



Council of the Inns of Court

Sentencing Guidance: Breaches of the Code of Conduct of the Bar of England and Wales

This document is intended to provide guidance and is not intended to inhibit decision makers from using their own discretion when considering an appropriate sanction in individual cases.

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Introduction from the President of the Council of the Inns of Court

I am pleased to present the first edition of the Sentencing Guidance promulgated by the Council of the Inns of Court. This guidance is primarily designed to assist those who have to pass sentence under the disciplinary processes for breaches of the Code of Conduct of the Bar of England and Wales. It is hoped that the guidance will promote consistency in the imposition of proportionate sanctions. It will also inform the profession and members of the public about the principles on which sanctions will be applied and about the range of sentence which may be expected for particular types of misconduct. It should help to ensure transparency.

The guidance has been developed in conjunction the Bar Standards Board (the BSB, the regulatory body for the Bar) after consultation with a wide range of interested persons.

There are several purposes behind the imposition of sanctions for misconduct. First, sanctions are designed to protect the public from any further harm which might be caused by repetition of the barrister's misconduct. Second, they are intended to enforce the standards imposed by the Code of Conduct by warning members of the profession of the consequences of misconduct. Sanctions must mark the disapproval of the public and the profession of the misconduct in question. It is not the primary intention to punish the barrister but it must be recognised that that will often be the effect.

Part I of the guidance provides general information about the range of sanctions available and when they can be imposed. Part II of the guidance sets out the "starting points" for sentencing in relation to the most common breaches of the Code. The examples given do not represent all the potential breaches of the Code: every case is different and it is not possible to cover all the situations that will arise. Decision makers must use their discretion to decide how the guidance should be applied to each case.

I must emphasise that the contents of this document are intended as guidance only and do not in any way inhibit decision makers' discretion to impose the sentence they consider appropriate in any individual case. Decision makers are free to depart from the guidance but, as they are expected to give reasons for all sentencing decisions, I hope they will explain with particular clarity their reasons for departing from the guidelines, if they decide to do so.

I am confident that the guidance will become an essential resource for decision makers, the profession and the public. It is important that it remains relevant and up to date. The guidance will be reviewed regularly and amended in the light of experience and informed reaction to its contents. Any comments on its contents and its application should be sent to Rachel O'Driscoll by email on Rachel.ODriscoll@lincolnsinn.org.uk.



Janet Smith
President of the Council of the Inns of Court
April 2009

Part I – General guidance

Section 1 - Introduction

- 1.1 This guidance has been developed by the Bar Standards Board ('BSB') and the Council of the Inns of Court ('COIC') for use by the Complaints Committee of the BSB and members of COIC's Disciplinary Tribunals and Adjudication Panels ('decision makers') when considering what sanctions should be imposed where a barrister has been found to be in breach of the Code of Conduct of the Bar Council of England and Wales ('the Code'). It is a 'living document' and will be updated and revised when the need arises.
- 1.2 This version of the guidance was first introduced on 2 April 2009 and applies to all sanctions imposed after that date, subject to the relevant Annexes to the Code. The document will undergo its first review about six months after its introduction. Thereafter, reviews will be undertaken on an annual basis to ensure that it is kept up to date. Decision makers are encouraged to provide feedback on the document at any time, even if it is outside a formal review period.
- 1.3 The guidance is publicly available and will allow defendant barristers, complainants and other interested parties to gauge, in advance, the potential sanction that might be imposed in a particular case. For more information about the complaints process, please see the complaints section on the BSB's website (www.barstandardsboard.org.uk).
- 1.4 The guidance provides decision makers with a basis for considering what sanctions are appropriate in any given case and is intended to promote proportionality, consistency and transparency in sentencing. **However, it must be stressed that it is not intended to interfere with decision makers' powers to impose whatever sanctions are appropriate in the circumstances of individual cases. Decision makers must exercise their own judgement when deciding on the sanctions to impose and must also ensure that any sentence is appropriate and fair based on the individual facts of the case.** Written reasons should be given for all sanctions imposed including any aggravating or mitigating factors. Care should be taken to include in the written reasons the basis for departing to a significant extent from this guidance.

Equality and diversity statement

- 1.5 Effective regulation requires procedures to be fair and free from discrimination. One of the BSB's priorities is to ensure that it conducts its regulatory activities fairly and in accordance with its duty to promote equality and eliminate discrimination. The BSB monitors the outcomes of the exercise of its regulatory powers and is committed to analysing the results and taking action, where appropriate, to reduce/remove inequality.

Section 2 - Aims and Objectives of the Bar's complaints and disciplinary system

- 2.1 The BSB came into existence on 1 January 2006 following a decision to separate the regulation of the Bar from the representative functions of the Bar Council. The Bar Council has delegated to the BSB all of its regulatory functions including investigation of complaints and the subsequent prosecution of barristers for breaches of the Code. However, the final decision as to whether a barrister has breached the Code is a matter for independent panels appointed by the Council of the Inns of Court (COIC). In limited circumstances, the Complaints Committee of the BSB can impose sanctions with the agreement of the barrister.
- 2.2 The operation of the Bar's complaints and disciplinary system is governed by the BSB's high level strategic objectives as well as the specific aims and objectives of the complaints and disciplinary system. Therefore, all decisions regarding the action to be taken in relation to individual complaints are taken by the BSB in the context of the objectives and aims set out below.
- 2.3 The BSB's strategic objectives applicable to the complaints and disciplinary system are:
- To establish systems to identify areas of risk to consumers; to take action to remedy poor performance by barristers; and where things go wrong, to provide an efficient and fair complaints and disciplinary system.
 - To be recognised as a respected, independent regulator according to best regulatory principles with the confidence of the Legal Services Board, consumers, the Bar and other stakeholders.
- 2.4 In taking these higher level strategic objectives forward, the BSB is committed to ensuring that the Bar's complaints and disciplinary system operates according to the following aims:
- To act in the public interest;
 - To protect the public and consumers of legal services;
 - To promote access to, and the proper administration of, justice;
 - To maintain high standards of behaviour and performance for the Bar;
 - To provide appropriate and fair systems of redress for those who receive poor service from a barrister;
 - To provide appropriate and fair systems for the barrister who is subject to regulatory action;
 - To ensure complaints are dealt with fairly, expeditiously and consistently; and
 - To promote public and professional confidence in the complaints and disciplinary process.
- 2.5 Most decisions regarding the sanctions to impose in relation to breaches of the Code are taken by the independent panels appointed by COIC who are not directly subject to the aims and objectives of the BSB. Nevertheless, COIC fully supports the BSB's aims and objectives and, urges disciplinary panel members to adopt them when dealing with disciplinary cases.

Section 3 - Purpose and principles of sentencing

- 3.1 The purposes of applying sanctions for breaches of the Code are:
- a) To protect the public and consumers of legal services;
 - b) To maintain high standards of behaviour and performance at the Bar;
 - c) To promote public and professional confidence in the complaints and disciplinary process.
- 3.2 The primary purpose of imposing sanctions is to protect the public. This is of paramount importance and should be the fundamental guiding factor when considering what sanctions to impose. However, in fulfilling the other purposes it is also important to avoid recurrence of the behaviour by the individual as well as provide an example to other barristers in order to maintain public confidence in the profession. Decision makers must take all of these factors into account when determining the appropriate sanction to be imposed in an individual case. Decision makers should also bear in mind that sanctions are not intended to be punitive in nature but nevertheless may have that effect.
- 3.3 **Deterrence and upholding standards:** in some cases, the sanction imposed may be necessary to act as a deterrent to other members of the profession. Therefore, when considering a sentence, it may be necessary not only to deter the individual barrister from repeating the behaviour, but also to send a signal to the profession and the public that the particular behaviour will not be tolerated. A deterrent sentence would be most applicable where there is evidence that the behaviour in question seems to be prevalent in relation to numbers of barristers within the profession.

Proportionality

- 3.4 In deciding what sanctions (if any) to impose, the decision maker should ensure that the sanctions are proportionate, weighing the interests of the public with those of the practitioner. Proportionality is not a static concept and will vary according to the nature of the breach and the background of the individual barrister. For example, a first time breach of the Continuing Professional Development requirements would rarely, if ever, warrant a suspension or disbarment but a similar breach, having been committed many times without remorse or any attempt to remedy the situation, might warrant consideration of suspension or disbarment. Repeated breaches of relatively minor provisions of the Code may indicate a significant lack of organisation, integrity, or insight on the part of the barrister which could represent a risk to the public and undermine confidence in the profession.
- 3.5 In order to ensure that any sanction imposed is proportionate to the seriousness of the breach of the Code, decision makers should consider all the circumstances of the case including the following:
- the seriousness of the breach;
 - whether the breach may have an impact on the general reputation of the Bar;
 - whether the breach was intentional;

- whether the breach has lasting consequences;
- any aggravating or mitigating factors relevant to the conduct in question (see Annex 1);
- the personal circumstances of the individual barrister;
- the previous professional history of the barrister, in particular whether the barrister is of previous good professional standing; and
- to a limited and cautious extent, any character references or testimonials provided by the barrister (see paragraphs 7.5-7.6 below).

Consistency

3.6 To maintain confidence in the complaints and disciplinary system, the sanctions imposed in any individual case should be consistent with, although not necessarily the same as, other sanctions imposed for a similar breach in similar circumstances. It is therefore important that decision makers take account of previous decisions while still maintaining an independent approach to individual cases. The BSB has developed a “Sentencing Database” that will, over time, assist decision makers in determining whether a particular sanction is consistent with previous decisions and will also assist the BSB/COIC in monitoring consistency. Relevant reports from the database will be made available to panels, barristers and the public, although the database will only provide information on sanctions imposed after the introduction of the Sanctions Guidance in March 2009.

Section 4 - Types of breaches of the Code and powers to address breaches

Introduction

- 4.1 The behaviour of barristers both in their professional lives and, to a limited extent their personal lives, is governed by the Code. There are three ways in which the Code can be breached and any subsequent action by the BSB will be dependent on the nature of the breach.
- 4.2 The three ways to breach the Code are:
- 4.2.1 **Professional Misconduct:** According to paragraph 901.7 of the Code, failure to comply with any provision of the Code, except for those covered by paragraph 901.1 (see paragraph 4.2.3 below) is classed as “professional misconduct” for which disciplinary action can be taken.
- 4.2.2 **‘Inadequate professional service’ (IPS):** IPS is defined in section 10 of the Code as *“conduct towards a lay client or performance of professional services for that client which falls significantly short of that which is to be reasonably expected of a barrister in all the circumstances.”*
- 4.2.3 **Paragraph 901.1:** The Code can also be breached by a barrister failing to comply with the paragraphs of the Code listed in paragraph 901.1. Failure to comply with these paragraphs does not automatically amount to professional misconduct and will initially only result in a “non-disciplinary” warning or fine being imposed by the Complaints Committee. However, repeated or serious breaches of the relevant paragraphs will amount to professional misconduct. The main provisions to which paragraph 901.1 applies are failures to comply with practising requirements such as completing Continuing Professional Development (‘CPD’), paying practising certificate fees and obtaining professional indemnity insurance; however, it also includes the obligations on Heads of Chambers, inappropriate media comment, rudeness and various other breaches.

