

E. THE INTERIM SUSPENSION AND DISQUALIFICATION RULES**E1. INTRODUCTION**

1. This Section E of Part V prescribes the manner in which the BSB may seek to take interim action to:
 - 1.1 suspend a *BSB authorised person*; or
 - 1.2 disqualify any *relevant person* from acting as a *HOLP* or a *HOFA* or from working as a *manager* or *employee* of a *BSB authorised person*;

subject to the criteria outlined at paragraphs 7 to 10 below, and pending consideration by a Disciplinary Tribunal under Section C.
2. Anything required by these rules to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* may be done or exercised, or given to, any person authorised by the *President* (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

3. In this Section E of Part V unless the context otherwise requires:
 - 3.1 any term defined in Part VI of the *Handbook* shall carry the same meaning;
 - 3.2 '*appeal panel*' means an appeal panel constituted in accordance with paragraph 6 of this Section E to part V, to perform the functions set out in paragraphs 24 and 25 of this section E;
 - 3.3 '*defendant*' means any of the persons referred to in paragraph 1 of this Section E;
 - 3.4 '*disqualify*' or '*disqualification*' means the power of the *Bar Standards Board*, pursuant to Section C of Part V, to disqualify a *relevant person* from performing one or more of the *relevant activities* where the *disqualification condition* is satisfied, which power when exercised on an interim basis shall be exercised in accordance with this section E of Part V;

- 3.5 'interim panel' means an interim panel constituted in accordance with paragraph 4 of this Section E to part V, to perform the functions set out in paragraphs 15 to 17 of this Section E;
- 3.6 'President' means the President of the Council of the Inns of Court;
- 3.7 'review panel' means a review panel constituted in accordance with paragraph 5 of this Section E to part V, to perform the functions set out in paragraphs 19 and 20 of this Section E;
- 3.8 'suspended' or 'suspension' means the power of the *Bar Standards Board*, pursuant to Section C of Part V, to suspend the practising certificate, licence or authorisation of a *BSB authorised person*, either generally or in respect of any separate authorisation that person may have to conduct litigation or to carry out public access work, which power when exercised on an interim basis shall be exercised in accordance with this Section E of Part V.

D2. RULES

Composition of panels

4. An *interim panel* shall consist of three members nominated by the *President* being a Chairman (who shall be a Queen's Counsel) and two others, of whom at least one must be a lay member. Provided that:
- 4.1 the proceedings of an *interim panel* shall be valid notwithstanding that one of the members becomes unable to act or is disqualified from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one lay member;
- 4.2 no person shall be appointed to serve on a panel if they are:
- (a) are a member of the Bar Council or of any of its committees; or
 - (b) are a member of the *Bar Standards Board* or of any of its committees; or
 - (c) were a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*.

5. A *review panel* shall consist of three members nominated by the President being a Chairman (who shall be a Queen's Counsel) and two others, of whom at least one must be a lay member. Provided that:

5.1 the proceedings of a *review panel* shall be valid notwithstanding that one of the members becomes unable to act or is disqualified from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one lay member;

5.2 no person shall be appointed to serve on a panel if they are:

(a) are a member of the *Bar Council* or of any of its committees; or

(b) are a member of the *Bar Standards Board* or of any of its committees; or

(c) were a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*.

5.3 no individual who is intended to sit on the *review panel* shall have sat on either the *interim panel* or the *appeal panel* considering the same matter.

6. An *appeal panel* shall consist of three members nominated by the President being:

6.1 two Queen's Counsel who are entitled to sit as a Recorder or a Deputy High Court Judge or who have been Queen's Counsel for at least ten years. Unless the *appeal panel* otherwise decides, the senior *barrister* member will be the Chairman of the *appeal panel*; and

6.2 a lay member.

Provided that:

(a) the proceedings of an *appeal panel* shall be valid notwithstanding that one of the members, becomes unable to act or is disqualified from acting, so long as the number of members present throughout the substantive hearing is not reduced below two and continues to include the Chairman and one lay member;

- (b) no person shall be appointed to serve on an *appeal panel* if they are
 - (i) are a member of the Bar Council or of any of its committees; or
 - (ii) are a member of the *Bar Standards Board* or of any of its committees; or
 - (iii) were a member of the *Bar Standards Board* or any of its committees at any time when the matter was being considered by the *Bar Standards Board*;

6.3 no individual who is intended to sit on the *appeal panel* shall have sat on either the *interim panel* or the *review panel* considering the same matter.

