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G. INTERVENTIONS AND DIVESTITURE
A. INTRODUCTION

1. This Part V prescribes the manner in which the Bar Standards Board shall process all complaints about the conduct of relevant persons.

2. The Bar Standards Board:

   2.1 shall from time to time publish its Enforcement Policy for the purposes of Part V (which will be identified as such); and

   2.2 may also from time to time publish other policies relevant to this Part.
B1 Interpretation

1. In these Complaints Rules:

1.1 *administrative sanction* means the imposition of an administrative warning, fixed penalty fine or other administrative fine up to the prescribed maximum, or any combination of the above;

1.2 *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;

1.3 *a realistic prospect of the disqualification condition being satisfied* 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 *disqualification condition* has been satisfied;

1.4 *Disciplinary Tribunal* means a tribunal convened pursuant to Regulation 25 of the Disciplinary Tribunal Regulations to consider an allegation of *professional misconduct* against a *BSB regulated person* (for which the sanctions may include disqualification, where Part V so provides) and/or to consider an application for disqualification against a non-authorised *employee*;

1.5 *disqualification condition* means that, in their capacity as a *HOLP*, *HOFA*, manager or *employee* of a *BSB authorised body* or as an *employee* of a *BSB authorised person* (as the case may be), the *relevant person* has (intentionally or through neglect):

(a) (if a *BSB regulated person*) breached a relevant duty to which the *BSB regulated person* is subject under this *Handbook* or under applicable rules of another *Approved Regulator*; or
(b) (if either a BSB regulated person or a non-authorised employee of a BSB authorised person) caused, or substantially contributed to, a BSB regulated person breaching a relevant duty to which the BSB regulated person is subject under this Handbook or under applicable rules of another Approved Regulator; and

(c) in either case, that it is undesirable that the relevant person should engage in the relevant activity in respect of which the disqualification order is made;

1.6 disqualification order means an order:

(a) made by the PCC under the Determination by Consent procedure or made by a Disciplinary Tribunal in disposing of a disciplinary charge or disqualification application referred to it by the PCC; and

(b) made on the basis that the disqualification condition is satisfied in respect of the relevant person who is the subject of the disqualification order; and

(c) either indefinitely or for a stated period, disqualifying a relevant person from one or more relevant activities and prohibiting any BSB authorised person from appointing them or directly or indirectly employing them in respect of such relevant activities, namely acting as a HOLP, HOFA, manager or employee of a BSB authorised body or as an employee of a BSB authorised individual (as the case may be);

1.7 Enforcement Policy means the policy from time to time published by the Bar Standards Board pursuant to paragraph 2.1 of Section A to this Part V, 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 this Part V;

1.8 professional misconduct means an alleged breach of this Handbook by a BSB regulated person which the PCC does not either dismiss or consider appropriate for disposal by way of administrative sanctions, pursuant to paragraph 33.1 below;

1.9 relevant person means:

(a) persons who were BSB regulated persons at the time of the conduct complained of (including, for the purposes of Part V 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); and

(b) *non-authorised persons* who are directly or indirectly employed by a *BSB authorised person* or who were so employed at the time of the conduct complained of (indirect employment, for the purposes of this Section B, means employment by a non-authorised person that in turn is owned or controlled by a *BSB authorised person*).

2. If a *barrister* is a member of more than one Inn, references in these Rules to his Inn shall mean the Inn by which he was called, unless he is a Bencher in which case his Inn shall mean the Inn of which he is a Bencher.

3. The *PCC* and the Chairman of the *PCC* shall each have the power to authorise any person, group or body to fulfill any function or exercise any power given to them by these *Complaints Rules*. Any authorisations given under this paragraph 3 must be in writing and may be both retrospective and prospective, and both general and for a particular purpose.

4. Save in respect of the matters dealt with at paragraphs 27.2 and 27.4 below (time limits for making a complaint), the *PCC*, the Chairman of the *PCC*, or any person authorised under paragraph 3 above, shall have the power to extend any time limits prescribed by these *Complaints Rules*, in his absolute discretion, whenever it appears to be appropriate to do so.

