



Legal Services Board – decision notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

The Bar Standards Board (BSB) application for approval of changes to the regulatory arrangements relating to the Fitness to Practise Regulations.

The Legal Services Board (LSB) has granted an application from the BSB for approval of amendments to its Fitness to Practise Regulations.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

Introduction

1. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which the Bar Council has delegated its regulatory functions.
2. Paragraph 25 of Schedule 4 to the Act explains that the LSB may only refuse an application setting out a proposed change to the regulatory arrangements if it is satisfied that by granting the application one or more of the criteria specified in sub paragraph 25(3) (and listed in the footnote below¹) will be met. For example, the LSB's granting of the application to alter the regulatory arrangements must not be prejudicial to the regulatory objectives overall. Accordingly, if the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.
3. As provided for by paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules² about how the application to alter the regulatory arrangements must be made including the contents of that application. The rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. The rules also require that the applicant provides information about the nature and effect of each proposed change and of appropriate consultation undertaken. Sub paragraph 25(3)(f) of Schedule 4 to the Act requires that each proposed alteration has been made

¹ The Board may refuse the application only if it is satisfied that—(a) granting the application would be prejudicial to the regulatory objectives, (b) granting the application would be contrary to any provision made by or by virtue of the Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator, (c) granting the application would be contrary to the public interest, (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator, (e) the alteration would enable the approved regulator to license persons under Part 5 to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.

² Rules for Rule Change Applications – Version 2 (November 2010)

or is likely to be made in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration. This therefore includes the LSB's rules.

4. The chronology for the LSB's handling of this application can be found towards the end of this decision notice.

Background

5. The Fitness to Practise Regulations set out how any issues concerning a barrister's fitness to practise for health reasons should be managed. The Regulations are designed to cover a range of circumstances, including where a barrister has a physical or mental condition that affects their ability to practise as a result of any underlying condition (for example, drug or alcohol addictions).

Proposed changes

6. The BSB stated that the existing rules required redrafting and posed risks which, if unaddressed, may have exposed the individuals subject to the proceedings to an imbalanced process that would not be in the public interest. The problems identified included:
 - Rules were overly complex and confusing;
 - The criteria for decision making required clarification;
 - Some of the terms used in the Regulations, upon which panels place reliance when making decisions, had not been properly defined;
 - The role of the medical practitioner (appointed by a Panel to advise on medical issues and conduct medical examinations), had not been defined within the Regulations;
 - The Equality Act 2010 overhauled and expanded the general law on, among other areas, discrimination. Clarification was needed as to whether the powers granted to the panel, as set out in the Regulations, and the Fitness to Practise process operated by the BSB, remained reasonable and fully compliant with human rights and equality legislation;
 - Whether the procedure continued to be fit for purpose; and
 - A lack of supplementary guidance to support the Regulations, and no further information being available regarding the operation of the Regulations or the criteria to be taken into account by panels when making decisions.
7. As a consequence of the amendments proposed to the Fitness to Practise Regulations, the BSB also sought approval for amendments to certain terms in Part 6 – Definitions - of the Handbook.

Assessment of the application

8. No major issues were identified in the LSB's assessment of the application.

9. A number of detailed questions were raised where the LSB's view was that drafting was not clear. As a result changes have been made to the drafting so that it is easier to understand and the scope for misinterpretation is reduced.
10. Clarification was sought regarding guidance that suggested that the Professional Conduct Committee (PCC) would be responsible for monitoring undertakings given that this appeared to be a matter progressed most effectively through line management rather than via a non-executive committee. BSB confirmed that the Professional Conduct Department (PCD) will take on the monitoring role and advise the PCC on any matters which call for action. The PCD will act under authority delegated to it by the PCC.
11. While the LSB does not generally approve guidance which accompanies an approved regulator's rules or regulations, we did note that that guidance submitted with this application was rather prescriptive in nature as opposed to being more outcomes focussed. However, given that there are relatively few fitness to practise cases in comparison to other types of BSB disciplinary proceedings, we accept that at this stage - in order to ensure a consistent approach - it is preferable to have detailed guidance.

