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FOREWORD

The BSB Handbook has set the standards of conduct for barristers since 2014. It serves as the key regulatory tool through which we can ensure the effective administration of justice is served. Barristers are central to the justice system, and clients depend upon their independence and ability to present their case fearlessly and effectively whilst providing a high standard of service.

The Handbook is drafted to be accessible for barristers, users of barristers’ services and the general public. We hope that the Handbook allows consumers to understand what to expect from barristers as well as providing clarity about the regulatory regime with which barristers must comply.

The Handbook also ensures that clients of barristers’ services receive the same level of protection and service regardless of the vehicle through which that service is provided. We now regulate a range of entities, including some alternative business structures. The Handbook ensures the public can be confident that the same standards apply to these different business structures as well as individual barristers.

This new version of the Handbook continues the process of removing unnecessary prescription, where such restrictions are no longer in the interest of clients or the wider regulatory objectives. In particular, we have streamlined some of the requirements in relation to public and licensed access and made the relevant rules more outcomes-focused in a way which is consistent with the rest of the Handbook. This new version also includes new rules allowing us to collect information on practice area. In particular, we want to know who is undertaking youth court work and to ensure compliance with new anti-money laundering regulations. This information should also allow us to target our regulation more effectively in the future to those areas where it is most needed.

Baroness Tessa Blackstone

Chair of the BSB
Part 1

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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 Standards Board’s regulatory framework and those subject to it.
A2. Structure of the Handbook

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 – 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;

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.

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 Policy.

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 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 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 policy 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 Pupillage Handbook; 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 Policies 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

r1  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.

r2  The Bar Standards Board has no power without the unanimous consent of the Inns to amend or waive Rule Q4.1 or this Rule so as to permit a person who has not been called to the Bar by an Inn to practise as a barrister.

r3  Removed from 1 November 2017.

r4  Amendments and additions will be published on the Bar Standards Board’s website.
A4. **Waivers**

Subject to r12, 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.

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.
SECTION B: APPLICATION

PART 1

B. APPLICATION

Subject to paragraphs r17 to r11 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 either the first non-practising six months of *pupillage* or the second practising six months of *pupillage*, or a part thereof and who are registered with the *Bar Standards Board* as a pupil ("pupils"); and
   c. all other barristers who do not hold a practising certificate but who have been called to the Bar by one of the *inns* and have not ceased to be a member of the Bar ("unregistered barristers");

2. European lawyers registered as such by the *Bar Council* 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*, students and *approved training organisations*.

9. and persons within paragraphs r17 to 7 (with the exception of pupils undertaking the first six months of pupillage, 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) are referred to as "*applicable persons*". For the avoidance of doubt, the *Handbook* continues to apply to those who are subject to suspension.
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.

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.

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.

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.
This third edition of the Handbook came into force on 03 April 2017 and replaced the second edition of the Handbook (which came into effect from 30 April 2015).

Subject to r114 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.

Where:

.1 a matter is being dealt with under The Disciplinary Tribunal Regulations 2014 as at 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) as at 6 January 2014; 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 PCC in respect of conduct before 6 January 2014.
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
The Code of Conduct
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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.
B. THE 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 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

Guidance to the core duties

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 CD6 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.
C. THE CONDUCT RULES

C1. You and the court

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

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

Guidance on Rules rC3 – rC6 and relationship to CD1 and CD2

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.
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.

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.

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.

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.

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.

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.
Rules

Not abusing your role as an advocate

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.
C2. Behaving ethically

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

Honesty, integrity and independence

- **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 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:
     2.1 any statement of fact or contention which is not supported by your client or by your instructions;
     2.2 any contention which you do not consider to be properly arguable;
     2.3 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;
     2.4 (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;
     2.5 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;
     2.6 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;
     2.7 you must only propose, or accept, fee arrangements which are legal.
Guidance on Rules rC8 and rC9 and their relationship to CD1, CD2, CD3, CD4 and CD5

**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.
SECTION C: THE CONDUCT RULES

PART 2

C2: Behaving ethically

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 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.

gC22 The former prohibition on practising barristers expressing a personal opinion in the media in relation to any future or current proceedings in which they are briefed has been removed. Practising barristers must, nevertheless, ensure that any comment they may make does not undermine, and is not reasonably seen as undermining, their independence. Furthermore, any such comment must not bring the profession, nor any other barrister into disrepute. Further guidance is available on the Bar Standards Board’s website (https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/) or by clicking on the relevant link.

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 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 A breach of Rule rC9 may also constitute a breach of CD3 and/or CD5. Other conduct which is likely to be treated as a breach of CD3 and/or CD5 includes (but is not limited to):

1. subject to Guidance gC26 below, breaches of Rule rC8;
2. breaches of Rule rC10;
3. criminal conduct, other than minor criminal offences (see Guidance C27);
4. seriously offensive or discreditable conduct towards third parties;
5. dishonesty;
6. unlawful victimisation or harassment; or
7. abuse of your professional position.

gC26 For the purposes of Guidance gC25.7 above, referring to your status as a barrister, for example on professional notepaper, in a context where it is irrelevant, such as in a private dispute, may well constitute abuse of your professional position and thus involve a breach of CD3 and/or CD5.

gC27 Conduct which is not likely to be treated as a breach of Rules rC8 or rC9, or CD3 or CD5, includes (but is not limited to):

1. minor criminal offences;
2. your conduct in your private or personal life, unless this involves:
   a. abuse of your professional position; or
   b. committing a criminal offence, other than a minor criminal offence.
For the purpose of Guidance rC27 above, minor criminal offences include:

.1 an offence committed in the United Kingdom which is a fixed-penalty offence under the Road Traffic Offenders Act 1988; or

.2 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; or

.3 an offence whose main ingredient is the unlawful parking of a motor vehicle.

You must not pay or receive referral fees.

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.

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;

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.

Further guidance is available at https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/
SECTION C: THE CONDUCT RULES

C2: Behaving ethically

R

Rules

Undertakings

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

Guidance on Rule rC11

gC33 You should ensure your insurance covers you in respect of any liability incurred in giving an undertaking.

R

Rules

Discrimination

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

Guidance on Rule rC12

gC34 Rules rC110 and associated guidance are also relevant to equality and diversity. The BSB’s Supporting Information on the BSB Handbook Equality Rules are available on the BSB website: https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf.

R

Rules

Foreign work

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 on Rules rC13 and rC14

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.
SECTION C: THE CONDUCT RULES

PART 2

C3: You and your client

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

Best interests of each client, provision of a competent standard of work and confidentiality

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 integrity (CD3) and to maintain your independence (CD4).

Guidance

Guidance on Rules rC15 and rC16 and their relationship to CD2, CD6 and CD7

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 minimum 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 such training requirements as may be imposed by the Bar Standards Board in respect of such work. 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.
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.

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 gC68 for an example of circumstances where it may be appropriate for you to seek such consent.

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.

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 to gC93 in respect of that rule provide further information. In addition, Rule rC66 may also apply.

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.

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.

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).

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.

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.
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 regulated bodies Rule S28 and the associated guidance.

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.

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

Guidance on Rule rC18

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 at https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/.

Rules

Not misleading clients and potential clients

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 on Rule rC19**

**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 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 D5 of this Code of Conduct and the additional guidance for unregistered barristers available on the Bar Standards Board website which can be accessed here: [https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/](https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/).

**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.
SECTION C: THE CONDUCT RULES

PART 2

C3: You and your client

Rules

Personal responsibility

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

Guidance on Rule rC20

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).

Rules

Accepting instructions

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 on Rule rC21

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.

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.

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

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). However, if you are planning to withdraw from a case because it appears that you are likely to be a witness on a material question of fact, you should only withdraw if you can do so without jeopardising the client’s interests.

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

**Defining terms or basis on which instructions are accepted**

- **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 rC22 to rC24

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 which can be found here http://www.barcouncil.org.uk/media/182287/guide_to_contractual_terms.pdf). 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 http://www.legislation.gov.uk/ukdsi/2009/9780111486276/contents. See further Rule rC19 (not misleading clients or prospective clients) and the guidance to that rule at gC52 to gC62.

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.

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

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

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.

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 here http://www.legalombudsman.org.uk/downloads/documents/publications/Ombudsman-view-good-costs-service.pdf.

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.
Returning instructions

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 on Rule rC26

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.

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.
Requirement not to discriminate

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 on Rule rC28

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 https://www.barstandardsboard.org.uk/about-bar-standards-board/equality-and-diversity/equality-and-diversity-rules-of-the-bsb-handbook/ and https://www.barstandardsboard.org.uk/media/1562168/bsb_equity_rules_handbook_corrected.pdf 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.

The ‘cab-rank’ rule

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 Queen’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 2012 as published on the *Bar Council’s* website; or (B) if you publish standard terms of work, on those standard terms of work.
Guidance on Rule rC29 and rC30

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.

rC31-rc63 Removed
C4. You and your regulator

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.

Rules

Provision of information to the Bar Standards Board

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 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

Guidance to Rule rC64:

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.

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 [2013] 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).

Rules

Duty to report certain matters to the Bar Standards Board

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:
   - to your knowledge any investigation into your conduct is commenced by your *home regulator*; or
   - any finding of professional misconduct is made by your *home regulator*; or
   - your authorisation in your *home state* to pursue professional activities under your *home professional title* is withdrawn or suspended; or
   - you are charged with a disciplinary offence.

6. any of the following occur:
   - bankruptcy proceedings are initiated in respect of or against you;
   - director’s disqualification proceedings are initiated against you;
   - a bankruptcy order or director’s disqualification order is made against you;
   - you have made a composition or arrangement with, or granted a trust deed for, your creditors;
   - 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;

7. you have committed serious misconduct;

8. you become authorised to practise by another approved regulator.
Guidance to Rule rC65

gC94  In circumstances where you have committed serious misconduct you should take all reasonable steps to mitigate the effects of such serious misconduct.

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.

Guidance on Rules rC65.7 to rC68

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.

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 by a barrister 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 by a barrister 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.

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.

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.

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 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 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 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 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 authorised persons appointed by or on behalf of the Bar Council to offer ethical advice to others from doing so or inhibit BSB regulated persons needing advice from seeking it. Consequently, BSB authorised persons appointed by or on behalf of the Bar Council to offer ethical advice to BSB regulated persons 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 authorised person will still be expected to encourage the relevant BSB regulated person who has committed serious misconduct to disclose such serious misconduct to the Bar Standards Board in accordance with Rule rC65.7.

**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.

### Rules

#### Access to premises

**rC70** You must permit the Bar Council, or 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 Council, 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.
Co-operation with the Legal Ombudsman

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.

Ceasing to practise

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.
C5. You and your practice

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.

C5.1 General

Rules

Client money

rC73 Except where you are acting in your capacity as a manager 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

Guidance on Rules rC73 and rC74

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 interests, 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:

• Ensure 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.

Belgium Regulation 265/2014 applies to EU Member States including the United Kingdom. On 29 March 2017, the UK’s withdrawal from the European Union is due to come into effect.

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

Rules

Insurance

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 Q98, 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 on Rules rC76 to rC78

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.

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. You should however 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.

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.
**Sections C: The Conduct Rules**

**Part 2**

**C5: You and your practice**

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**Rules**

**Associations with others**

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.

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**Guidance**

**Guidance on Rules rC79 to rC85 and CD5**

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.
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.

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 rC8, rC9, rC10, rC12, rC15, rC19, rC20, rC28, rC73, rC75, rC79, rC82 and rC86 (and, where relevant rC80, rC81, rC83, C74 and C110).

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.

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.

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).

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.

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.

Rules

Outsourcing

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;
C5: You and your practice

.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 on Rule rC86

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.

C5.2 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.

Guidance on Rule rC87

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 C87 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: https://www.barstandardsboard.org.uk/regulatory-requirements-for-barristers/supervision/. 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.

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.

### Rules

**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.

### Administration of chambers

**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 on C89 and C90

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 prescribed by the rule on advertising pupillages (rQ61);

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

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 and which can be accessed here: https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/.

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 here: https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/.

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.

5.4 Administration of BSB entities

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

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| 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 (except where a barrister is working as an unregistered barrister, in which case 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.
Guidance to Rules rC91 to rC94

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 prescribed by the rule on advertising pupillages (rQ61);

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

Duties of the HOLP/HOFA

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.

New managers/HOLP/HOFA

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.
D. RULES APPLYING TO PARTICULAR GROUPS OF REGULATED PERSONS

D1. Self-employed barristers, chambers and BSB entities

**Outcomes**

- **O C26** Clients know that they can make a complaint if dissatisfied, and know how to do so.
- **O C27** Complaints are dealt with promptly and the client is kept informed about the process.
- **O C28** Self-employed barristers, chambers and BSB entities run their practices without discrimination.
- **O C29** Pupils are treated fairly and all vacancies for pupillages are advertised openly.

**D1.1 Complaints rules**

**Provision of information to clients**

- **R C99** 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.

- **R C100** If you are doing public access, or licensed access work using an intermediary, the intermediary must similarly be informed.

- **R C101** 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 Chambers’ websites and literature must display information about the chambers’ complaints procedure. A BSB’s authorised body’s website and literature must carry information about that BSB entity’s Complaints Procedure.

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.
D1.2 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 except in unforeseen and exceptional circumstances, the person with lead responsibility for any selection panel and at least one member of any selection panel (who may be the same person) has received recent and appropriate training in fair recruitment and selection processes;

.c From July 2014, 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 (https://www.barstandardsboard.org.uk/media/1596730/bsb_equality_rules_handbook_june_2014.pdf);

.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 exclude diversity data relating to the characteristics of sexual orientation and religion or belief, unless there is consent from each of the members of the workforce; and

.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;

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**Guidance**

**Guidance to Rule rC110 and Rule rC111**

**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 may be undertaken in any of the following ways:

a) Classroom sessions

b) Online sessions

c) Private study of relevant materials such as the Bar Council’s Fair Recruitment Guide

d) Completion of CPD covering fair recruitment and selection processes
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.

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.

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.

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.

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.

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.

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

These rules are supplemented by the BSB’s Supporting Information on the BSB Handbook Equality Rules (“the Supporting Information”): https://www.barstandardsboard.org.uk/media/1562168/bsb_equality_rules_handbook_corrected.pdf. 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 Support Information as well as with the rules as set out above.
The Supporting Information is also relevant to all pupil supervisors and authorised training organisations. These will be expected to show how they comply with the Supporting Information as a condition of authorisation.

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.

D1.3 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 six months 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 six months 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 The requirements set out in Rules rC113 to rC116 above:

.1 do not apply in the case of pupils who were granted exemption from the vocational stage of training under Rule Q79;

.2 do not apply in the case of pupils who are doing a period of pupillage in a set of chambers, or in a BSB entity, as part of a training programme offered by another organisation which is authorised by the Bar Standards Board to take pupils;

.3 do not apply in the case of pupils who have completed both the non-practising and the practising six months of pupillage;

.4 save as provided in Rule rC117.3 above, do not apply in respect of any period after a pupil ceases, for whatever reason, to be a chambers pupil or an entity pupil; and

.5 may be waived in part or in whole by the BSB.

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 six months 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 six months of pupillage with a pupil-master or pupil-masters 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 six months of pupillage;

.4 “practising pupil” means a chambers pupil or an entity pupil doing the practising six months 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, six months 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.
D2. Barristers undertaking public access and licensed access work

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.

D2.1 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 https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/.

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 Council (acting by 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 Council (acting by 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.
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.

Removed from 1 February 2018.

Save where otherwise agreed:

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

D2.2 Licensed access rules

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 https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/) whether that client is acting for themselves or another.

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 (https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/).

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).
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.

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.

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:

   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.

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*.

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*. 

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.

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.
D3. Registered European lawyers

O Outcomes

oC33 Clients are not confused about the qualifications and status of registered European lawyers.

R 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.
D4. Unregistered barristers

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.

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 complaints 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.
Guidance on Rule rC144

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.

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 on Rule rC145

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 https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/code-guidance/.
D5. Cross-border activities within the European Union and the European Economic Area

**Outcomes**

oC35  *BSB regulated persons* who undertake *cross-border activities* comply with the terms of the *Code of Conduct for European Lawyers*.

