



Decision notice

The Bar Standards Board's application for approval of alterations to the regulatory arrangements relating to its Complaints Regulations

The Legal Services Board (LSB) has granted an application from the Bar Standards Board (BSB) for approval of alterations to the BSB's Complaints Regulations in its Handbook.

The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse approval of alterations by approved regulators 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.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes. The notes at the end of this notice explain the statutory basis for the decision. The chronology for the LSB's handling of this application is also set out at the end of this decision notice.

Purpose of notice
To grant an application from the BSB approving alterations to its regulatory arrangements in relation to its Complaints Regulations.
Main changes being made by the Bar Standards Board
To amend the BSB Handbook Complaints Regulations, removing the power of the BSB's Professional Conduct Committee (PCC) to take "no further action" (NFA) in relation to breaches of the Handbook and to make consequential amendments, including removal of NFA from the BSB definition of professional misconduct.
Why the LSB is granting the application in full
Having fully assessed the application against the refusal criteria in the Act, the LSB sees no reason to refuse this application.

Background

1. Under the 8th Edition of the BSB Code of Conduct (Annex J of the Code) the Professional Conduct Committee (PCC) of the BSB could decide that, notwithstanding that there was evidence of a breach of the Code that would warrant disciplinary action for professional misconduct, for exceptional reasons (for example ill health) it was appropriate to take no further action on a case. A barrister could appeal against a decision to take no further action and the matter could then be referred to a disciplinary tribunal for a decision. This power was rarely used by the PCC (3 cases between January 2011 and January 2014).
2. In January 2014, the BSB Handbook replaced the 8th Code of Conduct and the provisions previously in Annex J to that Code were transferred to the Complaints Regulations at Section A of Part 5 of the Handbook. The Handbook definition of professional misconduct was defined as a breach of the Handbook by a BSB regulated person which “is not appropriate for disposal by way of no further action or the imposition of an administrative sanction”. In effect this meant that a “no further action” decision is an assessment that the breach does not amount to professional misconduct.
3. The pre-2014 Complaints Regulations were largely replicated in Section A of the Handbook and the provision allowing appeal of a no further action decision remains; this has the unintended consequence that a barrister could appeal a decision to take no further action and the matter would have to be referred to a disciplinary tribunal even if the PCC already concluded that there is no evidence of professional misconduct.

Proposed changes

4. The BSB proposes addressing the matter in this rule change application by removing all reference to a ‘no further action’ decision from the Complaints Regulations and the definition of professional misconduct. Under the amended E37.2 the PCC retains the power to conclude that, on the balance of probabilities, the conduct did constitute a breach of the Handbook but that in all the circumstances no enforcement action should be taken.

LSB assessment

5. The LSB asked the BSB to confirm that the amended E37.2 is the power that would be used in the “exceptional cases” previously covered by the “no further action” power and it confirmed that this was the case.

Decision

6. The LSB has considered the BSB application against the criteria in paragraph 25(3) of Schedule 4 to the Legal Services Act 2007 (the Act). It considers that there is no reason to refuse this application; accordingly, the application is granted.

7. The alterations are contained in Annexes 1 and 2 of this decision notice.

Chronology

- The LSB confirmed receipt of an application from the BSB on 30 July 2015.
- The 28 day initial decision period for considering the application ends on 26 August 2015.
- This decision notice is effective from 26 August 2015.
- The decision notice will be published on our website on 27 August 2015.

Richard Moriarty, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
26 August 2015

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements 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 this 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 [of the Act] 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.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory

¹ Rules for Rule Change Applications – Version 2 (November 2010)

arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.

5. 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.

THE COMPLAINTS REGULATIONS

A1 Powers and Functions of the *PCC*

- rE1** The membership of the *PCC* shall be as prescribed by the Standing Orders of the *Bar Standards Board* from time to time.
- rE2** The powers of the *PCC* shall be as set out in this Part 5, and shall include (but not be limited to) the power:
- .1** to consider *complaints* made by *persons* other than the *Bar Standards Board*;
 - .2** to raise *complaints* on behalf of the *Bar Standards Board*, and to withdraw such *complaints*;
 - .3** to determine whether any *complaint*:
 - .a** discloses a potential breach of the *Handbook*; and/or
 - .b** discloses a potential case of *professional misconduct*; and/or
 - .c** potentially satisfies the *disqualification condition*,and if so to deal with it in accordance with this Section 5.A;
 - .4** to direct the investigation of *complaints*;
 - .5** to seek, in appropriate cases, to resolve *complaints* using the *determination by consent procedure*;
 - .6** to bring and prosecute charges of *professional misconduct* or make an application for *disqualification* before *Disciplinary Tribunals* (as provided by Section 5.B);
 - .7** to seek an immediate interim suspension or immediate *disqualification order* in accordance with Section 5.D of this *Handbook*;
 - .8** to seek an interim suspension or disqualification order in accordance with Section 5.D of this *Handbook*;

