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B. THE DISCIPLINARY TRIBUNALS REGULATIONS 2014

B1. Arrangement of Regulations

These *Disciplinary Tribunal* Regulations 2014 are organised as follows:

- Service of Charges and/or Applications
- Documents to be served on the defendant
- Directions etc
- Setting the date, appointing a tribunal and issuing a Convening Order
- The *Disciplinary Tribunal*
- Provision of documents to the *Disciplinary Tribunal*
- Procedure at the hearing
- Decision of a court or tribunal
- Absence of defendant
- Recording of proceedings
- Amendment of charge(s) and/or application(s)
- Adjournment
- The finding
- The sentence
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- Publication of finding and sentence
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- Costs
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B2. THE REGULATIONS

Service of Charges and/or Applications

- rE101** Once the *PCC* has decided to refer a matter to a *Disciplinary Tribunal* in accordance with Section 5.A, the *Bar Standards Board* must appoint a *person* or *persons* to represent the *Bar Standards Board* in respect of the charge(s) and or application(s).
- rE102** The *BSB Representative*, once appointed, must ensure that a copy of the charge(s) and/or application(s) is served on the relevant *defendant(s)*, together with a copy of these Regulations not later than 10 weeks (or 5 weeks if the *PCC* has directed that the prosecution of the charges be expedited) after the date on which by the *PCC* decides to refer the matter to a *Disciplinary Tribunal*.
- rE103** The *BSB Representative* must at the same time ensure that copies of the charge(s) and/or application(s) are sent to the *President*.

Documents to be served on the defendant

- rE104** As soon as practicable after the issue of the charges and/or applications to the *defendant(s)*, the *BSB representative* must give the *defendant(s)*:
- .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 *BSB Representative*; and
 - .3 either:
 - .a the *standard directions* which, subject to rE107, automatically apply to the case and must include such timetable as may be considered reasonable by the *BSB representative*, having regard to the facts of that case; or

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- .b the *standard directions*, together with any proposed amendments to the *standard directions* that the *BSB representative* considers reasonable; and
- .4 details of any *special directions* for which the *BSB Representative* proposes, in default of agreement, to apply for (which may include, but are not limited to):
 - .a any of the matters listed at rE107.2 below; or
 - .b an application for leave to amend and/or add charges and/or applications.

rE105 If the documents referred to in rE104.1 and/or rE104.2 are not sent to the *defendant(s)* within 28 days of the service of the charges on the *defendant(s)* in accordance with rE102 above, then the *BSB representative* must provide to the *defendant(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 *defendant(s)*.

rE106 Nothing in rE104 or rE105 above shall prevent a *Disciplinary Tribunal* from receiving the evidence of a witness which has not been served on the *defendant(s)* in accordance with rE104 or rE105, or of a document not included in the list of documents referred to at rE104.2 above, provided that the Tribunal is of the opinion either that this does not materially prejudice the *defendant(s)*, or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

Directions etc

rE107 Within 21 days, after they receive the *standard directions* (or, where relevant, the special direction of which the *BSB Representative* has given notice in accordance with rE104.4) the *defendant(s)* must:

- .1 provide to the *BSB representative* written submissions explaining why the *standard directions* and, where relevant, any special directions of which the *BSB representative* gave notice under rE104.4 above, should be amended, withdrawn or added to; and

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- .2 confirm whether they intend, if no of agreement is reached, to make any of the following applications for special directions, namely:
- .a an application to sever the charges and/or applications;
 - .b an application to strike out the charges and/or applications which relate to the *defendant* who makes the application;;
 - .c an application to stay the proceedings;
 - .d an application about the admissibility of documents;
 - .e an application for disclosure of documents in accordance with rE116.2.c;
 - .f an application to extend or abridge any relevant time limits;
 - .g an application to adjourn the substantive hearing;
 - .h an application for the hearing to be held in private;
 - .i an application for separate hearings or an application that proceedings pending against separate *defendants* be dealt with at the same hearing; or
 - .j any other application for special directions (which the *defendant* considers reasonable, having regard to the facts of the case).

rE108 If, in a case where the *BSB representative* has not suggested any amendments to *the standard directions* pursuant to rE104.3.b above or proposed any special directions in accordance with rE104.4 above, a *defendant* does not provide the information referred to in rE107.1 within the relevant twenty one day period, the *defendant* 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 *defendant* to the same proceedings which was made within the relevant twenty one day period. The *BSB representative* must forthwith serve on *the President* any directions which are deemed to apply to the matter in accordance with this rE108.

rE109 If, in a case where the *BSB representative* has suggested amendments to the *standard directions* pursuant to rE104.3.b above and/or has proposed some special directions in

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accordance with rE104.4 above, a *defendant* does not provide the information referred to in rE107.1 within the relevant twenty one day period, the *BSB representative* must invite *the President* to appoint a *Directions Judge* in accordance with rE113 below and, once a *Directions judge* has been appointed, the *BSB representative* must apply to him to endorse the proposed amendments to the *standard directions* or the proposed special directions (as appropriate), in accordance with the procedure in rE114 to rE123 below.

rE110 Within fourteen days of the date when he receives any written submissions from a *defendant* in accordance with rE107.1 and/or rE107.2 above, the *BSB representative* must consider them and must during that fourteen day period:

- .1 inform the *defendant(s)* of those changes to the *standard directions* or the special directions (as appropriate) which he is able to agree; and
- .2 seek to agree with the *defendant(s)* such other changes to the *standard directions* or the special directions (as appropriate) as may be acceptable to all parties.

rE111 Where the parties, pursuant to rE110 above, agree the directions and special directions which are to apply to the case, those directions will apply to the case and the *BSB representative* must forthwith serve those directions on *the President*.

