Part 1: Introduction

A. General

A1. The Bar Standards Board

I1

The *Bar Standards Board* is a specialist regulator focussing primarily on the regulation of advocacy, litigation and legal advisory services. These legal services have a close relationship to access to justice and the rule of law. Our society is based on a rule of law. Everyone needs to be able to seek expert advice on their legal rights and obligations and to have access to skilled representation in the event of a dispute or litigation. Our system of justice depends on those who provide such services acting fearlessly, independently and competently, so as to further their clients' best interests, subject always to their duty to the Court.

I2

The regulatory objectives of the *Bar Standards Board* derive from the Legal Services Act 2007 and can be summarised as follows:

.1 protecting and promoting the public interest;

.2 supporting the constitutional principles of the rule of law;

.3 improving access to justice;

.4 protecting and promoting the interests of consumers;

.5 promoting competition in the provision of the services;

.6 encouraging an independent, strong, diverse and effective legal profession;

.7 increasing public understanding of the citizen's legal rights and duties; and

.8 promoting and maintaining adherence to the following professional principles:

.a that *authorised persons* act with independence and integrity;

.b that *authorised persons* maintain proper standards of work;

.c that *authorised persons* act in the best interests of their clients;

.d that *authorised persons* comply with their duty to the court to act with independence in the interests of justice; and

.e that the affairs of clients are kept confidential.

I3

The BSB Handbook (" *this Handbook* " or " *the Handbook* ") sets out the standards that the *Bar Standards Board* requires the *persons* it regulates to comply with in order for it to be able to meet its *regulatory objectives* .

I4

Although the *Handbook* is drafted with specific reference to those regulated by the BSB and for use by them, the *Handbook* should also act as a useful reference tool for all consumers of legal services regulated by the *Bar Standards Board* . In particular, the Core Duties and the outcomes set out in Part 2 of this Handbook should give consumers a useful indication of what they should expect from the *Bar Standard Board's* regulatory framework and those subject to it.

A2. Structure of the Handbook

I5

The *Handbook* consists of the following parts:

.1 Part 1 **– Introduction** ;

.2 Part 2 **– The Code of Conduct** – this part includes the ten Core Duties which underpin the *Bar Standards Board's* entire regulatory framework, as well as the rules which supplement those Core Duties. Compliance with both the Core Duties and the rules is mandatory. The Code of Conduct also contains details of the outcomes which compliance with the Core Duties and the rules is designed to achieve. The *Bar Standards Board's* approach to regulation is risk-focused and so these outcomes have been defined by considering the risks which the profession needs to manage if the *regulatory objectives* are to be achieved;

.3 Part 3 **– Scope of Practice and Authorisation and Licensing Rules** – this part includes the requirements that must be met to become entitled to practise as a *barrister* or a *registered European lawyer* and the process that must be followed in order to obtain authorisation to practise as a *BSB entity* . It also provides a summary of the scope of activities that each type of *BSB authorised person* is permitted to undertake;

.4 Part 4 **– Bar Qualification Rules** – this part sets out the training which a person must complete, and other requirements which a person must satisfy, in order to be called to the Bar by an *Inn* and become qualified to practise as a *barrister* . It also includes details of the training requirements that *BSB authorised persons* are required to meet, and provides for the regulation of Authorised Education and Training Organisations (AETOs);

.5 Part 5 **– Enforcement Regulations** – this part sets out the enforcement procedures that apply if *applicable persons* fail to act in accordance with the requirements of this *Handbook* ;

.6 Part 6 **– Definitions** – this part defines all the italicised terms used in this *Handbook* .

I6

The *Handbook* includes Core Duties, Outcomes, Guidance, Rules and Regulations. "CD" refers to Core Duties, "o" to Outcomes, "g" to Guidance, "r" to Rules and Regulations. The Regulations form the basis upon which enforcement action may be taken and are set out in Part E of this Handbook. The effect of something being classified as a Core Duty, Outcome, Guidance, Rule or Regulations is as follows:

.1 **Core Duties –** these underpin the entire regulatory framework and set the mandatory standards that all *BSB regulated persons* or *unregistered barristers* are required to meet. They also define the core elements of professional conduct. Disciplinary proceedings may be taken against a *BSB regulated person* or *unregistered barrister* if the *Bar Standards Board* believes there has been a breach by that person of the Core Duties set out in this *Handbook* and that such action would be in accordance with the *Enforcement Strategy* .

.2 **The Outcomes –** these explain the reasons for the regulatory scheme and what it is designed to achieve. They are derived from the *regulatory objectives* as defined in the LSA and the risks which must be managed if those objectives are to be achieved. They are not themselves mandatory rules, but they are factors which *BSB regulated persons* or *unregistered barristers* should have in mind when considering how the Core Duties, Conduct Rules or Bar Qualification Rules (as appropriate) should be applied in particular circumstances. The *Bar Standards Board* will take into account whether or not an Outcome has, or might have been, adversely affected when considering how to respond to alleged breaches of the Core Duties, Conduct Rules or Bar Qualification Rules.

.3 **The Rules –** The Rules serve three purposes:

.a the Conduct Rules supplement the Core Duties and are mandatory. Disciplinary proceedings may be taken against a *BSB regulated person* or *unregistered barrister* if the *Bar Standards Board* believes there has been a breach by that person of the Conduct Rules set out as applying to them in Part 2 of this *Handbook* and that it would be in accordance with the *Enforcement strategy* to take such action. However, the Conduct Rules are not intended to be exhaustive. In any situation where no specific Rule applies, reference should be made to the Core Duties. In situations where specific Rules do apply, it is still necessary to consider the Core Duties, since compliance with the Rules alone will not necessarily be sufficient to comply with the Core Duties;

.b the Rules contained within "Scope of Practice Rules" set out the requirements for authorisation and the scope of practice for different kinds of *BSB authorised person* and include some rules relevant to *unregistered barristers* . These rules are mandatory;

.c the rest of Part 3 and Part 4 set out the requirements which must be met by a *person* before they may undertake a specific role within those regulated by the *Bar Standards Board.* If a person fails to meet those requirements, they will not be permitted to undertake that role by the *Bar Standards Board* . Where requirements are continuing and a *BSB regulated person* or *unregistered barrister* fails to meet such requirements which are relevant to that *BSB regulated person* or *unregistered barrister* , the *Bar Standards Board* may take steps in accordance with Part 3 or Part 5 to have that *BSB regulated person* or *unregistered barrister* prevented from continuing within that role.

.4 **Guidance –**

.a Guidance serves a number of purposes:

.i to assist in the interpretation and application of the Core Duties or Rules to which such Guidance relates.

.ii to provide examples of the types of conduct or behaviour that the Rules are intended to encourage or which would likely indicate compliance with the relevant Rule or, conversely, which may constitute non-compliance with the Rule to which such Guidance relates.

.iii to explain how the Rule applies to a particular type of *person* or *unregistered barrister* and how that particular *person* could comply with that Rule.

.iv to act as a signpost to other rules or to guidance on the *Bar Standards Board* website or elsewhere which may be relevant when considering the scope of the Rule.

.v in Part 3, to give further information about the process of applying for authorisation and about how the *Bar Standards Board* intends to exercise its discretionary powers in relation to the authorisation of entities.

.b The Guidance set out in this Handbook is not the only guidance which is relevant to *BSB regulated persons and unregistered barristers* . In addition to the Guidance, the *Bar Standards Board* has published and will publish from time to time various guidance on its website which supplements this *Handbook* , including (but not limited to):

.i the Bar Qualification Manual; and

.ii the BSB's Supporting Information on the BSB Handbook Equality Rules.

.c In carrying out their obligations or meeting the requirements of this *Handbook* , *BSB regulated persons* and *unregistered barristers* must have regard to any relevant guidance issued by the *Bar Standards Board* which will be taken into account by the *Bar Standards Board* if there is an alleged breach of or otherwise non-compliance with of the obligations imposed on a *BSB regulated person* or *unregistered barrister* under this *Handbook* . Failure to comply with the guidance will not of itself be proof of such breach or non-compliance but the *BSB regulated person* or *unregistered barrister* will need to be able to show how the obligation has been met notwithstanding the departure from the relevant guidance.

.5 **Regulations** – Part 5 of this *Handbook* sets out the regulations which bind the *Bar Standards Board* when it considers alleged breaches of the *Handbook* and subsequent enforcement action. These Regulations also bind the various Tribunals and panels referred to in that Part and all persons who are subject to the enforcement process. When considering enforcement action under Part 5, the *Bar Standards Board's* response to any alleged breach of or non-compliance with the Core Duties or the Rules will be informed by the impact of the alleged breach or non-compliance on the achievement of the relevant Outcomes, as well by as its own *Supervision and Enforcement Strategies* and any other policies published from time to time which the *Bar Standards Board* regards as relevant (taking into account the nature of the alleged breach or non-compliance).

A3. Amendments to the Handbook Rules

rI1

Subject to Rules r1 and r2, the *Bar Standards Board* may make amendments and/or additions to this *Handbook* by resolution and any such amendments and/or additions will take effect on such date as the *Bar Standards Board* appoints or, if no such date is appointed, on the date when notice of the amendment is first published on the *Bar Standard Board's* website following approval under Schedule 4 of the Legal Services Act 2007.

rI2

The *Bar Standards Board* shall not without the unanimous consent of the Inns amend or waive any rule so as to permit a person who has not been called to the Bar by an Inn to practise as a barrister.

rI3

Removed from 1 November 2017.

rI4

Amendments and additions will be published on the *Bar Standards Board's* website.

A4. Waivers Rules

rI5

Subject to rI2, the *Bar Standards Board* shall have the power to waive or modify:

.1 the duty imposed on a *BSB regulated person or unregistered barrister* to comply with the provisions of this *Handbook* ; or

.2 any other requirement of this *Handbook*

.3 in such circumstances and to such extent as the *Bar Standards Board* may think fit and either conditionally or unconditionally.

rI6

Any application to the *Bar Standards Board* for a waiver of any of the mandatory requirements or to extend the time within which to complete any of the mandatory requirements must be made in writing, setting out all relevant circumstances relied on and supported by all relevant documentary evidence.

B. Application

Rules

rI7

Subject to paragraphs rI8 to rI11 below, this *Handbook* applies to the following categories of person:

.1 all *barristers* , that is to say:

.a barristers who hold a practising certificate in accordance with Section 3.C (" *practising barristers ");*

.b barristers who are undertaking *pupillage* , or a part thereof and who are registered with the *Bar Standards Board* as a *pupil* (" *pupils* "); and

.c all *unregistered barristers* .

.2 European lawyers registered as such by the *Bar Standards Board* and by an *Inn* in accordance with Section 3.D but only in connection with professional work undertaken by them in England and Wales (" *registered European lawyers* ");

.3 bodies which have been authorised or licensed by the *Bar Standards Board* in accordance with Section 3.E of this Handbook (" *BSB entities* ");

.4 individuals who are authorised to provide *reserved legal activities* by another *Approved Regulator where such individuals are employed by a BSB authorised person (" authorised (non-BSB) individuals ");*

.5 all managers of *BSB entities* ;

.6 to the extent that this *Handbook* is expressed to apply to them in their capacity as such, owners of a *BSB entity* ;

.7 solely as regards provisions in this *Handbook* relating to disqualification from performing a *relevant activity* or *relevant activities* and not otherwise, any *non-authorised individuals* who are employed by a *BSB authorised person* ; and

.8 solely as regards Section 4.B of the *Handbook* , individuals who wish to be called to the Bar and to become qualified to practise as a barrister and authorised education and training organisations. Until 1 January 2020, for the purposes of any proceedings of the Inns Conduct Committee, Part 4 applies as if version 3.5 of the BSB Handbook were in force;

.9 and persons within paragraphs rI7.1 to 7 (with the exception of pupils without a provisional practising certificate, unregistered barristers and owners) are referred to as *"BSB regulated persons"* throughout this *Handbook* . For the purposes of Part 5 of the *Handbook* these persons (and those who are no longer *BSB regulated persons* or *unregistered barristers* but who were at the time when any conduct was complained of or reported) are referred to as *"applicable persons"* . For the avoidance of doubt, the *Handbook* continues to apply to those who are subject to suspension.

rI8

If you are a *BSB authorised individual* who is employed by or a *manager* of an *authorised (non-BSB) body* and is subject to the regulatory arrangements of the *Approved Regulator* of that body, and the requirements of that other *Approved Regulator* conflict with a provision within this *Handbook* then the conflicting provision within this *Handbook* shall not apply to you. You will instead be expected to comply with the requirements of that other *Approved Regulator* and, if you do so, you will not be considered to be in breach of the relevant provision of this *Handbook* .

rI9

If you are a *pupil* and are:

.1 the *pupil* of an *employed barrister (non-authorised body)* ; or

.2 the *pupil* of a manager or employee *of a BSB entity* ; or

.3 the *pupil* of a *manager* or employee of an *authorised (non-BSB) body* ; or

.4 spending a period of external training with a *BSB entity* or an *authorised (non-BSB) body*

.5 this *Handbook* will apply to you as though you were an employee of the *barrister's* employer or the body concerned.

rI10

If you are a *registered European lawyer* , then, except where otherwise provided, the provisions of this *Handbook* which apply to *barristers* shall apply to you, in connection with all professional work undertaken by you in England and Wales, as if you were a *self-employed barrister* or an *employed barrister (non-authorised body)* or a *manager* or employee of an *authorised (non BSB) body* or a manager or employee of a *BSB entity* (as the case may be) depending on the way in which you practise.

rI11

In addition to the above, each Part to this Handbook has its own application section which sets out the more detailed application of that particular Part. In the event of any inconsistency, the application section specific to the particular Part shall prevail over these general provisions.

C. Commencement and Transitional Provisions

Rules

rI12

This fourth edition of the *Handbook* came into force on 1 April 2019 and replaced the third edition of the *Handbook* (which came into effect from 3 April 2017).

rI13

Subject to rI14 below, in respect of anything done or omitted to be done or otherwise arising before 6 January 2014:

.1 Parts 2 and 3 of this Handbook shall not apply;

.2 the edition of the Code of Conduct or relevant Annexe in force at the relevant time shall apply; and

.3 any reference to Part 2, Part 3 or Part 5 of this *Handbook* shall include reference to the corresponding Part of the edition of the Code of Conduct or relevant Annexe which was in force at the relevant time.

rI14

Where:

.1 a matter is being dealt with under the Complaints Regulations prior to 15 October 2019; or the Disciplinary Tribunal Regulations 2014 prior to 1 November 2017; or Annexe J (The Complaints Rules 2011), Annexe K (The Disciplinary Tribunals Regulations (2009) (Reissued 1 February 2012)), Annexe M (Hearings before the Visitors Rules), Annexe N (Interim Suspension Rules) or Annexe O (Fitness to Practise Rules) prior to 6 January 2014; and that matter has not concluded or been disposed of; or

.2 anything done or omitted to be done or otherwise arising before 6 January 2014 required referral for consideration in accordance with any of the above Annexes, then Part 5 of this *Handbook* shall apply to all such cases and any step taken pursuant to the Annexes then applying (if any) shall be regarded, unless otherwise decided, as having been taken pursuant to the equivalent provisions of Part 5 of this *Handbook* , save that no fine in excess of £15,000 may be imposed by a *Disciplinary Tribunal* in respect of conduct before 6 January 2014 and no financial *administrative sanction* in excess of £300 may be imposed by the *Commissioner* or an *Independent Decision-Making Panel* in respect of conduct before 6 January 2014.

D. Interpretation

Rules

rI15

In this *Handbook* :

.1 words and phrases in italics shall have the meaning given to them in Part 6;

.2 any reference to the singular shall include the plural and vice versa;

.3 any reference to another provision in this *Handbook* shall be a reference to that provision as amended from time to time; and

.4 where references are made to an enactment, it is a reference to that enactment as amended, and includes a reference to that provision as extended or applied by or under any other enactment.

Part 2: Code of Conduct

Part 2 - A. Application

Rules

rC1

Who?

.1 Section 2.B (Core Duties): applies to all *BSB regulated persons* and *unregistered barristers* except where stated otherwise, and references to “you” and “your” in Section 2.B shall be construed accordingly.

.2 Section 2.C (Conduct Rules):

.a Applies to all *BSB regulated persons* .

.b Rules rC3.5, rC4, rC8, rC16, rC19 and rC64 to rC70 (and associated guidance to those rules) and the guidance on Core Duties also apply to *unregistered barristers* . If an *unregistered barrister* practises as a *barrister* as set out in rS9 then those rules which apply to practising barristers shall also apply.

References to “you” and “your” in Section 2.C shall be construed accordingly

.3 Section 2.D (Specific Rules): applies to specific groups as defined in each sub-section and references to “you” and “your” shall be construed accordingly.

rC2

When?

.1 Section 2.B applies when practising or otherwise providing *legal services* . In addition, CD5 and CD9 apply at all times.

.2 Section 2.C applies when practising or otherwise providing *legal services* . In addition, rules rC8, rC16 and rC64 to rC70 and the associated guidance apply at all times.

.3 Section 2.D applies when practising or otherwise providing *legal services* .

.4 Sections 2.B, 2.C and 2.D only apply to *registered European lawyers* in connection with professional work undertaken by them in that capacity in England and Wales.

Part 2 - B. The Core Duties

Core Duties

CD1 You must observe your duty to the court in the administration of justice [CD1].

CD2 You must act in the best interests of each client [CD2].

CD3 You must act with honesty, and with integrity [CD3].

CD4 You must maintain your independence [CD4].

CD5 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession [CD5].

CD6 You must keep the affairs of each client confidential [CD6].

CD7 You must provide a competent standard of work and service to each client [CD7]

CD8 You must not discriminate unlawfully against any person [CD8].

CD9 You must be open and co-operative with your regulators [CD9].

CD10 You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations [CD10].

Guidance to the Core Duties

Guidance

gC1

The Core Duties are not presented in order of precedence, subject to the following:

.1 CD1 overrides any other core duty, if and to the extent the two are inconsistent. Rules rC3.5 and rC4 deal specifically with the relationship between CD1, CD2 and CD4 and you should refer to those rules and to the related Guidance;

.2 in certain other circumstances set out in this Code of Conduct one Core Duty overrides another. Specifically, Rule rC16 provides that CD2 (as well as being subject to CD1) is subject to your obligations under CD3, CD4 and CD8.

gC2

Your obligation to take reasonable steps to manage your *practice* , or carry out your role within your *practice* , competently and in such a way as to achieve compliance with your legal and regulatory obligations (CD10) includes an obligation to take all reasonable steps to mitigate the effects of any breach of those legal and regulatory obligations once you become aware of the same.

gC2A

Your obligation to be open and co-operative with your regulators (CD9) includes being open and co-operative with all relevant regulators and ombudsman schemes, including but not limited to approved regulators under the Legal Services Act 2007 and the Legal Ombudsman.

Part 2 - C. The Conduct Rules Rules

Part 2 - C1. You and the court Rules

Outcomes C1-C5 Outcomes

oC1

The *court* is able to rely on information provided to it by those conducting litigation and by advocates who appear before it.

oC2

The proper administration of justice is served.

oC3

The interests of *clients* are protected to the extent compatible with outcomes oC1 and oC2 and the Core Duties.

oC4

Both those who appear before the *court* and *clients* understand clearly the extent of the duties owed to the *court* by advocates and those conducting litigation and the circumstances in which duties owed to *clients* will be overridden by the duty owed to the *court* .

oC5

The public has confidence in the administration of justice and in those who serve it.

Rules C3-C6 Rules

rC3

You owe a duty to the *court* to act with independence in the interests of justice. This duty overrides any inconsistent obligations which you may have (other than obligations under the criminal law). It includes the following specific obligations which apply whether you are acting as an advocate or are otherwise involved in the conduct of litigation in whatever role (with the exception of Rule C3.1 below, which applies when acting as an advocate):

.1 you must not knowingly or recklessly mislead or attempt to mislead the *court* ;

.2 you must not abuse your role as an advocate;

.3 you must take reasonable steps to avoid wasting the *court's* time;

.4 you must take reasonable steps to ensure that the *court* has before it all relevant decisions and legislative provisions;

.5 you must ensure that your ability to act independently is not compromised.

rC4

Your duty to act in the best interests of each *client* is subject to your duty to the *court* .

rC5

Your duty to the *court* does not require you to act in breach of your duty to keep the affairs of each *client* confidential.

Not misleading the court

rC6

Your duty not to mislead the *court* will include the following obligations:

.1 you must not:

.a make submissions, representations or any other statement; or

.b ask questions which suggest facts to witnesses

which you know, or are instructed, are untrue or misleading.

.2 you must not call witnesses to give evidence or put affidavits or witness statements to the *court* which you know, or are *instructed* , are untrue or misleading, unless you make clear to the *court* the true position as known by or instructed to you.

Guidance to Rules C3-C6 and relationship to CD1-CD2 Guidance

gC3

Rules rC3 – rC6 set out some specific aspects of your duty to the *court* (CD1). See CD1 and associated Guidance at gC1.

gC4

As to your duty not to mislead the court:

.1 knowingly misleading the *court* includes being complicit in another person misleading the court;

.2 knowingly misleading the *court* also includes inadvertently misleading the court if you later realise that you have misled the *court* , and you fail to correct the position;

.3 recklessly means being indifferent to the truth, or not caring whether something is true or false; and

.4 the duty continues to apply for the duration of the case.

gC5

Your duty under Rule rC3.4 includes drawing to the attention of the *court* any decision or provision which may be adverse to the interests of your *client* . It is particularly important where you are appearing against a litigant who is not legally represented.

gC6

You are obliged by CD2 to promote and to protect your *client's* interests so far as that is consistent with the law and with your overriding duty to the *court* under CD1. Your duty to the *court* does not prevent you from putting forward your *client's* case simply because you do not believe that the facts are as your *client* states them to be (or as you, on your *client's* behalf, state them to be), as long as any positive case you put forward accords with your *instructions* and you do not mislead the *court* . Your role when acting as an advocate or conducting litigation is to present your *client's* case, and it is not for you to decide whether your *client's* case is to be believed.

gC7

For example, you are entitled and it may often be appropriate to draw to the witness's attention other evidence which appears to conflict with what the witness is saying and you are entitled to indicate that a *court* may find a particular piece of evidence difficult to accept. But if the witness maintains that the evidence is true, it should be recorded in the witness statement and you will not be misleading the *court* if you call the witness to confirm their witness statement. Equally, there may be circumstances where you call a hostile witness whose evidence you are instructed is untrue. You will not be in breach of Rule rC6 if you make the position clear to the *court* . See, further, the guidance at gC14.

gC8

As set out in Rule rC5, your duty to the *court* does not permit or require you to disclose confidential information which you have obtained in the course of your *instructions* and which your client has not authorised you to disclose to the *court* . However, Rule rC6 requires you not knowingly to mislead the *court* . There may be situations where you have obligations under both these rules.

gC9

Rule rC4 makes it clear that your duty to act in the best interests of your *client* is subject to your duty to the *court* . For example, if your *client* were to tell you that they have committed the crime with which they were charged, in order to be able to ensure compliance with Rule rC4 on the one hand and Rule rC3 and Rule rC6 on the other:

.1 you would not be entitled to disclose that information to the *court* without your *client's* consent; and

.2 you would not be misleading the *court* if, after your *client* had entered a plea of 'not guilty', you were to test in cross-examination the reliability of the evidence of the prosecution witnesses and then address the jury to the effect that the prosecution had not succeeded in making them sure of your *client's* guilt.

gC10

However, you would be misleading the *court* and would therefore be in breach of Rules rC5 and rC6 if you were to set up a positive case inconsistent with the confession, as for example by:

.1 suggesting to prosecution witnesses, calling your *client* or your witnesses to show; or submitting to the jury, that your *client* did not commit the crime; or

.2 suggesting that someone else had done so; or

.3 putting forward an alibi.

gC11

If there is a risk that the *court* will be misled unless you disclose confidential information which you have learned in the course of your *instructions* , you should ask the *client* for permission to disclose it to the *court* . If your *client* refuses to allow you to make the disclosure you must cease to act, and return your *instructions* : see Rules rC25 to rC27 below. In these circumstances you must not reveal the information to the *court* .

gC12

For example, if your *client* tells you that they have previous *convictions* of which the prosecution is not aware, you may not disclose this without their consent. However, in a case where mandatory sentences apply, the non-disclosure of the previous *convictions* will result in the *court* failing to pass the sentence that is required by law. In that situation, you must advise your *client* that if consent is refused to your revealing the information you will have to cease to act. In situations where mandatory sentences do not apply, and your *client* does not agree to disclose the previous *convictions* , you can continue to represent your *client* but in doing so must not say anything that misleads the court. This will constrain what you can say in mitigation. For example, you could not advance a positive case of previous good character knowing that there are undisclosed prior *convictions* . Moreover, if the *court* asks you a direct question you must not give an untruthful answer and therefore you would have to withdraw if, on your being asked such a question, your *client* still refuses to allow you to answer the question truthfully. You should explain this to your *client* .

gC13

Similarly, if you become aware that your *client* has a document which should be disclosed but has not been disclosed, you cannot continue to act unless your *client* agrees to the disclosure of the document. In these circumstances you must not reveal the existence or contents of the document to the *court* .

Rule C7 - Not abusing your role as an advocate

Rules

rC7

Where you are acting as an advocate, your duty not to abuse your role includes the following obligations:

.1 you must not make statements or ask questions merely to insult, humiliate or annoy a witness or any other person;

.2 you must not make a serious allegation against a witness whom you have had an opportunity to cross-examine unless you have given that witness a chance to answer the allegation in cross-examination;

.3 you must not make a serious allegation against any person, or suggest that a person is guilty of a crime with which your *client* is charged unless:

.a you have reasonable grounds for the allegation; and

.b the allegation is relevant to your *client's* case or the credibility of a witness; and

.c where the allegation relates to a third party, you avoid naming them in open *court* unless this is reasonably necessary.

.4 you must not put forward to the *court* a personal opinion of the facts or the law unless you are invited or required to do so by the *court* or by law.

Part 2 - C2. Behaving ethically

Rules

Outcomes C6-C9

Outcomes

oC6

Those regulated by the *Bar Standards Board* maintain standards of honesty, integrity and independence, and are seen as so doing.

oC7

The proper administration of justice, access to justice and the best interests of *clients* are served.

oC8

Those regulated by the *Bar Standards Board* do not discriminate unlawfully and take appropriate steps to prevent *discrimination* occurring in their practices.

oC9

Those regulated by the *Bar Standards Board* and *clients* understand the obligations of honesty, integrity and independence.

Rules C8-C9 - Honesty, integrity and independence

Rules

rC8

You must not do anything which could reasonably be seen by the public to undermine your honesty, integrity (CD3) and independence (CD4).

rC9

Your duty to act with honesty and with integrity under CD3 includes the following requirements:

.1 you must not knowingly or recklessly mislead or attempt to mislead anyone;

.2 you must not draft any statement of case, witness statement, affidavit or other document containing:

.a any statement of fact or contention which is not supported by your *client* or by your *instructions* ;

.b any contention which you do not consider to be properly arguable;

.c any allegation of fraud, unless you have clear instructions to allege fraud and you have reasonably credible material which establishes an arguable case of fraud;

.d (in the case of a witness statement or affidavit) any statement of fact other than the evidence which you reasonably believe the witness would give if the witness were giving evidence orally;

.3 you must not encourage a witness to give evidence which is misleading or untruthful;

.4 you must not rehearse, practise with or coach a witness in respect of their evidence;

.5 unless you have the permission of the representative for the opposing side or of the *court* , you must not communicate with any witness (including your *client*) about the case while the witness is giving evidence;

.6 you must not make, or offer to make, payments to any witness which are contingent on their evidence or on the outcome of the case;

.7 you must only propose, or accept, fee arrangements which are legal.

Guidance to Rules C8-C9 and relationship to CD1-CD5 Guidance

gC14

Your honesty, integrity and independence are fundamental. The interests of justice (CD1) and the *client's* best interests (CD2) can only be properly served, and any conflicts between the two properly resolved, if you conduct yourself honestly and maintain your independence from external pressures, as required by CD3 and CD4. You should also refer to Rule rC16 which subjects your duty to act in the best interests of your *client* (CD2) to your observance of CD3 and CD4, as well as to your duty to the *court* (CD1).

gC15

Other rules deal with specific aspects of your obligation to act in your *client's* best interests (CD2) while maintaining honesty, integrity (CD3) and independence (CD4), such as rule rC21.10 (not acting where your independence is compromised), rule rC10 (not paying or accepting *referral fees*) and rC21 (not acting in circumstances of a conflict of interest or where you risk breaching one *client's* confidentiality in favour of another's).

gC16

Rule C8 addresses how your conduct is perceived by the public. Conduct on your part which the public may reasonably perceive as undermining your honesty, integrity or independence is likely to diminish the trust and confidence which the public places in you or in the profession, in breach of CD5. Rule C9 is not exhaustive of the ways in which CD5 may be breached.

gC17

In addition to your obligation to only propose, or accept, fee arrangements which are legal in Rule C9.7, you must also have regard to your obligations in relation to referral fees in Rule rC10 and the associated guidance.

Examples of how you may be seen as compromising your independence

gC18

The following may reasonably be seen as compromising your independence in breach of Rule 8 (whether or not the circumstances are such that Rule rC10 is also breached):

.1 offering, promising or giving:

.a any commission or referral fee (of whatever size) – note that these are in any case prohibited by Rule rC10 and associated guidance; or

.b a gift (apart from items of modest value),

to any *client* , *professional client* or other *intermediary* ; or

.2 lending money to any such *client* , *professional client* or other *intermediary* ; or

.3 accepting any money (whether as a loan or otherwise) from any *client* , *professional client* or other *intermediary* , unless it is a payment for your professional services or reimbursement of expenses or of disbursements made on behalf of the *client* ;

gC19

If you are offered a gift by a current, prospective or former *client* , *professional client* or other *intermediary* , you should consider carefully whether the circumstances and size of the gift would reasonably lead others to think that your independence had been compromised. If this would be the case, you should refuse to accept the gift.

gC20

The giving or receiving of entertainment at a disproportionate level may also give rise to a similar issue and so should not be offered or accepted if it would lead others reasonably to think that your independence had been compromised.

gC21

Guidance gC18 to gC20 above is likely to be more relevant where you are a *self-employed barrister* , a *BSB entity* , an *authorised (non-BSB) individual* , an *employed barrister (BSB entity)* or a *manager* of a *BSB entity* . If you are a *BSB authorised individual* who is a an employee or *manager* of an *authorised (non-BSB) body* or you are an *employed barrister (non-authorised body)* and your *approved regulator* or *employer* (as appropriate) permits payments to which Rule rC10 applies, you may make or receive such payments only in your capacity as such and as permitted by the rules of your *approved regulator* or *employer* (as appropriate). For further information on referral fees, see the guidance at gC32).

Media comment

gC22

The ethical obligations that apply in relation to your professional practice generally continue to apply in relation to media comment. In particular, *barristers* should be aware of the following:

• Client's best interests: Core Duty 2 and Rules C15.1-.2 require a barrister to promote fearlessly and by all proper and lawful means the lay *client's* best interests and to do so without regard to their own interests.

• Independence: Core Duties 3 and 4 provide that you must not permit your absolute independence, integrity and freedom from external pressures to be compromised.

• Trust and confidence: Core Duty 5 provides that you must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.

• Confidentiality: Core Duty 6 and Rule C15.5 require you to preserve the confidentiality of your lay client's affairs and you must not undermine this unless permitted to do so by law or with the express consent of the lay client.

Examples of what your duty to act with honesty and integrity may require

gC23

Rule rC9 sets out some specific aspects of your duty under CD3 to act with honesty and also with integrity.

gC24

In addition to the above, where the other side is legally represented and you are conducting correspondence in respect of the particular matter, you are expected to correspond at all times with that other party's legal representative – otherwise you may be regarded as breaching CD3 or Rule C9.

Other possible breaches of CD3 and/or CD5

gC25

Conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

breaches of rC8;

breaches of rC9;

breaches of rC10;

criminal conduct which you are under a duty to report to the Bar Standards Board pursuant to rC65;

seriously offensive conduct towards others;

dishonesty;

unlawful discrimination , victimisation or harassment ; or

abuse of your professional position.

gC26

For the purposes of gC25.8 above, referring to your status as a barrister in a context where it is irrelevant but may influence others may constitute abuse of your professional position and thus involve a breach of CD3, CD5 and/or rC8. An example of this might be using professional notepaper in a private dispute.

gC27

The application provisions at Section A of Part 2 of this Handbook (the Code of Conduct) set out which Core Duties and rules apply to you and when they apply. Certain Core Duties and rules (such as CD5 and rC8) apply to you at all times and may therefore also be relevant to conduct which occurs in your private or personal life.

To assist in considering whether conduct which occurs in your non-professional life is likely to be treated as a breach of CD5 and/or rC8, the BSB considers that the questions set out in the Guidance on the Regulation of Non-Professional Conduct are likely to be relevant.

gC28

Removed on 20 September 2023.

Rule C10 - Referral fees Rules

rC10

You must not pay or receive *referral fees* .

Guidance to Rule C10 and relationship to CD2-CD5 Guidance

gC29

Making or receiving payments in order to procure or reward the referral to you by an intermediary of professional *instructions* is inconsistent with your obligations under CD2 and/or CD3 and/or CD4 and may also breach CD5.

gC30

Moreover:

.1 where public funding is in place, the *Legal Aid Agency's* Unified Contract Standard Terms explicitly prohibit contract-holders from making or receiving any payment (or any other benefit) for the referral or introduction of a *client* , whether or not the lay *client* knows of, and consents to, the payment;

.2 whether in a private or publicly funded case, a *referral fee* to which the *client* has not consented may constitute a bribe and therefore a *criminal offence* under the Bribery Act 2010;

gC31

Referral fees and inducements (as defined in the Criminal Justice and Courts Act 2015) are prohibited where they relate to a claim or potential claim for damages for personal injury or death or arise out of circumstances involving personal injury or death personal injury claims: section 56 Legal Aid, Sentencing and Punishment of Offenders Act 2012 and section 58 Criminal Justice and Courts Act 2015. Rule rC10 does not prohibit proper expenses that are not a reward for referring work, such as genuine and reasonable payments for:

.1 clerking and administrative services (including where these are outsourced);

.2 membership subscriptions to ADR bodies that appoint or recommend a person to provide mediation, arbitration or adjudication services; or

.3 advertising and publicity, which are payable whether or not any work is referred. However, the fact that a fee varies with the amount of work received does not necessarily mean that that it is a *referral fee* , if it is genuinely for a marketing service from someone who is not directing work to one provider rather than another, depending on who pays more.

gC32

Further guidance is available on the BSB's website.

Rule C11 - Undertakings Rules

rC11

You must within an agreed timescale or within a reasonable period of time comply with any undertaking you give in the course of conducting litigation.

Guidance to Rule C11 Guidance

gC33

You should ensure your insurance covers you in respect of any liability incurred in giving an undertaking.

Rule C12 - Discrimination Rules

rC12

You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

Guidance to Rule C12 Guidance

gC34

Rules rC110 and associated guidance are also relevant to equality and diversity. The BSB's Supporting Information on the BSB Handbook Equality Rules is available on the BSB website.

Rules C13-C14 - Foreign work Rules

rC13

In connection with any *foreign work* you must comply with any applicable rule of conduct prescribed by the law or by any national or local Bar of:

.1 the place where the work is or is to be performed; and

.2 the place where any proceedings or matters to which the work relates are taking place or contemplated; unless such rule is inconsistent with any requirement of the Core Duties.

rC14

If you solicit work in any jurisdiction outside England and Wales, you must not do so in a manner which would be prohibited if you were a member of the local Bar.

Guidance to Rules C13-14 Guidance

gC35

When you are engaged in *cross border activities* within a *CCBE State* other than the UK, you must comply with the rules at 2.D5 which implement the part of the *Code of Conduct for European Lawyers* not otherwise covered by this Handbook as well as with any other applicable rules of conduct relevant to that particular *CCBE State* . It is your responsibility to inform yourself as to any applicable rules of conduct.

Part 2 - C3. You and your client Rules

Outcomes C10-C20 Outcomes

oC10

Clients receive a competent standard of work and service.

oC11

Clients' best interests are protected and promoted by those acting for them.

oC12

BSB authorised persons do not accept instructions from *clients* where there is a conflict between their own interests and the *clients'* or where there is a conflict between one or more *clients* except when permitted in this *Handbook* .

oC13

Clients know what to expect and understand the advice they are given.

oC14

Care is given to ensure that the interests of vulnerable *clients* are taken into account and their needs are met.

oC15

Clients have confidence in those who are instructed to act on their behalf.

oC16

Instructions are not accepted, refused, or returned in circumstances which adversely affect the administration of justice, access to justice or (so far as compatible with these) the best interests of the *client* .

oC17

Clients and *BSB authorised persons* and *authorised (non-BSB) individuals* and *managers* of *BSB entities* are clear about the circumstances in which *instructions* may not be accepted or may or must be returned.

oC18

Clients are adequately informed as to the terms on which work is to be done.

oC19

Clients understand how to bring a *complaint* and *complaints* are dealt with promptly, fairly, openly and effectively.

oC20

Clients understand who is responsible for work done for them.

Rules C15-C16 - Best interests of each client, provision of a competent standard of work and confidentiality

Rules

rC15

Your duty to act in the best interests of each *client* (CD2), to provide a competent standard of work and service to each *client* (CD7) and to keep the affairs of each *client* confidential (CD6) includes the following obligations:

.1 you must promote fearlessly and by all proper and lawful means the *client's* best interests;

.2 you must do so without regard to your own interests or to any consequences to you (which may include, for the avoidance of doubt, you being required to take reasonable steps to mitigate the effects of any breach of this *Handbook*);

.3 you must do so without regard to the consequences to any other person (whether to your *professional client* , *employer* or any other person);

.4 you must not permit your *professional client* , *employer* or any other person to limit your discretion as to how the interests of the *client* can best be served; and

.5 you must protect the confidentiality of each *client's* affairs, except for such disclosures as are required or permitted by law or to which your *client* gives informed consent.

rC16

Your duty to act in the best interests of each *client* (CD2) is subject to your duty to the *court* (CD1) and to your obligations to act with honesty, and with integrity (CD3) and to maintain your independence (CD4).

Guidance to Rules C15-C16 and relationship to CD2 and CD6-CD7

Guidance

gC36

Your duty is to your *client* , not to your *professional client* or other *intermediary* (if any).

gC37

Rules rC15 and rC16 are expressed in terms of the interests of each *client* . This is because you may only accept *instructions* to act for more than one *client* if you are able to act in the best interests of each *client* as if that *client* were your only *client* , as CD2 requires of you. See further Rule rC17 on the circumstances when you are obliged to advise your *client* to seek other legal representation and Rules rC21.2 and rC21.3 on conflicts of interest and the guidance to those rules at gC69.

gC38

CD7 requires not only that you provide a competent standard of work but also a competent standard of service to your *client* . Rule rC15 is not exhaustive of what you must do to ensure your compliance with CD2 and CD7. By way of example, a competent standard of work and of service also includes:

.1 treating each *client* with courtesy and consideration; and

.2 seeking to advise your *client* , in terms they can understand; and

.3 taking all reasonable steps to avoid incurring unnecessary expense; and

.4 reading your instructions promptly. This may be important if there is a time limit or limitation period. If you fail to read your instructions promptly, it is possible that you will not be aware of the time limit until it is too late.

gC39

In order to be able to provide a competent standard of work, you should keep your professional knowledge and skills up to date, regularly take part in professional development and educational activities that maintain and further develop your competence and performance and, where you are a *BSB entity* or a *manager* of such body, you should take reasonable steps to ensure that *managers* and employees within your organisation undertake such training. Merely complying with the Continuing Professional Development requirements may not be sufficient to comply with Rule rC15. You should also ensure that you comply with any specific training requirements of the *Bar Standards Board* before undertaking certain activities – for example, you should not attend a police station to advise a suspect or interviewee as to the handling and conduct of police interviews unless you have complied with the following training requirements imposed by the *Bar Standards Board* : *barristers* undertaking publicly funded police station work under a criminal contract must comply with the training requirements specified by the Legal Aid Agency. *Barristers* undertaking privately funded police station work must complete the Police Station Qualification (“PSQ”) and (if they do not hold higher rights of audience) the Magistrates Court Qualification. Similarly, you should not undertake public access work without successfully completing the required training specified by the *Bar Standards Board* .

gC40

In addition to Guidance gC38 above, a *BSB entity* or a *manager* of such body should ensure that work is allocated appropriately, to *managers* and/or employees with the appropriate knowledge and expertise to undertake such work.

gC41

You should remember that your *client* may not be familiar with legal proceedings and may find them difficult and stressful. You should do what you reasonably can to ensure that the *client* understands the process and what to expect from it and from you. You should also try to avoid any unnecessary distress for your *client* . This is particularly important where you are dealing with a vulnerable *client* .

gC42

The duty of confidentiality (CD6) is central to the administration of justice. *Clients* who put their confidence in their legal advisers must be able to do so in the knowledge that the information they give, or which is given on their behalf, will stay confidential. In normal circumstances, this information will be privileged and not disclosed to a *court* . CD6, rC4 and Guidance gC8 and gC11 to gC13 provide further information.

gC43

Rule rC15.5 acknowledges that your duty of confidentiality is subject to an exception if disclosure is required or permitted by law. For example, you may be obliged to disclose certain matters by the Proceeds of Crime Act 2002. Disclosure in those circumstances would not amount to a breach of CD6 or Rule rC15.5 In other circumstances, you may only make disclosure of confidential information where your *client* gives informed consent to the disclosure. See the Guidance to Rule rC21 at gC69 for an example of circumstances where it may be appropriate for you to seek such consent.

gC44

There may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to the *court* . Rule rC4 and Guidance gC8 and gC11 to gC13 provide further information.

gC45

Similarly, there may be circumstances when your duty of confidentiality to your *client* conflicts with your duty to your regulator. Rule rC64 and Guidance gC92 in respect of that rule provide further information. In addition, Rule rC66 may also apply.

gC46

If you are a *pupil* of, or are *devilling* work for, a *self-employed barrister* , Rule rC15.5 applies to you as if the *client* of the *self-employed barrister* was your own *client* .

gC47

The section You and Your Practice, at 2.C5, provides for duties regarding the systems and procedures you must put in place and enforce in order to ensure compliance with Rule rC15.5.

gC48

If you are an *authorised individual* or a *manager* working in a *BSB entity* your personal duty to act in the best interests of your *client* requires you to assist in the redistribution of *client* files and otherwise assisting to ensure each *client's* interests are protected in the event that the *BSB entity* itself is unable to do so for whatever reason (for example, insolvency).

Rule C17 Rules

rC17

Your duty to act in the best interests of each *client* (CD2) includes a duty to consider whether the *client's* best interests are served by different legal representation, and if so, to advise the *client* to that effect.

Guidance to Rule C17 Guidance

gC49

Your duty to comply with Rule rC17 may require you to advise your *client* that in their best interests they should be represented by:

.1 a different advocate or legal representative, whether more senior or more junior than you, or with different experience from yours;

.2 more than one advocate or legal representative;

.3 fewer advocates or legal representatives than have been instructed; or

.4 in the case where you are acting through a *professional client* , different *solicitors* .

gC50

Specific rules apply where you are acting on a public access basis, which oblige you to consider whether *solicitors* should also be instructed. As to these see the public access rules at Section 2.D2 and further in respect of *BSB entities* Rule S28 and the associated guidance.

gC51

CD2 and Rules rC15.5 and rC17 require you, subject to Rule rC16, to put your *client's* interests ahead of your own and those of any other person. If you consider that your *professional client* , another *solicitor* or *intermediary* , another *barrister* , or any other person acting on behalf of your *client* has been negligent, you should ensure that your *client* is advised of this.

Rule C18 Rules

rC18

Your duty to provide a competent standard of work and service to each *client* (CD7) includes a duty to inform your *professional client* , or your *client* if instructed by a *client* , as far as reasonably possible in sufficient time to enable appropriate steps to be taken to protect the *client's* interests, if:

.1 it becomes apparent to you that you will not be able to carry out the *instructions* within the time requested, or within a reasonable time after receipt of *instructions* ; or

.2 there is an appreciable risk that you may not be able to undertake the *instructions* .

Guidance to Rule C18 Guidance

gC52

For further information about what you should do in the event that you have a clash of listings, please refer to our guidance which can be accessed on the *Bar Standards Board's* website.

Rule C19 - Not misleading clients and potential clients Rules

rC19

If you supply, or offer to supply, *legal services* , you must not mislead, or cause or permit to be misled, any person to whom you supply, or offer to supply, *legal services* about:

.1 the nature and scope of the *legal services* which you are offering or agreeing to supply;

.2 the terms on which the *legal services* will be supplied, who will carry out the work and the basis of charging;

.3 who is legally responsible for the provision of the services;

.4 whether you are entitled to supply those services and the extent to which you are regulated when providing those services and by whom; or

.5 the extent to which you are covered by insurance against claims for professional negligence.

Guidance to Rule C19 Guidance

gC53

The best interests of *clients* (CD2) and public confidence in the profession (CD5) are undermined if there is a lack of clarity as to whether services are regulated, who is supplying them, on what terms, and what redress *clients* have and against whom if things go wrong. Rule rC19 may potentially be infringed in a broad variety of situations. You must consider how matters will appear to the *client* .

gC54

Clients may, by way of example, be misled if *self-employed barristers* were to share premises with *solicitors* or other professionals without making sufficiently clear to *clients* that they remain separate and independent from one another and are not responsible for one another's work.

gC55

Likewise, it is likely to be necessary to make clear to *clients* that any entity established as a "ProcureCo" is not itself able to supply *reserved legal activities* and is not subject to regulation by the *Bar Standards Board* .

gC56

A set of *chambers* dealing directly with unsophisticated lay *clients* might breach Rule rC19 if its branding created the appearance of an entity or *partnership* and it failed to explain that the members of *chambers* are, in fact, self-employed individuals who are not responsible for one another's work.

gC57

Knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead could also result in you being in breach of Rule rC19. You should be particularly careful about making comparisons with other persons as these may often be regarded as misleading.

gC58

If you carry out public access work but are not authorised to *conduct litigation* , you would breach Rule rC19 if you caused or permitted your *client* to be misled into believing that you are entitled to, or will, provide services that include the *conduct of litigation* on behalf of your *client* .

gC59

If you are a *self-employed barrister* , you would, for example, likely be regarded as having breached Rule rC19 if you charged at your own hourly rate for work done by a *devil* or *pupil* . Moreover, such conduct may well breach your duty to act with honesty and also with integrity (CD3).

gC60

If you are an *unregistered barrister* , you would breach Rule rC19 if you misled your *client* into thinking that you were providing *legal services* to them as a *barrister* or that you were subject to the same regulation as a *practising barrister* . You would also breach the rule if you implied that you were covered by insurance if you were not, or if you suggested that your *clients* could seek a remedy from the *Bar Standards Board* or the *Legal Ombudsman* if they were dissatisfied with the services you provided. You should also be aware of the rules set out in Section D4 of this Code of Conduct and the additional guidance for *unregistered barristers* available on the *Bar Standards Board* website.

gC61

Rule C19.3 is particularly relevant where you act in more than one capacity, for example as a *BSB authorised individual* as well as a manager or employee of an *authorised (non BSB) body* . This is because you should make it clear to each *client* in what capacity you are acting and, therefore, who has legal responsibility for the provision of the services.

gC62

If you are a *pupil* , you should not hold yourself out as a member of *chambers* or permit your name to appear as such. You should ensure the *client* understands your status.

gC63

A number of other rules impose positive obligations on you, in particular circumstances, to make clear your regulatory status and the basis and terms on which you are acting. See, for example, Rule rC23 and guidance gC74.

Rule C20 - Personal responsibility Rules

rC20

Where you are a *BSB authorised individual* , you are personally responsible for your own conduct and for your professional work. You must use your own professional judgment in relation to those matters on which you are instructed and be able to justify your decisions and actions. You must do this notwithstanding the views of your *client* , *professional client* , *employer* or any other person.

Guidance to Rule C20 Guidance

gC64

It is fundamental that *BSB authorised individuals* and *authorised (non-BSB) individuals* are personally responsible for their own conduct and for their own professional work, whether they are acting in a self-employed or employed capacity (in the case of *BSB authorised individuals*) or as an employee or *manager* of a *BSB entity* (in the case of *authorised (non-BSB) individuals*).

gC65

Nothing in Rule rC20 is intended to prevent you from delegating or outsourcing to any other person discrete tasks (for example, research) which such other person is well-equipped to provide. However, where such tasks are delegated or outsourced, you remain personally responsible for such work. Further, in circumstances where such tasks are being outsourced, Rule rC86 which deals with outsourcing, must be complied with.

gC66

You are responsible for the service provided by all those who represent you in your dealings with your *client* , including your clerks or any other employees or agents.

gC67

Nothing in this rule or guidance prevents a *BSB entity* from contracting on the basis that any civil liability for the services provided by a *BSB regulated individual* lies with the *BSB entity* and the *BSB regulated individual* is not to be liable. However, any such stipulation as to civil liability does not affect the regulatory obligations of the *BSB regulated individual* including (but not limited to) that of being personally responsible under Rule rC20 for the professional judgments made.

gC68

See, further, guidance to Rule rC19, as regards work by *pupils* and *devils* Rule rC15, gC124 and Rule rC86 (on outsourcing).

Rule C21 - Accepting instructions

Rules

rC21

You must not accept *instructions* to act in a particular matter if:

.1 due to any existing or previous *instructions* you are not able to fulfil your obligation to act in the best interests of the prospective *client* ; or

.2 there is a conflict of interest, or real risk of conflict of interest, between your own personal interests and the interests of the prospective *client* in respect of the particular matter; or

.3 there is a conflict of interest, or real risk of conflict of interest, between the prospective *client* and one or more of your former or existing *clients* in respect of the particular matter unless all of the *clients* who have an interest in the particular matter give their informed consent to your acting in such circumstances; or

.4 there is a real risk that information confidential to another former or existing *client* , or any other person to whom you owe duties of confidence, may be relevant to the matter, such that if, obliged to maintain confidentiality, you could not act in the best interests of the prospective *client* , and the former or existing *client* or person to whom you owe that duty does not give informed consent to disclosure of that confidential information; or

.5 your instructions seek to limit your ordinary authority or discretion in the conduct of proceedings in *court* ; or

.6 your instructions require you to act other than in accordance with law or with the provisions of this *Handbook* ; or

.7 you are not authorised and/or otherwise accredited to perform the work required by the relevant *instruction* ; or

.8 you are not competent to handle the particular matter or otherwise do not have enough experience to handle the matter; or

.9 you do not have enough time to deal with the particular matter, unless the circumstances are such that it would nevertheless be in the *client's* best interests for you to accept; or

.10 there is a real prospect that you are not going to be able to maintain your independence.

