Part 5: Enforcement Regulations

Part 5 - A. The Enforcement Decision Regulations 2019 Regulations

Regulation E1 Regulations

rE1

These regulations set out the powers and functions in relation to: the assessment of reports and the investigation of allegations which may indicate a potential breach of the Handbook or require regulatory action; the decisions available to the Commissioner and an Independent Decision-Making Panel at the conclusion of an investigation; the reconsideration of allegations that have been disposed of; and the disclosure of reports or allegations by the Bar Standards Board. These regulations also set out the operation of the administrative sanction appeal procedure and the determination by consent procedure

Part 5 - A1. The assessment of reports Regulations

Powers of the Commissioner in relation to the assessment of reports

rE2

The powers of the Commissioner include (but are not limited to):

.1 gathering information relating to applicable persons from any source for the purposes of assessing whether there has been a potential breach of the Handbook; and

.2 exercising the power under rE12 to determine that a report or part of a report may be treated as an allegation.

rE3

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

Reference to the Legal Ombudsman

rE4

If a report is received by the Bar Standards Board from a person entitled to complain to the Legal Ombudsman about the subject of the report, the Commissioner must refer the report without further consideration to the Legal Ombudsman or signpost the provider of the report to the Legal Ombudsman.

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

rE5

If it appears to the Commissioner that a report relates to an applicable person's actions in a part-time or temporary judicial or quasi-judicial capacity, the Commissioner must refer the report to the person or body responsible for the appointment of the applicable person to the judicial or quasi-judicial office concerned or another person or body responsible for considering such reports ("the appropriate body"), where it appears that the appropriate body should consider the report, requesting notification of the outcome of the appropriate body's consideration as soon as it has been dealt with, subject to rE6 to rE8 below.

rE6

Where:

.1 the appropriate body refuses to deal with the report; or

.2 it appears there is no appropriate body

the Commissioner may consider the report in accordance with the provisions of this Section 5.A.

rE7

When the appropriate body has dealt with the report, or the Commissioner considers that the appropriate body has not dealt with it within a reasonable

time or fully or satisfactorily, the Commissioner may consider the report in accordance with the provisions of this Section 5.A. and may consider any finding made and any action taken by the appropriate body.

rE8

The Commissioner must not consider or take action in relation to a report arising in substance from dissatisfaction or disagreement with anything decided, done or said by the applicable person in the proper exercise of their judicial or quasi-judicial functions.

Reference to the Lord Chancellor or other appropriate body

rE9

If it appears to the Commissioner that the report relates to the conduct of an applicable person who, since the events giving rise to the report took place, has been appointed to and continues to hold full-time judicial office and has ceased to practise, the Commissioner shall not consider the report further and must direct the person from whom the report is received to the Lord Chancellor or the Judicial Conduct Investigations Office or to such other person or appropriate body with responsibility for addressing complaints about judges.

Reference to any other person

rE10

If it appears to the Commissioner that a report in respect of an applicable person might more appropriately be dealt with by another body (e.g. an Inn, Circuit, employer, a complaint handling body or any other professional or regulatory body), the Commissioner may refer the report to such other body.

rE11

If, having referred a report to another body under rE10, the Commissioner subsequently considers that the report has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the Commissioner may choose to exercise the powers set out in rE2.1 and rE2.2 above.

Initial assessment of reports

rE12

Where the Commissioner, having regard to rE13, considers that a report:

.1 discloses a potential breach of the Handbook by an applicable person; and/or

.2 potentially satisfies the disqualification condition

the Commissioner may treat the report as an allegation.

rE13

In determining whether to treat a report as an allegation under rE12 the Commissioner must have regard to:

.1 whether the conduct disclosed in the report or its consequences presents sufficient risk to the regulatory objectives to justify further action;

.2 whether the conduct disclosed in the report can be properly and fairly investigated; and

.3 whether the conduct disclosed in the report could not more appropriately be dealt with under one or more of the provisions set out at rE4 to rE11 above.

Part 5 - A2. Investigation of allegations

Regulations

Powers of the Commissioner in relation to the investigation of allegations

rE14

The powers of the Commissioner include (but are not limited to) the power at any time:

.1 to carry out the investigation of allegations as appropriate; and

.2 to withdraw any allegation and treat it as if a decision under rE12 had not been made.

Investigating allegations

rE15

The Commissioner must not conclude any investigation of an allegation without taking reasonable steps to ensure that the applicable person has been informed of the allegation and given a reasonable opportunity to comment on the allegation.

rE16

If a new report comes to light during an investigation of an allegation that meets the criteria of rE12, it may be treated as a new allegation and investigated in accordance with the provisions of Section 5.A.

rE17

The Commissioner may defer further consideration of the original allegation until a new allegation has been investigated.

rE18

No further investigation or opportunity to respond is required where the subject matter of a new allegation has already been investigated by the Commissioner and the applicable person has already been given an opportunity to comment on it during the original investigation.

Part 5 - A3. Possible outcomes of the investigation of an allegation Regulations

Powers of the Commissioner in relation to the conclusion of investigations

rE19

At the conclusion of an investigation of an allegation the Commissioner has the power to decide:

.1 that the conduct alleged did not constitute a breach of the Handbook, or that there was insufficient evidence of a breach of the Handbook (on the civil standard of proof);

.2 that the conduct alleged did constitute a breach of the Handbook (on the civil standard of proof) but that, in all the circumstances, no enforcement action should be taken in respect of the breach;

.3 that the conduct alleged did constitute a breach of the Handbook (on the civil standard of proof) and that the breach should be dealt with by the imposition of an administrative sanction;

.4 that the conduct alleged may constitute a breach of the Handbook and, if the breach were to be proved, that an administrative sanction under rE19.3 would not be appropriate in all the circumstances, and that the subject matter of the allegation against an applicable person involves:

.a a conviction for an offence of dishonesty or deception; or

.b a conviction for an offence under Section 4, Section 5 or Section 5A Road Traffic Act 1988 (Driving or being in charge of a motor vehicle with alcohol concentration/concentration of a controlled drug above prescribed limit); or

.c a breach of Part 3 or 4 of the Handbook; or

.d any failure to pay an administrative fine within the relevant time; or

.e a failure to comply with any requirements of a sanction imposed following Disciplinary Action;

in which case the allegation may form the subject matter of a referral to Disciplinary Action; or

.5 to refer an allegation to an Independent Decision-Making Panel for a decision.

rE20

In conjunction with a decision under rE19, or following a recommendation from an Independent Decision-Making Panel under rE23, the Commissioner may refer any allegation for supervisory action.

rE21

In conjunction with a decision under rE19.1 or rE19.2 the Commissioner may issue the applicable person with advice.

Powers of an Independent Decision-Making Panel in relation to allegations referred to it

rE22

Where an allegation has been referred to an Independent Decision-Making Panel under rE19.5 the Independent Decision-Making Panel has the power to decide:

.1 that, on the evidence before it, the conduct alleged did not constitute a breach of the Handbook, or that there was insufficient evidence of a breach of the Handbook (on the civil standard of proof); or

.2 that, on the evidence before it, the conduct alleged did constitute a breach of the Handbook (on the civil standard of proof) but that, in all the circumstances, no enforcement action should be taken in respect of the breach; or

.3 that, on the evidence before it, the conduct alleged did constitute a breach of the Handbook (on the civil standard of proof) and that the breach should be dealt with by an administrative sanction; or

.4 that

.a there is a realistic prospect of a finding of professional misconduct being made or there is a realistic prospect of the disqualification condition being satisfied, and

.b having regard to the regulatory objectives, it is in the public interest to pursue Disciplinary Action

in which case the allegation must form the subject matter of Disciplinary Action.

rE23

In conjunction with a decision under rE22 the Independent Decision-Making Panel may recommend the matter be referred for supervisory action.

rE24

In conjunction with a decision under rE22.1 or rE22.2 the Independent Decision-Making Panel may issue the applicable person with advice.

Independent Decision-Making Panel and Commissioner powers/requirements

rE25

In exercising its powers under Section 5.A, the Commissioner or an Independent Decision-Making Panel must have regard to the Bar Standards Board enforcement strategy and any published Bar Standards Board policy and guidance that appear to be relevant.

Administrative sanction

rE26

Pursuant to rE19.3 and rE22.3 above, the Commissioner or an Independent Decision-Making Panel may impose an administrative sanction on an applicable person where there is sufficient evidence on the balance of probabilities of a breach of the Handbook by that applicable person.

rE27

The Commissioner or an Independent Decision-Making Panel may only impose an administrative sanction on an applicable person pursuant to rE26 where:

.1 the Commissioner or an Independent Decision-Making Panel considers that to impose an administrative sanction is proportionate and sufficient in the public interest; or

.2 where the matter falls to be considered under rE209 of Section 5.B of the Handbook.

rE28

In determining the level of administrative sanction to be imposed, the Commissioner or an Independent Decision-Making Panel must have regard to any published Bar Standards Board policy that appears to the Commissioner or an Independent Decision-Making Panel to be relevant.

rE29

The maximum level of a fine which can be imposed by the Commissioner or an Independent Decision-Making Panel under rE19.3 and rE22.3 is:

.1 £1,000 (one thousand pounds) where the fine is to be imposed on an applicable person who is not a BSB entity; or

.2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on a BSB entity.

rE30

Any decision to impose an administrative sanction will be recorded and may, where appropriate, be considered for continued monitoring and supervision but will not be disclosed to any third parties except in accordance with Section A.7 of these regulations.

rE31

The applicable person may appeal a decision of the Commissioner or an Independent Decision-Making Panel to impose an administrative sanction in accordance with Section 5.A of the Handbook

rE32

In the case of a non-authorised individual (other than an unregistered barrister, a manager of a BSB entity or a registered European lawyer who does not have a current practising certificate) who at the time of the alleged conduct was an employee of a BSB authorised person the Commissioner or an Independent Decision-Making Panel may only:

.1 decide that no further action should be taken in relation to the allegation; or

.2 make an application to the Disciplinary Tribunal that the non-authorised individual be subject to a disqualification order.

Part 5 - A4. Professional misconduct proceedings Regulations

Disciplinary Action

rE33

Where rE19.4 or rE22.4 is applicable, the allegation shall be referred to Disciplinary Action only where the Commissioner or an Independent Decision-Making Panel is satisfied that:

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

.2 having regard to the regulatory objectives, it is in the public interest to pursue Disciplinary Action.

rE34

Where the Commissioner or an Independent Decision-Making Panel is satisfied that the requirements of rE33 are met, an allegation which the Commissioner or an Independent Decision-Making Panel is otherwise intending to refer to the Disciplinary Tribunal may, with the consent of the applicable person against whom the allegation is made, be finally determined by an Independent Decision-Making Panel. This is referred to as the " determination by consent procedure".

rE35

The Commissioner or an Independent Decision-Making Panel must, in deciding whether to refer an allegation to the determination by consent procedure, consider all the circumstances. However, the Commissioner or an Independent Decision-Making Panel may only make the allegation subject to the determination by consent procedure if:

.1 the applicable person submits to the jurisdiction of an Independent Decision-Making Panel; and

.2 the Commissioner or an Independent Decision-Making Panel considers that:

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

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

.c the potential professional misconduct or disqualification condition, if proved, combined with the applicable person's previous disciplinary history, does not appear to be such as to warrant a period of suspension or disbarment, the withdrawal of an authorisation or licence (as appropriate) or the imposition of a disqualification order (or equivalent by another Approved Regulator).

rE36

Disciplinary Action will be conducted in accordance with such procedures as the Bar Standards Board may prescribe from time to time, including in Section 5.B of the Handbook, and will apply the appropriate standard of proof as described in rE37, rE38, rE164, and rE261A.

rE37

Where a matter is to be considered under the determination by consent procedure as per rE34, the standard of proof to be applied is the civil standard of proof, except when rE38 applies.

rE38

In considering allegations under the determination by consent procedure, the Commissioner or an Independent Decision-Making Panel must apply the criminal standard of proof when deciding charges of professional misconduct where the conduct alleged within that charge occurred prior to 1 April 2019, including where the same alleged conduct continued beyond 31 March 2019 and forms the basis of a single charge of professional misconduct.

Determination by Consent

rE39

Where the Commissioner or an Independent Decision-Making Panel has decided to refer an allegation to the determination by consent procedure in accordance with rE35, the Commissioner or an Independent Decision-Making Panel (as the case may be) may terminate the determination by consent procedure at any time if it no longer considers that the requirements of rE35 are satisfied, or for any other good reason.

rE40

If the determination by consent procedure ends other than by a finding and sanction to which the applicable person consents, then an allegation may be referred to a three-person Disciplinary Tribunal.

rE41

An Independent Decision-Making Panel may impose on an applicable person against whom a charge of professional misconduct has been found proved under the determination by consent procedure any one or more the following:

.1 an order to pay a fine to the Bar Standards Board (the amount of such fine to be determined having regard to the relevant sanctions guidance) on such terms as to payment as the Independent Decision-Making Panel thinks fit;

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

.3 a reprimand by the Bar Standards Board;

.4 advice by the Independent Decision-Making Panel as to their future conduct; and

.5 an order to complete (or, in the case of a BSB entity, an order to procure that any relevant managers or employees complete) continuing professional development of such nature and duration as an Independent Decision-Making Panel shall direct and to provide satisfactory proof of compliance with this order to the Commissioner.

rE42

In determining what sanction, if any, to impose under the determination by consent procedure, an Independent Decision-Making Panel shall have regard to any relevant policy or guidelines issued by the Bar Standards Board and/or by the Council of the Inns of Court from time to time.

rE43

An Independent Decision-Making Panel may not make an award of costs when dealing with an allegation under the determination by consent procedure.

rE44

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

rE45

If the applicable person accepts the outcome of the determination by consent procedure, no one may appeal against it.

