

# BAR STANDARDS BOARD

REGULATING BARRISTERS

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

### 1. Introduction

- 1.1. This document is issued by the Bar Standards Board (the BSB) to provide guidance on appeals against decisions of Disciplinary Tribunals and the Qualifications Committee of the Bar Standards Board. 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 High Court in respect of appeals made on or after 7 January 2014. Any appeals in respect of decisions made before 7 January 2014, and where the appellant serves notice on the Clerk to the Visitors before 18 April 2014, will continue to be made to the Visitors to the Inns of Court (the Visitors) and reference should be made to the document entitled 'Guidance on the application of the Hearings before the Visitors Rules 2010' (May 2011) in respect of those appeals. Please note that references to 'Tribunal' in this guidance means Disciplinary Tribunal or Qualifications Committee (as appropriate).

**Reasonable adjustments:** any barristers who wish to submit an appeal and require reasonable adjustments to assist them with making, or progressing, an appeal due to a disability should contact the Administrative Court as soon as possible to discuss their needs. Contact details can be found at the end of this guidance.

- 1.2 It is important to note that the guidance is not exhaustive and therefore appellants should ensure they refer to the detailed Civil Procedure Rules at each stage of the process.

## **2. Rights of appeal to the High Court**

- 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). Similarly, applicants who have applied to the BSB's Qualifications Committee for a review under the Bar Training Rules have a right of appeal.
- 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 High Court**

- 3.1 Appeals are made to the High Court (Administrative Court) and are conducted in accordance with the Civil Procedure Rules Part 52 (Appeals) and Practice Directions 52A and 52D. Paragraph 27.1A of Practice Direction 52D provides for the appeal route to be to the Administrative Court.
- 3.2 The day to day administrative aspects of appeals are handled by the Administrative Court. Relevant contact details can be found at the end of this guidance.
- 3.3 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 High Court including appeals by Qualifications Committee appellants from decisions of the BSB's Qualifications Committee (with such changes as are necessary).
- 4.2 CPR 52.7 provides that unless the Court or the Tribunal orders otherwise, an appeal does not stay the decision of the Tribunal. However, the Disciplinary Tribunals Regulations in the BSB Handbook provide that a sentence of a Tribunal is pronounced by the barrister's Inn of Court only once any appeal to the High Court

has been disposed of (rE189). In practice this means that any appeal from a Tribunal will operate as a stay because the sentence won't come into effect until after the appeal process has concluded.

## **5. Summary of the appeal process (NB the same process will apply where the BSB is the appellant)**

- 5.1 The first stage in the appeal process is for the barrister to file the appellant's notice in the Administrative Court and to pay the appropriate fee (current court fees can be found at <http://www.justice.gov.uk/courts/fees>). This must be done within 21 days of the Tribunal decision (CPR 52.4(2)). It is important to note that the appellant's notice must be lodged at the Administrative Court Office. A copy of the issued (stamped) appellant's notice must then be served on the BSB by the appellant as soon as practicable and in any event not later than 7 days after it is filed (CPR 52.4(3)). The notice must also be served on the Council of the Inns of Court in the case of appeals from Disciplinary Tribunals (Practice Direction 52D paragraph 27.1A (3)(b)).
- 5.2 The BSB as respondent may file with the Court a respondent's notice within 14 days of service of the appellant's notice and must serve this notice on the appellant as soon as practicable and in any event not later than 7 days after it is filed (CPR 52.5). The dates for filing notices may only be varied by the Court and not by agreement between the parties.
- 5.3 An appellant should serve his/her hearing bundle with the appellant's notice. If the appellant is not in a position to do so, they should indicate to the Court when they intend to lodge the bundle. The contents of the bundle should be agreed by the parties where possible.
- 5.4 Tribunal proceedings are recorded using digital equipment. The appellant must include a copy of the transcript of the original proceedings in the bundle, together with the report of the Disciplinary Tribunal. Transcripts can be obtained from the transcription company used, Marten Walsh Cherer, whose contact details can be found at the end of this guidance.
- 5.5 Section V of Practice Direction 52A sets out provisions relating to skeleton arguments to be used on appeals which must set out as concisely as practicable the arguments

intended to be relied upon. Please refer to this Section V for full details of what should be included in skeleton arguments.

## **6. Listing the hearing**

6.1 In order for the Court to be able to list the hearing, all parties should provide details of their Counsel (or Solicitor advocate) and a time estimate to the Listing Office as soon as possible. The Listing Office will then liaise with the parties to fix an appropriate date for the hearing of the appeal and notify the parties accordingly. Contact details for the Listing Office can be found at the end of this guidance.

## **7. The Appeal Hearing**

7.1 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” which can be found at <http://www.justice.gov.uk/courts/court-lists/list-cause-rcj>. This will give details of the court room and the time at which the hearing will start.

## **8. Conduct at the appeal hearing**

8.1 All the papers in the appeal will be distributed to the Court in advance of the hearing and therefore parties should assume that the Court has read the papers in advance of the hearing.

8.2 Advocates will need to be robed during the proceedings and normal court etiquette should be followed. Therefore the Judge should be addressed as My Lord or My Lady.

8.3 The hearing will usually start with the appellant presenting his/her case followed by the BSB presenting any arguments or submissions in response. As stated above, the Court 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 notice.

8.4 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 Court 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.

## **9. Findings**

- 9.1 The Court has the power to strike out the whole or part of an appellant's or respondent's notice where there is a compelling reason to do so.
- 9.2 The Court has all the powers of the Tribunal and may affirm, set aside or vary any order of the Tribunal or order a new hearing. If the Court strikes out an appellant's notice or dismisses an appeal and it considers that the notice or appeal is totally without merit it will record that fact.
- 9.3 The appeal hearing will be limited to a review of the Tribunal's decision unless the Court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing. Unless it orders otherwise the Court will not receive oral evidence or evidence which was not before the Tribunal. Also at the hearing a party may not rely on a matter not contained in an appellant's or respondent's notice without the permission of the Court. An appeal will be allowed where the Tribunal's decision was wrong or unjust due to a serious procedural or other irregularity at the Tribunal stage.
- 9.4 The Court may make an order for the costs of an appeal and may have regard to the means of the parties and all the circumstances of the case.

## **10. Communication of Court's decision**

- 10.1 In most cases, the Court will give its decision orally at the end of the appeal hearing. However, the Court may decide to reserve judgment and issue the final decision in the form of a written judgment after the hearing.
- 10.2 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 Inn of Court in line with the Disciplinary Tribunals Regulations. Where this is required, the barrister will be advised of the date on which the relevant sentence or individual sanctions take effect.

## **11. Decision of Court is final**

11.1 The decision of the Court is final and therefore no appeal lies against its decision, except to the Court of Appeal in the case of a decision to disbar a barrister.

## **12. Meeting your needs**

12.1 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 the BSB (see contact details below).

### **Contact Details:**

#### **Administrative Court**

Administrative Court Office  
The Royal Courts of Justice  
Strand  
London  
WC2A 2LL  
DX 44450 RCJ/Strand

Tel: 020 7947 6655

Fax: 020 7947 6802

Listing Enquiries: 020 7947 6655

Listing Office Fax: 020 7947 6330

Email: [administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk)

#### **Bar Standards Board**

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**Marten Walsh Cherer (transcripts)**

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