Decision

12. The LSB has considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act, and considers that there is no reason to refuse this application; accordingly, the LSB grants this application.
13. Annex A to this Decision Notice contains the Fitness to Practise Regulations approved by the LSB. Annex B sets out the definitions in Part 6 of the Handbook which have been amended.

Chronology

- The LSB confirmed receipt of an application from the BSB on 7 November 2013.
- On 28 November 2013, the LSB extended the initial decision period to 2 February 2014.
- This decision notice is effective from 10 December 2013 and will be published on the LSB's website on 12 December 2013.

Chris Kenny, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
10 December 2013

E THE FITNESS TO PRACTISE REGULATIONS

These Regulations dated [x 2014] commencing [x 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.

Table of Contents

Part 1 – Preliminaries	2
Commencement and application	2
Definitions	2
Part 2 - Constitution of Panels	4
Part 3 - The Fitness to Practise Procedure	5
Referral to a Fitness to Practise Panel	5
Preliminary Hearings	6
Directions	6
Medical Examination	5
Interim Restrictions	8
Full Hearings before a Fitness to Practise Panel	8
Decisions of a Fitness to Practise Panel	9
Part 4 – Reviews and Appeals	10
Review of decisions made by a Fitness to Practise Panel	10
Appeals before an Appeal Panel	11
Decisions of an Appeal Panel	11
Part 5 – Conduct of Fitness to Practise and Review Panel hearings	12
Procedure before a Panel	12
Postponement, adjournment and cancellation	13
Notice and publication of Decisions	13
Service of documents	14
Schedule 1 - Constitution of Fitness to Practise	

and Review Panels

16

Part 1 - Preliminaries**Commencement and application**

1. These Regulations will come into effect on [insert date] and shall apply to all cases referred to a *Fitness to Practise Panel* (a Panel) or *Review Panel* (a 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.
2. Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, the *President* of the Council of the Inns of Court or the *PCC*, may be done or exercised by, or given to, any *person* or body authorised by the *President* or by the *PCC* as the case may be (either prospectively or retrospectively and either generally or for a particular purpose).

Definitions

3. Any term defined in the *Definitions* section of the *Handbook* shall carry the same meaning in these Regulations. For the purpose of the *Fitness to Practise* Regulations, "Individual" means any '*BSB authorised individual*'.

Part 2 – Constitution of Panels

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

Part 3 - The Fitness to Practise Procedure**Referral to a Fitness to Practise Panel**

5. Where the *PCC* receives information suggesting that an *Individual* is *unfit to practise*, the matter shall be considered under Regulation 7.
6. The *PCC* may carry out any investigation, appropriate to the consideration of whether the *Individual* may be *unfit to practise*, prior to consideration of any referral under Regulation 8.
7. Where the *PCC* receives information under Regulation 5, the Chair of the *PCC* shall, subject to Regulation 6, as soon as reasonably practicable, write to the *Individual* concerned:

- (a) notifying him or her that information has been received which appears to raise a question of whether he or she is *unfit to practise*; and,
 - (b) providing him or her with copies of any information received under Regulation 5 or obtained under Regulation 6.
8. Where the *PCC*, following receipt of information under Regulation 5 or during its consideration of a complaint of professional misconduct under the *Complaints Regulations*, considers that an *Individual* may be *unfit to practise*, it shall refer the matter to a *Fitness to Practise Panel* for determination (Regulation 11).
9. No decision to refer shall be taken under Regulation 8 without the *Individual* having been provided with a reasonable opportunity (as to the circumstance) to make representations on the matter.
10. In reaching a decision under Regulation 8, the *PCC* shall take into account any information received under Regulation 5 or obtained under Regulation 6, and any representations submitted by the *Individual*.

Preliminary Hearings

11. As soon as reasonably practicable after referral of a matter by the *PCC* to a *Fitness to Practise Panel*, the Chair of the Panel shall send a notice in writing of the referral to the *Individual* which shall:
- (a) contain a summary of the case and the reasons why it has been referred to a *Fitness to Practise Panel*;
 - (b) inform the *Individual* of the time and date for a preliminary hearing before the Panel;
 - (c) inform the *Individual* of his or her right to attend and be represented at the preliminary hearing, and to produce evidence at the preliminary hearing, in accordance with Regulations 37(b) and (c) below;
 - (d) inform the *Individual* of the Panel's powers at a preliminary hearing under Regulations 12 and 15 to 18 below; and,
 - (e) inform the *Individual* of his or her right to appeal under Regulation 30 below.