Disciplinary Tribunal

rE46

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

rE47

In deciding whether to direct the constitution of a three-person or a five-person panel, the Commissioner or an Independent Decision-Making Panel shall consider the sanction which it considers is likely to be imposed on the applicable person if the charge or application is proved, having regard to:

.1 any indicative sanctions guidance published by BTAS/COIC/Bar Standards Board from time to time; and

.2 the previous disciplinary record of the applicable person.

rE48

The Commissioner or an Independent Decision-Making Panel may direct that a five-person panel is to be constituted if it considers that:

.1 having regard to any indicative sanctions guidance published by BTAS/COIC/Bar Standards Board, in all the circumstances, a sanction of disbarment or suspension from practice for more than twelve months may be appropriate; or

.2 having regard to any indicative sanctions guidance published by BTAS/COIC/Bar Standards Board, in all the circumstances, a sanction of indefinite disqualification or disqualification for a defined term of more than twelve months may be appropriate; or

.3 having regard to any indicative sanctions guidance published by BTAS/COIC/Bar Standards Board, in all the circumstances, a sanction of a BSB entity having its authorisation or licence revoked or suspended for a period of more than twelve months may be appropriate; or

.4 the allegation involves a conviction for dishonesty or deception

otherwise the Commissioner or an Independent Decision-Making Panel must direct that a three-person panel is to be constituted.

rE49

The Commissioner or an Independent Decision-Making Panel must inform the applicable person of the direction that it has made pursuant to rE46. There is no appeal against the decision to refer a matter to a three or a five-person panel.

rE50

The Commissioner or an Independent Decision-Making Panel may:

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

.2 refer any additional charges or disqualification applications relating to the same applicable person to the Disciplinary Tribunal which is dealing with the original disciplinary charge or disqualification application (as the case may be), even if the additional charge or application, by itself, may be regarded as insufficiently serious to merit disposal by a Disciplinary Tribunal of that level.

rE51

When the Commissioner or an Independent Decision-Making Panel has directed that an allegation shall form the subject matter of a charge or application before a Disciplinary Tribunal, the Commissioner is responsible for bringing the charge or application on behalf of the Bar Standards Board and prosecuting that charge before such Disciplinary Tribunal. If so:

.1 the Commissioner may arrange for the appointment of a representative to settle the charge and to present the case before the Disciplinary Tribunal; and

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

rE52

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

rE53

Where a Disciplinary Tribunal directs that matter(s) be referred to Commissioner or an Independent Decision-Making Panel under rE209 to consider whether an administrative sanction should be imposed, the Commissioner or an Independent Decision-Making Panel shall consider the matter in accordance with rE26 to rE32 or take no enforcement action in accordance with rE19.2 and rE22.2.

Part 5 - A5. Appeals Regulations

rE54

An applicable person has a right to appeal from a decision to impose an administrative sanction. That appeal is to an appeal panel nominated by the President in the same composition as a three-person panel constituted under rE141 of the Disciplinary Tribunal Regulations.

rE55

An appeal, if made, shall be made by the applicable person sending to the Commissioner, within 28 days of the imposition of the administrative sanction, a notice identifying the decision appealed against, the decision the applicable person contends for, the grounds of such appeal and a statement whether the applicable person requires their appeal to be disposed of at an oral hearing. If the applicable person does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.

rE56

The notice must be accompanied by a sum as prescribed by the Bar Standards Board from time to time. The sum will be payable to the Bar Standards Board to cover expenses.

rE57

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

.1 at least 5 working days before the time set for the appeal, the Bar Standards Board will provide each member of the appeal panel and the applicable person with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and

.2 the applicable person and Bar Standards Board may be represented at the hearing.

rE58

The decision of an appeal panel is final and shall not be not subject to any further appeal or reconsideration.

rE59

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

rE60

If the appeal panel allows the appeal in whole or in part, the appeal panel may direct that any administrative fine or appeal fee already paid by the applicable person be refunded either in whole or in part, but the appeal panel has no power to award costs.

Part 5 - A6. Reconsidering allegations which have been disposed of Regulations

rE61

The Commissioner or an Independent Decision-Making Panel may reconsider an allegation which has been disposed of by the Commissioner or an Independent Decision-Making Panel respectively where:

.1 new evidence becomes available which leads it to conclude that it should do so, or

.2 for some other good reason.

rE62

Following such reconsideration, the Commissioner may take any further or different action the Commissioner thinks fit, as if any earlier decision had not been made.

Part 5 - A7. Confidentiality Regulations

rE63

The Bar Standards Board must keep reports and allegations assessed or investigated under these regulations confidential. The Bar Standards Board must not disclose the fact that a report exists, or details of the report or of its treatment as an allegation or otherwise, or of its disposal save as specified in this Section 5.A, or as otherwise required by law.

rE64

Disclosure may be made:

.1 for the purpose of the Bar Standards Board's regulatory assurance, supervision or authorisations functions; or

.2 for the purpose of keeping the applicable person, or any source of information relating to the applicable person, informed of the progress of the consideration of a report or allegation; or

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

.4 where the applicable person consents; or

.5 in response to a request from the selection panel or a member of its secretariat in respect of an application by a barrister for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the BSB authorised individual for a certificate of good standing in respect of a barrister; or

.6 for the purposes of providing examples of the types of behaviour that may constitute breaches of the Handbook either externally or internally within the Bar Standards Board, provided that where disclosure occurs in these circumstances although details of the individual reports or allegations may be published, any relevant party's identities will remain anonymous; or

.7 with the approval of the Commissioner, where the Commissioner considers it is in the public interest to disclose some or all of the details of the report or allegation.

Part 5 - A8. Interpretation Regulations

rE65

For the avoidance of doubt, this Section 5.A does not prevent the immediate operation of the Interim Suspension and Disqualification Regulations or the Fitness to Practise Regulations, where appropriate.

Part 5 - A9. Commencement Regulations

rE66

This Section 5.A shall come into force in accordance with the provisions of Part 1 of this Handbook.

rE67 – rE100

Removed.

Schedule 1 - Proceedings and Composition of the Independent Decision-Making Panels Regulations

1) An Independent Decision-Making Panel shall:

a) for the purposes of Part 5A, consist of five members of the Independent Decision-Making Body;

b) for all other purposes, consist of three members of the Independent Decision-Making Body;

and shall have a lay majority of at least one.

2) Independent Decision-Making Panel meetings shall be held in private.

3) Decisions of Independent Decision-Making Panels must be recorded in writing.

4) Independent Decision-Making Panel meetings shall be held at a frequency to be determined by the Bar Standards Board.

5) Independent Decision-Making Panels may, at any time, invite any person to attend an Independent Decision-Making Panel meeting in an advisory or consultative capacity.

6) Independent Decision-Making Panel meetings may be held in person, by email, by telephone or via videoconference.

Part 5 - B. The Disciplinary Tribunals Regulations Regulations

Part 5 - B1. The Regulations Regulations

Regulation E101 Regulations

rE101

These Regulations will apply following the referral of an allegation by the Commissioner or an Independent Decision-Making Panel to a Disciplinary Tribunal, in accordance with Part 5 Section A.

Regulation E102 - Service of Charges and/or Applications Regulations

rE102

The Bar Standards Board must ensure that a copy of the charge(s) and/or application(s):

.1 is served on the relevant respondent(s), together with a copy of these Regulations not later than ten weeks after the date on which the Commissioner or an Independent Decision-Making Panel decides to refer the matter to a Disciplinary Tribunal; and

.2 at the same time, ensure that copies of the charge(s) and/or application(s) are sent to BTAS.

Regulations E103-E105 - Documents to be served on the respondent Regulations

rE103

As soon as practicable after the issue of the charge(s) and/or application(s) to the respondent(s), the Bar Standards Board must serve on the respondent(s) and file with BTAS:

.1 a copy of the evidence of any witness intended to be called in support of any charge(s) or application(s) (which, for the avoidance of doubt, may be a formal witness statement or an informal document such as a letter or attendance note); and

.2 a copy of any other documents intended to be relied on by the Bar Standards Board; and

.3 the standard directions and/or non-standard directions, which, subject to rE111, the Bar Standards Board proposes to apply to the case and which must include such timetable as may be considered reasonable by the Bar Standards Board, having regard to the facts of that case.

rE104

If the documents referred to in rE103.1 and/or rE103.2 are not sent to the respondent(s) within 28 days of the service of the charges on the respondent(s) in accordance with rE102 above, then the Bar Standards Board must provide to the respondent(s) within that period:

.1 details of the evidence that is 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.

Regulations E106-E107 - Directions

Regulations

rE106

Within 21 days of the date of service of the directions under rE103.3, the respondent(s) must:

.1 agree the standard directions and/or non-standard directions; or

.2 provide to the Bar Standards Board written submissions explaining why the directions sought by the Bar Standards Board, should be amended, withdrawn or added to; and/or

.3 indicate to the Bar Standards Board whether they intend to make any of the applications referred to in rE127.

rE107

Within 14 days of the date when the Bar Standards Board receives any written submissions from a respondent in accordance with rE106.2, the Bar Standards Board must consider them and must during that 14 day period:

.1 inform the respondent(s) of those changes to the standard directions or non-standard directions (as appropriate) which the Bar Standards Board is able to agree; and

.2 seek to agree with the respondent(s) such other changes to the standard directions or non-standard directions (as appropriate) as may be acceptable to all parties.

Regulations E108-E109 - No reply from respondent

Regulations

rE108

Where standard directions are sought by the Bar Standards Board and the respondent does not reply to a request to agree directions within the relevant 21 day period referred to in rE106, the respondent will be deemed to have accepted the standard directions and they shall be deemed to apply to the particular matter, save and in so far as they may have been modified on the application of any other respondent to the same proceedings which was made within the relevant 21 day period. The Bar Standards Board must forthwith serve on the respondent and file with BTAS any directions which are deemed to apply to the matter.

rE109

Where non-standard directions are sought by the Bar Standards Board and the respondent does not reply within the 21 day period referred to in rE106, the Bar Standards Board must send to the President a copy of the non-standard directions and invite them to appoint a Directions

Judge to endorse the directions in accordance with rE114 to rE126.

Regulations E110-E112 - Agreement of directions

Regulations

rE110

Where standard directions are sought in a case by the Bar Standards Board and the parties agree the directions within the relevant 21 day period referred to in rE106, or within the 1414 day period referred to in rE107, those directions will apply to the case and the Bar Standards Board must forthwith serve the agreed directions on the respondent and file them with BTAS.

rE111

The parties may agree non-standard directions, save that where any non-standard directions would have the effect of preventing BTAS from carrying out any function given to it by these Regulations, the said direction cannot be agreed without endorsement of a Directions Judge. In these circumstances, the Bar Standards Board must send to the President a copy of the non-standard directions and invite them to appoint a Directions Judge to endorse the directions in accordance with rE114 to rE126.

rE112

Where non-standard directions, which do not include matters under rE111, are sought by the Bar Standards Board in a case and the parties agree those directions within the relevant 21 day period referred to in rE106, or within the 14 day period referred to in rE107, those directions will apply to the case. The Bar Standards Board must forthwith serve the agreed directions on the respondent and file them with BTAS.

Regulation E113 - Non-agreement of directions

Regulations

rE113

Where standard directions and/or non-standard directions are sought in a case by the Bar Standards Board and the respondent does not agree those directions within the relevant 21 day period referred to in rE106, or within the 14 day period referred to in rE107, the Bar Standards Board must write to the respondent to confirm that the directions have not been agreed and must send to the President the following (where relevant):

.1 a copy of the directions, including any standard directions and/or non-standard directions which have been agreed;

.2 any written submissions received from the respondent(s) in accordance with rE106.2;

.3 any notice from the respondent(s) that they may be intending to make an application referred to at rE106.3; and

.4 the Bar Standards Board's response to any such request(s) and/or submissions.

Regulations E114-E126 - Agreement/endorsement of directions by a Directions Judge

Regulations

rE114

When the President has received the documents referred to in rE109,rE111 or rE113 above, the President must designate either a 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, rE111 or rE113 above, are sent to the Directions Judge once the Directions Judge has been designated.

rE116

When they receive the relevant documents, the Directions Judge must consider any submissions about the directions and will determine whether an oral directions hearing is necessary.

rE117

If the Directions Judge considers that no oral hearing is necessary, then:

.1 they must make an order setting out those directions which are to apply in the case taking into account all the relevant circumstances, including any written submissions of the parties and the Directions Judge's own findings; and

.2 they may consider and decide any other issues which may be necessary in accordance with rE129.

rE118

If the Directions Judge considers that an oral hearing is necessary, the Directions Judge must give written notice to the Bar Standards Board and the respondent(s) that an oral hearing is to be held for the purpose of giving directions and taking such other steps as the Directions Judge considers suitable for the clarification of the issues before the Disciplinary Tribunal and generally for the just and expeditious handling of the proceedings. The Directions Judge shall also provide the Bar Standards Board and the respondent(s) with a time estimate for the oral directions hearing.

rE119

Within seven days of receiving the notice referred to in rE118 above, the Bar Standards Board and the respondent(s) must notify the President and the other party of their and, where relevant, their representative's available dates and times during the six week period immediately after the date of that notice.

rE120

The Directions Judge must try to find a date and time within that six week period which are convenient for all parties. If that is not possible, the Directions Judge must fix a date and time for the oral directions hearing within that six week period and must notify the Bar Standards Board and the respondent(s) of that date and time.

rE121

Once the Directions Judge has set a date for the oral hearing, BTAS must appoint a person(s) in accordance with rE136 to act as Clerk at the hearing to take a note of the proceedings; draw up a record of the directions given and/or any admissions made at it.

rE122

BTAS must arrange for a record of the oral hearing before a Directions Judge to be made.

rE123

The oral hearing before a Directions Judge will be in private.

rE124

After the oral directions hearing (or, if one was not required, after the review of the papers by the Directions Judge) BTAS must ensure that copies of the directions order are served on the Bar Standards Board and on the respondent(s).

rE125

The directions order served under rE124 is final, and there is no appeal against it.

rE126

Any variation sought by a party to an order for standard directions made and served under rE108 or rE110, or to an order for non-standard directions made and served under rE112, must be endorsed by a Directions Judge, who shall be designated by the President in accordance with the requirements of rE114.

Regulations E127-E128 - Applications

Regulations

rE127

At any time before the hearing, either party can make any of the following applications and thereafter file with BTAS and serve on the opposing party written submission in support of the applications, namely:

.1 an application to sever the charges and/or applications;

.2 an application to strike out the charges and/or applications which relate to the respondent who makes the application;

.3 an application to stay the proceedings;

.4 an application about the admissibility of documents;

.5 an application for disclosure of documents;

.6 an application to extend or abridge any relevant time limits;

.7 an application for the hearing to be held in private;

.8 an application for separate hearings or an application that proceedings pending against separate 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.

Regulation E129 - Extent of powers to order directions

Regulations

rE129

The Directions Judge or the Chair of the Disciplinary Tribunal designated in the Convening Order (or failing the Directions Judge or the Chair of the Disciplinary Tribunal, any other Judge nominated by the President) may, at any stage, make such directions for the management of the case or the hearing as they consider will expedite the just and efficient conduct of the case.