Guidance to Rule C21

Guidance

gC69

Rules rC21.2, rC21.3 and rC21.4 are intended to reflect the law on conflict of interests and confidentiality and what is required of you by your duty to act in the *client's* best interests (CD2), independently (CD4), and maintaining *client* confidentiality (CD6). You are prohibited from acting where there is a conflict of interest between your own personal interests and the interests of a prospective *client* . However, where there is a conflict of interest between an existing *client* or *clients* and a prospective *client* or *clients* or two or more prospective *clients* , you may be entitled to accept instructions or to continue to act on a particular matter where you have fully disclosed to the relevant *clients* and prospective *clients* (as appropriate) the extent and nature of the conflict; they have each provided their informed consent to you acting; and you are able to act in the best interests of each *client* and independently as required by CD2 and CD4.

gC70

Examples of where you may be required to refuse to accept *instructions* in accordance with Rule rC21.7 include:

.1 where the *instructions* relate to the provision of litigation services and you have not been authorised to *conduct litigation* in accordance with the requirements of this *Handbook* ;

.2 removed

.3 where the matter would require you to conduct correspondence with parties other than your *client* (in the form of letters, faxes, emails or the like), you do not have adequate systems, experience or resources for managing appropriately such correspondence and/or you do not have adequate insurance in place in accordance with Rule rC75 which covers, amongst other things, any loss suffered by the *client* as a result of the conduct of such correspondence.

gC71

Competency and experience under Rule rC21.8 includes your ability to work with vulnerable *clients* .

gC72

Rule rC21.9 recognises that there may be exceptional circumstances when *instructions* are delivered so late that no suitable, competent advocate would have adequate time to prepare. In those cases you are not required to refuse *instructions* as it will be in the *client's* best interests that you accept. Indeed, if you are obliged under the cab rank rule to accept the *instructions* , you must do so.

gC73

Rule rC21.10 is an aspect of your broader obligation to maintain your independence (CD4). Your ability to perform your duty to the *court* (CD1) and act in the best interests of your *client* (CD2) may be put at risk if you act in circumstances where your independence is compromised. Examples of when you may not be able to maintain your independence include appearing as an advocate in a matter in which you are likely to be called as a witness (unless the matter on which you are likely to be called as a witness is peripheral or minor in the context of the litigation as a whole and is unlikely to lead to your involvement in the matter being challenged at a later date). If it appears that you are likely to be a witness on a material question of fact, and therefore must withdraw from a case as there is a real prospect that you are not going to be able to maintain your independence (Rules C21.10 and C25), you must also comply with Rule C27.

gC74

Where the *instructions* relate to public access or licensed access work and you are a *self-employed barrister* you will also need to have regard to the relevant rules at 2.D2. If you are a *BSB entity* , you should have regard to the guidance to Rule S28.

Rules C22-C24 - Defining terms or basis on which instructions are accepted

Rules

rC22

Where you first accept *instructions* to act in a matter:

.1 you must, subject to Rule rC23, confirm in writing acceptance of the *instructions* and the terms and/or basis on which you will be acting, including the basis of charging;

.2 where your instructions are from a *professional client* , the confirmation required by rC22.1 must be sent to the *professional client* ;

.3 where your instructions are from a *client* , the confirmation required by rC22.1 must be sent to the *client* .

.4 if you are a *BSB entity* , you must ensure that the terms under which you accept instructions from *clients* include consent from clients to disclose and give control of files to the *Bar Standards Board* or its agent in circumstances where the conditions in rS113.5 are met.

rC23

In the event that, following your acceptance of the *instructions* in accordance with Rule rC22, the scope of the *instructions* is varied by the relevant *client* (including where the *client* instructs you on additional aspects relating to the same matter), you are not required to confirm again in writing acceptance of the instructions or the terms and/or basis upon which you will be acting. In these circumstances, you will be deemed to have accepted the instructions when you begin the work, on the same terms or basis as before, unless otherwise specified.

rC24

You must comply with the requirements set out in Rules rC22 and rC23 before doing the work unless that is not reasonably practicable, in which case you should do so as soon as reasonably practicable.

Guidance to Rules C22-C24 Guidance

gC75

Compliance with the requirement in Rule rC22 to set out the terms and/or basis upon which you will be acting may be achieved by including a reference or link to the relevant terms in your written communication of acceptance. You may, for example, refer the *client* or *professional client* (as the case may be) to the terms of service set out on your website or to standard terms of service set out on the *Bar Council's* website (in which regard, please also refer to the guidance on the use of the standard terms of service). Where you agree to do your work on terms and conditions that have been proposed to you by the *client* or by the *professional client* , you should confirm in writing that that is the basis on which your work is done. Where there are competing sets of terms and conditions, which terms have been agreed and are the basis of your retainer will be a matter to be determined in accordance with the law of contract.

gC76

Your obligation under Rule rC23 is to ensure that the basis on which you act has been defined, which does not necessarily mean governed by your own contractual terms. In circumstances where Rule rC23 applies, you should take particular care to ensure that the *client* is clear about the basis for charging for any variation to the work where it may be unclear. You must also ensure that you comply with the requirements of the Provision of Services Regulations 2009. See, further Rule rC19 (not misleading *clients* or prospective *clients*) and the guidance to that rule at gC52 to gC62.

gC77

If you are a *self-employed barrister* a clerk may confirm on your behalf your acceptance of *instructions* in accordance with Rules rC22 and rC23 above.

gC78

When accepting instructions, you must also ensure that you comply with the complaints handling rules set out in Section 2.D.

gC79

When accepting instructions in accordance with Rule rC22, confirmation by email will satisfy any requirement for written acceptance.

gC80

You may have been instructed in relation to a discrete and finite task, such as to provide an opinion on a particular issue, or to provide ongoing services, for example, to conduct particular litigation. Your confirmation of acceptance of instructions under Rule rC22 should make clear the scope of the *instructions* you are accepting, whether by cross-referring to the *instructions* , where these are in writing or by summarising your understanding of the scope of work you are instructed to undertake.

gC81

Disputes about costs are one of the most frequent *complaints* . The provision of clear information before work starts is the best way of avoiding such *complaints* . The *Legal Ombudsman* has produced a useful guide “An Ombudsman's view of good costs service” which can be found on its website.

gC82

Where the *instructions* relate to public access or licensed access work and you are a *self-employed barrister* , you will also need to have regard to the relevant rules at 2.D2. If you are a *BSB entity* , you should have regard to the guidance to Rule S28.

Rules C25-C26 - Returning instructions

Rules

rC25

Where you have accepted *instructions* to act but one or more of the circumstances set out in Rules rC21.1 to rC21.10 above then arises, you must cease to act and return your *instructions* promptly. In addition, you must cease to act and return your *instructions* if:

.1 in a case funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid it has become apparent to you that this funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by your *client* ; or

.2 the *client* refuses to authorise you to make some disclosure to the *court* which your duty to the *court* requires you to make; or

.3 you become aware during the course of a case of the existence of a document which should have been but has not been disclosed, and the *client* fails to disclose it or fails to permit you to disclose it, contrary to your advice.

rC26

You may cease to act on a matter on which you are instructed and return your *instructions* if:

.1 your professional conduct is being called into question; or

.2 the *client* consents; or

.3 you are a *self-employed barrister* and:

.a despite all reasonable efforts to prevent it, a hearing becomes fixed for a date on which you have already entered in your professional diary that you will not be available; or

.b illness, injury, pregnancy, childbirth, a bereavement or a similar matter makes you unable reasonably to perform the services required in the *instructions* ; or

.c you are unavoidably required to attend on jury service;

.4 you are a *BSB entity* and the only appropriate *authorised individual(s)* are unable to continue acting on the particular matter due to one or more of the grounds referred to at Rules rC26.3.a to rC26.3.c above occurring;

.5 you do not receive payment when due in accordance with terms agreed, subject to Rule rC26.7 (if you are conducting litigation) and in any other case subject to your giving reasonable notice requiring the non-payment to be remedied and making it clear to the *client* in that notice that failure to remedy the non-payment may result in you ceasing to act and returning your *instructions* in respect of the particular matter; or

.6 you become aware of confidential or privileged information or documents of another person which relate to the matter on which you are instructed; or

.7 if you are conducting litigation, and your *client* does not consent to your ceasing to act, your application to come off the record has been granted; or

.8 there is some other substantial reason for doing so (subject to Rules rC27 to rC29 below).

Guidance to Rule C26

Guidance

gC83

In deciding whether to cease to act and to return existing instructions in accordance with Rule rC26, you should, where possible and subject to your overriding duty to the *court* , ensure that the *client* is not adversely affected because there is not enough time to engage other adequate legal assistance.

gC84

If you are working on a referral basis and your *professional client* withdraws, you are no longer instructed and cannot continue to act unless appointed by the *court* , or you otherwise receive new instructions. You will not be bound by the cab rank rule if appointed by the court. For these purposes working on a “referral basis” means where a *professional client* instructs a *BSB authorised individual* to provide *legal services* on behalf of one of that *professional client’s* own clients

gC85

You should not rely on Rule rC26.3 to break an engagement to supply legal services so that you can attend or fulfil a non-professional engagement of any kind other than those indicated in Rule rC26.3.

gC86

When considering whether or not you are required to return instructions in accordance with Rule rC26.6 you should have regard to relevant case law including: English & American Insurance Co Ltd & Others -v- Herbert Smith; ChD 1987; (1987) NLJ 148 and Ablitt -v- Mills & Reeve (A Firm) and Another; ChD (Times, 24-Oct-1995).

gC87

If a fundamental change is made to the basis of your remuneration, you should treat such a change as though your original instructions have been withdrawn by the *client* and replaced by an offer of new *instructions* on different terms. Accordingly:

.1 you must decide whether you are obliged by Rule rC29 to accept the new *instructions* ;

.2 if you are obliged under Rule rC29 to accept the new *instructions* , you must do so;

.3 if you are not obliged to accept the new *instructions* , you may decline them;

.4 if you decline to accept the new *instructions* in such circumstances, you are not to be regarded as returning your *instructions* , nor as withdrawing from the matter, nor as ceasing to act, for the purposes of Rules rC25 to rC26, because the previous *instructions* have been withdrawn by the *client* .

Rule C27 Rules

rC27

Notwithstanding the provisions of Rules rC25 and rC26, you must not:

.1 cease to act or return *instructions* without either:

.a obtaining your *client’s* consent; or

.b clearly explaining to your *client* or your *professional client* the reasons for doing so; or

.2 return instructions to another person without the consent of your *client* or your *professional client* .

Rule C28 - Requirement not to discriminate Rules

rC28

You must not withhold your services or permit your services to be withheld:

.1 on the ground that the nature of the case is objectionable to you or to any section of the public;

.2 on the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to you or to any section of the public;

.3 on any ground relating to the source of any financial support which may properly be given to the prospective *client* for the proceedings in question.

Guidance to Rule C28 Guidance

gC88

As a matter of general law you have an obligation not to discriminate unlawfully as to those to whom you make your services available on any of the statutorily prohibited grounds such as gender or race. See the Equality Rules in the BSB Handbook and the BSB's website for guidance as to your obligations in respect of equality and diversity. This rule of conduct is concerned with a broader obligation not to withhold your services on grounds that are inherently inconsistent with your role in upholding access to justice and the rule of law and therefore in this rule "discriminate" is used in this broader sense. This obligation applies whether or not the *client* is a member of any protected group for the purposes of the Equality Act 2010. For example, you must not withhold services on the ground that any financial support which may properly be given to the prospective *client* for the proceedings in question will be available as part of Criminal Legal Aid and Civil Legal Aid.

Rules C29-C30 - The cab rank rule

Rules

rC29

If you receive *instructions* from a *professional client* , and you are:

.1 a *self-employed barrister* instructed by a *professional client* ; or

.2 an *authorised individual* working within a *BSB entity* ; or

.3 a *BSB entity* and the *instructions* seek the services of a named *authorised individual* working for you,

and the *instructions* are appropriate taking into account the experience, seniority and/or field of practice of yourself or (as appropriate) of the named *authorised individual* you must, subject to Rule rC30 below, accept the *instructions* addressed specifically to you, irrespective of:

.a the identity of the *client* ;

.b the nature of the case to which the *instructions* relate;

.c whether the *client* is paying privately or is publicly funded; and

.d any belief or opinion which you may have formed as to the character, reputation, cause, conduct, guilt or innocence of the *client* .

rC30

The cab rank Rule rC29 does not apply if:

.1 you are required to refuse to accept the *instructions* pursuant to Rule rC21; or

.2 accepting the *instructions* would require you or the named *authorised individual* to do something other than in the course of their ordinary working time or to cancel a commitment already in their diary; or

.3 the potential liability for professional negligence in respect of the particular matter could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for you to accept; or

.4 you are a King's Counsel, and the acceptance of the *instructions* would require you to act without a junior in circumstances where you reasonably consider that the interests of the *client* require that a junior should also be instructed; or

.5 accepting the *instructions* would require you to do any *foreign work* ; or

.6 accepting the *instructions* would require you to act for a *foreign lawyer* (other than a *European lawyer* , a lawyer from a country that is a member of EFTA, a *solicitor* or *barrister* of Northern Ireland or a *solicitor* or advocate under the law of Scotland); or

.7 the *professional client* :

.a is not accepting liability for your fees; or

.b represents, in your reasonable opinion, an unacceptable credit risk; or

.c is instructing you as a lay *client* and not in their capacity as a *professional client* ; or

.8 you have not been offered a proper fee for your services (except that you shall not be entitled to refuse to accept *instructions* on this ground if you have not made or responded to any fee proposal within a reasonable time after receiving the *instructions*); or

.9 except where you are to be paid directly by (i) the *Legal Aid Agency* as part of the Community Legal Service or the Criminal Defence Service or (ii) the Crown Prosecution Service:

.a your fees have not been agreed (except that you shall not be entitled to refuse to accept *instructions* on this ground if you have not taken reasonable steps to agree fees within a reasonable time after receiving the *instructions*);

.b having required your fees to be paid before you accept the *instructions* , those fees have not been paid;

.c accepting the *instructions* would require you to act other than on (A) the Standard Contractual Terms for the Supply of Legal Services by Barristers to Authorised Persons 2020 as published on the *Bar Council's* website; or (B) if you publish standard terms of work, on those standard terms of work.

Guidance to Rules C29-C30

Guidance

gC89

Rule rC30 means that you would not be required to accept *instructions* to, for example, *conduct litigation* or attend a police station in circumstances where you do not normally undertake such work or, in the case of litigation, are not authorised to undertake such work.

gC90

In determining whether or not a fee is proper for the purposes of Rule C30.8, regard shall be had to the following:

.1 the complexity length and difficulty of the case;

.2 your ability, experience and seniority; and

.3 the expenses which you will incur.

gC91

Further, you may refuse to accept instructions on the basis that the fee is not proper if the instructions are on the basis that you will do the work under a *conditional fee agreement* or damages based agreement.

gC91A

Examples of when you might reasonably conclude (subject to the following paragraph) that a *professional client* represents an unacceptable credit risk for the purposes of Rule C30.7.b include:

.1 Where they are included on the *Bar Council's* List of Defaulting Solicitors;

.2 Where to your knowledge a *barrister* has obtained a judgment against a *professional client* , which remains unpaid;

.3 Where a firm or sole practitioner is subject to insolvency proceedings, an individual voluntary arrangement or partnership voluntary arrangement; or

.4 Where there is evidence of other unsatisfied judgments that reasonably call into question the *professional client's* ability to pay your fees.

Even where you consider that there is a serious credit risk, you should not conclude that the *professional client* represents an unacceptable credit risk without first considering alternatives. This will include considering whether the credit risk could be mitigated in other ways, for example by seeking payment of the fee in advance or payment into a third party payment service as permitted by rC74, rC75 and associated guidance.

gC91B

The standard terms referred to in Rule C30.9.c may be drafted as if the *professional client* were an *authorised person* regulated by the Solicitors Regulation Authority (SRA). However, the cab rank rule applies (subject to the various exceptions in Rule C30) to instructions from any *professional client* , therefore you may be instructed under the cab rank rule by *authorised persons* who are regulated by another *approved regulator* .

The BSB expects all *authorised persons* to be able to access the cab rank rule on behalf of their *clients* in the same way. Therefore, if you are instructed by an *authorised person* who is not regulated by the SRA, you are obliged to act on the same terms. You should therefore apply the standard terms referred to in Rule C30.9.c as if (i) the definition of *professional client* includes that *authorised person* , and (ii) any references to the SRA or its regulatory arrangements are references to that person's *approved regulator* and its regulatory arrangements.

Rules C31-C63 Rules

Removed.

Part 2 - C4. You and your regulator Rules

Outcomes C21-C23 Outcomes

oC21

BSB regulated persons are effectively regulated.

oC22

The public have confidence in the proper regulation of *persons* regulated by the *Bar Standards Board* .

oC23

The *Bar Standards Board* has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the *regulatory objectives* .

Rule C64 - Provision of information to the Bar Standards Board Rules

rC64

You must:

.1 promptly provide all such information to the *Bar Standards Board* as it may, for the purpose of its regulatory functions, from time to time require of you, and notify it of any material changes to that information;

.2 comply in due time with any decision or sentence imposed by the *Bar Standards Board* , a *Disciplinary Tribunal* , the High Court, the *First Tier Tribunal* , an *interim panel* , a *review panel* , an *appeal panel* , an *Independent Decision-Making Panel* or a *Fitness to Practise Panel* ;

.3 if you are a *BSB entity* or an *owner* or *manager* of a *BSB entity* and the conditions outlined in rS113.5 apply, give the *Bar Standards Board* whatever co-operation is necessary:

.4 comply with any notice sent by the *Bar Standards Board* or its agent; and

.5 register within 28 days if you undertake work in the Youth Court if you did not register when applying for a practising certificate.

Guidance to Rule C64 Guidance

gC92

Your obligations under Rule rC64 include, for example, responding promptly to any request from the *Bar Standards Board* for comments or information relating to any matter whether or not the matter relates to you, or to another *BSB regulated person* or *unregistered barrister* .

gC92A

A notice under rC64.4 refers to a notice under any part of the Legal Services Act 2007, or the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018.

gC93

The documents that you are required to disclose pursuant to Rule C64 may include client information that is subject to legal professional privilege. Pursuant to R (Morgan Grenfell & Co Ltd) v Special Commissioner [2003] 1 A.C. 563, referred to in R (Lumsdon) v Legal Services Board [2014] EWHC 28 (Admin) at [73], the BSB is entitled to serve you with a notice for production of those documents.

Where you are being required to report serious misconduct by others and legal professional privilege applies, this will override the requirement to report serious misconduct by another. However, the BSB may subsequently serve you with a notice for production of documents in which case the same principles set out above apply.

For the avoidance of doubt, none of this casts any doubt on your entitlement to withhold from the BSB any material that is subject to your own legal privilege (such as legal advice given to you about your own position during a BSB investigation).

Rule C65 - Duty to report certain matters to the Bar Standards Board

Rules

rC65

You must report promptly to the *Bar Standards Board* if:

.1 you are charged with an *indictable offence* ; in the jurisdiction of England and Wales or with a *criminal offence* of comparable seriousness in any other jurisdiction;

.2 subject to the Rehabilitation of Offenders Act 1974 (as amended) you are convicted of, or accept a caution, for any *criminal offence* , in any jurisdiction, other than a *minor criminal offence* ;

.3 you (or an entity of which you are a *manager*) to your knowledge are the subject of any disciplinary or other regulatory or enforcement action by another *Approved Regulator* or other regulator, including being the subject of disciplinary proceedings;

.4 you are a *manager* of a *regulated entity* (other than a *BSB entity*) which is the subject of an intervention by the *approved regulator* of that body;

.5 you are a *registered European lawyer* and:

.a to your knowledge any investigation into your conduct is commenced by your home regulator; or

.b any finding of professional misconduct is made by your home regulator; or

.c your authorisation in your *home state* to pursue professional activities under your *home professional title* is withdrawn or *suspended* ; or

.d you are charged with a disciplinary offence.

.6 any of the following occur:

.a bankruptcy proceedings are initiated in respect of or against you;

.b *director’s disqualification* proceedings are initiated against you;

.c a *bankruptcy order* or *director’s disqualification order* is made against you;

.d you have made a composition or arrangement with, or granted a trust deed for, your creditors;

.e winding up proceedings are initiated in respect of or against you;

.f you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you;

.g administration proceedings are initiated in respect of or against you;

.7 you have committed serious misconduct;

.8 you become authorised to *practise* by another *approved regulator* .

Guidance to Rule C65 Guidance

gC94

In circumstances where you have committed serious misconduct you should take all reasonable steps to mitigate the effects of such serious misconduct.

gC94.1

For the avoidance of doubt rC65.2 does not oblige you to disclose cautions or criminal convictions that are “spent” under the Rehabilitation of Offenders Act 1974 unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies. However, unless the caution or conviction is immediately spent, you must notify the BSB before it becomes spent.

Rules C66-C69 - Reporting serious misconduct by others Rules

rC66

Subject to your duty to keep the affairs of each *client* confidential and subject also to Rules rC67 and rC68, you must report to the *Bar Standards Board* if you have reasonable grounds to believe that there has been serious misconduct by a *barrister* or a *registered European lawyer* , a *BSB entity* , *manager* of a *BSB entity* or an *authorised (non-BSB) individual* who is working as a *manager* or an employee of a *BSB entity* .

rC67

You must never make, or threaten to make, a report under Rule rC66 without a genuine and reasonably held belief that Rule rC66 applies.

rC68

You are not under a duty to report serious misconduct by others if:

.1 you become aware of the facts giving rise to the belief that there has serious misconduct from matters that are in the public domain and the circumstances are such that you reasonably consider it likely that the facts will have come to the attention of the *Bar Standards Board* ; or

.2 you are aware that the person that committed the serious misconduct has already reported the serious misconduct to the Bar Standards Board; or

.3 the information or documents which led to you becoming aware of that other person’s serious misconduct are subject to legal professional privilege; or

.4 you become aware of such serious misconduct as a result of your work on a *Bar Council* advice line.

rC69

You must not victimise anyone for making in good faith a report under Rule C66.

Guidance to Rules C65.7-C68 Guidance

gC95

It is in the public interest that the *Bar Standards Board* , as an *Approved Regulator* , is made aware of, and is able to investigate, potential instances of serious misconduct. The purpose of Rules rC65.7 to rC69, therefore, is to assist the *Bar Standards Board* in undertaking this regulatory function.

gC96

Serious misconduct includes, without being limited to:

.1 dishonesty (CD3);

.2 assault or harassment (CD3 and/or CD5 and/or CD8);

.3 seeking to gain access without consent to *instructions* or other confidential information relating to the opposing party's case (CD3 and/or CD5); or

.4 seeking to gain access without consent to confidential information relating to another member of *chambers* , member of staff or *pupil* (CD3 and/or CD5);

.5 encouraging a witness to give evidence which is untruthful or misleading (CD1 and/or CD3);

.6 knowingly or recklessly misleading, or attempting to mislead, the *court* or an opponent (CD1 and/ or CD3); or

.7 being drunk or under the influence of drugs in *court* (CD2 and/or CD7); or

.8 failure to report promptly to the *Bar Standards Board* pursuant to rC65.1-rC65.5 and/or rC66 above or if;

• *director's disqualification* proceedings are initiated against you;

• a *director's disqualification* order is made against you;

• winding up proceedings are initiated in respect of or against you;

• you have had an administrator, administrative receiver, receiver or liquidator appointed in respect of you;

• administration proceedings are initiated in respect of or against you;

.9 a breach of rC67 above; for example, reporting, or threatening to report, another *person* as a litigation tactic or otherwise abusively; or merely to please a *client* or any other *person* or otherwise for an improper motive;

.10 conduct that poses a serious risk to the public.

gC97

If you believe (or suspect) that there has been serious misconduct, then the first step is to carefully consider all of the circumstances. The circumstances include:

.1 whether that person's *instructions* or other confidential matters might have a bearing on the assessment of their conduct;

.2 whether that person has been offered an opportunity to explain their conduct, and if not, why not;

.3 any explanation which has been or could be offered for that person's conduct;

.4 whether the matter has been raised, or will be raised, in the litigation in which it occurred, and if not, why not.

gC98

Having considered all of the circumstances, the duty to report arises if you have reasonable grounds to believe there has been serious misconduct. This will be so where, having given due consideration to the circumstances, including the matters identified at Guidance gC97, you have material before you which as it stands establishes a reasonably credible case of serious misconduct. Your duty under Rule rC66 is then to report the potential instance of serious misconduct so that the *Bar Standards Board* can investigate whether or not there has in fact been misconduct.

gC99

Circumstances which may give rise to the exception from the general requirement to report serious misconduct set out in Rule rC68.1 include for example where misconduct has been widely reported in the national media. In these circumstances it would not be in the public interest for every *BSB regulated person* and *unregistered barrister* to have an obligation to report such serious misconduct.

gC100

In Rule rC68.4 “work on the *Bar Council* advice line” means:

.1 dealing with queries from *BSB regulated persons* and *unregistered barristers* who contact an advice line operated by the *Bar Council* for the purposes of providing advice to those persons; and

.2 either providing advice to *BSB regulated persons* and *unregistered barristers* in the course of working for an advice line or to any individual working for an advice line where (i) you are identified on the list of *BSB regulated persons* maintained by the *Bar Council* as being permitted to provide such advice (the “approved list”); and (ii) the advice which you are being asked to provide to the individual working for an advice line arises from a query which originated from their work for that service; and

.3 providing advice to *BSB regulated persons* and *unregistered barristers* where any individual working for an advice line arranges for you to give such advice and you are on the approved list.

.4 for the purposes of Rule C68, the relevant advice lines are:

– the Ethical Queries Helpline;

– the Equality and Diversity Helpline;

– the Remuneration Helpline; and

– the Pupillage Helpline.

gC101

Rule rC68.4 has been carved out of the general requirement to report serious misconduct of others because it is not in the public interest that the duty to report misconduct should constrain *BSB regulated persons* or *unregistered barristers* appointed by or on behalf of the *Bar Council* to offer ethical advice to others from doing so or inhibit *BSB regulated persons* or *unregistered barristers* needing advice from seeking it. Consequently, *BSB regulated persons* or *unregistered barristers* appointed by or on behalf of the *Bar Council* to offer ethical advice to *BSB regulated persons* or *unregistered barristers* through a specified advice service will not be under a duty to report information received by them in confidence from persons seeking such advice, subject only to the requirements of the general law. However, in circumstances where Rule C68.4 applies, the relevant *BSB regulated person* or *unregistered barrister* will still be expected to encourage the relevant *BSB regulated person* or *unregistered barrister* who has committed serious misconduct to disclose such serious misconduct to the *Bar Standards Board* in accordance with Rule C65.7.

gC102

Misconduct which falls short of serious misconduct should, where applicable, be reported to your HOLP so that they can keep a record of non-compliance in accordance with Rule rC96.4.

Rule C70 - Access to premises Rules

rC70

You must permit the *Bar Standards Board* , or any person appointed by them, reasonable access, on request, to inspect:

.1 any premises from which you provide, or are believed to provide, *legal services* ; and

.2 any documents or records relating to those premises and your *practice* , or *BSB entity* , and the *Bar Standards Board* , or any person appointed by them, shall be entitled to take copies of such documents or records as may be required by them for the purposes of their functions.

Rule C71 - Co-operation with the Legal Ombudsman Rules

rC71

You must give the *Legal Ombudsman* all reasonable assistance requested of you, in connection with the investigation, consideration, and determination, of *complaints* made under the Ombudsman scheme.

Rule C72 - Ceasing to practise

Rules

rC72

Once you are aware that you (if you are a *self-employed barrister* or a *BSB entity*) or the *BSB entity* within which you work (if you are an authorised individual or *manager* of such *BSB entity*) will cease to practise, you shall effect the orderly wind-down of activities, including:

.1 informing the *Bar Standards Board* and providing them with a contact address;

.2 notifying those *clients* for whom you have current matters and liaising with them in respect of the arrangements that they would like to be put in place in respect of those matters;

.3 providing such information to the *Bar Standards Board* in respect of your practice and your proposed arrangements in respect of the winding down of your activities as the *Bar Standards Board* may require.

Part 2 - C5. You and your practice

Rules

Outcomes C24-C25

Outcomes

oC24

Your *practice* is run competently in a way that achieves compliance with the Core Duties and your other obligations under this *Handbook* . Your employees, *pupils* and trainees understand, and do, what is required of them in order that you meet your obligations under this *Handbook* .

oC25

Clients are clear about the extent to which your services are regulated and by whom, and who is responsible for providing those services.

Rules C73-C75 - Client money

Rules

rC73

Except where you are acting in your capacity as a *manager* or employee of an *authorised (non-BSB) body* , you must not receive, control or handle *client money* apart from what the client pays you for your services.

rC74

If you make use of a third party payment service for making payments to or from or on behalf of your *client* you must:

.1 Ensure that the service you use will not result in your receiving, controlling or handling *client money* ; and

.2 Only use the service for payments to or from or on behalf of your *client* that are made in respect of legal services, such as fees, disbursements or settlement monies; and

.3 Take reasonable steps to check that making use of the service is consistent with your duty to act competently and in your *client's* best interests.

rC75

The *Bar Standards Board* may give notice under this rule that (effective from the date of that notice) you may only use third party payment services approved by the *Bar Standards Board* or which satisfy criteria set by the *Bar Standards Board*

Guidance to Rules C73-C74

Guidance

gC103

The prohibition in Rule rC73 applies to you and to anyone acting on your behalf, including any "ProcureCo" being a company established as a vehicle to enable the provision of *legal services* but does not in itself supply or provide those *legal services* . Rule rC73 prohibits you from holding *client money* or other *client* assets yourself, or through any agent, third party or nominee.

gC104

Receiving, controlling or handling *client money* includes entering into any arrangement which gives you de facto control over the use and/or destination of funds provided by or for the benefit of your *client* or intended by another party to be transmitted to your *client* , whether or not those funds are beneficially owned by your client and whether or not held in an account of yours.

gC105

The circumstances in which you will have de facto control within the meaning of Rule rC73 include when you can cause money to be transferred from a balance standing to the credit of your *client* without that *client's* consent to such a withdrawal. For large withdrawals, explicit consent should usually be required. However, the *client's* consent may be deemed to be given if:

.1 the *client* has given informed consent to an arrangement which enables withdrawals to be made after the *client* has received an invoice; and

.2 the *client* has not objected to the withdrawal within a pre-agreed reasonable period (which should not normally be less than one week from receipt of the invoice).

gC106

A fixed fee paid in advance is not *client money* for the purposes of Rule rC73.

gC107

If you have decided in principle to take a particular case you may request an 'upfront' fixed fee from your prospective *client* before finally agreeing to work on their behalf. This should only be done having regard to the following principles:

• You should take care to estimate accurately the likely time commitment and only take payment when you are satisfied that:

– it is a reasonable payment for the work being done; and

– in the case of public access work, that it is suitable for you to undertake.

• If the amount of work required is unclear, you should consider staged payments rather than a fixed fee in advance.

• You should never accept an upfront fee in advance of considering whether it is appropriate for you to take the case and considering whether you will be able to undertake the work within a reasonable timescale.

• If the *client* can reasonably be expected to understand such an arrangement, you may agree that when the work has been done, you will pay the *client* any difference between that fixed fee and (if lower) the fee which has actually been earned based on the time spent, provided that it is clear that you will not hold the difference between the fixed fee and the fee which has been earned on trust for the *client* . That difference will not be *client money* if you can demonstrate that this was expressly agreed in writing, on clear terms understood by the *client* , and before payment of the fixed fee. You should also consider carefully whether such an arrangement is in the *client's* interest, taking into account the nature of the instructions, the *client* and whether the *client* fully understands the implications. Any abuse of an agreement to pay a fixed fee subject to reimbursement, the effect of which is that you receive more money than is reasonable for the case at the outset, will be considered to be holding *client money* and a breach of rC73. For this reason, you should take extreme care if contracting with a *client* in this way.

• In any case, rC22 requires you to confirm in writing the acceptance of any instructions and the terms or basis on which you are acting, including the basis of charging.

gC108

Acting in the following ways may demonstrate compliance with Rules rC73, rC74 and rC75:

gC109

Checking that any third party payment service you may use is not structured in such a way that the service provider is holding, as your agent, money to which the *client* is beneficially entitled. If this is so you will be in breach of Rule rC73.

gC110

Considering whether your *client* will be safe in using the third party payment service as a means of transmitting or receiving funds. The steps you should take in order to satisfy yourself will depend on what would be expected in all the circumstances of a reasonably competent legal adviser acting in their *client's* best interests. However, you are unlikely to demonstrate that you have acted competently and in your *client's* best interests if you have not:

.1 ensured that the payment service is authorised or regulated as a payment service by the Financial Conduct Authority (FCA) and taken reasonable steps to satisfy yourself that it is in good standing with the FCA;

.2 if the payment service is classified as a small payment institution, ensured that it has arrangements to safeguard *clients'* funds or adequate insurance arrangements;

.3 ensured that the payment service segregates *client money* from its own funds;

.4 satisfied yourself that the terms of the service are such as to ensure that any money paid in by or on behalf of the *client* can only be paid out with the *client's* consent;

.5 informed your *client* that moneys held by the payment service provider are not covered by the Financial Services Compensation Scheme.

gC111

Unless you are reasonably satisfied that it is safe for your client to use the third party payment service (see rC74.3, gC109 and gC110 above), advising your *client* against using the third party payment service and not making use of it yourself.

gC112

The *Bar Standards Board* has not yet given notice under rule rC75.

Rules C76-C78 - Insurance

Rules

rC76

You must:

.1 ensure that you have adequate insurance (taking into account the nature of your practice) which covers all the *legal services* you supply to the public; and

.2 if you are a *BSB authorised person* or a *manager* of a *BSB entity* then in the event that the *Bar Standards Board* , by any notice it may from time to time issue under this Rule C76, stipulates a minimum level of insurance and/or minimum terms for the insurance which must be taken out by *BSB authorised persons* , you must ensure that you have or put in place within the time specified in such notice, insurance meeting such requirements as apply to you.

rC77

Where you are acting as a *self-employed barrister* , you must be a member of *BMIF* , unless:

.1 you are a *pupil* who is covered by your *pupil supervisor's* insurance; or

.2 you were called to the *Bar* under Rule Q25, in which case you must either be insured with *BMIF* or be covered by insurance against claims for professional negligence arising out of the supply of your services in England and Wales in such amount and on such terms as are currently required by the *Bar Standards Board* , and have delivered to the *Bar Standards Board* a copy of the current insurance policy, or the current certificate of insurance, issued by the insurer.

rC78

If you are a member of *BMIF* , you must:

.1 pay promptly the insurance premium required by *BMIF* ; and

.2 supply promptly such information as *BMIF* may from time to time require pursuant to its rules.

Guidance to Rules C76-C78 Guidance

gC113

Where you are working in a *BSB entity* , you will satisfy the requirements of Rule rC76.1 so long as the *BSB entity* has taken out insurance, which covers your activities. A *BSB entity* will have to confirm each year that it has reviewed the adequacy of its insurance cover on the basis of a risk analysis and that they have complied with this rule.

gC114

Any notice issued under Rule rC76 will be posted on the *Bar Standards Board's* website and may also be publicised by such other means as the *Bar Standards Board* may judge appropriate. Notices issued under Rule C76, which stipulate minimum terms of cover for *self-employed barristers* and *BSB entities* , are currently in force and available on the *Bar Standards Board's* website.

The *Bar Standards Board's* requirements in respect of professional indemnity insurance, including the minimum terms, are concerned with ensuring consumer protection, specifically that there is adequate cover for liabilities which *BSB regulated persons* may incur to their *clients* or other parties to whom they may owe duties when performing their *legal services* . This includes claims for contribution which third parties, such as instructing *solicitors* , may make on the basis that the *BSB regulated person* has such a liability to a mutual *client* . However, Rule C76.1 of the *Handbook* does not require *BSB regulated persons* to carry insurance for other types of liability, which do not relate to their liabilities towards consumers, such as a contractual liability to instructing *solicitors* in respect of losses incurred by the *solicitor* that are not based on any liability the *solicitor* has in turn incurred to the *client* . Nor are the minimum terms concerned with the latter type of liability and whether and on what terms to seek to insure against such exposure is a commercial judgment for *BSB regulated persons* to make. For example, the minimum terms require you to have insurance which covers third party losses in the event of a *cyber incident* , but it does not require you to have a separate policy which covers your own ("first party") losses in such an event. You should assess your level of risk in this area to determine whether such protection is necessary .

You should also ensure that you are aware of and comply with any general legal requirements for you to carry other types of insurance than professional indemnity cover.

BSB regulated persons considering excluding or limiting liability should consider carefully the ramifications of the Unfair Contract Terms Act 1977 and other legislation and case law. If a *BSB regulated person* is found by the court to have limited liability in a way which is in breach of the Unfair Contract Terms Act, that might amount to professional misconduct.

BSB regulated persons should regularly review the amount of their professional indemnity insurance cover, taking into account the type of work which they undertake and the likely liability for negligence. They should be aware that claims can arise many years after the work was undertaken and that they would be prudent to maintain adequate insurance cover for that time since cover operates on a "claims made" basis and as such it is the policy and the limits in force at the time a claim is made that are relevant, not the policy and limits in force when the work was undertaken. They should also bear in mind the need to arrange run-off cover if they cease practice.

gC115

Where you are working in an *authorised (non-BSB) body* , the rules of the *approved regulator* of that body will determine what insurance the *authorised (non-BSB) body* must have.

gC116

Where you are working as an *employed barrister (non-authorised body)* , the rule does not require you to have your own insurance if you provide *legal services* only to your *employer* . If you supply *legal services* to other people (to the extent permitted by the Scope of Practice and Authorisation, and Licensing Rules set out at Section S.B you should consider whether you need insurance yourself having regard to the arrangements made by your *employer* for insuring against claims made in respect of your services. If your *employer* already has adequate insurance for this purpose, you need not take out any insurance of your own. You should ensure that your *employer's* policy covers you, for example, for any pro-bono work you may do.

gC117

Where you are a *registered European lawyer* , the rule does not require you to have your own insurance if:

.1 you provide to the *Bar Standards Board* evidence to show that you are covered by insurance taken out or a guarantee provided in accordance with the rules of your *home State* ; and

.2 the *Bar Standards Board* is satisfied that such insurance or guarantee is fully equivalent in terms of conditions and extent of cover to the cover required pursuant to Rule rC76. However, where the *Bar Standards Board* is satisfied that the equivalence is only partial, the *Bar Standards Board* may require you to arrange additional insurance or an additional guarantee to cover the elements which are not already covered by the insurance or guarantee contracted by you in accordance with the rules of your *home state*

Rules C79-C85 - Associations with others

Rules

rC79

You may not do anything, practising in *an association* , which you are otherwise prohibited from doing.

rC80

Where you are in *an association* on more than a one-off basis, you must notify the *Bar Standards Board* that you are in *an association* , and provide such details of that association as are required by the *Bar Standards Board* .

rC81

If you have a material commercial interest in an organisation to which you plan to refer a *client* , you must:

.1 tell the *client* in writing about your interest in that organisation before you refer the *client* ; and

.2 keep a record of your referrals to any such organisation for review by the *Bar Standards Board* on request.

rC82

If you have a material commercial interest in an organisation which is proposing to refer a matter to you, you must:

.1 tell the *client* in writing about your interest in that organisation before you accept such *instructions* ;

.2 make a clear agreement with that organisation or other public statement about how relevant issues, such as conflicts of interest, will be dealt with; and

.3 keep a record of referrals received from any such organisation for review by the *Bar Standards Board* on reasonable request.

rC83

If you refer a *client* to a third party which is not a *BSB authorised person* or an *authorised (non-BSB) person* , you must take reasonable steps to ensure that the *client* is not wrongly led to believe that the third party is subject to regulation by the *Bar Standards Board* or by another *approved regulator* .

rC84

You must not have a material commercial interest in any organisation which gives the impression of being, or may be reasonably perceived as being, subject to the regulation of the *Bar Standards Board* or of another *approved regulator* , in circumstances where it is not so regulated.

rC85

A material commercial interest for the purposes of Rules rC78 to rC84 is an interest which an objective observer with knowledge of the salient facts would reasonably consider might potentially influence your judgment.

rC85A

You must not act as a supervisor of an immigration adviser for the purposes of section 84(2) of the Immigration and Asylum Act 1999 (as amended) (IAA 1999) where the Office of the Immigration Services Commissioner has refused or cancelled the adviser’s registration, or where the adviser is:

1. disqualified in accordance with paragraph 4 of Schedule 6 to the IAA 1999; or

2. prohibited or suspended by the First-tier Tribunal (Immigration Services); or

3. permanently prohibited from practising by an *approved regulator* , or a designated professional body under the IAA 1999, pursuant to its powers as such, and removed from the relevant register; or

4. currently suspended from practising by an *approved regulator* , or a designated professional body under the IAA 1999, pursuant to its powers as such.

Guidance to Rules C79-C85 (and CD5)

Guidance

gC118

You may not use an association with the purpose of, or in order to evade rules which would otherwise apply to you. You may not do anything, practising in *an association* , which you are individually prohibited from doing.

gC119

You will bring yourself and your profession into disrepute (CD5) if you are personally involved in arrangements which breach the restrictions imposed by the Legal Services Act 2007 on those who can provide reserved legal activities. For example, you must not remain a member of any “ProcureCo” arrangement where you know or are reckless as to whether the ProcureCo is itself carrying on reserved legal activities without a licence or where you have failed to take reasonable steps to ensure this is not so before joining or continuing your involvement with the Procureco.

gC120

The purpose of Rules rC79 to rC85 is to ensure that *clients* and members of the public are not confused by any such association. In particular, the public should be clear who is responsible for doing work, and about the extent to which that person is regulated in doing it: see Rules rC79-85.

gC121

This *Handbook* applies in full whether or not you are practising in an association. You are particularly reminded of the need to ensure that, notwithstanding any such association, you continue to comply with Rules C8, C9, C10, C12, C15, C19, C20, C28, C73, C75, C79, C82 and C86 (and, where relevant C80, C81, C83, C74 and C110).

gC122

References to “organisation” in Rules rC81 and C82 include *BSB entities* and *authorised (non-BSB) bodies* , as well as non-authorised bodies. So, if you have an interest, as owner, or manager, in any such body, your relationship with any such organisation is caught by these rules.

gC123

These rules do not permit you to accept *instructions* from a third party in any case where that would give rise to a potential conflict of interest contrary to CD2 or any relevant part of Rule rC21.

gC124

You should only refer a *client* to an organisation in which you have a material commercial interest if it is in the *client’s* best interest to be referred to that organisation. This is one aspect of what is required of you by CD2. Your obligations of honesty and integrity, in CD3, require you to be open with *clients* about any interest you have in, or arrangement you have with, any organisation to which you properly refer the *client* , or from which the *client* is referred to you. It is inherently unlikely that a general referral arrangement obliging you (whether or not you have an interest in such organisation) to refer to that organisation, without the option to refer elsewhere if the *client’s* circumstances make that more appropriate, could be justified as being in the best interests of each individual *client* (CD2) and it may well also be contrary to your obligations of honesty and integrity (CD3) and compromise your independence (CD4).

gC125

The *Bar Standards Board* may require you to provide copies of any protocols that you may have in order to ensure compliance with these rules.

gC126

Your obligations under CD5 require you not to act in *an association* with a person where, merely by being associated with such person, you may reasonably be considered as bringing the profession into disrepute or otherwise diminishing the trust that the public places in you and your profession.

Rule C86 - Outsourcing

Rules

rC86

Where you outsource to a third party any support services that are critical to the delivery of any *legal services* in respect of which you are instructed:

.1 any outsourcing does not alter your obligations to your *client* ;

.2 you remain responsible for compliance with your obligations under this *Handbook* in respect of the *legal services* ;

.3 you must ensure that such outsourcing is subject to contractual arrangements which ensure that such third party:

.a is subject to confidentiality obligations similar to the confidentiality obligations placed on you in accordance with this *Handbook* ;

.b complies with any other obligations set out in this Code of Conduct which may be relevant to or affected by such outsourcing;

.c processes any personal data in accordance with your *instructions* ;

.d is required to allow the *Bar Standards Board* or its agent to obtain information from, inspect the records (including electronic records) of, or enter the premises of such third party in relation to the outsourced activities or functions, and;

.e processes any personal data in accordance with those arrangements, and for the avoidance of doubt, those arrangements are compliant with any relevant data protection laws.

Guidance to Rule C86

Guidance

gC127

Rule C86 applies to the outsourcing of clerking services.

gC128

Rule C86 does not apply where the *client* enters into a separate agreement with the third party for the services in question.

gC129

Rule C86 does not apply where you are instructing a *pupil* or a *devil* to undertake work on your behalf. Instead rC15 will apply in those circumstances.

gC130

Removed from 11 June 2018.

Rules C87-C88 - Administration and conduct of self-employed practice

Rules

rC87

You must take reasonable steps to ensure that:

.1 your practice is efficiently and properly administered having regard to the nature of your practice; and

.2 proper records of your practice are kept.

When deciding how long records need to be kept, you will need to take into consideration various requirements, such as those of this *Handbook* (see, for example, Rules C108, C129 and C141), any relevant data protection law and HM Revenue and Customs. You may want to consider drawing up a Records Keeping policy to ensure that you have identified the specific compliance and other needs of your *practice* .

rC88

You must:

.1 ensure that adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:

.a your fees have been paid; and

.b any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;

.2 provide your *client* with such records or details of the work you have done as may reasonably be required for the purposes of verifying your charges.

Rules C89-C90 - Administration of chambers

Rules

rC89

Taking into account the provisions of Rule rC90, you must take reasonable steps to ensure that:

.1 your *chambers* is administered competently and efficiently;

.2 your *chambers* has appointed an individual or individuals to liaise with the *Bar Standards Board* in respect of any regulatory requirements and has notified the *Bar Standards Board* ;

.3 *barristers* in your *chambers* do not employ any person who has been disqualified from being employed by an authorised person (i) by the *Bar Standards Board* and included on the *Bar Standards Board's* list of disqualified persons, or (ii) by another approved regulator or *licensing authority* pursuant to its powers as such, and such disqualification is continuing in force. This shall not apply where the *barrister* obtains the express written consent of the *Bar Standards Board* to the appointment of a person who has been disqualified before they are appointed;

.4 proper arrangements are made in your *chambers* for dealing with *pupils* and pupillage;

.5 proper arrangements are made in *chambers* for the management of conflicts of interest and for ensuring the confidentiality of *clients'* affairs;

.6 all non-authorised persons working in your *chambers* (irrespective of the identity of their *employer*):

.a are competent to carry out their duties;

.b carry out their duties in a correct and efficient manner;

.c are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;

.d do nothing which causes or substantially contributes to a breach of this *Handbook* by any *BSB authorised individual* or *authorised (non-BSB) individual* within *chambers* ,

and all *complaints* against them are dealt with in accordance with the complaints rules;

.7 all *registered European lawyers* and all *foreign lawyers* in your *chambers* comply with this *Handbook* insofar as applicable to them;

.8 appropriate risk management procedures are in place and are being complied with; and

.9 there are systems in place to check that:

.a all persons practising from your *chambers* whether they are members of the *chambers* or not have insurance in place in accordance with Rules rC75 to rC77 above (other than any *pupil* who is covered under their *pupil supervisor's* insurance); and

.b every *BSB authorised individual* practising from your *chambers* has a current *practising certificate* and every other *authorised (non-BSB) individual* providing *reserved legal activities* is currently authorised by their *Approved Regulator* .

rC90

For the purposes of Rule rC89 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

.1 the arrangements in place in your *chambers* for the management of *chambers* ;

.2 any role which you play in those arrangements; and

.3 the independence of individual members of *chambers* from one another.

Guidance to Rules C89-C90 Guidance

gC131

Members of *chambers* are not in partnership but are independent of one another and are not responsible for the conduct of other members. However, each individual member of *chambers* is responsible for their own conduct and the constitution of *chambers* enables, or should enable, each individual member of *chambers* to take steps to terminate another person's membership in specified circumstances. Rule C89 does not require you to sever connection with a member of *chambers* solely because to your knowledge they are found to breach this *Handbook* , provided that they are not disbarred and comply with such sanctions as may be imposed for such breach; however, your chambers *constitution* should be drafted so as to allow you to exclude from chambers a member whose conduct is reasonably considered such as to diminish the trust the public places in you and your profession and you should take such steps as are reasonably available to you under your constitution to exclude any such member.

gC132

The *Supervision Team* of the *Bar Standards Board* reviews the key controls that are in place in *chambers* and *BSB entities* to manage the risks in relation to key processes. These key processes are shown in guidance that is published on the Supervision section of the *Bar Standards Board's* website. You should retain relevant policies, procedures, monitoring reports and other records of your practice so that they are available to view if a Supervision visit is arranged.

gC133

Your duty under Rule rC89.4 to have proper arrangements in place for dealing with pupils includes ensuring:

.1 that all *pupillage* vacancies are advertised in the manner set out in the Bar Qualification Manual;

.2 that arrangements are made for the funding of *pupils* by *chambers* which comply with the Pupillage Funding Rules (rC113 to rC118); and

.3 the chambers meets the mandatory requirements set out in the *Authorisation Framework* and complies with conditions imposed upon its authorisation as an *Authorised Education and Training Organisation (AETO)* .

gC134

Your duty under Rule rC89.5 to have proper arrangements in place for ensuring the confidentiality of each *client's* affairs includes:

.1 putting in place and enforcing adequate procedures for the purpose of protecting confidential information;

.2 complying with data protection obligations imposed by law;

.3 taking reasonable steps to ensure that anyone who has access to such information or data in the course of their work for you complies with these obligations; and .4 taking into account any further guidance on confidentiality which is available on the Bar Standards Board's website.

gC135

In order to ensure compliance with Rule rC89.6.d, you may want to consider incorporating an obligation along these lines in all new employment contracts entered into after the date of this *Handbook* .

gC136

For further guidance on what may constitute appropriate risk management procedures in accordance with Rule rC89.8 please refer to the further guidance published by the *Bar Standards Board* which can be accessed on the Supervision section of its website.

gC137

Rule rC90.3 means that you should consider, in particular, the obligation of each individual members of *chambers* to act in the best interests of their own *client* (CD2) and to preserve the confidentiality of their own *client's* affairs (CD6), in circumstances where other members of *chambers* are free (and, indeed, may be obliged by the cab rank rule (rC29) to act for *clients* with conflicting interests.