Referral to an interim panel

7. On receipt of a complaint or any other information, the *PCC* may refer a *defendant* to an *interim panel* if:

7.1 subject to paragraph 8, the defendant meets one or more of the following criteria:

- (a) the *defendant* has been convicted of, or charged with, a criminal offence other than a *minor criminal offence*; or
- (b) the *defendant* has been convicted by another *Approved Regulator*, for which they have been sentenced to a period of suspension or termination of the right to practise; or
- (c) the *defendant* is a *BSB licensed body* and has been intervened into by the *Bar Standards Board*; or
- (d) the *defendant* is a *barrister only entity* or a *legal disciplinary practice* and the grounds for intervention have been met in respect of that *BSB authorised body*; and

7.2 the referral is necessary to protect the interests of clients (or former or potential clients); and

- 7.3 the *PCC* decides having regard to the *regulatory objectives* that the public interest would be best served by pursuing an interim suspension or an interim disqualification order.
8. No matter shall be referred to an *interim panel* unless the *PCC* considers that the grounds of referral set out at paragraph 7.1 above would warrant, in the case of a *BSB authorised person*, a charge of *professional misconduct* and referral to a Disciplinary Tribunal, or, in the case of a *relevant person*, an application to a Disciplinary Tribunal for disqualification (in each case such referral or application to be made in accordance with Section C of this Part V).
9. If the *PCC* refers a *defendant* to an *interim panel* under paragraph 7, the *PCC* (or the Chair on its behalf) shall go on to consider whether or not the *defendant* should be subject to an immediate interim suspension or disqualification pending disposal by the *interim panel*.
10. An immediate interim suspension or disqualification may only be imposed if the *PCC* is satisfied that such a course of action is justified having considered the risk to the *public* posed if such interim suspension or disqualification is not implemented.
11. Any immediate interim suspension or disqualification imposed by the *PCC* shall take immediate effect, will be notified in writing to the *defendant* and will remain in force until such time as an *interim panel* has considered the matter.

Procedure after referral to an Interim Panel

12. As soon as practicable after the *PCC* has made a decision to refer a *defendant* to an *interim panel*, the *Bar Standards Board* shall write to the *President* notifying him of the decision.
13. As soon as practicable after receipt of the notice referred to in paragraph 12, the *President* shall write to the *defendant* notifying him of the decision, together with a copy of these Supervision and Enforcement Rules, and briefly setting out the details that have caused the referral to the *interim panel*. The letter of notification:
- 13.1 shall lay down a fixed time and date (normally not less than fourteen and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;

- 13.2 shall invite the *defendant* to accept one or other of the dates proposed or to provide a written representation to the *President*, which should be copied to the Chairman of the *PCC*, objecting to both dates with reasons and providing two further alternative dates not more than twenty-one days from the date of the letter of notification. Any such representation must be received by the *President* not more than fourteen days from the date of the letter of notification. The *President* shall consider any such representation together with any representations from the Chairman of the *PCC*, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to paragraph 13.1 above. The *President's* decision, which shall be notified in writing to the *defendant* by the *President*, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the *President*;
- 13.3 shall inform the *defendant* that he may by letter to the Chairman of the *PCC* undertake, pending the disposal of any charge(s) or application(s) by a Disciplinary Tribunal:
- (a) to be immediately suspended or disqualified;
 - (b) not to accept or carry out any public access instructions; and/or
 - (c) to inform his professional and/or lay clients about any convictions, charges or other matters leading to a referral.
- 13.4 shall inform the *defendant* that he is entitled to make representations in writing or orally, by himself or by others on his behalf; and
- 13.5 shall inform the *defendant* that he is entitled to request an expedited hearing of any charges of *professional misconduct* or applications for disqualification orders by a Disciplinary Tribunal.
14. If a *defendant* sends a letter in accordance with paragraph 13.3 above which is satisfactory to the Chairman of the *PCC*, the Chairman shall accept the undertaking contained in the letter in lieu of imposing any period of interim suspension or interim disqualification pending the disposal by a Disciplinary Tribunal of any charges of professional misconduct or applications for a disqualification order (as the case may be).