Regulations E130-E131 - Setting the hearing date

Regulations

rE130

This regulation applies where, after the deemed acceptance, later agreement of directions, or the service of a directions order by the President, the date of the hearing has not been fixed. Where this Regulation applies, each party must submit details of their availability for the substantive hearing to BTAS in accordance with the directions. After they receive such details, or, where no such details are provided, once the time for providing such details has expired, the President must fix the date of the substantive hearing, having regard to the availability of the parties (if provided) and the need for the prompt determination of any charges and/or application(s) made against the respondent(s), in accordance with the provisions of these Regulations.

rE131

BTAS must inform all parties of the date fixed for the hearing as soon as reasonably practicable after the President has fixed the date.

Regulations E132-E135 - Appointing a Disciplinary Tribunal and issuing a Convening order

Regulations

rE132

On

.1 the deemed acceptance or later agreement of directions by the parties; or

.2 the service of the directions order by BTAS; or

.3 the fixing of the date of the hearing in accordance with rE130 above,

the President must, in all cases,

.a appoint an appropriate Disciplinary Tribunal to sit on the relevant date(s), taking into account the requirements of these Regulations;

.b appoint a person or persons to act as Clerk or Clerks to the Disciplinary Tribunal in accordance with rE136;

.c not less than 14 days before the date of the substantive hearing, serve an order on the respondent(s) ("the Convening order") specifying:

.i the name of the respondent(s) to the proceedings and such other information as may be relevant to the respondent(s), for example:

(1) where any respondent is a barrister, details of the barrister's Inn, their date of call and (if appropriate) the date of their appointment as 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 authorised body;

(3) where any respondent is another type of BSB regulated person, details of whether or not the BSB regulated person is an authorised (non-BSB) person or is otherwise subject to regulation by any other regulator and, if so, the identity of that regulator, and the role of that individual, including whether they were acting as a HOLP, HOFA, manager or employee of a regulated entity and identifying that regulated entity and its Approved Regulator; and,

(4) where any respondent is a non-authorised individual employed by a BSB authorised person, details of the role of that individual and identifying the BSB authorised person who directly or indirectly employs the respondent;

.ii the date and time of the sitting of the Disciplinary Tribunal at which it is proposed the charge(s) and/or application(s) should be heard; and

.iii the names and status (that is, as Chair, as lay member, as barrister or other) of those persons who it is proposed should constitute the Disciplinary Tribunal to hear the case; and

.iv the name of the Clerk,

and send copies of that Convening Order to the nominated members of the Disciplinary Tribunal, the Bar Standards Board, and the Clerk. In the Order the attention of the respondent(s) will be drawn to:

(1) their right to represent themselves or be represented professionally, with or without instructing a solicitor, as they shall think fit; and

(2) their right to inspect and be given copies of documents referred to in the list served pursuant to rE103 above; and

(3) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

rE133

The respondent(s) may, when they receive the Convening Order, give notice to the President objecting to any one or more of the proposed members of the Disciplinary Tribunal. The respondent must give this notice as soon as is reasonably practicable and must specify the grounds for their objection.

rE134

When the President receives such an objection, they must, if satisfied that it is justified (but subject to rE135), exercise the power conferred on them by rE148 to nominate a substitute member or members of the Disciplinary Tribunal, and must notify the respondent(s) accordingly. When they receive that notification, the respondent(s) may object to any substitute member or members, in the same way as they may object under rE133.

rE135

No objection to any member of the Disciplinary Tribunal may be made, or if made, may be upheld, on the grounds only that they know, or might have known, about a charge of professional misconduct, or of a breach of proper professional standards, or a previous application to disqualify, or a charge consisting of a legal aid 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.

Regulations E136-E138 - Appointment of Clerk(s) Regulations

rE136

BTAS shall appoint a Clerk(s) to perform the functions specified in these Regulations and such other functions as the President, Directions Judge or the Chair of any Disciplinary Tribunal may direct.

rE137

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

rE138

No person who has been engaged in the investigation of a allegation or application against a respondent in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that allegation or application.

Regulations E139-E150 - The Disciplinary Tribunal - Composition of Disciplinary Tribunals Regulations

rE139

A Disciplinary Tribunal must consist of either three persons or five persons.

rE140

A five-person panel must include the following persons nominated by the President:

.1 as Chair, a Judge; and

.2 two lay members; and

.3 two practising barristers of not less than seven years' standing.

rE141

A three-person panel shall include the following persons nominated by the President:

.1 as Chair, a 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 the Independent Decision-Making Body; or

.2 are a member of the Bar Standards Board or of any of its committees or the Independent Decision-Making Body; or

.3 were a member of the Bar Standards Board or of any of its committees or the Independent Decision-Making Body at any time when the matter was being considered by the Bar Standards Board.

rE145

The person nominated by the President, in accordance with rE140 and rE141, to be Chair of the Disciplinary Tribunal, may be the Directions Judge as appointed under rE114, unless the Directions Judge considers there to be any reason why they should not Chair the hearing.

rE146

The President may publish qualifications or other requirements made for those appointed to serve on a Disciplinary Tribunal.

rE147

If a vacancy in the Disciplinary Tribunal arises before the substantive hearing of the charge, the President must choose another member of the relevant class to fill that vacancy.

rE148

At any time before the substantive hearing of the charge starts, the President may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as, in the exercise of their discretion, they deem necessary or expedient, provided always that the President notifies the respondent(s) of the identity of such substitutes as soon as is reasonably practicable after they have chosen them. The respondent(s) may object to such substitute members in the same way as they may object under rE133.

rE149

The proceedings of a five-person panel will not be invalidated on the sole ground that after the Convening Order has been issued (in accordance with rE132 above), one or more of the members becomes unable to act or is disqualified from acting, provided that:

.1 the Chair and at least one lay member and one barrister member are still able to act and are present throughout the substantive hearing; and

.2 the number of members present throughout the substantive hearing of the charge is not reduced below three.

rE150

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

Regulations E151-E153 - Provision of documents to the Disciplinary Tribunal

Regulations

rE151

The Bar Standards Board and the respondent must send to BTAS, at least 14 days before the hearing:

.1 in the case of a five-person Disciplinary Tribunal, six copies of the evidence they intend to rely on at the hearing;

.2 in the case of a three-person Disciplinary Tribunal, four copies of the evidence they intend to rely on at the hearing.

rE152

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

rE153

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

.1 the Covening Order;

.2 the charge(s) and/or application(s) and any particulars of them;

.3 any documents which the Bar Standards Board or the respondent(s) propose to rely on, unless a direction has been made that copies of such documents be withheld;

.4 any written answer to the charge(s) and/or application(s) submitted by or on behalf of the respondent(s);

.5 such other documents as have been agreed or directed to be laid before the Disciplinary Tribunal before the start of the hearing; and

.6 all orders for directions which have been made in relation to the case.

Regulations E154-E155 - Applications for adjournment before the commencement of the hearing

Regulations

rE154

Any application by a party for an adjournment of the substantive hearing before the date on which the hearing is scheduled to commence must be in writing and accompanied by any evidence upon which the party relies in support of their application.

rE155

An application under rE154 must be submitted to the Chair of the Disciplinary Tribunal which has been convened to hear the case and served upon the other party. The Chair must make reasonable attempts to seek any representations in response to the application from the other party. The Chair must consider the application for adjournment taking into account any response submitted by the other party and may:

.1 grant the adjournment; or

.2 direct that the application must be renewed before the Disciplinary Tribunal on the first day fixed for the hearing; or

.3 refuse the application; and

.4 may make such directions as they consider appropriate for the further conduct of the case.

Regulation E156 - Hearing in public

Regulations

rE156

The hearing before a Disciplinary Tribunal must be in public, unless it has been directed that all or part of the hearing is not to be held in public, and that direction has not been over-ruled by the Disciplinary Tribunal.

Regulation E157 - Recording of proceedings

Regulations

rE157

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

Regulations E158-E160 - Joinder

Regulations

rE158

Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the Disciplinary Tribunal may consider and determine charges against two or more 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.

Regulation E161 - Amendment and addition of charge(s) and/or application(s)

Regulations

rE161

A Disciplinary Tribunal may at any time before or during the hearing grant permission to the Bar Standards Board to amend the charge(s) and/or application(s) against any respondent, or grant permission for new charge(s) and/or application(s) be added, provided that:

.1 the Disciplinary Tribunal is satisfied that no respondent will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of their defence; and

.2 the Disciplinary Tribunal will, if so requested by a respondent, adjourn for such time as the Disciplinary Tribunal considers reasonably necessary to enable that respondent to meet the amended charge(s) or application(s).

Regulations E162-E163 - Adjournment of the hearing

Regulations

rE162

Subject to rE163, the Disciplinary Tribunal must sit from day to day until it has made a finding and, if any charge or application is found proved, until sanction has been determined.

rE163

A Disciplinary Tribunal may, if they decide an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

Regulation E164 - Standard of proof

Regulations

rE164

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

Regulation E165 - Rules of natural justice

Regulations

rE165

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

Regulations E166-E168 - Evidence

Regulations

rE166

The Disciplinary Tribunal may:

.1 (subject to rE167 below) admit any evidence, whether oral or written, whether given in person, or over the telephone, or by video link, or by such other means as the Disciplinary Tribunal may deem appropriate, whether direct or hearsay, and whether or not it would be admissible in a court of law;

.2 give such directions with regard to the admission of evidence at the hearing as it considers appropriate, ensuring that a respondent has a proper opportunity of answering the charge(s) and/or application(s) made against them;

.3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.

rE167

Any party may refer to the fact (if relevant) that the determination by consent procedure was used before the allegation was referred as a charge before a Disciplinary Tribunal. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the determination by consent procedure ended), unless and until the respondent refers to the substance of the procedure in the course of presenting their case, or when they are being sanctioned.

rE168

Where a party has previously failed to comply with any direction made by the Directions Judge, or has failed to do any act, including the submission of evidence, within the time period specified in a direction, the Disciplinary Tribunal may, at its discretion:

.1 decide to exclude the relevant evidence; or

.2 draw an adverse inference against that party.

Regulations E169-E170 - Decisions of courts or tribunals

Regulations

rE169

In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the respondent was a party, 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.

rE170

In proceedings before a Disciplinary Tribunal which involve the decision of a court or tribunal in previous proceedings to which the respondent was not a party, the provisions of rE169 do not apply.

Regulations E171-E175 - Witness evidence at the Disciplinary Tribunal

Regulations

rE171

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

rE172

Subject to rE176, witnesses:

.1 if giving oral evidence-in-chief, shall first be examined by the party calling them;

.2 may be cross-examined by the opposing party;

.3 may be re-examined by the party calling them; and

.4 may at any time be questioned by the Disciplinary Tribunal.

rE173

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

rE174

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

rE175

A witness of fact shall be excluded from the hearing until they are called to give evidence, failing which they will not be entitled to give evidence without leave of the Disciplinary Tribunal

Regulations E176-E182 - Vulnerable Witnesses

Regulations

rE176

For the purpose of Part 5: Section B, any person falling into one or more of the following categories may be treated by the Disciplinary Tribunal as a vulnerable witness in proceedings before it:

.1 any witness under the age of 18 at the time of the hearing;

.2 any witness with a mental disorder within the meaning of the Mental Health Act 1983;

.3 any witness who is significantly impaired in relation to intelligence and social functioning;

.4 any witness with physical disabilities who requires assistance to give evidence;

.5 any witness, where the allegation against the respondent is of a sexual or violent nature and the witness was the alleged victim; and

.6 any witness who complains of intimidation.

rE177

Subject to hearing representations from the parties, the Chair of the Disciplinary Tribunal or the Disciplinary Tribunal may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

rE178

Any witness who is not regarded as a vulnerable witness under rE176 may apply for one or more of the measures set out in rE179 to be put into place on the ground that the measure(s) is desirable to enable the Disciplinary Tribunal to receive the witness's evidence.

rE179

Measures adopted by the Disciplinary Tribunal for receiving evidence from a vulnerable witness may include, but are not to be limited to:

.1 use of video links;

.2 use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such a witness is available at the hearing for cross-examination and questioning by the Disciplinary Tribunal;

.3 use of interpreters (including signers and translators) or intermediaries;

.4 use of screens or such other measures as the Disciplinary Tribunal consider necessary in the circumstances in order to prevent:

.a the identity of the witness being revealed to the press or the general public; or

.b access to the witness by the respondent

.5 the hearing of evidence (either whole or in part) by the Disciplinary Tribunal in private.

rE180

No respondent charged with an allegation of a sexual or violent nature may cross-examine in person a witness who is the alleged victim, either:

.1 in connection with that allegation, or

.2 in connection with any other allegation (of whatever nature) with which the said respondent is charged in the proceedings.

rE181

In the circumstances set out in rE180, in the absence of the respondent's written consent, BTAS must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on the respondent's behalf.

rE182

Removed from 1 November 2017.

Regulations E183-E184 - Absence of Respondent

Regulations

rE183

Where the respondent has not attended at the time and place appointed for the hearing, the Disciplinary Tribunal may nevertheless, subject to compliance with rE234.1 in respect of that respondent, proceed to hear and determine the charge(s) or application(s) relating to that respondent, if it considers it just to do so and it is satisfied that the relevant procedure has been complied with (that is, the respondent has been duly served (in accordance with rE249 of these Regulations) with the documents required by rE102, rE103, and rE132.3.c (as appropriate)).

rE184

If the relevant procedure has not been complied with, but a Disciplinary Tribunal is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that respondent, if it considers it just to do so, subject to compliance with rE234.2 in respect of that respondent if the Disciplinary Tribunal finds any charge or application proved.

Regulations E185-E187 - Application for a fresh hearing

Regulations

rE185

Where the Disciplinary Tribunal proceed in the respondent's absence, in accordance with rE183 or rE184, the respondent may apply to BTAS for a Directions Judge, appointed by the President, to consider an application for a fresh hearing before a new Disciplinary Tribunal.

rE186

The respondent's application under rE185 must be supported by a statement setting out the facts and/or circumstances upon which the respondent relies in support of their application.

rE187

The Directions Judge may grant a new hearing if they consider it just to do so and if they are satisfied that:

.1 the respondent submitted their application for a new hearing promptly upon becoming aware of the decision of the Disciplinary Tribunal; and

.2 the respondent had good reason for not attending the hearing.