**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**

Guidance on Rule rC146

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**

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 3

Scope of practice, authorisation and licensing rules
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A. APPLICATION

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.
B. SCOPE OF PRACTICE

B1. No practice without authorisation

rS6  You must not carry on any reserved legal activity unless you are entitled to do so under the LSA.

Guidance to Rule rS6

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.

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 Council (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 in the non-practising six months of pupillage 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 Council (acting by the Bar Standards Board), you provide in writing to the Bar Council (acting by 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.D.4.
B2. Provision of reserved legal activities and of legal services

**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 who has completed or been exempted from the non-practising six months of pupillage, 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 Training Regulations) 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 Training Regulations) 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; or

.b you are a barrister exercising a right of audience in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer’s Practice) Regulations 2000, a person shall be a qualified person for the purposes of Rule rS20 if they:
.i have been designated by the Bar Standards Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by Rule rS22.3.a.i and rS22.3.a.ii above; and

.i 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 Training Regulations) 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

.i have not been designated by the Bar Standards Board as unsuitable to be a qualified person; or

.b you are a barrister exercising a right to conduct litigation in a Member State other than the United Kingdom pursuant to the Establishment Directive, or in Scotland or Northern Ireland pursuant to the European Communities (Lawyer’s Practice) Regulations 2000, a person is a qualified person for the purposes of Rule rS20 and rS21 if they:

.i have been designated by the Bar Standards Board as having qualifications and experience in that state or country which are equivalent to the qualifications and experience required by Rule rS22.3.a.i and rS22.3.a.ii above; and

.i have not been designated by the Bar Standards Board as unsuitable to be a qualified person.

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.
B3. Scope of practice as a self-employed barrister

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

References to professional client in Rule rS24.1 include foreign lawyers and references to client in Rule rS24.3 include foreign clients.

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.

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.

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.
**B4. Scope of practice as a BSB entity**

**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.

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**Guidance**

**Guidance to Rule rS28**

**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.

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.
B5. **Scope of practice as a manager of a BSB entity or as an employed barrister (BSB entity)**

**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.
B6. Scope of practice as a manager of an authorised (non-BSB) body or as an employed barrister (authorised non-BSB body)

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).

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.

You must comply with the rules of the Approved Regulator or licensing authority of the authorised (non-BSB) body.
B7. Scope of practice as an employed barrister (non authorised body)

Rule rS39 applies to you where you are acting in your capacity as an employed barrister (non authorised body).

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.
B8. Scope of practice of a barrister called to undertake a particular case

If you are called to the Bar under rQ98 of the Bar Training Regulations (temporary membership of the Bar), you may not practise as a barrister other than to conduct the case or cases specified in the certificate referred to in rQ99.
B9. Legal Advice Centres

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

Guidance to Rules rS41 and rS42

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.
B10. Barristers authorised by other approved regulators

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.
C. PRACTISING CERTIFICATE RULES

C1. Eligibility for practising certificates and litigation extensions

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:

.3a 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) either the non-practising period of 6 months of pupillage or 12 months of pupillage; or

.3b 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:

.1a you have satisfactorily completed 12 months pupillage; or

.1b you have been exempted from the requirement to complete 12 months of pupillage; or

.1c on 30 July 2000, you were entitled to exercise full rights of audience by reason of being a barrister; or

.1d you were called to the Bar before 1 January 2002 and:

.1di you notified the Bar Council that you wished to exercise a right of audience before every court and in relation to all proceedings; and

1. Rule rs45.3 does not come into effect until 1 April 2015
C1: Eligibility for practising certificates and litigation extensions

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 Rules rS47.3

You should refer to the more detailed guidance published by the Bar Standards Board from time to time which can be found at https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/authorisation-to-conduct-litigation/. 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.
C2. Applications for practising certificates and litigation extensions by barristers and registered European lawyers

rS48 You may apply for a practising certificate by:

.1 completing the relevant application form supplied by the Bar Council (acting by the Bar Standards Board) and submitting it to the Bar Council (acting by the Bar Standards Board); and

.2 submitting such information in support of the application as may be prescribed by the Bar Council (acting 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 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 Council (acting by the Bar Standards Board) and submitting it to the Bar Council (acting by 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 Council) the application fee (if any) and the litigation extension fee (if any);

.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 Council (acting by the Bar Standards Board) has received, in respect of the relevant application, the application form in full, together with the application fee, the practising certificate fee, the litigation extension fee (if any, or an undertaking to pay such fees in a manner determined by the Bar Council), 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.

rS51 On receipt of the application, the Bar Council (acting by 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 Council (acting by 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 Council (acting by 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 Council 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 Council which can be found through Barrister Connect.
C3. Practising certificate fees and litigation extension fees

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 Queen’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.

The litigation extension fee shall be the amount or amounts prescribed by the Bar Council 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 Council 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 Council 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 Council 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 Council 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.

If you have given an undertaking to pay the practising certificate fee or the litigation extension fee, you must comply with that undertaking in accordance with its terms.
C4. Issue of practising certificates and litigation extensions

**rS57** The **Bar Council** (acting by 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 Council** (acting by the **Bar Standards Board**) shall not grant a **litigation extension** to a barrister or registered European lawyer:

1. in circumstances where the Bar Council (acting by 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 Council, the appropriate **application fee**(if any) and the **litigation extension fee**(if any).

**rS59** The **Bar Council** (acting by 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** or **litigation extension fee** 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.
When the Bar Council (acting by 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.

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 Council as a Public Access practitioner.

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.

A full practising certificate shall authorise a barrister to exercise a right of audience before every court in relation to all proceedings.

A provisional practising certificate shall authorise a pupil in their second six to exercise a right of audience before every court in relation to all proceedings.

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.

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.
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.

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.
C5. Amendment and revocation of practising certificates and litigation extensions

rs69 You must inform the Bar Council (acting by 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 Council (acting by the Bar Standards Board) of such requested amendment to your practising certificate; and

.b submit to the Bar Council (acting by the Bar Standards Board) such further information as the Bar Council (acting by 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 (acting by the Bar Standards Board) or in circumstances where you wish to cease to be authorised to conduct litigation, the Bar Council (acting by the Bar Standards Board) is not under any obligation to refund any part of the annual practising certificate fee or litigation extension 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.

rs71 The Bar Council (acting by 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 Council (acting by 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 Council (acting by the Bar Standards Board) or by a Disciplinary Tribunal, Interim Suspension or Disqualification Panel, Fitness to Practise Panel, the Visitors to the Inns of Court or the High Court.
The **Bar Council** (acting by 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 Council** or the **Bar Standards Board** that they no longer wish to have a **practising certificate**; 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.

The **Bar Council** (acting by the **Bar Standards Board**):

1. shall revoke a **litigation extension** if the **barrister or registered European lawyer** has notified the **Bar Council** or 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.
C6. Applications for review

rS75 If you contend that the Bar Council (acting by 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 here https://www.barstandardsboard.org.uk/qualifying-as-a-barrister/current-requirements/forms-and-guidelines/applications-authorisations,-exemptions,-waivers-and-reviews/. 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, the Visitors to the Inns of Court or the High Court.

rS76 The decision of the Bar Council (acting by the Bar Standards Board) shall take effect notwithstanding any application for review being submitted in accordance with Rule S75. However, the Bar Council (acting by 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 Council (acting by the Bar Standards Board):

.1 has wrongly failed or refused to issue a practising certificate, then the Bar Council (acting by 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 Council (acting by 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 Council (acting by the Bar Standards Board) must cancel the amendment; or
.4 has wrongly revoked a practising certificate, then the Bar Council (acting by 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 Council (acting by 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 Council (acting by the Bar Standards Board) must re-grant the litigation extension.
If you are a European lawyer and wish to practise on a permanent basis 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.

An application for registration must be made 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 a Member State as a lawyer qualified to practise in that Member State under a Member State 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 your Member State 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.

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.

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.
E. ENTITY APPLICATION AND AUTHORISATION

E1. Eligibility for authorisation to practise as a BSB entity

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 Council as Approved Regulator or licensing authority 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;
E1: Eligibility for authorisation to practise as a BSB entity

.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; or
   .ii incorporated in an Establishment Directive state and registered as an overseas company under Part 34 of the Companies Act 2006; or
   .iii incorporated and registered in an Establishment Directive state as a societas Europaea

.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.

G Guidance

Guidance on Rules rS82 to rS85

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).
E2. Applications for authorisation

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

Guidance on Rules rS88 and rS89

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.

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

Guidance on Rules rS91 to rS93

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.
E3. Decision process

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.
E4. Issues to be considered by the Bar Standards Board

Applications for authorisation or the grant of a licence

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.

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

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.

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 rS101

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.

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.
E5. Suitability criteria in respect of HOLPs, HOFAs, owners and managers

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.
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.

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.
E6. Notification of the authorisation decision

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.

Guidance to rule S110

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.
E7. Terms of authorisation

s112 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 s114).

s113 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 s113.5 apply, the Bar Standards Board may without notice:

.a modify an authorisation granted under s116;

.b revoke an authorisation under s117;

.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 s113.4 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 s113.4 in relation to the BSB entity to protect the interests of clients (or former or potential clients) of the BSB entity.
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.
E8. Duration of the authorisation/licence granted

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.
E9. Modification of an authorisation/licence

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.
E10. Revocation or suspension of an authorisation/licence

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.
E11. Applications for review

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.
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.

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 Council (acting by the Bar Standards Board) shall grant such litigation extension as ought to have been granted.

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.

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.

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.
E12. Register

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.
F. CONTINUING COMPLIANCE WITH THE AUTHORISATION AND LICENSING REQUIREMENTS

F1. Non-compliance with the mandatory conditions

**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**

**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, or where you are a licensable body and a non-authorised individual who is not a manager becomes an owner (for example on inheriting the interest from a manager who dies);

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;
F1: Non-compliance with the mandatory conditions

.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).
F2. Temporary emergency approvals for HOLPs and HOFAs

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
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A. APPLICATION

r01 Section 4.B applies to all persons who wish to be called to the Bar and to become qualified to practise as a barrister, to pupil supervisors and to approved training organisations.

r02 Section 4.C applies to all practising barristers.
B1. Purpose of the Bar training rules

To ensure that any person who qualifies to practise as a barrister is a fit and proper person, and competent to do so.

Rules

r03 To be called to the Bar by an Inn a person must:

.1 be a member of that Inn;
.2 complete (or be exempted from):
   (a) the Academic Stage, and
   (b) the Vocational stage
of training; and
.3 fulfill any applicable requirement to attend qualifying sessions.

r04 To become qualified to practise as a barrister a person must:

.1 be called to the Bar by an Inn;
.2 complete (or be exempted from) the Professional Stage of training; and
.3 satisfy such further requirements as are set out in Part 3 of this Handbook.

r05 The Bar Standards Board may charge such fees as it prescribes for dealing with applications, conducting assessments or examinations and issuing certificates under this Section 4.B.

r06 Any function or power which under this Section 4.B is exercisable by the Bar Standards Board may be delegated (and sub-delegated) to any committee, body or person to the extent permitted by the standing orders of the Bar Standards Board.
B2. Admissions to an Inn of Court

Eligibility for admission

To be eligible for admission to an Inn under this Section 4.B a person must:

.1 have the necessary educational qualifications; and

.2 be a fit and proper person to become a practising barrister.

A person has the necessary educational qualifications to be admitted to an Inn if that person:

.1 is reading for a qualifying law degree; or

.2 is attending (or has been accepted for and is about to attend) a Conversion Course; or

.3 has completed (or been exempted under Section 4.B7 from) the Academic Stage of training.

A person is a fit and proper person to become a practising barrister if:

.1 there is no reason to expect that that person, if admitted to an Inn, will engage in conduct which is dishonest or which otherwise makes that person unfit to become a practising barrister; and

.2 that person does not suffer from serious incapacity due to mental disorder (within the meaning of the Mental Health Act 1983), addiction to alcohol or drugs or any other condition which makes that person unfit to become a practising barrister.

In the case of an applicant who is authorised to practise by another Approved Regulator or who is a Qualified European Lawyer, a certificate of good standing is to be treated as conclusive evidence that the applicant is a fit and proper person to become a practising barrister.

Application procedure

To apply for admission to an Inn a person (“the applicant”) must submit to the Inn:

.1 a duly completed and signed application including an admission declaration in the form prescribed by the Bar Standards Board from time to time;

.2 two certificates of good character which comply with the requirements in Rule rQ13 below or, if the applicant is a qualified lawyer, a certificate of good standing, which (in either case) was issued within the previous three months; and

.3 the fee prescribed by the Inn.

Certificates of good character

A certificate of good character must contain the information specified by the Bar Standards Board from time to time and be provided by a professional person or person of standing in the community who:

.1 has known the applicant for at least one year;
.2 does not have a close family or personal relationship with the applicant; and

.3 has read the admission declaration submitted by the applicant under Rule rQ12.1.

Decision to admit or refuse admission

rQ14 Before deciding whether to admit the applicant, the Inn may make any further enquiries or require the applicant to provide any further information that it considers relevant.

rQ15 The Inn must admit the applicant if the applicant:

.1 is eligible for admission to an Inn and has given the undertaking on the admission declaration to commence the Vocational stage within five years of admission to an Inn and complete that Stage within ten years of admission; and

.2 has complied with Rule rQ12,

otherwise the Inn must reject the application and inform the applicant of its reasons for doing so.

rQ16 If the applicant falls within Rule rQ17, the Inn must refer the question whether the applicant is a fit and proper person to become a practising barrister to the Inns’ Conduct Committee to decide and must notify the applicant that it has done so.

rQ17 An applicant falls within this Rule rQ17 if:

.1 the applicant has been convicted of a Criminal offence (or is the subject of pending Criminal Proceedings); or

.2 the applicant has been convicted of a disciplinary offence by a professional or regulatory body (or is the subject of pending proceedings for such an offence); or

.3 the applicant has been found guilty of an academic offence by a higher education institution (and has not successfully appealed against that finding); or

.4 the applicant has been the subject of a Bankruptcy Order or director’s disqualification order or has entered into an individual voluntary arrangement with creditors; or

.5 the applicant has previously been refused admission to or expelled from an Inn; or

.6 there is any other circumstance which in the opinion of the Inn calls into question the applicant’s fitness to become a practising barrister.

rQ18 When the Inns’ Conduct Committee is asked to decide whether the applicant is a fit and proper person to become a practising barrister, it must send a report of its decision and the reasons for the decision to the applicant and to the Inn.

rQ19 If the Inns’ Conduct Committee decides that the applicant is not a fit and proper person to become a practising barrister or if the Inn rejects an application for admission for any other reason, the applicant may request a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.

rQ20 If on a review under Section 4.B10 the Bar Standards Board is satisfied that the applicant is eligible for admission to an Inn and has complied with Rule rQ12, the Inn must admit the applicant.
B3. The Academic Stage

rQ21 A person completes the Academic Stage of training by:

.1 obtaining a qualifying law degree; or

.2 obtaining a qualifying degree and successfully completing a Conversion Course.

rQ22 For the purpose of Rule rQ21.1 a qualifying law degree is a qualifying degree approved by the Bar Standards Board which includes a course of study of the foundations of legal knowledge.

rQ23 For the purpose of Rule rQ21.2 a qualifying degree is:

.1 a degree of the required standard awarded by a University in the United Kingdom following a course of study of the minimum period; or

.2 a degree awarded by a University or establishment of equivalent level outside the United Kingdom which the Bar Standards Board accepts as equivalent to a degree satisfying the requirements of Rule rQ23.1.

and a person obtains a qualifying degree on being adjudged to have successfully completed the academic requirements of the degree irrespective of when the degree is actually conferred.

rQ24 For the purpose of Rule rQ23.1, unless the Bar Standards Board on an application showing good grounds permits otherwise, the required standard is first or second class honours.

rQ25 A Conversion Course is a course approved by the Bar Standards Board which includes study of the foundations of legal knowledge.

rQ26 For the purpose of Rules rQ22 and rQ25, foundations of legal knowledge means those subjects the study of which is prescribed by the Bar Standards Board for the purposes of obtaining a qualifying law degree and for inclusion in any Graduate Conversion Course, and which currently comprise:

.1 Obligations I (Contract)

.2 Obligations II (Tort)

.3 Criminal Law

.4 Public Law

.5 Property Law

.6 Equity & The Law of Trusts

.7 Foundations of EU Law
B4. The Vocational Stage

rQ27 A person starts the vocational stage of training on starting to attend at a Bar Professional Training Course, and completes the vocational stage on being certified by the course provider that they have successfully completed a Bar Professional Training Course.

rQ28 Before starting the vocational stage, a person must:

.1 have completed (or been exempted under Section 4.B7 from) the Academic Stage; and

.2 have successfully completed the Bar Course Aptitude Test, the pass score for which is set by the Bar Standards Board from time to time; and

.3 be a member of an Inn of Court.

rQ29 A person may not start the vocational stage more than five years after completing the Academic Stage except with the permission of the Bar Standards Board and after complying with any condition which the Bar Standards Board may impose.
B5. The Professional Stage

A person starts the professional stage of training when they start pupillage in accordance with this Section 4.5 and completes the professional stage by:

.1 satisfactorily completing 12 months of pupillage and such further training as may be required by the Bar Standards Board; and

.2 being issued with a full qualification certificate.