Directions

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

- (a) 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;
- (b) the *PCC* instruct a *Medical Examiner* to conduct such examination and to provide a report setting out an opinion as to whether the *Individual* is *unfit to practise* and as to any other matters as may be specified by the Panel;
- (c) the *Individual* authorise disclosure to the *PCC* and the *Medical Examiner*, of such of his or her relevant medical records as may be reasonably required for the purposes of the medical examination and subsequent report; and,
- (d) the *PCC* carry out such other investigations or seek such advice or assistance as the Panel considers appropriate to the matters for consideration at the full hearing, and where it gives a direction under Paragraph (a) or (c) 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 21(1b).

Medical Examinations

13. Where a *Medical Examiner* is nominated by a Panel under Regulation 12(a) or 22(b)(i), the *Medical Examiner* shall:
- (a) within the period specified by the Panel, undertake a relevant medical examination of the *Individual* in accordance with any directions from the Panel;
 - (b) prepare a report which shall express an opinion as to:
 - (i) whether the *Individual* has a physical or mental condition;
 - (ii) whether the *Individual* is fit to practise either generally or on a restricted basis; and
 - (iii) any other matters which he or she has been instructed to address, in accordance with any directions of the Panel; and
 - (c) where requested by the *PCC* to do so, attend a hearing to present his or her findings.
14. An *Individual's* medical records and any report prepared by a *Medical Examiner* under these Regulations shall not be used for any other purpose than is provided for in these Regulations and shall not be disclosed to any other *person* or body without the consent in writing of the *Individual*.

Interim Restrictions

15. 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.
16. 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.
17. In lieu of imposing an interim restriction under Regulation 15 above, the Panel may accept from the *Individual* an undertaking in writing on terms satisfactory to the Panel:
 - (a) agreeing to an immediate interim restriction for such period as may be agreed; or,
 - (b) as to the *Individual's* conduct or behaviour pending the conclusion of the full hearing.
18. Where it has directed an interim restriction under Regulation 15 or accepted undertakings under Regulation 17, a Panel may, at any point during the period of an interim restriction:
 - (a) at the request of the Chair of the PCC, or at the request of the PCC or of the *Individual*, direct that the interim restriction or undertaking be reviewed at a further hearing of the Panel, on such date as the Panel shall specify, or on an unspecified date provided that the *Individual* is served with no less than 14 days' notice in writing of the hearing;
 - (b) at the request of the *Individual*, direct an expedited full hearing of the *Fitness to Practise Panel*;and, shall:
 - (i) inform the *Individual* of his or her right to request a *Fitness to Practise Panel* to review the interim restriction or undertaking under Regulation 26 below;
 - (ii) inform the *Individual* of his or her right of appeal under Regulation 30 below.
19. The Chair of the Panel shall record, in writing, the decision of the Panel, together with its reasons and the terms of any direction made, interim restriction imposed or undertakings accepted.

Full Hearings before a Fitness to Practise Panel

20. As soon as reasonably practicable after receipt of any report prepared by a *Medical Examiner* or, where no report has been prepared, the *PCC* considers that the case is ready for hearing, the Chair of the Panel shall send a notice in writing of hearing to the *Individual* which shall:
- (a) contain a summary of the case and a copy of the report, where applicable;
 - (b) inform the *Individual* of the time and date of the full hearing;
 - (c) inform the *Individual* of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations 37(b) and (c) below;
 - (d) inform the *Individual* of the Panel's powers at a full hearing under Regulations 21 to 23 below; and,
 - (e) inform the *Individual* of his or her right to appeal under Regulation 30 below.