Regulations E188-E198 - Order of proceedings at a hearing

Regulations

rE188

The order of proceedings at a hearing shall be as set out in these regulations unless the Disciplinary Tribunal decides, having considered the interests of justice and fairness to the parties, that the procedure should be varied. The Disciplinary Tribunal may then give such directions with regard to the conduct of, and procedure at, the hearing as it considers appropriate.

rE189

At any time during the hearing when it considers it desirable, the Disciplinary Tribunal may retire into private to deliberate.

rE190

The Disciplinary Tribunal shall consider any submissions from the parties in relation to objection(s) to the charge(s) or preliminary applications, following which the Disciplinary Tribunal will retire into private session to consider the submissions and shall thereafter announce its determination.

rE191

After the Disciplinary Tribunal has dealt with any submissions or applications under rE190, the Clerk shall read the charge(s) in public.

rE192

The Clerk shall ask the respondent(s) whether the charge(s) is admitted or denied. The respondent(s) plea to the charge(s) will be entered on the record.

rE193

Where the respondent(s) admit the charges(s), the Chair of the Disciplinary Tribunal shall announce the charge(s) proved and the Disciplinary Tribunal shall record in writing its finding on the charge(s) and its reasons. The matter shall then continue in accordance with the procedure set out at paragraph rE199 onwards.

rE194

Where the respondent(s) denies the charge(s), the Bar Standards Board will present the case against the respondent(s), which may include producing any evidence and calling any witness in person.

rE195

After the evidence against the respondent has been called, the respondent shall be entitled to submit that they have no case to answer. The Bar Standards Board shall be entitled to respond to such a submission. If such a submission is upheld the Disciplinary Tribunal shall dismiss the charge(s), either in whole or in part. If the entirety of the case against the respondent is not dismissed and some charges remain the proceedings shall continue as set out at rE196 to rE198.

rE196

The respondent shall then be entitled to call any witness, give evidence on their own behalf and adduce any other evidence in support of the respondent's defence.

rE197

The Bar Standards Board shall be entitled to call witnesses and adduce evidence in rebuttal of any part of the defence case.

rE198

After the respondent has called any witness in person and adduced any evidence, the Bar Standards Board may address the Disciplinary Tribunal, and thereafter the respondent.

Regulations E199-E202 - The finding

Regulations

rE199

At the end of the hearing, the Disciplinary Tribunal must record in writing its finding(s) on each charge or application, and its reasons. That record must be signed by the Chair and by all members of the Disciplinary Tribunal.

rE200

If the members of the Disciplinary Tribunal do not agree on any charge or application, the finding to be recorded on that charge or application

must be that of the majority. If the members of the Disciplinary Tribunal are equally divided on any charge or application, then, as the burden of proof is on the Bar Standards Board, the finding to be recorded on that charge or application must be that which is the most favourable to the respondent.

rE201

The Chair of the Disciplinary Tribunal must then announce the Disciplinary Tribunal's finding on the charge(s) or application(s), and state whether each such finding was unanimous or by a majority. The Disciplinary Tribunal is free to reserve its judgment.

rE202

In any case where the Disciplinary Tribunal dismisses the charge(s) and/or application(s), it may give advice to the respondent about their future conduct

Regulations E203-E219 - The sanction

Regulations

rE203

If the Disciplinary Tribunal finds any of the charges or applications proved against a respondent, it may hear evidence of any previous:

.1 finding of professional misconduct by a Disciplinary Tribunal or under the determination by consent procedure; or

.2 Disqualification Order; or

.3 finding of a breach of proper professional standards by the Bar Standards Board or any other regulator

.4 adverse finding on a charge consisting of a legal aid complaint;

made in respect of the respondent, or, where the proved charge(s) concerns a BSB entity, in respect of that body or any person employed in the BSB entity directly implicated by the charges

rE204

After hearing any representations by or on behalf of the respondent(s), the Disciplinary Tribunal must decide what sanction to impose on a respondent, taking into account the sentencing guidance and must record its sanction in writing, together with its reasons.

rE205

If the members of the Disciplinary Tribunal do not agree on the sanction to be imposed on a respondent, the sanction to be recorded must be that decided by the majority. If the members of the Disciplinary Tribunal are equally divided on the sanction to be imposed on a respondent, the sanction to be recorded must be that which is the most favourable to the respondent.

rE206

The Chair of the Disciplinary Tribunal must then announce the Disciplinary Tribunal's decision on sanction and state whether the decision was unanimous or by a majority.

rE207

Subject to rE208 below:

.1 a respondent against whom a charge of professional misconduct has been found proved may be sanctioned by the Disciplinary Tribunal as follows:

.a in the case of barristers, in accordance with Annex 1 to these Regulations;

.b in the case of a BSB authorised body, in accordance with Annex 2 to these Regulations;

.c in the case of a BSB licensed body, in accordance with Annex 3 to these Regulations;

.d in the case of registered European lawyers, in accordance with Annex 4 to these Regulations;

.e in the case of all other BSB regulated persons, in accordance with Annex 5 to these Regulations;

.2 in the case of a respondent who is an applicable person in respect of whom the Disciplinary Tribunal finds the disqualification condition to be established, the Disciplinary Tribunal may make a Disqualification Order if the Disciplinary Tribunal considers that the making of such a Disqualification Order is a proportionate sanction and is in the public interest (there being no other available sanction in respect of a non-authorised individual (other than an unregistered barrister, manager of a BSB entity or a registered European lawyer who does not have a current practicing certificate) directly or indirectly employed by a BSB authorised person).

rE208

In any case where a charge of professional misconduct has been found proved, the Disciplinary Tribunal may decide that no further action should be taken against the respondent

rE209

In any case where a charge of professional misconduct has not been found proved, the Disciplinary Tribunal may direct that the matter(s) be referred to the Bar Standards Board for it to consider whether an administrative sanction should be imposed in accordance with the provisions of rE19.3 or rE22.3 of the Enforcement Decision Regulations, where:

.1 The Disciplinary Tribunal is satisfied there is sufficient evidence on the balance of probabilities of a breach of the Handbook by the respondent; and

.2 The Disciplinary Tribunal considers that such referral to the Bar Standards Board is proportionate and in the public interest

rE209A

A direction made under rE209 is not a disposal or a finding for the purposes of the BSB Handbook.

rE210

A three-person panel must not:

.1 disbar a barrister or suspend a barrister's practising certificate for a period longer than twelve months; or

.2 revoke the authorisation or licence (as appropriate) of a BSB entity or suspend it for a period longer than twelve months; or

.3 remove a registered European lawyer from the register of European lawyers; or

.4 impose a sanction of suspension on any BSB regulated person for a prescribed period longer than twelve months; or

.5 impose a Disqualification Order for more than twelve months.

This Regulation does not prevent a three-person panel making an order in accordance with rE211 below.

rE211

In the event that a three-person panel considers that a case before it merits the imposition on a respondent of any of the sentences referred to in rE210 or the three-person panel otherwise considers that the case of a particular respondent is complex enough to warrant sentencing by a five-person panel:

.1 the three-person panel must refer the case to a five-person panel for it to sanction that respondent (but may proceed to sanction any other respondents to the proceedings in respect of whom this regulation does not apply); and

.2 the three-person panel must, in order to help the five-person panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other respondents to the proceedings). The respondent cannot challenge the facts found by the three-person panel; and

.3 the three-person panel must direct within what period of time the sentencing hearing before the five-person panel is to be held and make appropriate directions for the parties to provide the President with their dates of availability.

rE212

Following a referral by a three-person panel under rE211, the five-person panel must be constituted in accordance with rE140. The President must fix the date for the sentencing hearing and in so doing shall have regard to the availability of the parties, save that the President may disregard the availability of any party where that party has failed to provide any, or any reasonable dates of availability. As soon as is reasonably practicable after they have fixed the sentencing hearing, the President must inform all the parties of that date.

rE213

The respondent must be informed by BTAS as soon as practicable of the names and status (that is, as Chair, as lay member, as barrister or other) of those persons who it is proposed will constitute the five-person panel. The respondent may, when they are so informed, give notice to the President objecting to any one or more of the proposed members of the panel. That notice must be given as soon as is reasonably practicable, must specify the ground of objection, and must be dealt with in accordance with rE134 and rE135.

rE214

If the five-person panel is satisfied that the requirements of rE212 and rE213 above have been complied with, and the respondent has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sanction the respondent, provided that it complies with rE234.1.

rE215

If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE212 and rE213, above, and the respondent has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sanction the respondent, provided that it complies with rE234.2.

rE216

If the procedure under rE215 has been followed, the respondent may apply to the Directions Judge for an order that there should be a new sentencing hearing before a fresh five-person panel and the procedure for the respondent's application shall be as set out at rE185 to rE187 in these Regulations.

rE217

Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and as amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the Legal Aid Agency in connection with services provided as part of the Criminal Legal Aid or Civil Legal Aid and to the exclusion from providing representation funded by the Legal Aid Agency as part of the Criminal Legal Aid or Civil Legal Aid) on a Disciplinary Tribunal in the cases to which those Sections apply). Accordingly:

.1 any Disciplinary Tribunal which hears a charge consisting of a legal aid complaint relating to the conduct of a respondent who is a barrister may if it thinks fit (and whether or not it sentences the respondent in accordance with rE207.1 in respect of any conduct arising out of the same legal aid complaint) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;

.2 where a Disciplinary Tribunal hears a charge of professional misconduct against a respondent who is a barrister it may (in addition to, or instead of, sentencing that respondent in accordance with rE206.1) order that they be excluded from providing representation funded by the Legal Aid Agency as part of the Community Legal Service, or Criminal Defence Service, either temporarily, or for a specified period, if it determines that there is a good reason to exclude them arising from:

.a their conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or

.b their professional conduct generally.

rE218

Whether or not a Disciplinary Tribunal finds any charge or application proved against a barrister who is a pupil supervisor, if the Disciplinary Tribunal considers that the circumstances of the allegation are relevant to the respondent in their capacity as a pupil supervisor, it may notify the respondent's AETO and/or the BSB of those concerns in such manner as it sees fit.

rE219

If a barrister is a member of more than one Inn, each Inn of which they are a member must be mentioned in the sanction imposed on them.

Regulations E220-E224 - Sanction of suspension from practice or from authorisation or licensing or imposition of conditions

Regulations

rE220

For the purposes of rE222 to rE224:

.1 The effect of a sanction of suspension for a BSB authorised individual is that:

.a the respondent's practising certificate is suspended by the Bar Standards Board for the period of the suspension;

.b the respondent is prohibited from practising as a barrister, or holding themselves out as being a barrister when providing legal services or as otherwise being authorised by the Bar Standards Board to provide reserved legal activities or when describing themselves as a barrister in providing services other than legal services (whether or not for reward) unless they disclose the suspension;

.2 The effect of a sanction of suspension for a registered European lawyer shall mean that the respondent is suspended from the register of European lawyers maintained by the Bar Standards Board and is, for so long as they remain suspended:

.a prohibited from holding themselves out as registered with the Bar Standards Board; and;

.b not authorised to practise.

.3 The effect of a sanction of suspension for a BSB entity shall mean that the body's authorisation or licence is suspended for the period of the suspension such that the respondent is not an authorised person for that period;

.4 The effect of a sanction on a BSB authorised individual or a registered European lawyer requiring completion of continuing professional

development shall be in addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this Handbook.

rE221

In exceptional circumstances, where the total suspension is three months or less, the Tribunal may postpone the commencement of the suspension for a period as it deems fit.

rE222

The period for which a sanction of suspension from practice is expressed to run may be:

.1 a fixed period; or

.2 until the respondent has complied with any conditions specified in the order imposing the sanction of suspension.

rE223

Conditions may be imposed on a barrister's practising certificate or on the authorisation or licence of a BSB entity:

.1 without its being suspended; or

.2 to take effect on a barrister's practising certificate or on the authorisation or licence of a BSB entity when a period of suspension ends.

rE224

Conditions may (depending on the circumstances) include:

.1 conditions limiting the scope of the respondent's practice (after the end of any suspension, if relevant) to such part as the Disciplinary Tribunal may determine, either indefinitely or for a defined period; and/or

.2 imposing requirements that the respondent, or in the case of a BSB entity, its managers or employees, undergo such further training as the Disciplinary Tribunal may determine; and/or

.3 prohibiting the respondent from accepting or carrying out any public access instructions; and/or

.4 such other matters as the Disciplinary Tribunal may consider appropriate for the purpose of protecting the public and/or preventing a repetition of the conduct in question.

Regulations E225-E233 - Suspension/withdrawal of practising rights pending the hearing of any appeal

Regulations

rE225

rE226 to rE233 below apply to any respondent who:

.1 is a barrister, who has been sanctioned to be disbarred or to be suspended or to be prohibited from accepting or carrying out any public access work or instructions for more than twelve months;

.2 is a BSB authorised individual, who has been sanctioned to be disqualified or to be suspended for more than twelve months;

.3 is a BSB entity, which has been sanctioned to have its authorisation or licence revoked or suspended for more than twelve months; or

.4 is a BSB authorised person, who has been sanctioned to have conditions placed on their practising certificate, authorisation or licence (as appropriate) prohibiting them from accepting any public access instructions or conducting any litigation or for more than twelve months.

rE226

Where rE225 applies, the Disciplinary Tribunal must seek representations from the respondent and from the Bar Standards Board on the appropriateness or otherwise of taking action under rE227 below.

rE227

Having heard any representations under rE225 the Disciplinary Tribunal must (unless in the circumstances of the case it appears to the Disciplinary Tribunal to be inappropriate to do so), either:

.1 in relation to rE225.1 to rE225.3, require the respondent to suspend their practice immediately, in which case the Bar Standards Board must suspend that respondent's practising certificate with immediate effect; or

.2 in relation to rE225.4 decide that the condition prohibiting the respondent from accepting public access instructions or conducting any litigation, shall take effect immediately; or

.3 where the respondent has been sanctioned to be disbarred or to be suspended, and where that respondent does not currently hold a practising certificate, require the Bar Standards Board not to issue any practising certificate to them.

rE228

If the Disciplinary Tribunal decides that it would be inappropriate to require immediate suspension or immediate imposition of conditions (as the case may be) it may nonetheless require the respondent to suspend their practice or to impose conditions, from such date as the Disciplinary Tribunal may specify.

rE229

Where the respondent is permitted to continue to practise for any period before being suspended under rE228 the Disciplinary Tribunal may require the Bar Standards Board to impose such terms on the respondent's practice as the Disciplinary Tribunal deems necessary to protect the public until the suspension comes into effect.

rE230

Where an order is made in respect of a respondent under rE225 and that respondent considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, they may apply to the President in writing for it to be varied.

rE231

When the President receives an application made under rE230, they must refer it to the Chair and to one of the lay members of the Disciplinary Tribunal which originally made the order to make a decision on the application.

rE232

Any application made under rE230 must be sent by the applicant, on the day that it is made, to the Bar Standards Board. The Bar Standards Board may make such representations as they think fit on that application to those to whom the application has been referred by the President.

rE233

The persons to whom an application made under rE230 above is referred may vary or confirm the order in relation to which the application has been made.