Before starting the professional stage, a person must have completed (or been exempted under Section 4.5 from) the vocational stage.

A person may not start the Professional Stage more than five years after completing the vocational stage except with the permission of the Bar Standards Board and after complying with any condition which the Bar Standards Board may impose.

Pupillage

Pupillage is divided into two parts:

.1 a non-practising period of six months; and

.2 a practising period of six months.

Except with the written permission of the Bar Standards Board, the non-practising period of pupillage must be done:

.1 in a Member State of the European Union; and

.2 in a continuous period of six months.

Except with the written permission of the Bar Standards Board, the practising period of pupillage must:

.1 start within 12 months after completion of the non-practising period;

.2 be done in a Member State; and

.3 be completed within an overall period of nine months.

Any period of pupillage must provide training which is adequate and which complies with such criteria as may be published by the Bar Standards Board.

Except as provided in Rule rQ60, any period of pupillage must be done:

.1 in an approved training organisation; and

.2 with a barrister who is a registered pupil supervisor.

During any period of pupillage the pupil must;

.1 be diligent in receiving the instruction given; and

.2 observe all legal and professional obligations of confidence.
Approved training organisations

r039 The Bar Standards Board may authorise any organisation as an approved training organisation subject to such terms as the Bar Standards Board may from time to time determine.

r040 The Bar Standards Board may withdraw approval from an approved training organisation if it considers after investigation:

.1 that pupillage training provided by the organisation is or has been seriously deficient; or
.2 that the organisation has not made proper arrangements for dealing with pupils and pupillage in accordance with the Code of Conduct.

r041 The Bar Standards Board will give notice in writing:

.1 in the case of a decision to refuse to designate an organisation as an approved training organisation, to that organisation; and
.2 in the case of a decision to withdraw approval from an approved training organisation, to:

..a that organisation;
..b any person who is undertaking or has agreed to undertake a pupillage in that organisation; and
..c the Inn of which any such person is a member.

r042 Any person or organisation to whom the Bar Standards Board is required to give notice of a decision under Rule r041 may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.

r043 If the Bar Standards Board withdraws approval from an approved training organisation, the organisation may not claim repayment of any pupillage award or other sum paid to any pupil or prospective pupil.

Acting as a pupil supervisor

r044 A barrister may act as a pupil supervisor if the barrister:

.1 is on the register of approved pupil supervisors kept by the Bar Standards Board;
.2 has a current practising certificate; and
.3 has regularly practised as a barrister during the previous two years.

Registration as a pupil supervisor

r045 The Bar Standards Board may enter a barrister on the register of approved pupil supervisors if the barrister is approved by an Inn of which the barrister is a member.

r046 The Bar Standards Board may refuse to enter a barrister on the register of approved pupil supervisors if the Bar Standards Board finds that the barrister is unsuitable for any reason to act as a pupil supervisor.

r047 If the Bar Standards Board refuses to enter a barrister on the register of approved pupil supervisors, it will notify the barrister and the Inn which approved the barrister as a pupil supervisor of its decision and of the reasons for it.
rQ48  An Inn must approve a barrister as a pupil supervisor if:

.1  the barrister has a current practising certificate;

.2  the Inn is satisfied that the barrister has the necessary experience and is otherwise suitable to act as a pupil supervisor; and

.3  the barrister has submitted an application in accordance with Rule rQ50.

rQ49  To have the necessary experience to act as a pupil supervisor a barrister should normally:

.1  have practised in the United Kingdom or another Member State as a barrister (other than as a pupil who has not completed pupillage in accordance with this Section 4.B5) or as a person authorised to exercise a right of audience or to conduct litigation by another Approved Regulator for a period for at least six years in the previous eight years; and

.2  for the previous two years have regularly practised as a barrister and been entitled to exercise a right of audience before every court in England and Wales in relation to all proceedings.

Application procedure to become a pupil supervisor

rQ50  A barrister who wishes to be entered on the register of approved pupil supervisors must submit to the Inn an application in the form currently prescribed by the Bar Standards Board. The application must be supported:

.1  by an independent person who is a High Court Judge or Circuit Judge, a Leader of a Circuit, a Deputy High Court Judge, a Recorder, a Queen’s Counsel, a Master of the Bench of an Inn, Treasury Counsel or a person of comparable standing who is able to comment from personal knowledge on the applicant’s suitability to act as a pupil supervisor; and

.2  Subject to Rule rQ50.3 below,

.3  in the case of a self-employed barrister, by the applicant’s Head of chambers, or

.   .a  in the case of an employed barrister, by a more senior lawyer employed in the same organisation and who has direct knowledge of the work of the applicant;

.4  If the applicant is a Head of chambers, or there is no more senior lawyer employed in the same organisation with the required knowledge, or for any other reason the support of the person referred to in Rule rQ50.2 is not available, by a second person falling within Rule rQ50.1 above.

Training of pupil supervisors

rQ51  The Bar Standards Board, in consultation with the Inns, may and will normally require pupil supervisors to undertake training before they may be entered or after they have been entered on the register of approved pupil supervisors.

Removal from the register of pupil supervisors

rQ52  The Bar Standards Board may remove a barrister’s name from the register of approved pupil supervisors if the barrister:

.1  ceases to practise as a barrister or is suspended from practice as a barrister; or

.2  requests the Bar Standards Board in writing to be removed from the register; or

.3  fails to complete any training required under Rule rQ51; or
.4 is found by the Bar Standards Board to be unsuitable for any reason to act as a pupil supervisor; or

.5 has not acted as a pupil supervisor for the previous five years.

r053 If the Bar Standards Board decides that a barrister’s name should be removed from the register of approved pupil supervisors, it will notify the barrister and the Inn which approved the barrister as a pupil supervisor of its decision and of the reasons for it.

Duties of pupil supervisors

r054 A pupil supervisor must when responsible for supervising any pupil:

.1 take all reasonable steps to provide the pupil with adequate tuition, supervision and experience;

.2 have regard to any pupillage guidelines issued by the Bar Standards Board and to the Equality and Diversity Rules of the Code of Conduct; and

.3 ensure that the pupil prepares for and attends any further training required by the Bar Standards Board such as advocacy training provided by the pupil’s Circuit or Inn.

r055 A pupil supervisor may not be responsible for supervising more than one pupil at a time except with the approval in writing of the Bar Standards Board.

Complaints about pupil supervisors

r056 If any complaint or other matter which appears to affect the suitability of a barrister to continue to act as a pupil supervisor comes to the notice of the Inn which approved the barrister, the Inn must inform the Bar Standards Board of the matter.

r057 If any complaint or other matter which appears to affect the suitability of a barrister to continue to act as a pupil supervisor comes to the notice of the Bar Standards Board, the Bar Standards Board will investigate the matter.

r058 After such an investigation, the Bar Standards Board may:

.1 dismiss any complaint; or

.2 take no action; or

.3 if in its opinion the matter is such as to require informal treatment, draw it to the barrister’s attention in writing and if thought desirable direct the barrister to attend upon a nominated person for advice; or

.4 if in its opinion the conduct disclosed shows that the barrister is unsuitable to act as a pupil supervisor, remove the name of the barrister from the register of approved pupil supervisors.

r059 A barrister whose application to be approved as a pupil supervisor is rejected or whose name is removed from the register of approved pupil supervisors may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.

External training

r060 With the written permission of the Bar Standards Board, part or all of the practising period of pupillage may be satisfied by training:
.1 with a solicitor, judge or other suitably qualified lawyer who is not a registered pupil supervisor; and/or

.2 in an organisation which is not an approved training organisation but which, in the opinion of the Bar Standards Board, provides suitable training and experience.

Advertising

r061 Subject to Rule C117, all vacancies for pupillage must be advertised on a website designated by the Bar Council and the following information must be provided:

.1 In respect of chambers:
  .a the name and address of chambers;
  .b the number of tenants;
  .c a brief statement of the work done by Chambers, e.g., “predominantly criminal”;
  .d the number of pupillage vacancies;
  .e the level of award;
  .f the procedure for applying;
  .g the minimum educational or other qualifications required;
  .h the closing date for applications;
  .i the date by which the decisions will be made;

.2 in respect of entities:
  .a the name and address of the BSB entity;
  .b the number of barristers employed by that entity;
  .c a brief statement of the work done by the entity, e.g., “predominantly criminal”;
  .d the number of pupillage vacancies;
  .e the level of award;
  .f the procedure for application;
  .g the minimum educational or other qualifications required;
  .h the closing date for applications;
  .i the date by which the decisions will be made.

Registration of pupillage

r062 Before starting any period of pupillage (including any period of external training) a person must apply to the Bar Standards Board for registration of the pupillage by submitting an application in the form prescribed by the Bar Standards Board.
The Bar Standards Board will register the pupillage if it is satisfied that the application has been duly completed and that the pupillage complies with this Section 4.B5.

If a person applies to the Bar Standards Board for registration of a pupillage after the pupillage has started, the pupillage will be treated as having started on the date the application is received, unless the Bar Standards Board permits otherwise.

If the Bar Standards Board refuses to register a pupillage, it will inform the pupil in writing of its decision and of the reasons for it.

If the Bar Standards Board refuses to register a pupillage, the pupil may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.

If any of the information provided in an application for registration of a pupillage changes before the pupillage has been completed, the pupil must promptly notify the Bar Standards Board in writing of the change.

**Qualification certificates**

On completion of the non-practising period of pupillage, the Bar Standards Board will issue the pupil with a provisional qualification certificate provided that the pupil has been called to the Bar under Section 4.B9 and the Bar Standards Board is satisfied:

.1 that the pupil has satisfactorily completed the non-practising period of pupillage and any further training required under Rule rQ30.1; and

.2 that the pupillage is registered and complied with this Section 4.B5.

When the pupil completes the practising period of pupillage, the Bar Standards Board will issue them with a full qualification certificate, if the pupil has a provisional qualification certificate and the Bar Standards Board is satisfied:

.1 that the pupil has satisfactorily completed the practising period of pupillage and any further training required under Rule rQ30.1; and

.2 that the pupillage is registered, and has complied with this Section 4.B5.

For the purpose of this Section 4.B5, a pupil is to be treated as having satisfactorily completed a period of pupillage if the pupil:

.1 has been diligent in receiving the instruction given; and

.2 has achieved the minimum level of competence required of a pupil at the end of the relevant period.

The Bar Standards Board may accept as evidence that a pupil has satisfactorily completed any period of pupillage a certificate to this effect from the pupil supervisor (or the person responsible for external training) with whom the pupil has completed that period.

If a pupil supervisor is unable or unwilling to provide a certificate that a pupil has satisfactorily completed a period of pupillage, the Bar Standards Board may accept such a certificate signed by the Head of chambers or person in charge of pupillage in the training organisation where the pupillage has been done if the certificate contains a satisfactory explanation of why the pupil supervisor has not signed it.
If the Bar Standards Board is not satisfied:

.1 that the pupil has satisfactorily completed a period of pupillage, and/or

.2 that the pupillage is registered and complied with this Section 4.B5;

def the Bar Standards Board may specify further training which the pupil must satisfactorily complete before the Bar Standards Board will issue the pupil with a provisional qualification certificate or a full qualification certificate (as the case may be).

If the Bar Standards Board refuses to issue a provisional qualification certificate or a full qualification certificate, the pupil may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.
B6. Qualifying sessions

rQ75 In this Part 4.B6 a qualifying session means an event (or part of an event) of an educational and collegiate nature arranged by or on behalf of an Inn;

rQ76 Subject to Rules rQ77 and rQ82, a person who is admitted to an Inn must attend 12 qualifying sessions during a period of no more than five years ending on the date on which that person is called to the Bar.

rQ77 An Inn may on an application showing such exceptional grounds as satisfy criteria agreed by all four Inns waive or modify the requirement to attend qualifying sessions.

rQ78 Each Inn is responsible, in cooperation with the other Inns, for:

.1 ensuring that suitable qualifying sessions are available for its members; and

.2 deciding what requirements must be satisfied for a person to be credited with attendance at one or more qualifying sessions; and

.3 agreeing criteria which specify the grounds on which the requirement to attend qualifying sessions may be waived or modified.
B7. Exemptions from training requirements

The Bar Standards Board may grant exemptions from part or all of:

1. the Academic Stage,
2. the vocational stage, and/or
3. the Professional Stage,

of training.

In exercising its discretion whether to grant an exemption from part or all of any Stage of training, the Bar Standards Board will determine whether the relevant knowledge and experience of the applicant make it unnecessary for the applicant to do such training.

An exemption from part or all of any Stage 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 4.B; and/or
2. a condition that the applicant must pass a Bar Transfer Test.

Where the Bar Standards Board exempts a person from the Vocational or Professional Stage of training, 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 person concerned has been called to the Bar and in the case of a Specially Qualified Applicant is usually a period of three years during which the applicant must attend six qualifying sessions unless special circumstances apply.

Applications

An application for exemption under this Section must be in such form as may be prescribed by the Bar Standards Board and contain or be accompanied by the following:

1. details of the applicant’s educational and professional qualifications and experience;
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. the prescribed fee.

Before deciding whether to grant any exemption under this Section, the Bar Standards Board may make any further enquiries or require the applicant to provide any further information that it considers relevant.

A person whose application for exemption is rejected may ask for a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.
Full exemption

If the Bar Standards Board is satisfied that an applicant falls within Rule Q87, the Bar Standards Board will:

.1 exempt the applicant from any Stage of training prescribed by this Section 4.B which the applicant has not fulfilled;

.2 issue the applicant with a full qualification certificate; and

.3 authorise the applicant to practise as a barrister on their being admitted to an Inn and called to the Bar under Section 4.B9 subject to complying with the Code of Conduct.

The following categories of person fall within this Rule Q87:

.1 a person who has been granted rights of audience by an approved regulator and is entitled to exercise those rights in relation to all proceedings in all courts of England and Wales;

.2 subject to Rule Q88, a person who has been granted rights of audience by an approved regulator and 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 Q89, a Qualified European Lawyer.

The Bar Standards Board may exceptionally require an applicant who falls within Rule Q87.2 to do part or all of the practising six months of pupillage if it considers this necessary having regard in particular to the knowledge, professional experience and intended future practice of the applicant.

Subject to Rules Q91 to Q95, the Bar Standards Board may require a Qualified European Lawyer to pass a Bar Transfer Test if the Bar Standards Board determines that:

.1 the matters covered by the education and training of the applicant differ substantially from those covered by the Academic, Vocational and Professional Stages of training; and

.2 the knowledge acquired by the applicant in the course of their professional experience does not fully cover this substantial difference.

Registered European Lawyers

The Rules governing registration as a Registered European Lawyer in Section 3.D of this Handbook.

The Bar Standards Board may not require an applicant who is a Registered European Lawyer and who falls within Rule Q93 or Q94 to pass a Bar Transfer Test unless it considers that the applicant is unfit to practise as a barrister.

In considering whether to require an applicant who falls within Rule Q94 to pass a Bar Transfer Test, the Bar Standards Board 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.
To fall within this Rule rQ93 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.

To fall within this Rule rQ94 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.

For the purpose of this Section 4.B17, 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.