- .9 to refer *practising barristers* to a Fitness to Practise panel in accordance with Section 5.E of this *Handbook*;
 - .10 to refer to *disciplinary tribunals* any *legal aid complaint* relating to the conduct of a *BSB regulated person* and to be responsible for prosecuting any such charges or *legal aid complaints* before such *disciplinary tribunals*;
 - .11 to refer any *complaint* for supervisory action by the *supervision team*;
 - .12 to take such other actions in relation to *complaints* or infringements of the *handbook* as are permitted by this Section 5.A;
 - .13 to impose, or direct the imposition, of an *administrative sanction* in accordance with the provisions of rE37.3 below;
 - .14 to make recommendations on matters of professional conduct to the *Bar Standards Board* or to any of its committees, as the *PCC* may think appropriate; and
 - .15 to make rulings on matters of professional conduct in accordance with the *determination by consent procedure*.
- rE3** The *PCC* and the Chairman of the *PCC* shall each have the power to authorise any *person*, group or body to fulfil any function or exercise any power given to them by this Section 5.A. Any authorisations given under rE3 must be in writing and may be either or both retrospective and prospective, and either or both general and for a particular purpose.
- rE4** Save in respect of the matters dealt with at rE29.2 (time limits for making a *complaint*), the *PCC* or the Chairman of the *PCC* shall have the power to extend any time limits prescribed by this Section 5.A, in their absolute discretion, whenever it appears to be appropriate to do so.
- rE5** In determining which of its powers under this Section 5.A to use the *PCC* will take into account all the circumstances, including:
- .1 the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the *PCC* to be relevant; and
 - .2 any other factor relevant to the issue including whether it is appropriate, sufficient, proportionate and effective, in the public interest, to proceed in that manner.

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

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

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

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

.2 to dismiss ~~or take no further action on a *complaint*~~; or

.3 to postpone consideration of a *complaint*;

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

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

rE10 Any *complaint* raised by the *Bar Standards Board* itself shall be considered by the PCC in accordance with Section 5.A3 below.

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

A2 Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the *Bar Standards Board*

Referral of complaints to other persons or to the supervision team

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

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

Reference to the Legal Ombudsman

rE13 If a *complaint* is made by or on behalf of a *client* of a *BSB regulated person* (excluding for the purposes of this ~~rE13~~^{rE13} only, *unregistered barristers*) against that *BSB regulated person* (or, in the case of a *BSB authorised body*, such a *complaint* is made against any individual working as an *employee* or *manager* of such *BSB authorised body*), the *PCC* must refer such *complaint* without further consideration to the *Legal Ombudsman*, or will signpost the complainant to the *Legal Ombudsman* and must in the case of a referral notify the complainant of the referral, unless it is clear on the face of the *complaint* that the matter falls outside the jurisdiction of the *Legal Ombudsman*.

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

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

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

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar

Reference to chambers/BSB authorised bodies

- rE17** If it appears to the *PCC* that a *complaint* against a *relevant person* (which is not a *complaint* made by or on behalf of *BSB regulated person's client* against that *BSB regulated person*) may appropriately be resolved by:
- .1 *chambers* (where the *complaint* is against a *self-employed barrister* who is a *member of*, or other *relevant person* who is working at, such *chambers* at the relevant time); or
 - .2 a *BSB authorised body* (where the *complaint* is against a *BSB authorised body* or the *complaint* is against a *relevant person* acting in their capacity as a *manager* or *employee* of such *BSB authorised body* at the relevant time),
 - .3 the *PCC* may refer the *complaint* to the *chambers* or *BSB authorised body* for investigation and resolution. For the avoidance of doubt, where a *complaint* is made against an *employed barrister (authorised non-BSB body)* or an *employed barrister (non-authorised body)*, the provisions of rE28 apply.
- rE18** When deciding whether to refer a *complaint* in accordance with rE16 above, the *PCC* must take into account all the circumstances, including the factors referred to at rE4 above, and the relationship (if any) between the complainant and the relevant *chambers/BSB authorised body* and whether such a relationship continues.
- rE19** The *PCC* must consider whether the *complaint* should be dismissed on the grounds that it has not been made within the period identified in rE29.2 below before it decides whether to refer the *complaint* to the relevant *chambers/BSB authorised body* in accordance with rE17 above.
- rE20** Where a *complaint* is referred to the relevant *chambers/BSB authorised body* in accordance with rE17 above, the *PCC* will send any information held by it relating to the *complaint* to the head of *chambers* or to the *person* nominated by the *chambers* as being responsible for such issues (in the case of a referral to *chambers*) or to the *HOLP* (in the case of a referral to a *BSB authorised body*).
- rE21** Following a referral to a *chambers/BSB authorised body* in accordance with rE17 above, the *PCC* must inform the complainant of the complainant's rights under rE22.2 below.