Powers to address breaches of the Code

- 4.3 The way in which a breach of the Code will be addressed is determined by the type of breach as set out in 4.2 above. Currently, only breaches of the Code which amount to **professional misconduct** are registered on a barrister’s disciplinary record and thereby are available to the public. Findings of IPS are not at present disclosed to the public but will be disclosed to the relevant authorities in the event that the barrister applies for judicial office or Queen’s Counsel status. Paragraphs 4.4 - 4.6 and Section 5 provide details of which “bodies” have the power to impose sanctions for the various breaches of the Code.
- 4.4 **Administrative warnings and fines:** the Complaints Committee and Disciplinary Tribunals have the power to impose administrative warnings and fines under paragraph

901.1 of the Code. The Complaints Committee has given delegated authority to the staff of the BSB to impose warnings and fines in relation to breaches of the practising requirements (completion of CPD, payment of practising certificate fees and insurance subscriptions) and therefore these breaches can be dealt with by administrative action without the intervention of the Committee. Under paragraph 901.6 of the Code, if a barrister is given two separate administrative warnings or fines, then any further failure to comply with the relevant provisions of the Code will constitute professional misconduct.

- 4.5 **Professional misconduct:** the Complaints Committee has the power to determine cases of professional misconduct but only with the agreement of the barrister (“Determination by Consent”). The Complaints Committee has no power to impose a direct suspension from practice. In order for the Committee to impose a formal finding and sanction, the barrister must agree to the procedure and accept the final outcome. Otherwise, only Disciplinary Tribunals have the power to make findings of professional misconduct. A three person Disciplinary Tribunal can impose any sanction up to three months’ suspension and a five person Disciplinary Tribunal can impose the full range of sanctions including disbarment (see Section 5).
- 4.6 **Inadequate Professional Service (IPS):** Adjudication Panels consider cases solely of IPS (not accompanied by charges of professional misconduct) and have the power to make binding findings of IPS. The Complaints Committee has the power to make findings of IPS but only with the agreement of the barrister. Disciplinary Tribunals have the power to make binding findings of IPS, but cases of IPS will only be referred to a Tribunal where the allegation of IPS is combined with a charge of professional misconduct. Where the associated charges of professional misconduct are dismissed but an allegation of IPS is proved at a Disciplinary Tribunal, the Tribunal has the power to impose sanctions in relation to the IPS only.
- 4.7 **Combination of IPS and professional misconduct:** decision makers should note that quite often the circumstances giving rise to a professional misconduct charge will also represent IPS when the complainant was the barrister’s lay client. It is therefore possible, and quite legitimate, for a barrister to be charged with both professional misconduct and IPS based on the same set of facts. Such charges are not alternatives and both charges can be found to be proved. This is very important in the context of compensation orders because such orders can only be made where IPS is proved. Further, as the standard of proof for IPS is lower (balance of probabilities) than that for professional misconduct (certain so as to be sure), it is possible for an IPS charge to be found proved but the professional misconduct charge to be dismissed. On the same basis, if a professional misconduct charge is proved, and an IPS allegation is based on the same facts, it is inevitable that IPS will be proved.

Section 5 - Available sanctions

5.1 This section of the guidance sets out the various sanctions available in relation to the types of breaches outlined in Section 4. The available sanctions are based on the nature and seriousness of the breach of the Code and vary according to the type of breach. There is nothing to prevent a sentence including more than one sanction and in many cases a combination of sanctions will be appropriate (e.g. a fine, a suspension and an apology). A general overview of how to approach each sanction is provided in Section 6. Section 7 includes other important information to consider.

5.2 Administrative warnings and fines

The sanctions available under paragraph 901.1 of the Code are:

- A warning to remedy the breach identified; and
- A fine of £300¹ for any failure to remedy the breach within a specified period.

5.3 Professional misconduct

The sanctions available for professional misconduct are:

- Disbarment (only available to a five-person Disciplinary Tribunal);
- Suspension from practice (a three-person panel can only impose a suspension of up to three months; there is no limit on the period of suspension a five-person panel can impose);
- Prohibition (temporary or permanent) from accepting public access instructions;
- Exclusion from providing representation funded by the Legal Services Commission;
- A fine of up to £15,000 (for acts or omissions that took place on or after 31 March 2009) or up to £5,000 (for acts or omissions that took place prior to 31 March 2009);
- Repayment or foregoing of fees;
- Order to sit and pass, within a specified period, a Professional Ethics test;²
- Additional CPD requirements, including in specific areas of law;
- Reprimand;
- Advice as to future conduct;
- Order to make a formal apology to the complainant (for acts or omissions after 1 July 2008).

¹ Subject to change from time to time by the BSB.

² This sanction will only be available when the BSB has put in place arrangements to support the ethics test – this is likely to be in late 2009.

5.4 IPS

The sanctions available for IPS are:

- Order to make a formal apology to the complainant;
- Repayment or foregoing of fees in relation to the inadequate service;
- Payment of compensation to the complainant up to £15,000 (for acts or omissions that took place on or after 1 July 2008) or up to £5,000 (for acts or omissions that took place prior to 1 July 2008);
- Completion of additional CPD hours, including in specific areas of law;
- Prohibition (temporary or permanent) from accepting public access instructions.

5.5 Costs

Disciplinary Tribunals have the power to award costs both for and against the BSB. A Costs Order is not a sanction and they are mentioned here for the sake of completeness.

Section 6 - General approach to individual sanctions

- 6.1 This section gives guidance on the approach to take in relation to the application of individual sanctions. Decision makers should always take into account that a combination of sanctions may be appropriate in relation to a single breach of the Code. Also, it is important that the terms of any sanction are clear and therefore guidance is provided in Annex 3 as to the suggested wording to be used on findings and sentence sheets.

Disbarment (Disciplinary Tribunal only)

- 6.2 The sanction of disbarment is only available to five-person Disciplinary Tribunals. Disbarment is the most serious sanction that can be imposed and should be reserved for cases where the need to protect the public or the need to protect the reputation of the profession is such that the barrister should be removed from the profession. It is not possible to provide a definitive list of the circumstances in which disbarment will be appropriate as it will depend on the facts of the case and the individual background of the barrister. However, as Sir Thomas Bingham M.R. stated in Bolton v The Law Society [1994] 2 All ER 486: “*To maintain [the] reputation and sustain public confidence in the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission the reputation of the profession is more important than the fortunes of any individual barrister.*” Therefore, disbarment may be appropriate where some or all of the following factors apply:
- a) serious and/or persistent departures from professional standards or practising requirements;
 - b) serious harm has been caused to either the administration of justice, the reputation of the Bar or the individual complainant and there is a continuing risk to the public or the reputation of the profession if the barrister is permitted to continue in practice;
 - c) the barrister has committed a serious criminal offence involving dishonesty, violence or sexual offences;
 - d) the barrister has acted dishonestly regardless of whether it was in connection with a criminal offence (see 6.3 below)
 - e) the barrister has shown a persistent lack of insight into the seriousness of his/her actions or the consequences for his/her practice, the administration of justice or the reputation of the Bar.
- 6.3 **Dishonesty:** any dishonesty on the part of a member of the Bar, in whatever circumstances it may occur, is a matter of great seriousness. It damages the reputation of the profession as a whole, quite apart from its effect on the reputation of the individual barrister. Dishonesty is incompatible with membership of the Bar given the duties placed on barristers to safeguard the interests of their clients and their overriding duty to the law, justice and the courts. Public interest requires, and the general public expects, that members of the Bar are completely honest and are of the highest integrity. Therefore, in cases where a barrister has proved to be dishonest, even where no criminal offence has been committed, disbarment will almost always have to be considered (see section 7 - Acts

of dishonesty). For guidance on dealing with situations where the barrister has been, or may have been, dishonest during the course of proceedings, see paragraph 7.X.

Suspension from practice (Disciplinary Tribunal only)

6.4 This sanction is only available to Disciplinary Tribunals. Suspension from practice is a serious matter and should be reserved for cases where the barrister represents a risk to a public which requires that he/she be unable to practise for a period of time and/or the behaviour is so serious as to undermine public confidence in the profession and therefore a signal needs to be sent to the barrister, the profession and the public that the behaviour in question is unacceptable. Relevant factors to take into account include, but are not limited to:

- a) risk to the public;
- b) there has been a serious departure from the professional standards expected of a barrister;
- c) abuse of position or abuse of trust;
- d) the barrister has shown a lack of insight into and understanding of his/her actions and their consequences;
- e) the barrister has shown a lack of integrity that is not so serious as to warrant disbarment; and
- f) the behaviour is likely to be repeated or has been repeated since the initial incident.

6.5 **Period of suspension:** it is usual to impose a suspension for a specified period of time. The Disciplinary Tribunal Regulations do not stipulate an upper limit to the period of suspension a five person panel can impose. However, very long periods of suspension are tantamount to disbarment and therefore where a suspension of more than three years is considered appropriate, the Disciplinary Tribunal should give serious consideration to disbarring the barrister unless the circumstances are exceptional. The Visitors to the Inns of Court stated in the case of Durand (1961) that *“three years ... must ... be the maximum sentence of suspension which in practice can properly be given”*. Any period of suspension will inevitably have a serious negative impact on the barrister’s level of knowledge and up to date experience. Therefore, the longer the period of suspension the more difficult it will be for the barrister to return to practice as an effective advocate. If exceptionally a period of suspension longer than three years is considered appropriate, it should be combined with conditions regarding retraining such as to ensure that before the barrister returns to practice appropriate refresher training has been undertaken.

6.6 **Suspension subject to conditions:** while a specific period of suspension is the norm it is also acceptable to make the period of suspension dependent on the occurrence of a specified event or completion of a specified activity. For example, a barrister could be suspended pending completion of a specified training course or other similar activity. In these circumstances, the suspension would cease when acceptable evidence is provided to the BSB of the relevant activity being completed. The Tribunal should ensure that the terms of any order of suspension from practice are clear particularly where conditions on the suspension are imposed. Barristers should be in no doubt about what actions they

need to take to bring a suspension to an end and what evidence they need to present to allow the suspension to be lifted.

Prohibition from accepting public access instructions (Disciplinary Tribunal or adjudication Panel)

- 6.7 This sanction is only available to Disciplinary Tribunals. It is generally applicable in cases where the barrister was acting under formal Public Access instructions; however, there may be circumstances where a barrister's treatment of a client, even when instructed by a solicitor, indicates that the barrister should not be allowed to accept Public Access instructions. It is a requirement that any barrister providing this type of access must have completed a Public Access training course and must also provide the client, in advance, with prescribed information about the terms and extent of the work that can be carried out. Clients who instruct barristers by this means are exposed to greater risk than those who use a solicitor and therefore panels need to look carefully at whether the barrister's behaviour represents a risk to the public which requires some level of restriction on his/her ability to continue accepting Public Access instructions.
- 6.8 In general, such a sanction would be appropriate where the barrister's behaviour directly relates to, or arises from, the circumstances of the public access instructions. For example, the barrister has either failed completely, or in part, to comply with the prescribed terms for Public Access or has in some way exploited the Public Access relationship to the detriment of the client. In particular, panels should take into account the manner in which the barrister has handled the issue of fees including both the way in which the fee level has been set and the arrangements for payment. A time-limited prohibition would be appropriate where the barrister's behaviour indicates a level of risk that could be addressed via a period of contemplation and a review of his/her practices which would mitigate the potential risk to clients (this may apply to situations where the barrister has failed during the proceedings to recognise the seriousness of the effect of his or her conduct). A permanent prohibition would be appropriate where there is evidence that the barrister has intentionally exploited the relationship, has persistently provided a poor service to clients, has charged unreasonable rates, or has taken on instructions with no chance of success.