Decisions of a Fitness to Practise Panel

21. 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:
- (a) 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
 - (b) any failure by the *Individual* to comply with a direction to undergo a relevant medical examination made under Regulation 13 (a).
22. Where a *Fitness to Practise Panel* has decided that an *Individual* is *unfit to practise*, the Panel may direct:
- (a) 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;
 - (b) 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*:
 - (i) submit for regular examination before one or more *Medical Examiners* nominated by the Panel,

- (ii) authorise disclosure to the *PCC* and the *Medical Examiner* such of his or her medical records as may be reasonably required for the purposes of the medical examination and subsequent report,
 - (iii) 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.
23. In lieu of imposing any direction under Regulation 22 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.
24. Where it has made a direction under Regulation 22 or agreed undertakings under Regulation 23, the Panel shall inform the *Individual* :
- (a) of his or her right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation 26 below;
 - (b) of his or her right of appeal under Regulation 30 below; and
 - (c) 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.
25. 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 4 – Reviews and Appeals

Review of decisions made by a Fitness to Practise Panel

26. At any time during which an *Individual* is subject to a period of *restriction* or conditions, directed or undertaken pursuant to these Regulations, the Chair of the *PCC* may, of his or her own motion, or at the request of the *PCC* or of the *Individual*, refer the matter to be reviewed before a *Fitness to Practise Panel*, where he or she considers 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.
27. Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation 26, Regulations 11 to 25 and 37 shall apply, save that the Chair of the Panel and the *Individual* may agree in writing that no preliminary hearing shall be held.
28. At the conclusion of a review hearing, the *Fitness to Practise Panel* may:

- (a) confirm or revoke the direction made or undertakings agreed;
- (b) 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;
- (c) replace the direction or undertakings, exercising any of the powers of a *Fitness to Practise Panel* under Regulations 15, 17, 22 or 23 above.

29. Where a case has been referred to a *Fitness to Practise Panel* for a review hearing under Regulation 26 above and the review hearing cannot be concluded before the expiry of any period of *restriction* imposed under Regulation 15 or 22(a), or agreed under Regulation 17(a) or 23, the Panel may extend the *restriction* for such period as it considers necessary to allow for the conclusion of the review hearing.

Appeals before an Appeal Panel

30. 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 he or she wishes to do so, no more than 14 days after the date of the decision subject to appeal.
31. As soon as reasonably practicable after receipt of an appeal under Regulation 30, the Chair of the *Appeal Panel* shall send a notice in writing of the appeal hearing to the *Individual*, which shall:
- (a) inform the *Individual* of the time and date of the appeal hearing;
 - (b) inform the *Individual* of his or her right to attend and be represented at the hearing, and to produce evidence at the hearing, in accordance with Regulations 37(b) and (c) below; and
 - (c) inform the *Individual* of the Panel's powers under Regulation 33 below.
32. A pending appeal to an *Appeal Panel* shall not operate as a stay of the decision subject to appeal.

Decisions of an Appeal Panel

33. At the conclusion of an appeal hearing, the *Appeal Panel* may:
- (a) allow the appeal;
 - (b) confirm the decision that is subject to appeal;

- (c) exercise any of the powers of a *Fitness to Practise Panel* under Regulations 22 or 23 above;
34. The *Appeal Panel* shall inform the *Individual* :
- (a) of his or her right to request a *Fitness to Practise Panel* to review any direction made, or undertakings agreed, under Regulation 26 above; and
 - (b) that failure to comply with a *restriction* or condition imposed under Regulation 33(c) above would be likely to result in a charge of professional misconduct being brought before a *Disciplinary Tribunal*.
35. 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.
36. There shall be no right of appeal from a decision of a *Review Panel*.

Part 5 – Conduct of Fitness to Practise and Review Panel hearings

Procedure before a Panel

37. 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:
- (a) the procedure shall be informal, the details being at the discretion of the Chair of the Panel;
 - (b) 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;
 - (c) the *Individual* may, on his or her own behalf or through his or her representative:
 - (i) make representations in writing or orally,
 - (ii) 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
 - (iii) put questions to any *Medical Examiner* whose report is in evidence before the Panel;

- (d) the hearing shall be in private, unless the *Individual* requests a public hearing, and shall be recorded electronically;
 - (e) decisions shall be taken by simple majority;
 - (f) 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*.
38. If at any time it appears to a Panel that it would be appropriate to do so, the Panel may refer the case to the *PCC* for consideration of whether to refer any matter for a hearing before a *Disciplinary Tribunal*.
39. 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.
40. A Panel shall have no power to award costs.
41. The proceedings before an *Appeal Panel* shall be by way of a rehearing.
42. 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.
43. 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:
- (a) take into account its duties to make reasonable adjustments which arise under the Equality Act 2010; and
 - (b) have due regard to the need to:
 - (i) eliminate unlawful discrimination and other conduct prohibited by the Equality Act 2010, and
 - (ii) advance equality of opportunity and foster good relations between *persons* who share a relevant protected characteristic as set out in Section 149 of the Equality Act 2010 and those who do not.