**B2 Powers and Functions of the PCC**

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

6. The powers of the *PCC* shall be as set out in these *Enforcement Rules*, and shall include (but not be limited to) the power:

6.1 to consider *complaints* made by persons other than the *Bar Standards Board*;
6.2 to raise complaints on behalf of the Bar Standards Board, and to withdraw such complaints;

6.3 to determine whether any complaint:

(a) discloses a potential breach of the Handbook; and/or
(b) discloses a potential case of professional misconduct; and/or
(c) potentially satisfies the disqualification condition,

and if so to deal with it in accordance with these Complaints Rules;

6.4 to direct the investigation of complaints;

6.5 to seek, in appropriate cases, to resolve complaints using the Determination by Consent procedure;

6.6 to bring and prosecute charges of professional misconduct or make an application for disqualification before Disciplinary Tribunals (as provided by the Disciplinary Tribunals Regulations);

6.7 to seek an interim suspension or disqualification order in accordance with Section E of Part V of this Handbook.

6.8 to refer to Disciplinary Tribunals any legal aid complaint relating to the conduct of a BSB regulated person and to be responsible for prosecuting any such charges or legal aid complaints before such Disciplinary Tribunals;

6.9 to take such other actions in relation to complaints or infringements of the Handbook as are permitted by these Complaints Rules;

6.10 to impose, or direct the imposition, of an administrative sanction in accordance with the provisions of paragraph 33.1(c) below;

6.11 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;
6.12 to make rulings on matters of professional conduct in accordance with the *Determination by Consent procedure*; and

6.13 to exercise the power of the *Bar Standards Board* under Part 1 of the *Handbook* to grant waivers of the provisions of the *Handbook* either generally or in particular cases.

**B3 Procedure for dealing with complaints - general**

7. In determining which of its powers under this Section B to use the *PCC* will take into account all the circumstances, including:

7.1 the seriousness of the *complaint*;

7.2 the complexity of the *complaint*;

7.3 the *Bar Standards Board’s enforcement policy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant;

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

8. 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.

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

10. If at any time the *PCC* decides in accordance with these *Complaints Rules*:

10.1 to refer a *complaint* to another person or body for consideration; or

10.2 to dismiss or take no further action on a *complaint*; or

10.3 to postpone consideration of a *complaint* or part of it;
it shall give written reasons for such decision, and provide such reasons to the relevant person against whom the complaint was made and (where the complaint was made by a person other than the Bar Standards Board) the complainant.

11. Any complaint raised by the Bar Standards Board itself shall be considered by the PCC in accordance with paragraphs 30 and 31 and following below.

12. Any complaint other than a complaint raised by the Bar Standards Board itself shall be considered by the PCC in accordance with paragraphs 13 to 29 below.

**B4 Procedure for dealing with complaints by persons other than the Bar Standards Board**

*Referral of complaints to other persons*

13. On receipt of a complaint, the PCC shall first consider whether it is appropriate to refer the complaint to another person, taking into account the factors set out in paragraphs 15 to 26 below. If at any time the PCC decides to refer a complaint to another person or body for consideration it shall give written reasons for such decision, and provide such reasons to the relevant person against whom the complaint was made and (where the complaint was made by a person other than the Bar Standards Board) the complainant.

14. The PCC’s decision under paragraph 13 is final and no party shall have the right to appeal against it.

*Reference to Legal Ombudsman*

15. If a complaint is made by or on behalf of a client of a BSB regulated person (excluding for the purposes of this paragraph 15 only, unregistered barristers) against that BSB regulated person (or, in the case of a BSB authorised body, such complaint is made against any individual working as an employee or manager of such BSB authorised body), the PCC shall refer such complaint without further consideration to the Legal Ombudsman, and shall 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.

16. 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.

17. For the avoidance of doubt, such referral shall not prevent the immediate operation of the *Interim Suspension and Disqualification Rules* or the *Fitness to Practise Rules*, where appropriate.

18. On a complaint being referred, or referred back, to the *Bar Standards Board* by the *Legal Ombudsman*, paragraphs 27 and following below shall apply.

**Reference to Chambers/BSB authorised bodies**

19. If it appears to the *PCC* that a complaint against a relevant person (not being a complaint made by or on behalf of BSB regulated person's client against that BSB regulated person) may appropriately be resolved by:

19.1 *Chambers* (where the complaint is against a self-employed barrister who is a member of, or other relevant person who is working at, such Chambers at the relevant time); or

19.2 a *BSB authorised body* (where the complaint is against such BSB authorised body or the complaint is against a relevant person acting in their capacity as a manager or employee of such BSB authorised body at the relevant time),

the *PCC* may refer the complaint to the Chambers or BSB authorised body 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 paragraph 24 shall apply.