**Partial exemption**

If the Bar Standards Board is satisfied that an applicant falls within Rule rQ97, the Bar Standards Board will:

.1 exempt the applicant from the Academic Stage and the vocational stage and, if the Bar Standards Board thinks fit, from part or all of the Professional Stage of training; and

.2 if the applicant is exempted from the whole of the non-practising six months of pupillage, issue the applicant with a provisional qualification certificate.

The following categories of person fall within this Rule rQ97:

.1 a person 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**

A Qualified Foreign Lawyer ("the applicant") who falls within Rule rQ97.2 is entitled to be admitted to an Inn and called to the Bar 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 4.B if the applicant has:

.1 obtained from the Bar Standards Board 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 Bar Standards Board from time to time; and

.3 paid the fee prescribed by the Inn.

The Bar Standards Board will issue a Temporary Qualification Certificate if the applicant submits to the Bar Standards Board:

.1 evidence which establishes that the applicant is a Qualified European Lawyer or falls within Rule rQ97.2;

.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.

Admission to an Inn and call to the Bar under Rule rQ98 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 rQ98 and automatically cease to have effect on conclusion of the case or cases specified in the applicant’s Temporary Qualification Certificate.
B8. Conduct of students

rQ101 References in this Section to “the Inn” are to any Inn of which the student concerned is a member.

rQ102 A student must observe any regulations about conduct and discipline made by the Inn.

rQ103 If a student:

1. becomes the subject of pending Criminal Proceedings or is convicted of a Criminal offence, or
2. becomes the subject of pending disciplinary proceedings or is convicted of a disciplinary offence by a professional or regulatory body, or
3. is the subject of a Bankruptcy Order or directors disqualification order or enters into an individual voluntary arrangement with creditors, or
4. is found guilty of an academic offence by a higher education institution (and has not successfully appealed against that finding),

the student must immediately notify the Inn in writing.

rQ104 This Rule rQ104 applies where notification is given or a complaint or report is made or it appears to an Inn from information given in the student’s call declaration or otherwise that a student of the Inn has or may have:

1. made any false statement or acted in breach of any undertaking given in the student’s admission declaration or call declaration; or
2. while a student:
   a. committed any breach of any regulations made by the Inn concerning the conduct and discipline of its members; or
   b. been convicted of a Criminal offence; or
   c. been convicted of a disciplinary offence by a professional or regulatory body; or
   d. been the subject of a Bankruptcy Order or directors disqualification order or entered into an individual voluntary arrangement with creditors; or
   e. been found guilty by the course provider of cheating or other misconduct on a Bar Professional Training Course (and has not successfully appealed against that finding); or
   f. otherwise been guilty of any conduct discreditable to a member of an Inn.

rQ105 Where Rule rQ104 applies, the Inn:

1. may make any enquiries or require the student to provide such information as it may think fit; and
2. must consider whether the matter is a serious matter.

rQ106 If the Inn decides that the matter is not a serious matter, the Inn may deal with the matter under its internal disciplinary procedure and at the conclusion of that procedure may:

1. dismiss any complaint; or
2. decide to take no action; or
.3 advise the student as to future conduct; or

.4 reprimand the student; or

.5 ban the student for a specified period from using some or all of the Inn’s facilities.

rQ107 A student may appeal from a decision of an Inn under its internal disciplinary procedure to the Inns’ Conduct Committee.

rQ108 If at any stage the Inn decides that the matter is a serious matter, the Inn must refer the matter to the Inns’ Conduct Committee for determination. After determining the matter, the Inns’ Conduct Committee must send a report of its findings and reasons to the student and to the Inn.

rQ109 If the Inns’ Conduct Committee (or the Bar Standards Board on a review under Section 4.B10) finds a serious matter proved, it may:

.1 advise the student as to future conduct; or

.2 reprimand the student; or

.3 order that the student's call to the Bar be postponed for a specified period; or

.4 direct that the student be expelled from the Inn (in which case the Inn must expel the student).

rQ110 If the Inns’ Conduct Committee finds a serious matter proved, the student may ask for a review under Section 4.B10 of the decision of the Inns’ Conduct Committee, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given.

rQ111 Where Rule rQ104 applies, the student is not entitled to be called to the Bar:

.1 until the Inn has decided that the matter is not a serious matter; or

.2 if the Inn decides that the matter is a serious matter, until the matter has been determined; or

.3 if the Inns’ Conduct Committee (or the Bar Standards Board following a review under Section 4.B10) orders that the student’s call to the Bar be postponed for a specified period, until that period has expired.
B9. Call to the Bar

Requirements for call

rQ112 Subject to Rules rQ111, rQ113 and, rQ117 a person is entitled to be called to the Bar by an Inn of which that person is a member if that person has:

.1 completed or been exempted from the vocational stage of training in accordance with this Section 4.B;

.2 complied with any applicable requirement to attend qualifying sessions;

.3 submitted to the Inn a duly completed and signed a call declaration in the form prescribed by the Bar Standards Board from time to time; and

.4 paid the fee prescribed by the Inn.

rQ113 Before deciding whether a person who has complied with Rule rQ112 (“the candidate”) is entitled to be called to the Bar, the Inn:

.1 may make any enquiries or require the candidate to provide any further information that it considers relevant;

.2 must consider whether Rule rQ104 applies; and

.3 if Rule rQ104 applies, must give effect to Rule rQ111.

rQ114 If the Inn decides that the candidate is not entitled to be called to the Bar, the Inn must inform the candidate of its decision and of the reasons for it.

rQ115 If the Inn decides that the candidate is not entitled to be called to the Bar, the candidate may request a review of the decision under Section 4.B10, provided that the request is made in writing to the Bar Standards Board within one month of the date when notice of the decision was given by the Inn.

rQ116 If on a review under Section 4.B10 the Bar Standards Board decides that the candidate is entitled to be called to the Bar, the Inn must call the candidate to the Bar.

rQ117 Where it is alleged that the call declaration made by a barrister on call is 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 Benchers of 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.

Call days and procedure

rQ118 Calls to the Bar will take place on such days as may be authorised from time to time by the Inns’ Council.

rQ119 A candidate must be called to the Bar in person unless given written permission by the Inn to be absent from the call ceremony.
B10. Review and appeals

rQ120 Where provision is made under this Section 4.B for a review by the Bar Standards Board 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 or organisation requesting the review (“the applicant”); 

.2 where the decision is a decision of an Inn or of the Inns’ Conduct Committee, copies of all documents submitted or received by the applicant which were before the Inn or the Inns’ Conduct Committee (as the case may be); 

.3 any further representations and evidence which the applicant wishes the Bar Standards Board to take into account; and 

.4 the prescribed fee. 

rQ121 Where the decision under review is a decision of an Inn or of the Inns’ Conduct Committee, the Bar Standards Board will invite the Inn or the Inns’ Conduct Committee (as the case may be) to comment on any further representations and evidence which the applicant submits under Rule rQ120.3. 

rQ122 On a review under this Section the Bar Standards Board: 

.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 rQ120.4; and 

.3 will inform the applicant and any other interested person of its decision and the reasons for it. 

rQ123 Where under this Section 4.B provision is made for a review by the Bar Standards Board of a decision, no appeal may be made to the High Court unless such a review has taken place. 

rQ124 Subject to Rule rQ123, a person or organisation who is adversely affected by a decision of the Bar Standards Board may appeal to the High Court against the decision, in accordance with Civil Procedure Rules.
B11. Powers of the Inns

Inns’ Conduct Committee

rQ125 Subject to this Section 4.B, the Inns’ Conduct Committee shall have power to carry out the functions specified in the Inns’ Conduct Committee Rules.

rQ126 The Inns’ Conduct Committee Rules must be approved by the Bar Standards Board and any amendment to those rules will take effect on:

.1 the date when the amendment is approved by the Bar Standards Board; or

.2 such later date as the Bar Standards Board appoints.

rQ127 The Bar Standards Board may:

.1 issue guidance which the Inns’ Conduct Committee must follow in carrying out its functions; and

.2 ask for information about the performance of those functions which the Inns’ Conduct Committee must provide to the Bar Standards Board.

Other powers

rQ128 Subject to the approval of the Bar Standards Board, an Inn may charge such fees as it prescribes for dealing with applications and calling persons to the Bar under this Section 4.B.

rQ129 Any function or power which under this Section 4.B is exercisable by an Inn or by the Inns’ Conduct Committee may be delegated (and sub-delegated) to any committee, body or person to the extent permitted by the standing orders of the Inn or the Inns’ Conduct Committee Rules (as the case may be).
The mandatory continuing professional development requirements

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.

G  Guidance

Guidance on Rule rQ131

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.

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**

**Guidance on Rule Q132**

**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.

**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 on Rules Q133 and Q134**

**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.

**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.
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A1. Powers and functions of the PCC

The membership of the PCC shall be as prescribed by the Standing Orders of the Bar Standards Board from time to time.

The powers of the PCC shall be as set out in this Part 5, and shall include (but not be limited to) the power:

1. to consider complaints made by persons other than the Bar Standards Board;
2. to raise complaints on behalf of the Bar Standards Board, and to withdraw such complaints;
3. to determine whether any complaint:
   (1) discloses a potential breach of the Handbook; and/or
   (2) discloses a potential case of professional misconduct; and/or
   (3) potentially satisfies the disqualification condition,
   and if so to deal with it in accordance with this Section 5.A;
4. to direct the investigation of complaints;
5. to seek, in appropriate cases, to resolve complaints using the determination by consent procedure;
6. to bring and prosecute charges of professional misconduct or make an application for disqualification before Disciplinary Tribunals (as provided by Section 5.B);
7. to seek an immediate interim suspension or immediate disqualification order in accordance with Section 5.D of this Handbook;
8. to seek an interim suspension or disqualification order in accordance with Section 5.D of this Handbook;
9. to refer practising barristers to a Fitness to Practise Panel in accordance with Section 5.E of this Handbook;
10. to refer to disciplinary tribunals any legal aid complaint relating to the conduct of an applicable person and to be responsible for prosecuting any such charges or legal aid complaints before such disciplinary tribunals;
11. to refer any complaint for supervisory action by the supervision team;
.12 to take such other actions in relation to complaints or infringements of the handbook as are permitted by this Section 5.A;

.13 to impose, or direct the imposition, of an administrative sanction in accordance with the provisions of rE37.3 below;

.14 to make recommendations on matters of professional conduct to the Bar Standards Board or to any of its committees, as the PCC may think appropriate; and

.15 to make rulings on matters of professional conduct in accordance with the determination by consent procedure.

rE3 The PCC and the Chair of the PCC shall each have the power to authorise any person, group or body to fulfil any function or exercise any power given to them by this Section 5.A. Any authorisations given under rE3 must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.

rE4 Save in respect of the matters dealt with at rE29.2 (time limits for making a complaint), the PCC or the Chair of the PCC shall have the power to extend any time limits prescribed by this Section 5.A, in their absolute discretion, whenever it appears to be appropriate to do so.

rE5 In determining which of its powers under this Section 5.A to use the PCC will take into account all the circumstances, including:

.1 the enforcement strategy and any other published Bar Standards Board policy that appears to the PCC to be relevant; and

.2 any other factor relevant to the issue including whether it is appropriate, sufficient, proportionate and effective, in the public interest, to proceed in that manner.

rE6 The PCC may at any time postpone consideration of a complaint, whether to permit further investigation of the complaint to be made, or during the currency of related legal proceedings, or for any other reason it sees fit.

rE7 The PCC may at any time seek information or assistance, orally or in writing, as it thinks fit, from any person, group or body.

rE8 If at any time the PCC decides in accordance with this Section 5.A:

.1 to refer a complaint to another person or body for consideration; or

.2 to dismiss a complaint; or

.3 to postpone consideration of a complaint;

it must give written reasons for that decision, and provide those reasons to the applicable person against whom the complaint was made and (where the complaint was made by a person other than the Bar Standards Board) the complainant.

rE9 Any complaint received from a person other than the Bar Standards Board shall first be dealt with by the PCC in accordance with Section 5.A2 and, where relevant, shall then be considered by the PCC in accordance with Section 5.A3 below.

rE10 Any complaint raised by the Bar Standards Board itself shall be considered by the PCC in accordance with Section 5.A3 below.
A2. **Initial procedure to be followed by the PCC when dealing with complaints received from persons other than the Bar Standards Board**

**Referral of complaints to other persons or to the supervision team**

rE11 When it receives a complaint, the PCC may consider whether it is appropriate to refer the complaint to another person or to the supervision team, in accordance with rE13 to rE28 below. If at any time the PCC decides to refer a complaint to another person or body for consideration or to the supervision team it must give written reasons for that decision, and provide such reasons to the applicable person against whom the complaint was made and the complainant.

rE12 The PCC’s decision under rE11 is final and no one has the right to appeal against it.

**Reference to the Legal Ombudsman**

rE13 If a complaint is made by or on behalf of a client of a BSB regulated person against that BSB regulated person (or, in the case of a BSB entity, such a complaint is made against any individual working as an employee or manager of such BSB entity), the PCC must refer such complaint without further consideration to the Legal Ombudsman, or will signpost the complainant to the Legal Ombudsman and must in the case of a referral notify the complainant of the referral, unless it is clear on the face of the complaint that the matter falls outside the jurisdiction of the Legal Ombudsman.

rE14 If a complaint is made by or on behalf of a client of an unregistered barrister against that unregistered barrister, the PCC may refer such complaint to the Legal Ombudsman if it is satisfied that the Legal Ombudsman may have jurisdiction in relation to such complaint, and the PCC shall notify the complainant of the referral.

rE15 For the avoidance of doubt, such a referral does not prevent the immediate operation of the Interim Suspension and Disqualification Regulations or the Fitness to Practise Regulations, where appropriate.

rE16 When a complaint is referred, or referred back, to the Bar Standards Board by the Legal Ombudsman, rE29 and following, below, apply.

**Reference to chambers/BSB entities**

rE17 If it appears to the PCC that a complaint against an applicable person (which is not a complaint made by or on behalf of BSB regulated person’s client against that BSB regulated person) may appropriately be resolved by:

.1 chambers (where the complaint is against a self-employed barrister who is a member of, or other applicable person who is working at, such chambers at the relevant time); or

.2 a BSB entity (where the complaint is against a BSB entity or the complaint is against an applicable person acting in their capacity as a manager or employee of such BSB entity at the relevant time),

.3 the PCC may refer the complaint to the chambers or BSB entity for investigation and resolution. For the avoidance of doubt, where a complaint is made against an employed barrister (authorised non-BSB body) or an employed barrister (non-authorised body), the provisions of rE28 apply.

rE18 When deciding whether to refer a complaint in accordance with rE16 above, the PCC must take into account all the circumstances, including the factors referred to at rE5 above, and the relationship (if any) between the complainant and the relevant chambers/BSB entity and whether such a relationship continues.
The PCC must consider whether the complaint should be dismissed on the grounds that it has not been made within the period identified in rE29.2 below before it decides whether to refer the complaint to the relevant chambers/BSB entity in accordance with rE17 above.

Where a complaint is referred to the relevant chambers/BSB entity in accordance with rE17 above, the PCC will send any information held by it relating to the complaint to the head of chambers or to the person nominated by the chambers as being responsible for such issues (in the case of a referral to chambers) or to the HOLP (in the case of a referral to a BSB entity).

Following a referral to a chambers/BSB entity in accordance with rE17 above, the PCC must inform the complainant of the complainant’s rights under rE22.2 below.

If:

1. the PCC considers that progress made by the chambers/BSB entity in investigating and resolving the complaint, or the outcome of such an investigation, is unsatisfactory; or

2. a complainant informs the PCC that they are dissatisfied with the progress or outcome of the chambers/BSB entity’s investigation, giving reasons for such dissatisfaction,

then the PCC must consider the complaint in accordance with rE29 and following below.

Reference where applicable person acting in judicial or quasi-judicial capacity

If it appears to the PCC that the complaint arises out of an applicable person’s actions in a part-time or temporary judicial or quasi-judicial capacity, it must act as follows:

1. if it appears to the PCC that the complaint would otherwise fall to be dismissed under this Section 5.A, the PCC must dismiss it; or

2. if it appears to the PCC that the complaint would otherwise not fall to be dismissed:

   a) where it appears that the Office of Judicial Complaints, the Lord Chancellor, other Minister of the Crown, or other body or person with appropriate responsibilities in respect of the judicial or quasi-judicial appointment concerned (the “appropriate body”) should consider the complaint, the PCC must refer the complaint without further consideration to the appropriate body, requesting notification to the PCC of the outcome of the complaint as soon as it has been dealt with;

   b) where it appears that there is no appropriate body, or where the appropriate body refuses to deal with a complaint, the PCC may consider the complaint and direct it to be proceeded with in accordance with rE29 and following provisions below.