Procedure and powers of interim panels

15. At any hearing of an *interim panel* the proceedings shall be governed by the rules of natural justice, subject to which:
 - 15.1 the procedure shall be informal, the details being at the discretion of the Chairman of the *interim panel*;
 - 15.2 the *defendant* shall be entitled to make representations in writing or orally, by himself or by another on his behalf, as to:
 - (a) why a period of interim suspension or interim disqualification should not be imposed; or
 - (b) why the interim panel should not direct the defendant to notify his professional clients and/or lay clients about any convictions, charges or other matters leading to a referral,pending the disposal of any charges or applications by a Disciplinary Tribunal;
 - 15.3 no witnesses may be called without the prior consent of the Chairman of the Panel and without the submission of a proof of evidence;
 - 15.4 the attendance of the *defendant* shall be required. Should he nevertheless fail to attend, the hearing may proceed in his absence subject to the *interim panel* being satisfied that this course is appropriate. Should the *interim panel* not be so satisfied, it shall have the power to adjourn the hearing;
 - 15.5 the hearing shall not be in public unless so requested by the *defendant* and a record shall be taken electronically; and
 - 15.6 if the *interim panel* decides an adjournment is necessary for any reason, it may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.
16. If the members of the *interim panel* are not unanimous as to any decision, the decision made shall be that of the majority of them. If the members of the *interim panel* are equally divided the decision shall be that which is the most favourable to the *defendant*.

17. At the conclusion of the hearing the *interim panel*:
- 17.1 may decide not to impose any period of interim suspension, interim disqualification or other order;
- 17.2 may impose a period of interim suspension or interim disqualification (in each case, either unconditionally or subject to conditions) pending the hearing before a Disciplinary Tribunal, provided that no interim suspension or interim disqualification may be imposed unless:
- (a) the *interim panel* considers that it is likely that a Disciplinary Tribunal would impose a sentence of disbarment (with respect to *barrister defendants*), a sentence of suspension (with respect to *barrister defendants, registered European lawyer defendants* or *BSB authorised body defendants*), revocation of the licence or authorisation (with respect to *BSB authorised body defendants*) or a *disqualification order* (with respect to *relevant person defendants*); and
 - (b) it considers that it is in the public interest; and
- 17.3 in lieu of imposing a period of interim suspension or interim disqualification, the *interim panel* may either:
- (a) where the *defendant* is a *BSB authorised person*, direct the *defendant* to carry out his or its future activities in accordance with such interim conditions on the *defendant's* authorisation or licence as the *interim panel* may think fit pending final disposal of the charges or application against him or them; or
 - (b) where the *defendant* is a *manager* or *employee* of a *BSB authorised person*, direct such person (after affording the *BSB authorised person* an opportunity to be heard) to take such steps in relation to the *defendant* as the *interim panel* may think fit, which may include limits on the type of work the *defendant* is to be permitted to do, or requirements as to his supervision or training, pending final disposal of the charges or application against him;

- (c) accept from the *defendant* an undertaking in written terms satisfactory to the *interim panel* (and subject to such conditions and for such period as the *interim panel* may agree):
- (i) to be immediately suspended or disqualified;
 - (ii) not to accept or carry out any public access instructions or to conduct litigation; or
 - (iii) to inform his professional and lay clients about any convictions, charges or other matters leading to a referral,
- pending the disposal of any charges or application by a Disciplinary Tribunal.

17.4 shall set down in writing signed by the Chairman of the *interim panel* the decision of the *interim panel* and the terms of any period of interim suspension, interim disqualification or interim condition imposed under these *Interim Suspension and Disqualification Rules* or accepted (in the form of an undertaking) under paragraph 17.3(c) above.

- (a) Where the *defendant* is a *BSB authorised person*, the imposition of any period of suspension shall be recorded as follows:

“That.....be suspended from practice as a and from enjoyment of all rights and privileges as a member of the Honourable Society of.....and be prohibited from holding himself out as being a for a period expiring on the..... day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused the interim suspension or such Disciplinary Tribunal may otherwise direct.” (Note: If the Panel decides that the suspension should apply to only part of the defendant’s practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

- (b) Where the *defendant* is a *BSB authorised body*, the imposition of any period of suspension shall be recorded as follows:

“That have its BSB licence/authorisation suspended for a period expiring on the day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused the interim suspension or such Disciplinary Tribunal may otherwise direct.”
 (Note: If the Panel decides that the suspension should apply to only part of the defendant’s practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

- (c) Where the *defendant* is a *relevant person*, the imposition of any period of disqualification shall be recorded as follows:

“That be disqualified from [*specify here the relevant capacities in respect of which the order applies, which may be some or all of: acting as a HOLP, HOFA or manager of any BSB authorised body or being an employee of any BSB authorised person*] and that any *BSB regulated person* is prohibited from permitting the *defendant* to work in any such capacity for a period expiring on the day of.....or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused the interim disqualification or such Disciplinary Tribunal may otherwise direct“;