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar

rE22 If:

- .1 the *PCC* considers that progress made by the *chambers/BSB authorised body* in investigating and resolving the *complaint*, or the outcome of such an investigation, is unsatisfactory; or
- .2 a complainant informs the *PCC* that he is dissatisfied with the progress or outcome of the *chambers/BSB authorised body's* investigation, giving reasons for such dissatisfaction,

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

Reference where BSB regulated individual acting in judicial or quasi-judicial capacity

rE23 If it appears to the *PCC* that the *complaint* arises out of a *relevant person's* actions in a part-time or temporary judicial or quasi-judicial capacity, it must act as follows:

- .1 if it appears to the *PCC* that the *complaint* would otherwise fall to be dismissed under this Section 5.A, the *PCC* must dismiss it; or
- .2 if it appears to the *PCC* that the *complaint* would otherwise not fall to be dismissed, the *PCC* must refer the *complaint* without further consideration to the Office of Judicial Complaints and/or *person* or body responsible for the appointment of the *relevant person* to the judicial or quasi-judicial office concerned (whether the Lord Chancellor, a Minister of the Crown or other *person* or body as appropriate) ("the appropriate body"), requesting the appropriate body to notify the *PCC* when the *complaint* has been dealt with and of any action taken by it. Where the appropriate body is a *person* other than the Lord Chancellor or a Minister of the Crown, and where the *PCC* considers it inappropriate to refer the *complaint* to the appropriate body, or where the appropriate body refuses to deal with a *complaint*, the *PCC* must consider the *complaint* and, subject to rE25 below, direct it to be proceeded with in accordance with rE29 and following below.

rE24 If the appropriate body, having dealt with a *complaint*, believes that it may be appropriate for it to be considered further by the *Bar Standards Board*, the *appropriate body may*, subject to [rE25](#) below, refer the matter back to the *Bar Standards Board* and, following

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

such referral, the *PCC* may reconsider the *complaint* and may, if it sees fit, direct it to be proceeded with in accordance with rE29 and following below.

- rE25** No such reference to the *Bar Standards Board* as is mentioned in rE24 above by the appropriate body shall be acted upon by the *PCC*, nor shall the *PCC* exercise the powers under the last sentence of rE23.2 above, in respect of a *complaint* relating to anything said or done by the *BSB regulated individual* in the exercise of his judicial functions or affecting the independence of the *BSB regulated person* in his judicial or quasi-judicial capacity.

Reference to the Lord Chancellor or appropriate body

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

Reference to the supervision team

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

Reference to any other person

- rE28** If it appears to the *PCC* that a *complaint* received in respect of a *relevant person* relates to a matter which might more appropriately be dealt with by an *Inn*, Circuit, *employer* or any other professional or regulatory body (including, for the avoidance of doubt, any other *approved regulator*), it may refer the *complaint* to such other body. If, having referred a *complaint* to another body under rE28, the *PCC* subsequently considers that the *complaint* has not been dealt with by that other body within a reasonable time or fully or satisfactorily,

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

the *PCC* may in its discretion then choose to consider the *complaint* in accordance with rE11 above and/or rE29 and following below.

PCC's powers before investigation of complaints

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

- .1 whether the *complaint* concerns a *relevant person*; and
- .2 whether the *complaint* has been made:
 - .a within twelve months of the conduct of which *complaint* is made, or
 - .b where a complainant has indicated to the *PCC* his dissatisfaction with the outcome of a *chambers/BSB* authorised *body's* investigation in accordance with ~~rE22~~~~rE22~~ above, within three months of the end of the investigation by *chambers/BSB* authorised *body*, whichever is the later; and

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

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

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

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

A2: Initial Procedure to be followed by the *PCC* when dealing with complaints received from persons other than the Bar Standards Board

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

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

rE33 If a *complaint* is not dismissed by the *PCC* after its initial consideration, it must be investigated and dealt with in the manner set out in Section 5.A3 below and the complainant and *barrister* must be informed, in writing, that such an investigation is to take place.

A3 Procedure for dealing with complaints to be handled by the PCC - general**Investigation of complaints**

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

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

Additional potential breaches of the Handbook

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

- .1 Then, unless the new matter falls within rE36.2 below:
 - .a *the new complaint* must be investigated in the manner set out in rE34 and following above;
 - .b the PCC must not consider whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect of the disqualification condition being satisfied* in respect of *the new complaint* unless and until the *relevant person* has been given the opportunity to comment in writing on the matter complained of in *the new complaint*. The PCC must take any comments made by the *relevant person* into account when it decides whether there is a *realistic prospect of a finding of professional misconduct* or a *realistic prospect that the disqualification condition will be satisfied* in respect of *the new complaint*;
 - .c the PCC may defer further consideration of *the original complaint* until the *new complaint* has been investigated.