3. When the appropriate body has dealt with a complaint, or the PCC considers that the appropriate body has not dealt with a complaint within a reasonable time or fully or satisfactorily, the PCC may reconsider the complaint and shall consider any finding made and any action taken by the appropriate body and may direct that the complaint be proceeded with in accordance with rE29 and following below.

4. No direction shall be given under rE23.2(b) or rE23.3 above in respect of a complaint which the PCC considers to have arisen 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.
A2: Initial procedure to be followed by the PCC when dealing with complaints received from persons other than the Bar Standards Board

rE24 For the purposes of rE23 above, “quasi-judicial” refers to acting:

.1 in any capacity which requires an approach of a judicial nature and compliance with the basic requirements of natural justice; and/or

.2 as an arbitrator; or

.3 as a neutral evaluator between parties; or

.4 as a mediator.

rE25 Removed from 3 April 2017.

Reference to the Lord Chancellor or appropriate body

rE26 If it appears to the PCC that the complaint relates to the conduct of an applicable person who, since the events giving rise to the complaint took place, has been appointed to and continues to hold full-time judicial office and has ceased practice, the PCC shall not consider the complaint further and must inform the complainant that their complaint should be directed to the Lord Chancellor or the Office of Judicial Complaints or to such other person or appropriate body with responsibility for addressing complaints about judges.

Reference to the supervision team

rE27 If it appears to the PCC that a complaint received in respect of an applicable person relates to a matter which might more appropriately be dealt with by the supervision team rather than investigation in accordance with rE29 onwards, it may refer the complaint to the supervision team. If, the supervision team then concludes that the complaint is best dealt with more formally by the PCC in accordance with rE29 onwards, then the supervision team may refer the complaint back to the PCC. The PCC must then deal with the complaint in accordance with rE29 and following below.

Reference to any other person

rE28 If it appears to the PCC that a complaint received in respect of an applicable person relates to a matter which might more appropriately be dealt with by an Inn, Circuit, employer or any other professional or regulatory body (including, for the avoidance of doubt, any other approved regulator), it may refer the complaint to such other body. If, having referred a complaint to another body under rE28, the PCC subsequently considers that the complaint has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the PCC may in its discretion then choose to consider the complaint in accordance with rE11 above and/or rE29 and following below.

PCC’s powers before investigation of complaints

rE29 In determining whether a complaint raised by a person other than the Bar Standards Board potentially discloses a breach of the Handbook, a potential case of professional misconduct or a breach of the Handbook satisfying the disqualification condition, and whether, if it does, it is apt for further consideration, the PCC must first consider:

.1 whether the complaint concerns an applicable person; and

.2 whether the complaint has been made:

.a within twelve months of the conduct of which complaint is made, or
A2: Initial procedure to be followed by the PCC when dealing with complaints received from persons other than the Bar Standards Board

b where a complainant has indicated to the PCC their dissatisfaction with the outcome of a chambers/BSB entity’s investigation in accordance with rE22 above, within three months of the end of the investigation by chambers/BSB entity, whichever is the later; and

in either case, where the conduct of which a complaint is made is (or was) continuing or consisted of a series of related acts or omissions, the conduct must for the purposes of this regulation be treated as having taken place at the time when the continuing conduct ceased or at the date of of the last of any such acts or omissions.

rE30 Where the PCC decides that the complaint does not relate to an applicable person or that it relates to a non-authorised person (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 is an employee of a BSB authorised person in circumstances where the nature of the complaint is unlikely to satisfy the disqualification condition, it must dismiss the complaint.

rE31 Where the PCC decides that the complaint has not been made within the period identified in rE29.2 above it must dismiss the complaint unless it decides that further consideration of the complaint is justified in the public interest, having regard to the regulatory objectives.

rE32 Where the PCC has not dismissed a complaint in accordance with rE30 or rE31 above, the PCC must next consider, having regard to the enforcement strategy, whether further consideration of the complaint is justified. If the PCC considers that:

.1 the complaint for any reason lacks substance; or
.2 the complaint cannot be properly or fairly investigated; or
.3 the complaint or its consequences are insufficiently serious to justify further action; or
.4 for any other reason the complaint is not apt for further consideration,

then the PCC must dismiss the complaint, although it may also elect in such circumstances to refer the matter for to the supervision team in accordance with rE27 above (except that the supervision team can not refer the matter back to the PCC unless and until further evidence comes to light such that the matter would warrant further consideration by the PCC). The PCC must give written reasons for referring the matter to the supervision team.

rE33 If a complaint is not dismissed by the PCC after its initial consideration, it must be investigated and dealt with in the manner set out in Section 5.A3 below and the complainant and applicable person must be informed, in writing, that such an investigation is to take place.
A3. Procedure for dealing with complaints to be handled by the PCC – general

Investigation of complaints

rE34 The investigation of complaints must be conducted by the Professional Conduct Department under the direction of the PCC.

rE35 When an investigation into a complaint is complete, the PCC must exercise the powers given to it by rE36 and following below.

Additional potential breaches of the Handbook

rE36 If in the course of its investigation or consideration of a complaint ("the original complaint") the PCC considers that there is any matter other than that originally complained of which might give rise to a potential breach of this Handbook, and/or a potential case of professional misconduct, and/or potentially satisfy the disqualification condition, the PCC may raise a complaint about that matter on behalf of the Bar Standards Board ("the new complaint").

.1 Then, unless the new matter falls within rE36.2 below:

.a the new complaint must be investigated in the manner set out in rE34 and following above;

.b the PCC must not consider whether there is a realistic prospect of a finding of professional misconduct or a realistic prospect of the disqualification condition being satisfied in respect of the new complaint unless and until the applicable person has been given the opportunity to comment in writing on the matter complained of in the new complaint. The PCC must take any comments made by the applicable person into account when it decides whether there is a realistic prospect of a finding of professional misconduct or a realistic prospect that the disqualification condition will be satisfied in respect of the new complaint;

.c the PCC may defer further consideration of the original complaint until the new complaint has been investigated.

.2 No further investigation or opportunity to respond is required where the subject matter of the new complaint has already been investigated in the course of investigations into the original complaint and the applicable person has already been given an opportunity to comment thereon.

PCC consideration of complaints

rE37 When any investigation is complete, the PCC must consider the complaint, together with the results of any investigation thereof, and may conclude (having regard to the enforcement strategy and any other published Bar Standards Board policy that appears to the PCC to be relevant) in respect of complaints made against an applicable person (but subject always to rE38 and rE40 below):

.1 that the conduct did not constitute a breach of the Handbook, in which case the PCC must dismiss the complaint and rE43 to rE45 apply; or

.2 that the conduct did constitute a breach of the Handbook (on the balance of probabilities) but that, in all the circumstances, no enforcement action should be taken in respect of the breach in which case rE43 to rE45 apply; or

.3 that the conduct did constitute a breach of the Handbook (on the balance of probabilities) and that that breach should be dealt with by an administrative sanction in which case rE50 to rE55 apply; or
that the conduct may constitute a breach of the Handbook; and (ii) if such breach were to be proved, that an administrative sanction pursuant to rE37.3 would not be appropriate in all the circumstances, in which case rE38, rE41, rE42 and rE56 to rE66 apply; or

.5 that the subject matter of the complaint against an applicable person involves a conviction for an offence of dishonesty or deception, in which case the PCC must direct that the complaint should form the subject matter of a charge before a Disciplinary Tribunal in which case rE42 and rE56 to rE66 shall apply.

rE38 Where the PCC has concluded that rE37.4 is applicable, it must refer the complaint to a Disciplinary Tribunal, subject to rE40, provided that no complaint shall be referred unless the PCC 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 that it is in the public interest, having regard to the regulatory objectives to pursue disciplinary proceedings.

rE39 For the avoidance of doubt, where the applicable person is 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 PCC may not impose an administrative sanction or make a referral to a Disciplinary Tribunal on charges of professional misconduct. The PCC may only decide to dismiss the complaint or make an application to the Disciplinary Tribunal that such person be subject to a disqualification order.

rE40 The PCC must not conclude that any conduct alleged by an external complainant did constitute a breach of the Handbook (on the balance of probabilities) if the applicable person has not had a reasonable opportunity to respond in writing to the allegation on which the complaint is based unless the matter has already been investigated by the Legal Ombudsman. For the avoidance of doubt, complaints referred to the PCC by the supervision team are not caught by this requirement.

rE41 Where the PCC is minded to refer the matter to a Disciplinary Tribunal for determination it may, in appropriate cases and with the consent of the applicable person, instead direct that the complaint be subject to the determination by consent procedure (under Section 5.A5 below).

rE42 Where the applicable person referred to a Disciplinary Tribunal is a registered European Lawyer, the PCC shall:

.1 inform the professional body of which the registered European lawyer is a member in their home Member State;

.2 offer the professional body the opportunity to make representations to the Disciplinary Tribunal to which the complaint has been referred or (where the determination by consent procedure is used) to the PCC; and

.3 inform the professional body of findings made by the Disciplinary Tribunal, the PCC or any other Bar Standards Board Panel.
A4. Possible outcomes of an investigation of a complaint under Section 5.A3

Dismissal

rE43 Where a decision to dismiss a complaint in accordance with rE37.1 or rE37.2 is being taken at a meeting of the PCC and not by some other person, group or body authorised in accordance with rE3 of this Section 5.A, the majority of the lay members present at the meeting must consent to such dismissal.

rE44 Where the PCC takes the decision to dismiss a complaint, but the applicable person’s conduct is nevertheless such as to give cause for concern, the PCC may in those circumstances, and either before or after any disposal of the complaint, do any or both of the following:

.1 draw to the applicable person’s attention in writing the PCC’s concerns;

.2 advise the applicable person as to their future conduct either in writing or by directing them to attend on the Chair of the PCC or on some other person nominated by the PCC, to receive such advice.

rE45 Any decision by the PCC to dismiss a complaint must only be disclosed in accordance with rE92 and rE93.

rE46 Removed from 2 September 2015.

rE47 Removed from 2 September 2015.

rE48 Removed from 2 September 2015.

rE49 Removed from 2 September 2015.

Administrative fines and warnings

rE50 Pursuant to rE37.3 above and rE66A below, the PCC may impose an administrative sanction on an applicable person only where:

.1 there is sufficient evidence on the balance of probabilities of a breach of the Handbook by that person; and

.2 the PCC considers that to impose an administrative sanction is a proportionate and sufficient in the public interest.

rE51 In determining the level of administrative sanction to be imposed, the PCC must have due regard to the enforcement strategy and may have regard to such other matters as the Bar Standards Board may consider relevant from time to time.

rE52 The maximum level of a fine which can be imposed by the PCC under rE51 is:

.1 £1,000 (one thousand pounds) where the fine is to be imposed on an applicable person who is an individual; and

.2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on an applicable person who is a BSB entity.
Any decision by the PCC to impose an administrative fine or warning will be formally recorded and may, where appropriate, be referred to the supervision team for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with rE92 and rE93.

Any failure by the applicable person to pay the administrative fine within the relevant time is likely to be treated as professional misconduct and shall entitle the PCC to refer the matter to a full Disciplinary Tribunal for disposal.

The applicable person may appeal a decision of the PCC to impose an administrative sanction in accordance with Section 5.A6.

**Disciplinary charges**

If the PCC directs under rE37.5 or rE38 above that a complaint shall form the subject matter of a charge of professional misconduct before a Disciplinary Tribunal and/or that an application should be made to a Disciplinary Tribunal for a disqualification order, the following rules apply.

At the same time as the PCC directs that a complaint shall form the subject matter of a disciplinary charge and/or disqualification application before a Disciplinary Tribunal, the PCC must also decide whether a three-person panel or a five-person panel is to be constituted.

Where the direction is made pursuant to rE37.5 (complaint involving conviction for dishonesty or deception), the PCC must direct that a five-person panel is to be constituted.

In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the PCC 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 applicable sentencing policy and guidelines issued by the Bar Standards Board and/or the Council of the Inns of Court from time to time; and
2. the previous disciplinary record of the applicable person.

The PCC:

1. shall direct that a five-person panel is to be constituted if the PCC considers that:
   
   a. the applicable person would be likely to be disbarred or suspended from practice for more than twelve months; or
   
   b. that the applicable person would be likely to be disqualified indefinitely or for a defined term of more than twelve months; or
   
   c. that the BSB entity would be likely to have its authorisation or licence revoked or suspended for a period of more than twelve months;

2. may refer to a five person panel where it considers it desirable to have a broader range of expertise available, having regard to the subject matter of the complaint.

Otherwise, the PCC must direct that a three-person panel is to be constituted.

The PCC must inform the applicable person and the complainant (if any) of the direction that it has made pursuant to rE57. No one may appeal against the decision taken by the PCC under that rE57 (and those following).
Where the PCC directs that a three-person panel is to be constituted, the PCC may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chair of the Panel, giving reasons for any such recommendation.

The PCC may:

1. refer to the same Disciplinary Tribunal any charges and/or disqualification applications which the PCC considers may conveniently be dealt with together;

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.

The PCC:

1. may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions is satisfied:
   a. the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction); or
   b. witnesses are unlikely to be called for the hearing; or
   c. the case should be resolved urgently; or
   d. there is some other good reason for expedition; and

2. must direct that the prosecution of the charges be expedited if the respondent has requested an expedited hearing under Section 5.D.

When the PCC has directed that a complaint shall form the subject matter of a charge or application before a Disciplinary Tribunal, the PCC must be 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 PCC may arrange for the appointment of counsel 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.

Section 5.B applies in respect of the procedure to be followed by the Disciplinary Tribunal.

Where a Disciplinary Tribunal directs that matter(s) be referred to the Professional Conduct Committee under rE209 to consider whether an administrative sanction should be imposed, the PCC shall consider the matter in accordance with rE50-55 or dismiss the complaint in accordance with rE37.1/37.2.
A5.  Determination by consent

rE67  A complaint which the PCC is otherwise intending to refer to the Disciplinary Tribunal in accordance with rE38 above may, with the consent of the applicable person against whom the complaint is made, be finally determined by the PCC. This is referred to as the "determination by consent procedure".

rE68  The circumstances in which the determination by consent procedure is to be used, and how it is to be used, are set out below.

rE69  The PCC must, in deciding whether to make a complaint subject to the determination by consent procedure, consider all the circumstances. The PCC may make the complaint subject to the determination by consent procedure only if:

.1  the applicable person submits to the jurisdiction of the PCC; and

.2  the PCC considers that:

   .a  there is a realistic prospect of a finding of professional misconduct being made in respect of the complaint; and

   .b  there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and

   .c  there are no exceptional circumstances which would warrant the complaint being dismissed; and

   .d  having regard to the regulatory objectives, it is in the public interest to resolve the complaint under the determination by consent procedure; and

   .e  the potential professional misconduct or disqualification condition, if proved, combined with the applicable person’s disciplinary history do 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).

rE70  The determination by consent procedure will be conducted in accordance with such procedures as the PCC may prescribe from time to time.

rE71  The PCC may terminate the determination by consent procedure at any time if it no longer considers that the requirements of rE69 are satisfied, or for any other good reason.

rE72  If the determination by consent procedure ends other than by a finding and sentence to which the applicable person consents, then the complaint may be referred to a full Disciplinary Tribunal.

rE73  The PCC must publish any finding and sentence resulting from the determination by consent procedure to the same extent as such publication would have taken place on a finding and sentence by a Disciplinary Tribunal, as provided for in the Disciplinary Tribunal Regulations 2017.

rE74  If the applicable person accepts a determination by consent, no one may appeal against it.

rE75  In determining what sanction, if any, to be imposed under the determination by consent procedure, the PCC shall have regard to the relevant enforcement strategy and to any sentencing policy or guidelines issued by the Bar Standards Board and/or by the Council of the Inns of Court from time to time.
The PCC 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 sanctions:

.1 An order to pay a fine to the Bar Standards Board (the amount of such fine to be determined in accordance with the relevant fines policy);

.2 the imposition of any conditions on their licence or authorisation (where appropriate);

.3 a reprimand by the PCC or an order to attend on a nominated person to be reprimanded;

.4 advice by the PCC as to the applicable person’s future conduct or an order to attend on a nominated person to be given advice as to their future conduct;

.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 the PCC shall direct and to provide satisfactory proof of compliance with this order to the PCC.