rE112 If, after the end of the fourteen day period referred to in rE110 above the parties have not agreed any of the *standard directions* or special directions (as appropriate) the *BSB representative* must send to the *President* the following (where relevant):

- .1 a copy of the *standard directions* and/or special directions which have been agreed;
- .2 any written submissions received from the *defendant(s)* in accordance with rE107.1;
- .3 any notice from the *defendant(s)* that they may be intending to make an application referred to at rE107.2; and
- .4 the *BSB Representative's* response to any such request(s) and/or submissions.

rE113 When the *President* has received the documents referred to in rE112 above, the *President* must designate a Judge or Queen's Counsel ("the *Directions judge*") to exercise the powers and functions conferred on the *Directions Judge* in the following Regulations the *Directions*

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Judge must not be the *person* who Chairs the *Disciplinary Tribunal*, once convened subject to rE218.

rE114 The *President* must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE112 above, are sent to the *Directions Judge* once he has been designated.

rE115 When he receives the relevant documents, the *Directions Judge* must consider any submissions about directions. In an appropriate case, the *Directions Judge* may decide that an oral directions hearing is necessary.

rE116 If the *Directions Judge* considers that no oral hearing is necessary, then:

- .1 he 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 his own findings; and
- .2 he may consider and decide any other issues which may be necessary including but not limited to:
 - .a how any of the applications referred to at rE104.4 and/or rE107.2 are to be dealt with;
 - .b what documents are to be admitted ;
 - .c what documents which are in the *Bar Standards Board's* possession or control, and/or documents which later come into the possession of the *Bar Standards Board* , and which may support a defence or undermine the *Bar Standards Board's* case should be disclosed;
 - .d what facts should be made the subject of admissions;
 - .e the provision of a statement that the *defendant* has been duly served (in accordance with rE216 of these Regulations) with the documents required by rE102 and rE104;
 - .f the extension or abridgement of any time limit governing the proceedings;
 - .g fixing the date for the hearing;

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- .h such other matters as he consider are expedient for the efficient conduct of the hearing.

rE117 If the *Directions Judge* considers that an oral hearing is necessary, the *Directions Judge* must give written notice to the *BSB representative* and the *defendant(s)* that an oral hearing is to be held for the purpose of giving directions and taking such other steps as he considers suitable for the clarification of the issues before the tribunal and generally for the just and expeditious handling of the proceedings. The *Directions Judge* shall also provide the *BSB representative* and the *defendant(s)* with a time estimate for the oral directions hearing.

rE118 Within 7 days of receiving the notice referred to in rE117 above the *BSB representative* and the *defendant(s)* must notify the *President* and the other party of their and, where relevant, their Counsel's available dates and times during the six week period immediately after the date of that notice.

rE119 The *President* 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 *BSB representative* and the *defendant(s)* of that date and time.

rE120 At the hearing when convened the *Directions Judge* may deal with, amongst other things, all of the issues referred to at rE116 above.

rE121 A Clerk must take a note of the proceedings at any oral directions hearing and must draw up a record of the directions given and/or any admissions made at it.

rE122 After the oral directions hearing (or, if one was not required, after the review of the papers by the *Directions Judge*) the *President* must ensure that copies of the directions order are served on the *BSB representative* and on the *defendant(s)*.

rE123 The directions order served by the *President* under rE122 is be final, and there is no appeal against it.

rE124 For the avoidance of doubt, the *Directions Judge*, or the Chairman of the Disciplinary Tribunal designed in the Convening Order (or failing the *Directions Judge* or the Chairman, any other Judge nominated by the *President*) may:

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- .1 .1 upon the application of either party at any time extend or abridge any time limit governing the disciplinary procedures on such terms as he thinks just;
- .2 .2 upon the application of either party, or of his own motion, hold preliminary hearings for the purpose of giving any further directions or taking any other steps which he considers necessary for the proper conduct of the proceedings;
- .3 .3 adjourn any preliminary hearing from time to time and for such periods of time as he considers appropriate and set such time limits as he may decide for action to be taken during such adjournments; or
- .4 .4 consider applications for adjournments of the substantive hearing prior to that Hearing and grant such adjournments as he considers appropriate.

Setting the date, appointing a tribunal and issuing a convening order

rE125 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 its availability for the substantive hearing to the *Council of the Inns of Court* in accordance with the directions. After he receives 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 *defendant(s)*, in accordance with the provisions of these Regulations. *The President* must also inform all parties of the date fixed for the hearing as soon as reasonably practicable after he has fixed the date.

rE126 On

- .1 the deemed acceptance or later agreement of *the standard directions* by the parties; or receipt of the directions order from the *President*; or
- .2 where the date of the hearing has not been fixed in the directions referred to in rE126.1 above, the fixing of the date of the hearing in accordance with rE125 above, *the President* must, in all cases,

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- .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 Tribunals* to perform the functions specified in these Regulations and such other functions as the *President*, *Directions Judge* or the Chairman of any Tribunal may direct. No *person* who has been engaged in the investigation of a *complaint* or application against a *defendant* in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that *complaint*;
- .c not less than fourteen days before the date of the substantive hearing, serve an order on the *defendant(s)* ("the *convening order*") specifying:
 - .i the name of the *defendant(s)* to the proceedings and such other information as may be relevant to the *defendant(s)*, for example:
 - (1) where any *defendant* is a *barrister*, details of the *barrister's Inn*, his date of *call* and (if appropriate) the date of his 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 his *employer*, **including whether or not it is a BSB authorised body**) and if the *barrister* was acting as a *HOLP* or *manager* of an *authorised body*, identifying this fact and identifying the *authorised body* **and whether or not it is a BSB authorised body**;
 - (2) where any *defendant* is a **BSB authorised body**, 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**; and
 - (3) where any *defendant* is another type of **BSB regulated person**, details of whether or not the **BSB regulated person**

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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 he was acting as a *HOLP*, *HOFA*, *manager* or *employee* of an authorised body and identifying that authorised body and its Approved Regulator;

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

- .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 Chairman, 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 BSB Representative, and the Clerk. In the Order the attention of the *defendant(s)* will be drawn to:

- (1) their right to represent themselves or be represented by counsel, 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 rE104 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.