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

PCC consideration of complaints

rE37 When any investigation is complete, the PCC must consider the *complaint*, together with the results of any investigation thereof, and may conclude (having regard to the *enforcement strategy* and any other published *Bar Standards Board* policy that appears to the PCC to be relevant) in respect of *complaints* made against a *relevant person* (but subject always to [rE37](#)~~rE37~~[8](#) and [rE40](#)~~rE40~~ below):

- .1 that the conduct did not constitute a breach of the *Handbook*, in which case the PCC must dismiss the *complaint* and [rE43](#)~~rE43~~ to [rE45](#)~~rE45~~ apply; or
- .2 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) but that, in all the circumstances, no ~~further enforcement~~ action should be taken in respect of the breach in which case [rE1](#)~~rE43~~[6](#) to [rE1](#)~~rE45~~[9](#) apply; or
- .3 that the conduct did constitute a breach of the *Handbook* (on the balance of probabilities) and that that breach should be dealt with by an *administrative sanction* in which case [rE46](#)~~rE46~~[50](#) to [rE51](#)~~rE51~~[5](#) apply; or
- .4 that the conduct may constitute a breach of the *Handbook*; and (ii) if such breach were to be proved, that an *administrative sanction* pursuant to [rE37.3](#)~~rE37.3~~ would not be appropriate in all the circumstances, in which case [rE38](#)~~rE38~~, [rE41](#)~~rE41~~, [rE42](#)~~rE42~~ and [rE52](#)~~rE52~~[26](#) to [rE62](#)~~rE62~~[26](#) apply; or
- .5 that the subject matter of the *complaint* against a *BSB regulated person* involves a *conviction* for an offence of dishonesty or deception, in which case the PCC must direct that the *complaint* should form the subject matter of a charge before a *Disciplinary Tribunal* in which case [rE42](#)~~rE42~~ and [rE52](#)~~rE52~~[26](#) to [rE62](#)~~rE62~~[26](#) shall apply.

- rE38** Where the PCC has concluded that ~~rE37.4~~~~rE37.4~~ is applicable, it must refer the *complaint* to a *Disciplinary Tribunal*, subject to ~~rE40~~~~rE40~~, provided that no *complaint* shall be referred unless the PCC is satisfied that:
- .1 there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied*; and
 - .2 that it is in the public interest, having regard to the *regulatory objectives* to pursue disciplinary proceedings.
- rE39** For the avoidance of doubt, where the *relevant person* is a *non-authorised individual* the PCC may not impose an *administrative sanction* or make a referral to a *Disciplinary Tribunal* on charges of *professional misconduct*. The PCC may only decide to dismiss the *complaint*, ~~take no further action~~, or make an application to the *Disciplinary Tribunal* that the *non-authorised individual* be subject to a *disqualification order*.
- rE40** The PCC must not conclude that any conduct alleged by an external complainant did constitute a breach of the *Handbook* (on the balance of probabilities) if the *relevant person* has not had a reasonable opportunity to respond in writing to the allegation on which the *complaint* is based unless the matter has already been investigated by the *Legal Ombudsman*. For the avoidance of doubt, complaints referred to the PCC by the *supervision team* are not caught by this requirement.
- rE41** Where the PCC is minded to refer the matter to a *Disciplinary Tribunal* for determination it may, in appropriate cases and with the consent of the *defendant*, instead direct that the *complaint* be subject to the *determination by consent procedure* (under Section 5.A4 below).
- rE42** Where the *BSB regulated person* referred to a *Disciplinary Tribunal* is a *registered European Lawyer*, the PCC shall:
- .1 inform the professional body of which the registered *European lawyer* is a member in his home *Member State*;
 - .2 offer the professional body the opportunity to make representations to the *Disciplinary Tribunal* to which the *complaint* has been referred or (where the *determination by consent procedure* is used) to the PCC; and

- .3 inform the professional body of findings made by the Disciplinary Tribunal, the *PCC* or any other *Bar Standards Board* Panel.

A4 Possible outcomes of an investigation of a *complaint* under Section 5.A3**Dismissal**

rE43 Where a decision to dismiss a *complaint* in accordance with [rE37.1](#)~~rE37.1~~ or [E37.2](#) is being taken at a meeting of the *PCC* and not by some other *person*, group or body authorised in accordance with rE3 of this Section 5.A, the majority of the *lay members* present at the meeting must consent to such dismissal.

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

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

rE45 Any decision by the *PCC* to dismiss a *complaint* must only be disclosed in accordance with [rE88](#)~~rE88~~ and [rE89](#)~~rE89~~.