Rules C91-C95 - Administration of BSB entities

Rules

Duties of the BSB entity, authorised (non-BSB) individuals and managers of BSB entities

rC91

If you are a *BSB entity* , you must ensure that (or, if you are a *BSB regulated individual* working within such *BSB entity* you must use reasonable endeavours (taking into account the provisions of Rule rC95) to procure that the *BSB entity* ensures that):

.1 the *BSB entity* has at all times a person appointed by it to act as its *HOLP* , who shall be a *manager* ;

.2 the *BSB entity* has at all times a person appointed by it to act as its *HOFA* ; and

.3 subject to rC92, the *BSB entity* does not appoint any individual to act as a *HOLP* or a *HOFA* , or to be a *manager* or employee of that *BSB entity* , in circumstances where that individual has been disqualified from being appointed to act as a *HOLP* or a *HOFA* or from being a *manager* or employed by an *authorised person* (as appropriate) (i) by the *Bar Standards Board* and included on the *Bar Standards Board's* list of disqualified persons, or (ii) by another *Approved Regulator* or *licensing authority* pursuant to its powers as such and such disqualification is continuing in force.

rC92

Rule rC91.3 shall not apply where the *BSB entity* obtains the express written consent of the *Bar Standards Board* to the appointment of a person who has been disqualified before they are appointed.

rC93

If you are a *manager* or employee, you must not do anything to cause (or substantially to contribute to) a breach by the *BSB entity* or by any *BSB authorised individual* in it of their duties under this *Handbook* .

rC94

If you are a *BSB entity* , you must at all times have (or, if you are a *BSB regulated individual* working in such *BSB entity* you must use reasonable endeavours (taking into account the provisions of Rule rC95 to procure that the *BSB entity* shall have) suitable arrangements to ensure that:

.1 the *managers* and other *BSB regulated individuals* working as employees of the *BSB entity* comply with the *Bar Standards Board's* regulatory arrangements as they apply to them, as required under section 176 of the LSA;

.2 all employees:

.a are competent to carry out their duties;

.b carry out their duties in a correct and efficient manner;

.c are made clearly aware of such provisions of this *Handbook* as may affect or be relevant to the performance of their duties;

.d do nothing which causes or substantially contributes to, a breach of this *Handbook* by the *BSB entity* or any of the *BSB regulated individuals* employed by it; and

.e co-operate with the *Bar Standards Board* in the exercise of its regulatory functions, in particular in relation to any notice under rC64 or any request under rC70;

.3 the *BSB entity* is administered in a correct and efficient manner, is properly staffed and keeps proper records of its practice;

.4 *pupils* and *pupillages* are dealt with properly;

.5 conflicts of interest are managed appropriately and that the confidentiality of *clients'* affairs is maintained at all times;

.6 all *registered European lawyers* and all *foreign lawyers* employed by or working for you comply with this *Handbook* insofar as it applies to them;

.7 every *BSB authorised individual* employed by, or working for, the *BSB entity* has a current *practising certificate* (and where a *barrister* is working as an *unregistered barrister* , there must be appropriate systems to ensure that they are complying with the provisions of this *Handbook* which apply to *unregistered barristers*) and every other *authorised (non-BSB) individual* providing *reserved legal activities* is currently authorised by their *Approved Regulator* ; and

.8 adequate records supporting the fees charged or claimed in a case are kept at least until the later of the following:

.a your fees have been paid; and

.b any determination or assessment of costs in the case has been completed and the time for lodging an appeal against that assessment or determination has expired without any such appeal being lodged, or any such appeal has been finally determined;

.9 your *client* is provided with such records or details of the work you have done as may reasonably be required for the purpose of verifying your charges;

.10 appropriate procedures are in place requiring all *managers* and employees to work with the *HOLP* with a view to ensuring that the *HOLP* is able to comply with their obligations under Rule rC96;

.11 appropriate risk management procedures are in place and are being complied with; and

.12 appropriate financial management procedures are in place and are being complied with.

rC95

For the purposes of Rule rC91 and rC94 the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

.1 the arrangements in place in your *BSB entity* for the management of it; and

.2 any role which you play in those arrangements.

Gudiance to Rule C94 Guidance

gC138

Section 90 of the *LSA* places obligations on *non-authorised individuals* who are employees and *managers* of *licensed bodies* , as well as on *non-authorised individuals* who hold an ownership interest in such a *licensed body* (whether by means of a shareholding or voting powers in respect of the same) to do nothing which causes, or substantially contributes to a breach by the *licensed body* or by its employees or *managers* , of this *Handbook* . Rule C94 extends this obligation to *BSB entities* other than *licensed bodies* .

gC139

Your duty under Rule rC94.4 to have proper arrangements for dealing with pupils includes ensuring:

.1 that all *pupillage* vacancies are advertised in the manner manner set out in the Bar Qualification Manual;

.2 that arrangements are made for the funding of *pupils* by the *BSB entity* which comply with the Pupillage Funding Rules (rC113 to rC118); and

.3 the *BSB entity* meets the mandatory requirements set out in the *Authorisation Framework* and complies with conditions imposed upon its authorisation as an *Authorised Education and Training Organisation (AETO)* .

Rules C96-C97 - Duties of the HOLP and HOFA Rules

rC96

If you are a *HOLP* , in addition to complying with the more general duties placed on the *BSB entity* and on the *BSB regulated individuals* employed by it, you must:

.1 take all reasonable steps to ensure compliance with the terms of your *BSB entity's* authorisation;

.2 take all reasonable steps to ensure that the *BSB entity* and its employees and *managers* comply with the duties imposed by section 176 of the LSA;

.3 take all reasonable steps to ensure that *non-authorised individuals* subject to the duty imposed by section 90 of the LSA comply with that duty;

.4 keep a record of all incidents of non-compliance with the Core Duties and this *Handbook* of which you become aware and to report such incidents to the *Bar Standards Board* as soon as reasonably practicable (where such failures are material in nature) or otherwise on request by the *Bar Standards Board* or during the next monitoring visit or review by the *Bar Standards Board* .

rC97

If you are a *HOFA* , in addition to complying with the more general duties placed on the *BSB entity* and its *BSB regulated individuals* , you must ensure compliance with Rules rC73 and rC74.

Rule C98 - New managers, HOLPs and HOFAs Rules

rC98

A *BSB entity* must not take on a new *manager* , *HOLP* or *HOFA* without first submitting an application to the *Bar Standards Board* for approval in accordance with the requirements of Section S.D.

Part 2 - D. Rules Applying to Particular Groups of Regulated Persons Rules

Part 2 - D1. Self-employed barristers, chambers and BSB entities Rules

Outcomes C26-C29 Outcomes

oC26

Clients are provided with appropriate information about redress, know that they can make a *complaint* if dissatisfied, and know how to do so.

oC27

Complaints are dealt with promptly and the *client* is kept informed about the process.

oC28

Self-employed barristers , *chambers* and *BSB entities* run their practices without *discrimination* .

oC29

Pupils are treated fairly and paid in accordance with the Pupillage Funding Rules.

Rules C99-C109 - Complaints rules Rules

Provision of information

rC99

You must notify *clients* in writing when you are *instructed* , or, if that is if not practicable, at the next appropriate opportunity:

.1 of their right to make a *complaint* , including their right to complain to the *Legal Ombudsman* (if they have such a right), how, and to whom, they can complain, and of any time limits for making a *complaint* ;

.2 if you are doing referral work, that the lay *client* may complain directly to *chambers* or the *BSB entity* without going through *solicitors* .

rC100

If you are doing public access, or licensed access work using an *intermediary* , the *intermediary* must similarly be informed.

rC101

If you are doing referral work, you do not need to give a *professional client* the information set out in Rules rC99.1 and rC99.2, in a separate, specific letter. It is enough to provide it in the ordinary terms of reference letter (or equivalent letter) which you send when you accept *instructions* in accordance with Rule rC21.

rC102

If you do not send a letter of engagement to a lay *client* in which this information can be included, a specific letter must be sent to them giving them the information set out at Rules rC99.1 and rC99.2.

rC103

Each website of *self-employed barristers* , *chambers* and *BSB entities* must display:

.1 on the homepage, the text “regulated by the Bar Standards Board” (for sole practitioners) or “barristers regulated by the Bar Standards Board” (for *chambers*) or ”authorised and regulated by the Bar Standards Board” (for *BSB entities*); and

.2 in a sufficiently accessible and prominent place:

.a information about their complaints procedure, any right to complain to the Legal Ombudsman, how to complain to the Legal Ombudsman and any time limits for making a complaint;

.b a link to the decision data on the Legal Ombudsman’s website; and

.c a link to the Barristers’ Register on the BSB’s website.

.3 All e-mail and letterheads from *self-employed barristers* and *BSB entities* , their *managers* and employees must state “regulated by the Bar Standards Board” (for *self-employed barristers*) or “authorised and regulated by the Bar Standards Board” (for *BSB entities*).

.4 *Self-employed barristers* , *chambers* and *BSB entities* must have regard to guidance published from time to time by the *Bar Standards Board* in relation to redress transparency.

Response to complaints

rC104

All *complaints* must be acknowledged promptly. When you acknowledge a *complaint* , you must give the complainant:

.1 the name of the person who will deal with the *complaint* and a description of that person’s role in *chambers* or in the *BSB entity* (as appropriate);

.2 a copy of the *chambers’* complaints procedure or the *BSB entity’s* Complaints Procedure (as appropriate);

.3 the date by which the complainant will next hear from *chambers* or the *BSB entity* (as appropriate).

rC105

When *chambers* or a *BSB entity* (as appropriate) has dealt with the *complaint* , complainants must be told in writing of their right to complain to the *Legal Ombudsman* (where applicable), of the time limit for doing so, and how to contact them.

Documents and record keeping

rC106

All communications and documents relating to complaints must be kept confidential. They must be disclosed only so far as is necessary for:

.1 the investigation and resolution of the *complaint* ;

.2 internal review in order to improve *chambers'* or the *BSB entity's* (as appropriate) handling of complaints;

.3 complying with requests from the *Bar Standards Board* in the exercise of its monitoring and/or auditing functions.

rC107

The disclosure to the *Bar Standards Board* of internal documents relating to the handling of the *complaint* (such as the minutes of any meeting held to discuss a particular *complaint*) for the further resolution or investigation of the *complaint* is not required.

rC108

A record must be kept of each *complaint* , of all steps taken in response to it, and of the outcome of the *complaint* . Copies of all correspondence, including electronic mail, and all other documents generated in response to the *complaint* must also be kept. The records and copies should be kept for 6 years from resolution of the *complaint* .

rC109

The person responsible for the administration of the procedure must report at least annually to either:

.1 the *HOLP* ; or

.2 the appropriate member/committee of *chambers* ,

on the number of *complaints* received, on the subject areas of the *complaints* and on the outcomes. The *complaints* should be reviewed for trends and possible training issues.

Rules C110-C112 - Equality and diversity

Rules

rC110

You must take reasonable steps to ensure that in relation to your *chambers* or *BSB entity* :

.1 there is in force a written statement of policy on equality and diversity; and

.2 there is in force a written plan implementing that policy;

.3 the following requirements are complied with:

Equality and Diversity Officer

.a *chambers* or *BSB entity* has at least one *Equality and Diversity Officer* ;

Training

.b removed.

.c save in exceptional circumstances, every member of all selection panels must be trained in fair recruitment and selection processes;

Fair and objective criteria

.d recruitment and selection processes use objective and fair criteria;

Equality monitoring

.e your *chambers* or *BSB entity* :

.i conducts a regular review of its policy on equality and diversity and of its implementation in order to ensure that it complies with the requirements of this Rule rC110; and

.ii takes any appropriate remedial action identified in the light of that review;

.f subject to Rule rC110.3.h *chambers* or *BSB entity* regularly reviews:

.i the number and percentages of its *workforce* from different groups; and

.ii applications to become a member of its *workforce* ; and

.iii in the case of *chambers* , the *allocation of unassigned work* ,

.g the reviews referred to in Rule rC110.3.f above include:

.i collecting and analysing data broken down by race, disability and gender;

.ii investigating the reasons for any disparities in that data; and

.iii taking appropriate remedial action;

.h the requirement to collect the information referred to in Rule C110.3.g does not apply to the extent that the people referred to in Rule rC110.3.f.i and Rule rC110.3.f.ii refuse to disclose it.

Fair access to work

.i if you are a *self-employed barrister* , the affairs of your *chambers* are conducted in a manner which is fair and equitable for all members of *chambers* , *pupils* and/or employees (as appropriate). This includes, but is not limited to, the fair distribution of work opportunities among *pupils* and members of *chambers* ;

Harassment

.j *chambers* or *BSB entity* has a written anti- *harassment* policy which, as a minimum:

.i states that *harassment* will not be tolerated or condoned and that *managers* , employees, members of *chambers* , *pupils* and others temporarily in your *chambers* or *BSB entity* such as mini-pupils have a right to complain if it occurs;

.ii sets out how the policy will be communicated;

.iii sets out the procedure for dealing with *complaints* of *harassment* ;

Parental leave

.k *chambers* has a *parental leave* policy which must cover as a minimum:

.i the right of a member of *chambers* to take *parental leave* ;

.ii the right of a member of *chambers* to return to *chambers* after a specified period, or number of separate periods, of *parental leave* , provided the total leave taken does not exceed a specified maximum duration (which must be at least one year);

.iii a provision that enables *parental leave* to be taken flexibly and allows the member of *chambers* to maintain their *practice* while on *parental leave* , including the ability to carry out fee earning work while on *parental leave* without giving up other *parental leave* rights;

.iv the extent to which a member of chambers is or is not required to contribute to chambers' rent and expenses during parental leave;

.v the method of calculation of any waiver, reduction or reimbursement of *chambers'* rent and expenses during *parental leave* ;

.vi where any element of rent is paid on a flat rate basis, the *chambers'* policy must as a minimum provide that *chambers* will offer members taking a period of *parental leave* a minimum of 6 months free of *chambers'* rent;

.vii the procedure for dealing with grievances under the policy;

.viii *chambers'* commitment to regularly review the effectiveness of the policy;

Flexible working

.l *chambers* or *BSB entity* has a flexible working policy which covers the right of a member of *chambers* , *manager* or employee (as the case may be) to take a career break, to work part-time, to work flexible hours, or to work from home, so as to enable them to manage their family responsibilities or disability without giving up work;

Reasonable adjustments policy

.m *chambers* or *BSB entity* has a reasonable adjustments policy aimed at supporting disabled *clients* , its *workforce* and others including temporary visitors;

Appointment of Diversity Data Officer

.n *chambers* or *BSB entity* has a Diversity Data Officer;

.o *chambers* or *BSB entity* must provide the name and contact details of the Diversity Data Officer to the *Bar Standards Board* and must notify the *Bar Standards Board* of any change to the identity of the Diversity Data Officer, as soon as reasonably practicable;

Responsibilities of Diversity Data Officer

.p The Diversity Data Officer shall comply with the requirements in relation to the collection, processing and publication of *diversity data* set out in the paragraphs rC110.3.q to .t below;

Collection and publication of diversity data

.q The Diversity Data Officer shall invite members of the *workforce* to provide *diversity data* in respect of themselves to the Diversity Data Officer using the model questionnaire in Section 7 of the BSB's Supporting Information on the BSB Handbook Equality Rules, which is available on the BSB's website;

.r The Diversity Data Officer shall ensure that such data is anonymised and that an accurate and updated summary of it is published on *chambers'* or *BSB entity's* website every three years. If *chambers* or the *BSB entity* does not have a website, the Diversity Data Officer shall make such data available to the public on request;

.s The published summary of anonymised data shall:

.i removed;

.ii exclude diversity data in relation to any characteristic where there is a real risk that individuals could be identified, unless all affected individuals consent; and

.iii subject to the foregoing, include anonymised data in relation to each characteristic, categorised by reference to the job title and seniority of the *workforce* .

.t The Diversity Data Officer shall:

.i ensure that *chambers* or *BSB entity* has in place a written policy statement on the collection, publication, retention and destruction of *diversity data* which shall include an explanation that the provision of *diversity data* is voluntary;

.ii notify the *workforce* of the contents of the written policy statement; and

.iii ask for explicit consent from the *workforce* to the provision and processing of their *diversity data* in accordance with the written policy statement and these rules, in advance of collecting their *diversity data* .

rC111

For the purposes of Rule rC110 above, the steps which it is reasonable for you to take will depend on all the circumstances, which include, but are not limited to:

.1 the arrangements in place in your *chambers* or *BSB entity* for the management of *chambers* or the *BSB entity* ; and

.2 any role which you play in those arrangements.

rC112

For the purposes Rule rC110 above "allocation of unassigned work" includes, but is not limited to work allocated to:

.1 *pupils* ;

.2 *barristers* of fewer than four *years' standing* ; and

.3 *barristers* returning from *parental leave* ;

Guidance to Rules C110-C112 Guidance

gC140

Rule rC110 places a personal obligation on all *self-employed barristers* , however they practise, and on the *managers* of *BSB entities* , as well as on the entity itself, to take reasonable steps to ensure that they have appropriate policies which are enforced.

gC141

In relation to Rule rC110, if you are a Head of *chambers* or a *HOLP* it is likely to be reasonable for you to ensure that you have the policies required by Rule rC110, that an *Equality and Diversity Officer* is appointed to monitor compliance, and that any breaches are appropriately punished. If you are a member of a *chambers* you are expected to use the means available to you under your constitution to take reasonable steps to ensure there are policies and that they are enforced. If you are a *manager* of a *BSB entity* , you are expected to take reasonable steps to ensure that there are policies and that they are enforced.

gC142

For the purpose of Rule rC110 training means any course of study covering all the following areas:

a) Fair and effective selection & avoiding unconscious bias

b) Attraction and advertising

c) Application processes

d) Shortlisting skills

e) Interviewing skills

f) Assessment and making a selection decision

g) Monitoring and evaluation

gC143

Training should ideally be undertaken via classroom sessions. However, it is also permissible for training to be undertaken in the following ways: online sessions, private study of relevant materials such as the Bar Council's Fair Recruitment Guide and completion of CPD covering fair recruitment and selection processes.

gC144

The purpose of Rule rC110.3.d is to ensure that applicants with relevant characteristics are not refused employment because of such characteristics. In order to ensure compliance with this rule, therefore, it is anticipated that the *Equality and Diversity Officer* will compile and retain data about the relevant characteristics of all applicants for the purposes of reviewing the data in order to see whether there are any apparent disparities in recruitment.

gC145

For the purpose of Rule rC110 "regular review", means as often as is necessary in order to ensure effective monitoring and review takes place. In respect of data on pupils it is likely to be considered reasonable that "regularly" should mean annually. In respect of managers of a *BSB entity* or tenants, it is likely to be considered reasonable that "regularly" should mean every three years unless the numbers change to such a degree as to make more frequent monitoring appropriate.

gC146

For the purposes of Rule rC110, "remedial action" means any action aimed at removing or reducing the disadvantage experienced by particular relevant groups. Remedial action cannot, however, include positive discrimination in favour of members of relevant groups.

gC147

Rule rC110.3.f.iii places an obligation on *practices* to take reasonable steps to ensure the work opportunities are shared fairly among its *workforce* . In the case of *chambers* , this obligation includes work which has not been allocated by the solicitor to a named *barrister* . It includes fairness in presenting to solicitors names for consideration and fairness in opportunities to attract future named work (for example, fairness in arrangements for marketing). These obligations apply even if individual members of *chambers* incorporate their practices, or use a "ProcureCo" to obtain or distribute work, as long as their relationship between each other remains one of independent service providers competing for the same work while sharing clerking arrangements and costs.

gC148

a) Rule rC110.3.k applies to all members of *chambers* , irrespective of whether their partner or spouse takes *parental leave* .

b) A flexible policy might include for example: keeping in touch (KIT) days; returns to practice in between periods of *parental leave* ; or allowing a carer to practise part time.

c) Any periods of leave/return should be arranged between *chambers* and members taking *parental leave* in a way that is mutually convenient.

gC149

Rule rC110.3.k.vi sets out the minimum requirements which must be included in a *parental leave* policy if any element of rent is paid on a flat rate. If rent is paid on any other basis, then the policy should be drafted so as not to put any *self-employed barrister* in a worse position than they would have been in if any element of the rent were paid on a flat rate.

gC150

For the purposes of Rule rC110 above investigation means, considering the reasons for disparities in data such as:

.1 Under or overrepresentation of particular groups e.g. men, women, different ethnic groups or disabled people

.2 Absence of particular groups e.g. men, women, different ethnic groups or disabled people

3 Success rates of particular groups

.4 In the case of *chambers* , over or under allocation of unassigned work to particular groups

gC151

These rules are supplemented by the BSB's Supporting Information on the BSB Handbook Equality Rules ("the Supporting Information") which is available on the BSB's website. These describe the legal and regulatory requirements relating to equality and diversity and provide guidance on how they should be applied in *chambers* and in *BSB entities* . If you are a *self-employed barrister* , a *BSB entity* , or a *manager* of a *BSB entity* , you should seek to comply with the Supporting Information as well as with the rules as set out above.

gC152

The Supporting Information is also relevant to all *pupil supervisors* and *AETOs* . *AETOs* will be expected to show how they comply with the Supporting Information as a condition of authorisation.

gC153

Although the Supporting Information does not apply directly to *BSB authorised persons* working as *employed barristers (non-authorised bodies)* or *employed barristers (authorised non-BSB body)* , they provide helpful guidance which you are encouraged to take into account in your practice.

Rules C113-C118 - Pupillage funding

Rules

Funding

rC113

The members of a set of *chambers* or the *BSB entity* must pay to each non-practising *pupil* (as appropriate), by the end of each month of the non-practising period of their *pupillage* no less than:

.1 the *specified amount* ; and

.2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:

.3 travel for the purposes of their *pupillage* during that month; and

.4 attendance during that month at courses which they are required to attend as part of their *pupillage* .

rC114

The members of a set of *chambers* , or the *BSB entity* , must pay to each practising *pupil* by the end of each month of the practising period of their *pupillage* no less than:

.1 the *specified amount* ; plus

.2 such further sum as may be necessary to reimburse expenses reasonably incurred by the *pupil* on:

.a travel for the purposes of their *pupillage* during that month; and

.b attendance during that month at courses which they are required to attend as part of their *pupillage* ; less

c such amount, if any, as the *pupil* may receive during that month from their *practice* as a *barrister* ; and less

.d such amounts, if any, as the *pupil* may have received during the preceding months of their practising *pupillage* from their *practice* as a *barrister* , save to the extent that the amount paid to the *pupil* in respect of any such month was less than the total of the sums provided for in sub-paragraphs rC114.2.a and .b above.

rC115

The members of a set of *chambers* , or the *BSB entity* , may not seek or accept repayment from a *chambers pupil* or an entity *pupil* of any of the sums required to be paid under Rules rC113 and rC114 above, whether before or after they cease to be a chambers pupil or an entity *pupil* , save in the case of misconduct on their part.

rC116

If you are a *self-employed barrister* , you must pay any *chambers pupil* for any work done for you which because of its value to you warrants payment, unless the *pupil* is receiving an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work.

Application

rC117

Removed.

rC118

For the purposes of these requirements:

.1 " *chambers pupil* " means, in respect of any set of *chambers* , a *pupil* doing the non-practising or practising period of *pupillage* with a *pupil supervisor* , or *pupil supervisors* , who is or are a member, or members, of that set of *chambers* ;

.2 "entity *pupil* " means, in respect of a *BSB entity* a *pupil* doing the non-practising or practising period of *pupillage* with a *pupil supervisor* or *pupil supervisors* who are *managers* or employees of such *BSB entity* ;

.3 "non-practising *pupil* " means a *chambers pupil* or an entity *pupil* doing the non-practising period of *pupillage* ;

.4 "practising *pupil* " means a *chambers pupil* or an entity *pupil* doing the practising period of *pupillage* ;

.5 "month" means calendar month starting on the same day of the month as that on which the *pupil* began the non-practising, or practising, period *pupillage* , as the case may be;

.6 any payment made to a *pupil* by a *barrister* pursuant to Rule rC115 above shall constitute an amount received by the *pupil* from their *practice* as a *barrister* ; and

.7 the following travel by a *pupil* shall not constitute travel for the purposes of their *pupillage* :

.a travel between their home and *chambers* or, for an entity *pupil* , their place of work; and

.b travel for the purposes of their *practice* as a *barrister* .

Part 2 - D2. Barristers undertaking public access and licensed access work Rules

Outcomes C30-C32 Outcomes

oC30

Barristers undertaking public access or licensed access work have the necessary skills and experience required to do work on that basis.

oC31

Barristers undertaking public access or licensed access work maintain appropriate records in respect of such work.

oC32

Clients only instruct via public access when it is in their interests to do so and they fully understand what is expected of them.

Rules C119-C131 - Public access rules

Rules

rC119

These rules apply to *barristers* instructed by or on behalf of a lay *client* (other than a *licensed access client*) who has not also instructed a *solicitor* or other *professional client* (public access clients). Guidance on public access rules is available on the *Bar Standards Board* website.

rC120

Before accepting any *public access instructions* from or on behalf of a *public access client* , you must:

.1 be properly qualified by having been issued with a full *practising certificate* , by having satisfactorily completed the appropriate public access training, and by registering with the *Bar Standards Board* as a public access practitioner;

.2 Removed from 1 February 2018.

.3 take such steps as are reasonably necessary to ensure that the *client* is able to make an informed decision about whether to apply for legal aid or whether to proceed with public access.

rC121

As a barrister with less than three *years' standing* who has completed the necessary training you must have a *barrister* who is a qualified person within Rule S22 and has registered with the *Bar Standards Board* as a public access practitioner readily available to provide guidance to you.

rC122

You may not accept *instructions* from or on behalf of a public access *client* if in all the circumstances, it would be in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client* .

rC123

In any case where you are not prohibited from accepting *instructions* , you must at all times consider the developing circumstances of the case, and whether at any stage it is in the best interests of the public access *client* or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client* . If, after accepting *instructions* from a public access *client* you form the view that circumstances are such that it would be in the best interests of the public access *client* , or in the interests of justice for the public access *client* to instruct a *solicitor* or other *professional client* you must:

.1 inform the public access *client* of your view; and

.2 withdraw from the case in accordance with the provisions of Rules rC25 and rC26 and associated guidance unless the *client* instructs a *solicitor* or other *professional client* to act in the case.

rC124

You must have regard to guidance published from time to time by the *Bar Standards Board* in considering whether to accept and in carrying out any public access *instructions* .

rC125

Having accepted *public access instructions* , you must forthwith notify your public access *client* in writing, and in clear and readily understandable terms, of:

.1 the work which you have agreed to perform;

.2 the fact that in performing your work you will be subject to the requirements of Parts 2 and 3 of this *Handbook* and, in particular, Rules rC25 and rC26;

.3 unless authorised to *conduct litigation* by the *Bar Standards Board* , the fact that you cannot be expected to perform the functions of a *solicitor* or other *person* who is authorised to *conduct litigation* and in particular to fulfil obligations arising out of or related to the *conduct of litigation* ;

.4 the fact that you are self-employed, are not employed by a *regulated entity* and (subject to Rule S26) do not undertake the management, administration or general conduct of a client's affairs;

.5 in any case where you have been instructed by an *intermediary* :

.a the fact that you are independent of and have no liability for the *intermediary* ; and

.b the fact that the *intermediary* is the agent of the lay *client* and not your agent;

.6 the fact that you may be prevented from completing the work by reason of your professional duties or conflicting professional obligations, and what the *client* can expect of you in such a situation;

.7 the fees which you propose to charge for that work, or the basis on which your fee will be calculated;

.8 your contact arrangements; and

.9 the information about your complaints procedure required by D1.1 of this Part 2.

rC126

Save in exceptional circumstances, you will have complied with Rule rC125 above if you have written promptly to the public access *client* in the terms of the model letter provided on the *Bar Standards Board* website.

rC127

In any case where you have been instructed by an *intermediary* , you must give the notice required by Rule C125 above both:

.1 directly to the public access *client* ; and

.2 to the *intermediary* .

rC128

Having accepted *public access instructions* , you must keep a case record which sets out:

.1 the date of receipt of the *instructions* , the name of the lay *client* , the name of the case, and any requirements of the *client* as to time limits;

.2 the date on which the *instructions* were accepted;

.3 the dates of subsequent *instructions* , of the despatch of advices and other written work, of conferences and of telephone conversations; and

.4 when agreed, the fee.

rC129

Having accepted *public access instructions* , you must either yourself retain or take reasonable steps to ensure that the lay *client* will retain for at least seven years after the date of the last item of work done:

.1 copies of all *instructions* (including supplemental *instructions*);

.2 copies of all advices given and documents drafted or approved;

.3 the originals, copies or a list of all documents enclosed with any *instructions* ; and

.4 notes of all conferences and of all advice given on the telephone.

rC130

Removed from 1 February 2018.

rC131

Save where otherwise agreed:

.1 you shall be entitled to copy all documents received from your lay *client* , and to retain such copies;

.2 you shall return all documents received from your lay *client* on demand, whether or not you have been paid for any work done for the lay *client* ; and

.3 you shall not be required to deliver to your lay *client* any documents drafted by you in advance of receiving payment from the lay *client* for all work done for that *client* .

.4 Removed from 1 February 2018.

Rules C132-C141 - Licensed access rules

Rules

rC132

Subject to these rules and to compliance with the Code of Conduct (and to the *Scope of Practice, Authorisation and Licensing Rules*) a barrister in self-employed practice may accept *instructions* from a *licensed access client* in circumstances authorised in relation to that *client* by the Licensed Access Recognition Regulations (which are available on the BSB's website) whether that *client* is acting for themselves or another.

rC133

These rules apply to every matter in which a *barrister* in self-employed *practice* is instructed by a *licensed access client* save that Rules rC134.2 and rC139 do not apply to any matter in which a *licensed access client* is deemed to be a *licensed access client* by reason only of paragraph 7 or paragraph 8 of the Licensed Access Recognition Regulations (which are available on the BSB's website).

rC134

You are only entitled to accept *instructions* from a *licensed access client* if at the time of giving instructions the *licensed access client* :

.1 is identified; and

.2 you ensure that the *licensed access client* holds a valid Licence issued by the *Bar Standards Board* (either by requiring the *licensed access client* to send you a copy of the Licence, or referring to the list of *licensed access clients* published on the *Bar Standards Board* website).

rC135

You must not accept any *instructions* from a *licensed access client* :

.1 unless you are able to provide the services required of you by that *licensed access client* ;

.2 if you consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or other *person* who is authorised to *conduct litigation* or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place.

rC136

If you agree standard terms with a *licensed access client* , you must keep a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed and the basis upon which you are to be paid.

rC137

Having accepted *instructions* from a *licensed access client* , you must promptly send the *licensed access client* :

.1 a statement in writing that the *instructions* have been accepted (as the case may be) on the standard terms previously agreed in writing with that *licensed access client* ; or

.2 if you have accepted *instructions* otherwise than on such standard terms, a copy of the agreement in writing with the *licensed access client* setting out the terms upon which you have agreed to do the work and the basis upon which you are to be paid; and

.3 unless you have accepted *instructions* on standard terms which incorporate the following particulars must at the same time advise the *licensed access client* in writing of:

.a the effect of rC21 as it relevantly applies in the circumstances;

.b unless authorised by the *Bar Standards Board* to *conduct litigation* , the fact that you cannot be expected to perform the functions of a *solicitor* or other *person* who is authorised to *conduct litigation* and in particular to fulfil obligations arising out of or related to the conduct of litigation; and

.c the fact that circumstances may require the *client* to retain a *solicitor* or other *person* who is authorised to *conduct litigation* at short notice and possibly during the case.

rC138

If at any stage you, being instructed by a *licensed access client* , consider it in the interests of the lay *client* or the interests of justice that a *solicitor* or other *person* who is authorised to *conduct litigation* or some other appropriate *intermediary* (as the case may be) be instructed either together with you or in your place:

.1 you must forthwith advise the *licensed access client* in writing to instruct a *solicitor* or other *person* who is authorised to *conduct litigation* or other appropriate *intermediary* (as the case may be); and

.2 unless a *solicitor* or other *person* who is authorised to *conduct litigation* or other appropriate *intermediary* (as the case may be) is instructed as soon as reasonably practicable thereafter you must cease to act and must return any *instructions* .

rC139

If at any stage you, being instructed by a *licensed access client* , consider that there are substantial grounds for believing that the *licensed access client* has in some significant respect failed to comply with the terms of the Licence granted by the *Bar Standards Board* you must forthwith report the facts to the *Bar Standards Board* .

rC140

Having accepted *instructions* from a *licensed access client* , you must keep a case record which sets out:

.1 the date of receipt of the *instructions* , the name of the *licensed access client* , the name of the case, and any requirements of the *licensed access client* as to time limits;

.2 the date on which the *instructions* were accepted;

.3 the dates of subsequent *instructions* , of the despatch of advices and other written work, of conferences and of telephone conversations; and

.4 when agreed, the fee.

rC141

Having accepted *instructions* from a *licensed access client* , you must either yourself retain or take reasonable steps to ensure that the *licensed access client* will retain for seven years after the date of the last item of work done:

.1 copies of *instructions* (including supplemental *instructions*);

.2 copies of all advices given and documents drafted or approved;

.3 a list of all documents enclosed with any *instructions* ; and

.4 notes of all conferences and of all advice given on the telephone.

Part 2 - D3. Registered European lawyers

Rules

Outcome C33

Outcomes

oC33

Clients are not confused about the qualifications and status of *registered European lawyers* .

Rules C142-C143 Rules

rC142

If you are a *registered European lawyer* and not a *barrister* , you must not hold yourself out to be a *barrister* .

rC143

You must in connection with all professional work undertaken in England and Wales as a *registered European lawyer* :

.1 use your *home professional title* ;

.2 indicate the name of your *home professional body* or the *court* before which you are entitled to practise in that *Member State* ; and

.3 indicate that you are registered with the *Bar Standards Board* as a *European lawyer* .

Part 2 - D4. Unregistered barristers Rules

Outcome C34 Outcomes

oC34

Clients who receive *legal services* from *unregistered barristers* are aware that such *unregistered barristers* are not subject to the same regulatory safeguards that would apply if they instructed a *practising barrister* .

Rule C144 Rules

rC144

If you are an *unregistered barrister* and you supply *legal services* (other than as provided for in Rule rC145) to any inexperienced *client* then, before supplying such services:

.1 you must explain to the *client* that:

.a (unless you are supplying *legal services* pursuant to Rule S12) you are not acting as a *barrister* ;

.b you are not subject to those parts of the Code of Conduct and other provisions of this *Handbook* which apply only to *BSB authorised persons* ;

.c the *Bar Standards Board* will only consider *reports* about you which concern the Core Duties or those parts of the Code of Conduct and other provisions of this *Handbook* which apply to you;

.d (unless you are covered by professional indemnity insurance) you are not covered by professional indemnity insurance;

.e they have the right to make a *complaint* , how they can complain, to whom, of any time limits for making a *complaint* but that they have no right to complain to the *Legal Ombudsman* about the services you supply; and

.f in respect of any legal advice you provide, there is a substantial risk that they will not be able to rely on legal professional privilege.

.2 you must get written confirmation from the *client* that you have given this explanation.

For the purposes of this Rule rC144, an inexperienced *client* includes any individual or other person who would, if you were a *BSB authorised person* , have a right to bring a complaint pursuant to the *Legal Ombudsman* Scheme Rules.

Gudiance to Rule C144 Guidance

gC154

For the purposes of determining whether Rule rC144 applies, the people who would be entitled to complain to the *Legal Ombudsman* if you were a *BSB authorised person* are:

.1 an individual; or

.2 a business or enterprise that was a micro-enterprise within the meaning of Article 1 and Article 2(1) and (3) of the Annex to Commission Recommendation 2003/361/EC (broadly a business or enterprise with fewer than 10 employees and turnover or assets not exceeding €2 million), when it referred the *complaint* to you; or

3 a charity with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to you; or

.4 a club, association or organisation, the affairs of which are managed by its members or a committee of its members, with an annual income net of tax of less than £1 million at the time at which the complainant refers the *complaint* to you; or

.5 a trustee of a trust with an asset value of less than £1 million at the time at which the complainant refers the *complaint* to you; or

.6 a personal representative or beneficiary of the estate of a person who, before they died, had not referred the complaint to the *Legal Ombudsman* .

Rule C145 Rules

rC145

rC144 does not apply to you if you supply *legal services* :

.1 as an employee or *manager* of a *regulated entity* ;

.2 as an employee or *manager* of a body subject to regulation by a professional body or regulator;

.3 as provided for in Section S.B9 (*Legal Advice Centres*);

.4 pursuant to an authorisation that you have obtained from another *approved regulator* ; or

.5 in accordance with Rules S13 and S14.

Guidance to Rule C145 Guidance

gC155

Guidance on the disclosures which unregistered barristers should consider making to *clients* covered by Rule rC145, and other *clients* who are not inexperienced *clients* , to ensure that they comply with Rule rC19 and do not mislead those *clients* is available on BSB website.

Part 2 - D5. Cross-border activities between CCBE States Rules

Outcome C35 Outcomes

oC35

BSB regulated persons who undertake *cross-border activities* comply with the terms of the *Code of Conduct for European Lawyers* .

Rule C146 Rules

rC146

If you are a *BSB regulated person* undertaking *cross-border activities* then, in addition to complying with the other provisions of this *Handbook* which apply to you, you must also comply with Rules rC147 to rC158 below.

Guidance to Rule C146 Guidance

gC156

Where the *cross-border activities* constitute *foreign work* (in other words, limb (a) of the definition of *cross-border activities*), you should note, in particular, Rules rC13 and rC14 and the associated guidance.

gC157

The purpose of this section D5 is to implement those provisions of the *Code of Conduct for European Lawyers* which are not otherwise covered by the *Handbook* . If a provision of the *Code of Conduct for European Lawyers* has not been included here then the equivalent provisions of *Handbook* need to be complied with in respect of all *cross-border activities* (including where they place a higher burden on the *BSB regulated person* than the *Code of Conduct for European Lawyers* itself which is the case, for example, in respect of the handling of *client money* (Rule rC73 and rC74)).

Rules C147-C158 Rules

Incompatible occupations

rC147

If you act in legal proceedings or proceedings before public authorities in a *CCBE State* other than the *UK* , you must, in that *CCBE State* , observe the Rules regarding incompatible occupations as they are applied to lawyers of that *CCBE State* .

rC148

If you are established in a *CCBE State* other than the *UK* and you wish to participate directly in commercial or other activities not connected with the practice of the law in that *CCBE State* , you must respect the Rules regarding forbidden or incompatible occupations as they are applied to lawyers of that *CCBE State* .

Fee sharing with non-lawyers

rC149

You must not share your fees with a person situated in a *CCBE State* other than the *UK* who is not a lawyer except where otherwise permitted by the terms of this *Handbook* or Rule rC150 below.

rC150

Rule rC149 shall not preclude you from paying a fee, commission or other compensation to a deceased lawyer’s heirs or to a retired lawyer in respect of taking over the deceased or retired lawyer’s practice.

Co-operation among lawyers of different member states

rC151

If you are approached by a lawyer of a *CCBE State* other than the UK to undertake work which you are not competent to undertake, you must assist that lawyer to obtain the information necessary to find and instruct a lawyer capable of providing the service asked for.

rC152

When co-operating with a lawyer of a *CCBE State* other than the UK you must take into account the differences which may exist between your respective legal systems and the professional organisations, competencies and obligations of lawyers in your respective states.

Correspondence between lawyers in different CCBE states

rC153

If you want to send to a lawyer in a *CCBE State* other than the UK a communication which you wish to remain "confidential" or "without prejudice", you must, before sending the communication, clearly express your intention in order to avoid misunderstanding, and ask if the lawyer is able to accept the communication on that basis.

rC154

If you are the intended recipient of a communication from a lawyer in another *CCBE State* which is stated to be "confidential" or "without prejudice", but which you are unable to accept on the basis intended by that lawyer, you must inform that lawyer accordingly without delay.

Responsibility for fees

rC155

If in the course of practice you instruct a lawyer of a *CCBE State* other than the UK to provide *legal services* on your behalf, you must pay the fees, costs and outlays which are properly incurred by that lawyer (even where the *client* is insolvent) unless:

.1 you were simply introducing the *client* to them and the lawyer of the *CCBE State* other than the UK has since had a direct contractual relationship with the *client* ; or

.2 you have expressly disclaimed that responsibility at the outset, or at a later date you have expressly disclaimed responsibility for any fees incurred after that date; or the lawyer of the *CCBE State* other than the UK is, in the particular matter, practising as a lawyer in England or Wales (whether authorised by the *BSB* or any other *Approved Regulator*).

Disputes amongst lawyers in different member states

rC156

If you consider that a lawyer in a *CCBE State* other than the UK has acted in breach of a rule of professional conduct you must draw the breach to the other lawyer's attention.

rC157

If any personal dispute of a professional nature arises between you and a lawyer in a *CCBE State* other than the UK you must first try to settle it in a friendly way.

rC158

You must not commence any form of proceedings against a lawyer in a *CCBE State* other than the UK on matters referred to in Rules rC156 or rC157 without first informing the *Bar Council* and the other lawyer's bar or law society in order to allow them an opportunity to assist in resolving the matter.

Part 2 - D6. Price and service transparency rules for self-employed barristers, chambers and BSB entities

Rules

Outcome C36

Outcomes

oC36

Clients are provided with appropriate information to help them make informed choices and understand the price and service they will receive.

Rules C159-C163 - Self-employed barristers, chambers and BSB entities

Rules

Publication of information

rC159

Each website of *self-employed barristers* , *chambers* and *BSB entities* must, in a sufficiently accessible and prominent place:

.1 state that professional, licensed access and/or lay clients (as appropriate) may contact the *barrister* , *chambers* or *BSB entity* to obtain a quotation for *legal services* and provide contact details. Quotations must be provided if sufficient information has been provided by the *client* , and the *barrister* , *barristers* in *chambers* or *BSB entity* would be willing to provide the legal services. Quotations must be provided within a reasonable time period, and in clear and readily understandable terms;

.2 state their most commonly used pricing models for *legal services* , such as fixed fee or hourly rate. Where different models are typically used for different *legal services* , this must be explained;

.3 state the areas of law in which they most commonly provide *legal services* , and state and describe the *legal services* which they most commonly provide, in a way which enables clients to sufficiently understand the expertise of the *barrister* , *chambers* or *BSB entity* ; and

.4 provide information about the factors which might influence the timescales of their most commonly provided *legal services* .

rC160

All *self-employed barristers* , *chambers* and *BSB entities* must review their website content at least annually to ensure that it is accurate and complies with the transparency requirements referred to in Rules C103, C159 and where applicable, Rules C164 – C168.

rC161

Self-employed barristers , *chambers* and *BSB entities* must comply with the transparency requirements referred to in Rules C103, C159 and where applicable, Rules C164 – C168 by ensuring the required information is readily available in alternative format. This must be provided on request (for example, if they do not operate a website, or a *client* or prospective *client* does not have Internet access).

Provision of information to the Bar Standards Board

rC162

All *self-employed barristers* , *chambers* and *BSB entities* must notify the *Bar Standards Board* of their website address(es) offering *legal services* , and any changes to their website address(es), within 28 days of the creation or change of the same.

Bar Standards Board guidance

rC163

When offering their services to *clients* and prospective *clients* , all *self-employed barristers* , *chambers* and *BSB entities* must have regard to guidance published from time to time by the *Bar Standards Board* in relation to price and service transparency.

Rules C164-C169 - Self-employed barristers undertaking public access work and BSB entities supplying legal services directly to the public

Rules

Public Access Guidance for Lay Clients

rC164

Each website of *self-employed barristers* undertaking public access work and/or their chambers, and *BSB entities* supplying *legal services* directly to the public, must in a sufficiently accessible and prominent place display a link to the Public Access Guidance for Lay Clients on the BSB's website.

Price transparency policy statement

rC165

Self-employed barristers undertaking public access work and/or their *chambers* , and *BSB entities* supplying *legal services* directly to the public, must comply with the *Bar Standards Board's* price transparency policy statement insofar as it applies to them.

Publication of information

rC166

Self-employed barristers undertaking public access work and/or their *chambers* , and *BSB entities* supplying *legal services* directly to the public, are required by the *Bar Standards Board's* price transparency policy statement to provide price information in relation to certain *legal services* in certain circumstances. In relation to those *legal services* and in those circumstances, each website of *self-employed barristers* undertaking public access work and/or their *chambers* , and *BSB entities* supplying *legal services* directly to the public, must in a sufficiently accessible and prominent place:

.1 state their pricing model(s), such as fixed fee or hourly rate;

.2 state their indicative fees and the circumstances in which they may vary. For example, a fixed fee and the circumstances in which additional fees may be charged, or an hourly rate by seniority of *barrister* ;

.3 state whether their fees include VAT (where applicable); and

.4 state likely additional costs, what they cover and either the cost or, if this can only be estimated, the typical range of costs.

rC167

In compliance with the requirements of Rule C166 above:

.1 a sole practitioner must provide price information in relation to them as an individual *barrister* ;

.2 a *BSB entity* must provide price information in relation to the entity; and

.3 a *chambers* may provide price information either in relation to (1) individual *barristers* , or (2) *barristers* in *chambers* in the form of ranges or average fees.

rC168

Self-employed barristers undertaking public access work and/or their *chambers* , and *BSB entities* supplying *legal services* directly to the public, are required by the *Bar Standards Board's* price transparency policy statement to provide service information in relation to certain *legal services* in certain circumstances. In relation to those legal services and in those circumstances, each website of *self-employed barristers* undertaking public access work and/or their *chambers* , and *BSB entities* supplying *legal services* directly to the public, must in a sufficiently accessible and prominent place:

.1 state and describe the *legal services* , including a concise statement of the key stages, in a way which enables *clients* to sufficiently understand the service of the sole practitioner, *barristers* in chambers or *BSB entity* ; and

.2 provide an indicative timescale for the key stages of the *legal services* .

rC169

Self-employed barristers undertaking public access work, and BSB entities supplying *legal services* directly to the public, may be asked to accept instructions to provide the *legal services* listed in the *Bar Standards Board's* price transparency policy statement at short notice. In these circumstances, you are not required to comply with Rules C166 – C168 above before accepting the *instructions* . However, you must do so as soon as reasonably practicable after accepting the *instructions* .

Part 3: Scope of Practice, Authorisation and Licensing Rules

Part 3 - A. Application Rules

rS1

Section 3.B applies to all *BSB regulated persons* and *unregistered barristers* and “You” and “Your” should be construed accordingly. It provides that you must not carry on any *reserved legal activity* or practise as a *barrister* unless you are authorised to do so, and explains the different capacities within which you may work if you are so authorised and any limitations on the scope of your *practice* . It also explains the further requirements which you must follow if you intend to work in more than one capacity.

rS2

Section 3.C applies to *barristers* and *registered European lawyers* and sets out the basis on which they may apply for a *practising certificate* which will entitle them to practise within England and Wales.

rS3

Section 3.D applies to *European lawyers* and provides details about how to apply to become a *registered European lawyer* in England and Wales, thus entitling them to apply for a *practising certificate* in accordance with the provisions of 3.C.

rS4

Section 3.E applies to all entities wishing to be regulated by the BSB and sets out the basis upon which entities may be:

.1 authorised to practise as a *BSB authorised body* ; or

.2 licensed to practise as a *BSB licensed body* .

rS5

Section 3.F applies to all *BSB entities* . It contains the continuing compliance requirements which apply to them.

Part 3 - B. Scope of Practice Rules

Part 3 - B1. No practice without authorisation (Rule S6) Rules

rS6

You must not carry on any *reserved legal activity* unless you are entitled to do so under the *LSA* .

Guidance to Rule S6 Guidance

gS1

You are not entitled to carry on any *reserved legal activity* , whether on your own behalf or acting as a *manager* or employee, unless you are either authorised or exempt in respect of that *reserved legal activity* . Where you are a *manager* or employee of a *person* who, as part of their *practice* , supplies services to *the public* or to a section of *the public* (with or without a view to profit), which consist of, or include, the carrying on of *reserved legal activities* , that *person* must also be entitled to carry on that *reserved legal activity* under the LSA. Authorisation in accordance with this Part 3 permits you to carry on the *reserved legal activities* specified in your authorisation.

Part 3 - B1. No practice without authorisation (Rules S7-S15) Rules

rS7

You must not permit any third party who is not authorised to provide *reserved legal activities* to provide such *reserved legal activities* on your behalf.

rS8

If:

.1 you are an individual and do not have a *practising certificate* ; or

.2 you are an entity and you have not been authorised or licensed to provide *reserved legal activities* in accordance with Section 3.E, then:

.a you may not practise as a *barrister* or a *registered European lawyer* or as a *BSB entity* (as appropriate); and

.b you are not authorised by the *Bar Standards Board* to carry on any *reserved legal activity* .

rS9

For the purposes of this *Handbook* , you practise as a *barrister* or a *registered European lawyer* , or a *BSB entity* if you are supplying *legal services* and:

.1 you are an individual and you hold a *practising certificate* ; or

.2 you hold yourself out as a *barrister* or a *registered European lawyer* (as appropriate) or

.3 you are an entity and you have been authorised or licensed to provide *reserved legal activities* in accordance with Section 3.E; or

.4 you act as a *manager* of, or have an ownership interest in, an *authorised (non-BSB) body* and as such you are required by the rules of that body's *Approved Regulator* to hold a *practising certificate* issued by the *Bar Standards Board* (as the case may be).

rS10

For the purposes of this Section 3.B1 any reference to the supply of *legal services* includes an offer to supply such services.

rS11

Rule rS9.1 above does not apply to you if you are a *pupil* without a provisional practising certificate if and insofar as you accept a noting brief with the permission of your *pupil supervisor* or head of *chambers* or *HOLP* .

rS12

If you are an *unregistered barrister* or *registered European lawyer* but do not hold a *practising certificate* and you supply *legal services* in the manner provided for in Rules rS13, rS14 and rS15 below, then you shall not, by reason of supplying those services:

.1 be treated for the purposes of this Section B of Part 3 as *practising barrister* or a *registered European lawyer* ; or

.2 be subject to the rules in Part 2 of this *Handbook* or the rules in this Section 3.B which apply to *practising barristers* .

rS13

Rule rS12 applies to you if and insofar as:

.1 you are practising as a *foreign lawyer* ; and

.2 you do not:

(a) give advice on *English Law* ; or

(b) supply *legal services* in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law).

rS14

Rule rS12 applies to you if:

.1 you are authorised and currently permitted to carry on reserved legal activities by another *Approved Regulator* ; and

.2 you hold yourself out as a *barrister* or a *registered European lawyer* (as appropriate) other than as a *manager* or employee of a *BSB entity* ; and

.3 when supplying *legal services* to any *person* or *employer* for the first time, you inform them clearly in writing at the earliest opportunity that you are not practising as a *barrister* or a *registered European lawyer* .

rS15

Rule rS12 applies to you provided that:

.1 you supplied *legal services* prior to 31 March 2012 pursuant to paragraph 206.1 or 206.2 of the 8th Edition of the Code; and

.2 if you supply any *legal services* in England and Wales, you were called to the *Bar* before 31 July 2000; and

.3 before 31 March in each year, and promptly after any change in the details previously supplied to the *Bar Standards Board* , you provide in writing to the *Bar Standards Board* , details of the current address(es) with telephone number(s) of the office or premises from which you do so, and:

(a) if you are employed, the name, address, telephone number and nature of the *practice* of your *employer* ; or

(b) if you are an employee or *manager* of, or you have an ownership interest in, a *regulated entity* , the name, address, email address, telephone number and the name of the *regulated entity* and its *Approved Regulator* ; and

.4 unless you only offer services to your *employer* or to the *regulated entity* of which you are a *manager* or an employee or which you have an ownership interest in, you are (or, if you are supplying *legal services* to *clients* of your *employer* or *regulated entity* of which you are an *owner* , *manager* or an employee, your *employer* or such body is) currently insured in accordance with the requirements of Rule C76r and you comply with the requirements of Section 2.D4.