Fines (Disciplinary Tribunal or Complaints Committee)

- 6.9 The imposition of a fine is a sanction that can easily be combined with other sanctions and decision makers should always consider whether this would be appropriate. The maximum limit of a fine is £15,000 but fines at the upper end of the scale should be reserved for serious breaches of the Code where the barrister does not represent an ongoing risk to the public but appears to have profited substantially from the breach. Fines, on the whole, are a "deterrent" sanction and their main purpose is to mark the severity of the breach and prevent its reoccurrence.
- 6.10 **The means of the barrister:** when considering whether to impose a fine, the financial means of the barrister should not be the determining factor. If a fine is considered appropriate in the light of the seriousness of the breach, then it should be imposed regardless of the barrister's means. Therefore, the decision maker should first decide if a

fine is the appropriate sanction, then consider the appropriate level of fine based on the breach, and finally look at adjusting the fine level in order to take into account a barrister's financial situation. A fine should not be increased merely because a barrister can afford it but it is reasonable to reduce the level of fine to take into account the barrister's financial circumstances or increase it where there is evidence that indicates that the barrister has profited from the breach.

- 6.11 **Time to pay and instalments:** When a decision maker orders that a fine should be paid, the sum will technically become due for payment immediately after the appeal period has expired or, in the case of Determination by Consent, when the finding is accepted by the barrister. It is, however, good practice for decision makers to specify when the fine is due in their decision (see paragraph X for wording of the sentence).
- 6.12 Decision makers should bear in mind that it is open to a barrister to negotiate a payment plan with the BSB following a Tribunal. In most cases, the issue of payment by instalments is better left to the BSB to negotiate with the barrister after the hearing as the BSB will be able to make more detailed enquiries regarding the barrister's financial situation and will have time to negotiate a mutually acceptable plan. Where decision makers consider that it is appropriate to order an instalment plan they should take into account the cost to the BSB of administering the plan. It is helpful to limit any instalment plan to a maximum period of eight months because small instalments over a lengthy period of time can be expensive to administer and involve costs to the profession far in excess of the original fine. Additionally, lengthy instalment plans can lead to substantial delay in it becoming apparent that action needs to be taken for non-compliance.

Repayment or foregoing of fees (Disciplinary Tribunal, Adjudication Panel or Complaints Committee)

- 6.13 This sanction would normally only be imposed where the complainant is a client of the barrister. It is applicable in relation to both professional misconduct and IPS. Such a sanction is appropriate where, as a result of the breach, the service to the client was such to make the fee charges inappropriate. Therefore if the barrister agreed to provide a specific service or range of services and did not do so, or only provided them in part, or delayed significantly in providing them to the detriment of the client, it would be appropriate to order that a percentage, or even the whole, of the fee be repaid or foregone. The level of the order will be entirely dependent on the circumstances of the case but, in considering the amount, decision makers will need to look at whether the work done for the client was usable (and, if so, to what extent), whether the client had to go elsewhere for the services originally agreed and/or whether the client incurred other related costs.

Additional CPD requirements (Disciplinary Tribunal, Adjudication Panel or Complaints Committee)

- 6.14 The purpose of ordering that a barrister complete additional Continuing Professional Development (CPD) hours is to ensure that barristers are sufficiently trained and knowledgeable in areas where the breach of the Code may demonstrate that they are lacking in the required expertise. It is a rehabilitative sanction and can often be

appropriately combined with other sanctions. Decision makers should avoid making a general order to complete further hours but instead specify the area or subject matter in which additional training is required. Further, the order should stipulate a specific date by which the hours should be completed and the completion reported to the BSB. Additional CPD hours should not be imposed solely as a punishment but should serve a useful purpose that will help to prevent the breach of the Code being repeated in the future.

- 6.15 Where a barrister has failed to complete the required number of CPD hours for a particular year or years, then it is important that the decision maker orders that the outstanding hours be completed within a specified period. It may also be appropriate to order that failure to complete the outstanding hours within the specified period will result in an automatic suspension from practice for a specified period (see paragraph 6.6 above).

Reprimands (Disciplinary Tribunal or Complaints Committee)

- 6.16 A reprimand is appropriate in cases where the breach of the Code is minor and there is no continuing risk to the public but the decision maker wishes to indicate formally that the behaviour is unacceptable and should not occur again. A reprimand is a “backwards looking” sanction and represents censure of previous behaviour. It is therefore appropriate where the behaviour is unlikely to be repeated in the future. The sanction should include an order as to how the reprimand should be made. In most cases, it will be made at the Tribunal and probably form part of the general sentencing decision. However, Tribunals may consider that it is appropriate to order that the reprimand be made in the form of a written document. Reprimands can be given by the decision maker at the hearing or in the report, or by ordering the barrister to attend on a nominated person to be reprimanded. Relevant positive factors that would indicate whether a reprimand is appropriate include, but are not limited to, the following:

- a) no evidence of loss to the complainant
- b) appreciation and understanding on behalf of the barrister of the failings;
- c) the behaviour was isolated and not intentional;
- d) genuine expressions of regret/remorse; and
- e) previous good history.

Advice as to future conduct (Disciplinary Tribunal or Complaints Committee)

- 6.17 Advice as to future conduct will be appropriate in cases where the breach is minor and has not had any lasting consequences for the complainant but the decision maker considers it would be helpful if the barrister is given some guidance as to how to behave in the future. Advice is a “forward looking” sanction which should be used where it is thought that the barrister needs to change his/her behaviour. Advice as to future conduct would be particularly appropriate where a barrister appears to have a lack of appreciation or understanding of the nature of the breach and the reasons why disciplinary action was considered necessary. The advice can be given by the decision maker at the hearing or in the report, or by ordering the barrister to attend on a nominated person to be given advice. Such sanctions are particularly appropriate where the barrister is inexperienced in the profession and could benefit from guidance rather than censure.

Apologies (Disciplinary Tribunal, Adjudication Panel, or Complaints Committee)

- 6.18 In all cases where a client or a member of the public has been directly affected by the barrister's breach of the Code, it is likely to be appropriate, and important, to order that the barrister make a formal apology. The decision maker should make it clear which aspects of the barrister's behaviour should be covered by the apology. The order should stipulate that the apology be in writing and state whether the apology should be approved by the Chairman of the panel, or by some other nominated person, prior to it being sent to the BSB for forwarding to the recipient. Where the nominated person has concerns that the apology is inappropriate or does not meet the order of the decision maker, he/she can refer the apology back to the barrister to consider whether a further and better apology is required. (Note: After 1 July 2008, decision makers can order a barrister to apologise for professional misconduct in addition to IPS.)

Test in professional ethics (Disciplinary Tribunal or Complaints Committee)

- 6.19 The ability to order that a barrister undertake a test in professional ethics is a new sanction and one that supplements the ability to order additional CPD hours. It is available in relation to professional misconduct and IPS. The test will be designed to ensure that a barrister maintains an adequate level of understanding of his/her professional obligations: it will be similar to the aptitude test that solicitors are expected to pass when transferring to the Bar. It is appropriate to order such a test when a barrister has demonstrated a lack of understanding of the basic ethical requirements of the profession but nevertheless appears to be able to perform adequately as a legal advisor and an advocate. In many cases it will be appropriate to combine an order to take the test with other sanctions. This sanction will only be available when the BSB has put in place arrangements to support the ethics test – this is likely to be in late 2009.

No further action (Disciplinary Tribunal, Adjudication Panel, or Complaints Committee)

- 6.20 The option to take no further action in cases where a breach of the Code has been proved is open to all decision makers. It is only appropriate where the barrister's behaviour presents no risk to the public and there are no ongoing or lasting effects in relation to the behaviour. Taking no further action would be appropriate in cases where the barrister has fully acknowledged the breach; the effects of bringing disciplinary action have already had a significant impact on the barrister's reputation or practice and where no purpose would be served by ordering other sanctions.

Compensation (Disciplinary Tribunal, Adjudication Panel, or Complaints Committee)

- 6.21 The ability to order that compensation be paid to a client is restricted to circumstances where the barrister has been found to have provided an inadequate professional service (IPS). There is no power to order compensation for professional misconduct. If the IPS took place before 1 July 2008, the compensation limit is £5,000. If the IPS took place on or after 1 July 2008, the limit is £15,000.

- 6.22 There are two issues that need to be addressed when deciding the amount of compensation to award. The first issue is the inconvenience and potential distress and anxiety that the client has had to endure as a result of the breach as well as the time and trouble the client has been put to in pursuing the complaint. The second issue is the direct financial loss the client may have suffered as a result of the breach.
- 6.23 **Inconvenience, distress and time and trouble:** the current maximum limit for compensation awards is £15,000 but it is unlikely that decision makers will find it necessary to order compensation payments anywhere near the maximum under this heading. The amount awarded to cover these issues is likely to be a fairly modest sum and will be dependent on the seriousness of the breach of the Code, the length of time it went on, the effects on the individual client including those connected with the client e.g. family members, the time and trouble the client has been put to in bringing the complaint, the vulnerability of the complainant and the steps taken by the barrister to mitigate the distress and inconvenience.
- 6.24 **Direct financial loss:** the compensation award can include an amount to cover any quantifiable loss suffered by the client. Decision makers will need to be provided with evidence of the losses before including an element in the compensation award to cover direct financial losses. However, decision makers should bear in mind that it is not necessary for the client to prove financial loss recoverable in law in order for a compensation payment to be made. Decision makers should also bear in mind their powers to order repayment or foregoing of fees (see paragraph 6.13 above). If there is insufficient material available to reach a conclusion, the question of compensation may be adjourned for further information to be obtained; however, it is not necessary for a detailed or sophisticated enquiry to be undertaken.

Section 7 – Other important issues to consider

Character evidence

- 7.1 Barristers are entitled, as part of their mitigation, to put forward character references/witnesses to support their submissions. However, while such evidence can be relevant to the sanctions imposed, it should be treated with caution and panels should be wary of becoming distracted from the main issues by an abundance of character evidence. The fact that a barrister was previously of “good character” and has a good reputation, can only go so far in mitigating his/her behaviour and the more serious the breach of the Code, the less weight should be attached to character evidence. The emphasis should be on the nature of the breach of the Code and the circumstances in which the breach occurred.
- 7.2 If the character evidence indicates that the person providing it knows the barrister well and has a clear basis for assessing that the behaviour in question was a genuine anomaly/one-off then some weight should be given to it. However, if the character evidence indicates that the person supplying it can only have limited direct knowledge of the barrister, then it should be treated with caution and it may be that little or no weight can be given to it. The general approach should be that character evidence is treated with caution and should not unduly affect the sanctions imposed: a person of good character and impeccable reputation can still commit breaches of the Code that are serious and warrant the same sanctions as any other barrister.