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- rE127** The *defendant(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*. He must give this notice as soon as is reasonably practicable and must specify the grounds for his objection.
- rE128** When the *President* receives such an objection, he must, if satisfied that it is justified (but subject to rE129), exercise the power conferred on him by rE140 to nominate a substitute member or members of the Tribunal, and must notify the *defendant(s)* accordingly. When they receive that notification, the *defendant(s)* may object to any substitute member or members, in the same way as they may object under rE127 above.
- rE129** No objection to any member of the Tribunal may be made, or if made, may be upheld, on the grounds only that he knows, or might have known, about a previous application to *disqualify*, or a charge of *professional misconduct*, or of breach of proper professional standards, or a charge consisting of a *legal aid complaint*, against the *defendant(s)*, or any finding on any such application or charge, or any sentence imposed on the *defendant(s)* in connection with any such application or charge.

rE130 The Convening Order must inform the *defendant(s)* of the rights conferred by rE127.

The Disciplinary Tribunal

Hearing in private

rE131 The hearing before a *Disciplinary Tribunal* must be in public, unless it has been directed that it is not to be held in public, and that direction has not been over-ruled by the tribunal.

Composition of Disciplinary Tribunals

rE132 A *Disciplinary Tribunal* must consist of either three persons or five persons.

rE133 A five-person panel must include the following *persons* nominated by the *President*:

- .1 as chairman, a Judge; and
- .2 at least one *lay member*; and

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- .3 at least one *practising barrister* of not less than seven years' standing.

rE134 A three-person panel shall include the following persons nominated by *the President*:

- .1 as chairman, a Queen's Counsel or a Judge; and
- .2 one *lay member*; and
- .3 one *practising barrister of not less than seven years' standing*.

rE135 In deciding who will sit on the panel the *President* must have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the *defendant(s)* against whom the charges have been made. When constituting the panel, as well as taking into account the requirements of rE133 and rE134 above and rE136 below, the *President* must also have regard to (but shall not be bound by) any recommendations by the PCC, which may include a recommendation that a Judge rather than a Queen's Counsel be appointed to act as Chairman of a three-person panel.

rE136 A person must not be nominated to serve on a *Disciplinary Tribunal* if they:

- .1 are a member of the *Bar Council* or of any of its committees; or
- .2 are a member of the *Bar Standards Board* or of any of its committees; or
- .3 was a member of the *Bar Standards Board* or of any of its committees at any time when the matter was being considered by the *Bar Standards Board*.

rE137 *The President* may publish qualifications or other requirements made for those appointed to serve on a *Disciplinary Tribunal* and those appointed to be Clerks.

rE138 For the purposes of rE133 and rE134, a Judge includes:

- .1 a puisne judge of the High Court;
- .2 a judge of the Court of Appeal;
- .3 a Circuit judge;

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- .4 a Recorder who has been authorised to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;
- .5 a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and
- .6 a *person* who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that he remains permitted by virtue of section 9 of the Supreme Court Act 1981 to be requested to act as a judge of the High Court, or is eligible for appointment as a deputy Circuit judge under section 24 of the Courts Act 1971.

rE139 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.

rE140 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 his discretion, he deems necessary or expedient, provided always that the *President* notifies the *defendant(s)* of the identity of such substitutes as soon as is reasonably practicable after he has chosen them. The *defendant(s)* may object to such substitute members in the same way as they may object under rE127.

rE141 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 rE126 above), one or more of the members becomes unable to act or is *disqualified* from acting, provided that:

- .1 the chairman and at least one *lay 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.

rE142 A member of a *Disciplinary Tribunal* who has been absent for any time during a sitting shall take no further part in the proceedings.

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Provision of documents to the Disciplinary Tribunal

rE143 There shall be provided to each member of the *Disciplinary Tribunal* before the start of the substantive hearing copies of the following documents:

- .1 the *convening order*;
- .2 the charge(s) and/or application(s) and any particulars of them;
- .3 any documents which the *BSB representative* or the *defendant(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 *defendant(s)*;
- .5 such other documents as have been agreed or directed to be laid before the Tribunal before the start of the hearing; and
- .6 the *standard directions* (as amended by the parties) and any agreed special directions, or failing such agreement, the directions order served by the *President* pursuant to rE122.

Procedure at the hearing

rE144 The Tribunal must apply the criminal standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

rE145 The rules of natural justice apply to proceedings of a *Disciplinary Tribunal*. Subject to those, the Tribunal may:

- .1 (subject to rE146 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 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 conduct of, and procedure at, the hearing, and, with regard to the admission of evidence at the hearing, as it considers appropriate

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for securing that a *defendant* has a proper opportunity of answering the charge(s) and/or application(s) made against him, or otherwise as shall be just;

- .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.

rE146 Any party may refer to the fact (if relevant) that the *determination by consent* procedure was used before the *complaint* was referred as a charge before a *Disciplinary Tribunal*. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the *determination by consent* procedure ended), unless and until the *defendant* refers to the substance of the procedure in the course of presenting his case, or when he is being sentenced, once the facts have been found.

Decision of a court or tribunal

rE147 In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *defendant* was a party, the following rules shall apply:

- .1 a copy of the certificate of *conviction* relating to the offence shall be conclusive proof that the *defendant* 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 sentence 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 sentence and the findings of fact upon which that finding or sentence 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.