Regulation E234 - Wording of the sanction when respondent not present

Regulations

rE234

If a respondent has not been present throughout the proceedings, the sanction in respect of that respondent must include one or more of the following statements:

.1 if the relevant procedure under rE183 has been complied with, that the finding and sanction were made in the absence of the respondent in accordance with rE183;

.2 if the procedure under rE184 has been complied with, that the finding and the sanction were made in the absence of the respondent and that they have the right to apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal;

.3 if the relevant procedure under rE213 has been complied with, that the sanction was made in the absence of the respondent in accordance with rE214;

.4 if the procedure under rE215 has been complied with, that the sanction was made in the absence of the respondent and that they may apply to the Directions Judge for an order that there should be a new hearing before a fresh Disciplinary Tribunal.

Regulation E235 - Report of Finding and Sanction

Regulations

rE235

As soon as is practicable after the end of the proceedings of a Disciplinary Tribunal, the Chair must prepare a report in writing of the finding(s) on the charge(s) of professional misconduct and/or on any applications, and the reasons for those findings and the sanction. At the discretion of the Chair, the report may also refer to matters which, in the light of the evidence given to the Disciplinary Tribunal, appear to require investigation or comment. The Chair must send copies of the report to:

.1 the respondent;

.2 the Director General of the Bar Standards Board;

.3 the Chair of the Bar Standards Board; and

.4 where a barrister has been disbarred, the respondent's Inn of Call and to any other Inns of which they are a member; and

.5 where a HOLP or HOFA or manager or employee of a licensed body has been disqualified, the LSB; and

.6 in cases where one or more charges of professional misconduct have been found proved:

.a the respondent's head of chambers, HOLP, or employer (as appropriate); and

.b in the case of a registered European lawyer, their home professional body; and

.7 in cases where one or more charges of professional misconduct have been found proved and any such charge constitutes, or arises out of, a legal aid complaint, and/or the sanction includes an order under rE217, the Legal Aid Agency; and

.8 any other person or bodies that the President deems, in their absolute discretion, to be appropriate, taking into account the circumstances.

Regulations E236-E238 - Appeals

Regulations

rE236

In cases where one or more charges of professional misconduct have been proved, and/or a disqualification order has been made, an appeal may be lodged with the High Court in accordance with the Civil Procedure Rules:

.1 by the respondent against finding and/or sanction;

.2 with the consent of the Commissioner, by the Bar Standards Board against sanction.

rE237

In any case where any charge of professional misconduct or application to disqualify has been dismissed, the Bar Standards Board may (with the consent of the Commissioner) lodge an appeal with the High Court in accordance with the Civil Procedure Rules.

rE238

Where a respondent lodges an appeal against a disbarment or Disqualification Order or the revocation of a licence or authorisation, they may at the same time lodge with the High Court an appeal against any requirement imposed under rE227 to rE229 as appropriate.

Regulations E239-E240 - Action to be taken by the Inn (in circumstances where a barrister has been sanctioned to be disbarred)

Regulations

rE239

The Treasurer of the respondent's Inn of Call must not fewer than 21 days, or more than 35 days, after the end of the Disciplinary Tribunal's proceedings (or, where the respondent has given notice of appeal to High Court against the finding and/or sanction, once the time for appeal to the High Court has expired and any appeal to the High Court has been disposed of) pronounce the sanction of disbarment decided on by the Disciplinary Tribunal, and take such further action as may be required to carry the sanction into effect. The Treasurer must inform the persons specified in rE235 of the date on which the sanction is to take effect, (which must be no later than two working days after the date when that sanction is pronounced).

rE240

In any case in which the respondent has given notice of appeal to the High Court against the finding and/or sanction of the Disciplinary Tribunal on the charges of professional misconduct, no action referred to in rE239 may be taken until the appeal has been heard by the High Court, or otherwise disposed of without a hearing.

Regulations E241-E242 - Action to be taken by the Bar Council/Bar Standards Board

Regulations

rE241

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.

rE242

Where the finding and/or sanction of the Disciplinary Tribunal is that the BSB regulated person should be subject to an immediate suspension and/or immediate imposition of conditions in accordance with rE226 the actions of the Bar 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.

Regulations E243-E243A - Publication of finding, sanction and report of the Disciplinary Tribunal

Regulations

rE243

The following procedures apply to the publication of the finding and sanction of a Disciplinary Tribunal:

.1 BTAS:

.a must, where charges are proved, publish the finding and sanction of the Disciplinary Tribunal on its website within 14 days of the date when the Disciplinary Tribunal's proceedings end, unless, on application by the respondent at the hearing, the Disciplinary Tribunal directs that it is not in the public interest to publish the finding and/or sanction; and

.b must, where charges have been dismissed, including following an application under rE127.2, not publish the finding on its website, unless the respondent so requests; and

.2 The Bar Standards Board is free to publish the findings and sanction of a Disciplinary Tribunal on its website in accordance with rE243.1.

rE243A

The following procedures apply to the publication of the report of the Disciplinary Tribunal Decision:

.1 BTAS:

.a must, where charges are proved, publish the report of the Disciplinary Tribunal decision on its website within a reasonable time after the date when the Disciplinary Tribunal's proceedings end, unless, on application by the respondent at the hearing, the Disciplinary Tribunal directs that it is not in the public interest to publish the report; and

.b must, where charges have been dismissed, including following an application under rE127.2, not publish the report on its website, unless the respondent so requests; and

.c must, where charges have been dismissed, including following an application under rE127.2, publish an anonymised summary of the report on its website, unless on application by the respondent at the hearing, the Disciplinary Tribunal directs that it is not in the public interest to publish the anonymised summary; and

.d may, where charges have been dismissed, publish the report of the Disciplinary Tribunal on their websites at any time, provided that in this case all details of the relevant parties involved in the hearing are anonymised.

Regulations E244-E248 - Costs

Regulations

rE244

A Disciplinary Tribunal 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.

Regulations E249-E250 - Service of documents

Regulations

rE249

Any documents required to be served on a respondent in connection with proceedings under these Regulations shall be deemed to have been validly served:

.1 If sent by guaranteed delivery post, or other guaranteed or acknowledged delivery, or receipted hand delivery to:

.a in the case of a BSB authorised individual, the address notified by them pursuant to the requirements of Part 2 of this Handbook (or any provisions amending or replacing it) as their practising address; or

.b in the case of a BSB entity, its registered office address or its principal office; or

.c in the case of a BSB regulated person or non-authorised individual acting as a manager or employee of a BSB entity, the address provided by the BSB entity as their home address or, in the absence of such information, the address of the relevant BSB entity notified pursuant to the requirements of Part 2 of this Handbook; or

.d in either case, an address to which the respondent has asked in writing that such documents be sent; or

.e in the absence of any of the above, to their last known address; or;

.f in the case of a BSB regulated person or non-authorised individual acting as a manager or employee of a BSB entity, the last known address of the relevant BSB entity,

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

.2 If served by e-mail, where:

.a the respondent's e-mail address is known to the Bar Standards Board; and

.b the respondent has asked for or agreed to service by e-mail, or it is not possible to serve by other means;

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

.3 If actually served;

.4 If served in any way which may be directed by the Directions judge or the Chair of the Disciplinary Tribunal.

rE250

For the purpose of rE249.1, "receipted hand delivery" means a delivery by hand which is acknowledged by a receipt signed by the respondent or by a relevant representative of the respondent (including, for example, the respondent's clerk, or a manager or employee of the BSB entity at which the respondent work).

Regulations E251-E253 - Delegation

Regulations

rE251

The powers and functions conferred by these Regulations on a Directions judge may be exercised by any other Judge or 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.

Regulations E254-E258 - Exclusion from providing representation funded by the Legal Aid Agency (Application for termination)

Regulations

rE254

A respondent who has been excluded from legal aid work under Section 42 of the Administration of Justice Act 1985 may apply for an order ending their exclusion from providing representation funded by the Legal Aid Agency as part of the Community Legal Service or Criminal Defence Service in accordance with rE256 below.

rE255

Any such application must be in writing and addressed to the Chair of the Disciplinary Tribunal that made the original order.

rE256

The President may dismiss the application, or may decide that the respondent's exclusion from providing representation funded by the Legal Aid Agency as part of the Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date .

rE257

The Chair of the Disciplinary Tribunal must notify their decision in writing to all those persons who received copies of the report of the Disciplinary Tribunal under rE235.

rE258

The Disciplinary Tribunal may make such order for costs in relation to an application under rE244 as it thinks fit and rE244 to rE248 apply with all necessary modifications.

Regulation E259 - Interpretation

Regulations

rE259

In Section 5.B all italicised terms shall be interpreted in accordance with the definitions in Part 6.

Part 5 - B2. Citation and commencement

Regulations

rE260

These Regulations may be cited as "The Disciplinary Tribunal Regulations 2017".

rE261

These Regulations will come into effect on 1 November 2017 and shall apply to all cases referred to a Disciplinary Tribunal prior to that date under the Regulations then applying, and any step taken in relation to any Disciplinary Tribunal pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

rE261A

Notwithstanding the provisions in rE164 and rE261, the Disciplinary Tribunal must apply the criminal standard of proof when deciding:

.1 charges of professional misconduct where the conduct alleged within that charge occurred prior to 1 April 2019, including where the same alleged conduct continued beyond 31 March 2019 and forms the basis of a single charge of professional misconduct; and

.2 whether the disqualification condition has been established, in relation to an applicable person's alleged breach of duty or other conduct which occurred prior to 1 April 2019, including where the same alleged conduct continued beyond 31 March 2019.

Part 5 - B3. Annexes to the Disciplinary Tribunals Regulations

Regulations

Annex 1 - Sentencing Powers Against Barristers

Regulations

When a charge of professional misconduct has been found proved against a barrister [1] by a Disciplinary Tribunal, the Disciplinary Tribunal may decide to:

.1 order that they be disbarred;

.2 order that their practising certificate be suspended for a prescribed period;

.3 order that their practising certificate should not be renewed;

.4 order that conditions be imposed on their practising certificate;

.5 order that they be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any public access instructions;

.6 order that their authorisation to conduct litigation be removed or suspended, or be subject to conditions imposed;

.7 order them to pay a fine of up to £50,000 to the Bar Standards Board (or up to £50,000,000 if the charges relate to his or her time as an employee or manager of a licensed body);

.8 order them to complete continuing professional development of such nature and duration as the Disciplinary Tribunal may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the supervision team;

.9 reprimand them;

.10 give them advice about their future conduct;

.11 order them to attend on a nominated person to be reprimanded; or

.12 order them to attend on a nominated person to be given advice about their future conduct.

[1] If an application to disqualify the Barrister from acting as HOLP, manager or employee of an authorised person is made in the same proceedings, the Disciplinary Tribunal may also disqualify the Barrister in accordance with the provisions of Annex 5.

Annex 2 - Sentencing Powers Against BSB Authorised Bodies

Regulations

If a Disciplinary Tribunal finds a charge of professional misconduct proved against a BSB authorised body, the Disciplinary Tribunal may decide to :

.1 order that its authorisation to practise as a BSB authorised body be removed;

.2 order that conditions be imposed on its authorisation to practise as a BSB authorised body;

.3 order that its authorisation to practise for a prescribed period be suspended (either unconditionally or subject to conditions);

.4 order that it be re-classified as a BSB licenced body (either unconditionally or with conditions imposed on its licence to practise as a BSB licensed body);

.5 order that its authorisation to conduct litigation be withdrawn or suspended, or be subject to conditions on it;

.6 order it to pay a fine of up to £250,000 to the Bar Standards Board;

.7 order that its managers or employees complete continuing professional development of such nature and duration as the Disciplinary Tribunal may direct and to provide satisfactory proof of compliance with this order to the supervision team;

.8 reprimand it;

.9 give it advice about its future conduct; or

.10 order it to attend (by its HOLP or other person identified in the order) on a nominated person to be given advice about its future conduct.

Annex 3 - Sentencing Powers Against BSB Licensed Bodies

Regulations

If a Disciplinary Tribunal finds a charge of professional misconduct proved, against a BSB licensed body the Disciplinary Tribunal may decide to:

.1 revoke its licence to practise;

.2 suspend its licence to practise for a prescribed period (either unconditionally or subject to conditions);

.3 impose conditions on its licence to practise;

.4 withdraw or suspend its right to conduct litigation or to impose conditions on it;

.5 order it to pay a fine of up to £250,000,000 to the Bar Standards Board;

.6 order it to ensure that its managers or employees complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the supervision team;

.7 reprimand it;

.8 give advice to it about its future conduct; or

.9 order it to attend (by its HOLP or other person identified in the order) on a nominated person to be given advice about its future conduct.

Annex 4 - Sentencing Powers Against Registered European Lawyers

Regulations

If a Disciplinary Tribunal finds a charge of professional misconduct proved against a registered European lawyer, the Disciplinary Tribunal may decide to:

.1 order that they be removed from the register of European lawyers;

.2 order that they be suspended from the register of European lawyers for a prescribed period (either unconditionally or subject to conditions);

.3 order a condition to be imposed on them prohibiting them, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any public access instructions;

.4 order them to pay a fine of up to £50,000 to the Bar Standards Board (or of up to £50,000,000 if, the charges relate to their time as an employee or manager of a licensed body);

.5 order them to complete continuing professional development of such nature and duration as the Disciplinary Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the supervision team;

.6 reprimand them;

.7 give them advice about their future conduct;

.8 order them to attend on a nominated person to be reprimanded; or

.9 order them to attend on a nominated person to be given advice about their future conduct.

Annex 5 - Sentencing Powers Against All Other BSB Regulated Persons

Regulations

If a Disciplinary Tribunal finds a charge of professional misconduct proved against any other BSB regulated person [2] the Disciplinary Tribunal may decide to:

.1 order them to pay a fine of up to £50,000 to the Bar Standards Board (or up to £50,000,000 if the charges relate to their time as an employee or manager of a licensed body);

.2 reprimand them;

.3 give them advice about their future conduct;

.4 order them to attend on a nominated person to be reprimanded;

.5 order them to attend on a nominated person to be given advice about their future conduct.