Fitness to practise

- 7.3 In the Bar’s complaints and disciplinary system, the term “fitness to practise” is only used when considering whether a barrister is suffering from a physical or mental condition (including addiction) that may affect the barrister’s ability to practise. The Fitness to Practise Rules are contained at Annex O to the Code of Conduct. Fitness to Practise proceedings are not disciplinary in nature and are run entirely separately from any disciplinary proceedings. The primary purpose is to ensure the protection of the public by considering whether a barrister is medically fit to practise and if not, imposing any necessary restrictions.
- 7.4 Some complaints may give rise to concern about a barrister’s fitness to practise as a result of material submitted as part of the barrister’s defence and/or mitigation or as a result of their behaviour during the proceedings. This will often include information relating to, or indicating, an ongoing or recurring addiction or mental health problem. If a decision maker has information before it that gives rise to concern about a barrister’s fitness to practise, it should:
- a. Proceed with making a decision on the case before it based on all the facts and evidence;
 - b. State in the decision sheet (along with the decision on the case) that there is concern about the barrister’s fitness to practise and give reasons for such concern (including reference to relevant documents); and

- c. Formally refer their concerns to the Complaints Commissioner of the BSB, who will consider the evidence and, if necessary, invoke the relevant procedure under the Fitness to Practise Rules.

Dishonesty during the course of disciplinary proceedings

- 7.5 Where the barrister is not facing a specific charge alleging dishonest conduct, but the panel nonetheless decides that he/she has engaged in dishonest behaviour during the course of the disciplinary proceedings, the panel may refer the matter to the Complaints Committee of the BSB to consider raising a fresh complaint. The panel should ensure that it fully particularises any concerns it has so that the Complaints Committee can properly consider whether or not it wishes to take further action and raise a fresh complaint. The panel must sentence the barrister only in relation to the charges currently before it; however, it should ensure that it details the circumstances and basis of any concerns of dishonest behaviour by the barrister as this will be relied upon in any future disciplinary proceedings.

Multiple charges

- 7.6 When dealing with multiple charges, it is tempting to impose one sentence for the most serious charge and then impose no separate sanction for the more minor charges. However, this can cause problems if the barrister decides to appeal the decision because, if a decision is taken on appeal to overturn the finding or sentence on the most serious charge but not any of the other charges, it can be difficult to establish what sanction should apply to those charges that remain or determine how seriously the original Tribunal viewed each of the remaining charges. To avoid this situation, it is helpful to impose a separate sentence for each charge.

Concurrent and consecutive suspensions

- 7.7 Where there are multiple proved charges that warrant a period of suspension on each charge, the decision maker will have to decide whether the suspensions on each charge should run concurrently or consecutively: imposing a concurrent sentence means that the suspensions will run alongside each other, whereas imposing a consecutive sentence means that the suspensions will run after each other. Decision makers should be cautious about imposing consecutive suspensions unless they are sure that the totality of the consecutive suspensions is warranted based on the cumulative seriousness of the charges.

Deferred sentences

- 7.8 The Complaints Committee and Disciplinary Tribunals have the power to defer sentences. This means that a sanction can be imposed but be subject to deferred implementation based on whether a further breach of the Code occurs within a stipulated period. The stipulated period should be between six months and two years. Further breaches of the Code within the stipulated period will leave the barrister open to activation of the original deferred sentence as well as sanctions for the new breach.

- 7.9 A deferred sentence can only be imposed where the sanction is a fine or a suspension. Therefore, it is appropriate in circumstances where the behaviour is relatively serious (and therefore warrants a fine or suspension), the behaviour is unlikely to be repeated and there is no immediate need to protect the public, but the barrister needs to be encouraged to change the way in which he/she behaves. Lengthy periods of suspended sanctions should be reserved for cases where the barrister may need to have a control mechanism in place to temper his/her behaviour.

Suspension of practising certificate pending appeal

- 7.10 The Disciplinary Tribunal Regulations give Disciplinary Tribunals the power to order that the BSB suspend a barrister's practising certificate pending the outcome of an appeal where the sanction imposed is one of more than one year's suspension or disbarment. This power is different from imposing a sanction of suspension or disbarment in that suspension of a practising certificate only affects the barrister's ability to provide legal services as a barrister. Only the Inns of Court have the ability to suspend barristers formally or disbar them and in doing so also remove other privileges attached to call to the Bar including membership and use of the Inn's facilities
- 7.11 The need for a provision that allows the BSB to suspend the right to have a practising certificate arises because sanctions imposed by Tribunals will not be implemented until after the outcome of any appeal is known. Clearly where a Tribunal considers that the barrister represents an immediate risk to the public which warrants a lengthy suspension or disbarment, it would be wrong to allow the barrister to continue practising merely because an appeal has been submitted. The Regulations stipulate that a Tribunal should order that the barrister's practising certificate be suspended pending appeal unless there is good reason not to do so.

Reporting the barrister's unsuitability as a pupil supervisor

- 7.12 In any case where a barrister is a pupil supervisor and the breach of the Code indicates that the barrister may no longer be suitable to continue in that role, the decision maker should order that a report be made to the barrister's Inn so that consideration can be given to removing the barrister from the list of pupil supervisors. Decision makers do not have the power to order that a barrister's status as a pupil supervisor be removed: this is a matter solely for the Inns of Court but it is important that a report is made to the relevant Inn where the circumstances warrant it.

Part II - Guidance on common breaches of the Code

1. This section provides guidance in relation to the starting points for sanctions in respect of the most common breaches of the Code. Sections A to J provide information related to charges of professional misconduct and Section K relates to Inadequate Professional Service. The guidance is not intended to represent a tariff for the breaches and decision makers must decide each case on its own facts. The suggested sanctions do not necessarily represent the “going rate” and the guidance merely indicates where a decision maker might start before considering all the relevant factors.

2. It is important that consistency and proportionality in sentencing are maintained and therefore where a decision maker imposes a lesser or higher sanction than suggested by this guidance, it is important that full reasons are given as to why the sanction is considered appropriate. This will not only give the barrister and the complainant a clear indication of the reasons for a lenient or harsh sentence but will provide justification for the decision should the case go to appeal. It is particularly important for decision makers to give full written reasons for the sentencing should they impose a deferred sanction, as the decision to activate the sanction will be taken by a different body and that body will require detailed reasons in order to make a fair decision.

3. In assessing the appropriate sanction for a breach of the Code, decision makers must consider any aggravating or mitigating factors that may cause the sanction to be increased or decreased. Details of aggravating and mitigating factors applicable to all breaches are set out in Appendix 1. In addition to this, the individual tables relating to common breaches provide examples of aggravating and mitigating factors applicable to each breach. The factors listed are examples and the lists are not intended to be exhaustive.

4. It must be made clear that the guidance in relation to the common breaches is not intended to detract from decision maker’s complete discretion to impose any sanction which is appropriate to an individual case: the final decision is a matter for decision maker’s alone.

5. In relation to fines and suspensions, rather than including specific amounts, the following table shows three bands for fines and suspensions which are referred to in the rest of Part II. The ranges represent the following:

Fines	Suspensions
Low level = up to £1,000	Short = up to 3 months
Medium level = over £1,000 and up to £3,000	Medium = over 3 months and up to 6 months
High level = over £3,000 and up to £15,000	Long = over 6 months and up to three years

Section A - Criminal Convictions

A.1 Conviction for drink driving and related offences

Description	
<p>A criminal conviction for drink driving is normally charged under paragraph 301(a)(iii) (conduct which brings the legal profession into disrepute); however, depending on the nature of the circumstances, it may also be charged under paragraph 301(a)(i) (engaging in conduct discreditable to a barrister). It may also be accompanied by a separate charge for any other related convictions, such as dangerous driving.</p> <p>The sanction that is imposed should relate to the breach of the Code of Conduct for a barrister having been convicted of a criminal offence. It is not intended to be a second form of punishment, or “double jeopardy”, for the actual criminal offence.</p> <p>Range of sanctions: The starting point for a first time conviction for drink driving should normally be a reprimand and a low level fine. Where a conviction results in a custodial sentence, the general starting point should be disbarment unless there are clear mitigating factors that indicate that such a sanction is not warranted.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Sanction starting point
<ul style="list-style-type: none"> a. A first time conviction for drink driving only b. A conviction for drink driving that involves an element of dangerous driving c. A conviction for drink driving that is accompanied by further related convictions (e.g. leaving the scene, driving whilst disqualified) 	<ul style="list-style-type: none"> a. A reprimand and a low level fine b. A medium level fine and/or a short suspension c. A short to medium suspension
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Injury to persons • High alcohol level • Lack of cooperation with the police 	<ul style="list-style-type: none"> • Compelling emergency situation
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

A.2 Conviction for assault and violent acts

Description	
<p>A criminal conviction for violence is normally charged under paragraph 301(a)(iii) (conduct which brings the legal profession into disrepute); however, depending on the nature of the circumstances, it may also be charged under paragraph 301(a)(i) (engaging in conduct discreditable to a barrister).</p> <p>The guidance below is also applicable to charges relating to domestic violence, which should not be treated any less seriously than other forms of violence.</p> <p>The sanction that is imposed should relate to the breach of the Code of Conduct for a barrister having been convicted of a criminal offence. It is not intended to be a second form of punishment, or “double jeopardy”, for the actual criminal offence.</p> <p>Range of sanctions: The starting point for a conviction of minor assault should normally be a reprimand and a medium level fine, which may increase to a short suspension. Where a conviction results in a custodial sentence, the general starting point should be disbarment unless there are clear mitigating factors that indicate that such a sanction is not warranted.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Sanction starting point
<ul style="list-style-type: none"> a. A conviction for low level assault b. A conviction for an act of violence causing injury c. A conviction for an act of serious violence 	<ul style="list-style-type: none"> a. Reprimand and medium level fine to a short suspension b. A medium level suspension c. Disbarment (or in exceptional circumstances, a long suspension)
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Previous criminal convictions • Lack of cooperation with the police • Use of a weapon • Victim was particularly vulnerable • Intent to cause harm • Discriminatory motivation • Serious injury to the victim 	<ul style="list-style-type: none"> • Isolated incident in difficult and unusual circumstances • Element of self protection or protection of others/property
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

A.3 Conviction for drug possession or supply

Description	
<p>A criminal conviction for drug possession or supply is normally charged under paragraph 301(a)(iii) (conduct which brings the legal profession into disrepute); however, depending on the nature of the circumstances, it may be charged under paragraph 301(a)(i) (engaging in conduct discreditable to a barrister).</p> <p>The sanction that is imposed should represent the offence under the Code of Conduct for a barrister having been convicted of a criminal offence. It is not intended to be a second form of punishment, or “double jeopardy”, for the actual criminal offence.</p> <p>Range of sanctions: The starting point for a conviction of drug possession (normally tried in the Magistrates’ Court) should be a reprimand and a medium level fine. A period of suspension or disbarment would be appropriate where there is has been intentional supply for profit. Where a conviction results in a custodial sentence, the general starting point should be disbarment unless there are clear mitigating factors that indicate that such a sanction is not warranted.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Sanction starting point
<p>a. A conviction for drug possession (any class)</p> <p>b. A conviction for supply or intent to supply (any class)</p>	<p>a. A reprimand and a medium level fine</p> <p>b. Disbarment</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Previous criminal convictions • Lack of cooperation with the police • Medium/large scale operation 	<ul style="list-style-type: none"> • No intention to gain financially
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