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- rE148** In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *defendant* was not a party, the provisions of rE147 do not apply.

Absence of Defendant

- rE149** If a *Disciplinary Tribunal* is satisfied that the relevant procedure has been complied with and the *defendant* has been duly served (in accordance with rE216 of these Regulations) with the documents required by rE102, rE104, and rE126.2.c (as appropriate) but that *defendant* has not attended at the time and place appointed for the hearing, the Tribunal may nevertheless proceed to hear and determine the charge(s) or application(s) relating to that *defendant* if it considers it just to do so, subject to compliance with rE181.1 in respect of that *defendant* if the *Disciplinary Tribunal* finds any charge or application proved.

- rE150** If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with it, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that *defendant*, if it considers it just to do so, subject to compliance with rE181.2 in respect of that *defendant* if the *Disciplinary Tribunal* finds any charge or application proved.

- rE151** If the procedure under rE150 has been followed, the *defendant* may apply to the *Directions judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

Recording of proceedings

- rE152** The Clerk must arrange for a record of the proceedings before a *Disciplinary Tribunal* to be made, eitherby a shorthand writer, or by a recording machine.

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

- rE153** A *Disciplinary Tribunal* may at any time before or during the hearing direct the charge(s) and/or application(s) against any *defendant* to be amended, or that new charge(s) and/or application(s) be added, provided that:

- .1 that the Tribunal is satisfied that no *defendant* will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of his defence; and

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- .2 that the Tribunal will, if so requested by a *defendant*, adjourn for such time as is reasonably necessary to enable that *defendant* to meet the charge(s) or application(s) as so amended in respect of him.

Adjournment

rE154 Subject to the provisions of rE155, 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 sentence has been pronounced.

rE155 A *Disciplinary Tribunal* may, if the Tribunal decides an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

The finding

rE156 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 chairman and by all members of the Tribunal. 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 *defendant*. The chairman 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.

rE157 In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the *defendant* about his future conduct

The sentence

rE158 If the *Disciplinary Tribunal* finds any of the charges or applications proved against a *defendant*, it may hear evidence of any previous *disqualification order*, or finding of *professional misconduct*, or of breach of proper professional standards by the *Bar Standards Board*, or by any other regulator, or any finding on a charge consisting of a *legal aid complaint* against that *defendant*, or of the outcome of any previous *determination by consent*

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procedure. After hearing any representations by or on behalf of the *defendant(s)*, the *Disciplinary Tribunal* must decide what sentence to impose on a *defendant*, taking into account the *sentencing guidelines*, must record its sentence in writing, together with its reasons. If the members of the Tribunal do not agree on the sentence to be imposed on a *defendant*, the sentence to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sentence to be imposed on a *defendant*, the sentence to be recorded must be that which is the most favourable to the *defendant*. The chairman of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* decision on sentence and state whether the decision was unanimous or by a majority.

rE159 Subject to rE160 below:

- .1 a *defendant* against whom a charge of *professional misconduct* has been found proved may be sentenced 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 *licensed body*, in accordance with Annex 3 to these Regulations;~~
 - .d in the case of *registered European lawyers*, in accordance with Annex 2 to these Regulations;
 - .e in the case of all other *BSB regulated persons*, in accordance with Annex 3 to these Regulations;
- .2 in the case of a *defendant* who is a *relevant 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 sentence in respect of a *relevant person* who

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is a *non-authorised individual* directly or *indirectly employed* by a *BSB authorised person*).

rE160 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 *defendant*.

rE161 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 authorised body* 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 sentence 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 rE162 below.

rE162 In the event that a three-person panel considers that a case before it merits (in conjunction with any deferred sentence) the imposition on a *defendant* of any of the sentences referred to in rE161 above or the three-person panel otherwise considers that the case of a particular *defendant* 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 sentence that *defendant* (but may proceed to sentence any other *defendants* to the proceedings in respect of whom this rE162 does not apply);
- .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 *defendants* to the proceedings). The *defendant* cannot challenge the facts found by the three-person panel; and

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- .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.
- rE163** Following a referral by a three-person panel under rE162, the five-person panel must be constituted in accordance with rE133. The *defendant* must be informed as soon as practicable of the names and status (that is, as Chairman, as *lay member*, as *barrister* or other) of those *persons* who it is proposed will constitute the five-person panel. The *defendant* may, when he is 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 rE128 and rE129.
- rE164** 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 he has fixed the sentencing hearing, the *President* must inform all the parties of that date .
- rE165** If the five-person panel is satisfied that the requirements of rE163 and rE164 above have been complied with, and the *defendant* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sentence the *defendant*, provided that it complies with rE181.3.
- rE166** If the five-person panel is satisfied that it has not been practicable to comply with the requirements of rE163 and rE164, above, and the *defendant* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless sentence the *defendant*, provided that it complies with rE181.4.
- rE167** If the procedure under rE166 has been followed, the *defendant* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel.
- rE168** 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)

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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 Criminal Legal Aid or Civil Legal Aid and to the exclusion from providing representation funded by the *Legal Aid Agency* as part of 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 *defendant* who is a *barrister* may if it thinks fit (and whether or not it sentences the *defendant* in accordance with rE159.1 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 *defendant* who is a *barrister* it may (in addition to, or instead of, sentencing that *defendant* in accordance with rE159.1) order that he 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 him arising from (i) his conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or (ii) his professional conduct generally.

rE169 Whether or not a *Disciplinary Tribunal* finds any charge or application proved against a *barrister* who is a *pupil supervisor*, if the *Disciplinary Tribunal* considers that the circumstances of the *complaint* are relevant to the *defendant* in his capacity as a *pupil supervisor*, it may notify the *defendant's Inn* of those concerns in such manner as it sees fit.

rE170 If a *barrister* is a member of more than one *Inn*, each *Inn* of which he is a member must be mentioned in the sentence imposed on him.