Postponement, adjournment and cancellation

44. 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 his or her own motion or on the application of the *PCC* or the *Individual*, postpone the hearing until such time and date as he or she thinks fit.
45. Where any hearing under these Regulations has commenced, the Panel considering the matter may, at any stage in the proceedings, whether of its own motion or on the application of the *PCC* or the *Individual*, adjourn the hearing until such time and date as it thinks fit.
46. No hearing shall be postponed or adjourned under Regulations 44 or 45 unless the *Individual* has been given reasonable opportunity to make representations on the matter.
47. 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.
48. Where notice of hearing has been served in writing under these Regulations, the Chair of the Panel may, on application of the *PCC* or the *Individual*, cancel the hearing where the Chair considers that there are no reasonable grounds for questioning whether the *Individual* is *unfit to practise*.

Notice and publication of Decisions

49. 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.
50. Where a decision is taken at a full hearing of a *Fitness to Practise Panel* or at a *Review 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 he or she considers it to be in the public interest to do so.

Service of documents

51. Regulation 32 of the Disciplinary Tribunals Regulations (Part V B) shall apply for the purposes of the service of any notices or documents under these Regulations save that, for the reference in Regulation 32(1)(d) to the "*Directions Judge* or the *Chairman of the Disciplinary Tribunal*", there shall be substituted the "Chair of the Panel".
52. 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:
 - (a) the *Individual*;

- (b) the Chair of the *PCC*;
- (c) the Director of the *Bar Standards Board*;
- (d) the Barrister's Head of Chambers, where relevant;
- (e) the Treasurers of the Barrister's Inn of Call and of any other Inns of which he is a member, where relevant; and,
- (f) other regulators, where relevant.

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

- (a) the Chair of the *Bar Council*;
- (b) the Lord Chancellor;
- (c) the Lord Chief Justice;
- (d) the Attorney General;
- (e) the Director of Public Prosecutions; and,
- (f) the Leaders of the six circuits.

Schedule 1

Constitution of Fitness to Practise and Appeal Panels

1. The *President* shall appoint and maintain:
 - (a) a list of barristers and *lay persons* eligible to be members of *Fitness to Practise Panel*;
 - (b) a list of barristers and *lay persons* eligible to be members of an *Appeal Panel*; and,
 - (c) from the lists at (a) and (b), lists of Queen's Counsel eligible to act as Chairs of a *Fitness to Practise Panel* and an *Appeal Panel* respectively.

2. The *President* shall remove from the lists at Paragraph 1 *persons*:
 - (a) whose term of appointment has come to an end, unless that term is renewed;
 - (b) who resign from the relevant list by giving notice in writing to that effect to the *President*; or
 - (c) who in the opinion of the *President* have ceased to be eligible for appointment.

3. The *President* shall appoint, and ensure that arrangements are in place to be able to access suitably qualified *medical members* to sit on Fitness to Practise and Review 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 PCC or of the PCC or any of its other Committees; or
 - (b) they were a member of the PCC when the matter being dealt with by the Panel was considered by the PCC.
- 7. No *person* shall sit on a *Fitness to Practise Panel* or a Review 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 a Review 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.

1. Definitions which are currently repeated in both Regulation 3 of the Section 5.E, and Part 6 of the BSB Handbook:

1.1. The BSB is seeking the approval of the LSB to remove the following definitions from Section 5.E of the BSB Handbook, as they already feature in Part 6 of the Handbook. The BSB is also seeking approval to amend these definitions, as highlighted.

- **Fitness to Practise Panel** (currently referred to as the ‘medical panel’ in Part 6):

“means a Fitness to Practise Panel constituted under Section 5.E, in accordance with paragraph 4 of schedule 1.”

- **Medical member** (currently referred to as ‘medical expert’ in Part 6):

“means a person appointed by the President under Section 5.E, in accordance with paragraph 1 of schedule 1 for the purpose of serving on Fitness to Practise and Appeal Panels.”

