns of Court (usually Marten Walsh Cherer). For recordings of 3 person disciplinary hearings the Council of the Inns of Court will make a disc of the recording available to an authorised short hand writer, that is, those authorised by the Royal Courts of Justice. The contact details for the transcription company can be found at the end of this guidance.
- 9.3. As with the appeal fee it is recognised that, in some cases, the obligation to lodge a transcript may cause hardship. In such circumstances, appellants can apply to the Directions Judge to waive the need for a transcript in whole or in part. The Bar Standards Board will be invited to comment on the application. Where the Directions Judge is satisfied that the provision of a transcript would cause undue hardship, he/she can make directions that fit the circumstances and are appropriate for the just, expeditious and economical disposal of the appeal. This could include dispensing completely with the requirement to provide a transcript of the full proceedings or limiting the extent of the transcript which is required to assist the Visitors.

10. "Answers" to Petitions

- 10.1. In nearly all cases it will be the BSB who has to submit an “Answer” to the Petition but where the BSB is appealing the Answer will need to be submitted by the original defendant barrister or student. The Answer to the Petition must be served within 28 days of the date of the service of the petition or, if this is served later, the transcript and the Directions Judge agrees that this is when time for service should run from. The Directions Judge has the power to extend the period for answering a Petition and applications for extensions should be made as soon as possible after the Petition has been served.
- 10.2. If “the respondent” i.e. the person or body providing the Answer, considers that the appeal hearing is likely to last longer than a day, the Answer should include an estimate of the time required for the hearing giving reasons as to why additional time is required.
- 10.3. When submitting an Answer to a Petition about a disciplinary case which includes an appeal against sentence, the BSB can refer to any factors which it considers make the sentence unduly lenient which include the appellant’s disciplinary record or in relation to sentencing in other matters.

11. Listing the hearing and appointing the appeal panel (rE240 and rE241)

- 11.1. In order for the Clerk to the Visitors to be able to list the hearing, all parties should provide their dates of availability as soon as possible to the Clerk to the Visitors after the Answer has been served. However, it can take several months for the full appeal hearing to be listed and therefore it may be necessary for the Clerk to ask the parties for further dates of availability.
- 11.2. The Rules require that the prior notification is required if it is felt that more than one day is required for the hearing of the appeal, and that reasons should be given for this. The estimate should also take into account the amount of time which required for reading the papers beforehand. In the event of the parties disagreeing as to whether more than one day is required, it will be necessary for the Directions Judge to be asked to rule on this.
- 11.3. The Rules require the Visitors to list the appeal for a hearing on the first available date four weeks after the date on which the Answer was served or, if no Answer has

been served, the date on which, under the Rules, the Answer should have been served. The Visitors are required to serve notice of the appeal date on each party at least 14 days before the date fixed for hearing but this particular requirement can be waived where both parties agree to this in writing. Conversely, the amount of notice which is required may be extended upon applications to the Directions Judge where, for example, a barrister has caring responsibilities and needs time to make arrangements for alternative carers or is abroad and needs time to make travel arrangements. A Directions Judge has the power (under rE234.6.b) to vary the time for giving notice of the date of the appeal hearing. If either party, or both parties, want to vary the notice period then an application should be submitted to the Clerk to the Visitors giving reasons.

12. Composition of the appeal panel

- 12.1. Appeals against the decision of a Disciplinary Tribunal are heard by a panel of Visitors usually consisting of three people: a High Court Judge, a barrister and a lay member. Where the original Disciplinary Tribunal was presided over by a High Court Judge, the Judge on the panel must be a Court of Appeal Judge and the barrister member must be a Queen's Counsel. Appeals against decisions of the Qualifications Committee are heard by a High Court Judge sitting alone.
- 12.2. Where an appeal relates solely to a point of law, a Directions Judge may direct that it is appropriate for the appeal to be heard by a Judge sitting alone.
- 12.3. It should be noted that current members of the Bar Standards Board or the Bar Council or any of their Committees, are not permitted to sit as appeal panel members. Additionally, anybody who was a member of any Committee of the Bar Standards Board at any time when the original case was being considered by that Committee is also excluded from sitting on a Visitors' panel. .

13. The Appeal Hearing (rE243)

- 13.1. The full appeal hearing ordinarily takes place in public at the Royal Courts of Justice and the case will be listed in "the Daily Cause List". This will give details of the court

room and the time at which the hearing will start, although the latter detail will be notified in advance of the hearing.