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

rE171 For the purposes of rE172 to rE174:

- .1 The effect of a sentence of *suspension* for a *BSB authorised individual* is that:

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- .a the *defendant's practising certificate* is suspended for the period of the suspension;
 - .b any and all enjoyment of all rights and privileges as a member of the *Inn(s)* of which he is a member are suspended for the period of the suspension; and
 - .c the *defendant* is prohibited from practising as a *barrister*, or holding himself 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 himself as a *Barrister* in providing services other than *legal services* (whether or not for reward) unless he discloses the suspension);
- .2 the effect of a sentence of *suspension* for a *registered European lawyer* shall mean that the *defendant* is suspended from the *register of European lawyers* maintained by the *Bar Standards Board* and is, for so long as he remains suspended:
- .a prohibited from holding himself out as registered with the *Bar Standards Board*; and;
 - .b not authorised to *practice*.
- .3 **The effect of a sentence of suspension for a *BSB authorised body* shall mean that the body's authorisation or licence is suspended for the period of the suspension such that the *defendant* is not an *authorised person* for that period;**
- .4 70.3 The effect of a sentence 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*.

rE172 The period for which a sentence of *suspension* from *practice* is expressed to run may be:

- .1 a fixed period; or
- .2 until the *defendant* has complied with any conditions specified in the order imposing the sentence of *suspension*.

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rE173 Conditions may be imposed on a *barrister's practising certificate or on the authorisation or licence of a BSB authorised body*:

- .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 authorised body* when a period of *suspension* ends.

rE174 Conditions may (depending on the circumstances) include conditions limiting the scope of the *defendant'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 imposing requirements that the *defendant*, **or in the case of a BSB authorised body, its managers or employees**, undergo such further *training* as the *Disciplinary Tribunal* may determine; and/or prohibiting the *defendant* from accepting or carrying out any *public access instructions*; and/or such other matters as the Tribunal may consider appropriate for the purpose of protecting *the public* and/or preventing a repetition of the conduct in question.

Power to order that a sentence has deferred effect

rE175 Where a sentence imposed by a *Disciplinary Tribunal* includes a fine, condition and/or a *suspension from practice*, the *Disciplinary Tribunal* may direct that those elements of the sentence are to have deferred effect.

rE176 A sentence may be directed to have deferred effect for a minimum of six months or a maximum of two years (the “*period of deferral*”).

Power to activate a deferred sentence

rE177 A deferred sentence must be activated if the *defendant* is later found (whether during the *period of suspension* or afterwards) to have committed *professional misconduct* during the *period of deferral*.

rE178 Where a *Disciplinary Tribunal* finds that there has been *professional misconduct* during the *period of deferral*, it shall (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, unless there are exceptional circumstances.

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rE179 A *Disciplinary Tribunal* may (where the conditions for activation of a deferred sentence are satisfied) activate a sentence which has been deferred when imposed by the *PCC* pursuant to the *determination by consent* procedure.

rE180 Where a deferred sentence is activated pursuant to this Regulation, the sentence must then be pronounced, and any action as may be required to give effect to the sentence must be taken, in accordance with rE190 to rE198 below.

Wording of the sentence when defendant not present

rE181 If a *defendant* has not been present throughout the proceedings, the sentence in respect of that *defendant* must include one or more of the following statements:

- .1 if the relevant procedure under rE149 has been complied with, that the finding and sentence were made in the absence of the *defendant* in accordance with rE149;
- .2 if the procedure under rE150 has been complied with, that the finding and the sentence were made in the absence of the *defendant* and that he has 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 rE164 has been complied with, that the sentence was made in the absence of the *defendant* in accordance with rE165;
- .4 if the procedure under rE166 has been complied with, that the sentence was made in the absence of the *defendant* and that he may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

Report of Finding and Sentence

rE182 As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal*, the chairman must prepare a report in writing of the finding(s) on the charges of *professional misconduct* and/or on any applications, and the reasons for those findings and the sentence, if any. At the discretion of the chairman, 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. He must send copies of the report to:

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- .1 the *defendant*;
- .2 the Director of the *Bar Standards Board*;
- .3 the Treasurers of the *defendant's Inn of Call* and of any other *Inns* of which he is a member.

rE183 He must also send copies of the report to:

- .1 those of the following whom he deems, in his absolute discretion, to be appropriate taking into account the circumstances:
 - .a the Lord Chancellor;
 - .b the Lord Chief Justice;
 - .c the Attorney General;
 - .d the Director of Public Prosecutions;
 - .e the Chairman of the *Bar Council*; and
 - .f the Chairman of the *PCC*; and
- .2 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 sentence includes an order under rE168, the *Legal Aid Agency*.

Appeal

rE184 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 *defendant* against *conviction* and/or sentence;
- .2 with the consent of the Chairman of the *Bar Standards Board* or the Chairman of the *PCC*, by the *Bar Standards Board* against sentence on any of the grounds in rE186 below.

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rE185 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 Chairman of the *Bar Standards Board* or of the Chairman of the *PCC*) lodge an appeal with the High Court, in accordance with the Civil Procedure Rules, on any of the grounds in rE186 below.

rE186 The *Bar Standards Board* may only lodge an appeal (against sentence or dismissal) where the *Bar Standards Board* considers the *Disciplinary Tribunal* has:

- .1 taken into account irrelevant considerations;
- .2 failed to take into account relevant considerations;
- .3 reached a decision that is wrong in law; and/or
- .4 reached a decision which no reasonable Tribunal could properly have reached.

rE187 Where a *defendant* lodges an appeal against a disbarment, *Disqualification order or the revocation of a licence or authorisation*, he may at the same time lodge with the High Court an appeal against any requirement imposed pursuant to rE204 to rE206 as appropriate.

rE188 A complainant (other than the *Bar Standards Board*) has no right of appeal.