[2] If an application to disqualify is made in the same proceedings, the Disciplinary Tribunal may also disqualify a BSB regulated person in

accordance with these Regulations.

Annex 6 - Standard Directions

Regulations

The standard directions as referred to in rE103.3 are as follows :

1. The hearing will be in public;

2. This timetable will commence on the second working day after filing of these directions with the BTAS and all time limits will run from that date, unless stated otherwise ;

3. Within 28 days, ie by [date]:

3.1 all parties will provide BTAS with dates when they are available for the substantive hearing in the period between [month/year] and [month/year], failing which BTAS may fix the hearing without reference to the availability of any party;

3.2 the respondent will specify:

(a) whether they admit the charges;

(b) if not, which areas of fact and/or law are in dispute;

4. Within 42 days, ie by [date], the respondent must provide a copy of the documents and a list of witnesses, on which and on whom they intend to rely, and copies of any witness statements on which they intend to rely. The BSB is to provide copies of any witness statements on which it intends to rely within 42 days, i.e. by [date], if required;

5. Within 56 days, ie by [date], both the Bar Standards Board and the respondent must:

5.1 serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;

5.2 provide a schedule setting out details of the witnesses they intend to call and a time estimate for the evidence of each of their witnesses;

6. At least 14 days before the date fixed for the substantive hearing:

6.1 the respondent will provide to BTAS [four/six] copies of any defence bundle already provided under direction (5) for circulation to the Disciplinary Tribunal members, and at the same time send a copy to the Bar Standards Board;

6.2 where the respondent has indicated an intention to admit the charge(s), the respondent will provide to BTAS [four/six] copies of any financial documents or other documentation the respondent wishes to rely on in mitigation, in the event that the charge(s) is found proved;

6.3 the Bar Standards Board will provide to BTAS [four/six] copies of any bundle of evidence as originally served under rE103 for circulation to the Disciplinary Tribunal members;

7. If either party seeks reasonable adjustments, to enable a person with a disability to participate in the hearing, or measures under rE179 to rE181, they must notify BTAS as soon as possible and no later than 21 days before the date fixed for the substantive hearing;

8. The estimated duration of the hearing is [number] days/hours;

9. Any skeleton argument to be relied on at the hearing be filed with BTAS and served on the other parties at least 48 hours before the time fixed for the hearing;

10. There is liberty to apply to the Directions Judge for further directions.

Part 5 - C. The Interim Suspension and Disqualification Regulations

Regulations

Part 5 - C1. Application

Regulations

rE262

This Section 5.C prescribes the manner in which the BSB may seek to take interim action to:

.1 suspend a BSB authorised person (excluding, for the avoidance of doubt, any unregistered barrister); or

.2 disqualify any applicable person from acting as an a HOLP or a HOFA or from working as a manager or employee of a BSB authorised person;

subject to the criteria outlined at rE268 and rE269 below, and pending consideration by a Disciplinary Tribunal under Section 5.B.

rE263

In addition to the above, this Section 5.C sets out the basis upon which the Chair of the Independent Decision-Making Body may impose an immediate interim suspension or disqualification on any applicable person subject to the criteria outlined at rE270 to rE272 below, and pending consideration by an interim panel in accordance with this Section 5.C.

rE264

Anything required by this Section 5.C to be done or any discretion required to be exercised by, and any notice required to be given to, the President or the Chair of the Independent Decision-Making Body and Commissioner, may be done or exercised by, or given to, any person or body authorised by the President or by the Chair of the Independent Decision-Making Body and Commissioneras the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Part 5 - C2. The Regulations Regulations

Regulations E265-E267 - Composition of panels Regulations

rE265

An interim panel shall consist of three members nominated by the President being a Chair (who shall be a 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.

Regulations E268-E272 - Referral to an interim panel

Regulations

rE268

On receipt of a referal or any other information, the Commissioner may refer a respondent to an interim panel if:

.1 subject to rE269:

.a the respondent has been convicted of, or charged with, a criminal offence in any jurisdiction other than a minor criminal offence; or

.b the respondent has been convicted by another Approved Regulator, for which they have been sentenced to a period of suspension or termination of the right to practise; or

.c the respondent has been intervened into by the Bar Standards Board; or

.d removed;

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

.2 the Commissioner decides having regard to the regulatory objectives that pursuing an interim suspension or an interim disqualification order is appropriate in all the circumstances.

rE269

No matter shall be referred to an interim panel on any of the grounds of referral set out in rE268.1.a to rE268.1.b unless the Commissioner considers that, whether singly or collectively, the relevant grounds of referral would warrant, in the case of a BSB authorised person, a charge of professional misconduct and referral to a Disciplinary Tribunal, or, in the case of a applicable person, an application to a Disciplinary Tribunal for disqualification (in each case such referral or application to be made in accordance with Section 5.B).

rE270

If the Commissioner refers a respondent to an interim panel under rE268, the Chair of the Independent Decision-Making Body shall consider whether or not the respondent should be subject to an immediate interim suspension or disqualification under rE272 pending disposal by the interim panel.

rE271

An immediate interim suspension or disqualification may only be imposed if the Chair of the Independent Decision-Making Body is satisfied that such a course of action is justified having considered the risk posed to the public if such interim suspension or disqualification were not implemented and having regard to the regulatory objectives.

rE272

Any immediate interim suspension or disqualification imposed by the Chair of the Independent Decision-Making Body shall:

.1 take immediate effect;

.2 be notified in writing by the Commissioner to the respondent;

.3 remain in force until the earlier of:

.a such time as an interim panel has considered the matter; or

.b the date falling four weeks after the date on which the immediate interim suspension or disqualification is originally imposed;

.4 where relevant, result in the removal of the relevant BSB authorised individual's practising certificate, litigation extension and/or right to undertake public access work (as appropriate);

.5 where relevant, result in the imposition of conditions on the relevant BSB authorised person's authorisation and/or licence (as appropriate)

.6 be published on the Bar Standards Board's website; and

.7 be annotated on the Bar Standards Board's register of BSB authorised persons which is to be maintained by the Bar Standards Board in accordance with rS60.2 and rS129 or be included on the Bar Standards Board's register of individuals that are the subject of a disqualification order (as appropriate).

Guidance to Regulations E268-E272 Guidance

gE1

If an immediate interim suspension or disqualification has been imposed by the Chair of the Independent Decision-Making Body it must be considered by an interim panel within four weeks of the date that that the immediate interim suspension or disqualification is originally imposed. If it is not considered by an interim panel within that period, it shall automatically fall away and no further period of interim suspension or disqualification may be imposed on the respondent until the matter is considered by an interim panel.

gE2

If, subsequent to the imposition of an immediate suspension or disqualification under rE271, the applicable person agrees to provide to the Commissioner an undertaking in written terms in accordance with the provisions of rE274.4 below which is satisfactory to the Commissioner and which is subject to such conditions and for such period as the Commissioner may agree, the Commissioner may elect to remove or qualify the immediate interim suspension or disqualification pending the disposal of any charges or application by a Disciplinary Tribunal. For the avoidance of doubt, in these circumstances the referral to the interim panel shall also be withdrawn in accordance with the provisions of rE275 below.

Regulations E273-E275 - Procedure after referral to an Interim Panel and, where relevant, the decision to impose an immediate interim suspension or disqualification

Regulations

rE273

As soon as practicable after the Commissioner has made a decision to refer a respondent to an interim panel, the Bar Standards Board shall write to the President notifying them of the decision and informing them about whether or not an immediate interim suspension or disqualification has also been imposed on such respondent.

rE274

As soon as practicable after receipt of the notice referred to in rE273, the President shall write to the respondent notifying them of the decision, together with a copy of these Enforcement Regulations, and briefly setting out the details that have caused the referral to the interim panel. The letter of notification shall:

.1 where relevant, inform the respondent that they are the subject of an immediate interim suspension or disqualification (as appropriate) together with a summary of the consequences of that decision;

.2 lay down a fixed time and date (normally not less than 14 and not more than twenty-one days from the date of the letter) for the hearing to take place. One alternative shall be given;

.3 invite the respondent to accept one or other of the dates proposed or to provide a written representation to the President, which should be copied to the Commissioner, objecting to both dates with reasons and providing two further alternative dates which shall be not more than:

.a four weeks after the date of the imposition of the immediate interim suspension or disqualification, where relevant; or

.b in all other cases, twenty-one days from the date of the letter of notification;

Any such representation must be received by the President not more than ten days from the date of the letter of notification. The President shall consider any such representation together with any representations from the Commissioner, and either confirm one of the original dates or re-fix the hearing. If no such representation is received within ten days of the date of the letter of notification the hearing shall take place at the time and date first fixed pursuant to rE274.2 above. The President's decision, which shall be notified in writing to the respondent by the President, shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the

President:

.4 inform the respondent that they may by letter to the Commissioner undertake, pending the disposal of any charge(s) or application(s) by a Disciplinary Tribunal:

.a to be immediately suspended or disqualified (in which case the consequences set out at rE272.4 to rE272.7 would apply);

.b not to accept or carry out any public access instructions; and/or

.c to inform their professional and/or lay clients about any convictions, charges or other matters leading to a referral, in written terms satisfactory to the Commissioner;

and summarising the consequences of the respondent electing to make such an undertaking (which for the avoidance of doubt, may include those set out at rE272.4 to rE272.7 above);

.5 shall inform the respondent that they are entitled to make representations in writing or orally, by themselves or by others on their behalf; and

.6 removed.

rE275

If a respondent sends a letter in accordance with rE274.4 above which is satisfactory to the Commissioner, the Chair shall accept the undertaking contained in the letter in lieu of the interim panel imposing any period of interim suspension or interim disqualification pending the disposal by a Disciplinary Tribunal of any charges of professional misconduct or applications for a disqualification order (as the case may be).

Regulations E276-E278 - Procedure and powers of interim panels

Regulations

rE276

At any hearing of an interim panel the proceedings shall be governed by the rules of natural justice, subject to which:

.1 the procedure shall be informal, the details being at the discretion of the Chair of the interim panel;

.2 the respondent shall be entitled to make representations in writing or orally, by themselves or by another on their behalf, as to;

.a why a period of interim suspension or interim disqualification should not be imposed; or

.b why the interim panel should not direct the respondent to notify their professional clients and/or lay clients about any convictions, charges or other matters leading to a referral; or

.c any further or alternative direction which the interim panel is empowered to make in relation to the respondent under rE278.3 below;

pending the disposal of any charges or applications by a Disciplinary Tribunal;

.3 no witnesses may be called without the prior consent of the Chair of the Panel and without the submission of a proof of evidence;

.4 the attendance of the respondent shall be required. Should they nevertheless fail to attend, the hearing may proceed in their absence subject to the interim panel being satisfied that this course is appropriate. Should the interim panel not be so satisfied, it shall have the power to adjourn the hearing;

.5 the hearing shall not be in public unless so requested by the respondent and a record shall be taken electronically; and

.6 if the interim panel decides an adjournment is necessary for any reason, it may adjourn the hearing for such period and to such time and place, and upon such terms, as it may think fit.

rE277

If the members of the interim panel are not unanimous as to any decision, the decision made shall be that of the majority of them. If the members of the interim panel are equally divided the decision shall be that which is most favourable to the respondent.

rE278

At the conclusion of the hearing the interim panel:

.1 may decide not to impose any period of interim suspension, interim disqualification or other order;

.2 may impose a period of interim suspension or interim disqualification (in each case, either unconditionally or subject to conditions) pending the hearing before a Disciplinary Tribunal, provided that no interim suspension or interim disqualification may be imposed unless the interim panel considers that:

.a were a Disciplinary Tribunal to find a related charge of professional misconduct proven, it would be likely to impose a sentence of

disbarment (with respect to barrister respondents), a sentence of suspension (with respect to barrister respondents or registered European lawyer respondents or BSB entity respondents), revocation of the licence or authorisation (with respect to BSB entity respondents) or a disqualification order (with respect to applicable person respondents); and

.b such interim suspension or interim disqualification is in the public interest;

.3 in lieu of imposing a period of interim suspension or interim disqualification, the interim panel may either:

.a where the respondent is a BSB authorised person, direct the respondent to carry out their or its future activities in accordance with such interim conditions on the respondent's authorisation or licence as the interim panel may think fit pending final disposal of the charges or application against them or it; or

.b where the respondent is a manager or employee of a BSB authorised person, direct such person (after affording the BSB authorised person an opportunity to be heard) to take such steps in relation to the respondent as the interim panel may think fit, which may include limits on the type of work the respondent is to be permitted to do, or requirements as to their supervision or training, pending final disposal of the charges or application against them;

.c accept from the respondent an undertaking in written terms satisfactory to the interim panel (and subject to such conditions and for such period as the interim panel may agree):

.i to be immediately suspended or disqualified; or

.ii not to accept or carry out any public access instructions or to conduct litigation; or

.iii to inform their professional and lay clients about any convictions, charges or other matters leading to a referral;

pending the disposal of any charges or application by a Disciplinary Tribunal provided always that the respondent accepts that the following consequences may arise as a result of such undertaking being provided depending on the nature of the undertaking being provided:

(1) the removal of the relevant BSB authorised individual's practising certificate, litigation extension and/or right to undertake public access work (as appropriate);

(2) the imposition of conditions on the relevant BSB authorised person's authorisation and/or licence (as appropriate);

(3) publication of the details of such interim suspension or disqualification on the Bar Standards Board's website; and

(4) either the inclusion of a note on the Bar Standards Board's register of BSB authorised persons to the effect that such BSB authorised person is temporarily suspended from practice or the inclusion of the details of such interim disqualification on the Bar Standards Board's register of individuals that are the subject of a disqualification order;

.4 shall set down in writing signed by the Chair of the interim panel the decision of the interim panel and the terms of any period of interim suspension, interim disqualification or interim condition imposed under these Interim Suspension and Disqualification Regulations or accepted (in the form of an undertaking) under rE278.3.c above.