20. When deciding whether to refer a complaint in accordance with paragraph 18 above, the *PCC* shall take into account all the circumstances, including the factors referred to at paragraph 7 above and the relationship (if any) between the complainant and the relevant Chambers/BSB authorised body and whether such relationship is continuing.

21. The *PCC* shall consider whether the complaint should be dismissed on the basis that it has not been made within the period identified in paragraph 27.2 below prior to deciding whether to refer the complaint to the relevant Chambers/BSB authorised body in accordance with paragraph 19 above.
22. Where a complaint is referred to the relevant Chambers/BSB authorised body in accordance with paragraph 19 above, the PCC will send any information held by it relating to the complaint to the head of Chambers (in the case of a referral to Chambers) or to the HOLP (in the case of a referral to a BSB authorised body) or to such other individual at the Chambers/BSB authorised body as appears appropriate in all the circumstances.

23. Following a referral to a Chambers/BSB authorised body in accordance with paragraph 19 above, the PCC shall inform the complainant of the complainant's rights under paragraph 23 below.

24. If:

24.1 the PCC considers that progress made by the Chambers/BSB authorised body in investigating and resolving the complaint, or the outcome of such investigation, is unsatisfactory; or

24.2 a complainant informs the PCC that he is dissatisfied with the progress or outcome of the Chambers/BSB authorised body's investigation, giving reasons for such dissatisfaction,

then the PCC shall consider the complaint in accordance with paragraph 27 and following below.

Reference to any other person

25. If it appears to the PCC that a complaint received in respect of a relevant 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 without further consideration to such other body. If, having referred a complaint to another body under this paragraph 24, 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 (or such part or parts of the complaint as the PCC considers fit) in accordance with paragraph 13 above and/or paragraph 27 and following below.

Reference where BSB regulated individual acting in judicial or quasi-judicial capacity
26. If it appears to the PCC that the complaint arises out of a relevant person’s actions in a part-time or temporary judicial or quasi-judicial capacity, it shall act as follows:

26.1 If it appears to the PCC that the complaint would otherwise fall to be dismissed under Complaints Rules, the PCC shall dismiss it;

26.2 If it appears to the PCC that the complaint would otherwise not fall to be dismissed, the PCC shall refer the complaint without further consideration to the person or body responsible for the appointment of the relevant person to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other person or body as appropriate) ("the appointing body"), requesting the appointing body to notify the PCC when the complaint has been dealt with and of any action taken. Where the appointing body is a person other than the Lord Chancellor or a Minister of the Crown and where the PCC considers it inappropriate to refer the complaint to the appointing body, or where the appointing body refuses to deal with a complaint, the PCC shall consider the complaint and, subject to 25.4 below, direct it to be proceeded with in accordance with paragraphs 30 and 31 and following below.

26.3 If the appointing body, having dealt with a complaint, believes that it may be appropriate for further consideration by the Bar Standards Board, the appointing body may, subject to 25.4 below, refer the matter back to the Bar Standards Board and, following such referral, the PCC may reconsider the complaint and may, if it sees fit, direct it to be proceeded with in accordance with paragraphs 30 and 31 and following below.

26.4 No such reference to the Bar Standards Board as is mentioned in 25.3 above by the appointing body shall be acted upon by the PCC, nor shall the PCC exercise the powers under the last sentence of paragraph 25.2 above, in respect of any part of the complaint relating to anything said or done by the BSB regulated individual in the exercise of his judicial functions or affecting the independence of the BSB regulated person in his judicial or quasi-judicial capacity.

27. If it appears to the PCC that the complaint relates to the conduct of a BSB regulated individual 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 shall inform the complainant that his complaint should be
directed to the Lord Chancellor or to such other person or body as may hereafter assume the responsibilities of the Lord Chancellor in this regard.