Appeal: sum payable

rE189 Removed.

Action to be taken by the Inn (in circumstances where a barrister has been sentenced to be disbarred or suspended)

rE190 When the Treasurer of the *defendant's Inn of Call* receives a report prepared in accordance with rE182, he must, not fewer than 21 days after the end of the Tribunal's proceedings (or, where the *defendant* has given notice of appeal to the High Court against the finding and/or sentence, once the time for appeal to the High Court has expired and any appeal to the High Court has been disposed of) pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry the sentence into effect. The Treasurer must inform the *persons* specified in rE182 of the date on which the sentence is to take

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effect, (which must be no later than two working days after the date when that sentence is pronounced).

- rE191 Similar action must be taken by the Treasurer of any other *Inn* of which the *defendant* is a member, in conjunction with the Treasurer of the *defendant's Inn* of Call.
- rE192 In any case in which the *defendant* has given notice of appeal to the High Court against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in rE190 and rE191 may be taken until the appeal has been heard by the High Court, or otherwise disposed of without a hearing.
- rE193 Where, pursuant to rE204, a Tribunal has required the *Bar Standards Board* to suspend the *defendant's practising certificate* or not to issue a *practising certificate* to the *defendant* pending an appeal ("the Interim Measure"), the Treasurer must direct that any period of *suspension* to which the *defendant* has been sentenced will be deemed to have taken effect on the date on which the Interim Measure came into effect, or on the date on which the *defendant* would otherwise have been eligible to be issued with a *practising certificate*, whichever is later.

Action to be taken by the Council of the Inns of Court (in all other circumstances)

- rE194 If the *Disciplinary Tribunal* has imposed a sentence (other than disbarring or suspending a *barrister* see rE190 to rE193, above), the *Council of the Inns of Court*, when it receives the report prepared in accordance with rE182, must, not fewer than 21 days after the end of the Tribunal's proceedings, pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry that sentence into effect. The *Council of the Inns of Court* shall inform the persons specified in rE182 of the date on which the sentence is to take effect. That date must be no later than two clear days after the date when the sentence is pronounced.
- rE195 In any case in which a *BSB regulated person* has given notice of appeal to *the Visitors* against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in rE194 may be taken until the appeal has been heard by *the Visitors*, or otherwise disposed of without a hearing.

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rE196 The *Council of the Inns of Court* must take all such steps as may be necessary or expedient to give effect to any requirement made by the Tribunal pursuant to rE190 above.

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

rE197 Subject to rE198, below, after the sentence has been pronounced in accordance with rE190, above, , the *Bar Council/Bar Standards Board* must, as appropriate, in accordance with the finding and/or sentence of the Tribunal: :

- .1 remove the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to undertake public access work (as appropriate),
- .2 **impose conditions on the relevant *BSB authorised person's authorisation* and/or licence (as appropriate);**
- .3 either include a note on the *Bar Standards Board's register of BSB authorised persons* that the *BSB authorised person* is *disqualified, suspended or is otherwise subject to certain conditions on the terms of his authorisation/*licence*or that the relevant person* is the subject of a *disqualification order*,

except that in any case in which a *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in this rE197 may be taken until the appeal has been heard by the High Court or otherwise disposed of without a hearing.

rE198 Where the finding and/or sentence of the Tribunal is that the *BSB authorised person* should be subject to an immediate **suspension and/or immediate imposition of conditions** in accordance with rE203 below, the *Bar Council/Bar Standards Board* must immediately:

- .1 remove the relevant *BSB authorised individual's practising certificate, litigation extension* and/or right to do public access work (as appropriate),
- .2 **impose conditions on the relevant *BSB authorised person's authorisation* and/or licence (as appropriate);**

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- .3 either include a note on the *Bar Standards Board's* register of *BSB authorised persons* that the *BSB authorised person* is *suspended or is otherwise subject to certain conditions on the terms of his authorisation/licence*,

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 sentence of the Tribunal on the charges of *professional misconduct*.

rE199 The *Bar Standards Board* and/or the *Council of the Inns of Court* also:

- .1 must publish the finding and sentence of the Tribunal on the relevant website(s) within fourteen (14) days of the date when the Tribunal's proceedings end, unless the Chairman of the Tribunal directs that publication shall be delayed until *the President* has published the finding under rE199; and
- .2 may where charges have been dismissed publish the decision of the Tribunal on their websites at any time provided that in this case all details of the relevant parties involved in the hearing are anonymised.

Publication of finding and sentence

rE200 The following procedures apply to the publication of the finding and sentence of a *Disciplinary Tribunal*:

- .1 When the Tribunal has found that one or more charges of *professional misconduct* are proved, then, as soon as it has heard from the Inn. or from the *Council of the Inns of Court* (as the case may be), of the date that any sentence is to take effect, *the President* must publish those charges, the sentence, and the date when that sentence is to take effect.
- .2 When the Tribunal has found that the *disqualification condition* is established and has made a *Disqualification order*, as soon as it has heard from the *Council of the Inns of Court* on what date that order is to take effect, *the President* must publish the findings on which that order was based, the terms of the *Disqualification Order*, and the date when that order is to take effect.