A.4 Failure to report a criminal charge or conviction promptly

Description	
<p>Barristers are required to report nearly all criminal convictions and also the fact that charges have been preferred in relation to a range of criminal offences. Failure to report a criminal charge or conviction is charged under paragraph 905(b) of the Code.</p> <p>Failure to report a criminal conviction will usually be accompanied by a disciplinary charge relating to the specific conviction. Although there may be multiple charges, a separate sanction should be imposed for each.</p> <p>Range of sanctions: The starting point for failure to report a criminal charge or conviction promptly should be a low level fine. Given the nature of the offence, the range of appropriate sanctions is limited and it is unlikely that more than a medium level fine will be appropriate. However, the sanctions for the criminal conviction itself are likely to be more severe (see A.1 - A.3).</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Sanction starting point
<ul style="list-style-type: none"> a. Failure to report promptly being charged with a relevant criminal offence b. Failure to report promptly a relevant criminal conviction 	<ul style="list-style-type: none"> a. A low level fine b. A low to medium level fine
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Substantial delay in reporting the conviction • Attempts to conceal conviction and/or relevant facts or details relating to the conviction 	<ul style="list-style-type: none"> • genuine and understandable ignorance of the duty to report
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section B - Acts of dishonesty

Description	
<p>Please see paragraphs 6.3 above regarding the general approach to be taken towards dishonesty within the profession.</p> <p>There are a number of different types of breaches of the Code that involve dishonesty and different charges that may be brought in relation to each. In general such breaches will be charged under paragraph 301(a)(i) of the Code because they involve either direct allegations of dishonesty or allegations of otherwise bringing the Bar into disrepute.</p> <p>Dishonesty can amount to criminal dishonesty (even though no criminal charges may have been brought - see also criminal convictions) or personal or professional dishonesty that does not amount to a crime.</p> <p>Some examples of dishonest behaviour that form the basis for charges of professional misconduct include:</p> <ul style="list-style-type: none"> • Making a false declaration on Call • Inflating marks or experience on an application form • Falsification of documents • Certain types of criminal convictions, such as theft, perjury, or fraud • Deliberate misuse of client money • Dishonesty in connection with disciplinary proceedings (see paragraph 7.5) <p>Range of sanctions: Dishonesty is not compatible with practice in a profession which requires exceptional levels of integrity. The general starting point should be disbarment unless there are clear mitigating factors that indicate that such a sanction is not warranted. Therefore, no common circumstances are listed below but instead the emphasis should be on the potential mitigating factors that might reduce the sanction from disbarment.</p>	
Common circumstances	Starting Point
	<ul style="list-style-type: none"> • Disbarment
Aggravating factors	Mitigating factors
	<ul style="list-style-type: none"> • Clear evidence that behaviour was out of character and the consequences were not intended • Behaviour limited to personal life and no evidence of dishonesty in professional life (to be treated with caution)
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section C - Conduct during proceedings and in court

C.1 Making submissions that are not properly arguable or making allegations of fraud not supported by evidence

Description	
<p>Barristers have a duty to ensure they do not make submissions, or draft documents, that are not properly arguable or supported by evidence. In particular, allegations of fraud should be supported by evidence regardless of the client's instructions. These types of breaches are normally charged under paragraph 704 or 708 of the Code.</p> <p>Range of sanctions: As the circumstances surrounding these breaches can vary widely, the appropriate sanction may range from giving advice to disbarment. One key factor to take into account in determining the level of sanction is whether the breach was committed intentionally. Protection of the public is particularly relevant in relation to allegations of fraud, as such allegations are usually made against an individual and therefore may impact on the credibility and reputation of that person.</p> <p>In all cases, consideration should be given to whether it is appropriate to require the barrister to undertake the Professional Ethics Test (see paragraph 6.19 for more details), or whether an apology to the complainant should be ordered.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Sanction starting point
<ul style="list-style-type: none"> a. Recklessly making unsupported submissions b. Recklessly making allegations of fraud c. Making intentional unsupported submissions or allegations of fraud 	<ul style="list-style-type: none"> a. Reprimand and/or advice as to future conduct b. Medium level fine to short suspension c. Medium suspension to disbarment
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Personal or professional advantage gained (financial or otherwise) • Negative impact on the complainant, client or other party • Dishonest motive 	<ul style="list-style-type: none"> • Immediate apology • Remedial action taken at an early point
<p>NB - Acting on a client's instructions should not be considered as a mitigating factor, as this runs contrary to a barrister's overriding duty to the Court.</p>	
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

C.2 Misleading the Court

Description	
<p>Barristers are under a duty not to mislead the Court and doing so is usually considered to be a serious breach of the Code. The breach is normally charged under paragraph 302 of the Code of Conduct.</p> <p>Range of sanctions: As the circumstances surrounding this offence can vary widely, the appropriate sanction may range from giving advice to disbarment. One key element that could warrant more serious sanctions for this breach is whether or not the breach was committed intentionally.</p> <p>In all cases, consideration should be given to whether it is appropriate to require the defendant to undertake the Professional Ethics Test (see paragraph 6.19 for more details).</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Sanction starting point
<ul style="list-style-type: none"> a. Recklessly misleading the Court b. Knowingly misleading the Court 	<ul style="list-style-type: none"> a. Reprimand and/or advice as to future conduct b. A short suspension to disbarment
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Personal or professional advantage gained (financial or otherwise) • Negative impact on the complainant, client or other party • Actions of the barrister adversely affected the course of the proceedings. 	<ul style="list-style-type: none"> • Immediate apology • Remedial action taken at an early point
<p>NB - Acting on a client's instructions should not be considered as a mitigating factor as this runs contrary to a barrister's overriding duty to the Court.</p>	
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section D - Acceptance and return of instructions

D.1 Acting without a professional client

Description	
<p>A barrister may only supply legal services to a client if he/she is instructed by a professional client (normally a solicitor) or the barrister is acting under Licensed or Public Access. The rules prohibiting acting directly for a client are designed to protect the public and accepting instructions without a professional client can put the public at risk. Breaches are normally charged under paragraph 401(a) of the Code.</p> <p>Range of sanctions: The starting point should normally be a reprimand and/or a medium level fine. The main factors in determining the sanction will be the risk posed to the client, whether the breach involved a level of exploitation of the client and/or whether the behaviour was motivated by financial gain. In all cases, consideration should be given to whether it is appropriate to require the barrister to undertake the Professional Ethics Test (see paragraph 6.19 for more details), whether an apology to the complainant should be ordered, or whether the barrister should be ordered to refund or forego fees.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Circumstances	Starting point
<ul style="list-style-type: none"> a. Acting without a professional client (not financially motivated) b. Acting without a professional client (financially motivated) c. Acting without a professional client over a prolonged period of time 	<ul style="list-style-type: none"> a. Reprimand and/or advice as to future conduct b. Medium level fine to a short suspension c. Short to medium suspension
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Negative impact on the client • Particularly vulnerable client 	<ul style="list-style-type: none"> • Limited level of legal services provided • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

D.2 Breach of cab-rank rule

Description	
<p>A barrister must not withhold services on the basis of the nature of the case, the client's opinions or beliefs or on the basis of the source of the financial support. These requirements are known collectively as the "cab-rank rule". Breaches of these obligations are normally charged under paragraphs 601 and 602 of the Code.</p> <p>Range of sanctions: The starting point should normally be a reprimand and/or a medium level fine. In all cases, the Tribunal should consider whether it is appropriate to require the defendant to undertake the Professional Ethics Test (see page 6.19 for more details), or be ordered to apologise to the complainant.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Circumstances	Starting point
<ul style="list-style-type: none"> a. Breach of cab-rank rule (financial motive) b. Breach of cab-rank rule (discriminatory motive) 	<ul style="list-style-type: none"> a. Reprimand and medium level fine b. Reprimand and short suspension
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Actions of the barrister adversely affected the course of the proceedings 	<ul style="list-style-type: none"> • Immediate apology
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

D.3 Accepting instructions when professionally embarrassed

Description	
<p>There are a range of circumstances in which a barrister may be professionally embarrassed. These include (but are not limited to) accepting instructions when the barrister is likely to be a witness or his/her connection to the case will make it difficult to maintain independence, when there is a potential conflict of interest and when there is a significant risk of confidential information being communicated. Breaches are normally charged under paragraph 603 of the Code of Conduct.</p> <p>Range of sanctions: The sanctions should normally be a reprimand and/or a medium to high level fine. More serious sanctions should be imposed where the breach has had a significant impact on the client or the progress of the proceedings. Consideration should always be given to whether the barrister should be ordered to refund or forego any fees paid. In all cases, consideration should be given to whether it is appropriate to require the barrister to undertake the Professional Ethics Test (see paragraph 6.19 for more details), or whether an apology to the complainant should be ordered.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Circumstances	Starting point
<ul style="list-style-type: none"> a. Accepting instructions when professionally embarrassed (inadvertently) b. Accepting instructions when professionally embarrassed (intentionally) 	<ul style="list-style-type: none"> a. Reprimand and/or advice as to future conduct and refund/forego fees to client b. Reprimand, medium to high level fine and refund/forego fees to client
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Actions of the barrister adversely affected the course of the proceedings • Financial motivation 	<ul style="list-style-type: none"> • Immediate apology • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

D.4 Late withdrawal

Description	
<p>A late withdrawal from a case is normally charged under paragraph 610(d) of the Code.</p> <p>Range of sanctions: The starting point should normally be a reprimand and/or a medium to high level fine. Consideration should always be given to whether the barrister should be ordered to refund or forego any fees paid. In all cases, consideration should be given to whether it is appropriate to require the barrister to undertake the Professional Ethics Test (see paragraph 6.19 for more details), or whether an apology to the complainant should be ordered.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Circumstances	Starting point
<p>a. Late withdrawal (not financially motivated)</p> <p>b. Late withdrawal (financially motivated)</p>	<p>a. Reprimand and/or advice as to future conduct and refund/forego fees to client</p> <p>b. Reprimand, medium to high level fine and refund/forego fees to client</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Actions of the barrister adversely affected the course of the proceedings • Lateness/complexity of case prevents client from finding suitable alternative representation 	<ul style="list-style-type: none"> • Immediate apology • Positive steps taken to find/assist an alternative barrister.
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section E - Management of professional practice/obligations