No further action

~~**rE46** Where the *PCC* decides to take no further action in respect of a *complaint* in accordance with [rE37.2](#), the *PCC* shall write to the relevant *BSB regulated person*:~~

- ~~.1 notifying him of the provisions of the *Handbook* which the *PCC* has concluded were breached by him and that the *PCC* has decided in this instance to take no further action; and~~
- ~~.2 informing him of the consequences of its decision (including that the decision will be formally recorded and will be disclosable to third parties, where relevant, that it will be notified to the *supervision team* and, where relevant in accordance with [rE47](#), that it will be notified to the *Barrister's Inn*); and~~

~~.3~~ confirming that if the *BSB regulated person* objects to the decision taken by the *PCC* that he may ask for that the matter to be referred for resolution by a *Disciplinary Tribunal* in accordance with ~~rE49~~; and

~~—~~ where the *PCC* considers it appropriate in all the circumstances, advising him on to his future conduct either in writing or by directing him to attend on the Chairman of the *PCC* or on some other *person* nominated by the *PCC*, to receive such advice.

~~rE47~~ If, when deciding to take no further action on a *complaint* in respect of a *Barrister*, the *PCC* nonetheless considers that the circumstances of the *complaint* are relevant to the *Barrister's* position as a *pupil supervisor*, it may notify the *Barrister's Inn* of its concern in such manner as it sees fit.

~~rE47~~ Any decision by the *PCC* to take no further action will be formally recorded, will be disclosable to certain third parties (in accordance with the *Bar Standards Board's* policy on publication and disclosure) and may, where appropriate, be referred to the *supervision team* for continuing monitoring and supervision, but will not be made public.

~~rE48~~ The *BSB regulated person* shall have the right to object to a decision of the *PCC* to take no further action in accordance with Section 5.A5 by asking for that the matter to be referred for resolution by a *Disciplinary Tribunal*.

Administrative fines and warnings

~~rE49~~rE46 Pursuant to ~~rE37.3~~rE37.3 above, the *PCC* may impose an *administrative sanction* on a *BSB regulated person* only where:

- ~~.1~~ there is sufficient evidence on the balance of probabilities of a breach of the *Handbook* by that *person*; and
- ~~.2~~ the *PCC* considers that to impose an *administrative sanction* is a proportionate and sufficient in the public interest.

~~rE50~~rE47 In determining the level of *administrative sanction* to be imposed, the *PCC* must have due regard to the *enforcement strategy* and may have regard to such other matters as the *Bar Standards Board* may consider relevant from time to time.

~~rE51~~rE48 The maximum level of a fine which can be imposed by the *PCC* under ~~rE47~~rE4754 is:

- .1 £1,000 (one thousand pounds) where the fine is to be imposed on a *BSB regulated individual*; and
- .2 £1,500 (one thousand and five hundred pounds) where the fine is to be imposed on a *BSB authorised body*.

~~rE52~~rE49 Any decision by the *PCC* to impose an administrative fine or warning will be formally recorded and may, where appropriate, be referred to the *supervision team* for continuing monitoring and supervision but will not be disclosed to any third parties except in accordance with ~~rE88~~rE8892 and ~~rE89~~rE8993.

~~rE53~~rE50 Any failure by the *BSB regulated person* to pay the administrative fine within the relevant time is likely to be treated as *professional misconduct* and shall entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.

~~rE54~~rE51 The *BSB regulated person* may appeal a decision of the *PCC* to impose an *administrative sanction* in accordance with Section 5.A5.

Disciplinary charges

~~rE55~~rE52 If the *PCC* directs under rE37.5 or ~~rE38~~rE38 above that a *complaint* shall form the subject matter of a charge of *professional misconduct* before a *Disciplinary Tribunal* and/or that an application should be made to a *Disciplinary Tribunal* for a *disqualification order*, the following -rules apply.

~~rE56~~rE53 At the same time as the *PCC* directs that a *complaint* shall form the subject matter of a disciplinary charge and/or *disqualification* application before a *Disciplinary Tribunal*, the *PCC* must also decide whether a three-person panel or a five-person panel is to be constituted.

~~rE57~~rE54 Where the direction is made pursuant to rE37.5 (*complaint* involving *conviction* for dishonesty or deception), the *PCC* must direct that a five-person panel is to be constituted.

~~rE58~~rE55 In all other cases, in deciding whether to direct the constitution of a three-person or a five-person panel, the *PCC* shall consider the sanction which it considers is likely to be imposed on the *relevant person* if the charge or application is proved, having regard to:

- .1 any applicable sentencing policy and guidelines issued by the *Bar Standards Board* and/or the *Council of the Inns of Court* from time to time; and
- .2 the previous disciplinary record of the *relevant person*; and
- .3 any deferred sentence which would be activated if the *relevant person* were to be found guilty of the charges alleged.