B5  PCC’s powers before investigation of complaints

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

27.1 whether the complaint is made in respect of a relevant person; and

27.2 whether the complaint has been made:

   (a) within twelve months of the conduct of which complaint is made, or

   (b) where a complainant has indicated to the PCC his dissatisfaction with the outcome of a Chambers/BSB authorised body’s investigation in accordance with paragraph 18 above, within three months of the conclusion of the investigation by Chambers/BSB authorised body, whichever is the later; and

   (c) in either case, where the conduct of which complaint is made is (or was) ongoing or consists of a series of related acts or omissions, the conduct shall for the purposes of this paragraph be treated as having taken place at the time when the ongoing conduct ceased or at the time of the last of such acts or omissions; and

27.3 Where the PCC determines that the complaint does not relate to a relevant person or relates to a non-authorised person in circumstances where the nature of the complaint is unlikely to satisfy the disqualification condition, then it shall dismiss the complaint.

27.4 Where the PCC determines that the complaint has not been made within the period identified in paragraph 27.2 above it shall dismiss the complaint unless it decides that further consideration of the complaint is justified in the public interest, having regard to the regulatory objectives.
28. Where the PCC has not dismissed a complaint in accordance with paragraph 27.3 or 27.4 above, the PCC shall next consider whether further consideration of the complaint is justified. If the PCC considers that:

28.1 the complaint for any reason obviously lacks substance; or

28.2 the complaint cannot be properly or fairly investigated, or the relevant person is for any reason unable fairly to respond to it; or

28.3 the complaint or its consequences are obviously insufficiently serious to justify further action; or

28.4 for any other reason whatsoever the complaint is not apt for further consideration,

then the PCC shall dismiss the complaint and give written reasons for its decision to dismiss the complaint under this paragraph 28 to the complainant.

29. If a complaint is not dismissed by the PCC following its initial consideration, it shall be investigated and dealt with in the manner set out in paragraph 30 and following below and the complainant shall be informed, in writing, that such investigation is to take place.

B6 Investigation of complaints

30. The investigation of complaints shall be conducted by the Professional Conduct Department under the direction of the PCC.

31. Following the completion of any investigation into a complaint, the PCC shall exercise the powers given to it by paragraph 32 and following below.

B7 Additional potential breaches of the Handbook

32. 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").

32.1 In such event, unless the new matter falls within paragraph 32.2 below:

(a) the new complaint shall be investigated in the manner set out in paragraph 30 and following above;

(b) the PCC shall not proceed to 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 relevant person has been given the opportunity to comment in writing on the matter complained of in the new complaint. The PCC shall take any comments made by the relevant person into consideration when it determines 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;

(c) the PCC may defer further consideration of the original complaint pending the results of any investigation of the new complaint.

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

B8 PCC consideration of complaints

33. Following the completion of any investigation, the PCC shall consider the complaint, together with the results of any investigation thereof, and may conclude (having regard to the enforcement policy and any other published Bar Standards Board policy that appears to the PCC to be relevant)

33.1 in respect of complaints made against a relevant person:

(a) that the conduct did not constitute a breach of the Handbook, in which case the PCC shall dismiss the complaint or determine that no further action should be taken in respect of it;
(b) that the conduct did constitute a breach of the Handbook but that in all the circumstances the breach should appropriately be dealt with by way of dismissal or no further action;

(c) that the conduct did constitute a breach of the Handbook and that such breach should appropriately be dealt with by the way of administrative sanction.

(d) that the conduct did constitute a breach of the Handbook and is potentially professional misconduct and/or potentially satisfies the disqualification condition and that an administrative sanction pursuant to 33.1(b) is not appropriate in all the circumstances.

33.2 Where the PCC has concluded that 33.1(d) is the appropriate course of action it shall refer the complaint to a Disciplinary Tribunal, provided that no complaint shall be referred unless the PCC is satisfied that:

(a) there is a realistic prospect of a finding of professional misconduct being made or there is a realistic prospect of the disqualification condition being satisfied; and

(b) that it is in the public interest, having regard to the regulatory objectives to pursue disciplinary proceedings.

33.3 For the avoidance of doubt, where the relevant person is an non-authorised individual the imposition of an administrative sanction or referral to a Disciplinary Tribunal on charges of professional misconduct will not be available to the PCC. The PCC may only decide to dismiss, take no further action or make an application to the Disciplinary Tribunal that the non-authorised individual be subject to a disqualification order.