Where the PCC has imposed a fine, the confirmation letter to the applicable person must indicate that the applicable person must pay the fine within 28 days of the date when that letter is received, subject to any representations that the applicable person needs extra time to pay. Any application to pay a fine in instalments is to be decided in their discretion by the Chair of the PCC.

Any failure by the applicable person to pay a fine within the relevant timescale is likely to be treated as professional misconduct and will entitle the PCC to refer the matter to a full Disciplinary Tribunal for disposal.

Removed from 1 November 2017.

A deferred sentence, imposed prior to 1 November 2017, is liable be activated where the applicable person is later found (whether during the period of deferral or afterwards) to have committed professional misconduct during the period of deferral.

Where the PCC finds that there has been professional misconduct during the period of deferral, it must (at the same time as imposing sentence for the professional misconduct) activate the sentence which had been deferred, save in exceptional circumstances.

For the avoidance of doubt, the PCC may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a Disciplinary Tribunal, so long as the total sanction imposed does not exceed the powers of the PCC set out in rE76 above.

The PCC may not make an award of costs when dealing with a complaint under the determination by consent procedure.
A6. Appeals

Applicable person’s right to appeal from a decision to impose an administrative sanction

rE84 An applicable person has a right to appeal from a decision to impose an administrative sanction. That appeal is to an appeal panel constituted under the auspices of the Council of the Inns of Court in the same composition as a three-person panel constituted under rE141 of the Disciplinary Tribunal Regulations 2017.

rE85 An appeal, if made, shall be made by the applicable person sending to the Chair of the PCC, within 28 days of the imposition of the administrative sanction, a notice identifying the decision of the PCC 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.

rE86 The notice must be accompanied by such sum as may be prescribed by the Bar Standards Board from time to time, such sum being payable to the Bar Standards Board to defray expenses.

rE87 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 PCC 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 may be represented at the hearing.

rE88 The appeal panel must decide whether to set aside or to vary the original decision.

rE89 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.
A7. **Reopening or reconsidering complaints which have been disposed of**

The **PCC** may reopen or reconsider a **complaint** which has been disposed of, unless it has been disposed of by a **Disciplinary Tribunal**: 

1. where new evidence becomes available to the **PCC** which leads it to conclude that it should do so, or 
2. for some other good reason.

Following such reopening or reconsideration, the **PCC** may take any further or different action it thinks fit, as if any earlier decision had not been made, provided that if the **complaint** has already been referred to a **Disciplinary Tribunal** and charges have been served on the **respondent** or the application has been served on the **respondent** (as the case may be) then the **PCC** may only instruct counsel for the **Bar Standards Board** to:

1. offer no evidence on a charge or application, or 
2. apply to the **Directions Judge** for:
   a. the making of amendments to the charge or application; or 
   b. leave to bring additional charges or applications.
A8. Confidentiality

rE92 The Bar Standards Board must keep complaints confidential. The Bar Standards Board must not disclose the fact that a complaint has been made or details of the complaint, or of its disposal save as specified in this Section 5.A8 or as otherwise required by law.

rE93 Disclosure may be made:

1. for the purpose of investigating the complaint; or

2. for the purpose of keeping the complainant and the applicable person informed of the progress of the complaint; or

3. for the purpose of publicising any forthcoming public hearing of charges arising from the complaint; or

4. where the complainant and the applicable person consent; or

5. for the purposes of rE42 of this Section 5.A; or

6. where the publication of a finding is required by the provisions of the Disciplinary Tribunal Regulations 2017 or Part 5: Section C; or

7. subject to rE94, 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 individual for a certificate of good standing in respect of a barrister; or from one of the Inns of Court in respect of an application from a barrister to become a pupil supervisor; or

8. 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 complaints may be published, any relevant party’s identities will remain anonymous; or

9. with the approval of the PCC, for any other good reason.

rE94 Where a disclosure is made pursuant to rE93.7 above, if any complaint has been made against the barrister concerned which has not been disposed of by the PCC under these Rules, or dismissed by any Disciplinary Tribunal or by any other body to which it may have referred by the PCC, the Bar Standards Board shall simply indicate that a complaint has been received which has not been dismissed.

rE95 Where any finding of professional misconduct has been made (whether by a Disciplinary Tribunal, the High Court or the PCC in the course of a determination by consent), the Bar Standards Board and/or the Council of the Inns of Court must publish on the relevant website(s) the name of the applicable person against whom that finding was made, the nature of that finding, the sentence imposed and any other information about the finding and sentencing which the Bar Standards Board considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.

rE96 Where any disqualification order has been made (whether by a Disciplinary Tribunal or the High Court), the Bar Standards Board and/or the Council of the Inns of Court shall publish on the relevant website(s) the name of the applicable person against whom the order has been made and its terms.

rE97 Where any interim suspension or interim disqualification order has been made or interim conditions imposed, the Bar Standards Board must publish on the Bar Standards Board’s website the name of the applicable person against whom the order has been made and its terms.
A9. Interpretation

In these Complaints Regulations all italicised terms shall be interpreted in accordance with the definitions in Part 6.

If a barrister is a member of more than one Inn, references in these Regulations to their Inn shall mean the Inn by which they were called, unless they are a Bencher in which case their Inn shall mean the Inn of which they are a Bencher.
A10. Commencement

This Section 5.A shall come into force in accordance with the provisions of Part 1 of this Handbook.
B. THE DISCIPLINARY TRIBUNALS REGULATIONS

B1. The regulations

rE101 These Regulations will apply following the referral of a matter by the PCC to a Disciplinary Tribunal, in accordance with Part 5 Section A.

Service of Charges and/or Applications

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 (or five weeks if the PCC has directed that the prosecution of the charges be expedited) after the date on which the PCC 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.

Documents to be served on the respondent

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 still 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.
Directions

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 fourteen 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.

No reply from respondent

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.

Agreement of directions

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.
Non-agreement of directions

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 fourteen 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.

Agreement/endorsement of directions by a Directions Judge

rE114 When the President has received the documents referred to in rE109 or rE111 above, the President must designate either a Queen’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 or rE111 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.

Applications

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 respondents 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.

Extent of powers to order directions

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.
SECTION B: THE DISCIPLINARY TRIBUNALS REGULATIONS

PART 5

B1: The regulations

Setting the hearing date

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.

Appointing a Disciplinary Tribunal and issuing a Convening order

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 Queen’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 entity;

(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;

.i.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

.i.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

.i.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.

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.

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.

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 complaint, 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.

Appointment of Clerk(s)

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.

The President may publish qualifications or other requirements for those appointed to be Clerks.

No person who has been engaged in the investigation of a complaint 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 complaint or application.
The Disciplinary Tribunal

Composition of Disciplinary Tribunals

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 Queen'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
2. are a member of the Bar Standards Board or of any of its committees; or
3. was a member of the Bar Standards Board or of any of its committees 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.
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.

A member of a Disciplinary Tribunal who has been absent for any time during a sitting shall take no
further part in the proceedings.

Provision of documents to the Disciplinary Tribunal

The Bar Standards Board and the respondent must send to BTAS, at least fourteen 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.

The evidence referred to in rE151 must be indexed and paginated.

BTAS shall provide to each member of the Disciplinary Tribunal before the start of the substantive
hearing copies of the following documents:

.1 the Convening 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.

Applications for adjournment before the commencement of the hearing

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.

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.

Hearing in public

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.

Recording of proceedings

rE157 BTAS must arrange for a verbatim record of the proceedings before a Disciplinary Tribunal to be made.

Joinder

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 respondents 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.

Amendment and addition of charge(s) and/or application(s)

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
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).

**Adjournment of the hearing**

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.

**Standard of proof**

rE164 The Disciplinary Tribunal must apply the criminal standard of proof when deciding charges of professional misconduct and in deciding whether the disqualification condition has been established.

**Rules of natural justice**

rE165 The rules of natural justice apply to proceedings of a Disciplinary Tribunal.

**Evidence**

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 complaint 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.
Decisions of courts or tribunals

1. 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, 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 may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be proof of those facts, unless proved to be inaccurate.

2. 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, the provisions of rE169 do not apply.

Witness evidence at the Disciplinary Tribunal

Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.

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.

Any further questioning of the witnesses by the parties shall be at the discretion of the Disciplinary Tribunal.

The Disciplinary Tribunal may, upon the application of a party, agree that the identity of a witness should not be revealed in public.

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.

Vulnerable Witnesses

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.
Absence of Respondent

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.

Application for a fresh hearing

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.

Order of proceedings at a hearing

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.

The finding

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.

The sanction

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 entity, in accordance with Annex 2 to these Regulations;
   .c in the case of a 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 practising 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 rE37.3 of the Complaints 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.
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.

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 rE207.1) 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.

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 complaint are relevant to the respondent in their capacity as a pupil supervisor, it may notify the respondent’s Inn of those concerns in such manner as it sees fit.

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.

Sanction of suspension from practice or from authorisation or licensing or imposition of conditions

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 authorised body 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.

Suspension/withdrawal of practising rights pending the hearing of any appeal

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
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.

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.

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.

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.

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.

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.

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.

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.

**Wording of the sanction when respondent not present**

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.

Report of Finding and Sanction

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.

Appeals

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 Chair of the Bar Standards Board or the Chair of the PCC, 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 Chair of the Bar Standards Board or of the Chair of the PCC) lodge an appeal with the High Court in accordance with the Civil Procedure Rules.
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.

**Action to be taken by the Inn (in circumstances where a barrister has been sanctioned to be disbarred)**

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).

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.

**Action to be taken by the Bar Council/Bar Standards Board**

Subject to rE242, the Bar Council/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.

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 Council/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.

**Publication of finding, sanction and report of the Disciplinary Tribunal**

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 fourteen 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 rE1272, not publish the finding on its website, unless the respondent so requests; and

- **2 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, 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, 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.

Costs

rE244 A Disciplinary Tribunal may make such Orders for costs, whether against or in favour of a respondent, as it 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.

Service of documents

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).

Delegation

rE251 The powers and functions conferred by these Regulations on a Directions judge may be exercised by any other Judge or Queen’s Counsel nominated by the President, including the Judge or Queen’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.
Exclusion from providing representation funded by the Legal Aid Agency – Application for termination

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.

Interpretation

rE259  In Section 5.B2 all italicised terms shall be interpreted in accordance with the definitions in Part 6.
B2. Citation and commencement

These Regulations may be cited as “The Disciplinary Tribunal Regulations 2017”.

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.
B3. Annexes to the Disciplinary Tribunals Regulations

ANNEX 1 – SENTENCING POWERS AGAINST BARRISTERS

When a charge of professional misconduct has been found proved against a barrister 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 their 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.
ANNEX 2 – SENTENCING POWERS AGAINST BSB AUTHORISED BODIES

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

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

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

If a Disciplinary Tribunal finds a charge of professional misconduct proved against any other BSB regulated person, 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.
ANNEX 6 – STANDARD DIRECTIONS

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, i.e. 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, i.e. 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, i.e. 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 fourteen 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 (4) 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.
C. THE INTERIM SUSPENSION AND DISQUALIFICATION REGULATIONS

C1. Application

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 PCC 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 PCC, may be done or exercised by, or given to, any person or body authorised by the President or by the PCC as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).
C2. The regulations

Composition of panels

rE265 An interim panel shall consist of three members nominated by the President being a Chair (who shall be a Queen'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 Queen'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 Queen's Counsel, each of whom is entitled to sit as a Recorder or a Deputy High Court Judge or who has been Queen'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.

Referral to an interim panel

rE268 On receipt of a complaint or any other information, the PCC 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); and
  
  .2 the PCC 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 PCC 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 PCC refers a respondent to an interim panel under rE268, the PCC (or the Chair on its behalf) shall go on to 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 PCC 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 PCC shall:

  .1 take immediate effect;
  .2 be notified in writing by the PCC 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

If an immediate interim suspension or disqualification has been imposed by the PCC 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.

If, subsequent to the imposition of an immediate suspension or disqualification under rE271, the applicable person agrees to provide to the PCC an undertaking in written terms in accordance with the provisions of rE274.4 below which is satisfactory to the PCC and which is subject to such conditions and for such period as the PCC may agree, the PCC 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.

Procedure after referral to an Interim Panel and, where relevant, the decision to impose an immediate interim suspension or disqualification

As soon as practicable after the PCC 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.

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 fourteen and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;
.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 Chair of the PCC, 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 Chair of the PCC, 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 rE27.4.2 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 Chair of the PCC undertake, pending the disposal of any charge(s) or application(s) by a Disciplinary Tribunal:

.a to be immediately suspended or disqualified (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 Chair of the PCC;

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 shall inform the respondent that they are entitled to request an expedited hearing of any charges of professional misconduct or applications for disqualification orders by a Disciplinary Tribunal.

rE275 If a respondent sends a letter in accordance with rE274.4 above which is satisfactory to the Chair of the PCC, 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).

Procedure and powers of interim panels

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;

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 inform the respondent that they are entitled to request an expedited hearing of any charges or applications by a Disciplinary Tribunal and, if so requested, the Chair of the Panel may so direct;

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

Review

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 Chair of the PCC 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.
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.

**Appeals**

A respondent may by letter served on the President and on the Chair of the PCC not more than fourteen days after the date of the relevant decision of an interim panel give notice of their wish to appeal against the decision.

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 fourteen 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 fourteen 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 fourteen 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.

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.

At the conclusion of the hearing the appeal panel:

- may remove the period of interim suspension or interim disqualification and/or any interim conditions imposed under this Section 5.C;
- 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;
- 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;
- 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 rE2872 above or undertaking accepted under rE2873 above;
- 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.
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.

There shall be no right of appeal from the decision of an appeal panel.

Suspension or disqualification ceases to have effect

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 or the PCC (as appropriate);
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.

Costs

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

Report and Publication of Decisions

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.

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;
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 the Chair of the PCC; and
.h such one or more press agencies or other publications, as the Chair of the PCC may direct.

rE294 The Bar Standards Board shall keep a record of those who are subject to suspension or disqualification orders 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.

Service of documents

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;

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

.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.

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).
C3. Interpretation

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.
C4. Commencement

These rules shall come into force in accordance with the provisions of Part 1 of this *Handbook*. 
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.
D1. Preliminaries

Commencement and application

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 Panel or Appeal Panel pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

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 PCC, may be done or exercised by, or given to, any person or body authorised by the President or by the PCC as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

Any term defined in Definitions 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 a BSB authorised individual at the time of any decisions taken by a Fitness to Practise Panel.
D2. Constitution of Panels

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.
D3. The Fitness to Practise Procedure

Referral to a Fitness to Practise Panel

rE303 Where the PCC receives information suggesting that an Individual is unfit to practise, the matter shall be considered under Regulation E305.

rE304 The PCC 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 PCC receives information under Regulation E303, the Chair of the PCC 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 PCC, following receipt of information under Regulation E303 or during its consideration of a complaint of professional misconduct under the Complaints Regulations, considers that an Individual may be unfit to practise, it 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 PCC shall take into account any information received under Regulation E303 or obtained under Regulation E304, and any representations submitted by the Individual.

Preliminary Hearings

rE309 As soon as reasonably practicable after referral of a matter by the PCC 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.
**Directions**

**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 *PCC* 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 *PCC* 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 *PCC* 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.

**Medical Examinations**

**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 *PCC* 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*.

**Interim Restrictions**

**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 Chair of the PCC, or at the request of the PCC 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.

Full Hearings before a Fitness to Practise Panel

rE318 As soon as reasonably practicable after receipt of any report prepared by a Medical Examiner or, where no report has been prepared, the PCC 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.

Decisions of a Fitness to Practise Panel

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.
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 PCC 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 practice.

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.

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.