E.1 Holding out

Description	
<p>“Holding out” is the short hand term to describe a barrister who is not entitled to practise presenting him/herself to others in a way that would lead people to believe that he/she is entitled to practise and offer legal services as a barrister. The breach is normally charged under paragraph 202 of the Code on the basis that the barrister will not have complied with the stipulated requirements for practise.</p> <p>Holding out can occur in a variety of circumstances. At one end will be cases where a barrister has provided a misleading description of his/her status on a business card or letter head. At the other end will be cases where the barrister has deliberately stated that he is entitled to practise and has provided legal services for financial gain when he/she is not entitled to do so.</p> <p>Range of sanctions: This breach is one that could be subject to an administrative warning or fine: therefore any cases which reach a Tribunal will have been considered by the Complaints Committee as unsuitable for such a disposal. The starting point should be a reprimand or advice as to future conduct with fines being more appropriate where the behaviour is deliberate/financially motivated.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Using misleading description of status on a business card/letter head</p> <p>b. Inappropriate use of title as a marketing device</p> <p>c. Providing legal services for financial gain in circumstances where the client is misled into believing the barrister is entitled to practise.</p>	<p>a. Reprimand/advice as to future conduct</p> <p>b. Reprimand/advice as to future conduct and low level fine</p> <p>c. Medium level fine to suspension dependent on the extent of the financial gain (disbarment could be considered where there is a clear risk to the public and the barrister may be likely to persist in the behaviour)</p>
Aggravating factors	Mitigating factors

<ul style="list-style-type: none"> • Failure to pay administrative fine on time or at all • Providing legal services in return for payment • Persistent pattern of behaviour • Motivation is financial gain • Using status of barrister to threaten or exploit • Failure to take remedial action when asked to do so by the BSB 	<ul style="list-style-type: none"> • No direct impact on members of the public • Breach was inadvertent and unintentional
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

E.2 Breach of practising requirements

Description	
<p>The requirements a barrister must meet to practise as a self-employed barrister are set out in Part II of the Code, Practising Requirements. The requirements include completion of Continuing Professional Development (CPD), payment of practising fees and obtaining insurance cover.</p> <p>In 2005, a system of administrative warnings and fines was introduced which allows a warning or fine to be imposed by the Complaints Committee for breaches of the practising requirements. Such actions do not result in a disciplinary finding and do not form part of the barrister's disciplinary record.</p> <p>Therefore any breaches of the practising requirements which reach a Tribunal are likely to have previously been subject to the warnings and fines system or will have been considered by the Committee as unsuitable for such a disposal (usually because the barrister has repeatedly breached the requirements in the past). Therefore panels should bear in mind that the cases that come before them will often be persistent or recalcitrant defaulters who will have received repeated warnings as to the potential consequences of their continued default.</p> <p>Often panels will be faced with a charge sheet which includes up to three charges for: failing to pay the administrative fine, failing to meet the relevant requirement and failure to respond.</p> <p>Panels should treat any of the above failures seriously given that the barrister will have had a number of previous opportunities to rectify his/her non-compliance and considerable resources will have been expended in trying to make the barrister meet his/her obligations. Each breach should be sentenced separately.</p> <p>Range of sanctions: the starting point for each charge should be a low level fine towards the top end. Therefore in cases where three charges are included on the charge sheet, the total fine could amount to £3,000. The starting point for persistent offenders should be a short conditional suspension - the condition being the barrister should meet the practising requirement by a specified date. Immediate suspensions should be considered where the barrister has previously been subject to a conditional suspension of a similar offence.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Failing to meet practising requirements in due time (compliance achieved late)</p> <p>b. Failing to meet practising requirements (compliance still outstanding)</p>	<p>a. Low level fine with starting point of £600</p> <p>b. Low to medium level fine with starting point of £900 and an order to comply with outstanding requirements by a specified date</p>

<ul style="list-style-type: none"> c. Failure to pay an administrative fine d. Repeated failures to meet practising requirements (but no previous disciplinary history of this) e. Previous disciplinary history of failing to meet practising requirements (including previous suspension) 	<ul style="list-style-type: none"> c. Low to medium level fine with starting point of £900 d. Short suspension (usually conditional) e. Medium to long suspension conditional on requirements being met
<p>Aggravating factors</p>	<p>Mitigating factors</p>
<ul style="list-style-type: none"> • Previous disciplinary findings for failing to meet practising requirements • Failure to attend a Disciplinary Tribunal without explanation 	<ul style="list-style-type: none"> • Attempts to comply and/or previous responses to BSB enquiries • Attempts to prevent recurrence • Financial hardship causing inability to pay
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

E.3 Poor administration of practice/chambers

Description	
<p>All self-employed barristers have an obligation to ensure that their practices are efficiently and properly administered and they can be held personally responsible for any failures to do so. However, Heads of Chambers also have a general responsibility for ensuring the efficient and proper administration of chambers. Breaches of these obligations are charged under paragraph 403 and 404 respectively.</p> <p>Range of sanctions: In most cases advice as to future conduct will normally be appropriate. Fines in the low to medium range would be appropriate where there is financial gain or the problems are systemic within a practice/chambers. Fines for Heads of Chambers would not normally be appropriate given the collective nature of chambers but could be appropriate for sole practitioners.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Failure to return papers/keep proper records of cases/fees</p> <p>b. Systemic failures to manage a wide-range of areas of practice/chambers in order to save money or increase income</p>	<p>a. Advice as to future conduct</p> <p>b. Reprimand and a low to medium fine (dependent on potential financial gain)</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Financial gain • Persistent or wide ranging failures in administration • Adverse impact on other members of chambers 	<ul style="list-style-type: none"> • One off/limited duration due to break down in technical support or staff mistakes • Problems in staffing outside the control of an individual barrister • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

E.4 Breach of pupillage advertising/funding requirements

Description	
<p>All pupillages must be advertised in order to allow for open selection and equality of opportunity. It is also a requirement that pupillages are funded at a minimum prescribed level or more. Breaches are charged under paragraph 402.2(c) of the Code.</p> <p>Breaches of the advertising requirements may be unintentional and stem from lack of knowledge of the requirements. However, failures to provide funding are more serious as they are likely to be motivated by financial gain and in most cases will involve some level of exploitation of the pupil. Deliberate evasion/circumvention of both requirements should be taken seriously.</p> <p>Range of sanctions: Where the breach is unintentional, a reprimand or advice as to future conduct would be appropriate. Intentional breaches of the funding requirements should attract a relatively heavy fine, particularly where the arrangements involved a level of exploitation of the pupil.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. Failure to advertise but no pupillages were offered in contravention of the rules b. Deliberate failure to advertise where pupils have been taken on in contravention of the rules c. Deliberate failure to provide funding motivated by financial gain d. Intentional failure to comply with recruitment requirements as well as failure to provide funding requirements 	<ul style="list-style-type: none"> a. Reprimand/advice as to future conduct b. Reprimand and low level fine c. Medium to high level fine dependent on the level of potential or actual financial gain d. Short suspension
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Financial gain • Exploitation of a pupil • Breach resulted in the pupillage not being registered • Persistent breaches involving numbers of pupils • Lack of response to warnings from Pupillage and Training Committee of the BSB 	<ul style="list-style-type: none"> • Unintentional • One off where previous pupillages had been properly handled • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

E.5 Failure to report bankruptcy and provide regular updates to the BSB

Description	
<p>Barristers are required to report the fact of their bankruptcy and thereafter the BSB monitors progress of the administration of the bankruptcy to check that the barrister is complying with all relevant enquiries. The barrister is always asked to provide regular updates to the BSB. If a bankruptcy is reported, and updates provided, no further action will be taken and the barrister is free to continue practising. Charges are normally brought under 905(c) and (d) of the Code.</p> <p>Range of sanctions: While there will be a range of circumstances relating to the failure to report the bankruptcy, even with aggravating circumstances, a reprimand is still likely to be the appropriate sanction but the terms of the reprimand need to be considered carefully. A fine will be inappropriate in most circumstances given the barrister's financial position unless the bankruptcy came to light after discharge.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. Failure to report the bankruptcy b. Failure to respond to BSB enquires for updates c. Substantial delay in reporting the bankruptcy 	<ul style="list-style-type: none"> a. Reprimand b. Reprimand c. Reprimand and low level fine
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Persistent non-compliance with bankruptcy requirements 	
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

E.6 Failure to respond

Description	
<p>Barristers are required, under paragraph 905(d) of the Code, to respond promptly to enquiries from the BSB regarding complaints or potential breaches of the Code. This means that a charge for failure to respond could result from a delay in responding as well as a total absence of response.</p> <p>Failure to respond is most often accompanied by other charges for breaches of the Code. However, in some circumstances, a late response from the barrister results in the main issues of complaint being dismissed but a charge for failing to respond is still brought because of the inconvenience/delay caused either to the BSB or the complainant and/or because of the barrister's attitude towards the authority of the BSB.</p> <p>Range of sanctions: In most cases the starting point should be a low level fine increasing according to the circumstances, the barrister's attitude and the level of delay/inconvenience caused. A short suspension might be appropriate where the behaviour has been repeated in relation to a number of separate complaints.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Delays in responding but with some level of engagement with the BSB</p> <p>b. Failure to respond at any point to BSB enquiries</p> <p>c. Deliberate decision not to engage with the BSB showing a disregard for the authority of the regulator</p>	<p>a. Low level fine</p> <p>b. Low level fine (upper end)</p> <p>c. Medium level fine</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Lack of explanation for the failure to respond • Distress and inconvenience to the complainant • Substantial delay in being able to deal with the complaint • Persistent failures to respond 	
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section F - Failure to comply with a Direction, Order or Judgment

F.1 Failure to comply with an Order of a COIC Tribunal, the Complaints Committee, or the Complaints Commissioner

Description	
<p>The BSB does not have powers of enforcement. Where a barrister fails to comply with an Order of a previous Tribunal or disciplinary panel (including financial penalties) the only option available is to bring further disciplinary proceedings for failure to comply. Breaches are charged under paragraph 905(f) of the Code.</p> <p>Range of sanctions: The appropriate sanction will depend on the nature of the original sentence, whether compliance of whole or part of the order remains outstanding and the reasons why the breach occurred. It is therefore difficult to set an overall starting point. A financial penalty may not be appropriate where previous financial orders remain outstanding. In most cases, where order(s) remain outstanding, and no serious attempts have been made to comply, a conditional short suspension could be appropriate (i.e. the suspension does not become operative unless the barrister fails to comply with conditions set by the Tribunal). Such a sanction would be particularly relevant where a barrister has failed to pay compensation to the complainant.</p> <p>Where compliance has been achieved by the date of the Tribunal, the starting point should be a low level fine combined with a reprimand/advice as to future conduct.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Failure to comply in due time or with only part of an order</p> <p>b. Failure to comply with any part of the orders of the Tribunal/panel</p> <p>c. Deliberate decision not to engage with the BSB showing a disregard for the authority of the regulator</p>	<p>a. Low level fine and reprimand/ advice as to future conduct</p> <p>b. Conditional short suspension</p> <p>c. Medium suspension</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Similar previous findings • No attempt to comply with the order • Compensation or repayment of fees to a lay client is still outstanding following a finding of IPS 	<ul style="list-style-type: none"> • Genuine attempts to comply • Late compliance
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