34. The PCC shall not conclude that there is a realistic prospect of a finding of professional misconduct being made or that there is a realistic prospect of the disqualification condition being satisfied against a relevant person on the basis of any allegation by a complainant to which the relevant person has not had a reasonable opportunity to respond in writing.
35. 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 defendant, instead direct that the complaint be subject to the Determination by Consent procedure (under paragraph 51 and following below).

36. If the subject matter of the complaint against a BSB regulated person involves a conviction for an offence of dishonesty or deception the PCC shall direct that the complaint should form the subject matter of a charge before a Disciplinary Tribunal.

37. Where the BSB regulated person referred to a Disciplinary Tribunal is a registered European Lawyer, the PCD shall:

   (a) Inform the professional body of which the register European lawyer is a member in his home Member state;

   (b) 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

   (c) Inform the professional body of findings made by the Disciplinary Tribunal, the PCC or any other Bar Standards Board Panel.

B9 Dismiss or no further action

38. Where a decision to dismiss a complaint is being taken at a meeting of the PCC and not by some other person, group or body authorised in accordance with paragraph 3 of these Rules, the majority of the lay members present at the meeting must consent to such dismissal.

39. Where the PCC decides to take no further action on a complaint, or dismisses a complaint, but the BSB regulated 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:

   39.1 draw to the BSB regulated person’s attention in writing the PCC’s concerns;
39.2 advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the PCC or on some other person nominated by the PCC, to receive such advice.

40. If, when dismissing or deciding to take no further action on a complaint in respect of a barrister, the PCC nonetheless considers that the circumstances of the complaint are relevant to the barrister’s position as a pupil supervisor, it may notify the barrister’s Inn of its concern in such manner as it sees fit.

B10 Administrative fines and warnings

41. Pursuant to 33.1(c) above, the PCC may impose an administrative sanction on a BSB regulated person only where:

41.1 a breach of the Handbook by that person is proved on a balance of probability; and

41.2 the PCC considers that imposition of an administrative sanction is a proportionate and sufficient outcome in the public interest.

42. In determining the level of administrative sanction to be imposed, the PCC shall have due regard to the enforcement policy or other such guidance as may be published by the Bar Standards Board or the Council of the Inns of Court from time to time.

43. The maximum level of a fine capable of being imposed by the PCC under paragraph 40 is:

43.1 £3,000 where the fine is to be imposed on a BSB regulated individual; and

43.2 £5,000 where the fine is to be imposed on Chambers or a BSB authorised body.

44. Any decision by the PCC to impose an administrative fine or warning will be formally recorded but will not be made public.

B11 BSB regulated person’s right to appeal from an administrative sanction

45. A BSB regulated person has a right to appeal from any decision of the PCC to impose an administrative sanction in accordance with these Complaints Rules to an Appeal Panel constituted under the auspices of the Council of the Inns of Court in the same manner as a
three-person panel constituted under Regulation [2(3)] of the Disciplinary Tribunal Regulations.

46. An appeal shall be made by the BSB regulated person sending to the Chairman of the PCC a notice identifying the administrative fine or warning appealed against, the decision the BSB regulated person contends for, the grounds of such appeal and a statement of whether the BSB regulated person requires his appeal to be disposed of at an oral hearing. If the BSB regulated person does not expressly request an oral hearing, the appeal shall be dealt with by a review of the papers. The appeal shall be by way of a review of the original decision.

47. The notice shall 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.

48. Where the appeal is to be dealt with at an oral hearing then:

48.1 at least 5 working days before the time set for the appeal, the PCC will provide each member of the Appeal Panel and the BSB regulated person with a paginated bundle of the correspondence and other documents on its files relating to the imposition of the administrative sanction; and

48.2 at the oral hearing, the BSB regulated person may be represented.

49. The Appeal Panel shall decide whether to set aside or vary the administrative sanction.

50. If the Appeal Panel shall allow the appeal in whole or in part, the Appeal Panel may direct that any administrative fine or appeal fee already paid by the BSB regulated person be refunded either in whole or in part: but the Appeal Panel shall have no power to award costs.

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

B11 Determination by consent
52. A complaint which the PCC is otherwise intending to refer to the Disciplinary Tribunal in accordance with paragraph 33.2 may, with the consent of the relevant person against whom the complaint is made, be finally determined by the PCC. This is referred to as the “Determination by Consent procedure”.