Part 3 - B2. Provision of reserved legal activities and of legal services

Rules

rS16

You may only carry on *reserved legal activities* or supply other *legal services* in the following capacities:

.1 as a *self-employed barrister* , subject to the limitations imposed by Section 3.B3;

.2 as a *BSB entity* subject to the limitations imposed by Section 3.B4;

.3 as a *manager* of a *BSB entity* or as an *employed barrister (BSB entity)* , subject to the limitations imposed by Section 3.B5;

.4 as a *manager* of an *authorised (non-BSB) body* or as an *employed barrister (authorised non-BSB body),* subject to the limitations imposed by Section 3.B6;

.5 as an *employed barrister (non authorised body)* , subject to the limitations imposed by Section 3.B7; or

.6 as a *registered European lawyer* in any of the above capacities, in which case the equivalent limitations that would have applied if you were practising as a *barrister* shall apply to your *practice* as a *registered European lawyer* .

rS17

Where you carry on *reserved legal activities* in one of the capacities set out at Rule rS16, so as to be subject to regulation by the *Bar Standards Board* in respect of those *reserved legal activities* , any other *legal services* you may supply in that same capacity will also be subject to regulation by the *Bar Standards Board* , even if unreserved.

rS18

You may only *practise* or be involved with the supply of *legal services* (whether *reserved legal activities* or otherwise) in more than one of the capacities listed in Rule rS16 after:

.1 having obtained an amended *practising certificate* from the *Bar Standards Board* which recognises the capacities in respect of which you are intending to practise; and

.2 having agreed with each *employer* or *regulated entity* with which you are involved a protocol that enables you to avoid or resolve any conflict of interests or duties arising from your *practice* and/or involvement in those capacities,

and provided always that you do not work in more than one capacity in relation to the same case or issue for the same *client* , at the same time.

rS19

If you are a *pupil* with a provisional practising certificate, you may only supply *legal services* to *the public* or exercise any right which you have by reason of being a *barrister* , if you have the permission of your *pupil supervisor* , or head of *chambers* or *HOLP* (as appropriate).

rS20

Subject to Rule rS21, if you are a *barrister* of less than three *years' standing* , you may:

.1 only supply *legal services* to the public or exercise any *right of audience* by virtue of authorisation by the *Bar Standards Board* ; or

.2 only *conduct litigation* by virtue of authorisation by the *Bar Standards Board* ,

if your principal place of *practice* (or if you are *practising* in a dual capacity, each of your principal places of *practice*) is either:

.a a *chambers* or an annex of *chambers* which is also the principal place of *practice* of a relevant qualified *person* who is readily available to provide guidance to you; or

.b an office of an organisation of which an employee, *partner* , *manager* or *director* is a relevant qualified *person* who is readily available to provide guidance to you.

rS21

If you are an *employed barrister (non-authorised body)* and you are only exercising a *right of audience* or conducting litigation for those *persons* listed at Rule rS39.1 to rS39.6, then the place of *practice* from which you perform such duties is only required to be an office of an organisation of which an employee, *partner* , *manager* or *director* is a relevant qualified *person* who is readily available to provide guidance to you if you are of less than one year's standing.

rS22

In Rule rS20 and Rule rS21 above, the references to "qualified *person* " mean the following:

Supply of legal services to the public – qualified person

.1 Where you are a *barrister* intending to supply *legal services* to *the public* , a *person* shall be a qualified *person* for the purpose of Rule rS20 if they:

.a have been entitled to *practise* and have *practised* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the Bar Qualification Rules) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and

.b for the previous two years have made such *practice* their primary occupation; and

.c are not acting as a qualified *person* in relation to more than two other people; and

.d has not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person* .

The exercise of a right of audience – qualified person

.2 Where:

.a you are a *barrister* exercising a *right of audience* in England and Wales, a *person* is a qualified *person* for the purpose of Rule rS20 if they:

.i have been entitled to *practise* and have *practised* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the *Bar Qualification Rules*) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and

.ii for the previous two years:

(1) have made such *practice* their primary occupation; and

(2) have been entitled to exercise a *right of audience* before every *court* in relation to all proceedings; and

.iii are not acting as a qualified *person* in relation to more than two other people; and

.iv have not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person.*

The exercise of a right to conduct litigation – qualified person

.3 Where:

.a you are a *barrister* exercising a *right to conduct litigation* in England and Wales, a *person* is a qualified *person* for the purpose of Rule rS20 if they:

.i have been entitled to *practise* and have *practised* as a *barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the Bar Qualification Rules) or as a *person* authorised by another *Approved Regulator* for a period (which need not have been as a *person* authorised by the same *Approved Regulator*) for at least six years in the previous eight years; and

.ii for the previous two years have made such *practice* their primary occupation; and

.iii are entitled to *conduct litigation* before every *court* in relation to all proceedings; and

.iv are not acting as a qualified *person* in relation to more than two other people; and

.v have not been designated by the *Bar Standards Board* as unsuitable to be a qualified *person.*

Guidance to Rules S20-S22 Guidance

gS2

If you are a *practising barrister* of less than three *years' standing* and you are authorised to *conduct litigation* , you will need to work with a qualified *person* who is authorised to do litigation as well as with someone who meets the criteria for being a qualified *person* for the purpose of providing services to *the public* and exercising *rights of audience* . This may be, but is not necessarily, the same *person* .

Part 3 - B3. Scope of practice as a self-employed barrister (Rules S23-S24) Rules

rS23

Rules rS24 and rS25 below apply to you where you are acting in your capacity as a *self-employed barrister* , whether or not you are acting for a fee.

rS24

You may only supply *legal services* if you are appointed or instructed by the *court* or instructed:

.1 by a *professional client* (who may be an employee of the *client*); or

.2 by a *licensed access client* , in which case you must comply with the *licensed access rules* ; or

.3 by or on behalf of any other *client* , provided that:

.a the matter is *public access instructions* and:

.i you are entitled to provide public access work and the *instructions* are relevant to such entitlement; and

.ii you have notified the *Bar Standards Board* that you are willing to accept *instructions* from lay *clients* ; and

.iii you comply with the *public access rules* ; or

.b the matter relates to the *conduct of litigation* and

.i you have a litigation extension to your *practising certificate* ; and

.ii you have notified the *Bar Standards Board* that you are willing to accept *instructions* from lay *clients* .

Guidance to Rule S24 Guidance

gS3

References to professional *client* in Rule rS24.1 include *foreign lawyers* and references to *client* in Rule rS24.3 include *foreign clients* .

gS4

If you are instructed by a *foreign lawyer* to provide advocacy services in relation to *court* proceedings in England and Wales, you should advise the *foreign lawyer* of any limitation on the services you can provide. In particular, if *conduct of litigation* will be required, and you are not authorised to *conduct litigation* or have not been instructed to do so, you should advise the *foreign lawyer* to take appropriate steps to instruct a *person* authorised to *conduct litigation* and, if requested, assist the *foreign lawyer* to do so. If it appears to you that the *foreign lawyer* is not taking reasonable steps to instruct someone authorised to *conduct litigation* , then you should consider whether to return your *instructions* under rules C25 and C26.

Part 3 - B3. Scope of practice as a self-employed barrister (Rules S25-S26) Rules

rS25

Subject to Rule rS26, you must not in the course of your *practice* undertake the management, administration or general conduct of a *client's* affairs.

rS26

Nothing in Rule rS25 prevents you from undertaking the management, administration or general conduct of a client's affairs where such work is *foreign work* performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular *foreign work* or *foreign work* in general.

Part 3 - B4. Scope of practice as a BSB entity (Rules S27-S28) Rules

rS27

Rules rS28 and rS29 apply to you where you are acting in your capacity as a *BSB entity* .

rS28

You may only supply *legal services* if you are appointed or instructed by the *court* or instructed:

.1 by a professional *client* (who may be an employee of the *client*);

.2 by a *licensed access client* , in which case you must comply with the *licensed access rules* ; or

.3 by or on behalf of any other *client* , provided that:

.a at least one manager or employee is suitably qualified and experienced to undertake public access work; and

.b you have notified the *Bar Standards Board* that you are willing to accept *instructions* from *lay clients* .

Guidance to Rule S28 Guidance

gS5

References to professional client in Rule rS28.1 include foreign lawyers and references to client in Rule rS28.3 include foreign clients.

gS6

If you are instructed to provide advocacy services in relation to *court* proceedings in England and Wales by a *foreign lawyer* or other professional *client* who does not have a *right to conduct litigation* pursuant to Rule rS28.1 and you are not authorised to *conduct litigation* yourself or you are otherwise not instructed to conduct the litigation in the particular matter, then you must:

.1 advise the *foreign lawyer* to take appropriate steps to instruct a *solicitor* or other authorised litigator to conduct the litigation and, if requested, take reasonable steps to assist the *foreign lawyer* to do so;

.2 cease to act and return your *instructions* if it appears to you that the *foreign lawyer* is not taking reasonable steps to instruct a *solicitor* or other authorised litigator to conduct the litigation; and

.3 not appear in *court* unless a *solicitor* or other authorised litigator has been instructed to conduct the litigation.

gS7

The public access and licensed access rules do not apply to *BSB entities* as their circumstances will vary considerably. Nevertheless those rules provide guidance on best practice. In the case of a barrister, “suitably qualified and experienced to undertake public access work” will mean successful completion of the public access training required by the BSB or an exemption for the requirement to do the training. If you are a *BSB entity* , you will also need to have regard to relevant provisions in the Code of Conduct (Part 2 of this Handbook), especially C17, C21.7, C21.8 and C22. You will therefore need to consider whether:

.1 You have the necessary skills and experience to do the work, including, where relevant, the ability to work with a vulnerable client;

.2 The employees who will be dealing with the *client* are either authorised to *conduct litigation* or entitled to do public access work or have had other relevant training and experience;

.3 it would be in the best interests of the client or of the interests of justice for the client to instruct a solicitor or other professional client if you are not able to provide such services;

.4 If the matter involves the *conduct of litigation* and you are not able or instructed to *conduct litigation* , whether the client will be able to undertake the tasks that you cannot perform for them;

.5 The *client* is clear about the services which you will and will not provide and any limitations on what you can do, and what will be expected of them;

.6 If you are not able to act in legal aid cases, the *client* is in a position to take an informed decision as to whether to seek legal aid or proceed with public access.

gS8

You will also need to ensure that you keep proper records.

Part 3 - B4. Scope of practice as a BSB entity (Rules S29-S30) Rules

rS29

Subject to Rule rS30, you must not in the course of your *practice* undertake the management, administration or general conduct of a *client’s* affairs.

rS30

Nothing in Rule rS29 prevents you from undertaking the management, administration or general conduct of a client’s affairs where such work is foreign work performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular foreign work or foreign work in general.

Part 3 - B5. Scope of practice as a manager of a BSB entity or as an employed barrister (BSB entity) Rules

rS31

Rules rS32 and rS33 below apply to you where you are acting in your capacity as a *manager* of a *BSB entity* or as an *employed barrister (BSB entity)* .

rS32

You may only supply *legal services* to the following *persons* :

.1 the *BSB entity* ; or

.2 any employee, *director* , or company secretary of the *BSB entity* in a matter arising out of or relating to that *person’s* employment;

.3 any *client* of the *BSB entity* ;

.4 if you supply *legal services* at a *Legal Advice Centre* , *clients* of the *Legal Advice Centre* ; or

.5 if you supply *legal services* free of charge, members of the public.

rS33

Subject to Rule rS34, you must not in the course of your practice undertake the management, administration or general conduct of a *client's* affairs.

rS34

Nothing in Rule rS33 prevents you from undertaking the management, administration or general conduct of a client's affairs where such work is foreign work performed by you at or from an office outside England and Wales which you have established or joined primarily for the purposes of carrying out that particular foreign work or foreign work in general.

Part 3 - B6. Scope of practice as a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)

Rules

rS35

Rules rS36 and rS37 apply to you where you are acting in your capacity as a *manager* of an *authorised (non-BSB) body* or as an *employed barrister (authorised non-BSB body)* .

rS36

You may only supply legal services to the following persons:

.1 the *authorised (non-BSB) body* ;

.2 any employee, *director* or company secretary of the *authorised (non-BSB) body* in a matter arising out of or relating to that *person's* employment;

.3 any *client* of the *authorised (non-BSB) body* ;

.4 if you provide *legal services* at a *Legal Advice Centre* , *clients* of the *Legal Advice Centre* ; or

.5 if you supply *legal services* free of charge, members of the public.

rS37

You must comply with the rules of the *Approved Regulator* or *licensing authority* of the *authorised (non-BSB) body* .

Part 3 - B7. Scope of practice as an employed barrister (non authorised body)

Rules

rS38

Rule rS39 applies to you where you are acting in your capacity as an *employed barrister (non authorised body)* .

rS39

Subject to s. 15(4) of the Legal Services Act 2007, you may only supply *legal services* to the following *persons* :

.1 your *employer* ;

.2 any employee, *director* or company secretary of your *employer* in a matter arising out of or relating to that *person's* employment;

.3 if your *employer* is a public authority (including the Crown or a Government department or agency or a local authority), another public authority on behalf of which your *employer* has made arrangements under statute or otherwise to supply any *legal services* or to perform any of that other public authority's functions as agent or otherwise;

.4 if you are employed by or in a Government department or agency, any Minister or Officer of the Crown;

.5 if you are employed by a *trade association* , any individual member of the association;

.6 if you are, or are performing the functions of, a *Justices' clerk* , the Justices whom you serve;

.7 if you are employed by the *Legal Aid Agency* , members of the public;

.8 if you are employed by or at a *Legal Advice Centre* , *clients* of the *Legal Advice Centre* ;

.9 if you supply *legal services* free of charge, members of the public; or

.10 if your *employer* is a *foreign lawyer* and the *legal services* consist of foreign work, any *client* of your *employer* .

Guidance to Rule S39 Guidance

gS8A

If you provide services through a *non-authorised body* (A) whose purpose is to facilitate the provision by you of in-house *legal services* to another *non-authorised body* (B) then for the purposes of rS39 you will be treated as if you are employed by B and you should comply with your duties under this *Handbook* as if you are employed by B.

gS8B

If you provide services through a *non-authorised body* (C) whose purpose is to facilitate the provision by you of *legal services* to an authorised body (D) or clients of D (where those services are provided by D and regulated by D's *Approved Regulator*) then you will be treated as if you are employed by D and you should comply with your duties under this *Handbook* as if you are employed by D.

gS8C

Reserved legal activities may only be provided in a way that is permitted by s15 of the *Legal Services Act 2007* . S15 details when an employer needs to be authorised to carry on *reserved legal activities* and prevents those activities from being provided to the public, or a section of the public, by a *non-authorised body* .

Part 3 - B8. Scope of practice of a barrister called to undertake a particular case Rules

rS40

If you are called to the *Bar* under rQ25 (temporary call of QFLs), you may not *practise* as a *barrister* other than to conduct the case or cases specified in the certificate referred to in rQ26.

Part 3 - B9. Legal Advice Centres Rules

rS41

You may supply *legal services* at a *Legal Advice Centre* on a voluntary or part time basis and, if you do so, you will be treated for the purposes of this *Handbook* as if you were employed by the *Legal Advice Centre* .

rS42

If you supply legal services at a *Legal Advice Centre* to clients of a *Legal Advice Centre* in accordance with Rule rS41:

.1 you must not in any circumstances receive either directly or indirectly any fee or reward for the supply of any *legal services* to any *client* of the *Legal Advice Centre* other than a salary paid by the *Legal Advice Centre* ;

.2 you must ensure that any fees in respect of *legal services* supplied by you to any *client* of the *Legal Advice Centre* accrue and are paid to the *Legal Advice Centre* , or to the Access to Justice Foundation or other such charity as prescribed by order made by the Lord Chancellor under s.194(8) of the Legal Services Act 2007; and

.3 you must not have any financial interest in the *Legal Advice Centre* .

Guidance to Rules S41-S42

Guidance

gS9

You may provide *legal services* at a *Legal Advice Centre* on an unpaid basis irrespective of the capacity in which you normally work.

gS10

If you are a *self-employed barrister* , you do not need to inform the Bar Standards Board that you are also working for a *Legal Advice Centre* .

gS11

Transitional arrangements under the LSA allow *Legal Advice Centres* to provide *reserved legal activities* without being authorised. When this transitional period comes to an end, the Rules relating to providing services at *Legal Advice Centres* will be reviewed.

Part 3 - B10. Barristers authorised by other approved regulators

Rules

rS43

If you are authorised by another *Approved Regulator* to carry on a *reserved legal activity* and currently permitted to *practise* by that *Approved Regulator* , you must not *practise* as a *barrister* and you are not eligible for a *practising certificate* .

Part 3 - C. Practising Certificate Rules

Rules

Part 3 - C1. Eligibility for practising certificates and litigation extensions

Rules

rS44

In this Section 3.C, references to “you” and “your” are references to *barristers* and *registered European lawyers* who are intending to apply for authorisation to *practise* as a *barrister* or a *registered European lawyer* (as the case may be) or who are otherwise intending to apply for a *litigation extension* to their existing *practising certificate* .

rS45

You are eligible for a *practising certificate* if:

.1 you are a *barrister* or *registered European lawyer* and you are not currently *suspended* from *practice* and have not been disbarred; and

.2 you meet the requirements of Rules rS46.1, rS46.2, rS46.3 or rS46.4; and

.3 either:

.a within the last 5 years either (i) you have held a *practising certificate* ; or (ii) you have satisfactorily completed (or have been exempted from the requirement to complete) the pupillage component of training; or

.b if not, you have complied with such training requirements as may be imposed by the *Bar Standards Board* .

rS46

You are eligible for:

.1 a *full practising certificate* if either:

.a you have satisfactorily completed *pupillage* ; or

.b you have been exempted from the requirement to complete pupillage; or

.c on 30 July 2000, you were entitled to exercise full *rights of audience* by reason of being a *barrister* ; or

.d you were called to the *Bar* before 1 January 2002 and:

.i you notified the *Bar Council* that you wished to exercise a *right of audience* before every *court* and in relation to all proceedings; and

.ii you have complied with such training requirements as the *Bar Council* or the *Bar Standards Board* may require or you have been informed by the *Bar Council* or the *Bar Standards Board* that you do not need to comply with any such further requirements;

in each case, before 31 March 2012;

.2 a *provisional practising certificate* if you have satisfactorily completed (or have been exempted from the requirement to complete) a period of pupillage satisfactory to the *BSB* for the purposes of Rule Q4 and at the time when you apply for a *practising certificate* you are registered as a *Pupil* ;

.3 a *limited practising certificate* if you were called to the *Bar* before 1 January 2002 but you are not otherwise eligible for a *full practising certificate* in accordance with Rule rS46.1 above; or

.4 a *registered European lawyer's practising certificate* if you are a *registered European lawyer* .

rS47

You are eligible for a litigation extension:

.1 where you have or are due to be granted a *practising certificate* (other than a *provisional practising certificate*); and

.2 where you are:

.a more than three *years' standing* ; or

.b less than three *years' standing* , but your principal place of *practice* (or if you are *practising* in a dual capacity, each of your principal places of *practice*) is either:

.i a *chambers* or an annex of *chambers* which is also the principal place of *practice* of a qualified *person* (as that term is defined in Rule rS22.3) who is readily available to provide guidance to you; or

.ii an office of an organisation of which an employee, *partner* , *manager* or *director* is a qualified *person* (as that term is defined in Rule rS22.3) who is readily available to provide guidance to you;

.3 you have the relevant administrative systems in place to be able to provide *legal services* direct to *clients* and to administer the conduct of litigation; and

.4 you have the procedural knowledge to enable you to *conduct litigation* competently.

Guidance to Rule S47.3 Guidance

gS12

You should refer to the more detailed guidance published by the *Bar Standards Board* from time to time which can be found on its website. This provides more information about the evidence you may be asked for to show that you have procedural knowledge to enable you to *conduct litigation* competently

Part 3 - C2. Applications for practising certificates and litigation extensions by barristers and registered European lawyers Rules

rS48

You may apply for a *practising certificate* by:

.1 completing the relevant application form (in such form as may be designated by the *Bar Standards Board*) and submitting it to the *Bar Standards Board* ; and

.2 submitting such information in support of the application as may be prescribed by the *Bar Standards Board* ; and

.3 paying (or undertaking to pay in a manner determined by the *Bar Council*) the appropriate *practising certificate fee* to the *Bar Council* in the amount determined in accordance with Rule rS50 (subject to any reduction pursuant to Rule rS53).

rS49

You may apply for a litigation extension to a *practising certificate* (other than a *provisional practising certificate*) by:

.1 completing the relevant application form supplied by the *Bar Standards Board* and submitting it to the *Bar Standards Board* ; and

.2 confirming that you meet the relevant requirements of Rule rS47.1;

.3 paying (or undertaking to pay in a manner determined by the *Bar Standards Board*) the *application fee* (if any) and the *litigation extension fee* (if any) to the *Bar Standards Board* ;

.4 confirming, in such form as the *Bar Standards Board* may require from time to time, that you have the relevant administrative systems in place to be able to provide *legal services* direct to *clients* and to administer the *conduct of litigation* in accordance with Rule rS47.3; and

.5 confirming, in such form as the *Bar Standards Board* may require from time to time, that you have the procedural knowledge to enable you to *conduct litigation* competently in accordance with Rule rS47.4.

rS50

An application will only have been made under either Rule rS48 or rS49 once the *Bar Standards Board* has received, in respect of the relevant application, the application form in full, together with the *application fee* , the *litigation extension fee* (if any, or an undertaking to pay such a fee in a manner determined by the *Bar Standards Board*), all the information required in support of the application, confirmation from you, in the form of a declaration, that the information contained in, or submitted in support of, the application is full and accurate, and (in the case of Rule S48) once the *Bar Council* has received the *practising certificate fee* (if any, or an undertaking to pay such a fee in a manner determined by the *Bar Council*).

rS51

On receipt of the application, the *Bar Standards Board* may require, from you or a third party (including, for the avoidance of doubt, any *BSB entity*), such additional information, documents or references as it considers appropriate to the consideration of your application.

rS52

You are personally responsible for the contents of your application and any information submitted to the *Bar Standards Board* by you or on your behalf and you must not submit (or cause or permit to be submitted on your behalf) information to the *Bar Standards Board* which you do not believe is full and accurate.

rS53

When applying for a *practising certificate* you may apply to the *Bar Standards Board* for a reduction in the *practising certificate fee* payable by you if your gross fee income or salary is less than such amount as the *Bar Council* may decide from time to time. Such an application must be submitted by completing the form supplied for that purpose by the *Bar Standards Board* .

Part 3 - C3. Practising certificate fees and litigation extension fees

Rules

rS54

The *practising certificate fee* shall be the amount or amounts prescribed in the Schedule of *Practising Certificate Fees* issued by the *Bar Council* from time to time, and any reference in these Rules to the “appropriate *practising certificate fee* ” or the “ *practising certificate fee* payable by you” refers to the *practising certificate fee* payable by you pursuant to that Schedule, having regard, amongst other things, to:

.1 the different annual *practising certificate fees* which may be prescribed by the *Bar Council* for different categories of *barristers* , e.g. for King’s Counsel and junior counsel, for *barristers* of different levels of seniority, and/or for *barristers practising* in different capacities and/or according to different levels of income (i.e. *self-employed barristers* , *employed barristers* , *managers* or employees of *BSB entities* or *barristers practising* with dual capacity);

.2 any reductions in the annual *practising certificate fees* which may be permitted by the *Bar Council* in the case of *practising certificates* which are valid for only part of a *practising certificate year* ;

.3 any discounts from the annual *practising certificate fee* which may be permitted by the *Bar Council* in the event of payment by specified methods;

.4 any reduction in, or rebate from, the annual *practising certificate fee* which may be permitted by the *Bar Council* on the grounds of low income, change of category or otherwise; and

.5 any surcharge or surcharges to the annual *practising certificate fee* which may be prescribed by the Bar Council in the event of an application for renewal of a *practising certificate* being made after the end of the *practising certificate year* .

rS55

The *litigation extension fee* shall be the amount or amounts prescribed by the *Bar Standards Board* from time to time, and in these Rules the "appropriate *litigation extension fee* " or the " *litigation extension fee* payable by you" is the *litigation extension fee* payable by you having regard to, among other things:

.1 any reductions in the annual *litigation extension fees* which may be permitted by the *Bar Standards Board* in the case of *litigation extensions* which are valid for only part of a *practising certificate year* ;

.2 any discounts from the annual *litigation extension fee* which may be permitted by the *Bar Standards Board* in the event of payment by specified methods;

.3 any reduction in, or rebate from, the annual *litigation extension fee* which may be permitted by the *Bar Standards Board* on the grounds of low income, change of category, or otherwise; and

.4 any surcharge or surcharges to the annual *litigation extension fee* which may be prescribed by the *Bar Standards Board* in the event of an application for a *litigation extension* being made at a time different from the time of your application for a *practising certificate* .

rS56

If you have given an undertaking to pay the *practising certificate fee* to the *Bar Council* or the *litigation extension fee* to the *Bar Standards Board* , you must comply with that undertaking in accordance with its terms.

Part 3 - C4. Issue of practising certificates and litigation extensions

Rules

rS57

The *Bar Standards Board* shall not issue a *practising certificate* to a *barrister* or *registered European lawyer* :

.1 who is not eligible for a *practising certificate* , or for a *practising certificate* of the relevant type; or

.2 who has not applied for a *practising certificate* ; or

.3 who has not paid or not otherwise undertaken to pay in a manner determined by the *Bar Council* , the appropriate *practising certificate fee* ; or

.4 who is not insured against claims for professional negligence as provided for in Rule C76.

rS58

The *Bar Standards Board* shall not grant a *litigation extension* to a *barrister* or *registered European lawyer* :

.1 in circumstances where the *Bar Standards Board* is not satisfied that the requirements of *litigation extension* are met; or

.2 who has not applied for a *litigation extension* ; or

.3 who has not paid or not otherwise undertaken to pay in a manner determined by the *Bar Standards Board* , the appropriate *application fee* (if any) and the *litigation extension fee* (if any).

rS59

The *Bar Standards Board* may refuse to issue a *practising certificate* or to grant a *litigation extension* , or may revoke a *practising certificate* or a *litigation extension* in accordance with Section 3.C5, if it is satisfied that the information submitted in support of the application for the *practising certificate* or *litigation extension* (as the case may be) is (or was when submitted) incomplete, inaccurate or incapable of verification, or that the relevant *barrister* or *registered European lawyer* :

.1 does not hold adequate insurance in accordance with Rule C76;

.2 has failed and continues to fail to pay the appropriate *practising certificate fee* to the *Bar Council* or *litigation extension fee* to the *Bar Standards Board* when due;

.3 would be, or is, *practising* in breach of the provisions of Section 3.B;

.4 has not complied with any of the requirements of the Continuing Professional Development Regulations applicable to them;

.5 has not declared information on type and area of practice in a form determined by the BSB;

.6 has not made the declarations required by the BSB in relation to Youth Court work;

.7 has not made the declarations required by the BSB in relation to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;

.8 has not provided the BSB with a unique email address.

rS60

When the *Bar Standards Board* issues a *practising certificate* or a *litigation extension* , it shall:

.1 inform the relevant *barrister* or *registered European lawyer* of that fact; and

.2 in the case of a *practising certificate* , publish that fact, together with the name and *practising address* of the *barrister* and *registered European lawyer* and the other details specified in Rule rS61 in the register on the *Bar Standards Board's* website; or

.3 in the case of a litigation extension:

.a issue a revised and updated *practising certificate* to incorporate an express reference to such litigation extension in accordance with Rule rS66; and

.b amend the register maintained on the Bar Standards Board's website to show that the relevant *barrister* or *registered European lawyer* (as the case may be) is now authorised to *conduct litigation* .

rS61

A *practising certificate* must state:

.1 the name of the *barrister* or *registered European lawyer* (as the case may be);

.2 the period for which the *practising certificate* is valid;

.3 the *reserved legal activities* which the *barrister* or *registered European lawyer* (as the case may be) to whom it is issued is thereby authorised to carry on;

.4 the capacity (or capacities) in which the *barrister* or *registered European lawyer* (as the case may be) practises; and

.5 whether the *barrister* or *registered European lawyer* (as the case may be) is registered with the *Bar Standards Board* as a *Public Access* practitioner.

rS62

A *practising certificate* may be valid for a *practising certificate year* or part thereof and for one month after the end of the *practising certificate year* .

rS63

A *full practising certificate* shall authorise a *barrister* to exercise a *right of audience* before every *court* in relation to all proceedings.

rS64

A *provisional practising certificate* shall authorise a *pupil* to exercise a *right of audience* before every *court* in relation to all proceedings.

rS65

A *limited practising certificate* shall not authorise a *barrister* to exercise a *right of audience* , save that it shall authorise a *barrister* to exercise any *right of audience* which they had by reason of being a *barrister* and was entitled to exercise on 30 July 2000.

rS66

A *practising certificate* shall authorise a *barrister* to *conduct litigation* in relation to every *court* and all proceedings if the *practising certificate* specifies a *litigation extension* .

rS67

Every *practising certificate* issued to a *barrister* shall authorise the *barrister* :

.1 to undertake:

.a *reserved instrument activities* ;

.b *probate activities* ;

.c *the administration of oaths* ; and

.d *immigration work* .

rS68

A *registered European lawyer's practising certificate* shall authorise a *registered European lawyer* to carry on the same *reserved legal activities* as a *full practising certificate* issued to a *barrister* , save that:

.1 a *registered European lawyer* is only authorised to exercise a *right of audience* or *conduct litigation* in proceedings which can lawfully only be provided by a *solicitor* , *barrister* or other qualified *person* , if they act in conjunction with a *solicitor* or *barrister* authorised to *practise* before the *court* , tribunal or public authority concerned and who could lawfully exercise that right; and

.2 a *registered European lawyer* is not authorised to prepare for remuneration any instrument creating or transferring an interest in land unless they have a *home professional title* obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia.

Part 3 - C5. Amendment and revocation of practising certificates and litigation extensions Rules

rS69

You must inform the *Bar Standards Board* as soon as reasonably practicable, and in any event within 28 days, if any of the information submitted in support of your *practising certificate* application form or *litigation extension* application form:

.1 was incomplete or inaccurate when the application form was submitted; or

.2 changes before the expiry of your *practising certificate* .

rS70

If you wish to:

.1 change the capacity in which you *practise* (e.g. if you change from being an *employed barrister* or a *manager* or employee of a *BSB entity* or an *authorised (non-BSB) body* to a *self-employed barrister* , or vice versa, or if you commence or cease *practice* in a dual capacity); or

.2 cease to be authorised to *conduct litigation* ,

before the expiry of your *practising certificate* , you must:

.a notify the *Bar Standards Board* of such requested amendment to your *practising certificate* ; and

.b submit to the *Bar Standards Board* such further information as the *Bar Standards Board* may reasonably require in order for them to be able to determine whether or not to grant such proposed amendment to your *practising certificate* ; and

.c within 14 days of demand by the *Bar Council* pay to the *Bar Council* the amount (if any) by which the annual *practising certificate fee* which would apply to you in respect of your amended *practising certificate* exceeds the annual *practising certificate fee* which you have already paid (or undertaken to pay) to the *Bar Council* . In the event that the revised annual *practising certificate fee* is less than the amount originally paid to the *Bar Council* or in circumstances where you wish to cease to be authorised to *conduct litigation* , the *Bar Council* is not under any obligation to refund any part of the annual *practising certificate fee* already paid although it may in its absolute discretion elect to do so in the circumstances contemplated by the Schedule of *Practising Certificate* Fees issued by the *Bar Council* from time to time. In circumstances where you wish to cease to be authorised to *conduct litigation* , the *Bar Standards Board* is not under any obligation to refund any part of the *litigation extension fee* already paid although it may in its absolute discretion elect to do so.

rS71

The *Bar Standards Board* may amend a *practising certificate* if it is satisfied that any of the information contained in the relevant application form was inaccurate or incomplete or has changed, but may not amend a *practising certificate* (except in response to a request from the *barrister* or a *registered European lawyer*) without first:

.1 giving written notice to the *barrister* or *registered European lawyer* of the grounds on which the *practising certificate* may be amended; and

.2 giving the *barrister* or *registered European lawyer* a reasonable opportunity to make representations.

rS72

The *Bar Standards Board* shall endorse a *practising certificate* to reflect any qualification restriction or condition imposed on the *barrister* or *registered European lawyer* by the *Bar Standards Board* or by a *Disciplinary Tribunal* , *Interim Suspension or Disqualification Panel* , *Fitness to Practise Panel* or the High Court.

rS73

The *Bar Standards Board* :

.1 shall revoke a *practising certificate* :

.a if the *barrister* becomes authorised to practise by another *approved regulator* ;

.b if the *barrister* or *registered European lawyer* is disbarred or *suspended* from *practice* as a *barrister* or *registered European lawyer* whether on an interim basis under section D of Part 5 or otherwise under section B of Part 5;

.c if the *barrister* or *registered European lawyer* has notified the *Bar Standards Board* that they no longer wish to have a *practising certificate* ;

.d in the case of a *Registered European Lawyer* , where the individual no longer meets the eligibility requirements; and

.2 may revoke a *practising certificate* :

.a in the circumstances set out in Rule rS59; or

.b if the *barrister* or *registered European lawyer* has given an undertaking to pay the appropriate *practising certificate fee* and fails to comply with that undertaking in accordance with its terms, but in either case only after:

(i) giving written notice to the relevant *barrister* or *registered European lawyer* of the grounds on which the *practising certificate* may be revoked; and

(ii) giving the relevant *barrister* or *registered European lawyer* a reasonable opportunity to make representations.

rS74

The *Bar Standards Board* :

.1 shall revoke a *litigation extension* if the *barrister* or *registered European lawyer* has notified the *Bar Standards Board* that they no longer wish to have the *litigation extension* ; and

.2 may revoke a *litigation extension* :

.a in the circumstances set out in Rule rS59; or

.b if the *barrister* or *registered European lawyer* has given an undertaking to pay the appropriate *litigation extension fee* and fails to comply with that undertaking in accordance with its terms, but in either case only after:

(i) giving written notice to the relevant *barrister* or *registered European lawyer* of the grounds on which the *litigation extension* may be revoked; and

(ii) giving the relevant *barrister* or *registered European lawyer* a reasonable opportunity to make representations.

Part 3 - C6. Applications for review

Rules

rS75

If you contend that the *Bar Standards Board* has:

.1 wrongly failed or refused to issue or amend a *practising certificate* ; or

.2 wrongly amended or revoked a *practising certificate* ; or

.3 wrongly failed or refused to issue a *litigation extension* ; or

.4 wrongly revoked a *litigation extension* ,

in each case in accordance with this Section 3.C, then you may lodge an application for review using the form supplied for that purpose by the *Bar Standards Board* which can be found on its website. For the avoidance of doubt, this Section 3.C6 does not apply to any amendment or revocation of a *practising certificate* or *litigation extension* made by order of a *Disciplinary Tribunal* , *Interim Suspension* or *Disqualification Panel* , *Fitness to Practise Panel* or the High Court.

rS76

The decision of the *Bar Standards Board* shall take effect notwithstanding any application for review being submitted in accordance with Rule S75. However, the *Bar Standards Board* may, in its absolute discretion, issue a temporary *practising certificate* or *litigation extension* to a *barrister* or *registered European lawyer* who has lodged an application for review.

rS77

If the review finds that the *Bar Standards Board* :

.1 has wrongly failed or refused to issue a *practising certificate* , then the *Bar Standards Board* must issue such *practising certificate* as ought to have been issued; or

.2 has wrongly failed or refused to amend a *practising certificate* , then the *Bar Standards Board* must make such amendment to the *practising certificate* as ought to have been made; or

.3 has wrongly amended a *practising certificate* , then the *Bar Standards Board* must cancel the amendment; or

.4 has wrongly revoked a *practising certificate* , then the *Bar Standards Board* must re-issue the *practising certificate* ; or

.5 has wrongly failed or refused to grant a *litigation extension* , then the *Bar Standards Board* must grant such *litigation extension* as ought to have been granted; or

.6 has wrongly revoked a *litigation extension* , then the *Bar Standards Board* must re-grant the *litigation extension* .

Part 3 - D. The Registration of European Lawyers Rules

Rules

rS78

If you are a *Qualified Swiss lawyer* and wish to *practise* in England and Wales under a *home professional title* , you may apply to the *Bar Standards Board* to be registered as a *registered European lawyer* . Such an application will be valid if it was made before 1 January 2025 and in accordance with the *Swiss Citizens' Rights Agreement.*

rS79

An application for registration must be made before 1 January 2025 in such form as may be prescribed by the *Bar Standards Board* and be accompanied by:

.1 a certificate, not more than three months old at the date of receipt of the application by the *Bar Standards Board* , that you are registered with the Competent Authority in Switzerland as a lawyer qualified to *practise* in that *Member State* under a relevant Swiss professional title;

.2 a declaration that:

.a you have not on the grounds of misconduct or of the commission of a *criminal offence* been prohibited from practising in Switzerland and are not currently *suspended* from so practising;

.b no *bankruptcy order* or *directors disqualification order* has been made against you and you have not entered into an individual voluntary arrangement with your creditors;

.c you are not aware of any other circumstances relevant to your fitness to *practise* under your *home professional title* in England and Wales; and

.d you are not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland; and

.3 the prescribed fee.

rS80

Provided that it is satisfied that the application complies with the requirements of Rule rS79, the *Bar Standards Board* will:

.1 register you as a *registered European lawyer* ; and

.2 so inform you and the competent authority in your *Member State* which has issued the certificate referred to in Rule rS79.1.

rS81

The *Bar Standards Board* will:

.1 remove a *registered European lawyer* from the register:

.a pursuant to a sentence of a *Disciplinary Tribunal* ; or

.b if the *registered European lawyer* ceases to be a *European lawyer* ;

.2 suspend a *registered European lawyer* from the register:

.a pursuant to a sentence of either a *Disciplinary Tribunal* or an *Interim Suspension Panel* ; or

.b if the *registered European lawyer's* authorisation in their *home State* to pursue professional activities under their *home professional title* is *suspended* ;

and in each case, notify the *European lawyer's home professional body* :

.c of their removal or suspension from the register; and

.d of any criminal conviction or *bankruptcy order* of which it becomes aware against a *registered European lawyer* .

Part 3 - E. Entity Application and Authorisation

Rules

Part 3 - E1. Eligibility for authorisation to practise as a BSB entity

Rules

rS82

In this Section 3.E, "you" and "your" refer to the *partnership* , *LLP* or *company* which is applying for, or has applied for (in accordance with this Section 3.E) authorisation or (if a licensable body) a licence to practise as a *BSB entity* , and references in these Rules to "authorisation to practise" mean the grant by the *Bar Standards Board* of an authorisation or a licence (as the case may be) under this Section 3.E (distinguishing between the two only where the context so requires).

rS83

To be eligible for authorisation to *practise* as a *BSB entity* , you:

.1 must have arrangements in place designed to ensure at all times that any obligations imposed from time to time on the *BSB entity* , its *managers* , *owners* or employees by or under the *Bar Standards Board's* regulatory arrangements, including its rules and disciplinary arrangements, are complied with and confirm that the *BSB entity* and all *owners* and *managers* expressly consent to be bound by the *Bar Standards Board's* regulatory arrangements (including disciplinary arrangements);

.2 must have arrangements in place designed to ensure at all times that any other statutory obligations imposed on the *BSB entity* , its *managers* , *owners* or employees, in relation to the activities it carries on, are complied with;

.3 must confirm that, subject to the provisions of rS131, you will have in place, at all times, individuals appointed to act as a *HOLP* (who must also be a *manager*) and a *HOFA* of the *BSB entity* ;

.4 must confirm that you have or will have appropriate insurance arrangements in place at all times in accordance with Rule C76 and you must be able to provide evidence of those insurance arrangements if required to do so by the *Bar Standards Board* ;

.5 must confirm that, in connection with your proposed *practice* , you will not directly or indirectly hold *client money* in accordance with Rule C73 or have someone else hold *client money* on your behalf other than in those circumstances permitted by Rule C74;

.6 must confirm that no individual that has been appointed or will be appointed as a *HOLP* , *HOFA* , *manager* or employee of the *BSB entity* is disqualified from acting as such by the *Bar Standards Board* or any *Approved Regulator* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements;

.7 must confirm that you will at all times have a *practising address* in England or Wales;

.8 must confirm that:

.a if you are an *LLP* , you are incorporated and registered in England and Wales, Scotland or Northern Ireland under the Limited Liability Partnerships Act 2000;

.b if you are a *Company* , you are:

.i incorporated and registered in England and Wales, Scotland or Northern Ireland under Parts 1 and 2 of the Companies Act 2006;

.9 must confirm that at least one *manager* or employee is an *authorised individual* in respect of each *reserved legal activity* which you wish to provide;

.10 must confirm that you will pay annual fees as and when they become due.

rS84

In addition to the requirements set out at Rule rS83:

.1 to be eligible for authorisation to *practise* as a *BSB entity* :

.a all of the *managers* of the *partnership* , *LLP* or *company* (as the case may be) must be *BSB authorised individuals* or *authorised (non-BSB) individuals* ; and

.b all of the owners (whether or not the ownership interest is material) of the *partnership* , *LLP* or *company* (as the case may be) must be *BSB authorised individuals* or *authorised (non-BSB) individuals* ;

.2 to be licensed to *practise* as a *BSB licensed body* :

.a the body must be a *licensable body* , as defined by section 72 of the *LSA* but must also meet the eligibility requirements set out at Rule rS83; and

.b all of the non-authorised owners in the *partnership* , *LLP* or *company* (as the case may be) must be approved by the *Bar Standards Board* as being able to hold such interest taking into account the relevant *suitability criteria* .

rS85

In the event that you meet the eligibility criteria set out in Rule rS83, you may submit an application in accordance with Section 3.E2 and the *Bar Standards Board* will review that application in accordance with Section 3.E3 and 3.E4 to determine whether or not to authorise you or to grant you a licence (as appropriate) to *practise* as a *BSB entity* . In the event that the *Bar Standards Board* determines that you should be authorised or licensed (as appropriate) to practise as a *BSB entity* then it may either:

rS86

Authorise you to *practise* as a *BSB entity* in the event that you also meet the eligibility criteria set out in Rule rS84.1 and you have applied to be authorised as such in your relevant application form; or

.1 license you to *practise* as a *BSB licensed body* , in the event that you also meet the eligibility criteria set out in Rule rS84.2 and you have applied to be authorised as such in your relevant application form.

rS87

Such authorisation or licence (as appropriate) will entitle you to:

.1 to exercise a *right of audience* before every *court* in relation to all proceedings;

.2 to carry on:

.a *reserved instrument activities* ;

.b *probate activities* ;

.c the *administration of oaths* ;

.3 to do *immigration work* ; and

.4 if you have been granted a *litigation extension* , to *conduct litigation* .

Guidance to Rules S82-S85 Guidance

gS13

Single person entities are permitted under these arrangements. Therefore, a *BSB entity* may (subject to any structural requirements imposed by general law for the particular type of entity) comprise just one barrister who is both the owner and manager of that entity.

gS14

These are mandatory eligibility requirements. The *Bar Standards Board* has a discretion to take other factors into account in deciding whether an *applicant body* is one which it would be appropriate for it to regulate (see Section 3.E3 and 3.E4 below).

Part 3 - E2. Applications for authorisation (Rules S88-S89) Rules

Application to be authorised or licensed as a BSB entity

rS88

To apply for authorisation to *practise* as a *BSB entity* you must:

.1 complete the application form supplied by the *Bar Standards Board* and submit it to the *Bar Standards Board* ; and

.2 submit such other information, documents and references in support of the application as may be required by the application form or by the *Bar Standards Board* from time to time; and

.3 pay the *application fee* in the amount determined in accordance with Rule rS94 and the *authorisation or licence fee* for the first year.

Application for a litigation extension

rS89

To apply for a *litigation extension* you must:

.1 make this clear on your application form submitted in accordance with rS88 (where appropriate) or otherwise submit the relevant application form made available by the *Bar Standards Board* on its website for this purpose; and

.2 pay (or undertake to pay in a manner prescribed by the Bar Standards Board) the *application fee* (if any) and the relevant *litigation extension fee* (if any) in the amount determined in accordance with Rule rS94; and

.3 provide such other information to the *Bar Standards Board* as it may require in order to satisfy itself that:

.a you have the relevant administrative systems in place to be able to provide *legal services* direct to *clients* and to administer the *conduct of litigation* ; and

.b you have a sufficient number of *persons* who are authorised to *conduct litigation* and to provide guidance to any *managers* or employees that may be involved in assisting in the *conduct of litigation* who are not themselves authorised and that you have an adequate number of qualified *persons* to provide guidance to any persons authorised to *conduct litigation* who are of less than three years' standing.

Guidance to Rules S88-S89 Guidance

gS15

In the event that your application is rejected, the *authorisation fee* and/or *litigation fee* (as appropriate) will be reimbursed to you but the *application fee(s)* shall be retained by the Bar Standards Board.

gS16

A qualified *person* referred to in Rule rS89.3 shall be defined in accordance with Rule S22.3.

Part 3 - E2. Applications for authorisation (Rules S90-S94) Rules

Approval applications for any new HOLPs, HOFAs, owners and/or managers

rS90

If, following authorisation or the grant of a licence (as appropriate), a *BSB entity* wishes to appoint a new *HOLP, HOFA, owner* or *manager* , the *BSB entity* must:

.1 notify the *Bar Standards Board* of such a proposed appointment before it is made; and

.2 make an application to the *Bar Standards Board* for approval of the new *HOLP, HOFA, owner* or *manager* (as appropriate); and

.3 ensure that the new *HOLP, HOFA, owner* or *manager* (as appropriate) has expressly consented to be bound by the *Bar Standards Board's* regulatory arrangements (including disciplinary arrangements); and

.4 pay any fees set by the *Bar Standards Board* in respect of such approval applications.

Application Process

rS91

An application for authorisation and/or a *litigation extension* is only made once the *Bar Standards Board* has received the application form in full, together with the appropriate fees, all the information required in support of the application and confirmation from you in the form of a declaration that the information contained in, or submitted in support of, the application is full and accurate.

rS92

On receipt of the application, the *Bar Standards Board* may require, from you or from a third party, such additional information, documents or references as it considers appropriate to the consideration of your application.

rS93

You are responsible for the contents of your application and any information submitted to the *Bar Standards Board* by you, or on your behalf, and you must not submit (or cause or permit to be submitted on your behalf) information to the *Bar Standards Board* which you do not believe is full and accurate.

rS94

The *application fee* and the *litigation extension fee* shall be the amount or amounts prescribed by the *Bar Standards Board* from time to time. The *authorisation fee* and *litigation fee* shall also be payable and shall be the amount or amounts prescribed by the *Bar Standards Board* from time to time.

Guidance to Rules S91-S93 Guidance

gS17

Application forms and guidance notes for completion can be found on the *Bar Standard Board's* website.

gS18

Once you have submitted an application, if you fail to disclose to the *Bar Standards Board* any information of which you later become aware and which you would have been required to supply if it had been known by you at the time of the original application the Bar Standards Board may refuse your application in accordance with rS101.5.

gS19

Details of the relevant *application fee* , *litigation extension fee* , *authorisation fee* , *licence fee* and *litigation fee* can be found on the *Bar Standards Board's* website.

Part 3 - E3. Decision process

Rules

rS95

Subject to Rules rS96 and rS97, the *Bar Standards Board* must make a decision in respect of each valid and complete application within the *decision period* .

rS96

In the event that the *Bar Standards Board* is not able to reach a decision within the *decision period* , it must notify you and must confirm to you the latest date by which you will have received a response to your application from the *Bar Standards Board* .

rS97

The *Bar Standards Board* may issue more than one notice to extend the *decision period* except that:

.1 any notice to extend must always be issued before the decision period expires on the first occasion, and before any such extended *decision period* expires on any second and subsequent occasions; and

.2 no notice to extend can result in the total *decision period* exceeding more than 9 months.

rS98

During its consideration of your application form, the *Bar Standards Board* may identify further information or documentation which it needs in order to be able to reach its decision. If this is the case, you must provide such additional information or documentation as soon as possible after you receive the relevant request from the *Bar Standards Board* . Any delay in providing this information shall further entitle the *Bar Standards Board* to issue an extension notice in accordance with Rule rS96 and rS97 (as the case may be) or to treat the application as having been withdrawn.

Part 3 - E4. Issues to be considered by the Bar Standards Board (Rules S99-S100)

Rules

Applications for authorisation or the grant of a licence

rS99

In circumstances where the mandatory conditions in Rules rS83 and rS84 have been met, the *Bar Standards Board* must then consider whether to exercise its discretion to grant the authorisation or licence (as appropriate). In exercising this discretion, the *Bar Standards Board* will consider whether the entity is one which it would be appropriate for the *Bar Standards Board* to regulate, taking into account its analysis of the risks posed by you, the *regulatory objectives* of the *LSA* and the Entity Regulation Policy Statement of the *Bar Standards Board* as published from time to time.

rS100

In circumstances where the mandatory conditions set out at Rules S83 and S84 have not been met, the *Bar Standards Board* must refuse to grant the authorisation or licence (as appropriate).

Guidance to Rules S99-S100

Guidance

gS20

In exercising its discretion whether to grant the authorisation or licence the *Bar Standards Board* will have regard to its current Entity Regulation Policy Statement.

Part 3 - E4. Issues to be considered by the Bar Standards Board (Rule S101)

Rules

rS101

Where the *Bar Standards Board* concludes that you are an entity which it is appropriate for it to regulate the *Bar Standards Board* may nonetheless in its discretion refuse your application for authorisation if:

.1 it is not satisfied that your *managers* and *owners* are suitable as a group to operate or control a *practice* providing services regulated by the *Bar Standards Board* ;

.2 if it is not satisfied that your proposed *HOLP* and *HOFA* meet the relevant *suitability criteria* ;

.3 it is not satisfied that your management or governance arrangements are adequate to safeguard the *regulatory objectives* of the *LSA* or the policy objectives of the *Bar Standards Board* as set out in the Entity Regulation Policy Statement;

.4 it is not satisfied that, if the authorisation is granted, you will comply with the *Bar Standards Board's* regulatory arrangements including this *Handbook* and any conditions imposed on the authorisation;

.5 you have provided inaccurate or misleading information in your application or in response to any requests by the *Bar Standards Board* for information;

.6 you have failed to notify the *Bar Standards Board* of any changes in the information provided in the application;

.7 removed;

.8 for any other reason, the *Bar Standards Board* considers that it would be inappropriate for the *Bar Standards Board* to grant authorisation to you, having regard to its analysis of the risk posed by you, the regulatory objectives of the *LSA* or the Entity Regulation Policy Statement of the Bar Standards Board.

Guidance to Rule S101 Guidance

gS21

In circumstances where the *Bar Standards Board* rejects your application on the basis of Rule rS101, you will have the opportunity to make the necessary adjustments to your composition and to re-apply to become a *BSB entity* .

Part 3 - E4. Issues to be considered by the Bar Standards Board (Rules S102-S103) Rules

Applications for authorisation to conduct litigation

rS102

If the *Bar Standards Board* is unable to satisfy itself that the *BSB entity* meets the requirements set out in Rule rS89, it can refuse to grant the litigation extension.

Approval applications for any new HOLPs, HOFAs, owners and/or managers

rS103

The *Bar Standards Board* must consider any approval applications for any new *HOLPs, HOFAs, owners* and/or *managers* made in accordance with Rule rS90 and must determine any application by deciding whether the relevant individual meets the *suitability criteria* which apply relevant to such a proposed appointment.