F.2 Breach of Court Direction or failure to comply with a Court Order

Description	
<p>Breach of a Court direction or order usually occurs in the course of a barrister representing a client. However it is possible that such a breach may occur in the course of a case that a barrister is involved with on a personal level. Charges are usually brought under paragraph 301(a)(ii) of the Code for diminishing public confidence in the profession or bringing the Bar into disrepute.</p> <p>Given a barrister’s responsibilities to the Court and for upholding the integrity of the profession, such behaviour should be considered more seriously than if committed by a lay person. Disrespect for the authority of a Court should be considered as a serious matter.</p> <p>Range of sanctions: In most cases the starting point should be a reprimand and/or a fine. The level of fine will be dependent on the circumstances of the breach and the barrister’s attitude. In cases where the breach might amount to a criminal offence (usually this occurs in relation to personal matters where a barrister, for example, breaches a restraining order), a medium level fine or a suspension would be appropriate. Suspensions should be reserved for cases where the impact on the complainant is significant.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. Inadvertent breach of a direction/order that did not have implications for the future course of the proceedings b. Inadvertent breach of a direction/order that resulted in a change to the course/outcome of the proceedings c. Deliberate breach of an order/direction in order to gain advantage 	<ul style="list-style-type: none"> a. Reprimand b. Reprimand and low level fine c. Medium fine and/or medium suspension
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Deliberate disobedience based on gaining advantage for the barrister or his/her client • Continued breach in face of warnings from the Court • Evidence of previous failures to obey Court Orders/Directions • Significant impact on the complainant or case 	<ul style="list-style-type: none"> • Unintentional • Confusion as to the nature of the order • Immediate apology • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

F.3 Failure to comply with a Court judgment

Description	
<p>Usually a failure to comply with a Court judgment will occur as result of an event in the barrister’s personal life although it is possible that it will result from representing a client. Charges are usually brought under paragraph 301(a)(ii) of the Code for diminishing public confidence in the profession or bringing the Bar into disrepute.</p> <p>It is a serious matter for a barrister to fail to comply with a Court judgment because it shows a level of contempt for the legal process which is not compatible with the standards expected of professionals with a responsibility to the Court. Therefore, a barrister’s non-compliance with a Court judgment should be considered to be more serious than that of “lay person”. However, the nature of the judgment will be relevant as will be the point at which the non-compliance has reached.</p> <p>Range of sanctions: The starting point should be a fine with the level increasing according to the circumstances. A deliberate breach of a judgment resulting in significant implications for the complainant/proceedings may warrant a short suspension.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Breach of judgement related solely to personal financial obligations</p> <p>b. Deliberate disregard for the authority of the court combined with a significant impact on the complainant/case</p>	<p>a. Low level fine as well as reprimand and/or advice as to future conduct</p> <p>b. Medium level fine and/or medium suspension</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Deliberate attempt to evade financial obligations 	<ul style="list-style-type: none"> • Late compliance with the judgment • Genuine attempts to meet the judgment
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section G - Financial Issues

G.1 Overcharging

Description	
<p>Overcharging will normally be charged under paragraph 301(a)(iii) of the Code (diminishing public confidence in the Bar and/or bringing the Bar into disrepute). It is a serious breach in that it will inevitably involve a victim whether that it is the public purse, a company or an individual.</p> <p>Range of sanctions: Normally a starting point of medium level fine would be appropriate but the level of fine will be highly fact specific and should reflect the extent and circumstances of the overcharging. In all cases, unless the overcharged fees have already been repaid, an order to repay or forego fees should be made. Where the overcharging consists of knowingly charging for work/hours not completed, decision makers should carefully consider whether the behaviour includes an element of dishonesty and may warrant disbarment (see paragraph 6.4 on dishonesty).</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<p>a. Overcharging of a privately paying or commercial client</p> <p>b. Overcharging of a client who is publicly funded</p> <p>c. Knowingly charging for work/hours not completed.</p>	<p>a. Medium level fine, repay/forego fees and an order to apologise</p> <p>b. High level fine or short suspension, repay/forego fees and an order to apologise</p> <p>c. Medium suspension to disbarment</p>
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Significant amount of overcharging • Particularly vulnerable client • Pattern of repeated behaviour • Public Access client 	<ul style="list-style-type: none"> • Overcharged fee repaid voluntarily • Genuine mistake
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section H - Discourtesy

Description	
<p>Discourtesy, in most cases, will be directed towards a Judge or Magistrate but can also involve conduct towards a lay client or other individual involved in the proceedings. Charges are normally brought under paragraph 701(a) of the Code. When considering discourtesy it will be important to consider the circumstances of the act and whether or not it was an isolated incident as opposed to repeated acts of discourtesy in the face of repeated warnings from the Judge or Magistrate.</p> <p>Range of sanctions: In most cases the starting point should be a reprimand and an apology accompanied by a low level fine.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. An isolated incident within proceedings b. Repeated pattern of discourtesy against a background of repeated warnings or interventions from the Judge/Magistrate c. A high level of the discourtesy that had a significant impact on the victim 	<ul style="list-style-type: none"> a. Reprimand and an apology, possibly accompanied by a low level fine b. Reprimand and an apology accompanied by a medium level fine c. Reprimand and an apology accompanied by a medium to high level fine
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Lack of remorse • Failure to acknowledge impact of behaviour • Adverse impact on the course of the proceedings • Bullying behaviour 	<ul style="list-style-type: none"> • An isolated incident in difficult or unusual circumstances • Immediate apology
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section I - Harassment, discrimination and behaviour towards others

I.1 Discrimination and harassment

Description	
<p>Discrimination will normally be charged under paragraph 305.1 of the Code of Conduct and relates to behaviour both in the course of profession work as well as in a barrister's personal life which amounts to discrimination based on race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion or belief.</p> <p>Harassment will normally be charged under paragraph 301(a)(i) of the Code (conduct discreditable to a barrister). This type of breach is not intended to cover the situation where a barrister has been convicted of a criminal offence for harassment in his/her personal capacity. This section relates to behaviour in the course of a barrister's professional work that amounts to any form of harassment or bullying.</p> <p>Range of sanctions: The starting point for a finding of either discrimination or harassment should be a medium level fine, although a suspension or disbarment would be appropriate in circumstances where the behaviour is of a serious nature and/or continues over an extended period of time.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. An isolated incident which had a limited impact on the complainant b. The behaviour took place over an extended period of time and/or the barrister was in a position of power or acting in a supervisory role c. Physical or particularly strong verbal actions towards a vulnerable individual or group 	<ul style="list-style-type: none"> a. A medium level fine b. A high level fine and a short suspension c. A medium suspension to disbarment
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • A significant negative impact on the victim • Failure to accept responsibility for actions • The vulnerability of the victim in the circumstances 	<ul style="list-style-type: none"> • Immediate apology
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

I.2 Conduct towards witnesses and other advocates

Description	
<p>Section 3 of the Code of Conduct consists of guidance called “Written Standards For The Conduct of Professional Work”. While failure to follow this guidance does not in itself amount to a breach of the Code, it may lead to a breach of other provisions of the Code, particularly paragraph 301(a)(ii) (actions prejudicial to the administration of justice). Further, paragraph 701(d) of the Code states that a barrister must have regard to the Written Standards. Common examples are inappropriate contact with witnesses and improper conduct towards opposing advocates.</p> <p>An important element to take into account is whether or not the offence was committed intentionally or inadvertently through ignorance of the appropriate guidance. Any findings made in this regard should be noted in the written reasons of the decision maker. A charge involving inappropriate contact with witness should normally be deemed to be more serious than behaviour towards opposing advocates as witnesses are likely to be more vulnerable and less able to protect themselves.</p> <p>Range of sanctions: The starting point should be a low level fine for cases of inadvertent behaviour rising to disbarment for more serious sanctions for intentional acts which may be likely to pervert the course of justice.</p> <p>In all cases, consideration should be given to whether it is appropriate to require the barrister to undertake the Professional Ethics Test (see paragraph 6.19 for more details), or be ordered to apologise to the complainant.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. Inadvertent contact with a witness or an act towards another advocate in ignorance of the rules or accepted etiquette b. An intentional act towards a witness or other individual that had (or was likely to have) an adverse effect on the proceedings c. An intention to act towards a witness or other individual that was likely to pervert the course of justice 	<ul style="list-style-type: none"> a. A low level fine and advice as to future conduct b. A medium level fine and medium suspension c. Disbarment
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • The behaviour took place over an extended period of time 	<ul style="list-style-type: none"> • An isolated incident • Immediate apology
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

I.3 Using status to influence

Description	
<p>The circumstances in which a barrister may attempt to use his/her status to influence usually arise in relation to the barrister's personal life. A typical breach under this heading might arise where a barrister sends correspondence on a personal matter on chambers' letterhead holding him or herself out as a barrister in an attempt to influence or pressurise someone to accede to a course of action. The breach is usually charged under paragraph 301(a)(iii) of the Code (conduct discreditable to a barrister).</p> <p>Range of sanctions: In most cases the starting point should be an apology accompanied by a low level fine. However, if the pressure is severe and amounts to "bullying", then a higher level fine would be appropriate.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common Circumstances	Starting Point
<ul style="list-style-type: none"> a. A single incident of using status to influence when he or she ought to have realised that it was inappropriate b. Repeated incidents where the barrister is attempting to exploit his/her status as a means of exerting pressure or there is a financial motivation involved 	<ul style="list-style-type: none"> a. A low level fine and an apology b. A medium level fine and an apology
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Victim is particularly vulnerable • Behaviour over an extended period of time • Motivation is financial gain 	<ul style="list-style-type: none"> • An isolated incident • Immediate apology
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

I.4 Inappropriate media comment

Description	
<p>Inappropriate media comment is normally charged under paragraph 709.1 of the Code of Conduct and relates to a barrister giving a personal opinion on any current or anticipated proceedings in which he is instructed or expects to appear.</p> <p>Given the potential for self-publicity and commercial advantage this confers, a financial penalty is usually the starting point. Other relevant factors will be the sensitivity of the information imparted to the media, the likelihood of further proceedings being affected by the comments and whether the comment was made in an attempt to place unfair pressure on an opposing party.</p> <p>Range of sanctions: In most cases the starting point should be an apology accompanied by a medium level fine.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. A relatively uncontroversial comment made where it was unlikely that there would be any further proceedings b. Controversial comments when further proceedings were likely and may have been adversely affected by the barristers' comments 	<ul style="list-style-type: none"> a. A medium level fine and an apology b. A high level fine to a short suspension and an apology
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Lack of remorse • The comments were intended to self-publicise • The comments were intended to place unfair pressure on an opposing party • Particularly sensitive information disclosed • Failure to take responsibility for actions • Personal or professional advantage gained (financial or otherwise) 	<ul style="list-style-type: none"> • Remedial action taken at an early point • Immediate apology
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section J - Incompetence and delay

J.1 Incompetence

Description	
<p>Incompetence or delay amounting to discreditable conduct will usually be charged under paragraph 301(a)(iii) of the Code of Conduct.</p> <p>The level of incompetence and seniority of the particular barrister concerned will be important factors in deciding what sanction is appropriate. It will also be important to consider whether the incompetence has had a direct impact on the client's case.</p> <p>Range of sanctions: In most cases the starting point should be an apology however this may be accompanied by a fine for more serious cases. Always consider ordering the barrister to repay or forego fees.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. An isolated act on the part of an inexperienced barrister which did not adversely affect the client's case b. Significant or repeated acts of incompetence which had an adverse effect on the proceedings 	<ul style="list-style-type: none"> a. An apology and low level fine b. An apology and a medium level fine to a short suspension
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Failure to take responsibility for actions 	<ul style="list-style-type: none"> • Immediate apology • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