53. The circumstances in which the Determination by Consent procedure is to be used, and how it is to be used, are set out below.

54. The PCC shall, 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:

54.1 the relevant person submits to the jurisdiction of the PCC; and

54.2 if the PCC considers that:

(a) where relevant, 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 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 no further action being taken on the complaint or 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:

(i) the relevant person’s previous disciplinary history, and

(ii) any deferred sentences which would be activated if the breach or breaches were proved,

do not appear to be such as to warrant:
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(iii) in the case of a barrister, a period of suspension from practice or disbarment;

(iv) in the case of a BSB authorised body, suspension or revocation of its authorisation or licence;

(v) in the case of a non-BSB authorised individual, referral to that individual's Approved Regulator for that regulator to consider whether to suspend or revoke their authorisation;

(vi) a sanction other than those set out in paragraph 61 below.

55. The Determination by Consent procedure shall be conducted in accordance with such procedures as the PCC may prescribe from time to time.

56. The PCC may terminate the Determination by Consent procedure at any time if it no longer considers that the requirements of paragraph 54 are satisfied, or for any other good reason.

57. If the Determination by Consent procedure terminates other than by a finding and sentence to which the relevant person consents, then the complaint shall be referred to a full Disciplinary Tribunal.

58. The PCC shall publish any finding and sentence resulting from the Determination by Consent procedure to the same extent as such publication would have taken place following a finding and sentence resulting from a Disciplinary Tribunal, as provided for in the Disciplinary Tribunal Regulations.

59. Once accepted by the relevant person no appeal may be made against a Determination by Consent, whether by the BSB regulated person or by the complainant (if applicable).

60. In determining any sanction to be imposed under the Determination by Consent procedure, the PCC shall have regard to the relevant enforcement policy and any sentencing policy or guidelines issued by the Bar Standards Board and/or the Council of the Inns of Court from time to time.

61. A relevant person in respect of whom the disqualification condition has been found to be satisfied under the Determination by Consent procedure may be made subject to a disqualification order, and
62. A *relevant person* against whom a charge of *professional misconduct* has been found proved under the *Determination by Consent procedure* may be subject to the following sanctions:

62.1 in the case of a *BSB regulated person*;

(a) ordered to pay a fine to the *Bar Standards Board* (in the case of a *BSB licensed body*, a fine of up to £250,000,000 - in the case of a manager or authorised *employee* of a *BSB licensed body*, a fine of up to £50,000,000 in the case of any other *BSB regulated person*, a fine of up to £1,000,000);

(b) where the *relevant person* is a *BSB authorised body* or a *BSB authorised individual*, impose any conditions on the licence or authorisation (as appropriate);

(c) reprimanded by the *PCC* or ordered to attend on a nominated person to be reprimanded;

(d) given advice by the *PCC* as to his future conduct or ordered to attend on a nominated person to be given advice as to his future conduct;

62.2 Further to the sanctions available under 62.1, in the case of a *BSB regulated individual*, ordered to complete (or 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*;

63. Where the *PCC* has imposed a fine, the confirmation letter to the *relevant person* shall indicate that the *relevant person* must pay the fine within 28 days, subject to any representations made regarding the need for extra time to pay. Any application to pay a fine in installments shall be left to the discretion of the Chairman of the *PCC*.

64. Where a sanction imposed by the *PCC* includes a fine, that element of the sentence may be directed by the *PCC* to have deferred effect. A sentence may have deferred effect for a minimum of six months or a maximum of two years (the “*period of deferral*”).

64.1 A deferred sentence shall be activated where the *relevant person* is subsequently found (whether during the *period of deferral* or afterwards) to have committed a
Relevant Breach during the period of deferral. For the purpose of this regulation, a Relevant Breach would be a breach of this Handbook amounting to professional misconduct.

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

64.3 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 paragraph 60 above.

65. The PCC shall have no power to award costs when dealing with a complaint under the Determination by Consent procedure.

B12 Disciplinary charges

66. If the PCC directs under paragraph 33.1(d) 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 paragraphs shall have effect.

67. 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 shall also direct whether a three-person panel or a five-person panel is to be constituted.