~~rE59~~rE56 The *PCC*:

- .1 shall direct that a five-*person* panel is to be constituted if the *PCC* considers that:
 - .a the *BSB authorised individual* would be likely to be disbarred or *suspended* from *practice* for more than twelve months; or
 - .b that the *relevant person* would be likely to be *disqualified* indefinitely or for a defined term of more than twelve months; or
 - .c that the *BSB authorised body* would be likely to have its authorisation or licence revoked or *suspended* for a period of more than twelve months;
- .2 may refer to a five *person* panel where it considers it desirable to have a broader range of expertise available, having regard to the subject matter of the complaint.

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

~~rE60~~rE57 The *PCC* must inform the *BSB regulated person* and the complainant (if any) of the direction that it has made pursuant to ~~rE53~~rE537. No one may appeal against the decision taken by the *PCC* under that ~~RULE-rE53~~ (and those following).

~~rE64~~rE58 Where the *PCC* directs that a three-person panel is to be constituted, the *PCC* may, if it thinks fit, recommend that a Judge rather than a QC be appointed to act as Chairman of the Panel, giving reasons for any such recommendation.

~~rE62~~rE59 The *PCC* may:

- .1 refer to the same *Disciplinary Tribunal* any charges and/or *disqualification* applications which the *PCC* considers may conveniently be dealt with together;
- .2 refer any additional charges or *disqualification* applications relating to the same *BSB regulated person* to the *Disciplinary Tribunal* which is dealing with the original disciplinary charge or *disqualification* application (as the case may be), even if the additional charge or application, by itself, may be regarded as insufficiently serious to merit disposal by a *Disciplinary Tribunal* of that level.

~~rE63~~rE60 The *PCC*:

- .1 may direct that the prosecution of the charges be expedited if it considers that one or more of the following conditions is satisfied:
 - .a the facts of the *complaint* are unlikely to be disputed (for example because it involves a criminal *conviction*); or
 - .b witnesses are unlikely to be called for the hearing; or
 - .c the case should be resolved urgently; or
 - .d there is some other good reason for expedition; and
- .2 must direct that the prosecution of the charges be expedited if the *defendant* has requested an expedited hearing under Section 5.D.

~~rE64~~rE61 When the *PCC* has directed that a *complaint* shall form the subject matter of a charge or application before a *Disciplinary Tribunal*, the *PCC* must be responsible for bringing the charge or application on behalf of the *Bar Standards Board* and prosecuting that charge before such *Disciplinary Tribunal*. If so:

- .1 the *PCC* may arrange for the appointment of counsel to settle the charge and to present the case before the *Disciplinary Tribunal*; and
- .2 any charges shall be brought in the name and on behalf of the *Bar Standards Board*.

~~rE65~~rE62 Section 5.B applies in respect of the procedure to be followed by the *Disciplinary Tribunal*.

ANNEX 1

Part 5: Enforcement Regulations
Section A: The Complaints Regulations
A4: Possible outcomes of an investigation

A5 Determination by consent

~~rE66~~rE63 A *complaint* which the *PCC* is otherwise intending to refer to the *Disciplinary Tribunal* in accordance with rE38 above may, with the consent of the *relevant person* against whom the *complaint* is made, be finally determined by the *PCC*. This is referred to as the “*determination by consent procedure*”.

~~rE67~~rE64 The circumstances in which the *determination by consent procedure* is to be used, and how it is to be used, are set out below.

~~rE68~~rE65 The *PCC* must, in deciding whether to make a *complaint* subject to the *determination by consent procedure*, consider all the circumstances. The *PCC* may make the *complaint* subject to the *determination by consent procedure* only if:

- .1 the *relevant person* submits to the jurisdiction of the *PCC*; and
- .2 the *PCC* considers that:
 - .a there is a *realistic prospect of a finding of professional misconduct being made* or there is a *realistic prospect of the disqualification condition being satisfied* in respect of the *complaint*; and
 - .b there are no substantial disputes of fact which can only fairly be resolved by oral evidence being taken; and
 - .c there are no exceptional circumstances which would warrant ~~no further action being taken on the complaint or the complaint~~ being dismissed; and
 - .d having regard to the *regulatory objectives*, it is in the public interest to resolve the *complaint* under the *determination by consent procedure*; and
 - .e the potential *professional misconduct or disqualification condition*, if proved, combined with:
 - .i the *relevant person’s* previous disciplinary history, and
 - .ii any deferred sentences which would be activated if the breach or breaches were proved,

.f do not appear to be such as to warrant a period of suspension or disbarment, the withdrawal of an *authorisation* or *licence* (as appropriate) or the imposition of a *disqualification order* (or equivalent by another *Approved Regulator*).

~~rE69~~rE66 The *determination by consent procedure* will be conducted in accordance with such procedures as the *PCC* may prescribe from time to time.

~~rE70~~rE67 The *PCC* may terminate the *determination by consent procedure* at any time if it no longer considers that the requirements of ~~rE65~~rE65 are satisfied, or for any other good reason.