17.5 shall, if a period of interim suspension or interim disqualification or an interim condition is imposed or a written undertaking is accepted under these *Interim Suspension and Disqualification Rules*:

- (a) inform the *defendant* of his right to request a *review panel* to review the matter as provided in paragraph 18 below;
- (b) inform the *defendant* of his right of appeal as provided in paragraph 22 below;
- (c) inform the *defendant* that he is entitled to request an expedited hearing of any charges or applications by a Disciplinary Tribunal and, if so requested, the Chairman of the Panel may so direct;

17.6 may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

Review

18. In the event of a significant change in circumstances or other good reason the *defendant* may at any time while on interim suspension, interim disqualification or subject to interim conditions make a request in writing to the President for a *review panel* to be convened to review the matter.
19. The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the *President* may seek representations from the Chairman of the *PCC* and may in his discretion convene a *review panel* or refuse the request. In either case the President shall notify the *defendant* in writing of the decision. If the *President* decides to convene a *review panel* the procedure to be followed for fixing the time and date of the hearing shall be as set out in paragraphs 13.1 and 13.2 above as if for references therein to the *interim panel* and the Chairman of the *interim panel* there were substituted references respectively to the *review panel* and the Chairman of the *review panel*.
20. Unless in the meantime the hearing before a Disciplinary Tribunal of any charges or applications based on the referral to an *interim panel* has commenced, a hearing by a *review panel* convened pursuant to paragraph 19 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the *review panel* which may reconsider the matter as if there had been no previous hearing.
21. If the hearing before a Disciplinary Tribunal of any charges or applications based on the referral to a *interim panel* has commenced before the date fixed for a rehearing by a *review panel*, the date fixed for the rehearing shall be vacated and any interim suspension, interim disqualification or interim conditions made or undertaking accepted by the *interim panel* shall continue until such charges or applications have been disposed of by the Disciplinary Tribunal.

Appeals

22. A *defendant* may by letter served on the *President* and on the Chair of the *PCC* not more than fourteen days after the date of the relevant decision of an *interim panel* give notice of his wish to appeal against the decision.
23. As soon as practicable after receipt of a letter in accordance with paragraph 22 above the *President* shall convene an *appeal panel* and write to the *defendant* notifying him of a fixed

time and date (normally not less than fourteen and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The *defendant* may make a written representation, addressed to the Chairman of the proposed *appeal panel*, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chairman of the *appeal panel* not more than fourteen days from the date of the letter of notification. The Chairman shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within fourteen days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the *defendant*. The Chairman's decision, which shall be notified in writing to the *defendant* shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chairman of the *appeal panel*.

24. The proceedings before an *appeal panel* shall be by way of a rehearing and the provisions of paragraph 16 above shall apply as if for references therein to the *interim panel* and the Chairman of the *interim panel* there were substituted references respectively to the *appeal panel* and the Chairman of the *appeal panel*.
25. At the conclusion of the hearing the *appeal panel*:
 - 25.1 may remove the period of interim suspension or interim disqualification and/or any interim conditions imposed under this Section E of Part V;
 - 25.2 may confirm the period of interim suspension or interim disqualification or impose further or alternative interim conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;
 - 25.3 in lieu of confirming or imposing a period of interim suspension or interim disqualification or imposing interim conditions, may accept from the *defendant* in terms satisfactory to the Chairman of the Panel an undertaking in writing to continue to be suspended, disqualified and/or to submit to such conditions and for such period as the *appeal panel* may agree, pending the disposal of any charges by a Disciplinary Tribunal;
 - 25.4 shall set down in writing signed by the Chairman of the *appeal panel* the decision of the *appeal panel* and the terms of any interim suspension, interim disqualification or

interim conditions confirmed or imposed under paragraph 24.2 above or undertaking accepted under paragraph 24.3 above.

- 25.5 may, if it has not already been referred to a Disciplinary Tribunal, refer the matter to a Disciplinary Tribunal.

If the members of the *appeal panel* are not unanimous as to the decision the decision made shall be that of the majority of them. Any period of interim suspension or interim disqualification or interim conditions having been set, which is confirmed or imposed, shall be recorded as set out in rule 16.5 above;

26. A pending appeal to an *appeal panel* shall not operate as a stay of any period of interim suspension or interim disqualification or interim conditions having been set or the terms of any direction or undertaking which is the subject of the appeal.
27. There shall be no right of appeal from the decision of an *appeal panel*.