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.
D4. Reviews and Appeals

Review of decisions made by a Fitness to Practise Panel

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 Chair of the PCC may, of their own motion, or at the request of the PCC or 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 E313 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.

Appeals before an Appeal Panel

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.
Decisions of an Appeal Panel

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;

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.

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.

There shall be no right of appeal from a decision of an Appeal Panel.
D5. Conduct of Fitness to Practise and Review Panel Hearings

Procedure before a Panel

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 PCC 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.

Postponement, adjournment and cancellation

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 PCC 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 PCC 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 PCC 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.

Notice and publication of Decisions

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.

Service of documents

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 Chair of the PCC;

.3 the Director of the Bar Standards Board;
4. the Barrister’s Head of Chambers, where relevant;

5. the Treasurers of the Barrister’s Inn of Call and of any other Inns of which they are a member, where relevant; and

6. other regulators, where relevant.

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

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 Queen'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
   
   (b) they were a member of the PCC when the matter being dealt with by the Panel was considered by the PCC.

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.
E1. Interventions

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.
E2. Divestiture

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.

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).

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:

<table>
<thead>
<tr>
<th></th>
<th>admission to an Inn</th>
<th>includes readmission of a former member who has ceased (whether as a result of disbarment or otherwise) to be a member of the Inn</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>admission declaration</td>
<td>means the declaration referred to in Q12 in Part 4</td>
</tr>
<tr>
<td>3</td>
<td>administration of oaths</td>
<td>has the same meaning as set out in paragraph 8 of Schedule 2 to the LSA</td>
</tr>
<tr>
<td>4</td>
<td>administrative sanction</td>
<td>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</td>
</tr>
</tbody>
</table>
| 5 | appeal panel | (a) in Section 5.A means an Appeal Panel constituted in accordance with paragraph rE84, to perform the functions set out in regulations E88 and E89 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 |
| 6 | appellant | in Part 5 means an appellant wishing to appeal to the High Court against a relevant decision |
| 7 | applicable person | Means persons who were unregistered barristers or BSB regulated persons 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) |
| 8 | 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 |
| 9 | 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 |
| 10 | 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 |
| 11 | approved training organisation | means any body or organisation (including chambers) which has been approved by the Bar Standards Board for the purpose of providing professional training under Section 4.85 |
### DEFINITIONS

#### PART 6

<p>| 12 | 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 persons 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 partnership 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 |
| 13 | an association | means where: |
|    |            | (a) BSB authorised individuals are practising as a chambers; or |
|    |            | (b) BSB authorised persons 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 |
| 14 | authorisation fee | means the fee prescribed from time to time by the Bar Standards Board in accordance with Rule S94 |
| 15 | authorised individual | means BSB authorised individuals and authorised (non-BSB) individuals |
| 16 | authorised (non-BSB) body | means a partnership, LLP or company authorised or licensed by another approved regulator to undertake reserved legal activities |
| 17 | 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 |
| 18 | authorised (non-BSB) person | means an authorised (non-BSB) body or an authorised (non-BSB) individual (as the case may be) |
| 19 | authorised person | has the meaning set out in section 18(1) of the LSA |</p>
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<tr>
<td>20</td>
<td>bankruptcy order</td>
<td>includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world</td>
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<tr>
<td>21</td>
<td>Bar</td>
<td>means the Bar of England and Wales</td>
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<td>22</td>
<td>Bar Council</td>
<td>means The General Council of the Bar as constituted from time to time or a committee thereof</td>
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<td>23</td>
<td>Bar Professional Training Course</td>
<td>means a course which has been approved by the Bar Standards Board as providing vocational training of appropriate content and quality to satisfy the requirements of the Vocational Stage</td>
</tr>
<tr>
<td>24</td>
<td>Bar Standards Board</td>
<td>means the board established to exercise and oversee the regulatory functions of the Bar Council</td>
</tr>
<tr>
<td>25</td>
<td>Bar Transfer Test</td>
<td>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</td>
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<tr>
<td>26</td>
<td>barrister</td>
<td>has the meaning given in s. 207 of the LSA and includes (a) practising barristers; (b) pupils; and (c) unregistered barristers</td>
</tr>
<tr>
<td>27</td>
<td>BMIF</td>
<td>means Bar Mutual Indemnity Fund Limited</td>
</tr>
<tr>
<td>28</td>
<td>BSB authorised body</td>
<td>means a body (corporate or unincorporated) which is authorised by the BSB to carry on reserved legal activities and is not a licensable body</td>
</tr>
<tr>
<td>29</td>
<td>BSB authorised individuals</td>
<td>means all individuals authorised by the Bar Standards Board to carry on reserved legal activities including: a) practising barristers; b) second six pupils; c) registered European lawyers</td>
</tr>
<tr>
<td>30</td>
<td>BSB authorised persons</td>
<td>means BSB entities and BSB authorised individuals</td>
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<tr>
<td>31</td>
<td>BSB entity</td>
<td>means BSB authorised body and BSB licensed body</td>
</tr>
<tr>
<td>32</td>
<td>BSB licensed body</td>
<td>means a licensed body that has been licensed by the BSB</td>
</tr>
<tr>
<td>33</td>
<td>BSB regulated individuals</td>
<td>means BSB authorised individuals, authorised (non-BSB) individuals employed by BSB authorised bodies and BSB regulated managers</td>
</tr>
<tr>
<td>34</td>
<td>BSB regulated managers</td>
<td>means a manager of a BSB entity</td>
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<td>35</td>
<td>BSB regulated person</td>
<td>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</td>
</tr>
<tr>
<td>Definition</td>
<td>Description</td>
<td></td>
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<tr>
<td><strong>BTAS</strong></td>
<td>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.</td>
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<tr>
<td><strong>call</strong></td>
<td>means call to the Bar in accordance with the Bar Training Rules</td>
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<tr>
<td><strong>call declaration</strong></td>
<td>means the Declaration referred to in Rule Q112.3</td>
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<tr>
<td><strong>CCBE State</strong></td>
<td>means any state whose legal profession is a full member, an associate member or an observer member of the CCBE</td>
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<td><strong>Certificate of Good Standing</strong></td>
<td>means:</td>
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<td></td>
<td>(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:</td>
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<td></td>
<td>(i) is of good character;</td>
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<td></td>
<td>(ii) has not been the subject of a Bankruptcy Order or Directors Disqualification Order nor entered into an individual voluntary arrangement with creditors; and</td>
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<td></td>
<td>(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;</td>
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<td>(b) in relation to a Qualified European Lawyer, evidence of the kind referred to in Regulation 9(2) of the European Qualification Regulations, that the person concerned:</td>
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</tr>
<tr>
<td></td>
<td>(i) is of good character;</td>
<td></td>
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<tr>
<td></td>
<td>(ii) has not been the subject of a Bankruptcy Order or Directors Disqualification Order nor entered into an individual voluntary arrangement with creditors; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(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</td>
<td></td>
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<tr>
<td><strong>chambers</strong></td>
<td>means a place at or from which one or more self-employed barristers or BSB authorised bodies carry on their practices and also refers where the context so requires to all the barristers (excluding pupils) and BSB authorised bodies who for the time being carry on their practices at or from that place</td>
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<tr>
<td><strong>client</strong></td>
<td>means, the person for whom you act and, where the context permits, includes prospective and former clients</td>
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<td><strong>client money</strong></td>
<td>means</td>
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<tr>
<td></td>
<td>(a) money, securities or other assets beneficially owned by a client; or</td>
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<td></td>
<td>(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,</td>
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<td></td>
<td>But excludes:</td>
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<td>(c) a fixed fee paid in advance; or</td>
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<td>(d) a payment made in settlement of an accrued debt; or</td>
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<td></td>
<td>(e) money which belongs to your employer</td>
<td></td>
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<td></td>
<td><strong>DEFINITIONS</strong></td>
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<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>45</td>
<td>Code of Conduct for European Lawyers</td>
<td>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</td>
</tr>
<tr>
<td>46</td>
<td>Company</td>
<td>has the same meaning as in section 1 of the Companies Act 2006</td>
</tr>
<tr>
<td>47</td>
<td>complaint</td>
<td>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 and, for the purposes of Part 5, an allegation, or a group of associated allegations, by any person or by the Bar Standards Board of its own motion of professional misconduct or a breach of the Core Duties and/or rules of this Handbook and includes a legal aid complaint</td>
</tr>
<tr>
<td>48</td>
<td>Complaints Regulations</td>
<td>means the Regulations set out at section 5.A</td>
</tr>
<tr>
<td>49</td>
<td>conditional fee agreement</td>
<td>means a conditional fee agreement as defined in Section 58 of the Courts and Legal Services Act 1990</td>
</tr>
<tr>
<td>50</td>
<td>conduct litigation or conduct of litigation</td>
<td>has the same meaning as set out in paragraph 4 of Schedule 2 to the LSA. Conducting litigation shall be construed accordingly</td>
</tr>
<tr>
<td>51</td>
<td>Convening Order</td>
<td>means the Order described in Rule E132.c</td>
</tr>
<tr>
<td>52</td>
<td>conviction</td>
<td>means a criminal conviction for an indictable offence</td>
</tr>
<tr>
<td>53</td>
<td>Council of the Inns of Court (COIC)</td>
<td>means the Council of the Inns of Court and its successors including any entity or part through which it exercises its functions</td>
</tr>
<tr>
<td>54</td>
<td>court</td>
<td>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</td>
</tr>
<tr>
<td>55</td>
<td>criminal offence</td>
<td>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</td>
</tr>
<tr>
<td>56</td>
<td>pending criminal proceedings</td>
<td>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</td>
</tr>
<tr>
<td>57</td>
<td>Cross border activities</td>
<td>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</td>
</tr>
</tbody>
</table>
| 58 | 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 |
| 59 | Definitions Section | means Part 6 of the Handbook |
| 60 | determination by consent procedure | means the procedure set out in Regulation E67 |
| 61 | 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 |
| 62 | Directions Judge | means a Judge or Queen’s Council designated by the President |
| 63 | 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 |
| 64 | 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 |
| 65 | 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 |
| 66 | discrimination | has the same meaning as in chapter 2 of the Equality Act 2010 |
| 67 | 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 |
### Definitions

<table>
<thead>
<tr>
<th>Section</th>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>68</td>
<td>disqualification order</td>
<td>means an order:</td>
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<tr>
<td></td>
<td></td>
<td>a) made by a <em>Disciplinary Tribunal</em> in disposing of a disciplinary charge or disqualification application referred to it by the <em>PCC</em>; and</td>
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<td></td>
<td></td>
<td>b) made on the basis that the <em>disqualification condition</em> is satisfied in respect of the <em>applicable person</em> who is the subject of the <em>disqualification order</em>; and</td>
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<td></td>
<td></td>
<td>c) either indefinitely or for a stated period, disqualifying an <em>applicable person</em> from one or more relevant activities and prohibiting any <em>BSB authorised person</em> from appointing them or employing them in respect of such relevant activities</td>
</tr>
<tr>
<td>69</td>
<td>Disqualify, disqualified or disqualification</td>
<td>means the power of the <em>Bar Standards Board</em>, pursuant to Section 5.B, to disqualify an <em>applicable person</em> from performing one or more of the <em>relevant activities</em> where the <em>disqualification condition</em> is satisfied, which power when exercised on an interim basis shall be exercised in accordance with Section 5.D</td>
</tr>
<tr>
<td>70</td>
<td>diversity data</td>
<td>Means information relating to the following characteristics in respect of an individual:</td>
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<tr>
<td></td>
<td></td>
<td>a) Age</td>
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<td></td>
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<td>b) Disability</td>
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<tr>
<td></td>
<td></td>
<td>c) Pregnancy and maternity</td>
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<td></td>
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<td>d) Race (including ethnic or national origins, colour or nationality)</td>
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<td>e) Religion or belief (including lack of belief)</td>
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<td></td>
<td>f) Sex</td>
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<tr>
<td></td>
<td></td>
<td>g) Sexual orientation</td>
</tr>
<tr>
<td>71</td>
<td>employed barrister</td>
<td>means:</td>
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<tr>
<td></td>
<td></td>
<td>a) an <em>employed barrister (authorised non-BSB body)</em>; or</td>
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<td></td>
<td></td>
<td>b) an <em>employed barrister (BSB entity)</em>; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>c) an <em>employed barrister (non authorised body)</em></td>
</tr>
<tr>
<td>72</td>
<td>employed barrister (authorised non-BSB body)</td>
<td>means a <em>practising barrister</em> who is employed by an <em>authorised (non-BSB) body</em> either:</td>
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<td>a) under a contract of employment; or</td>
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<td>b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice), who supplies <em>legal services</em> as a <em>barrister</em> in the course of their employment</td>
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<td>73</td>
<td>employed barrister (BSB entity)</td>
<td>means a <em>practising barrister</em> who is employed by a <em>BSB entity</em> either:</td>
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<td></td>
<td>a) under a contract of employment; or</td>
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<td>b) under a written contract for services which is for a determinate period (subject to any provision for earlier termination on notice), who supplies <em>legal services</em> as a <em>barrister</em> in the course of their employment</td>
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</table>
| 74 | 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 or in the institutions of the European Union; and  
who supplies *legal services* as a *barrister* in the course of their employment |
| 75 | employer | means *persons* by whom *employed barristers* (non-authorised bodies) are employed including any holding subsidiary or associated company, corporate body or firm of that *person* |
| 76 | enforcement strategy | means the strategy on enforcement from time to time published by the *Bar Standards Board*, in effect as at the date the complaint is made to the *Bar Standards Board* or raised by the *Bar Standards Board* of its own motion under Part 5 |
| 77 | Enforcement Regulations | means the supervision and enforcement regulations set out at Part 5 |
| 78 | English law | includes international law and the law of the European Communities |
| 79 | 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 |
| 80 | Establishment Directive | means Directive 98/5/EC of the European Parliament and of the Council of February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a *Member State* other than that in which the qualification was obtained |
| 81 | 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(2) of the European Communities (Lawyer’s Practice) Order 1999, 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 |
<p>| 82 | European Qualifications Regulations | means the European Union (Recognition of Professional Qualifications) Regulations 2015 |
| 83 | family responsibilities | includes caring responsibilities for older, young, or disabled dependants or relatives |
| 84 | First Tier Tribunal | means the General Regulatory Chamber of the First Tier Tribunal |
| 85 | Fitness to Practise Panel | means a Fitness to Practise Panel constituted under Section 5.D, in accordance with paragraph 4 of schedule 1 |
| 86 | foreign client | means a lay <em>client</em> who has their centre of main interests outside England and Wales, or who reasonably appears as having that characteristic |
| 87 | foreign lawyer | is a <em>person</em> 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 <em>authorised person</em> for the purposes of the LSA |</p>
<table>
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<tr>
<th>Term</th>
<th>Definition</th>
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| 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 |
| Full Qualification Certificate | means a certificate issued by the *Bar Standards Board* under Rule Q69 or Rule Q86 on satisfactory completion of, or exemption from, the *Professional Stage* |
| 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 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(2) of the European Communities (Lawyer’s Practice) Order 1999 and, if the European lawyer is authorised in more than one *Member State*, it shall mean any such body |
| 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(2) of the European Communities (Lawyer’s Practice) Order 1999 under which they are authorised in their *home State* to pursue professional activities |
| 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* |
| immigration work | means the provision of immigration advice and immigration services, as defined in section 82 of the *Immigration and Asylum Act 1999* |
| indictable offence | has the same meaning as in Schedule 1 of the Interpretation Act 1978, namely “an offence which, if committed by an adult is triable on indictment whether it is exclusively so triable or triable either way” |
| 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 |
| 101 | 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 |
| 102 | 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 |
| 103 | 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* |
| 104 | Judge | for the purposes of rE140 and rE141, a Judge includes: a) a puisne judge of the High Court; b) a judge of the Court of Appeal; c) a Circuit judge; 
d) a Recorder who has been authorised to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981; 
e) a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and 
f) a person who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that they remain permitted by virtue of section 9 of the Supreme Court Act 1981 to be requested to act as a judge of the High Court, or is eligible for appointment as a deputy Circuit judge under section 24 of the Courts Act 1971 |
| 105 | Justices’ clerk | means a serving Justices’ clerk or assistant Justices’ clerk, appointed under the Courts Act 2003 |
| 106 | lay member | means either: 
(a) a *lay person* appointed to be a member of the *Bar Standards Board* or one of its regulatory committees; 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 |
| 107 | Lay person | means a person who is not and never has been a barrister and who has not completed the training required in order to be called to the Bar |
| 108 | legal aid complaint | has the same meaning as in section 40 of the Administration of Justice Act 1985 |
| 109 | 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 |
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<tr>
<td><strong>110</strong></td>
<td>Legal Ombudsman</td>
<td>means scheme administered by the Office for Legal Complaints under Part 6 of the LSA</td>
</tr>
</tbody>
</table>
| **111** | 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 |
| **112** | Legal Services Board or LSB | means the independent body established under the LSA to be the overarching regulator for the legal profession as a whole |
| **113** | 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 |
| **114** | licensed access client | means a person or organisation approved as such by the Bar Standards Board in accordance with the Licensed Access Recognition Regulations [https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/](https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/licensed-access-recognition-regulations/) |
| **115** | Licensed Access rules | means the Rules on licensed access set out at Rules C132 to C141 |
| 116 | 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 persons 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.