Part 3 - E5. Suitability criteria in respect of HOLPs, HOFAs, owners and managers Rules

rS104

The *Bar Standards Board* must conclude that an individual does not meet the suitability criteria to undertake the role of a *HOLP* if:

.1 they are not an *authorised individual* ;

.2 they are disqualified from acting as a *HOLP* by the *Bar Standards Board* or an *Approved Regulator* or *licensing authority* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements; or

.3 It determines that the individual is not able effectively to carry out the duties imposed on a HOLP by section 91 of the LSA.

rS105

The *Bar Standards Board* may conclude that an individual does not meet the suitability criteria to undertake the role of a *HOLP* if any of the circumstances listed in Rule rS110 apply to the individual designated as the *HOLP* .

rS106

The *Bar Standards Board* must conclude that an individual does not meet the suitability criteria for acting as a *HOFA* if:

.1 they are disqualified from acting as a *HOFA* by the *Bar Standards Board* or by an *Approved Regulator* or *licensing authority* pursuant to section 99 of the *LSA* or otherwise as a result of its regulatory arrangements; or

.2 the *Bar Standards Board* determines that they are not able effectively to carry out the duties imposed on a *HOFA* by section 92 of the *LSA* .

rS107

The *Bar Standards Board* may conclude that an individual does not meet the suitability criteria for acting as a *HOFA* if any of the circumstances listed in Rule rS110 apply to them.

rS108

If an *owner* is also a *non-authorised individual* , the *Bar Standards Board* must approve them as an *owner* . The *Bar Standards Board* shall approve a *non-authorised individual* to be an *owner* of a *BSB licensed body* if:

.1 their holding of an ownership interest does not compromise the *regulatory objectives* ; and

.2 their holding of an ownership interest does not compromise compliance with the duties imposed pursuant to section 176 of the *LSA* by the *licensed body* or by any authorised individuals who are to be employees or *managers* of that *licensed body* ; and

.3 they otherwise meet the *suitability criteria* to hold that ownership interest taking into account:

(a) their probity and financial position;

(b) whether they are disqualified pursuant to section 100(1) of *LSA* or included in the list maintained by the *Legal Services Board* pursuant to paragraph 51 of Schedule 13 of the *LSA* ; and

(c) their *associates* ; and

(d) the *suitability criteria* in Rule rS110 which apply to *managers* and employees.

rS109

If a *manager* is a *non-authorised individual* , the *Bar Standards Board* must approve them as a *manager* . The *Bar Standards Board* must approve a *non-authorised individual* to be a *manager* of a *BSB licensed body* if they meet the *suitability criteria* to hold that interest taking into account:

.1 their probity;

.2 whether they are disqualified pursuant to section 100(1) of the *LSA* or included in the list maintained by the *Legal Services Board* pursuant to paragraph 51 of Schedule 13 of the *LSA* ; and

.3 the *suitability criteria* in Rule rS110 which apply to *managers* and employees.

rS110

The *Bar Standards Board* may reject an application if it is not satisfied that:

.1 an individual identified in an application for authorisation or the grant of a licence as a proposed *owner, manager, HOLP or HOFA* of the relevant *applicant body* ; or

.2 any individual identified as a replacement owner, manager, *HOLP* or *HOFA* , meets the *suitability criteria* to act as an *owner, manager, HOLP* or *HOFA* of a *BSB entity* . Reasons why the *Bar Standards Board* may conclude that an individual does not meet the *suitability criteria* include where an individual:

.3 has been committed to prison in civil or criminal proceedings (unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975 /1023) applies, this is subject to any conviction being unspent under the Rehabilitation of Offenders Act 1974 (as amended));

.4 has been disqualified from being a *director* ;

.5 has been removed from the office of charity trustee or trustee for a charity by an order under section 72(1)(d) of the Charities Act 1993;

.6 is an undischarged bankrupt;

.7 has been adjudged bankrupt and discharged;

.8 has entered into an individual voluntary arrangement or a *partnership* voluntary arrangement under the Insolvency Act 1986;

.9 has been a *manager* of a *regulated entity* or a *BSB entity* which has entered into a voluntary arrangement under the Insolvency Act 1986;

.10 has been a *director* of a *company* or a *member* of an *LLP* (as defined by section 4 of the Limited Liability Partnerships Act 2000) which has been the subject of a winding up order, an administration order or administrative receivership; or has entered into a voluntary arrangement under the Insolvency Act 1986; or has been otherwise wound up or put into administration in circumstances of insolvency;

.11 lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to that individual;

.12 is the subject of an outstanding judgment or judgments involving the payment of money;

.13 is currently charged with an *indictable offence* , or has been convicted of an *indictable offence* , any offence of dishonesty, or any offence under the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006 (unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies, this is subject to the Rehabilitation of Offenders Act 1974 (as amended));

.14 has been disqualified from being appointed to act as a *HOLP* or a *HOFA* or from being a *manager* or employed by an *authorised or licensed body* (as appropriate) by the *Bar Standards Board* or another *Approved Regulator* or *licensing authority* pursuant to its or their powers under section 99 of the *LSA* or otherwise as a result of its regulatory arrangements;

.15 has been the subject in another jurisdiction of circumstances equivalent to those listed in Rules rS110.1 to rS110.14;

.16 has an investigation or disciplinary proceedings pending against them and/or has professional conduct findings against them either under the disciplinary scheme for *barristers* or otherwise; or

.17 has been involved in other conduct which calls into question their honesty, integrity, or respect for the law;

.18 has not consented to be bound by the regulatory arrangements (including disciplinary arrangements) of the *Bar Standards Board* .

Guidance to Rule S110 Guidance

gS21.1

For the avoidance of doubt rS110 does not oblige you to disclose cautions or criminal convictions that are “spent” under the Rehabilitation of Offenders Act 1974 unless the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) applies. The latter entitles the BSB to ask for disclosure of unprotected cautions or criminal convictions that are “spent” in relation to *HOLPs* and *HOFAs* of *licensed bodies* when seeking authorisation and owners who require approval under Schedule 13 to the LSA.

Part 3 - E6. Notification of the authorisation decision Rules

rS111

The *Bar Standards Board* will notify you of its decision in writing within the *decision period* or by such later date as may have been notified to the *applicant body* in accordance with Rules rS96 or rS97. In the event that the *Bar Standards Board* decides to refuse to grant the application, it must give the reasons for such refusal.

Part 3 - E7. Terms of authorisation Rules

rS112

Any authorisation given by the *Bar Standards Board* to a *BSB entity* , and the terms of any licence granted by the *Bar Standards Board* to a *BSB licensed body* in accordance with this Section 3.E must specify:

.1 the activities which are *reserved legal activities* and which the *BSB entity* is authorised to carry on by virtue of the authorisation or the licence (as the case may be); and

.2 any conditions subject to which the authorisation or the licence (as the case may be) is given (which may include those in Rule rS114).

rS113

Authorisations and licences must, in all cases, be given on the conditions that:

.1 any obligation which may from time to time be imposed on you (or your *managers* , employees, or *owners*) by the *Bar Standards Board* is complied with; and

.2 any other obligation imposed on you (or your *managers* , employees or *owners*) by or under the *LSA* or any other enactment is complied with.

.3 you (and your *managers* , employees, and *owners*) consent to be bound by the regulatory arrangements (including the disciplinary arrangements) of the *Bar Standards Board* ; and

.4 if the conditions outlined at rS113.5 apply, the *Bar Standards Board* may without notice:

.a modify an authorisation granted under rS116;

.b revoke an authorisation under rS117;

.c require specific co-operation with the *Bar Standards Board* as provided for in rC64 and rC70;

.d take such action as may be necessary in the public or *clients'* interests and in the interests of the regulatory objectives; and

.e recover from the *BSB entity* any reasonable costs that were necessarily incurred in the exercise of its regulatory functions.

.5 The conditions referred to in rS113.4 are that:

.a one or more of the terms of the *BSB entity's* authorisation have not been complied with;

.b a person has been appointed receiver or manager of the property of the *BSB entity* ;

.c a relevant insolvency event has occurred in relation to the *BSB entity* ;

.d the *Bar Standards Board* has reason to suspect dishonesty on the part of any *manager* or employee of the *BSB entity* in connection with either that *BSB entity's* business or the business of another body of which the person was a manager or employee, or the *practice* or former *practice* of the *manager* or employee;

.e the *Bar Standards Board* is satisfied that it is necessary to exercise any of the powers listed in rS113.4 in relation to the *BSB entity* to protect the interests of *clients* (or former or potential *clients*) of the *BSB entity* .

rS114

In addition to the provisions in Rule rS113, an authorisation or a licence may be given subject to such other terms as the *Bar Standards Board* considers appropriate including terms as to:

.1 the *non-reserved activities* which you may or may not carry on; and/or

.2 in the case of *licensed bodies* :

(a) the nature of any interest held by a non-authorised *owner* provided always that the *Bar Standards Board* complies with its obligations under paragraph 17 of Schedule 13 to the *LSA* ; and/or

(b) any limitations on the shareholdings or voting controls which may be held by non-authorised *owners* in accordance with paragraph 33 of Schedule 13 to the *LSA* .

Part 3 - E8. Duration of the authorisation/licence granted

Rules

rS115

Except where indicated otherwise in the authorisation or licence, any authorisation or licence granted in accordance with this Section 3.E will be of unlimited duration except that the authorisation or licence:

.1 the authorisation or licence shall cease to have effect on the occurrence of any of the following:

(a) if you have your authorisation/licence withdrawn in accordance with Rule rS117; or

(b) if you obtain authorisation/licence from an *Approved Regulator* or *licensing authority* ;

.2 the authorisation or licence may cease to have effect on the occurrence of any of the following:

(a) if you fail to provide the relevant monitoring information or fail to pay any relevant fees in circumstances where the *Bar Standards Board* has notified you (i) that such information or payment is required within a particular time; and (ii) that failure to provide such information or payment within that time may result in the withdrawal of your authorisation or licence in accordance with this Rule rS115; or

(b) if you fail to replace your *HOLP/HOFA* in accordance with the requirements of this *Handbook* .

.3 The licence of a partnership or other unincorporated body (“the existing body”) may continue where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business subject to the following in rS115.3(a)-(b):

(a) you have notified the *Bar Standards Board* of such a change within 28 days;

(b) if there is no remaining *partner* who was a *partner* before the existing body ceased to exist the licence shall cease to have effect from the date the existing body ceased to exist.

Part 3 - E9. Modification of an authorisation/licence

Rules

rS116

In addition to any powers which the *Bar Standards Board* may have in accordance with Part 5, the *Bar Standards Board* may modify the terms of an authorisation or licence granted by it:

.1 if you apply to the *Bar Standards Board* for the terms of such authorisation or licence (as the case may be) to be modified; or

.2 if it is satisfied that any of the information contained in the relevant application form was inaccurate or incomplete or has changed; or

.3 if such modification is required in accordance with the provisions of this *Handbook* ; or

.4 where the *Bar Standards Board* reasonably considers that such modification is appropriate and in accordance with the *regulatory objectives* under the *LSA* or the policy objectives of the *Bar Standards Board* ; or

.5 where the conditions in rS113.5 are met,

but, in the circumstances set out in Rules rS116.2 to rS116.4 above, shall only be entitled to do so after:

.a giving notice to you in writing of the modifications which the *Bar Standards Board* is intending to make to your authorisation or licence (as the case may be); and

.b giving you a reasonable opportunity to make representations about such proposed modifications.

Part 3 - E10. Revocation or suspension of an authorisation/licence

Rules

rS117

In addition to any powers which the Bar Standards Board may have in accordance with Part 5, the *Bar Standards Board* may:

.1 revoke an authorisation or licence granted by it:

(a) subject to Section 3.F, in the event that you no longer comply with the mandatory requirements set out in Rules rS83 and rS84; or

(b) if your circumstances have changed in relation to the issues considered by the *Bar Standards Board* in Section 3.E4; or

(c) if revocation otherwise appears appropriate taking into account the *regulatory objectives* of the *Bar Standards Board* ; or

(d) where the conditions in rS113.5 are met.

.2 suspend an authorisation or licence granted by it to give it an opportunity to investigate whether or not your authorisation or licence should be revoked in accordance with Rule rS117 (for the avoidance of doubt a *BSB entity* whose authorisation has been suspended remains a *BSB regulated person*),

but (except for when the conditions in rS113.5 are met) in either case only after:

(i) giving written notice to the relevant *BSB entity* of the grounds on which the authorisation or licence may be revoked; and

(ii) giving the relevant *BSB entity* a reasonable opportunity to make representations.

Part 3 - E11. Applications for review

Rules

rS118

If you consider that the *Bar Standards Board* has (other than pursuant to [Section 5]):

.1 wrongly refused an application for authorisation or licence; or

.2 wrongly imposed a term or condition on an authorisation or licence; or

.3 wrongly modified the terms of your authorisation or licence; or

.4 wrongly refused to modify the terms of your authorisation or licence; or

.5 wrongly revoked or *suspended* your authorisation or licence; or

.6 wrongly done any of these things in relation to a litigation extension to your authorisation or licence; or

.7 failed to provide to you notice of a decision in accordance with this Section 3.E, then you may lodge an application for review of that decision using the form supplied for that purpose by the *Bar Standards Board* . Such application for review will only have been made once the *Bar Standards Board* has received the relevant fee in respect of such application for review.

rS119

Any individual:

.1 designated to act as a *HOLP* or a *HOFA* ; or

.2 identified as a non-authorised *owner* or *manager* of the *applicant body* ,

who considers that the *Bar Standards Board* has wrongly concluded that they do not meet the *suitability criteria* which apply to their proposed position in the entity, may lodge an application for a review of that decision using the form supplied for that purpose by the *Bar Standards Board* . Alternatively, you may lodge an application for review on their behalf whether or not they have asked you to. In either case, such an application for a review will only have been made once the *Bar Standards Board* has received the relevant fee for it.

rS120

Any application for a review of the decision must be made within 28 days from the date when the decision is notified to you.

rS121

The decision of the *Bar Standards Board* will take effect notwithstanding the making of any application for a review in accordance with Rule rS118 or rS119. However, the *Bar Standards Board* may, in its absolute discretion, issue a temporary authorisation, licence or litigation extension to a *BSB entity* which has lodged an application for a review in accordance with this Section 3.E11.

rS122

If the review finds that the *Bar Standards Board* :

.1 has wrongly failed or refused to grant an authorisation or licence; or

.2 has wrongly imposed a term or condition on an authorisation or licence;

then in each case the *Bar Standards Board* must issue such authorisation or licence as ought to have been issued.

rS123

If the review finds that the *Bar Standards Board* :

.1 finds that the *Bar Standards Board* has wrongly modified an authorisation or licence; or

.2 finds that the *Bar Standards Board* has wrongly refused to modify an authorisation or licence,

then in each case the Bar Standards Board shall make such modification to the authorisation or licence as ought to have been made.

rS124

If the review finds that the *Bar Standards Board* has wrongly revoked or *suspended* an authorisation or licence, then the *Bar Standards Board* shall re-issue such authorisation or licence.

.1 If the review finds that the *Bar Standards Board* has wrongly done any of the things described in rS122 or–rS123 in relation to your *litigation extension* , then the *Bar Standards Board* shall grant such *litigation extension* as ought to have been granted.

rS125

If the review finds that the *Bar Standards Board* has wrongly concluded that an individual does not meet the *suitability criteria* relevant to their proposed position, the *Bar Standards Board* shall amend its decision and confirm that they do meet the suitability criteria which apply to their proposed position.

rS126

If, after such a review, you or the relevant individual(s) (as the case may be) do not agree with the decision you or the relevant individual(s) may appeal to the *First Tier Tribunal* against the decision.

rS127

Any appeal to the *First Tier Tribunal* against a decision of the BSB must be lodged within 28 days from the date that the decision is notified to you.

rS127A

Where a BSB decision is appealed to the *First Tier Tribunal* , the *First Tier Tribunal* may suspend the effect of that decision until the conclusion of the appeal.

Part 3 - E12. Register

Rules

rS128

The *Bar Standards Board* must keep a public register containing the names and places of practice of all *BSB entities* (together with details of the *reserved legal activities* which such *BSB entities* are able to undertake) as well as details of any bodies which have in the past been granted authorisation or obtained a licence from the *Bar Standards Board* but where such licence and/or authorisation is no longer current.

rS129

If an authorisation or licence is, at any time, suspended or made subject to conditions, this must be noted on the register of *BSB entities* by the Bar Standards Board.

Part 3 - F. Continuing Compliance with the Authorisation and Licensing Requirements

Rules

Part 3 - F1. Non-compliance with the mandatory conditions

Rules

rS130

If, at any time, and for whatever reason, you fail to meet the mandatory conditions in Rules rS83 and rS84 which apply to the type of *BSB entity* which you are, then you must notify the *Bar Standards Board* of your failure to comply with the mandatory conditions within seven days of your failure to comply and, at the same time, you must submit your proposals for rectifying that non-compliance which, for the avoidance of doubt, must include your proposed timetable for rectifying them. If the *Bar Standards Board* considers that your proposals for rectifying them are not sufficient, the *Bar Standards Board* may issue a notice suspending or revoking your authorisation or licence (as appropriate) in accordance with Section 3.E10.

Guidance to Rule S130

Guidance

gS22

Examples of non-compliance include:

.1 where your last remaining *authorised person* :

.a dies; or

.b abandons, retires or resigns from the *practice* ; or

.2 where you are a *BSB entity* (other than a BSB licensed body) a *non-authorised individual* is appointed as a *manager* of or otherwise acquires an ownership interest in such a practice;

.3 where you cease to have available at least one employee who is authorised to carry on a particular reserved activity which you are authorised to provide. Examples of situations where an individual should be considered to be unavailable to a *BSB entity* include where:

.a they are committed to prison;

.b they are unable to attend to the *practice* because of incapacity caused by illness, accident or age;

.c they become and continue to lack capacity under Part 1 of the Mental Capacity Act 2005;

.d they are made subject to a condition on their *practising certificate* or registration which would be breached if they continue to be an *owner* and/or *manager* of the body; or

.e they are no longer authorised to perform the particular *reserved legal activity* .

.4 you cease to have a *HOLP* or a *HOFA* appointed;

.5 your *HOLP, HOFA* , any *manager* or *owner* ceases to meet the relevant *suitability criteria* ; or

.6 where you are a *licensed body* , your last remaining *owner* and/or *manager* who is a *non-authorised individual* dies or otherwise leaves the *practice* .

gS23

Examples of proposals that you may submit in order to rectify such non-compliance include:

.1 In the case of Guidance gS22.1, that you are seeking to appoint a different *authorised person* to be an *owner* and/or a *manager* of a *BSB entity* ;

.2 In the case of Guidance gS22.2, confirmation that you will take the necessary steps to rectify your status, whether by submitting an application to the *Bar Standards Board* for authorisation to *practise* as a *licensed body* and/or for approval of the *non-authorised individual* as a *manager* or by ensuring that the *non-authorised person* divest themselves of their interest as soon as is reasonably practicable, or by seeking a licence from another *licensing authority* , as the case may be [but note Guidance gS24];

.3 in the case of Guidance gS22.4, that you are seeking to appoint a replacement *HOLP* or *HOFA* (as appropriate) in accordance with the relevant procedure in Rule sS90;

.4 in the case of Guidance gS22.5, that you are taking the necessary steps to exclude the relevant individual from the *practice* and, where necessary, you are taking steps to replace them; and

.5 in the case of Guidance gS22.6, you confirm whether or not you are likely to appoint a replacement *non-authorised individual* or, if not, whether you will be seeking authorisation from the *Bar Standards Board* to practise as a *BSB authorised body* .

gS24

In respect of Guidance gS23.2, it may be the case that a *non-authorised individual* obtains an ownership interest in a *BSB entity* following the death of a *barrister* or a *non-authorised person* . Similarly, a *non-authorised person* who has not been approved pursuant to the *suitability criteria* may acquire an ownership interest in a *licensed body* . In these cases, it may be that the *BSB entity* will not need to apply for authorisation to *practise* as a *licensed body* or for approval of such *non-authorised individual* (as appropriate) if the *BSB entity* instead satisfies the *Bar Standards Board* that it is taking steps to ensure that such *non-authorised individual* divest themselves of their interest as soon as is reasonably practicable (for example, on completion of the relevant probate).

Part 3 - F2. Temporary emergency approvals for HOLPs and HOFAs

Rules

rS131

If a *BSB entity* ceases to have a *HOLP* or *HOFA* whose designation has been approved by the *Bar Standards Board* , the *BSB entity* must immediately and in any event within seven days:

.1 notify the *Bar Standards Board* ;

.2 designate another *manager* or employee to replace its previous *HOLP* or *HOFA* , as appropriate; and

.3 make an application to the *Bar Standards Board* for temporary approval of the new *HOLP* or *HOFA* , as appropriate.

rS132

The *Bar Standards Board* may grant a temporary approval under this Section 3.F2 if on the face of the application and any other information immediately before the *Bar Standards Board* , there is no evidence suggesting that the new *HOLP* or *HOFA* is not suitable to carry out the duties imposed on them under this *Handbook* .

rS133

If granted temporary approval under Rule rS132 for its designation of a new *HOLP* or *HOFA* , the *BSB entity* must:

.1 designate a permanent *HOLP* or *HOFA* , as appropriate; and

.2 submit a substantive application for approval of that designation in accordance with Rule rS90,

before the expiry of the temporary approval or any extension of that approval by the *Bar Standards Board* , otherwise the *Bar Standards Board* may be entitled to suspend or revoke the authorisation or licence in accordance with Section 3.E10.

Part 4: Qualification Rules

Part 4 - A. Application Rules

rQ1

Section 4.B applies to all individuals who wish to be called to the *Bar* and to become qualified to practise as a *barrister* and to *Authorised Education and Training Organisations (AETOs)* . Until 1 January 2020, for the purposes of any proceedings of the Inns Conduct Committee, Part 4 applies as if version 3.5 of the BSB Handbook were in force.

rQ2

Section 4.C applies to all *practising barristers* .

Part 4 - B. Bar Qualification Rules Rules

Part 4 - B1. Purpose of the Bar Qualification Rules Outcomes

oC1

To provide routes for the qualification of *barristers* that enable them to meet the Professional Statement and to provide for the regulation of AETOs.

Part 4 - B2. Routes to Qualification as a barrister and authorised person Rules

rQ3

To be called to the *Bar* by an *Inn* an individual must have successfully completed the following:

.1 academic legal training;

.2 vocational training;

.3 the number of qualifying sessions as a student member of an *Inn* as prescribed from time to time by the *BSB* ; and

.4 pay such fee or fees as may be prescribed.

rQ4

To obtain a *provisional practising certificate* a *barrister* must:

.1 have successfully completed a period of *pupillage* satisfactory to the *BSB* ;

.2 pay such fee or fees as may be prescribed.

rQ5

To obtain a *full practising certificate* a *barrister* must:

.1 have successfully completed a further period of *pupillage* satisfactory to the *BSB* ;

.2 pay such fee or fees as may be prescribed.

rQ6

The BSB shall set out in writing:

.1 the requirements to be met by an *Inn* in admitting student members and calling individuals to the *Bar* ;

.2 the manner in which an *Inn* shall assess whether such individuals are fit and proper; and

.3 the minimum requirements for the delivery of qualifying sessions by an *Inn* .

rQ6A

Where it is alleged that the *call declaration* made by a *barrister* on *call* was false in any material respect or that the *barrister* has engaged before *call* in conduct which is dishonest or otherwise discreditable to a *barrister* and which was not, before *call* , fairly disclosed in writing to the *Inn* calling them or where any undertaking given by a *barrister* on *call* to the *Bar* is breached in any material respect that shall be treated as an allegation of a breach of this *Handbook* and will be subject to the provisions of Part 5.

Exemptions Rules

rQ7

The *BSB* may grant exemptions from all or part of the requirements set out in rQ3 to rQ5 above.

rQ8

In deciding whether to grant an exemption from part or all of any component of training, the *BSB* will determine whether the relevant knowledge and experience of the applicant make it unnecessary for further training to be required.

rQ9

An exemption from part or all components of training may be granted unconditionally or subject to conditions, which may include in an appropriate case:

.1 a requirement to do training instead of the training prescribed by this Section; and/or

.2 a condition that the applicant must pass a *Bar Transfer Test* .

rQ10

Where the BSB exempts an individual pursuant to rQ7 above, it may also:

.1 grant exemption in whole or in part from the requirement to attend *qualifying sessions* ; and

.2 specify the period within which any requirement to attend *qualifying sessions* must be fulfilled, which may be a period ending after the individual concerned has been called to the *Bar* .

rQ11

An application for exemption under this Section must be in such form as may be prescribed by the *BSB* and contain or be accompanied by the following:

.1 details of the applicant’s educational and professional qualifications and experience that meets the standards required of candidates;

.2 evidence (where applicable) that the applicant is or has been entitled to exercise rights of audience before any court, specifying the rights concerned and the basis of the applicant’s entitlement to exercise such rights;

.3 any other representations or evidence on which the applicant wishes to rely in support of the application;

.4 verified English translations of every document relied on which is not in the English language; and

.5 payment of such fee or fees as may be prescribed.

rQ12

Before deciding whether to grant any exemption under this Section, the *BSB* may make any further enquiries or require the applicant to provide any further information that it considers relevant.

Full exemption Rules

rQ13

If the *BSB* is satisfied that an applicant falls within Rule Q14, the *BSB* will:

.1 exempt the applicant from any component of training prescribed by this Section which the applicant has not fulfilled; and

.2 authorise the applicant to practise as a *barrister* on their being admitted to an Inn and called to the *Bar* subject to complying with the Handbook.

rQ14

The following categories of individual fall within this Rule:

.1 an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;

.2 subject to Rule Q15, an individual who has been granted rights of audience by an *approved regulator* and who is entitled to exercise those rights in relation to either all proceedings in the High Court or all proceedings in the Crown Court of England and Wales (but not both);

.3 a *barrister* of Northern Ireland who has successfully completed pupillage in accordance with the rules of the Bar of Northern Ireland;

.4 subject to Rule Q16, a *Qualified Swiss Lawyer* .

rQ15

The *BSB* may exceptionally require an applicant who falls within Rule Q14.2 to do part of *pupillage* if it considers this necessary having regard particularly to the knowledge, professional experience and intended future *practice* of the applicant.

rQ16

Subject to Rules Q18 to Q20, the *BSB* may require a *Qualified Swiss Lawyer* to pass a *Bar Transfer Test* if the *BSB* determines that:

.1 the matters covered by the education and training of the applicant differ substantially from those covered by the *academic legal training* and the *vocational training* ; and

.2 the knowledge acquired by the applicant throughout their professional experience does not fully cover this substantial difference.

Registered European Lawyers Rules

rQ17

The Rules governing registration as a *Registered European Lawyer* are in Section 3.D of this *Handbook* .

rQ18

To the extent provided in the *Swiss Citizens' Rights Agreement* , the BSB may not require an applicant who is a *Registered European Lawyer* and who falls within Rule Q20 or Q21 to pass a *Bar Transfer Test* unless it considers that the applicant is unfit to practise as a *barrister* .

rQ19

In considering whether to require an applicant who falls within Rule Q21 to pass a *Bar Transfer Test* , the *BSB* must:

.1 take into account the professional activities the applicant has pursued while a *Registered European Lawyer* and any knowledge and professional experience gained of, and any training received in, the law of any part of the United Kingdom and of the rules of professional conduct of the *Bar* ; and

.2 assess and verify at an interview the applicant's effective and regular pursuit of professional activities and capacity to continue the activities pursued.

rQ20

To fall within this Rule an applicant must have:

.1 for a period of at least three years been a *Registered European Lawyer* ; and

.2 for a period of at least three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales; and

.3 applied for admission to the *Bar* before 1 January 2025.

rQ21

To fall within this Rule an applicant must have:

.1 for a period of at least three years been a *Registered European Lawyer* ; and

.2 for a period of at least three years effectively and regularly pursued in England and Wales professional activities under a *Home Professional Title* ; and

.3 for a period of less than three years effectively and regularly pursued in England and Wales under a *Home Professional Title* professional activities in the law of England and Wales; and

.4 applied for admission to the *Bar* before 1 January 2025.

rQ22

For the purpose of this Section, activities are to be regarded as effectively and regularly pursued if they are actually exercised without any interruptions other than those resulting from the events of everyday life such as absence through illness or bereavement, customary annual leave or parental leave.

Partial exemption Rules

rQ23

If the *BSB* is satisfied that an applicant falls within Rule Q24, the *BSB* will exempt the applicant from the *academic legal training* and the *vocational training* and, if the *BSB* thinks fit, from part or all of *pupillage* .

rQ24

If the *BSB* is satisfied that an applicant falls within Rule Q24, the *BSB* will exempt the applicant from the *academic legal training* and the *vocational training* and, if the *BSB* thinks fit, from part or all of *pupillage* . The following categories of individual fall within this Rule:

.1 an individual who has been granted rights of audience by another *Approved Regulator* and is entitled to exercise those rights in relation to any class of proceedings in any of the Senior Courts or all proceedings in county courts or magistrates' courts in England and Wales;

.2 a *Qualified Foreign Lawyer* who has for a period of at least three years regularly exercised full rights of audience in courts which administer law substantially similar to the common law of England and Wales;

.3 a teacher of the law of England and Wales of experience and academic distinction.

Temporary call to the Bar of Qualified Foreign Lawyers Rules

rQ25

A *Qualified Foreign Lawyer* ("the applicant") who falls within Rule Q24.2 may apply to be called to the *Bar* by an *Inn* on a temporary basis for the purpose of appearing as counsel in a particular case before a *court* of England and Wales without being required to satisfy any other requirements of this Section if the applicant has:

.1 obtained from the *BSB* and submitted to an *Inn* a *Temporary Qualification Certificate* specifying the case for the purposes of which the applicant is authorised to be called to the *Bar* ;

.2 duly completed and signed a *call declaration* in the form prescribed by the *BSB* from time to time; and

.3 paid such fee or fees as may be prescribed.

rQ26

The *BSB* will issue a *Temporary Qualification Certificate* if the applicant submits to the *BSB* :

.1 evidence which establishes that the applicant is a *Qualified Swiss Lawyer* or falls within Rule Q24.2;

.2 a *certificate of good standing* ; and

.3 evidence which establishes that a *professional client* wishes to instruct the applicant to appear as counsel in the case or cases for the purposes of which the applicant seeks temporary *call* to the *Bar* .

rQ27

Admission to an *Inn* and *call* to the *Bar* under Rule Q25 take effect when the applicant is given notice in writing by the *Inn* that the applicant has been admitted to the *Inn* and called to the *Bar* under Rule Q26 and automatically cease to have effect on conclusion of the case or cases specified in the applicant's *Temporary Qualification Certificate* .

rQ28

Where an individual is dissatisfied with a decision by either the *BSB* or an *Inn* in relation to rQ3 to rQ5 and rQ7 to rQ26 above they may apply to the *BSB* for a review.

Part 4 - B3. Authorised Education and Training Organisations Rules

rQ29

Providers of *vocational training* and *pupillage* must be authorised by the *BSB* as an *AETO* .

rQ30

An application to become an *AETO* must be made in such form and be accompanied by payment of such fee or fees as may be prescribed by the *BSB* .

rQ31

In determining an application from an applicant to become an *AETO* , the *BSB* will have regard to the *Authorisation Framework* and in particular the mandatory criteria. The BSB will not approve an application to become an *AETO* unless it is satisfied that it is:

.1 able to meet the mandatory criteria set out in the *Authorisation Framework* relevant to the application; and

.2 a suitable provider for the purposes of the *Authorisation Framework* .

rQ32

The *BSB* may grant authorisation to an *AETO* on such terms and conditions as it considers appropriate including the period of authorisation.

rQ33

The BSB may vary, amend, suspend or withdraw authorisation of an *AETO* in the following circumstances:

.1 the *AETO* has applied for such variation, amendment, suspension or withdrawal;

.2 the *AETO* ceases to exist, becomes insolvent or merges;

.3 the *AETO* fails to comply with conditions imposed upon its authorisation;

.4 the *BSB* is of the view that the *AETO* has failed or will fail to fulfil the mandatory requirements set out in the *Authorisation Framework* ;

.5 the *BSB* is of the view that the *AETO* is not providing the training for which it was authorised to an adequate standard or there has been a material change in the training provided; or

.6 the *BSB* is of the view that the continued authorisation of the *AETO* would inhibit the *Regulatory Objectives* .

rQ34

An *AETO* which is dissatisfied by a decision in relation to rQ31 – rQ33 above may apply to the *BSB* for a review.

Part 4 - B4. Review and Appeals

Rules

rQ35

Where provision is made under this Section for a review by the *BSB* of a decision, any request for such a review must be accompanied by:

.1 a copy of any notice of the decision and the reasons for it received by the person requesting the review ("the applicant");

.2 where the decision is a decision of an *Inn* or the *ICC* , copies of all documents submitted or received by the applicant which were before the *Inn* or the *ICC* ;

.3 any further representations and evidence which the applicant wishes the *BSB* to take into account; and

.4 payment of such fee or fees as may be prescribed.

rQ36

Where the decision under review is a decision of an *Inn* , the *BSB* will invite the *Inn* to comment on any further representations and evidence which the applicant submits under Rule Q35.3.

rQ37

On a review under this Section the *BSB* :

.1 may affirm the decision under review or substitute any other decision which could have been made on the original application;

.2 may in an appropriate case reimburse the fee paid under Rule Q35.4; and

.3 will inform the applicant and any other interested *person* of its decision and the reasons for it.

rQ38

Where provision is made under this Section for a review of a decision by the *BSB* , this review may be delegated to an *Independent Decision-Making Panel* , where specified by the *BSB* .

rQ39

Where under this Section provision is made for a review by the *BSB* of a decision, no appeal may be made to the High Court unless such a review has taken place.

rQ40

An individual who is adversely affected by a decision of the *BSB* under Section B.2 may appeal to the High Court against the decision.

rQ41-rQ129

Removed.

Part 4 - C. The CPD Rules

Rules

The mandatory continuing professional development requirements (Rules Q130-Q131)

Rules

rQ130

For the purpose of this Section 4.C:

.1 “calendar year” means a period of one year starting on 1 January in the year in question;

.2 “continuing professional development” (“CPD”) means work undertaken over and above the normal commitments of a *barrister* and is work undertaken with a view to developing the *barrister’s* skills, knowledge and professional standards in areas relevant to their present or proposed area of practice in order to keep the *barrister* up to date and maintain the highest standards of professional practice.

.3 “CPD Guidance” means guidance issued by the Bar Standards Board from time to time which sets out the CPD structure with which an EPP *barrister* should have regard to.

.4 “EPP” means the Established Practitioners Programme which requires *barristers* , once they have completed the NPP, to undertake CPD during each calendar year in accordance with these Rules.

.5 the “mandatory requirements” are those in Rules Q131 to Q138 below.

.6 “NPP” means the New Practitioner Programme which requires *barristers* to complete CPD in their first three calendar years of practice in accordance with these rules.

.7 a “ *pupillage* year” is any calendar year in which a *barrister* is at any time a *pupil* .

.8 a “ learning objective” is a statement of what a *barrister* intends to achieve through their CPD activities for that calendar year with reference to a specific aim and one or more outcomes.

rQ131

Any practising *barrister* who, as at 1 October 2001, had started but not completed the period of three years referred to in the Continuing Education Scheme Rules at Annex Q to the Sixth Edition of the Code of Conduct must complete a minimum of 42 hours of CPD during their first three years of *practice* .

Guidance to Rule Q131 Guidance

gQ1

Rule rQ131 is intended to apply only in those limited circumstances where a *barrister* started *practice* before 1 October 2001 but after the NPP first came into force, left *practice* before completing the NPP, but has since returned. Rule rQ131 requires them to finish their NPP during whatever is left of their first three years of *practice* .

The mandatory continuing professional development requirements (Rule Q132) Rules

rQ132

Any practising NPP *barrister* who starts *practice* on or after 1 October 2001 must during the first three calendar years in which the *barrister* holds a *practising certificate* after any *pupillage* year complete a minimum of 45 hours of CPD.

Guidance to Rule Q132 Guidance

gQ2

NPP *barristers* should have regard to rQ137 and the NPP guidance which will note the details of any compulsory courses the NPP *barristers* must complete. It also provides guidance as to the types of activities that count towards CPD.

The mandatory continuing professional development requirements (Rules Q133-Q134) Rules

rQ133

Subject to Rule Q136, any EPP *barrister* who holds a *practising certificate* or certificates during a calendar year must undertake CPD.

rQ134

An EPP *barrister* who is required to undertake CPD must:

1. prepare a written CPD Plan setting out the *barrister's* learning objectives and the types of CPD activities they propose to undertake during the calendar year

2. keep a written record of the CPD activities the *barrister* has undertaken in the calendar year

3. keep a written record in the CPD Plan for each calendar year of:

a. the *barrister's* reflection on the CPD they have undertaken;

b. any variation in the *barrister's* planned CPD activities; and

c. the *barrister's* assessment of their future learning objectives.

4. Retain a record of the CPD Plan and completed CPD activities for three years.

5. submit to the Bar Standards Board an annual declaration of completion of CPD in the form specified by the BSB.

Guidance to Rules Q133-Q134 Guidance

gQ3

EPP *barristers* who are required by these Rules to undertake CPD should refer to the CPD Guidance. The CPD Guidance provides further detailed information which EPP *barristers* should have regard to when planning, undertaking and recording their CPD. The CPD Guidance is not prescriptive. Its purpose is to provide a structure that would represent good practice for most *barristers* when considering their CPD requirements.

gQ4

The CPD Guidance explains that these Rules do not specify a minimum number of CPD hours which an EPP *barrister* must undertake in a calendar year: it is the responsibility of the individual *barrister* to determine the CPD activities they will undertake in order meet the requirements of CPD. The Bar Standards Board will assess and monitor *barristers'* compliance with CPD.

gQ5

The underlying principle behind the requirement to plan CPD and set learning objectives is that *barristers* consider their own circumstances and development needs when they complete CPD activities. This best ensures that activities completed contribute to the development of the barrister's practice.

The mandatory continuing professional development requirements (Rules Q135-Q138) Rules

rQ135

Upon the request of the Bar Standards Board, a *barrister* must produce their CPD Plan and record of CPD activities for assessment.

rQ136

Rule Q133 does not apply:

.1 in the case of a *barrister* to whom Rule Q131 applies, to any calendar year forming or containing part of the period of 3 years referred to in Rule Q131; or

.2 in the case of a *barrister* to whom Rule Q132 applies, during any *pupillage* year or during the first three calendar years in which the *barrister* holds a *practising certificate* .

rQ137

The *Bar Standards Board* may, by resolution, specify the nature, content and format of courses and other activities which may be undertaken by *barristers* (or by any category of *barristers*) in order to satisfy the mandatory requirements.

rQ138

The *Bar Standards Board* may, by resolution and after consultation with the Inns, Circuits and other providers as appropriate, vary the minimum number of hours of CPD which must be completed by an NPP *barrister* in order to satisfy any of the mandatory requirements.

Part 5: Enforcement Regulations

Part 5 - A. The Enforcement Decision Regulations 2019 Regulations

Regulation E1 Regulations

rE1

These regulations set out the powers and functions in relation to: the assessment of *reports* and the investigation of *allegations* which may indicate a potential breach of the *Handbook* or require regulatory action; the decisions available to the *Commissioner* and an *Independent Decision-Making Panel* at the conclusion of an investigation; the reconsideration of *allegations* that have been disposed of; and the disclosure of *reports* or *allegations* by the *Bar Standards Board* . These regulations also set out the operation of the *administrative sanction* appeal procedure and the *determination by consent procedure*

Part 5 - A1. The assessment of reports Regulations

Powers of the *Commissioner* in relation to the assessment of *reports*

rE2

The powers of the *Commissioner* include (but are not limited to):

.1 gathering information relating to *applicable persons* from any source for the purposes of assessing whether there has been a potential breach of the *Handbook* ; and

.2 exercising the power under rE12 to determine that a *report* or part of a *report* may be treated as an *allegation* .

rE3

The *Commissioner* shall have the power to authorise any *person* , group or body to fulfil any function or exercise any power given to the *Commissioner* by this Section 5.A. Any authorisations given must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.

Reference to the Legal Ombudsman

rE4

If a *report* is received by the *Bar Standards Board* from a person entitled to complain to the *Legal Ombudsman* about the subject of the *report* , the *Commissioner* must refer the *report* without further consideration to the *Legal Ombudsman* or signpost the provider of the *report* to the *Legal Ombudsman* .

Reference where an *applicable person* acting in judicial or *quasi-judicial* capacity

rE5

If it appears to the *Commissioner* that a *report* relates to an *applicable person* 's actions in a part-time or temporary judicial or *quasi-judicial* capacity, the *Commissioner* must refer the *report* to the person or body responsible for the appointment of the *applicable person* to the judicial or *quasi-judicial* office concerned or another person or body responsible for considering such reports ("the appropriate body"), where it appears that the appropriate body should consider the *report* , requesting notification of the outcome of the appropriate body's consideration as soon as it has been dealt with, subject to rE6 to rE8 below.

rE6

Where:

.1 the appropriate body refuses to deal with the *report;* or

.2 it appears there is no appropriate body

the *Commissioner* may consider the *report* in accordance with the provisions of this Section 5.A.

rE7

When the appropriate body has dealt with the *report* , or the *Commissioner* considers that the appropriate body has not dealt with it within a reasonable time or fully or satisfactorily, the *Commissioner* may consider the *report* in accordance with the provisions of this Section 5.A. and may consider any finding made and any action taken by the appropriate body.

rE8

The *Commissioner* must not consider or take action in relation to a *report* arising in substance from dissatisfaction or disagreement with anything decided, done or said by the *applicable person* in the proper exercise of their judicial or *quasi-judicial* functions.

Reference to the Lord Chancellor or other appropriate body

rE9

If it appears to the *Commissioner* that the *report* relates to the conduct of an *applicable person* who, since the events giving rise to the *report* took place, has been appointed to and continues to hold full-time judicial office and has ceased to practise, the *Commissioner* shall not consider the *report* further and must direct the person from whom the *report* is received to the Lord Chancellor or the Judicial Conduct Investigations Office or to such other person or appropriate body with responsibility for addressing complaints about judges.

Reference to any other person

rE10

If it appears to the *Commissioner* that a *report* in respect of an *applicable person* might more appropriately be dealt with by another body (e.g. an *Inn* , Circuit, employer, a complaint handling body or any other professional or regulatory body), the *Commissioner* may refer the *report* to such other body.

rE11

If, having referred a *report* to another body under rE10, the *Commissioner* subsequently considers that the *report* has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the *Commissioner* may choose to exercise the powers set out in rE2.1 and rE2.2 above.

Initial assessment of *reports*

rE12

Where the *Commissioner,* having regard to rE13, considers that a *report* :

.1 discloses a potential breach of the *Handbook* by an *applicable person* ; and/or

.2 potentially satisfies the *disqualification condition*

the *Commissioner* may treat the *report* as an *allegation* .

rE13

In determining whether to treat a *report* as an *allegation* under rE12 the *Commissioner* must have regard to:

.1 whether the conduct disclosed in the *report* or its consequences presents sufficient risk to the *regulatory objectives* to justify further action;

.2 whether the conduct disclosed in the *report* can be properly and fairly investigated; and

.3 whether the conduct disclosed in the *report* could not more appropriately be dealt with under one or more of the provisions set out at rE4 to rE11 above.

Part 5 - A2. Investigation of allegations

Regulations

Powers of the *Commissioner* in relation to the investigation of *allegations*

rE14

The powers of the *Commissioner* include (but are not limited to) the power at any time:

.1 to carry out the investigation of *allegations* as appropriate; and

.2 to withdraw any *allegation* and treat it as if a decision under rE12 had not been made.

Investigating *allegations*

rE15

The *Commissioner* must not conclude any investigation of an *allegation* without taking reasonable steps to ensure that the *applicable person* has been informed of the *allegation* and given a reasonable opportunity to comment on the *allegation* .

rE16

If a new *report* comes to light during an investigation of an *allegation* that meets the criteria of rE12, it may be treated as a new *allegation* and investigated in accordance with the provisions of Section 5.A.

rE17

The *Commissioner* may defer further consideration of the original *allegation* until a new *allegation* has been investigated.

rE18

No further investigation or opportunity to respond is required where the subject matter of a new *allegation* has already been investigated by the *Commissioner* and the *applicable person* has already been given an opportunity to comment on it during the original investigation.

Part 5 - A3. Possible outcomes of the investigation of an allegation

Regulations

Powers of the *Commissioner* in relation to the conclusion of investigations

rE19

At the conclusion of an investigation of an *allegation* the *Commissioner* has the power to decide:

.1 that the conduct alleged did not constitute a breach of the *Handbook,* or that there was insufficient evidence of a breach of the *Handbook* (on the civil standard of proof *)* ;

.2 that the conduct alleged did constitute a breach of the *Handbook* (on the civil standard of proof) but that, in all the circumstances, no enforcement action should be taken in respect of the breach;

.3 that the conduct alleged did constitute a breach of the *Handbook* (on the civil standard of proof) and that the breach should be dealt with by the imposition of an *administrative sanction* ;

.4 that the conduct alleged may constitute a breach of the *Handbook* and, if the breach were to be proved, that an *administrative sanction* under rE19.3 would not be appropriate in all the circumstances, and that the subject matter of the *allegation* against an *applicable person* involves:

.a a conviction for an offence of dishonesty or deception; or

.b a conviction for an offence under Section 4, Section 5 or Section 5A Road Traffic Act 1988 (Driving or being in charge of a motor vehicle with alcohol concentration/concentration of a controlled drug above prescribed limit); or

.c a breach of Part 3 or 4 of the *Handbook* ; or

.d any failure to pay an administrative fine within the relevant time; or

.e a failure to comply with any requirements of a sanction imposed following *Disciplinary Action;*

in which case the *allegation* may form the subject matter of a referral to *Disciplinary Action* ; or

.5 to refer an *allegation* to an *Independent Decision-Making Panel* for a decision.

rE20

In conjunction with a decision under rE19, or following a recommendation from an *Independent Decision-Making Panel* under rE23, the *Commissioner* may refer any *allegation* for supervisory action.

rE21

In conjunction with a decision under rE19.1 or rE19.2 the *Commissioner* may issue the *applicable person* with advice.

Powers of an *Independent Decision-Making Panel* in relation to *allegations* referred to it

rE22

Where an *allegation* has been referred to an *Independent Decision-Making Panel* under rE19.5 the *Independent Decision-Making Panel* has the power to decide:

.1 that, on the evidence before it, the conduct alleged did not constitute a breach of the *Handbook,* or that there was insufficient evidence of a breach of the *Handbook* (on the civil standard of proof); or

.2 that, on the evidence before it, the conduct alleged did constitute a breach of the *Handbook* (on the civil standard of proof) but that, in all the circumstances, no enforcement action should be taken in respect of the breach; or

.3 that, on the evidence before it, the conduct alleged did constitute a breach of the *Handbook* (on the civil standard of proof) and that the breach should be dealt with by an *administrative sanction* ; or

.4 that

.a there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied* , and

.b having regard to the *regulatory objectives* , it is in the public interest to pursue *Disciplinary Action*

in which case the *allegation* must form the subject matter of *Disciplinary Action* .

rE23

In conjunction with a decision under rE22 the *Independent Decision-Making Panel* may recommend the matter be referred for supervisory action.

rE24

In conjunction with a decision under rE22.1 or rE22.2 the *Independent Decision-Making Panel* may issue the *applicable person* with advice.

***Independent Decision-Making Panel* and *Commissioner* powers/requirements**

rE25

In exercising its powers under Section 5.A, the *Commissioner* or an *Independent Decision-Making Panel* must have regard to the *Bar Standards Board enforcement strategy* and any published *Bar Standards Board* policy and guidance that appear to be relevant.

Administrative sanction

rE26

Pursuant to rE19.3 and rE22.3 above, the *Commissioner* or an *Independent Decision-Making Panel* may impose an *administrative sanction* on an *applicable person* where there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by that *applicable person* .

rE27

The *Commissioner* or an *Independent Decision-Making Panel* may only impose an *administrative sanction* on an *applicable person* pursuant to rE26 where:

.1 the *Commissioner* or an *Independent Decision-Making Panel* considers that to impose an *administrative sanction* is proportionate and sufficient in the public interest; or

.2 where the matter falls to be considered under rE209 of Section 5.B of the *Handbook.*

rE28

In determining the level of *administrative sanction* to be imposed, the *Commissioner* or an *Independent Decision-Making Panel* must have regard to any published *Bar Standards Board* policy that appears to the *Commissioner* or an *Independent Decision-Making Panel* to be relevant.

rE29

The maximum level of a fine which can be imposed by the *Commissioner* or an *Independent Decision-Making Panel* under rE19.3 and rE22.3 is:

.1 £1,000 (one thousand pounds) where the fine is to be imposed on an *applicable person* who is not a BSB entity; or

.2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on a *BSB entity* .

rE30

Any decision to impose an *administrative sanction* will be recorded and may, where appropriate, be considered for continued monitoring and supervision but will not be disclosed to any third parties except in accordance with Section A.7 of these regulations.

rE31

The *applicable person* may appeal a decision of the *Commissioner* or an *Independent Decision-Making Panel* to impose an *administrative sanction* in accordance with Section 5.A of the Handbook

rE32

In the case of a *non-authorised individual* (other than an unregistered barrister, a manager of a BSB entity or a registered European lawyer who does not have a current practising certificate) who at the time of the alleged conduct was an employee of a *BSB authorised person* the *Commissioner* or an *Independent Decision-Making Panel* may only:

.1 decide that no further action should be taken in relation to the *allegation;* or

.2 make an application to the *Disciplinary Tribunal* that the *non-authorised individual* be subject to a *disqualification order* .

Part 5 - A4. Professional misconduct proceedings

Regulations

Disciplinary Action

rE33

Where rE19.4 or rE22.4 is applicable, the *allegation* shall be referred to *Disciplinary Action* only where the *Commissioner* or an *Independent Decision-Making Panel* is satisfied that:

.1 there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied* ; and

.2 having regard to the *regulatory objectives* , it is in the public interest to pursue *Disciplinary Action.*

rE34

Where the *Commissioner* or an *Independent Decision-Making Panel* is satisfied that the requirements of rE33 are met, an *allegation* which the *Commissioner* or an *Independent Decision-Making Panel* is otherwise intending to refer to the *Disciplinary Tribunal* may, with the consent of the *applicable person* against whom the *allegation* is made, be finally determined by an *Independent Decision-Making Panel* . This is referred to as the " *determination by consent procedure* ".

rE35

The *Commissioner* or an *Independent Decision-Making Panel* must, in deciding whether to refer an *allegation* to the *determination by consent procedure* , consider all the circumstances. However, the *Commissioner* or an *Independent Decision-Making Panel* may only make the *allegation* subject to the *determination by consent procedure* if:

.1 the *applicable person* submits to the jurisdiction of an *Independent Decision-Making Panel* ; and

.2 the *Commissioner* or an *Independent Decision-Making Panel* considers that:

.a there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and

.b having regard to the *regulatory objectives* , it is in the public interest to resolve the *allegation* under the *determination by consent procedure* ; and

.c the potential *professional misconduct* or *disqualification condition* , if proved, combined with the *applicable person* 's previous disciplinary history, does not appear to be such as to warrant a period of *suspension* or disbarment, the withdrawal of an *authorisation* or *licence* (as appropriate) or the imposition of a *disqualification order* (or equivalent by another *Approved Regulator*).

rE36

Disciplinary Action will be conducted in accordance with such procedures as the *Bar Standards Board* may prescribe from time to time, including in Section 5.B of the Handbook, and will apply the appropriate standard of proof as described in rE37, rE38, rE164, and rE261A.

rE37

Where a matter is to be considered under the *determination by consent procedure* as per rE34, the standard of proof to be applied is the civil standard of proof, except when rE38 applies.

rE38

In considering *allegations* under the *determination by consent procedure* , the *Commissioner* or an *Independent Decision-Making Panel* must apply the criminal standard of proof when deciding charges of *professional misconduct* where the conduct alleged within that charge occurred prior to 1 April 2019, including where the same alleged conduct continued beyond 31 March 2019 and forms the basis of a single charge of *professional misconduct* .