- 13.2. Once a formal appeal panel is convened, that panel may give any direction it considers appropriate before or during the hearing. This means that any applications received after an appeal panel has been convened will be considered by the panel rather than by a Directions Judge.
- 13.3. In the absence of prior permission by a Directions Judge, the Visitors' panel must give express permission for witnesses to be called at the hearing or for new evidence that was not before the original panel or Disciplinary Tribunal to be considered.

14. Conduct at the appeal hearing

- 14.1. All the papers in the appeal will be distributed to the appeal panel in advance of the hearing and therefore parties should assume that the panel has read the papers in advance of the hearing. The parties are usually required to serve their hearing bundles at least three days in advance of a hearing but this deadline may be varied by the Visitors themselves. Whilst both parties are entitled to serve their own hearing bundles, it is helpful to the Visitors if a single bundle of documents can be agreed upon.
- 14.2. Nobody is robed during the proceedings; however, normal court etiquette should be followed. As stated above, the Visitors panel will be chaired by a High Court judge. Therefore when addressing the panel the following terms should be used: My Lord or My Lady for the judge although strictly speaking Sir or Madam would also be acceptable as the Chair is not sitting as a High Court judge. The barrister and lay members should be addressed as Sir or Madam.
- 14.3. The hearing will usually start with the barrister/student presenting his/her case followed by the BSB presenting any arguments or submissions in response. As stated above, the panel will have been provided with all the relevant papers in advance and therefore any submissions to support the appeal can be kept short. Submissions should concentrate on the main points of the appeal and on addressing the counter arguments presented by the BSB in its Answer.

- 14.4. Generally, the time estimates provided for the listing of appeals are fairly accurate. As with any case, however, an appeal will sometimes overrun. Where this happens, the Visitors may re-convene at a later date and the date(s) for the reconvened hearing will either be agreed at the hearing or notified to the parties afterwards.

15. Findings of the Visitors

- 15.1. The Visitors may dismiss or allow an appeal in whole or in part. They may also confirm or vary the original decision(s) or order a re-hearing of the original case on such terms as they consider appropriate.
- 15.2. The Visitors have the same decision making powers as the original panel and therefore are free to substitute the original decision with any decision they consider appropriate as long as the decision falls within the powers of the original Disciplinary Tribunal or Qualifications Committee. In relation to Disciplinary Tribunals this includes increasing the original sentence imposed.
- 15.3. **Costs in relation to disciplinary appeals:** the Visitors also have the power to order that either party pay the costs of the appeal hearing. This includes the power to make an order in relation to the payment of the costs of obtaining a transcript and also a power to vary any costs order imposed by the original Disciplinary Tribunal.

16. Communication of Visitors' decisions

- 16.1. In most cases, the Visitors will give their decision orally at the end of the appeal hearing. However, in some cases, particularly where the issues are complex, the panel may decide to "reserve judgment" and issue the final decision in the form of a written judgment after the hearing. This might involve arranging a further hearing date when the judgment can be "handed down" or it may involve the judgment being handed down without the parties having to be present. In the latter case, copies of the judgment would be sent to the parties on the day.
- 16.2. In all cases, following the conclusion of the appeal, the Clerk to the Visitors will send a copy of the final written decision to the Council of the Inns of Court.
- 16.3. Where an appeal against a Disciplinary Tribunal decision has been unsuccessful in whole or in part, it will be necessary for the original sentence, or the adjusted

sentence on appeal, to be pronounced by the relevant of Inn of Court in line with the Disciplinary Tribunal Regulations 2009. Where this is required, the barrister will be advised of the date on which the relevant sentence or individual sanctions take effect.

17. Further avenues of challenge following the appeal

17.1. The Visitors' decision is final and there are no further avenues of formal appeal. If a barrister or student wishes to take the case further, legal advice should be sought as to how this can be done. A record is made of appeal hearings and transcripts can be obtained from the Court Service at the expense of the person making the request. Should you require a transcript of the appeal hearing you should contact the Royal Courts of Justice transcription service, details of which are listed below.

18. Meeting your needs

18.1. The BSB can provide this guidance in different formats, such as Braille, large print or on audio tape or compact disc. If you would like the guidance in a different format or have any questions about the appeals process, please contact either the BSB or the Clerk to the Visitors (see contact details below).

19. Comments and suggestions

19.1. The BSB welcomes any comments on the contents of this document and any suggestions for additions and/or improvements. Comments or suggestions should be sent to the Manager of the Investigations and Hearings Team at the BSB. See the BSB's contact details below.

Contact Details:

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