~~rE74~~rE68 If the *determination by consent procedure* ends other than by a finding and sentence to which the *relevant person* consents, then the *complaint* may be referred to a full *Disciplinary Tribunal*.

~~rE72~~rE69 The *PCC* must publish any finding and sentence resulting from the *determination by consent procedure* to the same extent as such publication would have taken place on a finding and sentence by a *Disciplinary Tribunal*, as provided for in the *Disciplinary Tribunal Regulations*.

~~rE73~~rE70 If the *relevant person* accepts a *determination by consent*, no one may appeal against it.

~~rE74~~rE71 In determining what sanction, if any, to impose under the *determination by consent procedure*, the *PCC* shall have regard to the relevant *enforcement strategy* and to any sentencing policy or guidelines issued by the *Bar Standards Board* and/or by the *Council of the Inns of Court* from time to time.

~~rE75~~rE72 The *PCC* may impose on a *relevant person* against whom a charge of *professional misconduct* has been found proved under the *determination by consent procedure* any one or more the following sanctions:

- .1 An order to pay a fine to the *Bar Standards Board* (the amount of such fine to be determined in accordance with the relevant fines policy);
- .2 the imposition of any conditions on his licence or authorisation (where appropriate);

- .3 a reprimand by the *PCC* or an order to attend on a nominated *person* to be reprimanded;
- .4 advice by the *PCC* as to his future conduct or an order to attend on a nominated *person* to be given advice as to his future conduct;
- .5 an order to complete (or, in the case of a *BSB* authorised *body*, an order to procure that any relevant *managers* or *employees* complete) continuing professional development of such nature and duration as the *PCC* shall direct and to provide satisfactory proof of compliance with this order to the *PCC*.

~~rE76~~rE73 Where the *PCC* has imposed a fine, the confirmation letter to the *relevant person* must indicate that the *relevant person* must pay the fine within 28 days of the date when that letter is received, subject to any representations that the *relevant person* needs extra time to pay. Any application to pay a fine in instalments is to be decided in his discretion by the Chairman of the *PCC*.

~~rE77~~rE74 Any failure by the *BSB regulated person* to pay a fine within the relevant timescale is likely to be treated as *professional misconduct* and will entitle the *PCC* to refer the matter to a full *Disciplinary Tribunal* for disposal.

~~rE78~~rE75 Where a sanction imposed by the *PCC* includes a fine, that element of the sentence may be directed by the *PCC* to have deferred effect. A sentence may be deferred for a period which is no less than six months and no more than two years long (the “*period of deferral*”).

~~rE79~~rE76 A deferred sentence is liable be activated where the *relevant person* is later found (whether during the *period of deferral* or afterwards) to have committed *professional misconduct* during the *period of deferral*.

~~rE80~~rE77 Where the *PCC* finds that there has been *professional misconduct* during the *period of deferral*, it must (at the same time as imposing sentence for the *professional misconduct*) activate the sentence which had been deferred, save in exceptional circumstances.

~~rE81~~rE78 For the avoidance of doubt, the *PCC* may (where the conditions for activation of a deferred sentence are satisfied) activate a deferred sentence imposed by a *Disciplinary Tribunal*, so long as the total sanction imposed does not exceed the powers of the *PCC* set out in ~~rE72~~rE72~~6~~ above.

~~rE82rE79~~ The PCC may not make an award of costs when dealing with a *complaint* under the *determination by consent procedure*.

A6 Appeals***BSB regulated person's right to appeal ~~from a decision to take no further action or~~ from a decision to impose an administrative sanction***

rE83rE80 A *BSB regulated person* has a right to appeal from a decision to impose an *administrative sanction*. That appeal is to an *appeal panel* constituted under the auspices of the *Council of the Inns of Court* in the same composition as a three-person panel constituted under [Error! Reference source not found.](#)~~rE133~~ of the *Disciplinary Tribunal Regulations*.

rE84rE81 An appeal, if made, shall be made by the *BSB regulated person* sending to the Chairman of the *PCC* a notice identifying the decision of the *PCC* appealed against, the decision the *BSB regulated person* contends for, the grounds of such appeal and a statement whether the *BSB regulated person* requires his appeal to be disposed of at an oral hearing. If the *BSB regulated person* does not expressly request an oral hearing, the appeal will be dealt with by a review of the papers. The appeal is a review of the original decision, not a re-hearing.

rE85rE82 The notice must be accompanied by such sum as may be prescribed by the *Bar Standards Board* from time to time, such sum being payable to the *Bar Standards Board* to defray expenses.

rE86rE83 Where the appeal is to be dealt with at an oral hearing then:

- .1 at least 5 working days before the time set for the appeal, the *PCC* will provide each member of the *appeal panel* and the *BSB regulated person* with a paginated bundle of the correspondence and other documents on its files relating to the original decision; and
- .2 the *BSB regulated person* may be represented at the hearing.

rE87rE84 The *appeal panel* must decide whether to set aside or to vary the original decision.

rE88rE85 If the *appeal panel* allows the appeal in whole or in part, the *appeal panel* may direct that any administrative fine or appeal fee already paid by the *BSB regulated person* be refunded either in whole or in part: but the *appeal panel* has no power to award costs.