Determination by Consent

rE39

Where the *Commissioner* or an *Independent Decision-Making Panel* has decided to refer an *allegation* to the *determination by consent procedure* in accordance with rE35, the *Commissioner* or an *Independent Decision-Making Panel* (as the case may be) may terminate the *determination by consent procedure* at any time if it no longer considers that the requirements of rE35 are satisfied, or for any other good reason.

rE40

If the *determination by consent procedure* ends other than by a finding and sanction to which the *applicable person* consents, then an *allegation* may be referred to a three-person *Disciplinary Tribunal* .

rE41

An *Independent Decision-Making Panel* may impose on an *applicable person* against whom a charge of *professional misconduct* has been found proved under the *determination by consent procedure* any one or more the following:

.1 an order to pay a fine to the *Bar Standards Board* (the amount of such fine to be determined having regard to the relevant sanctions guidance) on such terms as to payment as the *Independent Decision-Making Panel* thinks fit;

.2 the imposition of any conditions on their licence or authorisation (where appropriate);

.3 a reprimand by the *Bar Standards Board* ;

.4 advice by the *Independent Decision-Making Panel* as to their future conduct; and

.5 an order to complete (or, in the case of a *BSB entity* , an order to procure that any relevant *managers* or employees complete) continuing professional development of such nature and duration as an *Independent Decision-Making Panel* shall direct and to provide satisfactory proof of compliance with this order to the *Commissioner* .

rE42

In determining what sanction, if any, to impose under the *determination by consent procedure,* an *Independent Decision-Making Panel* shall have regard to any relevant policy or guidelines issued by the *Bar Standards Board* and/or by the *Council of the Inns of Court* from time to time.

rE43

An *Independent Decision-Making Panel* may not make an award of costs when dealing with an *allegation* under the *determination by consent procedure* .

rE44

The *Commissioner* must publish any finding and sanction resulting from the *determination by consent procedure* to the same extent as such publication would have taken place on a finding and sanction by a *Disciplinary Tribunal* , as provided for in the Disciplinary Tribunal Regulations.

rE45

If the *applicable person* accepts the outcome of the *determination by consent procedure* , no one may appeal against it.

Disciplinary Tribunal

rE46

At the same time as the *Commissioner* or an *Independent Decision-Making Panel* directs that an *allegation* shall form the subject matter of a disciplinary charge and/or *disqualification* application before a *Disciplinary Tribunal* , the *Commissioner* or an *Independent Decision-Making Panel* must also decide whether a three-person panel or a five-person panel is to be constituted.

rE47

In deciding whether to direct the constitution of a three-person or a five-person panel, the *Commissioner* or an *Independent Decision-Making Panel* shall consider the sanction which it considers is likely to be imposed on the *applicable person* if the charge or application is proved, having regard to:

.1 any indicative sanctions guidance published by *BTAS/COIC* / *Bar Standards Board* from time to time; and

.2 the previous disciplinary record of the *applicable person* .

rE48

The *Commissioner* or an *Independent Decision-Making Panel* may direct that a five-person panel is to be constituted if it considers that:

.1 having regard to any indicative sanctions guidance published by *BTAS/COIC* / *Bar Standards Board* , in all the circumstances, a sanction of disbarment or *suspension* from *practice* for more than twelve months may be appropriate; or

.2 having regard to any indicative sanctions guidance published by *BTAS/COIC* / *Bar Standards Board* , in all the circumstances, a sanction of indefinite *disqualification* or *disqualification* for a defined term of more than twelve months may be appropriate; or

.3 having regard to any indicative sanctions guidance published by *BTAS/COIC* / *Bar Standards Board* , in all the circumstances, a sanction of a *BSB entity* having its authorisation or licence revoked or *suspended* for a period of more than twelve months may be appropriate; or

.4 the *allegation* involves a conviction for dishonesty or deception

otherwise the *Commissioner* or an *Independent Decision-Making Panel* must direct that a three-person panel is to be constituted.

rE49

The *Commissioner* or an *Independent Decision-Making Panel* must inform the *applicable person* of the direction that it has made pursuant to rE46. There is no appeal against the decision to refer a matter to a three or a five-person panel.

rE50

The *Commissioner* or an *Independent Decision-Making Panel* may:

.1 refer to the same *Disciplinary Tribunal* any charges and/or *disqualification* applications which they consider may conveniently be dealt with together; and

.2 refer any additional charges or *disqualification* applications relating to the same *applicable person* to the *Disciplinary Tribunal* which is dealing with the original disciplinary charge or *disqualification* application (as the case may be), even if the additional charge or application, by itself, may be regarded as insufficiently serious to merit disposal by a *Disciplinary Tribunal* of that level.

rE51

When the *Commissioner* or an *Independent Decision-Making Panel* has directed that an *allegation* shall form the subject matter of a charge or application before a *Disciplinary Tribunal* , the *Commissioner* is responsible for bringing the charge or application on behalf of the *Bar Standards Board* and prosecuting that charge before such *Disciplinary Tribunal* . If so:

.1 the *Commissioner* may arrange for the appointment of a representative to settle the charge and to present the case before the *Disciplinary Tribunal* ; and

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

rE52

Section 5.B applies in respect of the procedure to be followed by the *Disciplinary Tribunal*

rE53

Where a *Disciplinary Tribunal* directs that matter(s) be referred to *Commissioner* or an *Independent Decision-Making Panel* under rE209 to consider whether an *administrative sanction* should be imposed, the *Commissioner* or an *Independent Decision-Making Panel* shall consider the matter in accordance with rE26 to rE32 or take no enforcement action in accordance with rE19.2 and rE22.2.

Part 5 - A5. Appeals

Regulations

rE54

An *applicable person* has a right to appeal from a decision to impose an *administrative sanction* . That appeal is to an *appeal panel* nominated by the *President* in the same composition as a *three-person panel* constituted under rE141 of the *Disciplinary Tribunal Regulations* .

rE55

An appeal, if made, shall be made by the *applicable person* sending to the *Commissioner,* within 28 days of the imposition of the *administrative sanction* , a notice identifying the decision appealed against, the decision the *applicable person* contends for, the grounds of such appeal and a statement whether the *applicable person* requires their appeal to be disposed of at an oral hearing. If the *applicable person* does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.

rE56

The notice must be accompanied by a sum as prescribed by the *Bar Standards Board* from time to time. The sum will be payable to the *Bar Standards Board* to cover expenses.

rE57

Where the appeal is to be dealt with at an oral hearing then:

.1 at least 5 working days before the time set for the appeal, the *Bar Standards Board* will provide each member of the *appeal panel* and the *applicable person* with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and

.2 the *applicable person* and *Bar Standards Board* may be represented at the hearing.

rE58

The decision of an *appeal panel* is final and shall not be not subject to any further appeal or reconsideration.

rE59

The *appeal panel* must decide whether to set aside or to vary the original decision.

rE60

If the *appeal panel* allows the appeal in whole or in part, the *appeal panel* may direct that any administrative fine or appeal fee already paid by the *applicable person* be refunded either in whole or in part, but the appeal panel has no power to award costs.

Part 5 - A6. Reconsidering allegations which have been disposed of

Regulations

rE61

The *Commissioner* or an *Independent Decision-Making Panel* may reconsider an *allegation* which has been disposed of by the *Commissioner* or an *Independent Decision-Making Panel* respectively where:

.1 new evidence becomes available which leads it to conclude that it should do so, or

.2 for some other good reason.

rE62

Following such reconsideration, the *Commissioner* may take any further or different action the *Commissioner* thinks fit, as if any earlier decision had not been made.

Part 5 - A7. Confidentiality

Regulations

rE63

The *Bar Standards Board* must keep *reports* and *allegations* assessed or investigated under these regulations confidential. The *Bar Standards Board* must not disclose the fact that a *report* exists, or details of the *report* or of its treatment as an *allegation* or otherwise, or of its disposal save as specified in this Section 5.A, or as otherwise required by law.

rE64

Disclosure may be made:

.1 for the purpose of the *Bar Standards Board's* regulatory assurance, supervision or authorisations functions; or

.2 for the purpose of keeping the *applicable person,* or any source of information relating to the *applicable person,* informed of the progress of the consideration of a *report* or *allegation* ; or

.3 for the purpose of publicising any forthcoming public hearing of charges arising from the *allegation* ; or

.4 where the *applicable person* consents; or

.5 in response to a request from the selection panel or a member of its secretariat in respect of an application by a *barrister* for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the *BSB authorised individual* for a *certificate of good standing* in respect of a *barrister* ; or

.6 for the purposes of providing examples of the types of behaviour that may constitute breaches of the *Handbook* either externally or internally within the *Bar Standards Board* , provided that where disclosure occurs in these circumstances although details of the individual *reports* or *allegations* may be published, any relevant party's identities will remain anonymous; or

.7 with the approval of the *Commissioner* , where the *Commissioner* considers it is in the public interest to disclose some or all of the details of the *report* or *allegation* .

Part 5 - A8. Interpretation

Regulations

rE65

For the avoidance of doubt, this Section 5.A does not prevent the immediate operation of the *Interim Suspension and Disqualification Regulations* or the *Fitness to Practise Regulations* , where appropriate.

Part 5 - A9. Commencement

Regulations

rE66

This Section 5.A shall come into force in accordance with the provisions of Part 1 of this Handbook.

rE67 – rE100

Removed.

Schedule 1 - Proceedings and Composition of the Independent Decision-Making Panels

Regulations

1) An *Independent Decision-Making Panel* shall:

a) for the purposes of Part 5A, consist of five members of the *Independent Decision-Making Body* ;

b) for all other purposes, consist of three members of the *Independent Decision-Making Body;*

and shall have a lay majority of at least one.

2) *Independent Decision-Making Panel* meetings shall be held in private.

3) Decisions of *Independent Decision-Making Panels* must be recorded in writing.

4) *Independent Decision-Making Panel* meetings shall be held at a frequency to be determined by the *Bar Standards Board.*

5) *Independent Decision-Making Panels* may, at any time, invite any person to attend an *Independent Decision-Making Panel* meeting in an advisory or consultative capacity.

6) Independent Decision-Making Panel meetings may be held in person, by email, by telephone or via videoconference.

Part 5 - B. The Disciplinary Tribunals Regulations

Regulations

Part 5 - B1. The Regulations

Regulations

Regulation E101

Regulations

rE101

These Regulations will apply following the referral of an *allegation* by the *Commissioner* or an *Independent Decision-Making Panel* to a *Disciplinary Tribunal* , in accordance with Part 5 Section A.

Regulation E102 - Service of Charges and/or Applications

Regulations

rE102

The Bar Standards Board must ensure that a copy of the charge(s) and/or application(s):

.1 is served on the relevant *respondent* (s), together with a copy of these Regulations not later than ten weeks after the date on which the *Commissioner* or an *Independent Decision-Making Panel* decides to refer the matter to a *Disciplinary Tribunal* ; and

.2 at the same time, ensure that copies of the charge(s) and/or application(s) are sent to *BTAS* .

Regulations E103-E105 - Documents to be served on the respondent

Regulations

rE103

As soon as practicable after the issue of the charge(s) and/or application(s) to the *respondent(s)* , the Bar Standards Board must serve on the *respondent* (s) and file with *BTAS* :

.1 a copy of the evidence of any witness intended to be called in support of any charge(s) or application(s) (which, for the avoidance of doubt, may be a formal witness statement or an informal document such as a letter or attendance note); and

.2 a copy of any other documents intended to be relied on by the *Bar Standards Board* ; and

.3 the *standard directions* and/or non- *standard directions,* which, subject to rE111, the Bar Standards Board proposes to apply to the case and which must include such timetable as may be considered reasonable by the Bar Standards Board, having regard to the facts of that case.

rE104

If the documents referred to in rE103.1 and/or rE103.2 are not sent to the *respondent(s)* within 28 days of the service of the charges on *the respondent(s)* in accordance with rE102 above, then the *Bar Standards Board* must provide to the *respondent(s)* within that period:

.1 details of the *evidence* that is *s* till being sought; and

.2 details of when it is believed that it will be practicable to supply that evidence to the *respondent(s)* .

rE105

Nothing in rE103 or rE104 above shall prevent a *Disciplinary Tribunal* from receiving the evidence of a witness which has not been served on the *respondent(s)* in accordance with rE103 or rE104, provided that the *Disciplinary Tribunal* is of the opinion either that this does not materially prejudice the *respondent(s)* , or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

Regulations E106-E107 - Directions

Regulations

rE106

Within 21 days of the date of service of the directions under rE103.3, the *respondent(s)* must:

.1 agree the *standard directions* and/or non- *standard directions* ; or

.2 provide to the *Bar Standards Board* written submissions explaining why the directions sought by the *Bar Standards Board* , should be amended, withdrawn or added to; and/or

.3 indicate to the *Bar Standards Board* whether they intend to make any of the applications referred to in rE127.

rE107

Within 14 days of the date when the *Bar Standards Board* receives any written submissions from a *respondent* in accordance with rE106.2, the *Bar Standards Board* must consider them and must during that 14 day period:

.1 inform the *respondent* (s) of those changes to the standard directions or non- *standard directions* (as appropriate) which the *Bar Standards Board* is able to agree; and

.2 seek to agree with the *respondent* (s) such other changes to the standard directions or non- *standard directions* (as appropriate) as may be acceptable to all parties.

Regulations E108-E109 - No reply from respondent

Regulations

rE108

Where standard directions are sought by the Bar Standards Board and the *respondent* does not reply to a request to agree directions within the relevant 21 day period referred to in rE106, the *respondent* will be deemed to have accepted the *standard directions* and they shall be deemed to apply to the particular matter, save and in so far as they may have been modified on the application of any other *respondent* to the same proceedings which was made within the relevant 21 day period. The *Bar Standards Board* must forthwith serve on the *respondent* and file with *BTAS* any directions which are deemed to apply to the matter.

rE109

Where non- *standard directions* are sought by the Bar Standards Board and the *respondent* does not reply within the 21 day period referred to in rE106, the Bar Standards Board must send to the President a copy of the non- *standard directions* and invite them to appoint a Directions Judge to endorse the directions in accordance with rE114 to rE126.

Regulations E110-E112 - Agreement of directions

Regulations

rE110

Where *standard directions* are sought in a case by the *Bar Standards Board* and the parties agree the directions within the relevant 21 day period referred to in rE106, or within the 14 day period referred to in rE107, those directions will apply to the case and the Bar Standards Board must forthwith serve the agreed directions on the *respondent* and file them with *BTAS* .

rE111

The parties may agree non- *standard directions* , save that where any non- *standard directions* would have the effect of preventing *BTAS* from carrying out any function given to it by these Regulations, the said direction cannot be agreed without endorsement of a Directions Judge. In these circumstances, the *Bar Standards Board* must send to the President a copy of the non- *standard directions* and invite them to appoint a Directions Judge to endorse the directions in accordance with rE114 to rE126.

rE112

Where non- *standard directions* , which do not include matters under rE111, are sought by the Bar Standards Board in a case and the parties agree those directions within the relevant 21 day period referred to in rE106, or within the 14 day period referred to in rE107, those directions will apply to the case. The Bar Standards Board must forthwith serve the agreed directions on the *respondent* and file them with *BTAS* .

Regulation E113 - Non-agreement of directions

Regulations

rE113

Where *standard directions* and/or non- *standard directions* are sought in a case by the Bar Standards Board and the *respondent* does not agree those directions within the relevant 21 day period referred to in rE106, or within the 14 day period referred to in rE107, the *Bar Standards Board* must write to the *respondent* to confirm that the directions have not been agreed and must send to the *President* the following (where relevant):

.1 a copy of the directions, including any *standard directions* and/or non- *standard directions* which have been agreed;

.2 any written submissions received from the *respondent(s)* in accordance with rE106.2;

.3 any notice from the *respondent(s)* that they may be intending to make an application referred to at rE106.3; and

.4 the *Bar Standards Board’s* response to any such request(s) and/or submissions.

Regulations E114-E126 - Agreement/endorsement of directions by a Directions Judge

Regulations

rE114

When the *President* has received the documents referred to in rE109,rE111 or rE113 above, the *President* must designate either a King's Counsel or *Judge* , to be determined at the *President’s* sole discretion ("the *Directions judge* "), to exercise the powers and functions conferred on the *Directions Judge* in these Regulations.

rE115

The *President* must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE109, rE111 or rE113 above, are sent to the *Directions Judge* once the *Directions Judge* has been designated.

rE116

When they receive the relevant documents, the *Directions Judge* must consider any submissions about the directions and will determine whether an oral directions hearing is necessary.

rE117

If the *Directions Judge* considers that no oral hearing is necessary, then:

.1 they must make an order setting out those directions which are to apply in the case taking into account all the relevant circumstances, including any written submissions of the parties and the *Directions Judge's* own findings; and

.2 they may consider and decide any other issues which may be necessary in accordance with rE129.

rE118

If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* must give written notice to the *Bar Standards Board* and the *respondent(s)* that an oral hearing is to be held for the purpose of giving directions and taking such other steps as the *Directions Judge* considers suitable for the clarification of the issues before the *Disciplinary Tribunal* and generally for the just and expeditious handling of the proceedings. The *Directions Judge* shall also provide the *Bar Standards Board* and the *respondent(s)* with a time estimate for the oral directions hearing.

rE119

Within seven days of receiving the notice referred to in rE118 above, the *Bar Standards Board* and the *respondent(s)* must notify the *President* and the other party of their and, where relevant, their representative's available dates and times during the six week period immediately after the date of that notice.

rE120

The *Directions Judge* must try to find a date and time within that six week period which are convenient for all parties. If that is not possible, the *Directions Judge* must fix a date and time for the oral directions hearing within that six week period and must notify the *Bar Standards Board* and the *respondent(s)* of that date and time.

rE121

Once the *Directions Judge* has set a date for the oral hearing, *BTAS* must appoint a *person(s)* in accordance with rE136 to act as Clerk at the hearing to take a note of the proceedings; draw up a record of the directions given and/or any admissions made at it.

rE122

BTAS must arrange for a record of the oral hearing before a *Directions Judge* to be made.

rE123

The oral hearing before a *Directions Judge* will be in private.

rE124

After the oral directions hearing (or, if one was not required, after the review of the papers by the *Directions Judge*) *BTAS* must ensure that copies of the directions order are served on the *Bar Standards Board* and on the *respondent(s)* .

rE125

The directions order served under rE124 is final, and there is no appeal against it.

rE126

Any variation sought by a party to an order for *standard directions* made and served under rE108 or rE110, or to an order for non- *standard directions* made and served under rE112, must be endorsed by a *Directions Judge* , who shall be designated by the *President* in accordance with the requirements of rE114.

Regulations E127-E128 - Applications

Regulations

rE127

At any time before the hearing, either party can make any of the following applications and thereafter file with *BTAS* and serve on the opposing party written submission in support of the applications, namely:

.1 an application to sever the charges and/or applications;

.2 an application to strike out the charges and/or applications which relate to the *respondent* who makes the application;

.3 an application to stay the proceedings;

.4 an application about the admissibility of documents;

.5 an application for disclosure of documents;

.6 an application to extend or abridge any relevant time limits;

.7 an application for the hearing to be held in private;

.8 an application for separate hearings or an application that proceedings pending against separate *respondent* s be dealt with at the same hearing; or

.9 any other application to vary *standard directions* or non- *standard directions* (which either party considers reasonable, having regard to the facts of the case).

rE128

The *Directions Judge* or Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* will consider how any of the applications referred to rE127 are to be dealt with.

Regulation E129 - Extent of powers to order directions

Regulations

rE129

The *Directions Judge* or the Chair of the *Disciplinary Tribunal* designated in the *Convening Order* (or failing the *Directions Judge* or the Chair of the *Disciplinary Tribunal* , any other *Judge* nominated by the *President*) may, at any stage, make such directions for the management of the case or the hearing as they consider will expedite the just and efficient conduct of the case.

Regulations E130-E131 - Setting the hearing date

Regulations

rE130

This regulation applies where, after the deemed acceptance, later agreement of directions, or the service of a directions order by *the President* , the date of the hearing has not been fixed. Where this Regulation applies, each party must submit details of their availability for the substantive hearing to *BTAS* in accordance with the directions. After they receive such details, or, where no such details are provided, once the time for providing such details has expired, the *President* must fix the date of the substantive hearing, having regard to the availability of the parties (if provided) and the need for the prompt determination of any charges and/or application(s) made against the *respondent(s)* , in accordance with the provisions of these Regulations.

rE131

BTAS must inform all parties of the date fixed for the hearing as soon as reasonably practicable after *the President* has fixed the date.

Regulations E132-E135 - Appointing a Disciplinary Tribunal and issuing a Convening order

Regulations

rE132

On

.1 the deemed acceptance or later agreement of directions by the parties; or

.2 the service of the directions order by *BTAS* ; or

.3 the fixing of the date of the hearing in accordance with rE130 above,

the President must, in all cases,

.a appoint an appropriate *Disciplinary Tribunal* to sit on the relevant date(s), taking into account the requirements of these Regulations;

.b appoint a *person* or *persons* to act as Clerk or Clerks to the *Disciplinary* Tribunal in accordance with rE136;

.c not less than 14 days before the date of the substantive hearing, serve an order on the *respondent(s)* ("the *Convening order* ") specifying:

.i the name of the *respondent(s)* to the proceedings and such other information as may be relevant to the *respondent(s)* , for example:

(1) where any *respondent* is a *barrister* , details of the *barrister's* Inn, their date of call and (if appropriate) the date of their appointment as King's Counsel, and details of whether or not the *barrister* was acting as a *self-employed barrister* or an *employed barrister* (and, in the latter case, details of their *employer* , including whether or not it is a *BSB entity*) and if the *barrister* was acting as a *HOLP* or *manager* of a *regulated entity* , identifying this fact and identifying the *regulated entity* and whether or not it is a *BSB entity* ;

(2) where any *respondent* is a *BSB entity* , details of the date when that body was so authorised or licensed with a summary of the number of *barristers* and other individuals working within that *BSB authorised body* ;

(3) where any *respondent* is another type of *BSB regulated person* , details of whether or not the *BSB regulated person* is an *authorised (* non- *BSB) person* or is otherwise subject to regulation by any other regulator and, if so, the identity of that regulator, and the role of that individual, including whether they were acting as a *HOLP* , *HOFA, manager* or employee of a *regulated entity* and identifying that *regulated entity* and its Approved Regulator; and,

(4) where any *respondent* is a non- *authorised* individual employed by a *BSB authorised person* , details of the role of that individual and identifying the *BSB authorised person* who directly or indirectly employs the *respondent* ;

.ii the date and time of the sitting of the *Disciplinary Tribunal* at which it is proposed the charge(s) and/or application(s) should be heard; and

.iii the names and status (that is, as Chair, as *lay member* , as *barrister* or other) of those *persons* who it is proposed should constitute the *Disciplinary Tribunal* to hear the case; and

.iv the name of the Clerk,

and send copies of that *Convening Order* to the nominated members of the *Disciplinary Tribunal* , the *Bar Standards Board* , and the Clerk. In the Order the attention of the *respondent(s)* will be drawn to:

(1) their right to represent themselves or be represented professionally, with or without instructing a *solicitor* , as they shall think fit; and

(2) their right to inspect and be given copies of documents referred to in the list served pursuant to rE103 above; and

(3) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

rE133

The *respondent(s)* may, when they receive the *Convening Order* , give notice to the *President* objecting to any one or more of the proposed members of the *Disciplinary Tribunal* . The *respondent* must give this notice as soon as is reasonably practicable and must specify the grounds for their objection.

rE134

When the *President* receives such an objection, they must, if satisfied that it is justified (but subject to rE135), exercise the power conferred on them by rE148 to nominate a substitute member or members of the *Disciplinary Tribunal* , and must notify the *respondent(s)* accordingly. When they receive that notification, the *respondent(s)* may object to any substitute member or members, in the same way as they may object under rE133.

rE135

No objection to any member of the *Disciplinary Tribunal* may be made, or if made, may be upheld, on the grounds only that they know, or might have known, about a charge of *professional misconduct* , or of a breach of proper professional standards, or a previous application to *disqualify* , or a charge consisting of *a legal aid* c *omplaint* , against the *respondent(s)* , or any finding on any such application or charge, or any sanction imposed on the *respondent(s)* in connection with any such application or charge.

Regulations E136-E138 - Appointment of Clerk(s) Regulations

rE136

BTAS shall appoint a Clerk(s) to perform the functions specified in these Regulations and such other functions as the *President, Directions Judge* or the Chair of any *Disciplinary Tribunal* may direct.

rE137

The *President* may publish qualifications or other requirements for those appointed to be Clerks.

rE138

No person who has been engaged in the investigation of a *allegation* or application against a *respondent* in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that *allegation* or application.

Regulations E139-E150 - The Disciplinary Tribunal - Composition of Disciplinary Tribunals

Regulations

rE139

A *Disciplinary Tribunal* must consist of either three persons or five persons.

rE140

A five-person panel must include the following *persons* nominated by the *President* :

.1 as Chair, a *Judge* ; and

.2 two *lay members* ; and

.3 two *practising barristers* of not less than seven years' standing.

rE141

A three-person panel shall include the following *persons* nominated by *the President* :

.1 as Chair, a King's Counsel or a *Judge* ; and

.2 one *lay member* ; and

.3 one *practising barrister* of not less than seven years' standing .

rE142

With the exception of judicial Chairs, the persons nominated by *the President* to sit on a *Disciplinary Tribunal* must be selected from the pool appointed by the *Tribunal Appointments Body.*

rE143

In deciding who will sit on the panel, the *President* may have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the *respondent* (s) against whom the charges have been made. When constituting the panel, *the President* shall take into account the requirements of rE140 and rE141 above, and rE144 and rE145 below.

rE144

A *person* must not be nominated to serve on a *Disciplinary Tribunal* if they:

.1 are a member of the *Bar Council* or of any of its committees or the *Independent Decision-Making Body* ; or

.2 are a member of the *Bar Standards Board* or of any of its committees or the *Independent Decision-Making Body* ; or

.3 were a member of the *Bar Standards Board* or of any of its committees or the *Independent Decision-Making Body* at any time when the matter was being considered by the *Bar Standards Board* .

rE145

The person nominated by *the President,* in accordance with rE140 and rE141, to be Chair of the *Disciplinary Tribunal,* may be the *Directions Judge* as appointed under rE114, unless the *Directions Judge* considers there to be any reason why they should not Chair the hearing.

rE146

The President may publish qualifications or other requirements made for those appointed to serve on a *Disciplinary Tribunal* .

rE147

If a vacancy in the *Disciplinary Tribunal* arises before the substantive hearing of the charge, the *President* must choose another member of the relevant class to fill that vacancy.

rE148

At any time before the substantive hearing of the charge starts, the *President* may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as, in the exercise of their discretion, they deem necessary or expedient, provided always that *the President* notifies the *respondent(s)* of the identity of such substitutes as soon as is reasonably practicable after they have chosen them. The *respondent(s)* may object to such substitute members in the same way as they may object under rE133.

rE149

The proceedings of a five-person panel will not be invalidated on the sole ground that after the *Convening Order* has been issued (in accordance with rE132 above), one or more of the members becomes unable to act or is disqualified from acting, provided that:

.1 the Chair and at least one *lay member* and one barrister member are still able to act and are present throughout the substantive hearing; and

.2 the number of members present throughout the substantive hearing of the charge is not reduced below three.

rE150

A member of a *Disciplinary Tribunal* who has been absent for any time during a sitting shall take no further part in the proceedings.

Regulations E151-E153 - Provision of documents to the Disciplinary Tribunal Regulations

rE151

The *Bar Standards Board* and the *respondent* must send to *BTAS* , at least 14 days before the hearing:

.1 in the case of a five-person *Disciplinary Tribunal* , six copies of the evidence they intend to rely on at the hearing;

.2 in the case of a three-person *Disciplinary Tribunal* , four copies of the evidence they intend to rely on at the hearing.

rE152

The evidence referred to in rE151 must be indexed and paginated.

rE153

BTAS shall provide to each member of the *Disciplinary Tribunal* before the start of the substantive hearing copies of the following documents:

.1 the *Covening Order* ;

.2 the charge(s) and/or application(s) and any particulars of them;

.3 any documents which the *Bar Standards Board* or the *respondent(s)* propose to rely on, unless a direction has been made that copies of such documents be withheld;

.4 any written answer to the charge(s) and/or application(s) submitted by or on behalf of the *respondent(s)* ;

.5 such other documents as have been agreed or directed to be laid before the *Disciplinary Tribunal* before the start of the hearing; and

.6 all orders for directions which have been made in relation to the case.

Regulations E154-E155 - Applications for adjournment before the commencement of the hearing

Regulations

rE154

Any application by a party for an adjournment of the substantive hearing before the date on which the hearing is scheduled to commence must be in writing and accompanied by any evidence upon which the party relies in support of their application.

rE155

An application under rE154 must be submitted to the Chair of the *Disciplinary Tribunal* which has been convened to hear the case and served upon the other party. The Chair must make reasonable attempts to seek any representations in response to the application from the other party. The Chair must consider the application for adjournment taking into account any response submitted by the other party and may:

.1 grant the adjournment; or

.2 direct that the application must be renewed before the *Disciplinary Tribunal* on the first day fixed for the hearing; or

.3 refuse the application; and

.4 may make such directions as they consider appropriate for the further conduct of the case.

Regulation E156 - Hearing in public

Regulations

rE156

The hearing before a *Disciplinary Tribunal* must be in public, unless it has been directed that all or part of the hearing is not to be held in public, and that direction has not been over-ruled by the *Disciplinary Tribunal.*

Regulation E157 - Recording of proceedings

Regulations

rE157

BTAS must arrange for a verbatim record of the proceedings before a *Disciplinary Tribunal* to be made.

Regulations E158-E160 - Joinder

Regulations

rE158

Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine charges against two or more *respondent* s at the same hearing where:

.1 the charge(s) against each *respondent* arises out of the same circumstances; or

.2 in the view of the *Disciplinary Tribunal,* a joint hearing is necessary or desirable.

rE159

Where a joint hearing is held:

.1 these Regulations are to have effect in relation to the hearing with the necessary modifications as directed by the Chair; and

.2 each *respondent* concerned is to be able to exercise any of the rights granted to that *respondent* under these Regulations whether or not any other *respondent* concerned wishes to exercise that right.

rE160

Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine at a single hearing two or more matters which have been separately referred to the *Disciplinary Tribunal* in respect of the same *respondent,* whether or not those matters arise from the same circumstances.

Regulation E161 - Amendment and addition of charge(s) and/or application(s)

Regulations

rE161

A *Disciplinary Tribunal* may at any time before or during the hearing grant permission to the Bar Standards Board to amend the charge(s) and /or application(s) against any *respondent* , or grant permission for new charge(s) and/or application(s) be added, provided that:

.1 the *Disciplinary Tribunal* is satisfied that no *respondent* will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of their defence; and

.2 the *Disciplinary Tribunal* will, if so requested by a *respondent,* adjourn for such time as the *Disciplinary Tribunal considers* reasonably necessary to enable that *respondent* to meet the amended charge(s) or application(s).

Regulations E162-E163 - Adjournment of the hearing

Regulations

rE162

Subject to rE163, the *Disciplinary Tribunal* must sit from day to day until it has made a finding and, if any charge or application is found proved, until sanction has been determined.

rE163

A *Disciplinary Tribunal* may, if they decide an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

Regulation E164 - Standard of proof

Regulations

rE164

The *Disciplinary Tribunal* must apply the civil standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

Regulation E165 - Rules of natural justice

Regulations

rE165

The rules of natural justice apply to proceedings of a *Disciplinary Tribunal* .

Regulations E166-E168 - Evidence

Regulations

rE166

The *Disciplinary Tribunal* may:

.1 (subject to rE167 below) admit any evidence, whether oral or written, whether given in person, or over the telephone, or by video link, or by such other means as the *Disciplinary Tribunal* may deem appropriate, whether direct or hearsay, and whether or not it would be admissible in a *court* of law;

.2 give such directions with regard to the admission of evidence at the hearing as it considers appropriate, ensuring that a *respondent* has a proper opportunity of answering the charge(s) and/or application(s) made against them;

.3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.

rE167

Any party may refer to the fact (if relevant) that the *determination by consent procedure* was used before the *allegation* was referred as a charge before a *Disciplinary Tribunal* . However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the determination by consent procedure ended), unless and until the *respondent* refers to the substance of the procedure in the course of presenting their case, or when they are being sanctioned.

rE168

Where a party has previously failed to comply with any direction made by the Directions Judge, or has failed to do any act, including the submission of evidence, within the time period specified in a direction, the *Disciplinary Tribunal* may, at its discretion:

.1 decide to exclude the relevant evidence; or

.2 draw an adverse inference against that party.

Regulations E169-E170 - Decisions of courts or tribunals

Regulations

rE169

In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was a party, or where a wasted costs order was made against the *respondent* , the following Regulations shall apply:

.1 a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the *respondent* committed the offence;

.2 any *court* record of the findings of fact upon which the *conviction* was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate;

.3 the finding and sanction of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sanction and the findings of fact upon which that finding or sanction was based shall be proof of those facts, unless proved to be inaccurate; and

.4 the judgment of any civil *court* , or a wasted costs order made in any *court* , may be proved by producing an official copy of the judgment or order, and the findings of fact upon which that judgment or order was based shall be proof of those facts, unless proved to be inaccurate.

rE170

In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was not a party, with the exception of a wasted costs order that was made against the *respondent* , the provisions of rE169 do not apply.

Regulations E171-E175 - Witness evidence at the Disciplinary Tribunal

Regulations

rE171

Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.

rE172

Subject to rE176, witnesses:

.1 if giving oral evidence-in-chief, shall first be examined by the party calling them;

.2 may be cross-examined by the opposing party;

.3 may be re-examined by the party calling them; and

.4 may at any time be questioned by the *Disciplinary Tribunal.*

rE173

Any further questioning of the witnesses by the parties shall be at the discretion of the *Disciplinary Tribunal* .

rE174

The *Disciplinary Tribunal* may, upon the application of a party, agree that the identity of a witness should not be revealed in public.

rE175

A witness of fact shall be excluded from the hearing until they are called to give evidence, failing which they will not be entitled to give evidence without leave of the *Disciplinary Tribunal*

Regulations E176-E182 - Vulnerable Witnesses

Regulations

rE176

For the purpose of Part 5: Section B, any person falling into one or more of the following categories may be treated by the *Disciplinary Tribunal* as a vulnerable witness in proceedings before it:

.1 any witness under the age of 18 at the time of the hearing;

.2 any witness with a mental disorder within the meaning of the Mental Health Act 1983;

.3 any witness who is significantly impaired in relation to intelligence and social functioning;

.4 any witness with physical disabilities who requires assistance to give evidence;

.5 any witness, where the allegation against the *respondent* is of a sexual or violent nature and the witness was the alleged victim; and

.6 any witness who complains of intimidation.

rE177

Subject to hearing representations from the parties, the Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

rE178

Any witness who is not regarded as a vulnerable witness under rE176 may apply for one or more of the measures set out in rE179 to be put into place on the ground that the measure(s) is desirable to enable the *Disciplinary Tribunal* to receive the witness's evidence.

rE179

Measures adopted by the *Disciplinary Tribunal* for receiving evidence from a vulnerable witness may include, but are not to be limited to:

.1 use of video links;

.2 use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such a witness is available at the hearing for cross-examination and questioning by the *Disciplinary Tribunal;*

.3 use of interpreters (including signers and translators) or intermediaries;

.4 use of screens or such other measures as the *Disciplinary Tribunal* consider necessary in the circumstances in order to prevent:

.a the identity of the witness being revealed to the press or the general public; or

.b access to the witness by the *respondent*

.5 the hearing of evidence (either whole or in part) by the *Disciplinary Tribunal* in private.

rE180

No *respondent* charged with an allegation of a sexual or violent nature may cross-examine in person a witness who is the alleged victim, either:

.1 in connection with that allegation, or

.2 in connection with any other allegation (of whatever nature) with which the said *respondent* is charged in the proceedings.

rE181

In the circumstances set out in rE180, in the absence of the *respondent* 's written consent, *BTAS* must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on the *respondent* 's behalf.

rE182

Removed from 1 November 2017.

Regulations E183-E184 - Absence of Respondent

Regulations

rE183

Where the *respondent* has not attended at the time and place appointed for the hearing, the *Disciplinary Tribunal* may nevertheless, subject to compliance with rE234.1 in respect of that *respondent* , proceed to hear and determine the charge(s) or application(s) relating to that *respondent,* if it considers it just to do so and it is satisfied that the relevant procedure has been complied with (that is, the *respondent* has been duly served (in accordance with rE249 of these Regulations) with the documents required by rE102, rE103, and rE132.3.c (as appropriate)).

rE184

If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that *respondent* , if it considers it just to do so, subject to compliance with rE234.2 in respect of that *respondent* if the *Disciplinary Tribunal* finds any charge or application proved.

Regulations E185-E187 - Application for a fresh hearing

Regulations

rE185

Where the *Disciplinary Tribunal* proceed in the *respondent* 's absence, in accordance with rE183 or rE184, the *respondent* may apply to *BTAS* for a *Directions Judge* , appointed by the *President* , to consider an application for a fresh hearing before a new *Disciplinary Tribunal* .

rE186

The *respondent's* application under rE185 must be supported by a statement setting out the facts and/or circumstances upon which the *respondent* relies in support of their application.

rE187

The *Directions Judge* may grant a new hearing if they consider it just to do so and if they are satisfied that:

.1 the *respondent* submitted their application for a new hearing promptly upon becoming aware of the decision of the *Disciplinary Tribunal;* and

.2 the *respondent* had good reason for not attending the hearing.

Regulations E188-E198 - Order of proceedings at a hearing

Regulations

rE188

The order of proceedings at a hearing shall be as set out in these regulations unless the *Disciplinary Tribunal* decides, having considered the interests of justice and fairness to the parties, that the procedure should be varied. The *Disciplinary Tribunal* may then give such directions with regard to the conduct of, and procedure at, the hearing as it considers appropriate.

rE189

At any time during the hearing when it considers it desirable, the *Disciplinary Tribunal* may retire into private to deliberate.

rE190

The *Disciplinary Tribunal* shall consider any submissions from the parties in relation to objection(s) to the charge(s) or preliminary applications, following which the *Disciplinary Tribunal* will retire into private session to consider the submissions and shall thereafter announce its determination.

rE191

After the *Disciplinary Tribunal* has dealt with any submissions or applications under rE190, the Clerk shall read the charge(s) in public.

rE192

The Clerk shall ask the *respondent* (s) whether the charge(s) is admitted or denied. The *respondent* (s) plea to the charge(s) will be entered on the record.

rE193

Where the *respondent* (s) admit the charges(s), the Chair of the *Disciplinary Tribunal* shall announce the charge(s) proved and the *Disciplinary Tribunal* shall record in writing its finding on the charge(s) and its reasons. The matter shall then continue in accordance with the procedure set out at paragraph rE199 onwards.

rE194

Where the *respondent* (s) denies the charge(s), the Bar Standards Board will present the case against the *respondent* (s), which may include producing any evidence and calling any witness in person.

rE195

After the evidence against the *respondent* has been called, the *respondent* shall be entitled to submit that they have no case to answer. The Bar Standards Board shall be entitled to respond to such a submission. If such a submission is upheld the *Disciplinary Tribunal* shall dismiss the charge(s), either in whole or in part. If the entirety of the case against the *respondent* is not dismissed and some charges remain the proceedings shall continue as set out at rE196 to rE198.

rE196

The *respondent* shall then be entitled to call any witness, give evidence on their own behalf and adduce any other evidence in support of the *respondent* 's defence.

rE197

The *Bar Standards Board* shall be entitled to call witnesses and adduce evidence in rebuttal of any part of the defence case.

rE198

After the *respondent* has called any witness in person and adduced any evidence, the *Bar Standards Board* may address the *Disciplinary Tribunal,* and thereafter the *respondent.*

Regulations E199-E202 - The finding

Regulations

rE199

At the end of the hearing, the *Disciplinary Tribunal* must record in writing its finding(s) on each charge or application, and its reasons. That record must be signed by the Chair and by all members of the *Disciplinary Tribunal* .

rE200

If the members of the *Disciplinary Tribunal* do not agree on any charge or application, the finding to be recorded on that charge or application must be that of the majority. If the members of the *Disciplinary Tribunal* are equally divided on any charge or application, then, as the burden of proof is on the *Bar Standards Board* , the finding to be recorded on that charge or application must be that which is the most favourable to the *respondent* .

rE201

The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal* 's finding on the charge(s) or application(s), and state whether each such finding was unanimous or by a majority. The *Disciplinary Tribunal* is free to reserve its judgment.

rE202

In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the *respondent* about their future conduct.

Regulations E202A – 202F - Interim suspension/withdrawal of practising rights pending a final decision on sanction

Regulations

rE202A

In any case where charge(s) or application(s) have been found proved against the *respondent* and the *Disciplinary Tribunal* have decided to adjourn the hearing before deciding what sanction to impose, or where under rE211 a three-person panel refers a case to a five-person panel for sanction, the *Disciplinary Tribunal* must consider prior to the adjournment taking effect whether it is in the public interest to make an order and if so to make an order that:

.1 requires the *respondent* to suspend their *practice* , in which case the *Bar Standards Board* must suspend that respondent's *practising certificate* ; or

.2 requires the *Bar Standards Board* to impose such conditions on the *respondent's practice* as the *Disciplinary Tribunal* deems necessary; or

.3 prohibits the *respondent* , either unconditionally or subject to such conditions as the *Disciplinary Tribunal* deems necessary, from accepting or carrying out any public access instructions; or

.4 the *respondent's* authorisation to conduct litigation be suspended or be subject to such conditions as the *Disciplinary Tribunal* deems necessary; or

.5 where that *respondent* does not currently hold a *practising certificate* , requires the *Bar Standards Board* not to issue any *practising certificate* to them.

rE202B

Any order made under rE202A will take effect immediately and last until a decision on what sanction to impose has been made unless the *Disciplinary Tribunal* directs otherwise. Where an order is made under rE202A.1 the effect of the suspension will be as set out in rE220.

rE202C

Where an order is made in respect of a *respondent* under rE202A and that *respondent* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, they may apply to the *President* in writing for it to be so varied.

rE202D

When the *President* receives an application made under rE202C, they must refer it to the Chair and to one of the *lay members* of the *Disciplinary Tribunal* which originally made the order to make a decision on the application or where under rE211 a three-person panel refers a case to a five-person panel for sanction and that five-person panel has been convened by the *President* to the Chair and to one of the *lay members* of the new five-person panel.

rE202E

Any application made under rE202C must be sent by the applicant, on the day that it is made, to the *Bar Standards Board* . The *Bar Standards Board* may make such representations as they think fit on that application to those to whom the application has been referred by the *President* .

rE202F

The persons to whom an application made under rE202C above is referred may vary or confirm the order in relation to which the application has been made.

Regulations E203-E219 - The sanction Regulations

rE203

If the *Disciplinary Tribunal* finds any of the charges or applications proved against a *respondent* , it may hear evidence of any previous:

.1 finding of *professional misconduct* by a *Disciplinary Tribunal* or under the *determination by consent procedure* ; or

.2 *Disqualification Order* ; or

.3 finding of a breach of proper professional standards by the *Bar Standards Board* or any other regulator

.4 adverse finding on a charge consisting of a *legal aid complaint;*

made in respect of the *respondent* , or, where the proved charge(s) concerns a *BSB entity* , in respect of that body or any person employed in the *BSB entity* directly implicated by the charges

rE204

After hearing any representations by or on behalf of the *respondent(s)* , the *Disciplinary Tribunal* must decide what sanction to impose on a *respondent* , taking into account the sentencing guidance and must record its sanction in writing, together with its reasons.

rE205

If the members of the *Disciplinary Tribunal* do not agree on the sanction to be imposed on a *respondent* , the sanction to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sanction to be imposed on a *respondent* , the sanction to be recorded must be that which is the most favourable to the *respondent* .

rE206

The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal* 's decision on sanction and state whether the decision was unanimous or by a majority.

rE207

Subject to rE208 below:

.1 a *respondent* against whom a charge of *professional misconduct* has been found proved may be sanctioned by the *Disciplinary Tribunal* as follows:

.a in the case of *barristers* , in accordance with Annex 1 to these Regulations;

.b in the case of a *BSB authorised body* , in accordance with Annex 2 to these Regulations;

.c in the case of a *BSB licensed body* , in accordance with Annex 3 to these Regulations;

.d in the case of *registered European lawyers* , in accordance with Annex 4 to these Regulations;

.e in the case of all other *BSB regulated persons* , in accordance with Annex 5 to these Regulations;

.2 in the case of a *respondent* who is an *applicable person* in respect of whom the *Disciplinary Tribunal* finds the *disqualification condition* to be established, the *Disciplinary Tribunal* may make a *Disqualification Order* if the *Disciplinary Tribunal* considers that the making of such a *Disqualification Order* is a proportionate sanction and is in the public interest (there being no other available sanction in respect of a *non-authorised individual* (other than an unregistered barrister, manager of a BSB entity or a registered European lawyer who does not have a current practicing certificate *)* directly or indirectly employed by a *BSB authorised person*).

rE208

In any case where a charge of *professional misconduct* has been found proved, the *Disciplinary Tribunal* may decide that no further action should be taken against the *respondent*

rE209

In any case where a charge of *professional misconduct* has not been found proved, the *Disciplinary Tribunal* may direct that the matter(s) be referred to the *Bar Standards Board* for it to consider whether an *administrative sanction* should be imposed in accordance with the provisions of rE19.3 or rE22.3 of the Enforcement Decision Regulations, where:

.1 The *Disciplinary Tribunal* is satisfied there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by the *respondent* ; and

.2 The *Disciplinary Tribunal* considers that such referral to the *Bar Standards Board* is proportionate and in the public interest

rE209A

A direction made under rE209 is not a disposal or a finding for the purposes of the BSB Handbook.

rE210

A three-person panel must not:

.1 disbar a *barrister* or suspend a *barrister's practising certificate* for a period longer than twelve months; or

.2 revoke the authorisation or licence (as appropriate) of a *BSB entity* or suspend it for a period longer than twelve months; or

.3 remove a *registered European lawyer* from the *register of European lawyers* ; or

.4 impose a sanction of suspension on any *BSB regulated person* for a prescribed period longer than twelve months; or

.5 impose a *Disqualification Order* for more than twelve months.

This Regulation does not prevent a three-person panel making an order in accordance with rE211 below.

rE211

In the event that a three-person panel considers that a case before it merits the imposition on a *respondent* of any of the sentences referred to in rE210 or the three-person panel otherwise considers that the case of a particular *respondent* is complex enough to warrant sentencing by a five-person panel:

.1 the three-person panel must refer the case to a five-person panel for it to sanction that *respondent* (but may proceed to sanction any other *respondents* to the proceedings in respect of whom this regulation does not apply); and

.2 the three-person panel must, in order to help the five-person panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other *respondents* to the proceedings). The *respondent* cannot challenge the facts found by the three-person panel; and

.3 the three-person panel must direct within what period of time the sentencing hearing before the five-person panel is to be held and make appropriate directions for the parties to provide the *President* with their dates of availability.

rE212

Following a referral by a three-person panel under rE211, the five-person panel must be constituted in accordance with rE140. *The President* must fix the date for the sentencing hearing and in so doing shall have regard to the availability of the parties, save that *the President* may disregard the availability of any party where that party has failed to provide any, or any reasonable dates of availability. As soon as is reasonably practicable after they have fixed the sentencing hearing, *the President* must inform all the parties of that date.

rE213

The *respondent* must be informed by *BTAS* as soon as practicable of the names and status (that is, as Chair, as *lay member,* as *barrister* or other) of those *persons* who it is proposed will constitute the five-person panel. The *respondent* may, when they are so informed, give notice to *the President* objecting to any one or more of the proposed members of the panel. That notice must be given as soon as is reasonably practicable, must specify the ground of objection, and must be dealt with in accordance with rE134 and rE135.

rE214

If the five-person panel is satisfied that the requirements of rE212 and rE213 above have been complied with, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sanction the *respondent* , provided that it complies with rE234.1.

rE215

If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE212 and rE213, above, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sanction the *respondent* , provided that it complies with rE234.2.

rE216

If the procedure under rE215 has been followed, the *respondent* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel and the procedure for the *respondent's* application shall be as set out at rE185 to rE187 in these Regulations.

rE217

Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and as amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the *Legal Aid Agency* in connection with services provided as part of the Criminal Legal Aid or Civil Legal Aid and to the exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid) on a *Disciplinary Tribunal* in the cases to which those Sections apply). Accordingly:

.1 any *Disciplinary Tribunal* which hears a charge consisting of a *legal aid complaint* relating to the conduct of a *respondent* who is a *barrister* may if it thinks fit (and whether or not it sentences the *respondent* in accordance with rE207.1 in respect of any conduct arising out of the same *legal aid complaint*) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;

.2 where a *Disciplinary Tribunal* hears a charge of *professional misconduct* against a *respondent* who is a *barrister* it may (in addition to, or instead of, sentencing that *respondent* in accordance with rE206.1) order that they be excluded from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service, or Criminal Defence Service, either temporarily, or for a specified period, if it determines that there is a good reason to exclude them arising from:

.a their conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or

.b their professional conduct generally.

rE218

Whether or not a *Disciplinary Tribunal* finds any charge or application proved against a *barrister* who is a *pupil supervisor* , if the *Disciplinary Tribunal* considers that the circumstances of the *allegation* are relevant to the *respondent* in their capacity as a *pupil supervisor* , it may notify the *respondent's AETO* and/or the *BSB* of those concerns in such manner as it sees fit.

rE219

If a *barrister* is a member of more than one *Inn* , each *Inn* of which they are a member must be mentioned in the sanction imposed on them.