.a Where the respondent is a BSB authorised individual, the imposition of any period of suspension shall be recorded as follows:

"That……..be suspended from practice as a …… and be prohibited from holding themselves out as being a …… for a period expiring on [the …….. day of……../[insert applicable condition/event on which expiry is contingent] or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused the interim suspension or such Disciplinary Tribunal may otherwise direct." (Note: If the Panel decides that the suspension should apply to only part of the respondent' s practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

.b Where the respondent is a BSB entity, the imposition of any period of suspension shall be recorded as follows:

"That …….. have its BSB licence/authorisation suspended for a period expiring on [the ……. day of……../[insert applicable condition/event on which expiry is contingent] or such earlier date as a Disciplinary Tribunal shall have disposed of any charges that have caused the interim suspension or such Disciplinary Tribunal may otherwise direct." (Note: If the Panel decides that the suspension should apply to only part of the respondent's practice or shall be subject to conditions, such part or such conditions (as the case may be) shall be recorded);

.c Where the respondent is an applicable person, the imposition of any period of disqualification shall be recorded as follows:

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

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

.a inform the respondent of their right to request a review panel to review the matter as provided in rE279 below;

.b inform the respondent of their right of appeal as provided in rE284 below;

.c removed;

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

Regulations E279-E283 - Review

Regulations

rE279

In the event of a significant change in circumstances or other good reason the respondent may at any time while on interim suspension, interim disqualification or subject to interim conditions make a request in writing to the President for a review panel to be convened to review the matter.

rE280

The letter must set out the details of any alleged change in circumstances or good reason. On receipt of such a letter the President may seek representations from the Commissioner and may in their discretion convene a review panel or refuse the request. In either case the President shall notify the respondent in writing of the decision. If the President decides to convene a review panel the procedure to be followed for fixing the time and date of the hearing shall be as set out in rE274.2 and rE274.3.

rE281

The proceedings before a review panel shall be by way of a rehearing and the provisions of rE276 above shall apply as if for references therein to the interim panel and the Chair of the interim panel there were substituted references respectively to the review panel and the Chair of the review panel.

rE282

Unless in the meantime the hearing before a Disciplinary Tribunal of any charges or applications arising from and/or related to the referral to an interim panel has commenced, a hearing by a review panel convened pursuant to rE279 above shall take place at the time and date fixed. Such hearing shall be a rehearing of the matter by the review panel which may reconsider the matter as if there had been no previous hearing.

rE283

If the hearing before a Disciplinary Tribunal of any charges or applications arising from and/or related to the referral to an interim panel has commenced before the date fixed for a rehearing by a review panel, the date fixed for the rehearing shall be vacated and any interim suspension, interim disqualification or interim conditions made or undertaking accepted by the interim panel shall continue until such charges or applications have been disposed of by the Disciplinary Tribunal.

Regulations E284-E289 - Appeals

Regulations

rE284

A respondent may by letter served on the President and on the Commissioner not more than 14 days after the date of the relevant decision of an interim panel give notice of their wish to appeal against the decision.

rE285

As soon as practicable after receipt of a letter in accordance with rE284 above the President shall convene an appeal panel and write to the respondent notifying them of a fixed time and date (normally not less than 14 and not more than twenty-one days from the date of receipt of the letter) for the hearing to take place. The respondent may make a written representation, addressed to the Chair of the proposed appeal panel, objecting to the date with reasons and providing two further alternative dates. Any such representation must be received by the Chair of the appeal panel not more than 14 days from the date of the letter of notification. The Chair shall consider any such representation and either confirm the original date or re-fix the hearing. If no such representation is received within 14 days of the date of the letter of notification the hearing shall take place at the time and date originally notified to the respondent. The Chair's decision, which shall be notified in writing to the respondent shall be final. Once fixed, a hearing date shall be vacated only in exceptional circumstances and with the agreement of the Chair of the appeal panel.

rE286

The proceedings before an appeal panel shall be by way of a rehearing and the provisions of rE276 above shall apply as if for references therein to the interim panel and the Chair of the interim panel there were substituted references respectively to the appeal panel and the Chair of the appeal panel.

rE287

At the conclusion of the hearing the appeal panel:

.1 may remove the period of interim suspension or interim disqualification and/or any interim conditions imposed under this Section 5.C;

.2 may confirm the period of interim suspension or interim disqualification or impose further or alternative interim conditions, or substitute such shorter period (either unconditionally or subject to conditions) as may be thought fit;

.3 in lieu of confirming or imposing a period of interim suspension or interim disqualification or imposing interim conditions, may accept from the respondent in terms satisfactory to the Chair of the Panel an undertaking in writing to continue to be suspended, disqualified and/or to submit to such conditions and for such period as the appeal panel may agree, pending the disposal of any charges by a Disciplinary Tribunal;

.4 shall set down in writing signed by the Chair of the appeal panel the decision of the appeal panel and the terms of any interim suspension, interim disqualification or interim conditions confirmed or imposed under rE287.2 above or undertaking accepted under rE287.3 above;

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

If the members of the appeal panel are not unanimous as to the decision, the decision made shall be that of the majority of them. If the members of the appeal panel are equally divided, the decision shall be that which is most favourable to the respondent. Any period of interim suspension or interim disqualification or interim conditions having been set, which is confirmed or imposed, shall be recorded as set out in rE278.4 above.

rE288

A pending appeal to an appeal panel shall not operate as a stay of any period of interim suspension or interim disqualification or interim conditions having been set or the terms of any direction or undertaking which is/are the subject of the appeal.

rE289

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

Regulation E290 - Suspension or disqualification ceases to have effect

Regulations

rE290

Unless a Disciplinary Tribunal shall otherwise direct, any period of interim suspension or disqualification and any interim conditions imposed by the interim panel or appeal panel under this Section 5.C shall cease and the respondent shall cease to be bound by the terms of any direction made or undertaking accepted by a interim panel or an appeal panel immediately upon:

.1 a Disciplinary Tribunal dismissing or making an order disposing of all charges of professional misconduct or applications for disqualification based on the referral from the interim panel;

.2 any appeal by the respondent against the conviction or all the conviction(s) which had caused the referral to a interim panel being successful;

.3 the acquittal of the respondent of the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to a interim panel;

.4 the criminal charge or (as the case may be) all of the criminal charges which had caused the referral to an interim panel being withdrawn.

Regulation E291 - Costs

Regulations

rE291

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

Regulations E292-E294 - Report and Publication of Decisions

Regulations

rE292

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

rE293

In any case where a period of interim suspension or interim disqualification is imposed or an interim condition is imposed under this Section 5.C or a direction is made requiring notification to lay and/or professional clients or an undertaking from a respondent is accepted, the President shall communicate brief details in writing of the fact that the respondent is on an interim basis suspended, disqualified and/or subject to conditions (as the case may be) to:

.1 the respondent;

.2 the Chair of the Bar Standards Board and Commissioner;

.3 the respondent's head of chambers, HOLP, or employer (as appropriate);

.4 in the case of a registered European lawyer, their home professional body;

.5 the Treasurers of the respondent's Inn of Call and of any other Inns of which they are a member;

.6 other Approved Regulators and the LSB; and

.7 those of the following whom the President deems, in their absolute discretion, to be appropriate taking into account the particular circumstances:

.a the Lord Chancellor;

.b the Lord Chief Justice;

.c the Attorney General;

.d the Director of Public Prosecutions;

.e the Chair of the Bar Council;

.f the Leaders of the six circuits;

.g such one or more press agencies or other publications, as the Commissioner may direct.

rE294

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

Regulation E295-E296 - Service of documents

Regulations

rE295

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

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

.a in the case of a BSB authorised individual, the address notified by such respondent pursuant to the requirements of Part 2 of this Handbook (or any provisions amending or replacing the same) as being their practising address; or

.b in the case of a BSB regulated person or non-authorised individual acting as a manager or employee of a BSB entity, the address provided by the BSB entity as being their home address or, in the absence of such information, the address of the relevant BSB entity notified pursuant to the requirements of Part 2 of this Handbook; or

.c in either case, an address to which the respondent may request in writing that such documents be sent; or

.d in the absence of any of the above, to their last known address or; in the case of a BSB regulated person or non-authorised individual acting as a manager or employee of a BSB entity, the last known address of the relevant BSB entity;

and such service shall be deemed to have been made on the second day after it was posted, left with, delivered to or collected by the relevant service provider, (provided that that day is a business day, or, if not, the next business day after that day) or on the next working day after receipted hand delivery;

.2 If served by e-mail, where:

.a the respondent's e-mail address is known to the Bar Standards Board; and

.b the respondent has requested or agreed to service by e-mail, or it is not possible to serve by other means;

the respondent has requested or agreed to service by e-mail, or it is not possible to serve by other means;

.3 if actually served;

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

rE296

For the purpose of this regulation "receipted hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the respondent or a relevant representative of such respondent (including, for example, their clerk and a manager or employee of the BSB entity at which they work).

Part 5 - C3. Interpretation Regulations

rE297

In this Section 5.C unless the context otherwise requires all italicized terms shall be defined and all terms shall be interpreted in accordance with the definitions in Part 6.

Part 5 - C4. Commencement Regulations

rE298

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

Part 5 - D. The Fitness to Practise Regulations Regulations

These Regulations, commencing 6 January 2014, are made by the Bar Standards Board, in liaison with the Council of the Inns of Court, under section 21 (regulatory arrangements) Legal Services Act 2007, under authority delegated by the General Council of the Bar as the Approved Regulator of the Bar under Part 1 of Schedule 4 to the Legal Services Act 2007, and with the approval of the Legal Services Board under Paragraph 19 of Schedule 4 to the Legal Services Act 2007.

Part 5 - D1. Preliminaries Regulations

Commencement and application

rE299

These Regulations will come into effect on 6 January 2014 and shall apply to all cases referred to a Fitness to Practise Panel or an Appeal Panel prior to that date under the Regulations then applying, and any step taken in relation to any Fitness to Practise Panel or Appeal Panel pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.

rE300

Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, the President of the Council of the Inns of Court or the Commissioner, may be done or exercised by, or given to, any person or body authorised by the President or by the Commissioner as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

rE301

Any term defined in 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 ‘BSB authorised individual’- at the time of any decisions taken by a Fitness to Practise Panel.

Part 5 - D2. Constitution of Panels

Regulations

rE302

The President shall constitute Fitness to Practise Panels and Appeal Panels (Panels) to exercise the functions afforded to those Panels under these Regulations, in accordance with the provisions set out Schedule 1.

Part 5 - D3. The Fitness to Practise Procedure

Regulations

Regulations E303-E308 - Referral to a Fitness to Practise Panel

Regulations

rE303

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

rE304

The Commissioner may carry out any investigation, appropriate to the consideration of whether the Individual may be unfit to practise, prior to consideration of any referral under Regulation E306.

rE305

Where the Commissioner receives information under Regulation E303, the Commissioner shall, subject to Regulation E307, as soon as reasonably practicable, write to the Individual concerned:

.1 notifying them that information has been received which appears to raise a question of whether they are unfit to practise; and,

.2 providing them with copies of any information received under Regulation E303 or obtained under Regulation E304.

rE306

Where the Commissioner, following receipt of information under Regulation E303 or during the Commissioner's consideration of a referral under the Enforcement Decision Regulations, considers that an Individual may be unfit to practise, they shall refer the matter to a Fitness to Practise Panel for determination.

rE307

No decision to refer shall be taken under Regulation E306 without the Individual having been provided with a reasonable opportunity (as to the circumstance) to make representations on the matter.

rE308

In reaching a decision under Regulation E306, the Commissioner shall take into account any information received under Regulation E303 or obtained under Regulation E304, and any representations submitted by the Individual.

Regulation E309 - Preliminary Hearings

Regulations

rE309

As soon as reasonably practicable after referral of a matter by the Commissioner to a Fitness to Practise Panel, the Chair of the Panel shall send a notice in writing of the referral to the Individual which shall:

.1 contain a summary of the case and the reasons why it has been referred to a Fitness to Practise Panel;

.2 inform the Individual of the time and date for a preliminary hearing before the Panel;

.3 inform the Individual of their right to attend and be represented at the preliminary hearing, and to produce evidence at the preliminary hearing, in accordance with Regulations E335.2 and E335.3 below;

.4 inform the Individual of the Panel's powers at a preliminary hearing under Regulations E310 and rE313 to rE316 below; and,

.5 inform the Individual of their right to appeal under Regulation E328 below.

Regulation E310 - Directions

Regulations

rE310

At a preliminary hearing, the Fitness to Practise Panel may give directions for the full hearing before the Panel, which may include that:

.1 the Individual, within a specified period of time, submit to a relevant medical examination to be carried out by a Medical Examiner nominated by the Panel;

.2 the Bar Standards Board instruct a Medical Examiner to conduct such examination and to provide a report setting out an opinion as to whether the Individual is unfit to practise and as to any other matters as may be specified by the Panel;

.3 the Individual authorise disclosure to the Bar Standards Board and the Medical Examiner, of such of their relevant medical records as may be reasonably required for the purposes of the medical examination and subsequent report; and,

.4 the Bar Standards Board carry out such other investigations or seek such advice or assistance as the Panel considers appropriate to the matters for consideration at the full hearing, and where it gives a direction under Paragraph .1 or .3 above, it shall inform the Individual that failure to comply with the direction may be taken into account by the Panel in accordance with Regulation E319.2

Regulations E311-E312 - Medical Examinations

Regulations

rE311

Where a Medical Examiner is nominated by a Panel under Regulation E310.1 or E320.2.a, the Medical Examiner shall:

.1 within the period specified by the Panel, undertake a relevant medical examination of the Individual in accordance with any directions from the Panel;

.2 prepare a report which shall express an opinion as to:

.a whether the Individual has a physical or mental condition;

.b whether the Individual is fit to practise either generally or on a restricted basis; and

.c any other matters which they have been instructed to address, in accordance with any directions of the Panel; and

.3 where requested by the Commissioner to do so, attend a hearing to present their findings.

rE312

An Individual's medical records and any report prepared by a Medical Examiner under these Regulations shall not be used for any other purpose than is provided for in these Regulations and shall not be disclosed to any other person or body without the consent in writing of the Individual.