A7 Reopening or reconsidering complaints which have been disposed of

~~rE89~~rE86 The *PCC* may reopen or reconsider a *complaint* which has been disposed of, unless it has been disposed of by a *Disciplinary Tribunal*:

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

~~rE90~~rE87 Following such reopening or reconsideration, the *PCC* may take any further or different action it thinks fit, as if any earlier decision had not been made, provided that if the *complaint* has already been referred to a *Disciplinary Tribunal* and charges have been served on the *defendant* or the application has been served on the *Respondent* (as the case may be) then the *PCC*'s may only instruct counsel for the *Bar Standards Board* to:

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

A8 Confidentiality

~~rE91~~~~rE88~~ The *Bar Standards Board* must keep *complaints* confidential. The *Bar Standards Board* must not disclose the fact that a *complaint* has been made or details of the *complaint*, or of its disposal save as specified in this **Section 5.A8** or as otherwise required by law.

~~rE92~~~~rE89~~ Disclosure may be made:

- .1 for the purpose of investigating the *complaint*; or
- .2 for the purpose of keeping the complainant and the relevant *person* informed of the progress of the *complaint*; or
- .3 for the purpose of publicising any forthcoming public hearing of charges arising from the *complaint*; or
- .4 where the complainant and the relevant *person* consent; or
- .5 for the purposes of ~~rE42~~ of this **Section 5.A**; or
- .6 where the publication of a finding is required by the provisions of the *Disciplinary Tribunals* Regulations or the *Disqualification Panel* Regulations; or
- .7 subject to ~~rE90~~~~rE904~~, in response to a request from the selection panel or a member of its secretariat in respect of an application by a *barrister* for silk; or from any body responsible for the appointment of judges in respect of an application for judicial appointment; or from some other body or the *authorised individual* for a *certificate of good standing* in respect of a *barrister*; or from one of the Inns of Court in respect of an application from a *barrister* to become a *pupil supervisor*; or
- .8 for the purposes of providing examples of the types of behaviour that may constitute breaches of the *Handbook* either externally or internally within the *Bar Standards Board*, provided that where disclosure occurs in these circumstances although details of the individual complaints may be published, any relevant party's identities will remain anonymous; or
- .9 with the approval of the *PCC*, for any other good reason.

~~rE93~~rE90 Where a disclosure is made pursuant to ~~rE89.7~~rE89.7~~rE89.7~~rE89.7 above, if any *complaint* has been made against the *barrister* concerned which has not been disposed of by the *PCC* under these Rules, or dismissed by any *Disciplinary Tribunal* or by any other body to which it may have referred by the *PCC*, the *Bar Standards Board* shall simply indicate that a *complaint* has been received which has not been dismissed.

~~rE94~~rE91 Where any finding of *professional misconduct* has been made (whether by a *Disciplinary Tribunal*, *the Visitors*, or the *PCC* in the course of a *determination by consent*), the *Bar Standards Board* and/or *the Council of the Inns of Court* must publish on the relevant website(s) the name of the *BSB regulated person* against whom that finding was made, the nature of that finding, the sentence imposed and any other information about the finding and sentencing which the *Bar Standards Board* considers it is in the interests of the public to publish, unless the body making the finding directs otherwise.

~~rE95~~rE92 Where any *disqualification order* has been made (whether by a *Disciplinary Tribunal* or *the Visitors*), *the Bar Standards Board* and/or *the Council of the Inns of Court* shall publish on the relevant website(s) the name of the relevant *person* against whom the order has been made and its terms.

~~rE96~~rE93 Where any interim suspension or interim *disqualification order* has been made or interim conditions imposed, the *Bar Standards Board* must publish on the *Bar Standards Board's* website the name of the *relevant person* against whom the order has been made and its terms.

A9 Interpretation

~~rE97~~rE94 In these *Complaints Regulations* all italicised terms shall be interpreted in accordance with the definitions in Par.

~~rE98~~rE95 If a *barrister* is a member of more than one Inn, references in these Regulations to his *Inn* shall mean the *Inn* by which he was called, unless he is a Bencher in which case his *Inn* shall mean the *Inn* of which he is a Bencher.

A10 Commencement

~~rE99~~rE96 This Section 5.A shall come into force in accordance with the provisions of Part 1 of this *Handbook*.

(166)	professional misconduct	means a breach of this Handbook by a BSB regulated person which is not appropriate for disposal by way of no further action or the imposition of administrative sanctions, pursuant to Section 5.A
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