Suspension or disqualification ceases to have effect

28. Unless a Disciplinary Tribunal shall otherwise direct, any period of interim suspension or disqualification and any interim conditions imposed by the *interim panel* or *appeal panel* under this Section E of Part V shall cease and the *defendant* shall cease to be bound by the terms of any direction made or undertaking accepted by a *interim panel* or an *appeal panel* immediately upon:
- 28.1 a Disciplinary Tribunal dismissing or making an order disposing of all charges of professional misconduct or applications for disqualification based on the referral from the *interim panel*;
- 28.2 any appeal by the *defendant* against the conviction or all the conviction(s) which had caused the referral to a *interim panel* being successful;
- 28.3 the acquittal of the *defendant* of the criminal charge or all the criminal charges which had caused the referral to a *interim panel*;
- 28.4 the criminal charge or all the criminal charges which had caused the referral to an *interim panel* being withdrawn.

Costs

29. An *interim panel*, *review panel* and an *appeal panel* shall have no power to award costs.

Report and Publication of Decisions

30. As soon as practicable after the conclusion of an *interim panel* hearing or an *appeal panel* hearing, the *President* shall confirm the decision to the *defendant* in writing.

31. In any case where a period of interim suspension or interim disqualification is imposed or an interim condition is imposed under this Section E of Part V or a direction is made requiring notification to lay on professional clients or an undertaking from a *defendant* is accepted, the *President* shall communicate brief details in writing of the fact that the *defendant* is on an interim basis suspended, disqualified and/or subject to conditions (as the case may be) to those of the following whom he deems appropriate taking into account the particular circumstances:

31.1 the Lord Chancellor;

31.2 the Lord Chief Justice;

31.3 the Attorney General;

31.4 the Director of Public Prosecutions;

31.5 the Chairman of the Bar Council;

31.6 the Leaders of the six circuits;

31.7 The Chairman of the *Bar Standards Board*;

31.8 the Chairman of the *PCC*;

31.9 the *defendant*;

31.10 the *defendant's* head of chambers or employer (as appropriate);

31.11 the Treasurers of the *defendant's* Inn of Call and of any other Inns of which he is a member;

31.12 such one or more press agencies or other publications, as the Chairman of the *PCC* may direct;

31.13 all other *Approved Regulators* and the LSB.

32. The *Bar Standards Board* shall keep a record of those who are subject to suspension orders or disqualification orders or conditions imposed on their authorisation made under the procedures in this Handbook and shall publish in accordance with the provisions of Section B of this Part V details of any interim suspension or interim disqualification or interim conditions, for as long as they remain in effect.

Service of documents

33. Any documents required to be served on a *defendant* arising out of or in connection with proceedings under these Regulations shall be deemed to have been validly served:

33.1 If sent by registered post, or recorded delivery post, or receipted hand delivery to:

- (a) in the case of a *BSB authorised individual*, the address notified by such *defendant* pursuant to the requirements of Part II of this *Handbook* (or any provisions amending or replacing the same) as being his practising address; or
- (b) in the case of a *BSB regulated person* or *non-authorised individual* acting as a *manager* or *employee* of a *BSB authorised body*, the address provided by the *BSB authorised body* as being his home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified pursuant to the requirements of Part II of this *Handbook*; or
- (c) in either case, an address to which the *defendant* may request in writing that such documents be sent; or
- (d) in the absence of any of the above, to his last known address or; in the case of a *BSB regulated person* or *non-authorised individual* acting as a *manager*

or *employee of a BSB authorised body*, the last known address of the relevant *BSB authorised body*,

and such service shall be deemed to have been made on the fifth working day after the date of posting or on the next working day after receipted hand delivery;

33.2 If served by e-mail, where:

- (a) the *defendant's* e-mail address is known to the *Bar Standards Board*; and
- (b) the *defendant* has requested or agreed to service by e-mail, or it is not possible to serve by other means;

and such service shall be deemed to have been made on the second working day after the date of sending the e-mail;

33.3 if actually served;

33.4 if served in any way which may be directed by the *President* of the Council of the Inns of Court.

34. For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *defendant* or a relevant representative of such *defendant* (including, for example, his clerk and a *manager* or *employee* of the *BSB authorised body* at which he works).

Commencement and revocations

35. These rules shall come into force in accordance with the provisions of Part I of this *Handbook*.