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- .3 When the Tribunal has found that any charge of *professional misconduct* has not been proved *the President* must not publish that charge, or the finding unless the *defendant* asks him to subject to rE198.2.

rE201 When publishing any finding, sentence or decision in accordance with rE199, *the President* must communicate it in writing to:

- .1 the *defendant*;
- .2 the Chairman of the *Bar Standards Board*;
- .3 the *defendant's* head of *chambers*, *HOLP*, or *employer* (as appropriate);
- .4 in the case of a *registered European lawyer*, his *home professional body*;
- .5 the Treasurers of the *defendant's Inn of Call* and of any other Inns of which he is a member;
- .6 other *Approved Regulators* and the *LSB*; and
- .7 one or more press agencies or other publications.
- .8 the following *persons* only where *the President* deems, in his absolute discretion, to be appropriate, taking into account the circumstances:
 - .a the Lord Chancellor;
 - .b the Lord Chief Justice;
 - .c the Attorney General;
 - .d the Director of Public Prosecutions;
 - .e the Chairman of the Bar Council;

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

rE202 rE203 to rE210 below apply to any *defendant* who:

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- .1 Is a *a barrister*, who has been sentenced to be disbarred or to be *suspended* or to be prohibited from accepting or doing any public access work or *instructions* for more than one year;
- .2 Is a *BSB authorised individual*, who has been sentenced to be *disqualified* or to be *suspended* for more than one year;
- .3 **is a *BSB authorised body*, which has been sentenced to have its authorisation or licence revoked or suspended for more than one year; or**
- .4 is a *BSB authorised person*, who has been sentenced to have conditions placed on his *practising certificate, authorisation-or licence-(as appropriate)* prohibiting him from accepting any *public access instructions* or *conducting any litigation* or for more than one year.

rE203 Where rE202 applies the Tribunal must seek representations from the *defendant* and from the *BSB representative* on the appropriateness or otherwise of taking action under rE204 below.

rE204 Having heard any representations under rE202 above, the Tribunal must (unless in the circumstances of the case it appears to the Tribunal to be inappropriate to do so), either:

- .1 in relation to rE202.1 and rE202.2, require the *defendant* to suspend his *practice* immediately, in which case the Bar Standards Board must suspend that *defendant's practising certificate* with immediate effect; or
- .2 in relation to rE202.3, decide that the condition prohibiting the *defendant* from accepting *public access instructions* or conducting any *litigation*, shall take effect immediately; or
- .3 where the *defendant* has been sentenced to be disbarred or to be *suspended*, and where that *defendant* does not currently hold a *practising certificate*, require the Bar Standards Board not to issue any *practising certificate* to him.

rE205 If the 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

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defendant to suspend his *practice* or to impose conditions, from such date as the Tribunal may specify.

rE206 Where the *defendant* is permitted to continue to practise for any period before being suspended under rE205, the Tribunal may require the *Bar Standards Board* to impose such terms on the *defendant's practice* as the Tribunal deems necessary to protect *the public* until the suspension comes into effect.

rE207 Where an order is made in respect of a *defendant* under rE204 above and that *defendant* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, he may apply to *the President* in writing for it to be varied.

rE208 When *the President* receives an application made pursuant to rE207 above, he must refer it to the Chairman and to one of the *lay members* of the Tribunal which originally made the order.

rE209 Any application made pursuant to rE207 above must be sent by the applicant, on the day that it is made, to the *PCC* and the *PCC* may make such representations as they think fit on that application to those to whom the application has been referred by *the President*.

rE210 The persons to whom an application made pursuant to rE207 above is referred may vary or confirm the order in relation to which the application has been made.

rE211 References in rE207 to the *Bar Standards Board* shall be treated as referring to such body as may from time to time have the power to issue or suspend *practising certificates* or to impose conditions on *practising certificates* and the authorisations and licences of *BSB authorised bodies*.

Costs

rE212 A *Disciplinary Tribunal* may make such Orders for costs, whether against or in favour of a *defendant*, as it shall think fit.

rE213 It makes such an Order a *Disciplinary Tribunal* must either itself decide the amount of such costs or appoint a suitably qualified person to do so on its behalf.

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rE214 Any costs ordered to be paid by or to a *defendant* must be paid to or by the *Bar Standards Board*.

rE215 All costs incurred by the *PCC* preparatory to the hearing before the Tribunal must be borne by the *Bar Standards Board*.

Miscellaneous

Representation of complainant's interests

rE216 The *BSB representative* must keep the complainant (if any) informed of the progress of the *complaint*.

Service of documents

rE217 Any documents required to be served on a *defendant* 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 him pursuant to the requirements of Part 2 of this *Handbook* (or any provisions amending or replacing it) as his *practising address*; or
 - .b in the case of a *BSB regulated person* or *non-authorised individual* acting as a ~~manager~~ or employee of a *BSB authorised body*, the address provided by the *BSB authorised body* as his home address or, in the absence of such information, the address of the relevant *BSB authorised body* notified pursuant to the requirements of Part 2 of this *Handbook*; or
 - .c in either case, an address to which the *defendant* has asked in writing that such documents be sent; or
 - .d in the absence of any of the above, to his last known address or; in the case of a *BSB regulated person* or *non-authorised individual* acting as a

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

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

.2 If served by e-mail, where:

- .a the *defendant's* e-mail address is known to the *Bar Standards Board*; and
- .b the *defendant* has 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 Chairman of the *Disciplinary Tribunal*.

rE218 For the purpose of this regulation "received hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the *defendant* or by a relevant representative of the *defendant* (including, for example, his clerk, a ***manager or employee of the BSB authorised body at which he works***).

Delegation

rE219 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 designated in the *convening order* as Chairman of the Tribunal appointed to hear and determine the charge or charges against the *defendant*, if the *Directions judge* is unable to act due to absence, or to any other reason.

rE220 Any duty or function or step which, pursuant to the provisions of these regulations, is to be discharged or carried out by *the President* may, if he is unable to act due to absence or to any other reason, be discharged or carried out by any other member of the *Council of the*

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Inns of Court, the Treasurer of any Inn, or by any other person nominated in writing by *the President* for any specific purpose.

- rE221** 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) subject to rE219.