Regulations E220-E224 - Sanction of suspension from practice or from authorisation or licensing or imposition of conditions

Regulations

rE220

For the purposes of rE222 to rE224:

.1 The effect of a sanction of suspension for a *BSB authorised individual* is that:

.a the *respondent's practising certificate* is *suspended* by the Bar Standards Board for the period of the suspension;

.b the *respondent* is prohibited from practising as a *barrister* , or holding themselves out as being a *barrister* when providing *legal services* or as otherwise being authorised by the *Bar Standards Board* to provide *reserved legal activities* or when describing themselves as a *barrister* in providing services other than *legal services* (whether or not for reward) unless they disclose the suspension;

.2 The effect of a sanction of suspension for a *registered European lawyer* shall mean that the *respondent* is *suspended* from the *register of European lawyers* maintained by the *Bar Standards Board* and is, for so long as they remain *suspended* :

.a prohibited from holding themselves out as registered with the *Bar Standards Board* ; and;

.b not authorised to *practise* .

.3 The effect of a sanction of suspension for a *BSB entity* shall mean that the body's authorisation or licence is *suspended* for the period of the suspension such that the *respondent* is not an *authorised person* for that period;

.4 The effect of a sanction on a *BSB authorised individual* or a *registered European lawyer* requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this *Handbook* .

rE221

In exceptional circumstances, where the total suspension is three months or less, the Tribunal may postpone the commencement of the suspension for a period as it deems fit.

rE222

The period for which a sanction of suspension from *practice* is expressed to run may be:

.1 a fixed period; or

.2 until the *respondent* has complied with any conditions specified in the order imposing the sanction of suspension.

rE223

Conditions may be imposed on a *barrister's practising certificate* or on the authorisation or licence of a *BSB entity* :

.1 without its being *suspended* ; or

.2 to take effect on a *barrister's practising certificate* or on the authorisation or licence of a *BSB entity* when a period of suspension ends.

rE224

Conditions may (depending on the circumstances) include:

.1 conditions limiting the scope of the *respondent's practice* (after the end of any suspension, if relevant) to such part as the *Disciplinary Tribunal* may determine, either indefinitely or for a defined period; and/or

.2 imposing requirements that the *respondent* , or in the case of a *BSB entity* , its *managers* or employees, undergo such further *training* as the *Disciplinary Tribunal* may determine; and/or

.3 prohibiting the *respondent* from accepting or carrying out any *public access instructions* ; and/or

.4 such other matters as the *Disciplinary Tribunal* may consider appropriate for the purpose of protecting the public and/or preventing a repetition of the conduct in question.

Regulations E225-E233 - Suspension/withdrawal of practising rights pending the hearing of any appeal

Regulations

rE225

rE226 to rE233 below apply to any *respondent* who:

.1 is a *barrister,* who has been sanctioned to be disbarred or to be *suspended* or to be prohibited from accepting or carrying out any public access work or *instructions* for more than twelve months;

.2 is a *BSB* authorised *individual,* who has been sanctioned to be disqualified or to be *suspended* for more than twelve months;

.3 is a *BSB entity,* which has been sanctioned to have its authorisation or licence revoked or *suspended* for more than twelve months; or

.4 is a *BSB authorised person,* who has been sanctioned to have conditions placed on their *practising* certificate , authorisation or licence (as appropriate) prohibiting them from accepting any *public access instructions* or *conducting any litigation* or for more than twelve months.

rE226

Where rE225 applies, the *Disciplinary Tribunal* must seek representations from the *respondent* and from the *Bar Standards Board* on the appropriateness or otherwise of taking action under rE227 below.

rE227

Having heard any representations under rE225 the *Disciplinary Tribunal* must (unless in the circumstances of the case it appears to the *Disciplinary Tribunal* to be inappropriate to do so), either:

.1 in relation to rE225.1 to rE225.3, require the *respondent* to suspend their *practice* immediately, in which case the *Bar Standards Board* must suspend that *respondent's practising certificate* with immediate effect; or

.2 in relation to rE225.4 decide that the condition prohibiting the *respondent* from accepting *public access instructions* or conducting any litigation, shall take effect immediately; or

.3 where the *respondent* has been sanctioned to be disbarred or to be suspended, and where that *respondent* does not currently hold a *practising certificate* , require the *Bar Standards Board* not to issue any *practising certificate* to them.

rE228

If the *Disciplinary Tribunal* decides that it would be inappropriate to require immediate *suspension* or immediate imposition of conditions (as the case may be) it may nonetheless require the *respondent* to suspend their *practice* or to impose conditions, from such date as the *Disciplinary Tribunal* may specify.

rE229

Where the *respondent* is permitted to continue to practise for any period before being *suspended* under rE228 the *Disciplinary Tribunal* may require the *Bar Standards Board* to impose such terms on the *respondent's practice* as the *Disciplinary Tribunal* deems necessary to protect *the public* until the suspension comes into effect.

rE230

Where an order is made in respect of a *respondent* under rE225 and that *respondent* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, they may apply to *the President* in writing for it to be varied.

rE231

When *the President* receives an application made under rE230, they must refer it to the Chair and to one of the *lay members* of the *Disciplinary Tribunal* which originally made the order to make a decision on the application.

rE232

Any application made under rE230 must be sent by the applicant, on the day that it is made, to the *Bar Standards Board.* The *Bar Standards Board may* make such representations as they think fit on that application to those to whom the application has been referred by the *President.*

rE233

The persons to whom an application made under rE230 above is referred may vary or confirm the order in relation to which the application has been made.

Regulation E234 - Wording of the sanction when respondent not present

Regulations

rE234

If a *respondent* has not been present throughout the proceedings, the sanction in respect of that *respondent* must include one or more of the following statements:

.1 if the relevant procedure under rE183 has been complied with, that the finding and sanction were made in the absence of the *respondent* in accordance with rE183;

.2 if the procedure under rE184 has been complied with, that the finding and the sanction were made in the absence of the *respondent* and that they have the right to apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal* ;

.3 if the relevant procedure under rE213 has been complied with, that the sanction was made in the absence of the *respondent* in accordance with rE214;

.4 if the procedure under rE215 has been complied with, that the sanction was made in the absence of the *respondent* and that they may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal* .

Regulation E235 - Report of Finding and Sanction

Regulations

rE235

As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal* , the Chair must prepare a report in writing of the finding (s) on the charge(s) of *professional misconduct* and/or on any applications, and the reasons for those findings and the sanction. At the discretion of the Chair, the report may also refer to matters which, in the light of the evidence given to the *Disciplinary Tribunal* , appear to require investigation or comment. The Chair must send copies of the report to:

.1 the *respondent* ;

.2 the Director General of the *Bar Standards Board* ;

.3 the Chair of the *Bar Standards Board* ; and

.4 where a *barrister* has been disbarred, the *respondent's Inn* of Call and to any other Inns of which they are a member; and

.5 where a *HOLP* or *HOFA* or *manager* or employee of a *licensed body* has been disqualified, *the LSB* ; and

.6 in cases where one or more charges of *professional misconduct* have been found proved:

.a the *respondent's* head of chambers, *HOLP* , or employer (as appropriate); and

.b in the case of a *registered European lawyer* , their home professional body; and

.7 in cases where one or more charges of *professional misconduct* have been found proved and any such charge constitutes, or arises out of, *a legal aid complaint* , and/or the sanction includes an order under rE217, *the Legal Aid Agency* ; and

.8 any other person or bodies that the *President* deems, in their absolute discretion, to be appropriate, taking into account the circumstances.

Regulations E236-E238 - Appeals

Regulations

rE236

In cases where one or more charges of *professional misconduct* have been proved, and/or a *disqualification order* has been made, an appeal may be lodged with the High Court in accordance with the Civil Procedure Rules:

.1 by the *respondent* against finding and/or sanction;

.2 with the consent of the *Commissioner* , by the *Bar Standards Board* against sanction.

rE237

In any case where any charge of *professional misconduct* or application to *disqualify* has been dismissed, the *Bar Standards Board* may (with the consent of the *Commissioner*) lodge an appeal with the High Court in accordance with the Civil Procedure Rules.

rE238

Where a *respondent* lodges an appeal against a disbarment or *Disqualification Order* or the revocation of a licence or authorisation, they may at the same time lodge with the High Court an appeal against any requirement imposed under rE227 to rE229 as appropriate.

Regulations E239-E240 - Action to be taken by the Inn (in circumstances where a barrister has been sanctioned to be disbarred)

Regulations

rE239

The Treasurer of the *respondent's Inn* of Call must not fewer than 21 days, or more than 35 days, after the end of the *Disciplinary Tribunal's* proceedings (or, where the *respondent* has given notice of appeal to High Court against the finding and/or sanction, once the time for appeal to the High Court has expired and any appeal to the High Court has been disposed of) pronounce the sanction of disbarment decided on by the *Disciplinary Tribunal* , and take such further action as may be required to carry the sanction into effect. The Treasurer must inform the *persons* specified in rE235 of the date on which the sanction is to take effect, (which must be no later than two working days after the date when that sanction is pronounced).

rE240

In any case in which the *respondent* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct* , no action referred to in rE239 may be taken until the appeal has been heard by the High Court, or otherwise disposed of without a hearing.

Regulations E241-E242 - Action to be taken by the Bar Standards Board

Regulations

rE241

Subject to rE242, the *Bar Standards Board* must take the appropriate steps to put the finding and/or sanction of the *Disciplinary Tribunal* into effect, except that in any case in which an *applicable person* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct* or *disqualification order,* no action may be taken until the appeal has been heard by the High Court or otherwise disposed of without a hearing.

rE242

Where the finding and/or sanction of the *Disciplinary Tribunal* is that the *BSB regulated person* should be subject to an immediate suspension and/or immediate imposition of conditions in accordance with rE226 the actions of the *Bar Standards Board* must not be deferred even if the *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct.*

Regulations E243-E243A - Publication of finding, sanction and report of the Disciplinary Tribunal

Regulations

rE243

The following procedures apply to the publication of the finding and sanction of a *Disciplinary Tribunal:*

.1 *BTAS:*

.a must, where charges are proved, publish the finding and sanction of the *Disciplinary Tribunal* on its website within 14 days of the date when the *Disciplinary Tribunal's* proceedings end, unless, on application by the *respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the finding and/or sanction; and

.b must, where charges have been dismissed, including following an application under rE127.2, not publish the finding on its website, unless the *respondent* so requests; and

.2 The *Bar Standards Board* is free to publish the findings and sanction of a *Disciplinary Tribunal* on its website in accordance with rE243.1.

rE243A

The following procedures apply to the publication of the report of the *Disciplinary Tribunal* Decision:

.1 *BTAS* :

.a must, where charges are proved, publish the report of the *Disciplinary Tribunal* decision on its website within a reasonable time after the date when the *Disciplinary Tribunal's* proceedings end, unless, on application by the *respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the report; and

.b must, where charges have been dismissed, including following an application under rE127.2, not publish the report on its website, unless the *respondent* so requests; and

.c must, where charges have been dismissed, including following an application under rE127.2, publish an anonymised summary of the report on its website, unless on application by the *respondent* at the hearing, the *Disciplinary Tribunal* directs that it is not in the public interest to publish the anonymised summary; and

.d may, where charges have been dismissed, publish the report of the *Disciplinary Tribunal* on their websites at any time, provided that in this case all details of the relevant parties involved in the hearing are anonymised.

Regulations E244-E248 - Costs

Regulations

rE244

A *Disciplinary Tribunal* or Directions Judge may make such Orders for costs, whether against or in favour of a *respondent* , as the *Disciplinary Tribunal* or Directions Judge shall think fit.

rE245

A party who wishes to make an application for costs must, no later than 24 hours before the commencement of the hearing, serve upon any other party and file with *BTAS* a schedule setting out the costs they seek.

rE246

Where it exercises its discretion to make an Order for costs, a *Disciplinary Tribunal* must either itself decide the amount of such costs or direct *BTAS* to appoint a suitably qualified *person* to do so on its behalf.

rE247

Any costs ordered to be paid by or to a *respondent* must be paid to or by the *Bar Standards Board* .

rE248

All costs incurred by the *Bar Standards Board* preparatory to the hearing before the *Disciplinary Tribunal* must be borne by the *Bar Standards Board* .

Regulations E249-E250 - Service of documents

Regulations

rE249

Any documents required to be served on a *respondent* in connection with proceedings under these Regulations shall be deemed to have been validly served:

.1 If sent by guaranteed delivery post, or other guaranteed or acknowledged delivery, or receipted hand delivery to:

.a in the case of a *BSB authorised individual* , the address notified by them pursuant to the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing it) as their *practising address* ; or

.b in the case of a *BSB entity* , its registered office address or its principal office; or

.c in the case of a *BSB regulated person* or non- *authorised individual* acting as a *manager* or employee of a *BSB entity* , the address provided by the *BSB entity* as their home address or, in the absence of such information, the address of the relevant *BSB entity* notified pursuant to the requirements of Part 2 of this *Handbook* ; or

.d in either case, an address to which the *respondent* has asked in writing that such documents be sent; or

.e in the absence of any of the above, to their last known address; or;

.f in the case of a *BSB regulated person* or non- *authorised individual* acting as a *manager* or employee of a *BSB entity* , the last known address of the relevant *BSB entity* ,

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

.2 If served by e-mail, where:

.a the *respondent's* e-mail address is known to the *Bar Standards Board* ; and

.b the *respondent* has asked for 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 the e-mail is sent;

.3 If actually served;

.4 If served in any way which may be directed by the *Directions judge* or the Chair of the *Disciplinary Tribunal* .

rE250

For the purpose of rE249.1, "receipted hand delivery" means a delivery by hand which is acknowledged by a receipt signed by the *respondent* or by a relevant representative of the *respondent* (including, for example, the *respondent's* clerk, or a *manager* or employee of the *BSB entity* at which the *respondent* work).

Regulations E251-E253 - Delegation

Regulations

rE251

The powers and functions conferred by these Regulations on a *Directions judge* may be exercised by any other *Judge* or King's Counsel nominated by *the President* , including the *Judge* or King's Counsel designated in the *Convening Order* as Chair of *the Disciplinary Tribunal* appointed to hear and determine the charge or charges against the *respondent* , if the *Directions Judge* is unable to act due to absence, or for any other reason.

rE252

Any duty or function or step which, under these regulations, is to be discharged or carried out by *the President* may, if they are unable to act due to absence or to any other reason, be discharged or carried out by the Registrar of *BTAS,* the Chair of the *Tribunal,* or by any other *person* nominated in writing by *the President* for any specific purpose.

rE253

Anything required by these Regulations 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 by, or given to, any *person* authorised by *the President* , either prospectively or retrospectively and either generally or for a particular purpose. Any authorisations given by the President under this regulation must be in writing.

Regulations E254-E258 - Exclusion from providing representation funded by the Legal Aid Agency (Application for termination)

Regulations

rE254

A *respondent* who has been excluded from legal aid work under Section 42 of the Administration of Justice Act 1985 may apply for an order ending their exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service in accordance with rE256 below.

rE255

Any such application must be in writing and addressed to the Chair of the *Disciplinary Tribunal* that made the original order.

rE256

The President may dismiss the application, or may decide that the *respondent's* exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date .

rE257

The Chair of the *Disciplinary Tribunal* must notify their decision in writing to all those *persons* who received copies of the report of the *Disciplinary Tribunal* under rE235.

rE258

The Disciplinary Tribunal may make such order for costs in relation to an application under rE244 as it thinks fit and rE244 to rE248 apply with all necessary modifications.

Regulation E259 - Interpretation [Regulations]

rE259

In Section 5.B all italicised terms shall be interpreted in accordance with the definitions in Part 6.

Part 5 - B2. Citation and commencement [Regulations]

rE260

These Regulations may be cited as "The *Disciplinary Tribunal* Regulations 2017".

rE261

These Regulations will come into effect on 1 November 2017 and shall apply to all cases referred to a *Disciplinary Tribunal* prior to that date under the Regulations then applying, and any step taken in relation to any *Disciplinary Tribunal* pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

rE261A

Notwithstanding the provisions in rE164 and rE261, the *Disciplinary Tribunal* must apply the criminal standard of proof when deciding:

.1 charges of *professional misconduct* where the conduct alleged within that charge occurred prior to 1 April 2019, including where the same alleged conduct continued beyond 31 March 2019 and forms the basis of a single charge of *professional misconduct* ; and

.2 whether the *disqualification condition* has been established, in relation to an applicable person's alleged breach of duty or other conduct which occurred prior to 1 April 2019, including where the same alleged conduct continued beyond 31 March 2019.

Part 5 - B3. Annexes to the Disciplinary Tribunals Regulations [Regulations]

Annex 1 - Sentencing Powers Against Barristers [Regulations]

When a charge of *professional misconduct* has been found proved against a *barrister* [1] by a *Disciplinary Tribunal* , the *Disciplinary Tribunal* may decide to:

.1 order that they be disbarred;

.2 order that their *practising certificate* be suspended for a prescribed period;

.3 order that their *practising certificate* should not be renewed;

.4 order that conditions be imposed on their *practising certificate* ;

.5 order that they be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions* ;

.6 order that their authorisation to *conduct litigation* be removed or suspended, or be subject to conditions imposed;

.7 order them to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to his or her time as an employee or manager of a licensed body);

.8 order them to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team* ;

.9 reprimand them;

.10 give them advice about their future conduct;

.11 order them to attend on a nominated *person* to be reprimanded; or

.12 order them to attend on a nominated *person* to be given advice about their future conduct.

[1] If an application to disqualify the *Barrister* from acting as *HOLP,* manager or employee of an *authorised person* is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify the *Barrister* in accordance with the provisions of Annex 5.

Annex 2 - Sentencing Powers Against BSB Authorised Bodies

Regulations

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *BSB authorised body* , the *Disciplinary Tribunal* may decide to :

.1 order that its authorisation to practise as *a BSB authorised body* be removed;

.2 order that conditions be imposed on its authorisation to practise as a *BSB authorised body ;*

.3 order that its authorisation to *practise* for a prescribed period be suspended (either unconditionally or subject to conditions);

.4 order that it be re-classified as a BSB licensed body (either unconditionally or with conditions imposed on its licence to practise as a *BSB licensed body);*

.5 order that its authorisation to *conduct litigation* be withdrawn or suspended, or be subject to conditions on it;

.6 order it to pay a fine of up to £250,000 to the *Bar Standards Board;*

.7 order that its *managers* or employees complete continuing professional development of such nature and duration as the *Disciplinary Tribunal may* direct and to provide satisfactory proof of compliance with this order to the *supervision team;*

.8 reprimand it;

.9 give it advice about its future conduct; or

.10 order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.

Annex 3 - Sentencing Powers Against BSB Licensed Bodies

Regulations

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved, against a *BSB licensed body* the *Disciplinary Tribunal* may decide to:

.1 revoke its licence to practise;

.2 suspend its licence to practise for a prescribed period (either unconditionally or subject to conditions);

.3 impose conditions on its licence to practise;

.4 withdraw or suspend its *right to conduct litigation* or to impose conditions on it;

.5 order it to pay a fine of up to £250,000,000 to the *Bar Standards Board* ;

.6 order it to ensure that its *managers* or employees complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the *supervision team* ;

.7 reprimand it;

.8 give advice to it about its future conduct; or

.9 order it to attend (by its *HOLP* or other *person* identified in the order) on a nominated *person* to be given advice about its future conduct.

Annex 4 - Sentencing Powers Against Registered European Lawyers

Regulations

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against a *registered European lawyer* , the *Disciplinary Tribunal* may decide to:

.1 order that they be removed from the *register of European lawyers;*

.2 order that they be suspended from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);

.3 order a condition to be imposed on them prohibiting them, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions;*

.4 order them to pay a fine of up to £50,000 to the *Bar Standards Board* (or of up to £50,000,000 if, the charges relate to their time as an employee or *manager* of *a licensed body);*

.5 order them to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team;*

.6 reprimand them;

.7 give them advice about their future conduct;

.8 order them to attend on a nominated *person* to be reprimanded; or

.9 order them to attend on a nominated *person* to be given advice about their future conduct.

Annex 5 - Sentencing Powers Against All Other BSB Regulated Persons

Regulations

If a *Disciplinary Tribunal* finds a charge of *professional misconduct* proved against any other *BSB regulated person* [2] the *Disciplinary Tribunal* may decide to:

.1 order them to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to their time as an employee or *manager* of a *licensed body);*

.2 reprimand them;

.3 give them advice about their future conduct;

.4 order them to attend on a nominated *person* to be reprimanded;

.5 order them to attend on a nominated *person* to be given advice about their future conduct.

[2] If an application to disqualify is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify a *BSB regulated person* in accordance with these Regulations.

Annex 6 - Standard Directions

Regulations

The *standard directions* as referred to in rE103.3 are as follows :

1. The hearing will be in public;

2. This timetable will commence on the second working day after filing of these directions with the *BTAS* and all time limits will run from that date, unless stated otherwise ;

3. Within 28 days, ie by [date]:

3.1 all parties will provide *BTAS* with dates when they are available for the substantive hearing in the period between [month/year] and [month /year], failing which *BTAS* may fix the hearing without reference to the availability of any party;

3.2 the *respondent* will specify:

(a) whether they admit the charges;

(b) if not, which areas of fact and/or law are in dispute;

4. Within 42 days, ie by [date], the *respondent must* provide a copy of the documents and a list of witnesses, on which and on whom they intend to rely, and copies of any witness statements on which they intend to rely. The BSB is to provide copies of any witness statements on which it intends to rely within 42 days, i.e. by [date], if required;

5. Within 56 days, ie by [date], both the *Bar Standards Board* and the *respondent* must:

5.1 serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;

5.2 provide a schedule setting out details of the witnesses they intend to call and a time estimate for the evidence of each of their witnesses;

6. At least 14 days before the date fixed for the substantive hearing:

6.1 the *respondent* will provide to *BTAS* [four/six] copies of any defence bundle already provided under direction (5) for circulation to the *Disciplinary Tribunal* members, and at the same time send a copy to the *Bar Standards Board* ;

6.2 where the *respondent* has indicated an intention to admit the charge(s), the *respondent* will provide to *BTAS* [four/six] copies of any financial documents or other documentation the *respondent* wishes to rely on in mitigation, in the event that the charge(s) is found proved;

6.3 the *Bar Standards Board* will provide to *BTAS* [four/six] copies of any bundle of evidence as originally served under rE103 for circulation to the *Disciplinary Tribunal* members;

7. If either party seeks reasonable adjustments, to enable a person with a disability to participate in the hearing, or measures under rE179 to rE181, they must notify *BTAS* as soon as possible and no later than 21 days before the date fixed for the substantive hearing;

8. The estimated duration of the hearing is [number] days/hours;

9. Any skeleton argument to be relied on at the hearing be filed with *BTAS* and served on the other parties at least 48 hours before the time fixed for the hearing;

10. There is liberty to apply to the *Directions Judge* for further directions.

Part 5 - C. The Interim Suspension and Disqualification Regulations

Regulations

Part 5 - C1. Application

Regulations

rE262

This Section 5.C prescribes the manner in which the BSB may seek to take interim action to:

.1 suspend a *BSB authorised person* (excluding, for the avoidance of doubt, any *unregistered barrister*); or

.2 *disqualify* any *applicable person* from acting as an a *HOLP* or a *HOFA* or from working as a *manager* or employee of a *BSB authorised person* ;

subject to the criteria outlined at rE268 and rE269 below, and pending consideration by a *Disciplinary Tribunal* under Section 5.B.

rE263

In addition to the above, this Section 5.C sets out the basis upon which the Chair of the *Independent Decision-Making Body* may impose an immediate interim *suspension* or *disqualification* on any *applicable person* subject to the criteria outlined at rE270 to rE272 below, and pending consideration by an *interim panel* in accordance with this Section 5.C.

rE264

Anything required by this Section 5.C to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* or the Chair of the *Independent Decision-Making Body* and *Commissioner* , may be done or exercised by, or given to, any *person* or body authorised by the *President* or by the Chair of the *Independent Decision-Making Body* and *Commissioner* as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Part 5 - C2. The Regulations Regulations

Regulations E265-E267 - Composition of panels Regulations

rE265

An *interim panel* shall consist of three members nominated by the *President* being a Chair (who shall be a King's Counsel) and two others, of whom at least one must be a *lay member* . Provided that:

.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 Chair and one *lay member* ;

.2 no *person* shall be appointed to serve on a panel if they:

.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 are 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* .

rE266

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

.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 Chair and one *lay member* ;

.2 no *person* shall be appointed to serve on a panel if they:

.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* ;

.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.

rE267

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

.1 two King's Counsel, each of whom is entitled to sit as a Recorder or a Deputy High Court Judge or who has been King's Counsel for at least ten years. Unless the *appeal panel* otherwise decides, the senior *barrister* member will be the Chair of the *appeal panel* ; and

.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 Chair and the *lay member* ;

.b no *person* shall be appointed to serve on an *appeal panel* if they:

.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* ;

.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.

Regulations E268-E272 - Referral to an interim panel

Regulations

rE268

On receipt of a referral or any other information, the *Commissioner* may refer a *respondent* to an *interim panel* if:

.1 subject to rE269:

.a the *respondent* has been convicted of, or charged with, a *criminal offence* in any jurisdiction other than a *minor criminal offence* ; or

.b the *respondent* 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 *respondent* has been intervened into by the *Bar Standards Board* ; or

.d removed;

.e the referral is necessary to protect the interests of *clients* (or former or potential *clients*); or

.f the referral is necessary to protect the public or is otherwise in the public interest; and

.2 the *Commissioner* decides having regard to the *regulatory objectives* that pursuing an *interim suspension* or an *interim disqualification* order is appropriate in all the circumstances.

rE269

No matter shall be referred to an *interim panel* on any of the grounds of referral set out in rE268.1.a to rE268.1.b unless the *Commissioner* considers that, whether singly or collectively, the relevant grounds of referral 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 *applicable person* , an application to a *Disciplinary Tribunal* for *disqualification* (in each case such referral or application to be made in accordance with Section 5.B).

rE270

If the *Commissioner* refers a *respondent* to an *interim panel* under rE268, the Chair of the *Independent Decision-Making Body* shall consider whether or not the *respondent* should be subject to an immediate interim *suspension* or *disqualification* under rE272 pending disposal by the *interim panel* .

rE271

An immediate interim *suspension* or *disqualification* may only be imposed if the Chair of the *Independent Decision-Making Body* is satisfied that such a course of action is justified having considered the risk posed to the *public* if such interim *suspension* or *disqualification* were not implemented and having regard to the *regulatory objectives* .

rE272

Any immediate interim *suspension* or *disqualification* imposed by the Chair of the *Independent Decision-Making Body* shall:

.1 take immediate effect;

.2 be notified in writing by the *Commissioner* to the *respondent* ;

.3 remain in force until the earlier of:

.a such time as an *interim panel* has considered the matter; or

.b the date falling four weeks after the date on which the immediate interim *suspension* or *disqualification* is originally imposed;

.4 where relevant, result in the removal of the relevant *BSB authorised individual's practising certificate* , *litigation extension* and/or right to undertake public access work (as appropriate);

.5 where relevant, result in the imposition of conditions on the relevant *BSB authorised person's* authorisation and/or licence (as appropriate)

.6 be published on the *Bar Standards Board's* website; and

.7 be annotated on the *Bar Standards Board's* register of *BSB authorised persons* which is to be maintained by the *Bar Standards Board* in accordance with rS60.2 and rS129 or be included on the *Bar* Standards Board's register of individuals that are the subject of a *disqualification order* (as appropriate).

Guidance to Regulations E268-E272 Guidance

gE1

If an immediate interim *suspension* or *disqualification* has been imposed by the Chair of the *Independent Decision-Making Body* it must be considered by an *interim panel* within four weeks of the date that that the immediate interim *suspension* or *disqualification* is originally imposed. If it is not considered by an *interim panel* within that period, it shall automatically fall away and no further period of interim *suspension* or *disqualification* may be imposed on the *respondent* until the matter is considered by an *interim panel* .

gE2

If, subsequent to the imposition of an immediate *suspension* or *disqualification* under rE271, the *applicable person* agrees to provide to the *Commissioner* an undertaking in written terms in accordance with the provisions of rE274.4 below which is satisfactory to the *Commissioner* and which is subject to such conditions and for such period as the *Commissioner* may agree, the *Commissioner* may elect to remove or qualify the immediate interim *suspension* or *disqualification* pending the disposal of any charges or application by a *Disciplinary Tribunal* . For the avoidance of doubt, in these circumstances the referral to the *interim panel* shall also be withdrawn in accordance with the provisions of rE275 below.

Regulations E273-E275 - Procedure after referral to an Interim Panel and, where relevant, the decision to impose an immediate interim suspension or disqualification Regulations

rE273

As soon as practicable after the *Commissioner* has made a decision to refer a *respondent* to an *interim panel* , the *Bar Standards Board* shall write to the *President* notifying them of the decision and informing them about whether or not an immediate interim *suspension* or *disqualification* has also been imposed on such *respondent* .

rE274

As soon as practicable after receipt of the notice referred to in rE273, the *President* shall write to the *respondent* notifying them of the decision, together with a copy of these *Enforcement Regulations* , and briefly setting out the details that have caused the referral to the *interim panel* . The letter of notification shall:

.1 where relevant, inform the *respondent* that they are the subject of an immediate interim *suspension* or *disqualification* (as appropriate) together with a summary of the consequences of that decision;

.2 lay down a fixed time and date (normally not less than 14 and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;

.3 invite the *respondent* to accept one or other of the dates proposed or to provide a written representation to the *President* , which should be copied to the *Commissioner* , objecting to both dates with reasons and providing two further alternative dates which shall be not more than:

.a four weeks after the date of the imposition of the immediate interim *suspension* or *disqualification* , where relevant; or

.b in all other cases, twenty-one days from the date of the letter of notification;

Any such representation must be received by the *President* not more than ten days from the date of the letter of notification. The *President* shall consider any such representation together with any representations from the Commissioner, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within ten days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rE274.2 above. The *President's* decision, which shall be notified in writing to the *respondent* 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* :

.4 inform the *respondent* that they may by letter to the *Commissioner* undertake, pending the disposal of any charge(s) or application(s) by a *Disciplinary Tribunal* :

.a to be immediately *suspended* or *disqualified* (in which case the consequences set out at rE272.4 to rE272.7 would apply);

.b not to accept or carry out any *public access instructions* ; and/or

.c to inform their professional and/or lay *clients* about any *convictions* , charges or other matters leading to a referral, in written terms satisfactory to the *Commissioner;*

and summarising the consequences of the *respondent* electing to make such an undertaking (which for the avoidance of doubt, may include those set out at rE272.4 to rE272.7 above);

.5 shall inform the *respondent* that they are entitled to make representations in writing or orally, by themselves or by others on their behalf; and

.6 removed.

rE275

If a *respondent* sends a letter in accordance with rE274.4 above which is satisfactory to the *Commissioner* , the Chair shall accept the undertaking contained in the letter in lieu of the *interim panel* 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).

Regulations E276-E278 - Procedure and powers of interim panels

Regulations

rE276

At any hearing of an *interim panel* the proceedings shall be governed by the rules of natural justice, subject to which:

.1 the procedure shall be informal, the details being at the discretion of the Chair of the *interim panel* ;

.2 the *respondent* shall be entitled to make representations in writing or orally, by themselves or by another on their 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 *respondent* to notify their professional *clients* and/or lay *clients* about any *convictions* , charges or other matters leading to a referral; or

.c any further or alternative direction which the *interim panel* is empowered to make in relation to the *respondent* under rE278.3 below;

pending the disposal of any charges or applications by a *Disciplinary Tribunal* ;

.3 no witnesses may be called without the prior consent of the Chair of the Panel and without the submission of a proof of evidence;

.4 the attendance of the *respondent* shall be required. Should they nevertheless fail to attend, the hearing may proceed in their 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;

.5 the hearing shall not be in public unless so requested by the *respondent* and a record shall be taken electronically; and

.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.

rE277

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 most favourable to the *respondent* .

rE278

At the conclusion of the hearing the *interim panel* :

.1 may decide not to impose any period of interim *suspension* , interim *disqualification* or other order;

.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 the *interim panel* considers that:

.a were a *Disciplinary Tribunal* to find a related charge of *professional misconduct* proven, it would be likely to impose a sentence of disbarment (with respect to *barrister respondents*), a sentence of *suspension* (with respect to *barrister respondents* or *registered European lawyer respondents* or *BSB entity respondents*), revocation of the licence or authorisation (with respect to *BSB entity respondents*) or a *disqualification order* (with respect to *applicable person respondents*); and

.b such interim *suspension* or interim *disqualification* is in the public interest;

.3 in lieu of imposing a period of interim *suspension* or interim *disqualification* , the *interim panel* may either:

.a where the *respondent* is a *BSB authorised person* , direct the *respondent* to carry out their or its future activities in accordance with such interim conditions on the *respondent's* authorisation or licence as the *interim panel* may think fit pending final disposal of the charges or application against them or it; or

.b where the *respondent* 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 *respondent* as the *interim panel* may think fit, which may include limits on the type of work the *respondent* is to be permitted to do, or requirements as to their supervision or training, pending final disposal of the charges or application against them;

.c accept from the *respondent* 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* ; or

.ii not to accept or carry out any *public access instructions* or to *conduct litigation* ; or

.iii to inform their 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* provided always that the *respondent* accepts that the following consequences may arise as a result of such undertaking being provided depending on the nature of the undertaking being provided:

(1) the removal of the relevant *BSB authorised individual's practising certificate* , *litigation extension* and/or right to undertake *public access* work (as appropriate);

(2) the imposition of conditions on the relevant *BSB authorised person's* authorisation and/or licence (as appropriate);

(3) publication of the details of such interim *suspension* or *disqualification* on the *Bar Standards Board's* website; and

(4) either the inclusion of a note on the *Bar Standards Board's* register of *BSB authorised persons* to the effect that such *BSB authorised person* is temporarily *suspended* from *practice* or the inclusion of the details of such interim *disqualification* on the *Bar* Standards Board's register of individuals that are the subject of a *disqualification order* ;

.4 shall set down in writing signed by the Chair 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 Regulations* or accepted (in the form of an undertaking) under rE278.3.c above.

.a Where the *respondent* is a *BSB authorised individual* , the imposition of any period of *suspension* shall be recorded as follows:

“That……….be *suspended* from *practice* as a ………………… and be prohibited from holding themselves out as being a ………………… for a period expiring on [the …….. day of……………/[insert applicable condition/event on which expiry is contingent] 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 *respondent* ’ *s practice* or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

.b Where the *respondent* is a *BSB entity* , 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……………../[insert applicable condition/event on which expiry is contingent] 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 *respondent’s practice* or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

.c Where the *respondent* is an *applicable 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 entity* or being an employee of any *BSB authorised person*] and that any *BSB regulated person* is prohibited from permitting the *respondent* to work in any such capacity for a period expiring on [the ……… day of……………../ [insert applicable condition/event on which expiry is contingent] 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";

.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 *respondent* of their right to request a *review panel* to review the matter as provided in rE279 below;

.b inform the *respondent* of their right of appeal as provided in rE284 below;

.c removed;

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

Regulations E279-E283 - Review

Regulations

rE279

In the event of a significant change in circumstances or other good reason the *respondent* 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.

rE280

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 *Commissioner* and may in their discretion convene a *review panel* or refuse the request. In either case *the President* shall notify the *respondent* 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 rE274.2 and rE274.3.

rE281

The proceedings before a *review panel* shall be by way of a rehearing and the provisions of rE276 above shall apply as if for references therein to the *interim panel* and the Chair of the *interim panel* there were substituted references respectively to the *review panel* and the Chair of the *review panel* .

rE282

Unless in the meantime the hearing before a *Disciplinary Tribunal* of any charges or applications arising from and/or related to the referral to an *interim panel* has commenced, a hearing by a *review panel* convened pursuant to rE279 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.

rE283

If the hearing before a *Disciplinary Tribunal* of any charges or applications arising from and/or related to the referral to an *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* .

Regulations E284-E289 - Appeals

Regulations

rE284

A *respondent* may by letter served on the *President* and on the *Commissioner* not more than 14 days after the date of the *relevant decision* of an *interim panel* give notice of their wish to appeal against the decision.

rE285

As soon as practicable after receipt of a letter in accordance with rE284 above the *President* shall convene an *appeal panel* and write to the *respondent* notifying them of a fixed time and date (normally not less than 14 and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The *respondent* may make a written representation, addressed to the Chair 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 Chair of the *appeal panel* not more than 14 days from the date of the letter of notification. The Chair shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within 14 days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the *respondent* . The Chair's decision, which shall be notified in writing to the *respondent* shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chair of the *appeal panel* .

rE286

The proceedings before an *appeal panel* shall be by way of a rehearing and the provisions of rE276 above shall apply as if for references therein to the *interim panel* and the Chair of the *interim panel* there were substituted references respectively to the *appeal panel* and the Chair of the *appeal panel* .

rE287

At the conclusion of the hearing the *appeal panel* :

.1 may remove the period of interim *suspension* or interim *disqualification* and/or any interim conditions imposed under this Section 5.C;

.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;

.3 in lieu of confirming or imposing a period of interim *suspension* or interim *disqualification* or imposing interim conditions, may accept from the *respondent* in terms satisfactory to the Chair 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* ;

.4 shall set down in writing signed by the Chair 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 rE287.2 above or undertaking accepted under rE287.3 above;

.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. If the members of the *appeal panel* are equally divided, the decision shall be that which is most favourable to the *respondent* . 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 rE278.4 above.

rE288

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/are the subject of the appeal.

rE289

There shall be no right of appeal from the decision of an *appeal panel* .

Regulation E290 - Suspension or disqualification ceases to have effect

Regulations

rE290

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 5.C shall cease and the *respondent* 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:

.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* ;

.2 any appeal by the *respondent* against the *conviction* or all the *conviction(s)* which had caused the referral to a *interim panel* being successful;

.3 the acquittal of the *respondent* of the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to a *interim panel* ;

.4 the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to an *interim panel* being withdrawn.

Regulation E291 - Costs

Regulations

rE291

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

Regulations E292-E294 - Report and Publication of Decisions

Regulations

rE292

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 *respondent* in writing.

rE293

In any case where a period of interim *suspension* or interim *disqualification* is imposed or an interim condition is imposed under this Section 5. C or a direction is made requiring notification to lay and/or professional *clients* or an undertaking from a *respondent* is accepted, the *President* shall communicate brief details in writing of the fact that the *respondent* is on an interim basis *suspended* , *disqualified* and/or subject to conditions (as the case may be) to:

.1 the *respondent* ;

.2 the *Chair of the Bar Standards Board and Commissioner* ;

.3 the *respondent* 's head of *chambers, HOLP,* or *employer* (as appropriate);

.4 in the case of a *registered European lawyer* , their *home professional body* ;

.5 the Treasurers of the *respondent's Inn* of Call and of any other Inns of which they are a member;

.6 other *Approved Regulators* and the *LSB* ; and

.7 those of the following whom the President deems, in their absolute discretion, to be appropriate taking into account the particular circumstances:

.a the Lord Chancellor;

.b the Lord Chief Justice;

.c the Attorney General;

.d the Director of Public Prosecutions;

.e the Chair of the Bar Council;

.f the Leaders of the six circuits;

.g such one or more press agencies or other publications, as the *Commissioner* may direct.

rE294

The *Bar Standards Board* shall keep a record of those who are subject to *suspension* or *disqualification order* s or conditions imposed on their authorisation made under the procedures in this *Handbook* and shall publish details of any interim *suspension* , interim *disqualification* or interim conditions on its website and in such of its registers as it considers appropriate, for as long as they remain in effect.

Regulation E295-E296 - Service of documents

Regulations

rE295

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

.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 *respondent* pursuant to the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing the same) as being their *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 entity* , the address provided by the *BSB entity* as being their home address or, in the absence of such information, the address of the relevant *BSB entity* notified pursuant to the requirements of Part 2 of this *Handbook* ; or

.c in either case, an address to which the *respondent* may request in writing that such documents be sent; or

.d in the absence of any of the above, to their 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 entity* , the last known address of the relevant *BSB entity* ;

and such service shall be deemed to have been made on the second day after it was posted, left with, delivered to or collected by the relevant service provider, (provided that that day is a business day, or, if not, the next business day after that day) or on the next working day after receipted hand delivery;

.2 If served by e-mail, where:

.a the *respondent* 's e-mail address is known to the *Bar Standards Board* ; and

.b the *respondent* has requested or agreed to service by e-mail, or it is not possible to serve by other means;

the *respondent* has requested or agreed to service by e-mail, or it is not possible to serve by other means;

.3 if actually served;

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

rE296

For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *respondent* or a relevant representative of such *respondent* (including, for example, their clerk and a *manager* or employee of the *BSB entity* at which they work).

Part 5 - C3. Interpretation

Regulations

rE297

In this Section 5.C unless the context otherwise requires all italicized terms shall be defined and all terms shall be interpreted in accordance with the definitions in Part 6.

Part 5 - C4. Commencement

Regulations

rE298

These rules shall come into force in accordance with the provisions of Part 1 of this *Handbook* .

Part 5 - D. The Fitness to Practise Regulations

Regulations

These Regulations, commencing 6 January 2014, are made by the *Bar Standards Board* , in liaison with the *Council of the Inns of Court* , under section 21 (regulatory arrangements) Legal Services Act 2007, under authority delegated by the General Council of the Bar as the Approved Regulator of the Bar under Part 1 of Schedule 4 to the Legal Services Act 2007, and with the approval of the *Legal Services Board* under Paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Part 5 - D1. Preliminaries

Regulations

Commencement and application

rE299

These Regulations will come into effect on 6 January 2014 and shall apply to all cases referred to a *Fitness to Practise Panel* or *an Appeal Panel* prior to that date under the Regulations then applying, and any step taken in relation to any *Fitness to Practise Pane* l or *Appeal Panel* pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

rE300

Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* of the Council of the Inns of Court or the *Commissioner* , may be done or exercised by, or given to, any *person* or body authorised by the *President* or by the *Commissioner* as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

rE301

Any term defined in D *efinitions Section* of the *Handbook* shall carry the same meaning in these Regulations. For the purpose of Section D4 of these Regulations alone, “Individual” includes anyone who was *‘BSB authorised individual’*- at the time of any decisions taken by a *Fitness to Practise Panel* .

Part 5 - D2. Constitution of Panels

Regulations

rE302

The *President* shall constitute *Fitness to Practise Panels* and *Appeal Panels* (Panels) to exercise the functions afforded to those Panels under these Regulations, in accordance with the provisions set out Schedule 1.

Part 5 - D3. The Fitness to Practise Procedure

Regulations

Regulations E303-E308 - Referral to a Fitness to Practise Panel

Regulations

rE303

Where the *Commissioner* receives information suggesting that an *Individual* is *unfit to practise* , the matter shall be considered under Regulation E305.

rE304

The *Commissioner* may carry out any investigation, appropriate to the consideration of whether the *Individual* may be *unfit to practise* , prior to consideration of any referral under Regulation E306.

rE305

Where the *Commissioner* receives information under Regulation E303, the *Commissioner* shall, subject to Regulation E307, as soon as reasonably practicable, write to the *Individual* concerned:

.1 notifying them that information has been received which appears to raise a question of whether they are *unfit to practise* ; and,

.2 providing them with copies of any information received under Regulation E303 or obtained under Regulation E304.

rE306

Where the *Commissioner* , following receipt of information under Regulation E303 or during the *Commissioner's* consideration of a referral under the Enforcement Decision Regulations, considers that an *Individual* may be *unfit to practise* , they shall refer the matter to a *Fitness to Practise Panel* for determination.

rE307

No decision to refer shall be taken under Regulation E306 without the *Individual* having been provided with a reasonable opportunity (as to the circumstance) to make representations on the matter.

rE308

In reaching a decision under Regulation E306, the *Commissioner* shall take into account any information received under Regulation E303 or obtained under Regulation E304, and any representations submitted by the *Individual* .

Regulation E309 - Preliminary Hearings

Regulations

rE309

As soon as reasonably practicable after referral of a matter by the *Commissioner* to a *Fitness to Practise Panel* , the Chair of the Panel shall send a notice in writing of the referral to the *Individual* which shall:

.1 contain a summary of the case and the reasons why it has been referred to a *Fitness to Practise Panel* ;

.2 inform the *Individual* of the time and date for a preliminary hearing before the Panel;

.3 inform the *Individual* of their right to attend and be represented at the preliminary hearing, and to produce evidence at the preliminary hearing, in accordance with Regulations E335.2 and E335.3 below;

.4 inform the *Individual* of the Panel's powers at a preliminary hearing under Regulations E310 and rE313 to rE316 below; and,

.5 inform the *Individual* of their right to appeal under Regulation E328 below.

Regulation E310 - Directions

Regulations

rE310

At a preliminary hearing, the *Fitness to Practise Panel* may give directions for the full hearing before the Panel, which may include that:

.1 the *Individual* , within a specified period of time, submit to a relevant medical examination to be carried out by a *Medical Examiner* nominated by the Panel;

.2 the *Bar Standards Board* instruct a *Medical Examiner* to conduct such examination and to provide a report setting out an opinion as to whether the *Individual* is *unfit to practise* and as to any other matters as may be specified by the Panel;

.3 the *Individual* authorise disclosure to the *Bar Standards Board* and the *Medical Examiner* , of such of their relevant medical records as may be reasonably required for the purposes of the medical examination and subsequent report; and,

.4 the *Bar Standards Board* carry out such other investigations or seek such advice or assistance as the Panel considers appropriate to the matters for consideration at the full hearing, and where it gives a direction under Paragraph .1 or .3 above, it shall inform the *Individual* that failure to comply with the direction may be taken into account by the Panel in accordance with Regulation E319.2

Regulations E311-E312 - Medical Examinations

Regulations

rE311

Where a *Medical Examiner* is nominated by a Panel under Regulation E310.1 or E320.2.a, the *Medical Examiner* shall:

.1 within the period specified by the Panel, undertake a relevant medical examination of the *Individual* in accordance with any directions from the Panel;

.2 prepare a report which shall express an opinion as to:

.a whether the *Individual* has a physical or mental condition;

.b whether the *Individual* is fit to practise either generally or on a restricted basis; and

.c any other matters which they have been instructed to address, in accordance with any directions of the Panel; and

.3 where requested by the *Commissioner* to do so, attend a hearing to present their findings.

rE312

An *Individual 's* medical records and any report prepared by a *Medical Examiner* under these Regulations shall not be used for any other purpose than is provided for in these Regulations and shall not be disclosed to any other *person* or body without the consent in writing of the *Individual.*

Regulations E313-E317 - Interim Restrictions

Regulations

rE313

At a preliminary hearing, a *Fitness to Practise Panel* may, where it is satisfied that it is necessary to protect the public, is otherwise in the public interest or is in the *Individual 's* own interests to do so, direct that the *Individual* is subject to an interim *restriction* .

rE314

An interim *restriction* may be imposed subject to such conditions as the Panel may consider appropriate, and shall have effect pending the determination of the matter at a full hearing before the *Fitness to Practise Panel* for a specified period, which shall not, save in exceptional circumstances, exceed 3 months.

rE315

In lieu of imposing an interim *restriction* under Regulation E313 above, the Panel may accept from the *Individual* an undertaking in writing on terms satisfactory to the Panel:

.1 agreeing to an immediate interim *restriction* for such period as may be agreed; or,

.2 as to the *Individual 's* conduct or behaviour pending the conclusion of the full hearing.

rE316

Where it has directed an interim *restriction* under Regulation E313 or accepted undertakings under Regulation E315, a Panel may, at any point during the period of an interim restriction:

.1 at the request of the *Commissioner* or of the Individual, direct that the interim *restriction* or undertaking be reviewed at a further hearing of the Panel, on such date as the Panel shall specify, or on an unspecified date provided that the *Individual* is served with no less than 14 days' notice in writing of the hearing;

.2 at the request of the *Individual* , direct an expedited full hearing of the *Fitness to Practise Panel* ;

and, shall;

.a inform the *Individual* of their right to request a *Fitness to Practise Panel* to review the interim *restriction* or undertaking under Regulation E324 below;

.b inform the *Individual* of their right of appeal under Regulation E328 below.

rE317

The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made, interim *restriction* imposed or undertakings accepted.

Regulation E318 - Full Hearings before a Fitness to Practise Panel Regulations

rE318

As soon as reasonably practicable after receipt of any report prepared by a *Medical Examiner* or, where no report has been prepared, the *Commissioner* considers that the case is ready for hearing, the Chair of the Panel shall send a notice in writing of hearing to the *Individual* which shall:

.1 contain a summary of the case and a copy of the report, where applicable;

.2 inform the *Individual* of the time and date of the full hearing;

.3 inform the *Individual* of their right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E335.2 and .3 below;

.4 inform the *Individual* of the Panel's powers at a full hearing under Regulations E319 to E321 below; and,

.5 inform the *Individual* of their right to appeal under Regulation E328 below.

Regulations E319-E323 - Decisions of a Fitness to Practise Panel Regulations

rE319

At a full hearing, the *Fitness to Practise Panel* shall decide whether the *Individual* is *unfit to practise* and, in reaching its decision, shall be entitled to take into account:

.1 the *Individual 's* current physical or mental condition, any continuing or episodic condition experienced by the *Individual* , or any condition experienced by the *Individual* which, although currently in remission, may be expected to cause impairment if it recurs; and

.2 any failure by the *Individual* to comply with a direction to undergo a relevant medical examination made under Regulation E310.1.

rE320

Where a *Fitness to Practise Panel* has decided that an *Individual* is *unfit to practise* , the Panel may direct:

.1 that the *Individual* be subject to a *restriction* which may be subject to such conditions as the Panel may consider appropriate, and which may be imposed indefinitely or for such period, not exceeding six months, as shall be specified in the direction;

.2 that the *Individual 's* right to continue to practise, or to resume practice after any period of *restriction* shall be subject to such conditions as the Panel may think fit, including that the *Individual* :

.a submit for regular examination before one or more *Medical Examiners* nominated by the Panel,

.b authorise disclosure to the *Commissioner* and the *Medical Examiner* such of their medical records as may be reasonably required for the purposes of the medical examination and subsequent report,

.c is reviewed by a registered medical practitioner and shall follow the treatment they recommend in respect of any physical or mental condition, which the Panel consider may be a cause of the Individual being unfit to practise.

rE321

In lieu of imposing any direction under Regulation E320 above, the Panel may accept from the *Individual* one or more undertakings in writing in which the *Individual* agrees to such period of *restriction* , or such conditions, as the Panel would otherwise have imposed.

rE322

Where it has made a direction under Regulation E320 or agreed undertakings under Regulation E321, the Panel shall inform the *Individual* :

.1 of their right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation E324 below;

.2 of their right of appeal under Regulation E328 below; and

.3 that a failure to comply with the direction or undertakings would be likely to result in a charge of professional misconduct being brought against the *Individual* before a Disciplinary Tribunal.

rE323

The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made or undertakings accepted.