| 117 | 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;

| 118 | 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

| 119 | limited practising certificate | in accordance with r565, 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

| 120 | litigation extension fee | means the amount payable by a BSB authorised person which has a litigation extension

| 121 | LLP | means a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000

| 122 | LSA | means the Legal Services Act 2007 (as amended)
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<tr>
<th>Term</th>
<th>Definition</th>
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<td>manager</td>
<td>has the same meaning as set out in s. 207 LSA namely:</td>
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<td></td>
<td>a) a member of an LLP;</td>
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<td></td>
<td>b) a director of a company;</td>
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<td></td>
<td>c) a partner in a partnership; or</td>
</tr>
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<td></td>
<td>d) in relation to any other body, a member of its governing body.</td>
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<td>material interest</td>
<td>a person holds a material interest in a body (“B”) if the person:</td>
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<td></td>
<td>i. holds at least 10% of the shares in B,</td>
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<td></td>
<td>ii. is able to exercise significant influence over the management of B by virtue of the person's shareholding in B,</td>
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<td></td>
<td>iii. holds at least 10% of the shares in a parent undertaking (“P”) of B,</td>
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<td></td>
<td>iv. is able to exercise significant influence over the management of P by virtue of the person's shareholding in P,</td>
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<td>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,</td>
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<td>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,</td>
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<td></td>
<td>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</td>
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<td></td>
<td>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.</td>
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<td></td>
<td>and for the purposes of this definition “person” means—</td>
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<td></td>
<td>i. the person,</td>
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<td></td>
<td>ii. any of the person's associates, or</td>
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<td></td>
<td>iii. the person and any of the person's associates taken together;</td>
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<td>mediation</td>
<td>means the process whereby the parties to a dispute appoint a neutral person (mediator) to assist them in the resolution of their dispute</td>
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<td>medical</td>
<td>In relation to any person means a registered medical practitioner</td>
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<td>Medical Examiner</td>
<td>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.</td>
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<tr>
<td>medical member</td>
<td>means a person appointed by the President under Section 5.E, in accordance with paragraph 1 of schedule 1 for the purpose of serving on Fitness to Practise and Appeal Panels.</td>
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<td>Member State</td>
<td>means a state which is a member of the European Union</td>
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<td>Line</td>
<td>Term</td>
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<td>130</td>
<td>minor criminal offence</td>
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<td>131</td>
<td>non-authorised body</td>
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<td>132</td>
<td>non-authorised individual</td>
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<td>133</td>
<td>non-authorised person</td>
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<td>134</td>
<td>non-reserved activities</td>
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<td>135</td>
<td>notarial activities</td>
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<td>136</td>
<td>Owner</td>
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<td>137</td>
<td>parental leave</td>
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<td>138</td>
<td>partner</td>
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<td>139</td>
<td>partnership</td>
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<td>140</td>
<td>PCC</td>
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<td>141</td>
<td>period of deferral</td>
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<td>142</td>
<td>person</td>
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<td>Line</td>
<td>Term</td>
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<td>143</td>
<td>practice</td>
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<td>144</td>
<td>practising address</td>
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<td>145</td>
<td>practising barrister</td>
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<td>146</td>
<td>practising certificate</td>
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<td>147</td>
<td>practising certificate fee</td>
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<td>148</td>
<td>practising certificate year</td>
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<td>149</td>
<td>the President</td>
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<td>150</td>
<td>probate activities</td>
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<td>151</td>
<td>professional client</td>
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<td>152</td>
<td>professional misconduct</td>
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DEFINITIONS

PART 6

262
<p>| 153 | professional principles | has the same meaning as set out in s. 1(3) LSA namely: |
|     |                         | (a) that authorised persons should act with independence and integrity, |
|     |                         | (b) that authorised persons should maintain proper standards of work, |
|     |                         | (c) that authorised persons should act in the best interests of their clients, |
|     |                         | (d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons 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. |
| 154 | provisional practising certificate | in accordance with Rule S64 a provisional practising certificate authorises a pupil in their second six to exercise a right of audience before every court in relation to all proceedings |
| 155 | Provisional Qualification Certificate | means a certificate issued by the Bar Standards Board under Q68 or Q96 following satisfactory completion of, or exemption from, the non-practising six months of pupillage |
| 156 | public access client | a client (other than a licensed access client) that instructs a barrister directly on their behalf. |
| 157 | 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 |
| 158 | pupil | means an individual who is undertaking either the first non-practising six months of pupillage or the second practising six months of pupillage, or a part thereof and who is registered with the Bar Standards Board as a pupil |
| 159 | pupil supervisor | an individual, qualified barrister who has been approved as a pupil supervisor by their Inn of Court, and in accordance with the Bar Training Regulations |
| 160 | pupillage | means a period of professional training under Section 4.B5 and includes a period of external training for which permission has been given by the Bar Standards Board under rQ45 |
| 161 | Qualification Regulations | means the rules on qualification set out at Part 4 |
| 162 | qualified European lawyer | means a person who is a national of a Relevant State and who either: |
|     |                         | (a) holds a diploma required in a Relevant State for the practice of a legal profession regulated by that State which diploma satisfies the requirements of Regulation 29(1)(a) of the European Qualification Regulations; or |
|     |                         | (b) satisfies the requirements of Regulation 29(1)(b) of the European Qualification Regulations |
| 163 | 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 |
| 164 | qualified lawyer | means a person who is authorised to practise by another Approved Regulator, a Qualified European Lawyer or a Qualified Foreign Lawyer |
| 165 | a realistic prospect of a finding of professional misconduct being made | means that the PCC 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 a complaint, that it is more likely than not that a finding of professional misconduct will be made |</p>
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<tr>
<td><strong>166</strong></td>
<td>a realistic prospect of the disqualification condition being satisfied</td>
<td>means that the PCC 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 a complaint, that it is more likely than not that it shall be determined that the <em>disqualification condition</em> has been satisfied</td>
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<td><strong>167</strong></td>
<td>referral fee</td>
<td>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</td>
</tr>
<tr>
<td><strong>168</strong></td>
<td>register of European lawyers</td>
<td>means the register of European lawyers maintained by the <em>Bar Standards Board</em> under regulation 15 of the European Communities (Lawyer’s Practice) Regulations 2000 (SI 2000/1119)</td>
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<tr>
<td><strong>169</strong></td>
<td>registered European lawyer</td>
<td>means a European lawyer registered as such by the <em>Bar Council</em> and by an <em>Inn</em> in accordance with Section 3.D</td>
</tr>
<tr>
<td><strong>170</strong></td>
<td>Registered European lawyer’s practising certificate</td>
<td>means, in accordance with rS68, a <em>practising certificate</em> which entitles a registered European lawyer to carry on the same reserved legal activities as a full <em>practising certificate</em> 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 <em>solicitor or barrister</em> 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</td>
</tr>
<tr>
<td><strong>171</strong></td>
<td>regulated entity</td>
<td>Means <em>BSB entity or authorised (non-BSB) body</em></td>
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<td><strong>172</strong></td>
<td>regulatory objectives</td>
<td>has the meaning given to it by section 1 of the <em>LSA</em> 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</td>
</tr>
<tr>
<td><strong>173</strong></td>
<td>relevant activity</td>
<td>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 <em>BSB licensed body</em>, those set out in section 99(2) of the LSA.</td>
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<td>174</td>
<td>relevant breach</td>
<td>in Parts 5.A and 5.B means a breach of the Code of Conduct amounting to <em>professional misconduct</em>.</td>
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<td>175</td>
<td>relevant decision</td>
<td>means:</td>
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<td>a)</td>
<td>a decision of a <em>Disciplinary Tribunal</em>; or</td>
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<td></td>
<td>b)</td>
<td>a decision, on review, by the BSB under Part X of the Bar Training Regulations (where the Bar Training Regulations provide for an appeal to the High Court against such a decision), herein a “Qualification Decision”</td>
</tr>
<tr>
<td>176</td>
<td>Relevant State</td>
<td>means a <em>Member State</em>, Iceland, Norway, Liechtenstein or Switzerland</td>
</tr>
<tr>
<td>177</td>
<td>reserved instrument activities</td>
<td>has the same meaning as set out in paragraph 5 of Schedule 2 to the LSA</td>
</tr>
<tr>
<td>178</td>
<td>reserved legal activity</td>
<td>means:</td>
</tr>
<tr>
<td></td>
<td>a)</td>
<td>the exercise of a right of audience;</td>
</tr>
<tr>
<td></td>
<td>b)</td>
<td>the <em>conduct of litigation</em>;</td>
</tr>
<tr>
<td></td>
<td>c)</td>
<td>reserved instrument activities;</td>
</tr>
<tr>
<td></td>
<td>d)</td>
<td><em>probate activities</em>;</td>
</tr>
<tr>
<td></td>
<td>e)</td>
<td><em>notarial activities</em>; and</td>
</tr>
<tr>
<td></td>
<td>f)</td>
<td>the administration of oaths;</td>
</tr>
<tr>
<td></td>
<td>&quot;reserved activities&quot; shall be construed accordingly</td>
<td></td>
</tr>
<tr>
<td>179</td>
<td>Respondent</td>
<td>Means the <em>applicable person</em> who is the subject of: a decision to refer a matter to a <em>Disciplinary Tribunal or Determination by Consent procedure</em> in part 5.A; a disciplinary charge or charges brought before a <em>Disciplinary Tribunal</em> and/or a <em>disqualification</em> application made to the <em>Disciplinary Tribunal</em> in part 5.B; or against whom the <em>Bar Standards Board</em> is considering taking interim action in accordance with section 5.C.</td>
</tr>
<tr>
<td>180</td>
<td>Restriction</td>
<td>in Section 5.D, means a <em>suspension</em> or <em>disqualification</em>, imposed, extended, varied or replaced by a Panel under Regulations E313, E315, E320, E321 and E331 of Section 5.D</td>
</tr>
<tr>
<td>181</td>
<td>review panel</td>
<td>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</td>
</tr>
<tr>
<td>182</td>
<td>right of audience</td>
<td>has the same meaning as set out in paragraph 3 of Schedule 2 to the LSA;</td>
</tr>
<tr>
<td>183</td>
<td>right to conduct litigation</td>
<td>refer to <em>conduct of litigation</em> above</td>
</tr>
<tr>
<td>184</td>
<td>Scope of Practice, Authorisation and Licensing Rules</td>
<td>means the rules set out at Part 3 of this Handbook</td>
</tr>
<tr>
<td>185</td>
<td>selection panel</td>
<td>any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of <em>pupils</em>, assessed mini-pupils, tenants, clerks, or staff, or, in the context of a <em>BSB entity</em>, any panel formally tasked with the final decision on recruitment or selection or promotion (as the case may be) of <em>pupils</em>, assessed mini-pupils, managers or employees of that <em>BSB entity</em></td>
</tr>
<tr>
<td>186</td>
<td>self-employed barrister</td>
<td>means a <em>practising barrister</em> who is <em>self-employed</em></td>
</tr>
<tr>
<td>187</td>
<td>Senior Courts</td>
<td>means the Senior Courts of England and Wales, namely, the Court of Appeal, the High Court of Justice and the Crown Court</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
<td></td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>serious matter</td>
<td>For the purpose of Section 4.B8, a matter is a serious matter if it:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>i. falls within Rule Q104.1 or Rules Q104.2.b to .f; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>ii. in the opinion of the Inn otherwise calls into question whether the Student is a fit and proper person to become a practising barrister.</td>
<td></td>
</tr>
<tr>
<td>solicitor</td>
<td>means a solicitor of the Supreme Court of England and Wales</td>
<td></td>
</tr>
<tr>
<td>specified amount</td>
<td>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 from time to time</td>
<td></td>
</tr>
<tr>
<td>the standard directions</td>
<td>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)</td>
<td></td>
</tr>
<tr>
<td>suitability criteria</td>
<td>means:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>a) in respect of a HOLP, the criteria set out at Rules S104, S105 and S110;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) in respect of a HOFA, the criteria set out at Rules S106, S107 and S110;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>c) in respect of owners, the criteria set out at Rule S108 and S110; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>d) in respect of managers, the criteria set out at Rule S109 and S110</td>
<td></td>
</tr>
<tr>
<td>Supervision Team</td>
<td>means the Supervision Team of the Bar Standards Board</td>
<td></td>
</tr>
<tr>
<td>suspended or suspension</td>
<td>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.D and when exercised in fitness to practise proceedings shall be exercised in accordance with Section 5.E.</td>
<td></td>
</tr>
<tr>
<td>trade association</td>
<td>means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members</td>
<td></td>
</tr>
<tr>
<td>Temporary Qualification Certificate</td>
<td>means a certificate issued by the Bar Standards Board under Rule Q100 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</td>
<td></td>
</tr>
<tr>
<td>Tribunal Appointments Body</td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>unfit to practise</td>
<td>when used to describe a BSB authorised individual means that the individual:</td>
<td></td>
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<tr>
<td></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td>199</td>
<td><strong>university</strong></td>
<td>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</td>
</tr>
<tr>
<td>200</td>
<td><strong>unregistered barrister</strong></td>
<td>means an individual who does not hold a <em>practising</em> certificate but who has been called to the <em>Bar</em> by one of the <em>Inns</em> and has not ceased to be a member of the <em>Bar</em></td>
</tr>
<tr>
<td>201</td>
<td><strong>UK</strong></td>
<td>means United Kingdom</td>
</tr>
<tr>
<td>202</td>
<td><strong>victimisation</strong></td>
<td>has the same meaning as in section 27 of the Equality Act 2010</td>
</tr>
<tr>
<td>203</td>
<td><strong>vocational stage</strong></td>
<td>has the meaning set out in rQ27</td>
</tr>
<tr>
<td>204</td>
<td><strong>workforce</strong></td>
<td>means:</td>
</tr>
<tr>
<td></td>
<td>a) in the case of a <em>Chambers</em>, the staff, <em>barristers</em>, <em>pupils</em> and assessed mini-pupils; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) in the case of a <em>BSB entity</em>, the employees, <em>managers</em>, <em>pupils</em> and assessed mini-pupils</td>
<td></td>
</tr>
<tr>
<td>205</td>
<td><strong>Years’ standing</strong></td>
<td>Means that a <em>barrister</em> shall be treated as being of a particular number of years’ standing if they:</td>
</tr>
<tr>
<td></td>
<td>a) have been entitled to practise and have practised as a <em>Barrister</em> (other than as a <em>pupil</em> who has not completed <em>pupillage</em> in accordance with the <em>Bar Training Regulations</em>) or as a <em>person</em> authorised by another <em>Approved Regulator</em>;</td>
<td></td>
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<tr>
<td></td>
<td>b) have made such <em>practice</em> their primary occupation; and</td>
<td></td>
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<tr>
<td></td>
<td>c) have been entitled to exercise a <em>right of audience</em> before every <em>court</em> in relation to all proceedings,</td>
<td></td>
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<tr>
<td></td>
<td>for a period (which need not be continuous and need not have been as a <em>person</em> authorised by the same <em>Approved Regulator</em>) of at least that number of years.</td>
<td></td>
</tr>
</tbody>
</table>