J.2 Delay

Description	
<p>Delay will usually be charged under 701(b)(iii) of the Code of Conduct.</p> <p>The length of the particular delay will be relevant and persistent instances of ignoring related communications from the client. The workload of the barrister is not a relevant factor to take into account as barristers are required by the Code to refuse instructions if they do not have adequate time or opportunity to prepare that which is required.</p> <p>It will also be important to consider whether or not the delay had a direct impact on the client's case.</p> <p>Range of sanctions: In most cases the starting point should be an apology accompanied by a low level fine. Always consider ordering the barrister to repay or forego fees.</p> <p>Listed below are common circumstances in which breaches might occur set out according to severity.</p>	
Common circumstances	Starting Point
<ul style="list-style-type: none"> a. A delay with limited impact on the proceedings b. A significant delay in the face of repeated communications seeking a response 	<ul style="list-style-type: none"> a. An apology and/or a low level fine b. An apology and a medium level fine
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Lack of remorse • Previous convictions for similar breaches • Adverse effect on the course of the proceedings • Distress or worry caused to client 	<ul style="list-style-type: none"> • Immediate apology • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Section K - Inadequate Professional Service

Description	
<p>Inadequate Professional Service (IPS) is framed as allegations rather than charges, and is pursuant to paragraph 904 of the Code.</p> <p>IPS is defined in section 10 of the Code as <i>“conduct towards a lay client or performance of professional services for that client which falls significantly short of that which is to be reasonably expected of a barrister in all the circumstances.”</i></p> <p>There are no common circumstances for IPS, as the actions that may lead to an allegation are wide ranging. As there are no common circumstances, an appropriate range of sanctions or starting points cannot be provided. Each panel will have to decide the sanctions for a finding of IPS based on the individual circumstances of the offence and the effect it has had on the complainant.</p> <p>The sanctions for a finding of IPS, and relevant references for further information, are:</p> <ul style="list-style-type: none"> • Order the barrister to make a formal apology to the complainant (paragraph 6.18); • Repayment or foregoing of fees in relation to the inadequate service (paragraph 6.13); Payment of compensation to the complainant up to £15,000 (for acts or omissions that took place on or after 1 July 2008) or up to £5,000 (for acts or omissions that took place prior to 1 July 2008) (paragraphs 6.22-6.25); • Completion of additional CPD hours, including in specific areas of law (paragraph 6.14); • Prohibition (temporary or permanent) from accepting public access instructions (paragraphs 6.10-6.11). <p>According to the Disciplinary Tribunal Regulations and Adjudication Panel Rules, a panel considering whether compensation should be paid, or in fixing the amount of compensation, should have particular regard to:</p> <ul style="list-style-type: none"> • Any loss suffered by the complainant as a result of the IPS; • The availability to the complainant of other forms of redress; • The gravity of the conduct complained of; and • The fee claimed by the barrister for the IPS. <p>Additionally, decision makers should take into account any inconvenience, distress, time and trouble suffered by the lay complainant (see paragraph 6.24).</p>	
Aggravating factors	Mitigating factors
<ul style="list-style-type: none"> • Motivation of financial gain • Significant effect on the complainant • Particular vulnerability of the complainant (e.g. public access client) 	<ul style="list-style-type: none"> • Immediate apology • Remedial action taken at an early point
<p>The aggravating and mitigating factors listed above should be considered in addition to the factors listed at Annex 1.</p>	

Annex 1 – Aggravating and mitigating factors

Aggravating factors

The following factors, if present, may determine whether a higher sanction for a breach should be imposed. The factors listed are only examples and are not exhaustive:

- Premeditation
- Motive of financial gain
- Corruption/gross deception
- Coercion
- Involvement of others
- Persistent conduct or conduct over a lengthy period of time
- Undermining of the profession in the eyes of the public
- Attempts to hide the misconduct or wrongly lay blame elsewhere
- Effect on the complainant or particular vulnerability of the complainant
- Actions accompanied by discriminatory behaviour or motivation (does not require intent)
- Breach of trust
- Position of responsibility within the profession
- Previous disciplinary findings for similar breaches
- Previous disciplinary findings for any types of breaches, particularly where the breaches show an unwillingness to comply with the Code
- Lack of remorse for having committed the offences
- Failure to respond promptly to communications from the BSB, or inappropriate behaviour that frustrates the administration of the complaint
- Failure to attend a Tribunal without explanation
- Indication of an element of dishonesty (see paragraph 6.3 on a finding of dishonesty and paragraph 7.5 on dishonesty during proceedings)

Mitigating factors

The following factors, if present, may determine whether a lower sanction for a breach should be imposed. The factors listed are only examples and are not exhaustive:

- Guilty plea
- Genuine remorse (as expressed in e.g. a willingness to apologise to the complainant and/or compromise over matters such as fees)
- Limited experience within the profession
- The breach was unintentional
- Single incident (not applicable if behaviour involves discrimination)
- Heat of the moment (not applicable if behaviour involves discrimination)
- Co-operation with the investigation
- Voluntary steps have been taken to remedy or rectify the breach
- Evidence of attempts to prevent reoccurrence
- Previous good character (not applicable if behaviour involves discrimination)

- Evidence of financial hardship (only applicable when it has had a direct impact on the commission of the offence)
- Advice was sought and obtained from the Bar Council's professional ethics helpline
- Unusual personal circumstances that provide a reasonable explanation for the behaviour. In particular, bereavement, relationship breakdown and divorce (matters such as pressure of work and bankruptcy should be treated with caution as these factors may indicate a greater risk to the public in the barrister's ongoing practice)
- Good references (only of limited applicability and very much dependent on the nature of the offence and the role and identity of the referee)

Annex 2 – Wording of sentences and Findings and Sentence sheet

Wording of sentences

A2.1 Prescriptive requirements for the wording of sanctions are no longer included in the Disciplinary Tribunal Regulations but it is still important that panels include on the findings and sentence sheet clear details of the sanction(s) imposed. Therefore set out below is guidance on the wording that should be used when imposing each of the individual sanctions, including any sanction imposed under the Determination by Consent procedure. It is based on the previous wording of the Disciplinary Tribunal Regulations and may appear very formal but it provides a sound basis for ensuring that any sanctions imposed are not subject to confusion. It is mandatory to use one of the statements contained in paragraph A2.2 below where a defendant is absent from a Tribunal hearing.

Absence of the barrister charged

A2.2 Where the barrister charged has not been present throughout the proceedings, the sentence must include one of the following two statements:

- (i) If the relevant procedure under Regulation 14(1) has been complied with, that the finding and sentence were made in the absence of the barrister in accordance with Regulation 14(1).
- (ii) If the procedure under Regulation 14(2) has been complied with, that the finding and the sentence were made in the absence of the barrister and that he has the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.

Disbarment

A2.3 "That [X] be disbarred and expelled from the Honourable Society of [X] [*and any other Inn of which he is a member*]"

Removal from the Register of European Lawyers

A2.4 "That [X] be removed from the register of European lawyers maintained by the Bar Council."

Suspension from practice

A2.5 "That [X] be suspended for [X] weeks/months/year."

"That [X] be suspended until he has complied with [state the practising requirement with which the barrister should comply]."

"That [X] be suspended from accepting or carrying out any [state the area of practice that the suspension shall apply to] for [X] weeks/months/years."

"That [X] be suspended from accepting or carrying out any [state the area of practice that the suspension shall apply to] until he has complied with [state the practising requirement with which the barrister should comply]."

Suspension from the Register of European Lawyers

A2.6 "That [X] be suspended from the register of European lawyers maintained by the Bar Council for [X period]."

"That [X] be suspended from the register of European lawyers maintained by the Bar Council until he has complied with [state the practising requirement with which the barrister should comply]."

"That [X] be suspended from the register of European lawyers maintained by the Bar Council with regards to accepting or carrying out any [state the area of practice that the suspension shall apply to] for [X] weeks/months/years."

"That [X] be suspended from the register of European lawyers maintained by the Bar Council with regards to accepting or carrying out any [state the area of practice that the suspension shall apply to] until he has complied with [state the practising requirement with which the barrister should comply]."

Prohibition on accepting or carrying out public access instructions

A2.7 "That [X] be prohibited from accepting or carrying out any public access instructions."

"That [X] be prohibited from accepting or carrying out any public access instructions for [X] weeks/months/years."

"That [X] be prohibited from accepting or carrying out any public access instructions until he has complied with [state the practising requirement with which the barrister should comply]."

Payment of fine

A2.8 "That [X] pay a fine of £[] to the Bar Standards Board, within [X] weeks/months of the expiry of any appeal period."

"That [X] pay a fine of £[] to the Bar Standards Board, to be paid in monthly installments of £[] to commence within [X] weeks/months of the expiry of any appeal period."

Repayment or foregoing fees

A2.9 "That [X] shall repay fees amounting to £[] received by him in connection with [specify the legal services in question] within [X] weeks/months of the expiry of any appeal period."

"That [X] shall forego fees amounting to £[] due to be paid to him in connection with [specify the legal services in question]."

Compensation

A2.10 "That [X] is ordered to pay compensation to [X - the complainant] in the sum of £[] within [X] weeks/months of the expiry of any appeal period."

Continuing Professional Development

A2.11 "That [X] shall by [date] complete a minimum of [X] hours of continuing professional development (in addition to the mandatory requirements set out in the Continuing Professional Development Regulations at Annex C to the Code of Conduct) [in the subject of ...] and provide satisfactory proof of compliance with this Order to the Complaints Committee of the Bar Standards Board."

Professional Ethics test

A2.12 "That [X] shall by [date] complete the Bar Standards Board Professional Ethics Test and provide satisfactory proof of compliance with this Order to the Complaints Committee of the Bar Standards Board."

Reprimand

A2.13 "That [X] has been reprimanded by the Tribunal."

"That [X] is ordered to attend on [X- the nominated person] to be reprimanded."

Apology

A2.14 That [X] shall by [date] write a written apology to [X - the complainant] and send it to the Bar Standards Board for forwarding to [X - the complainant]."

"That [X] shall by [date] draft a written apology to [X - the complainant] which shall be approved by [X – the nominated person] before being sent to the Bar Standards Board for forwarding to [X - the complainant]."

Advice as to future conduct

A2.15 "That [X] has been advised by the Tribunal as to his future conduct in regard to....."

"That [X] is hereby ordered to attend on [X – the nominated person] to be given advice as to his future conduct in regard to.....".

Order for reduction of Legal Aid fees

A2.16 "That the fees otherwise payable to [X] by the Legal Services Commission in connection with the legal services provided by him are reduced in the following sum £[] according to the attached list. (*a list of the reductions should be provided*) "

Order for cancellation of Legal Aid fees

A2.17 "That the fees otherwise payable to [X] by the Legal Services Commission in connection with services provided by him should be cancelled in accordance with the attached list. (*a list of the cancelled services should be provided*) "

Exclusion from Legal Aid work

A2.18 "That [X] be excluded from providing representation funded by the Legal Services Commission (as explained in Section 42(4)(b) of the Administration of Justice Act 1985 as substituted by Section 33 of the Legal Aid Act 1988 and amended by Schedule 4 to the Access to Justice Act 1999) until [X date] or for a period of [X time]beginning on [X date].