Other

- rE222** When the Treasurer of an *Inn* is a Royal Bencher, references in these Regulations to the Treasurer shall be read as references to his deputy.

Exclusion from providing representation funded by the Legal Aid Agency - Application for termination

- rE223** A *defendant* who has been excluded from legal aid work under Section 42 of the Administration of Justice Act 1985 may apply for an order ending his exclusion from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid in accordance with this rE223 and rE224 below.

- rE224** Any such application must be in writing and addressed to *the President*.

- rE225** *The President* may dismiss the application, or may decide that the *defendant's* exclusion from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date.

- rE226** *The President* must notify his decision in writing to all those persons who received copies of the report of the *Disciplinary Tribunal* which ordered that the *defendant* be excluded from providing such representation.

- rE227** When the Treasurer of the applicant's *Inn* of Call, and of any other *Inn* of which he is a member, receives any such report, he shall take action equivalent to that which he took in respect of the report of the *Disciplinary Tribunal* which sentenced the *defendant* to be excluded from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid

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rE228 The procedures about the publication of the decision of *the President* on any such application as is referred to in this Regulation are those which applied to the publication of the finding and sentence by which the applicant was excluded from providing representation funded by the *Legal Aid Agency* as part of Criminal Legal Aid or Civil Legal Aid.

rE229 *The President* may make such order for costs as he thinks fit and rE212 to rE215 apply with all necessary modifications.

Interpretation

rE230 In Section 5.B2 all italicised terms shall be interpreted in accordance with the definitions in Part 4.

B3 Citation and commencement

rE231 These Regulations may be cited as “The *Disciplinary Tribunal* Regulations 2014”.

rE232 These Regulations come into force in accordance with the provisions of Part 1 of this *Handbook*.

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B4 Annexes to the *Disciplinary Tribunals* Regulations 2014

ANNEX 1 – SENTENCING POWERS AGAINST BARRISTERS

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

1. to disbar him;
2. to suspend his *practising certificate* and suspend his rights and privileges as a member of his *Inn* for a prescribed period (either unconditionally or subject to conditions);
3. not to renew his *practising certificate*;
4. to impose conditions on his *practising certificate*;
5. 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. to remove or to suspend his authorisation to *conduct litigation* or to impose conditions on it;
7. to order him 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 time as an *employee or manager of a licensed body*);
8. to order him to complete continuing professional development of such nature and duration as the Tribunal may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
9. to order him to be reprimanded by the Treasurer of his Inn;
10. to order him to be reprimanded by the Tribunal;
11. to give him advice about his future conduct;
12. to order him to attend on a nominated person to be reprimanded; or

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 6.

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13. to order him to attend on a nominated *person* to be given advice about his future conduct.

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ANNEX 2 – SENTENCING POWERS AGAINST BSB AUTHORISED BODIES

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

1. remove its authorisation to practise as a *BSB authorised body*;
2. impose conditions on its authorisation to practise as a *BSB authorised body*;
3. suspend its authorisation to *practise* for a prescribed period (either unconditionally or subject to conditions);
4. withdraw, or suspend its authorisation to *conduct litigation* or to impose conditions on it;
5. order a fine of up to £250,000 to the *Bar Standards Board*;
6. order that its *managers* or *employees* complete continuing professional development of such nature and duration as the Tribunal may direct and to provide satisfactory proof of compliance with this order to the *supervision team*;
7. reprimand it;
8. give it advice 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.

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ANNEX 3 – SENTENCING POWERS AGAINST LICENSED BODIES

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

1. ~~revoke its licence to practise revoked;~~
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.~~

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ANNEX 4 – SENTENCING POWERS AGAINST REGISTERED EUROPEAN LAWYERS

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

1. remove him from the *register of European lawyers*;
2. suspend him from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);
3. impose a condition on him prohibiting him, 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 him 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 his time as an *employee* or *manager* of a *licensed body*);
5. order him to complete continuing professional development of such nature and duration as the Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;
6. reprimand him;
7. give him advice about his future conduct;
8. order him to attend on a nominated *person* to be reprimanded; or
9. order him to attend on a nominated *person* to be given advice about his future conduct.

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ANNEX 5 – SENTENCING POWERS AGAINST ALL OTHER *BSB REGULATED PERSONS*

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

1. order him 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 him;
3. give him advice about his future conduct;
4. order him to attend on a nominated *person* to be reprimanded;
5. order him to attend on a nominated *person* to be given advice about his 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.

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ANNEX 6 - STANDARD DIRECTIONS

Pursuant to the *Disciplinary Tribunal* Regulations 2014:

1. The hearing will be in public;
2. That by [] the *defendant* is required to specify:
 - (a) whether he admits the charges;
 - (b) whether any of the facts relied on by the *Bar Standards Board* and set out in the documents provided pursuant to rE104 are admitted;
3. That the *defendant* provide by [] a list of the documents, rely and of the witnesses, on which and on whom he intends to rely, and copies of any witness statemens on which he intends to rely;
4. That on or before [] both the *BSB representative* and the *defendant* serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;
5. That the *defendant* provide to the *Bar Standards Board* at least fourteen days before the date fixed for the substantive hearing [] copies of any defence bundle already provided pursuant to direction (3) above for circulation to the Tribunal members;
6. That the estimated length duration of the hearing is [] days/hours;
7. That the substantive hearing shall take place on [];

OR

8. By [] all parties I provide *the President* with dates when they are available for the substantive hearing, failing which *the President* may fix the hearing without reference to the availability of any party;
9. Any skeleton argument to be relied on at the hearing be served on *the President* and on the other parties at least 48 hours before the time fixed for the hearing.
10. That there be liberty for the parties to agree in writing to vary these directions;

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11. That there be liberty to apply to the *Directions judge* for further directions.