68. Where paragraph 36 above applies (complaint involving conviction for dishonesty or deception), the PCC shall direct that a five-person panel is to be constituted.

69. 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 sentence which it considers is likely to be imposed on the relevant person if the charge or application is proved, having regard to:

69.1 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
69.2 the previous disciplinary record of the relevant person; and

69.3 any deferred sentence which would be activated if the relevant person were to be found guilty of the charges alleged.

70. The PCC:

70.1 shall direct that a five-person panel is to be constituted if the PCC considers that:

(a) the BSB authorised individual would be likely, to be disbarred or suspended from practice for more than three months; or

(b) that the relevant person would be likely to be disqualified indefinitely or for a defined term of more than three months; or

(c) that the BSB authorised body would be likely to have its authorisation or licence revoked or suspended for a period of more than three months;

70.2 may constitute 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 shall direct that a three-person panel is to be constituted.

71. The PCC shall inform the BSB regulated person and the complainant (if any) of the decision taken under this paragraph. The decision taken by the PCC under this paragraph shall not be subject to any appeal.

72. 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 Chairman of the Panel, giving reasons for any such recommendation. The PCC shall have power to:

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

72.2 refer any additional charges or disqualification applications relating to the same regulated person to the Disciplinary Tribunal that 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.

73. The PCC:

73.1 may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions are 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 needs to be resolved urgently; or

(d) there is some other good reason for expedition; and

73.2 shall direct that the prosecution of the charges be expedited if the defendant has requested an expedited hearing under the Interim Suspension and Disqualification Rules.

74. When the PCC has directed that a complaint shall form the subject matter of a charge or application before a Disciplinary Tribunal, the PCC shall be responsible for bringing the charge or application on behalf of the Bar Standards Board and prosecuting such charge before such Disciplinary Tribunal. In this regard:

74.1 the PCC may arrange for the appointment of counsel to settle the charge and to present the case before the Disciplinary Tribunal;

74.2 any charges shall be brought in the name and on behalf of the Bar Standards Board.

B13 Reopening or reconsidering complaints which have been disposed of

75. The PCC may reopen or reconsider a complaint which has been disposed of, unless it has been disposed of by a Disciplinary Tribunal
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75.1 where new evidence becomes available to the PCC which leads it to conclude that it should do so, or

75.2 for some other good reason.

76. Following such reopening or reconsideration, the PCC may take any further or different action it thinks fit, as if the former 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 defendant or the application has been served on the Respondent (as the case may be) then the PCC's actions shall be confined to instructing counsel for the Bar Standards Board to:

76.1 offer no evidence on a charge or application, or

76.2 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.

B14 Confidentiality

77. The Bar Standards Board shall respect the confidentiality of complaints. The Bar Standards Board shall not disclose the fact that a complaint has been made or details of the complaint or its disposal save as specified in this paragraph or otherwise required by law.

78. Disclosure may be made:

78.1 for the purpose of investigating the complaint; or

78.2 for the purpose of keeping the complainant and the relevant person informed of the progress of the complaint; or

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

78.4 where the complainant and the relevant person consent; or
78.5 for the purposes of paragraph 37 of these Complaints Rules; or

78.6 where the publication of a finding is required by the provisions of the Disciplinary Tribunals Regulations or the Disqualification Pane Regulations; or

78.7 subject to paragraph 79 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 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

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

79. Where a disclosure is made pursuant to paragraph 78.7 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.

80. Where any finding of professional misconduct has been made (whether by a Disciplinary Tribunal, the Visitors, or the PCC in the course of a Determination by Consent), the Bar Standards Board shall publish on the Bar Standards Board's website the name of the BSB regulated person against whom that finding was made, the nature of that finding, and the sentence imposed and any other information about the finding and sentencing that the Bar Standards Board considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.

81. Where any disqualification order has been made (whether by a Disciplinary Tribunal, the Visitors or by consent), the Bar Standards Board shall publish on the Bar Standards Board's website the name of the relevant person against whom the order has been made and the terms thereof.

82. Where any interim suspension or interim disqualification order has been made or interim conditions imposed, the Bar Standards Board shall publish on the Bar Standards Board's website the name of the relevant person against whom the order has been made and the terms thereof.
Commencement

83. This Section B of Part V shall come into force in accordance with the provisions of Part I of this Handbook.