- **Appeal Panel** (currently called ‘Review Panel’ in the FTP Regulations (see Item 8 of the Issues Log)):

The definition of ‘Appeal Panel’ already features in Part 6 of the Handbook in relation to other regulations, and so the definition here will need to be amended, as follows:

“in Section 5.A means an Appeal Panel constituted in accordance with paragraph rE84, to perform the functions set out in regulations E88 and E89 of that Section 5.A;

in Section 5.D means an Appeal Panel constituted in accordance with paragraph 6 of that Section 5.D, to perform the functions set out in paragraphs rE276 and rE277 of that Section 5.D;

in Section 5.E means an Appeal Panel constituted in accordance paragraph 5 of Schedule 1 of that Section 5.E, to perform the functions set out in paragraphs XXXX* and XXXX* of that Section 5.E.”

Please note: As a result of the proposal to amend the name of ‘Review Panel’ to ‘Appeal Panel’ (see Item 8 of the Issues Log), there is no longer a requirement to amend the definition of ‘Review Panel’, already included in Part 6 of the Handbook (as indicated in our original application).

- **Unfit to practise:**

“when used to describe a BSB authorised individual means that he or she:

is incapacitated due to his or her physical or mental condition (including any addiction); and,

as a result, the Individual’s fitness to practise is impaired; and, the imposition of a restriction, or the acceptance of undertakings in lieu, is necessary for the protection of the public, is otherwise in the public interest or is in the Individual’s own interests.”

Please note: The definitions of 'President' and 'person' are already suitably defined in Part 6 of the Handbook and thus the BSB is seeking only to remove these terms from Regulation 3 of the Fitness to Practise Regulations, and not make any amendments to the definitions as they appear in Part 6 of the Handbook.

2. Definitions included at Regulation 3, but not already included at Part 6 of the BSB Handbook

2.1. The BSB is seeking the approval of the LSB to remove these definitions from Section 5.E of the BSB Handbook and include them in Part 6 instead. The BSB is also seeking approval to amend some of these definitions, as highlighted.

- **Medical**

~~*“in relation to any person means a registered medical practitioner”.*~~

- **Medical Examiner:**

“means a registered medical practitioner nominated to carry out a medical examination of an Individual under Regulations XX or XX of Section 5.E. and provide medical advice to the Fitness to Practise Panel”.*

- **Restriction**

“in Section 5.E, means a suspension, prohibition or disqualification, imposed, extended, varied or replaced by a Panel under Regulations XX, XX, XX or XX of Section 5.E”.*

****paragraph numbers will need to be inserted once the numbering has been finalised.***

3. Consequential amendments to Part 6 of the Handbook

3.1. The BSB is also seeking the approval of the LSB to make further consequential amendments to Part 6 of the Handbook. These terms are also applicable to other sections of the Handbook:

- **Suspended or suspension:**

"means to suspend the practising certificate, licence or authorisation of a BSB authorised person, either generally or in respect of any separate authorisation that person may have to conduct litigation or to carry out public access work (and which includes, in the case of a barrister suspended by order of a Disciplinary Tribunal, the fact that he is suspended from practice and from the rights and privileges as a member of his Inn) which power when exercised on an interim basis, shall be exercised in accordance with Section 5.D and when exercised in fitness to practise proceedings shall be exercised in accordance with Section 5.E."

- **Lay member:**

"means either:

(a) a lay person appointed to be a member of the Bar Standards Board or one of its regulatory committees; or,

(b) a lay person appointed by the President to serve on Disciplinary Tribunals, Interim Suspension Panels and Appeal Panels therefrom, and Fitness to Practise Panels and Appeal Panels therefrom."

- **Lay representative:**

"means either:

(a) a lay person appointed by the President of the Council of the Inns of Court to serve on Disciplinary Tribunals, Interim Suspension Panels and Appeal Panels therefrom, and Medical Panels and Review Panels therefrom; or

(b) a lay person appointed by the Lord Chief Justice to serve on Hearings before the Visitors."

- **Lay person (new definition):**

"means a person who is not and never has been a barrister and who has not completed the training required in order to be called to the Bar".