Part 5 - D4. Reviews and Appeals

Regulations

Regulations E324-E327 - Review of decisions made by a Fitness to Practise Panel

Regulations

rE324

At any time during which an *Individual* is subject to a period of *restriction* or conditions, directed or undertaken pursuant to these Regulations, the *Commissioner* may, of their own motion, or at the request of the *Individual* , refer the matter to be reviewed before a *Fitness to Practise Panel* , where they consider there has been a significant change in the *Individual 's* circumstances or that there is some other good reason for a review to be undertaken.

rE325

Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation E324, Regulations E309 to E323 and E335 shall apply, save that the Chair of the Panel and the *Individual* may agree in writing that no preliminary hearing shall be held.

rE326

At the conclusion of a review hearing, the *Fitness to Practise Panel* may:

.1 confirm or revoke the direction made or undertakings agreed;

.2 extend or vary (or further extend or vary) the period for which the direction has effect, or agree with the *Individual* concerned an extension or variation of the period for which an undertaking has been agreed;

.3 replace the direction or undertakings, exercising any of the powers of a *Fitness to Practise Panel* under Regulations E313, E315, E320 or E321 above.

rE327

Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation E324 above and the review hearing cannot be concluded before the expiry of any period of *restriction* imposed under Regulation E314 or E320.1, or agreed under Regulation E315.1 or E321, the Panel may extend the *restriction* for such period as it considers necessary to allow for the conclusion of the review hearing.

Regulations E328-E330 - Appeals before an Appeal Panel

Regulations

rE328

An *Individual* may appeal a decision of a *Fitness to Practise Panel* to impose, extend, vary or replace a period of *restriction* by notifying the *President* in writing that they wish to do so, no more than 14 days after the date of the decision subject to appeal.

rE329

As soon as reasonably practicable after receipt of an appeal under Regulation E328, the Chair of the *Appeal Panel* shall send a notice in writing of the appeal hearing to the *Individual* , which shall:

.1 inform the *Individual* of the time and date of the appeal hearing;

.2 inform the *Individual* of their right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E335.2 and .3 below; and

.3 inform the *Individual* of the Panel's powers under Regulation E331 below.

rE330

A pending appeal to an *Appeal Panel* shall not operate as a stay of the decision subject to appeal.

Regulations E331-E334 - Decisions of an Appeal Panel

Regulations

rE331

At the conclusion of an appeal hearing, the *Appeal Panel* may:

.1 allow the appeal;

.2 confirm the decision that is subject to appeal;

.3 exercise any of the powers of a *Fitness to Practise Panel* under Regulations E320 or E321 above;

rE332

The *Appeal Panel* shall inform the *Individual* :

.1 of their right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation E324 above; and

.2 that failure to comply with a *restriction* or condition imposed under Regulation E331.3 above would be likely to result in a charge of professional misconduct being brought before a *Disciplinary Tribunal* .

rE333

The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons, and the terms of any *restriction* imposed or undertakings accepted.

rE334

There shall be no right of appeal from a decision of an *Appeal Panel* .

Part 5 - D5. Conduct of Fitness to Practise and Review Panel Hearings

Regulations

Regulations E335-E341 - Procedure before a Panel

Regulations

rE335

At any hearing before a *Fitness to Practise* or *Appeal Panel* , the proceedings shall be governed by the rules of natural justice, subject to which:

.1 the procedure shall be informal, the details being at the discretion of the Chair of the Panel;

.2 the *Individual* shall attend the hearing and may be represented by another member of the bar or a solicitor, save that where the *Individual* does not attend and is not represented, the hearing may nevertheless proceed if the Panel is satisfied that it is appropriate to do so and that all reasonable efforts have been made to serve the *Individual* with notice in writing of the hearing in accordance with these Regulations;

.3 the *Individual* may, on their own behalf or through their representative:

.a make representations in writing or orally,

.b produce evidence, provided (but subject to the discretion of the Chair) that a proof of such evidence has been submitted no less than 24 hours prior to the hearing, and

.c put questions to any *Medical Examiner* whose report is in evidence before the Panel;

.4 the hearing shall be in private, unless the *Individual* requests a public hearing, and shall be recorded electronically;

.5 decisions shall be taken by simple majority;

.6 where the votes are equal the issue shall be decided, at a hearing before a *Fitness to Practise Panel* , in the *Individual 's* favour and, in an appeal case, against the *Individual* .

rE336

If at any time it appears to a Panel that it would be appropriate to do so, the Panel may refer the case to the *Commissioner* for consideration of whether to refer any matter for a hearing before a *Disciplinary Tribunal* .

rE337

Where it considers it necessary, a Panel may appoint a practising barrister or solicitor to assist it on any question of law or interpretation of these Regulations, by providing an independent advice either orally or in writing, such advice to be tendered in the presence of the parties, or, where the parties are not present at the hearing, copied to the parties as soon as reasonably practicable.

rE338

A Panel shall have no power to award costs.

rE339

The proceedings before an *Appeal Panel* shall be by way of a rehearing.

rE340

At any review hearing before a *Fitness to Practise Panel* or appeal hearing before an *Appeal Panel,* copies of the report of any expert or any proof of evidence referred to at any previous hearing of the Panel in respect of the same case may be referred to by the Panel.

rE341

In the arrangements that it makes to perform its functions, and in undertaking its functions, in particular, in reaching any decision concerning an *Individual's* fitness to practise, a Panel shall:

.1 take into account its duties to make reasonable adjustments which arise under the Equality Act 2010; and

.2 have due regard to the need to:

.a eliminate unlawful discrimination and other conduct prohibited by the Equality Act 2010, and

.b advance equality of opportunity and foster good relations between *persons* who share a relevant protected characteristic as set out in Section 149 of the Equality Act 2010 and those who do not.

Regulations E342-E346 - Postponement, adjournment and cancellation

Regulations

rE342

Before the opening of any hearing in which notice has been served in writing in accordance with these Regulations, the Chair of the Panel may, of their motion or on the application of the *Bar Standards Board* or the *Individual* , postpone the hearing until such time and date as they think fit.

rE343

Where any hearing under these Regulations has commenced, the Panel considering the matter may, at any stage in the proceedings, whether of its own motion or on the application of the *Bar Standards Board* or the *Individual* , adjourn the hearing until such time and date as it thinks fit.

rE344

No hearing shall be postponed or adjourned under Regulations E342 or E343 unless the *Individual* has been given reasonable opportunity to make representations on the matter.

rE345

Where a hearing has been postponed or adjourned, the parties shall be notified as soon as reasonably practicable of the time, of the date and place at which the hearing is to take place or to resume.

rE346

Where notice of hearing has been served in writing under these Regulations, the Chair of the Panel may, on application of the *Bar Standards Board* or the *Individual* , cancel the hearing where the Chair considers that there are no reasonable grounds for questioning whether the *Individual* is *unfit to practise* .

Regulations E347-E348 - Notice and publication of Decisions

Regulations

rE347

Where a decision has been taken by *Fitness to Practise Panel* or an *Appeal Panel* under these Regulations, the Chair of the Panel shall, as soon as reasonably practicable, serve notice in writing of the decision on the *Individual* concerned.

rE348

Where a decision is taken at a full hearing of a *Fitness to Practise Panel* or at an *Appeal Panel* hearing, unless the decision is to take no action and the *Individual* is permitted to continue to practise without *restriction* , the Chair shall provide notice in writing of the decision to any *person* to whom they consider it to be in the public interest to do so.

Regulations E349-E351 - Service of documents

Regulations

rE349

Regulation rE249 of the Disciplinary Tribunals Regulations 2017 (section 5.B) shall apply for the purposes of the service of any notices or documents under these Regulations save that, for the reference in Regulation rE249.4 to the “ *Directions Judge* or the Chair of the *Disciplinary Tribunal* ”, there shall be substituted the “Chair of the Panel”.

rE350

Where a Panel directs that an *Individual’s* ability to practise be subject to *restrictions,* conditions or agreed undertakings, the *President* shall always communicate brief details of the decision, in writing to:

.1 the *Individual* ;

.2 the *Commissioner* of the *Bar Standards Board* ;

.3 the Barrister’s Head of Chambers, where relevant;

.4 the Treasurers of the Barrister’s *Inn* of Call and of any other Inns of which they are a member, where relevant; and

.5 other regulators, where relevant.

rE351

The following shall have details of the decision of the Panel communicated to them in writing, at the discretion of the *President* :

.1 the Chair of the *Bar Council* ;

.2 the Lord Chancellor;

.3 the Lord Chief Justice;

.4 the Attorney General;

.5 the Director of Public Prosecutions; and,

.6 the Leaders of the six circuits.

Schedule 1 - Constitution of Fitness to Practise and Appeal Panels

Regulations

1. The *President* shall appoint and maintain:

(a) a list of barristers and *lay persons* eligible to be members of *Fitness to Practise Panel* ;

(b) a list of barristers and *lay persons* eligible to be members of an *Appeal Panel* ; and,

(c) from the lists at (a) and (b), lists of King’s Counsel eligible to act as Chairs of a *Fitness to Practise Panel* and an *Appeal Panel* respectively.

2. The *President* shall remove from the lists at Paragraph 1 *persons* :

(a) whose term of appointment has come to an end, unless that term is renewed;

(b) who resign from the relevant list by giving notice in writing to that effect to the *President* ; or

(c) who in the opinion of the *President* have ceased to be eligible for appointment.

3. The *President* shall appoint, and ensure that arrangements are in place to be able to access suitably qualified *medical members* to sit on Fitness to Practise and Appeal Panels.

4. A *Fitness to Practise Panel* shall consist of five members selected by the *President* from the list of *persons* under Paragraph 1(a) and in line with the arrangements arising from paragraph 3, being:

(a) a Chair whose name appears on the relevant list at Paragraph 1(c);

(b) two practising barristers;

(c) a *medical member* ; and

(d) a *lay member* .

5. An *Appeal Panel* shall consist of four members selected by the *President* from the list of *persons* under Paragraph 1(b) and in line with paragraph 3, being:

(a) two practising barristers, including a Chair whose name appears on the relevant list at Paragraph 1(c), and who shall, unless the *Appeal Panel* decide otherwise, be the most senior of the barrister members;

(b) a *medical member* ; and

(c) a *lay member* .

6. No *person* shall be selected to sit on a *Fitness to Practise Panel* or an *Appeal Panel* if:

(a) they are a member of the *BSB* or any of its other Committees or the Independent Decision-Making Body; or

(b) removed.

7. No *person* shall sit on a *Fitness to Practise Panel* or an *Appeal Panel* for the hearing of a case that they have previously considered or adjudicated upon in any other capacity.

8. The proceedings of a *Fitness to Practise Panel* or an *Appeal Panel* shall be valid notwithstanding that one or more members of the Panel become unable to sit or disqualified from sitting on the Panel, or are replaced by another member from the appropriate list or by the arrangement at paragraph 3, subject to there being a minimum of three Members which shall include a Chair from the relevant list held under Paragraph 1(c), a *medical member* and a *lay member* .

9. The validity of the proceedings of a Panel shall not be affected by any defect in the appointment of a member.

Part 5 - E. Interventions and Divestiture

Regulations

Part 5 - E1. Interventions

Regulations

rE352

The *Bar Standards Board* has the statutory power under Schedule 14 of the Legal Services Act 2007 (as amended by the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018) to intervene into a *BSB authorised person* .

rE353

The *Bar Standards Board* may authorise an intervention into a *BSB authorised person* where:

.1 in relation to the *BSB authorised person* , one or more of the intervention conditions (as such term is defined in the Legal Services Act 2007) is satisfied; or

.2 the licence, authorisation or *practising certificate* granted to the *BSB authorised person* has expired and has not been renewed or replaced by the *Bar Standards Board* .

rE354

In circumstances where the *Bar Standards Board* authorises an intervention under rE353 above, such intervention shall be carried out in accordance with the provisions of the Legal Services Act 2007 and the *Bar Standards Board's* Statutory Interventions Strategy.

Part 5 - E2. Divestiture

Regulations

rE355

The *Bar Standards Board* has the statutory power under Schedule 13 of the Legal Services Act 2007 to make an application for divestiture in relation to a *non-authorised person* and a *BSB licensed body* .

rE356

The *Bar Standards Board* may make an application for divestiture if the divestiture condition (as such term is defined in the Legal Services Act 2007) is satisfied in relation to such *non-authorised person* and a *BSB licensed body* (as the case may be).

rE357

In circumstances where the *Bar Standards Board* elects to make an application for divestiture under rE356 above, such application shall be carried out in accordance with the provisions of the Legal Services Act 2007.

Part 6: Definitions

In this Handbook, the following words and phrases have the meaning set out below:

A

a realistic prospect of a finding of professional misconduct being made

means that the *Commissioner* or an *Independent Decision-Making Panel* considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of an *allegation* , that it is more likely than not that a finding of *professional misconduct* will be made

a realistic prospect of the disqualification condition being satisfied

means that the *Commissioner* or an *Independent Decision-Making Panel* considers, on the information then available to it and having regard to the evidence which it regards as likely to be available at any tribunal or final determination of an *allegation* , that it is more likely than not that it shall be determined that the *disqualification condition* has been satisfied

academic legal training

(a) UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body and which contains the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union; or

(b) a UK degree, awarded at level 6 (or above) of the Framework for Higher Education Qualifications, by a recognised degree-awarding body together with a degree programme or degree conversion programme (ie Graduate Diploma in Law or equivalent) which includes the following subject content: Contract, Property Law, Tort, Criminal Law, Constitutional and Administrative Law, Equity and Trusts and the Law of the European Union.

administration of oaths

has the same meaning as set out in paragraph 8 of Schedule 2 to the *LSA.*

administrative sanction

means the imposition of an administrative warning, fixed penalty fine or other administrative fine up to the prescribed maximum, or any combination of the above in accordance with Section 5.A.

admission to an Inn

includes readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of the *Inn.*

AETO

is an Authorised Education and Training Organisation which is authorised by the *BSB* to provide a vocational training course and/or *pupillage* in accordance with the *Authorisation Framework* .

allegation

means, for the purposes of Part 5.A, a *report* , or part of a *report* , that is treated by the *Commissioner* as an allegation under Part 5.A

an association

means where:

(a) *BSB* authorised individuals are *practising* as a chambers; or

(b) *BSB* authorised *person* s are sharing premises and/or costs and/or using a common vehicle for obtaining or distributing work with any *person* other than a *BSB regulated person* , in a manner which does not require the *association* to be authorised as an entity under the *Legal Services Act 2007.*

appeal panel

(a) in Section 5.A means an Appeal Panel constituted in accordance with paragraph rE54, to perform the functions set out in regulations E59 and E60 of that Section 5.A;

(b) in Section 5.C means an Appeal Panel constituted in accordance with rE267 of that Section 5.C, to perform the functions set out in paragraphs rE287 to rE288 of that Section 5.C;

(c) in Section 5.D means an Appeal Panel constituted in accordance with paragraph 5 of Schedule 1 of that Section 5.D, to perform the functions set out in paragraphs rE331 to rE333 of that Section 5.D

applicable person

Means *persons* who were *unregistered barristers* or *BSB regulated person s* at the time of the conduct complained of (including, for the purposes of Part 5 of the *Handbook* only, *persons* who would have fallen within the definition of *BSB regulated persons* but for the fact that, at the time of the conduct complained of, they had their authorisation or licence *suspended* or revoked, or were subject to a sentence of *suspension* or disbarment, or were subject to a disqualification order (as the case may be) that has subsequently been overturned on appeal).

applicant body

in Part 3, means a licensable body, or a *BSB authorised* body which makes an application to the *Bar Standards Board* for authorisation in accordance with the *Scope of Practice, Authorisation and Licensing Rules* in Part 3.

application fee

means the amount payable by a person to cover the cost of an application process for seeking to be authorised by the *BSB* to carry out any *reserved legal services* or seeking to extend an existing authorisation.

approved regulator

means any body specified as an approved regulator in paragraph 1 of Schedule 4 of the *LSA* or designated as an approved regulator by an order under paragraph 17 of that Schedule

associates

has the meaning given in paragraph 5 to Schedule 13 of the *LSA* namely:

(i) "associate", in relation to a *person* ("A") and:

(a) a shareholding in a body ("S"); or

(b) an entitlement to exercise or control the exercise of voting power in a body ("V");

means a *person* listed in sub-paragraph (ii).

(ii) The *person* s are:

(a) the spouse or civil *partner* of A;

(b) a child or stepchild of A (if under 18);

(c) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest);

(d) an undertaking of which A is a director;

(e) an employee of A;

(f) a *partner* of A (except, where S or V is a *partner* ship in which A is a *partner* , another *partner* in S or V);

(g) if A is an undertaking:

(I) a *director* of A;

(II) a subsidiary undertaking of A; or

(III) a *director* or employee of such a subsidiary undertaking;

(h) if A has with any other *person* an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in S or V (whether or not they are interests within the meaning of section 72(3) of the *LSA*), that other *person* ; or

(i) if A has with any other *person* an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to S or V, that *person*

authorisation fee

means the fee prescribed from time to time by the *Bar Standards Board* in accordance with Rule S94.

Authorisation Framework

means the framework published by the *BSB* setting permitted pathways and their mandatory training components for the qualification of *barristers* in order to meet the Professional Statement and the criteria for authorisation of *AETOs* . It also includes the prescribed Curriculum and Assessment Strategy and additional publications as detailed in the framework.

authorised (non-BSB) body

means a partnership, *LLP* or company authorised or licensed by another *approved regulator* to undertake *reserved legal activities.*

authorised (non-BSB) individual

means an individual that is authorised to provide reserved legal activities by another *approved regulator* where such an individual is working as a *manager* or an employee of a *BSB entity.*

authorised (non-BSB) person

means an *authorised (non-BSB) body* or an *authorised (non-BSB) individual* (as the case may be).

authorised individual

means *BSB authorised individuals* and *authorised (non-BSB) individuals.*

authorised person

has the meaning set out in section 18(1) of the *LSA.*

B

bankruptcy order

includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world.

Bar

means the Bar of England and Wales.

Bar Council

means The General Council of the Bar as constituted from time to time or a committee thereof.

Bar Qualification Rules

means the rules on qualification set out at Part 4.

Bar Standards Board

means the part of the *Bar Council* established to independently exercise the regulatory functions of the *Bar Council.*

Bar Transfer Test

means an examination administered by the *Bar Standards Board* which:

(a) is designed to assess whether a *person* has the professional knowledge (including knowledge of the rules of professional conduct) required in order to practise as a *barrister* in England and Wales; and

(b) covers subjects not already covered by the education and training of the *person* concerned, the knowledge of which is essential for such *practice.*

barrister

has the meaning given in s. 207 of the *LSA* and includes

(a) *practising barristers* ;

(b) *pupils* ; and

(c) *unregistered barristers.*

BMIF

means Bar Mutual Indemnity Fund Limited

BSB authorised body

means a body (corporate or unincorporated) which is authorised by the BSB to carry on reserved legal activities and is not a *licensable body*

BSB authorised individuals

means all individuals authorised by the *Bar Standards Board* to carry on *reserved legal activities* including:

a) practising barristers ;

b) *pupils* with a *provisional practising certificate* ;

c) registered European lawyers

BSB authorised persons

means *BSB entities* and *BSB authorised individuals*

BSB entity

means *BSB authorised body* and *BSB licensed body*

BSB licensed body

means a *licensed body* that has been licensed by the BSB

BSB regulated individuals

means *BSB authorised individuals* , *authorised (non-BSB) individuals employed by BSB authorised bodies and BSB regulated manager s*

BSB regulated managers

means a *manager* of a *BSB entity*

BSB regulated person

Includes to the extent described in the application sections of the Handbook:

a) *Practising barristers;*

b) registered European lawyers;

c) BSB entities; and

d) Any employees or *managers* of the above

BTAS

The Bar Tribunals and Adjudication Service ('BTAS') is a body contracted by the Bar Standards Board to administer and appoint hearing panels in line with the provisions of Part 5 of the BSB Handbook.

C

call

means call to the *Bar* in accordance with the Bar Qualification Rules

call declaration

means a declaration made to an *Inn* for the purpose of being called to the *Bar.*

CCBE

means The Council of Bars and Law Societies of Europe

CCBE State

means any state whose legal profession is a full member, an associate member or an observer member of the *CCBE*

Certificate of Good Standing

means:

(a) in relation to a *person* authorised by another *Approved Regulator* or by a *Qualified Foreign Lawyer* , a certificate issued by the *Approved Regulator* or the professional body or other authority responsible for regulating the profession of which the *person* concerned is a member attesting that the *person* concerned:

(i) is of good character;

(ii) has not been the subject of a *Bankruptcy Order* or Directors Disqualification Order nor entered into an individual voluntary arrangement with creditors; and

(iii) has not been prohibited and is not currently suspended from *practising* on account of serious professional misconduct or the commission of a criminal offence;

(b) in relation to a *Qualified Swiss Lawyer* , evidence that the *person* concerned:

(i) is of good character;

(ii) has not been the subject of a *Bankruptcy Order* or Directors Disqualification Order nor entered into an individual voluntary arrangement with creditors; and

(iii) has not been prohibited and is not currently suspended from *practising* on account of serious *professional misconduct* or the commission of a *criminal offence*

chambers

means a place at or from which one or more self-employed barristers or *BSB entities* carry on their practices and also refers where the context so requires to all the *barristers* (excluding pupils) and *BSB entities* who for the time being carry on their *practices* at or from that place

client

means, the *person* for whom you act and, where the context permits,includes prospective and former clients

client money

means

(a) money, securities or other assets beneficially owned by a *client* ; or

(b) money, securities or other assets provided by, or for the benefit of, your *client* or intended by another party to be transmitted to your *client* ,

But excludes:

(c) a fixed fee paid in advance; or

(d) a payment made in settlement of an accrued debt; or

(e) money which belongs to your *employer*

Code of Conduct for European Lawyers

means the code of conduct adopted by the *CCBE* (as may be amended from time to time) applying to all lawyers undertaking *cross border activities* in a *CCBE State*

Commissioner

the person who is empowered within the executive of the *Bar Standards Board* to carry out the functions and exercise the powers as indicated within the *Handbook*

Company

has the same meaning as in section 1 of the Companies Act 2006

complaint

means, for the purposes of Part 2, a complaint by a *client* about the standard of service received that is addressed either to the *Legal Ombudsman* or the *chambers* or the *BSB authorised person*

conditional fee agreement

means a conditional fee agreement as defined in Section 58 of the Courts and Legal Services Act 1990

conduct litigation or conduct of litigation

has the same meaning as set out in paragraph 4 of Schedule 2 to the *LSA* . Conducting litigation shall be construed accordingly

Convening Order

means the Order described in Regulation E132.c

conviction

means a criminal conviction for an *indictable offence*

Council of the Inns of Court (COIC)

means the Council of the Inns of Court and its successors including any entity or part through which it exercises its functions

court

means any court or tribunal or any other *person* or body whether sitting in public or in private before whom a *barrister* appears or may appear as an advocate

criminal offence

means any offence, wherever committed, under the criminal law of any jurisdiction (including an offence the conviction for which is a spent conviction within the meaning of the Rehabilitation of Offenders Act 1974) except:

(a) an offence for which liability is capable of being discharged by payment of a fixed penalty; and

(b) an offence which has as its main ingredient the unlawful parking of a vehicle

Cross border activities

means:

(a) the undertaking by a *BSB authorised person* of foreign work in a *CCBE State* other than the *UK* , whether or not the *BSB authorised person* is physically present in that *CCBE State* ; and

(b) any professional contact by a *BSB authorised person* with a lawyer of a *CCBE State* other than the *UK*

D

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decision period

for the purposes of applications for authorisation in Part 3 means:

in respect of an application for authorisation or licensing, the period of 6 months;

in respect of a standalone application for authorisation to conduct litigation, the period of 3 months; and

in respect of an application for approval of a *manager, owner, HOLP or HOFA* , the period of 1 month,

in each case, commencing on the last date on which the *Bar Standards Board* receives any of the documentation, information or payments required to be submitted with such application

Definitions Section

means Part 6 of the *Handbook*

determination by consent procedure

means the procedure set out in Regulation E39

devilling

means where a *self-employed barrister* ("A") arranges for another *barrister* ("B") in the same *chambers* to carry out work for A on the basis that A will be responsible for the payment of B's remuneration for such work and will be responsible to the client for the work as if it were their own.

“devil” and “devils” will be construed accordingly

Directions Judge

means a Judge or King’s Counsel designated by the *President*

Director

means a *director* of a company, and includes the director of a *BSB entity or an authorised (non-BSB) body* which is a company, and in relation to a societas Europaea includes:

a) in a two-tier system, a member of the management organ and a member of the supervisory organ;

b) in a one-tier system, a member of the administrative organ

directors disqualification order

includes a disqualification order made by a court, or disqualification undertaking accepted by the secretary of state, pursuant to the Company Directors Disqualification Act 1986 and any similar order made or undertaking given in any jurisdiction in the world

disciplinary action

for the purposes of Part 5.A, action taken by the *Bar Standards Board* under the *determination by consent procedure* or by way of referring a disciplinary charge and/or a *disqualification* application to the *Disciplinary Tribunal*

Disciplinary Tribunal

means a Tribunal convened pursuant to E132 of the Disciplinary Tribunal Regulations 2017 to consider an allegation of *professional misconduct* against an *applicable person* (for which the sanctions may include disqualification, where Part 5 so provides) and/or to consider an application for *disqualification* against an *applicable person*

discrimination

has the same meaning as in chapter 2 of the Equality Act 2010

disqualification condition

means that an *applicable person* has (intentionally or through neglect):

a) breached a relevant duty to which the person is subject; or

b) caused, or substantially contributed to, a BSB regulated person breaching a duty imposed under this Handbook (or in the case of a *BSB licensed body* a significant breach of its licence); and

c) in either case, that the BSB is of the view that it is undesirable that the *applicable person* should engage in one or more of the relevant activities

disqualification order

means an order:

a) made by a *Disciplinary Tribunal* in disposing of a disciplinary charge or disqualification application referred to it by the *Commissioner* or an *Independent Decision-Making Panel* ; and

b) made on the basis that the *disqualification condition* is satisfied in respect of the *applicable person* who is the subject of the *disqualification order* ; and

c) either indefinitely or for a stated period, disqualifying an *applicable person* from one or more relevant activities and prohibiting any *BSB authorised person* from appointing them or employing them in respect of such relevant activities

Disqualify, disqualified or disqualification

means the power of the *Bar Standards Board* , pursuant to Section 5.B, to disqualify an *applicable 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 by the *Commissioner* in accordance with Section 5.D

diversity data

Means information relating to the following characteristics in respect of an individual:

a) Age

b) Disability

c) Pregnancy and maternity

d) Race (including ethnic or national origins, colour or nationality

e) Religion or belief (including lack of belief)

f) Sex

g) Sexual orientation

E

employed barrister

means:

a) an *employed barrister (authorised non-BSB body*); or

b) an *employed barrister* (*BSB entity*); or

c) an *employed barrister* (*non authorised body*)

employed barrister (authorised non-BSB body)

means a *practising barrister* who is employed by an *authorised (non- BSB) body either:*

a) under a contract of employment; or

b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice),

who supplies *legal services* as a *barrister* in the course of their employment

employed barrister (BSB entity)

means a *practising barrister* who is employed by a *BSB entity* either:

a) under a contract of employment; or

b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice),

who supplies *legal services* as a *barrister* in the course of their employment

employed barrister (non-authorised body)

means a *practising barrister* who is employed:

a) other than by a *regulated entity* ;

b) either:

(i) under a contract of employment; or

(ii) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice);

or

(iii) by virtue of an office under the Crown; and

who supplies *legal services* as a *barrister* in the course of their employment

employer

means *person* s by whom *employed barristers* (non-authorised bodies) are employed including any holding subsidiary or associated company, corporate body or firm of that *person*

enforcement strategy

means the strategy on enforcement from time to time published by the *Bar Standards Board* , in effect as at the date the report is received by, or comes to the attention of, the *Bar Standards Board* under Part 5.A

English law

includes international law that is in force in England and Wales

Equality and Diversity Officer

means the individual appointed as such by the *chambers* or the *BSB entity* (as appropriate), one of whose responsibilities is to ensure compliance with the Equality and Diversity set out at rules C110-C111

European lawyer

means a *person* who is a national of a *Member State* and who is authorised in any *Member State* to pursue professional activities under any of the professional titles appearing in article 2(4) of the European Communities (Lawyer's *Practice*) Regulations 2000 or within the Services of Lawyers and Lawyers' Practice (Revocation etc.) (EU Exit) Regulations 2020, but who is not any of the following:

a) a *solicitor* or *barrister* of England and Wales or Northern Ireland; or

b) a *solicitor* or advocate under the law of Scotland

European Qualifications Regulations

means the European Union (Recognition of Professional Qualifications) Regulations 2015

F

family responsibilities

includes caring responsibilities for older, young, or disabled dependants or relatives

First Tier Tribunal

means the General Regulatory Chamber of the First Tier Tribunal

Fitness to Practise Panel

means a Fitness to Practise Panel constituted under Section 5.D, in accordance with paragraph 4 of schedule 1

foreign client

means a lay *client* who has their centre of main interests outside England and Wales, or who reasonably appears as having that characteristic

foreign lawyer

is a *person* who is a member, and entitled to *practice* as such, of a legal profession regulated within a jurisdiction outside England and Wales and who is not an *authorised person* for the purposes of the *LSA*

foreign work

means *legal services* of whatsoever nature relating to:

a) court or other legal proceedings taking place or contemplated to take place outside England and Wales; or

b) if no court or other legal proceedings are taking place or contemplated, any matter or contemplated matter not subject to the law of England and Wales

full practising certificate

means, in accordance with Rule S63, a *practising* certificate which entitles a *barrister* to exercise a *right of audience* before every *court* in relation to all proceedings

H

Handbook

means this Handbook

harassment

has the same meaning as in section 26 of the Equality Act 2010

HOFA

In relation to a *BSB authorised body* : has the meaning set out in the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2016

In relation to a *BSB licensed body* : means an individual who meets the requirements set out in paragraph 13 of Schedule 11 to the LSA and has been approved as a Head of Finance and Administration by the BSB in accordance with section E of Part 3

HOLP

In relation to a *BSB authorised body* : has the meaning set out in the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2016

In relation to a *BSB licensed body* : means an individual who meets the requirements set out in paragraph 11 of Schedule 11 to the LSA and has been approved as a Head of Legal Practice by the BSB in accordance with section E of Part 3

home professional title

means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to their *home State* in article 2(4) of the European Communities (Lawyer's *Practice*) Regulations 2000 (as amended) or within the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020 under which they are authorised in their *home State* to pursue professional activities

home regulator

means the body in a *Member State* which authorises a European lawyer to pursue professional activities under any of the professional titles appearing in article 2(4) of the European Communities (Lawyer's *Practice*) Regulations 2000 (as amended) or within the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020 and, if the European lawyer is authorised in more than one *Member State* , it shall mean any such body

home State

means the *Member State* in which a European lawyer acquired the authorisation to pursue professional activities under their home professional title and, if they are authorised in more than one *Member State* , it shall mean any such *Member State*

I

immigration work

means the provision of immigration advice and immigration services, as defined in section 82 of the Immigration and Asylum Act 1999

Independent Decision-Making Body

means a body established by the *Bar Standards Board* to provide a pool of members for *Independent Decision-Making Panels*

Independent Decision-Making Panel

means a panel established to take decisions independently of the executive of the *Bar Standards Board* as provided for in the Handbook and consisting of members of the *Independent Decision-Making Body* , in accordance with Schedule 1 of Part 5.A.

Inn

means one of the four Inns of Court, namely, the Honourable Societies of Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn

" *Inns* " should be construed accordingly

instructions

means *instructions* or directions in whatever form (including a brief to appear as an advocate before a Court) given to a *practising barrister* or a *BSB entity* to supply legal services whether in a contentious or in a non-contentious matter and "instructed" shall have a corresponding meaning

interim panel

means an *interim panel* constituted in accordance with paragraph rE265, to perform the functions set out in paragraphs rE276 to rE278 of Section 5.C

intermediary

means

any *person* by whom a *self-employed barrister* or *BSB entity* is instructed on behalf of a *client* excluding a *professional client* who is not also the *client* save for an *intermediary* in the context of a *referral fee* which includes a *professional client*

J

Justices' clerk

means a serving Justices' clerk or assistant Justices' clerk, appointed under the Courts Act 2003

L

lay member

means either:

(a) a *lay person* appointed to be a member of the *Bar Standards Board* , one of its regulatory committees or the *Independent Decision-Making Body* ; or,

(b) a *lay person* appointed by the President to serve on Disciplinary Tribunals, Interim Suspension Panels and Appeal Panels therefrom, and Fitness to Practise Panels and Appeal Panels therefrom

Lay person

means a person who is not and never has been a barrister, who has not completed the training required in order to be called to the Bar, and who is a lay person under paragraph 2(4) and (5) of Schedule 1 to the Legal Services Act 2007

Legal Advice Centre

means a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and:

a) which employs or has the services of one or more solicitors conducting work pursuant to rule 4.16 of the SRA Practice Framework Rules 2011; or

b) which has been and remains designated by the *Bar Standards Board* as suitable for the employment or attendance of *barristers* subject to such conditions as may be imposed by the *Bar Standards Board* in relation to insurance or any other matter whatsoever

Legal Aid Agency

is the executive agency established under Legal Aid Sentencing and Punishment of Offenders Act 2012 to manage and administer the legal aid system

legal aid complaint

has the same meaning as in section 40 of the Administration of Justice Act 1985

Legal Ombudsman

means scheme administered by the Office for Legal Complaints under Part 6 of the *LSA*

legal services

includes legal advice, representation and drafting or settling any statement of case, witness statement, affidavit or other legal document, but does not include:

a) sitting as a judge or arbitrator or acting as a mediator;

b) lecturing in or teaching law or writing or editing law books articles or reports;

c) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like;

d) communicating to or in the press or other media;

e) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable benevolent or philanthropic institution;

f) in relation to a *barrister* who is a non-executive director of a company or a trustee or governor of a charitable benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors trustees or governors the benefit of their learning and experience on matters of general legal principle applicable to the affairs of the company institution or trust;

g) early neutral evaluation, expert determination and adjudications

Legal Services Board

means the independent body established under the *LSA* to be the overarching regulator for the legal profession as a whole

licensable body

Has the same meaning as set out in s. 72 *LSA* namely:

(1) A body ("B") is a licensable body if a *non-authorised person* –

(a) is a *manager* of B, or

(b) has an interest in B.

(2) A body ("B") is also a licensable body if–

(a) another body ("A") is a *manager* of B, or has an interest in B, and

(b) *non-authorised person* s are entitled to exercise, or control the exercise of, at least 10% of the voting rights in A.

(3) For the purposes of this Act, a *person* has an interest in a body if–

(a) the *person* holds shares in the body, or

(b) the *person* is entitled to exercise, or control the exercise of, voting rights in the body.

(4) A body may be licensable by virtue of both subsection (1) and subsection (2).

(5) For the purposes of this Act, a *non-authorised person* has an indirect interest in a licensable body if the body is licensable by virtue of subsection (2) and the *non authorised person* is entitled to exercise, or control the exercise of, voting rights in A.

(6) "shares" means–

(a) in relation to a body with a share capital, allotted shares (within the meaning of the Companies Acts);

(b) in relation to a body with capital but no share capital, rights to share in the capital of the body;

(c) in relation to a body without capital, interests–

(i) conferring any right to share in the profits, or liability to contribute to the losses, of the body, or

(ii) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up;

and references to the holding of shares, or to a shareholding, are to be construed accordingly.

licensed access client

means a *person* or organisation approved as such by the *Bar Standards Board* in accordance with the Licensed Access Recognition Regulations which are available on the *BSB's* website

Licensed Access rules

means the Rules on licensed access set out at Rules C132 to C141

licensed body

Has the same meaning as in s71(2) of the LSA, namely a *licensable body* which has been granted a licence by the *Bar Standards Board* or other licensing authority to undertake *reserved legal activities* ;

licensing authority

means an *approved regulator* which is designated as a licensing authority under Part 1 of Schedule 10 to the *LSA,* and whose licensing rules have been approved for the purposes of the *LSA*

limited practising certificate

in accordance with rS65, a limited *practising* certificate authorises a *barrister* to exercise any right of audience that they had on 30 July 2000 as a result of them being a *barrister*

litigation extension fee

means the amount payable by a *BSB authorised person* which has a litigation extension

LLP

means a limited liability *partner* ship formed by being incorporated under the Limited Liability *Partner* ships Act 2000

LSA

means the *Legal Services Act 2007* (as amended)

M

manager

has the same meaning as set out in s. 207 *LSA* namely:

a) a member of an *LLP* ;

b) a director of a company;

c) a *partner* in a *partner* ship; or

d) in relation to any other body, a member of its governing body.

material interest

a person holds a material interest in a body (“B”) if the person:

i. holds at least 10% of the shares in B,

ii. is able to exercise significant influence over the management of B by virtue of the person’s shareholding in B,

iii. holds at least 10% of the shares in a parent undertaking (“P”) of B,

iv. is able to exercise significant influence over the management of P by virtue of the person’s shareholding in P,

v. is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B,

vi. is able to exercise significant influence over the management of B by virtue of the person’s entitlement to exercise, or control the exercise of, voting rights in B,

vii. is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P, or

viii. is able to exercise significant influence over the management of P by virtue of the person’s entitlement to exercise, or control the exercise of, voting rights in P.

and for the purposes of this definition “person” means–

i. the person,

ii. any of the person’s associates, or

iii. the person and any of the person’s associates taken together;

mediation

means the process whereby the parties to a dispute appoint a neutral *person* (mediator) to assist them in the resolution of their dispute

medical

In relation to any person means a registered medical practitioner

Medical Examiner

means a registered medical practitioner nominated to carry out a medical examination of an Individual under Regulations rE310.1 and rE320.2.a of Section 5.D and provide medical advice to the Fitness to Practise Panel.

medical member

means a person appointed by the President under Section 5.D, in accordance with paragraph 1 of schedule 1 for the purpose of serving on Fitness to Practise and Appeal Panels.

Member State

means a state which is a member of the European Union, the European Economic Area or Switzerland

minor criminal offence

includes:

a) an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988;

b) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that for such a fixed-penalty offence;

c) an offence whose main ingredient is the unlawful parking of a motor vehicle

N

non-authorised body

any body that is not a *regulated entity*

non-authorised individual

means any individual who is not a *BSB authorised individual* or an *authorised (non-BSB) individual*

non-authorised person

means:

a) non-authorised bodies; and

b) non-authorised individual s

non-reserved activities

means any activities other than reserved legal activities

notarial activities

has the same meaning as set out in paragraph 7 of Schedule 2 to the *LSA*

O

Owner

means:

a) in relation to a *BSB entity* that is a company or an *LLP* (or an applicant to become such a body), any *person* who holds a *material interest* in that company or *LLP* ;

b) in relation to a *BSB entity* that is a *partner* ship (or an applicant to become such a body), any *partner* of that *partner* ship who holds a *material interest* in that *partner* ship

P

parental leave

means leave from practice taken by a carer of a child preceding or following birth or adoption. This could be the mother, father or adoptive parent of either sex, and includes the married, civil, or de facto partner of a biological or adoptive parent

partner

means a *person* who is or is held out as a *partner* in an unincorporated firm.

partnership

means an unincorporated *partner* ship, and includes any unincorporated firm in which *person* s are or are held out as *partner* s, but does not include an *LLP*

pending criminal proceedings

are pending if a *person* :

(a) is currently charged with, or

(b) is on bail or in detention or custody (or has failed to surrender to custody) in connection with,

any *criminal offence*

period of deferral

A sentence imposed prior to 1 November 2017 that was deferred for a period no less than six months and no more than two years long;

person

includes a body of *person* s (corporate or unincorporated)

practice

means the activities, including business related activities, in that capacity, of:

a) a *practising barrister* ;

b) a *BSB entity* ;

c) a *manager* of a *BSB entity*

d) an employee of a *BSB entity*

“practise”, “ *practising* ” and “ *practised* ” should be construed accordingly

practising address

means an address from which the services which consist of or include the carrying on of *reserved legal activities* are being provided

practising barrister

means a *barrister* who *practises* as a *barrister* as defined in Rule S9

practising certificate

means a *full practising certificate* , a *provisional practising certificate* , a *limited practising certificate* , or an *European lawyer’s practising certificate* or a temporary *practising* certificate issued by the *Bar Standards Board* or the *Bar Council* (acting by the *Bar Standards Board*)

practising certificate fee

means the amount payable for a *practising certificate* each year, such amount to be calculated by reference to the Schedule of *Practising* Certificate Fees issued by the *Bar Council* from time to time, together with the provisions of Section 3.C

practising certificate year

means the period from 1 April in any calendar year to 31 March in the next calendar year

probate activities

has the same meaning as set out in paragraph 6 of Schedule 2 to the *LSA*

professional client

means in relation to giving *instructions* to a BSB authorised *person* :

a) any *person* authorised by another *approved regulator or licensing authority ;*

b) an *employed barrister* or registered European lawyer;

c) any *practising barrister* or registered European lawyer acting on their own behalf;

d) any *BSB authorised person* who is authorised to conduct litigation;

e) a *foreign lawyer* ;

f) a Scottish or Northern Irish *Solicitor* ; or

g) the representative of any body (such as a Legal Advice Centre or Pro Bono or Free Representation Unit) which arranges for the supply of legal services to the public without a fee, and which has been and remains designated by the *Bar Standards Board* (subject to such conditions as may be imposed by the *Bar Standards Board* in relation to insurance or any other matter whatsoever) as suitable for the instruction of *barristers* , and which instructs a *barrister* to supply legal services without a fee;

professional misconduct

means a breach of this Handbook by an *applicable person* which is not appropriate for disposal by way of the imposition of *administrative sanctions* , pursuant to Section 5.A

professional principles

has the same meaning as set out in s. 1(3) *LSA* namely:

(a) that authorised *person* s should act with independence and integrity,

(b) that authorised *person* s should maintain proper standards of work,

(c) that authorised *person* s should act in the best interests of their clients,

(d) that *person* s who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised *person* s should comply with their duty to the court to act with independence in the interests of justice, and

(e) that the affairs of clients should be kept confidential.

provisional practising certificate

in accordance with Rule S64 a *provisional practising certificate* authorises a *pupil* in their practising period to exercise a *right of audience* before every *court* in relation to all proceedings

public access client

a *client* (other than a *licensed access client*) that instructs a *barrister* directly on their behalf.

public access instructions

means *instructions* given to a *barrister* by or on behalf of a *public access client* , in accordance with Rules C119 to C131

pupil

means an individual who is undertaking either the non- *practising period* of *pupillage* or the *practising period* of *pupillage* , or a part thereof and who is registered with the *Bar Standards Board* as a *pupil* ;

pupil supervisor

an *authorised individual* who has been appointed as a *pupil supervisor* by an *AETO*

pupillage

means a period of training which is work-based learning provided by an *AETO* in accordance with its authorisation by the *BSB*

Q

qualified foreign lawyer

means a *person* who is a member of a legal profession regulated in a jurisdiction outside England and Wales and entitled to *practise* as such

qualified lawyer

means a person who is authorised to *practise* by another *Approved Regulator , a Qualified Swiss Lawyer* or a *Qualified Foreign Lawyer*

qualified Swiss lawyer

means a person with the relevant qualifications or professional title within the meaning of Regulation 6 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020

qualifying sessions

means professional development events of an educational or collegiate nature arranged by or on behalf of an *Inn* .

Quasi-judicial

acting in any capacity which requires an approach of a judicial nature and compliance with the basic requirements of natural justice; and/or, as an arbitrator; or, as a neutral evaluator between parties; or, as a mediator.

R

referral fee

means any payment or other consideration made in return for the referral of professional *instructions* by an *intermediary,*

For the avoidance of doubt, a payment for the provision of a particular service or for some other reason, and not for the provision or referral of professional *instructions* is not a *referral fee* for the purposes of this definition

register of European lawyers

means the register of European lawyers maintained by the *Bar Standards Board* under regulation 15 of the European Communities (Lawyer's Practice) Regulations 2000 (SI 2000/1119).

registered European lawyer

means:

a) a *European lawyer* , who retains registration as such, pending a decision on an application to the *Bar Standards Board* for admission to the *Bar* made before the end of the *Transition Period* and was registered by the *Bar Standards Board* and by an *Inn* in accordance with Section 3D before the end of the *Transition Period* ; or

b) a *qualified Swiss lawyer* who applied for registration as such under the *Swiss Citizens' Rights Agreement* and was registered continuously by the *Bar Standards Board* and by an *Inn* in accordance with Section 3D before 1 January 2025; or

c) for the purposes of Part 5 of the *Bar Standards Board Handbook* prior to the end of *Transition Period* was registered as such by the *Bar Standards Board* and by an *Inn* in accordance with Section 3.D.

Registered European lawyer's practising certificate

means, in accordance with rS68, a *practising certificate* which entitles a registered European lawyer to carry on the same reserved legal activities as a full *practising certificate* issued to a *barrister,* save that:

a) a registered European lawyer is only authorised to exercise a right of audience or a right to conduct litigation if they act in conjunction with a *solicitor* or *barrister* who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully exercise that right; and

b) a registered European lawyer is not authorised to prepare for remuneration any instrument creating or transferring an interest in land unless they have a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia

regulated entity

Means *BSB entity* or *authorised (non-BSB) body*

regulatory objectives

has the meaning given to it by section 1 of the *LSA* and consists of the following objectives:

a) protecting and promoting the public interest;

b) supporting the constitutional principles of the rule of law;

c) improving access to justice;

d) protecting and promoting the interests of consumers;

e) promoting competition in the provision of the services;

f) encouraging an independent, strong, diverse and effective legal profession;

g) increasing public understanding of the citizen's legal rights and duties; and

h) promoting and maintaining adherence to the professional principles

relevant activity

Means:

a) those activities set out in paragraph 7(3) of the Legal Services Act (General Council of the Bar) (Modification of Functions) Order 2018; or

b) in relation to a *BSB licensed body* , those set out in section 99(2) of the LSA.

Relevant State

means a *Member State* , Iceland, Norway, Liechtenstein or Switzerland

report

For the purposes of rC144.1.c and Part 5.A, a spoken, written or other documentary account that gives information about a particular subject, situation, or event involving any of the categories of person listed in rI7

reserved instrument activities

has the same meaning as set out in paragraph 5 of Schedule 2 to the *LSA*

reserved legal activity

means:

a) the exercise of a right of audience;

b) the *conduct of litigation* ;

c) reserved instrument activities;

d) *probate activities* ;

e) *notarial activities* ; and

f) the administration of oaths;

"reserved activities" shall be construed accordingly

Respondent

Means the *applicable person* who is the subject of: a decision to refer a matter to a *Disciplinary Tribunal* or *Determination by Consent procedure* in part 5.A; a disciplinary charge or charges brought before a *Disciplinary Tribunal* and/or a *disqualification* application made to the *Disciplinary Tribunal* in part 5.B; or against whom the *Bar Standards Board* is considering taking interim action in accordance with section 5.C.

Restriction

in Section 5.D, means a *suspension* or *disqualification* , imposed, extended, varied or replaced by a Panel under Regulations E313, E315, E320, E321 and E331 of Section 5.D

review panel

In Section 5.C, means a review panel constituted in accordance with rE266 of that Section 5.C, to perform the functions set out in paragraphs rE281 to rE283 of that Section 5.C

right of audience

has the same meaning as set out in paragraph 3 of Schedule 2 to the *LSA* ;

right to conduct litigation

refer to *conduct of litigation* above

S

Scope of Practice, Authorisation and Licensing Rules

means the rules set out at Part 3 of this *Handbook*

selection panel

any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of *pupil* s, assessed minipupils, tenants, clerks, or staff, or, in the context of a *BSB entity* , any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of *pupil* s, assessed mini-pupils, *manager* s or employees of that *BSB entity*

self-employed barrister

means a *practising barrister* who is *self-employed*

Senior Courts

means the Senior Courts of England and Wales, namely, the Court of Appeal, the High Court of Justice and the Crown Court

solicitor

means a *solicitor* of the Supreme Court of England and Wales

specified amount

means in respect of a *pupil* , the amount payable to a *pupil* in their non- *practising* period or their *practising* period (as appropriate), such amount being specified by the *Bar Standards Board* in the Bar Qualification Manual from time to time

student member

means an individual who is a member of an Inn of Court for the purposes of training to become a *barrister*

suitability criteria

means:

a) in respect of a *HOLP* , the criteria set out at Rules S104, S105 and S110;

b) in respect of a *HOFA* , the criteria set out at Rules S106, S107 and S110;

c) in respect of *owner* s, the criteria set out at Rule S108 and S110; and

d) in respect of *manager* s, the criteria set out at Rule S109 and S110

Supervision Team

means the Supervision Team of the *Bar Standards Board*

suspended or suspension

means 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 Section 5.C and when exercised in fitness to practise proceedings shall be exercised in accordance with Section 5.D.

Swiss Citizens' Rights Agreement

means an agreement between the United Kingdom and Switzerland which preserves certain rights of citizens of each country

T

Temporary Qualification Certificate

means a certificate issued by the *Bar Standards Board* under Rule Q26 authorising a Qualified Foreign Lawyer to be admitted to temporary membership of an *Inn* and called to the *Bar* for the purpose of appearing as counsel in a particular case or cases before a court or courts of England and Wales

the President

means the President of the Council of the *Inns* of Court;

the standard directions

mean the standard directions set out at Annex 6 to Section 5.B (as such Annex may be amended or updated by the *Bar Standards Board* from time to time)

trade association

means a body of *person* s (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of *person* s represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members

Transition Period

means the period agreed in the UK-EU Withdrawal Agreement in which the UK is no longer a member of the European Union but remains subject to European Union regulations, including qualification regulations. The transition period ends at 11pm GMT on 31 December 2020

Tribunal Appointments Body

The “Tribunal Appointments Body” is a body appointed by the Council of the Inns of Court which considers the applications of those people who wish to be members of hearing panels, and certifies that those they select to the panels are fit and properly qualified to conduct the business for which they have been selected.

U

UK

means United Kingdom

unfit to practise

when used to describe a *BSB authorised individual* means that the individual:

is incapacitated due to their physical or mental condition (including any addiction); and, as a result, the Individual’s fitness to practise is impaired; and, the imposition of a restriction, or the acceptance of undertakings in lieu, is necessary for the protection of the public, is otherwise in the public interest or is in the Individual’s own interests.

university

means an institution which makes available educational services under a name which includes the word “university” and in the case of an institution to which section 39(1) of the Higher Education Act 1998 applies which is authorised or has approval to include that word in that name as mentioned in that subsection

unregistered barrister

means an individual who does not hold a *practising* certificate but who has been called to the *Bar* by one of the *Inns* and has not ceased to be a member of the *Bar*

V

victimisation

has the same meaning as in section 27 of the Equality Act 2010

vocational training

means a vocational component training course provided by an *AETO* in accordance with the *Authorisation Framework*

W

workforce

means:

a) in the case of a *Chambers* , the staff, *barristers* , *pupils* and assessed mini-pupils; and

b) in the case of a *BSB entity* , the employees, *managers* , *pupils* and assessed mini-pupils

Y

Years' standing

Means that a *barrister* shall be treated as being of a particular number of years' standing if they:

a) have been entitled to practise and have practised as a *Barrister* (other than as a *pupil* who has not completed *pupillage* in accordance with the *Bar Qualification Rules*) or as a person authorised by another *Approved Regulator* ;

b) have made such *practice* their primary occupation; and

c) have been entitled to exercise a *right of audience* before every *court* in relation to all proceedings,

for a period (which need not be continuous and need not have been as a *person* authorised by the same *Approved Regulator*) of at least that number of years.