Regulations E313-E317 - Interim Restrictions

Regulations

rE313

At a preliminary hearing, a Fitness to Practise Panel may, where it is satisfied that it is necessary to protect the public, is otherwise in the public interest or is in the Individual's own interests to do so, direct that the Individual is subject to an interim restriction.

rE314

An interim restriction may be imposed subject to such conditions as the Panel may consider appropriate, and shall have effect pending the determination of the matter at a full hearing before the Fitness to Practise Panel for a specified period, which shall not, save in exceptional circumstances, exceed 3 months.

rE315

In lieu of imposing an interim restriction under Regulation E313 above, the Panel may accept from the Individual an undertaking in writing on terms satisfactory to the Panel:

.1 â€‹â€‹â€‹agreeing to an immediate interim restriction for such period as may be agreed; or,

.2 as to the Individual's conduct or behaviour pending the conclusion of the full hearing.

rE316

Where it has directed an interim restriction under Regulation E313 or accepted undertakings under Regulation E315, a Panel may, at any point during the period of an interim restriction:

.1 at the request of the Commissioner or of the Individual, direct that the interim restriction or undertaking be reviewed at a further hearing of the Panel, on such date as the Panel shall specify, or on an unspecified date provided that the Individual is served with no less than 14 days' notice in writing of the hearing;

.2 at the request of the Individual, direct an expedited full hearing of the Fitness to Practise Panel;

and, shall;

.a inform the Individual of their right to request a Fitness to Practise Panel to review the interim restriction or undertaking under Regulation E324 below;

.b inform the Individual of their right of appeal under Regulation E328 below.

rE317

The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made, interim restriction imposed or undertakings accepted.

Regulation E318 - Full Hearings before a Fitness to Practise Panel

Regulations

rE318

As soon as reasonably practicable after receipt of any report prepared by a Medical Examiner or, where no report has been prepared, the Commissioner considers that the case is ready for hearing, the Chair of the Panel shall send a notice in writing of hearing to the Individual which shall:

.1 contain a summary of the case and a copy of the report, where applicable;

.2 inform the Individual of the time and date of the full hearing;

.3 inform the Individual of their right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E335.2 and .3 below;

.4 inform the Individual of the Panel's powers at a full hearing under Regulations E319 to E321 below; and,

.5 inform the Individual of their right to appeal under Regulation E328 below.

Regulations E319-E323 - Decisions of a Fitness to Practise Panel

Regulations

rE319

At a full hearing, the Fitness to Practise Panel shall decide whether the Individual is unfit to practise and, in reaching its decision, shall be entitled to take into account:

.1 the Individual's current physical or mental condition, any continuing or episodic condition experienced by the Individual, or any condition experienced by the Individual which, although currently in remission, may be expected to cause impairment if it recurs; and

.2 any failure by the Individual to comply with a direction to undergo a relevant medical examination made under Regulation E310.1.

rE320

Where a Fitness to Practise Panel has decided that an Individual is unfit to practise, the Panel may direct:

.1 that the Individual be subject to a restriction which may be subject to such conditions as the Panel may consider appropriate, and which may be imposed indefinitely or for such period, not exceeding six months, as shall be specified in the direction;

.2 that the Individual's right to continue to practise, or to resume practice after any period of restriction shall be subject to such conditions as the Panel may think fit, including that the Individual:

.a submit for regular examination before one or more Medical Examiners nominated by the Panel,

.b authorise disclosure to the Commissioner and the Medical Examiner such of their medical records as may be reasonably required for the purposes of the medical examination and subsequent report,

.c is reviewed by a registered medical practitioner and shall follow the treatment they recommend in respect of any physical or mental condition, which the Panel consider may be a cause of the Individual being unfit to practice.

rE321

In lieu of imposing any direction under Regulation E320 above, the Panel may accept from the Individual one or more undertakings in writing in which the Individual agrees to such period of restriction, or such conditions, as the Panel would otherwise have imposed.

rE322

Where it has made a direction under Regulation E320 or agreed undertakings under Regulation E321, the Panel shall inform the Individual:

.1 of their right to request a Fitness to Practise Panel to review any direction made, or undertakings agreed, under Regulation E324 below;

.2 of their right of appeal under Regulation E328 below; and

.3 that a failure to comply with the direction or undertakings would be likely to result in a charge of professional misconduct being brought against the Individual before a Disciplinary Tribunal.

rE323

The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made or undertakings accepted.

Part 5 - D4. Reviews and Appeals Regulations

Regulations E324-E327 - Review of decisions made by a Fitness to Practise Panel Regulations

rE324

At any time during which an Individual is subject to a period of restriction or conditions, directed or undertaken pursuant to these Regulations, the Commisioner may, of their own motion, or at the request of the Individual, refer the matter to be reviewed before a Fitness to Practise Panel, where they consider there has been a significant change in the Individual 's circumstances or that there is some other good reason for a review to be undertaken.

rE325

Where a case has been referred to a Fitness to Practise Panel for a review hearing under Regulation E324, Regulations E309 to E323 and E335 shall apply, save that the Chair of the Panel and the Individual may agree in writing that no preliminary hearing shall be held.

rE326

At the conclusion of a review hearing, the Fitness to Practise Panel may:

.1 confirm or revoke the direction made or undertakings agreed;

.2 extend or vary (or further extend or vary) the period for which the direction has effect, or agree with the Individual concerned an extension or variation of the period for which an undertaking has been agreed;

.3 replace the direction or undertakings, exercising any of the powers of a Fitness to Practise Panel under Regulations E313, E315, E320 or E321 above.

rE327

Where a case has been referred to a Fitness to Practise Panel for a review hearing under Regulation E324 above and the review hearing cannot be concluded before the expiry of any period of restriction imposed under Regulation E314 or E320.1, or agreed under Regulation E315.1 or E321, the Panel may extend the restriction for such period as it considers necessary to allow for the conclusion of the review hearing.

Regulations E328-E330 - Appeals before an Appeal Panel

Regulations

rE328

An Individual may appeal a decision of a Fitness to Practise Panel to impose, extend, vary or replace a period of restriction by notifying the President in writing that they wish to do so, no more than 14 days after the date of the decision subject to appeal.

rE329

As soon as reasonably practicable after receipt of an appeal under Regulation E328, the Chair of the Appeal Panel shall send a notice in writing of the appeal hearing to the Individual, which shall:

.1 inform the Individual of the time and date of the appeal hearing;

.2 inform the Individual of their right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations E335.2 and .3 below; and

.3 inform the Individual of the Panel's powers under Regulation E331 below.

rE330

A pending appeal to an Appeal Panel shall not operate as a stay of the decision subject to appeal.

Regulations E331-E334 - Decisions of an Appeal Panel

Regulations

rE331

At the conclusion of an appeal hearing, the Appeal Panel may:

.1 allow the appeal;

.2 confirm the decision that is subject to appeal;

.3 exercise any of the powers of a Fitness to Practise Panel under Regulations E320 or E321 above;

rE332

The Appeal Panel shall inform the Individual:

.1 of their right to request a Fitness to Practise Panel to review any direction made, or undertakings agreed, under Regulation E324 above; and

.2 that failure to comply with a restriction or condition imposed under Regulation E331.3 above would be likely to result in a charge of professional misconduct being brought before a Disciplinary Tribunal.

rE333

The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons, and the terms of any restriction imposed or undertakings accepted.

rE334

There shall be no right of appeal from a decision of an Appeal Panel.

Part 5 - D5. Conduct of Fitness to Practise and Review Panel Hearings

Regulations

Regulations E335-E341 - Procedure before a Panel

Regulations

rE335

At any hearing before a Fitness to Practise or Appeal Panel, the proceedings shall be governed by the rules of natural justice, subject to which:

.1 the procedure shall be informal, the details being at the discretion of the Chair of the Panel;

.2 the Individual shall attend the hearing and may be represented by another member of the bar or a solicitor, save that where the Individual does not attend and is not represented, the hearing may nevertheless proceed if the Panel is satisfied that it is appropriate to do so and that all reasonable efforts have been made to serve the Individual with notice in writing of the hearing in accordance with these Regulations;

.3 the Individual may, on their own behalf or through their representative:

.a make representations in writing or orally,

.b produce evidence, provided (but subject to the discretion of the Chair) that a proof of such evidence has been submitted no less than 24 hours prior to the hearing, and

.c put questions to any Medical Examiner whose report is in evidence before the Panel;

.4 the hearing shall be in private, unless the Individual requests a public hearing, and shall be recorded electronically;

.5 decisions shall be taken by simple majority;

.6 where the votes are equal the issue shall be decided, at a hearing before a Fitness to Practise Panel, in the Individual 's favour and, in an appeal case, against the Individual.

rE336

If at any time it appears to a Panel that it would be appropriate to do so, the Panel may refer the case to the Commissioner for consideration of whether to refer any matter for a hearing before a Disciplinary Tribunal.

rE337

Where it considers it necessary, a Panel may appoint a practising barrister or solicitor to assist it on any question of law or interpretation of these Regulations, by providing an independent advice either orally or in writing, such advice to be tendered in the presence of the parties, or, where the parties are not present at the hearing, copied to the parties as soon as reasonably practicable.

rE338

A Panel shall have no power to award costs.

rE339

The proceedings before an Appeal Panel shall be by way of a rehearing.

rE340

At any review hearing before a Fitness to Practise Panel or appeal hearing before an Appeal Panel, copies of the report of any expert or any proof of evidence referred to at any previous hearing of the Panel in respect of the same case may be referred to by the Panel.

rE341

In the arrangements that it makes to perform its functions, and in undertaking its functions, in particular, in reaching any decision concerning an Individual's fitness to practise, a Panel shall:

.1 take into account its duties to make reasonable adjustments which arise under the Equality Act 2010; and

.2 have due regard to the need to:

.a eliminate unlawful discrimination and other conduct prohibited by the Equality Act 2010, and

.b advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic as set out in Section 149 of the Equality Act 2010 and those who do not.

Regulations E342-E346 - Postponement, adjournment and cancellation

Regulations

rE342

Before the opening of any hearing in which notice has been served in writing in accordance with these Regulations, the Chair of the Panel may, of their motion or on the application of the Bar Standards Board or the Individual, postpone the hearing until such time and date as they think fit.

rE343

Where any hearing under these Regulations has commenced, the Panel considering the matter may, at any stage in the proceedings, whether of its own motion or on the application of the Bar Standards Board or the Individual, adjourn the hearing until such time and date as it thinks

fit.

rE344

No hearing shall be postponed or adjourned under Regulations E342 or E343 unless the Individual has been given reasonable opportunity to make representations on the matter.

rE345

Where a hearing has been postponed or adjourned, the parties shall be notified as soon as reasonably practicable of the time, of the date and place at which the hearing is to take place or to resume.

rE346

Where notice of hearing has been served in writing under these Regulations, the Chair of the Panel may, on application of the Bar Standards Board or the Individual, cancel the hearing where the Chair considers that there are no reasonable grounds for questioning whether the Individual is unfit to practise.

Regulations E347-E348 - Notice and publication of Decisions

Regulations

rE347

Where a decision has been taken by Fitness to Practise Panel or an Appeal Panel under these Regulations, the Chair of the Panel shall, as soon as reasonably practicable, serve notice in writing of the decision on the Individual concerned.

rE348

Where a decision is taken at a full hearing of a Fitness to Practise Panel or at an Appeal Panel hearing, unless the decision is to take no action and the Individual is permitted to continue to practise without restriction, the Chair shall provide notice in writing of the decision to any person to whom they consider it to be in the public interest to do so.

Regulations E349-E351 - Service of documents

Regulations

rE349

Regulation rE249 of the Disciplinary Tribunals Regulations 2017 (section 5.B) shall apply for the purposes of the service of any notices or documents under these Regulations save that, for the reference in Regulation rE249.4 to the " Directions Judge or the Chair of the Disciplinary Tribunal", there shall be substituted the "Chair of the Panel".

rE350

Where a Panel directs that an Individual's ability to practise be subject to restrictions, conditions or agreed undertakings, the President shall always communicate brief details of the decision, in writing to:

.1 the Individual;

.2 the Commissioner of the Bar Standards Board;

.3 â€‹â€‹â€‹the Barrister's Head of Chambers, where relevant;

.4 â€‹â€‹â€‹the Treasurers of the Barrister' s Inn of Call and of any other Inns of which they are a member, where relevant; and

.5 â€‹â€‹â€‹other regulators, where relevant.

rE351

The following shall have details of the decision of the Panel communicated to them in writing, at the discretion of the President:

.1 â€‹â€‹â€‹the Chair of the Bar Council;

.2 the Lord Chancellor;

.3 the Lord Chief Justice;

.4 the Attorney General;

.5 the Director of Public Prosecutions; and,

.6 the Leaders of the six circuits.

Schedule 1 - Constitution of Fitness to Practise and Appeal Panels

Regulations

1. The President shall appoint and maintain:

(a) a list of barristers and lay persons eligible to be members of Fitness to Practise Panel;

(b) a list of barristers and lay persons eligible to be members of an Appeal Panel; and,

(c) from the lists at (a) and (b), lists of 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 the Independent Decision-Making Body; or

(b) removed.

7. No person shall sit on a Fitness to Practise Panel or an Appeal Panel for the hearing of a case that they have previously considered or adjudicated upon in any other capacity.

8. The proceedings of a Fitness to Practise Panel or an Appeal Panel shall be valid notwithstanding that one or more members of the Panel become unable to sit or disqualified from sitting on the Panel, or are replaced by another member from the appropriate list or by the arrangement at paragraph 3, subject to there being a minimum of three Members which shall include a Chair from the relevant list held under Paragraph 1(c), a medical member and a lay member.

9. The validity of the proceedings of a Panel shall not be affected by any defect in the appointment of a member.

Part 5 - E. Interventions and Divestiture

Regulations

Part 5 - E1. Interventions

Regulations

rE352

The Bar Standards Board has the statutory power under Schedule 14 of the Legal Services Act 2007 (as amended by the Legal Services Act 2007 (General Council of the Bar) (Modification of Functions) Order 2018) to intervene into a BSB authorised person.

rE353

The Bar Standards Board may authorise an intervention into a BSB authorised person where:

.1 in relation to the BSB authorised person, one or more of the intervention conditions (as such term is defined in the Legal Services Act 2007) is satisfied; or

.2 the licence, authorisation or practising certificate granted to the BSB authorised person has expired and has not been renewed or replaced by the Bar Standards Board.

rE354

In circumstances where the Bar Standards Board authorises an intervention under rE353 above, such intervention shall be carried out in accordance with the provisions of the Legal Services Act 2007 and the Bar Standards Board's Statutory Interventions Strategy.

Part 5 - E2. Divestiture

Regulations

rE355

The Bar Standards Board has the statutory power under Schedule 13 of the Legal Services Act 2007 to make an application for divestiture in relation to a non-authorised person and a BSB licensed body.

rE356

The Bar Standards Board may make an application for divestiture if the divestiture condition (as such term is defined in the Legal Services Act 2007) is satisfied in relation to such non-authorised person and a BSB licensed body (as the case may be).

rE357

In circumstances where the Bar Standards Board elects to make an application for divestiture under rE356 above, such application shall be carried out in accordance with the provisions of the Legal Services Act 2007.