

ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

Part 5: Enforcement Regulations
Section B: The Disciplinary Tribunals Regulations
B2: The Regulations

B. THE DISCIPLINARY TRIBUNALS REGULATIONS

B1. THE REGULATIONS

rE101 These Regulations will apply following the referral of a matter by the PCC to a Disciplinary Tribunal, in accordance with Part 5 Section A.

Service of Charges and/or Applications

rE102 The Bar Standards Board must ensure that a copy of the charge(s) and/or application(s):

.1 is served on the relevant respondent(s), together with a copy of these Regulations not later than ten weeks (or five weeks if the PCC has directed that the prosecution of the charges be expedited) after the date on which the PCC decides to refer the matter to a Disciplinary Tribunal; and

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

Documents to be served on the respondent

rE103 As soon as practicable after the issue of the charge(s) and/or application(s) to the respondent(s), the Bar Standards Board must serve on the respondent(s) and file with BTAS:

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

.2 a copy of any other documents intended to be relied on by the BSB Representative; and

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

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These *Disciplinary Tribunal* Regulations are organised as follows.¶
Definitions¶
Service of Charges and/or Applications¶
Documents to be served on the defendant¶
Directions etc¶
Setting the date, appointing a tribunal and issuing a Convening Order¶
The *Disciplinary Tribunal*¶
Provision of documents to the *Disciplinary Tribunal*¶
Procedure at the hearing¶
Decision of a court or tribunal¶
Absence of defendant¶
Recording of proceedings¶
Amendment of charge(s) and/or application(s)¶
Adjournment¶
The finding¶
The sentence¶
Sentence of suspension from practice or from authorisation or licensing¶
Power to order that a sentence has deferred effect¶
Power to activate a deferred sentence¶
Wording of the sentence when defendant not present¶
Report of finding and sentence¶
Appeal to the Visitors¶
Appeal: sum payable¶
Action to be taken by the Inn (in circumstances where a Barrister has been sentenced to be disbarred or suspended)¶
Action to be taken by the Council of the Inns of Court (in all other circumstances)¶
Publication of finding and sentence¶
Suspension/withdrawal of practising rights pending the hearing of any appeal¶
Costs¶
Miscellaneous¶
Exclusion from providing representation funded by the Legal Aid Agency – Application for termination¶
Citation, commencement and revocation¶
Annex 1: Sentencing powers against Barristers¶
~~Annex 2: Sentencing powers against BSB legal services bodies¶~~
~~Annex 3: Sentencing powers against licensed bodies¶~~
Annex 4: Sentencing powers against registered European Lawyers¶
Annex 5: Sentencing powers against all other BSB regulated persons¶
Annex 6: Standard Directions¶
.....End of Section.....

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The *BSB Representative*, once appointed, must ensure that a copy of the charge(s) and/or application(s) is served on the relevant *defendant(s)*, together with a copy of these ...

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rE104 If the documents referred to in rE103.1 and/or rE103.2 are not sent to the respondent(s) within 28 days of the service of the charges on the respondent(s) in accordance with rE102 above, then the Bar Standards Board must provide to the respondent(s) within that period:

- .1 details of the evidence that is still being sought; and
- .2 details of when it is believed that it will be practicable to supply that evidence to the respondent(s).

rE105 Nothing in rE103 or rE104 above shall prevent a Disciplinary Tribunal from receiving the evidence of a witness which has not been served on the respondent(s) in accordance with s rE103 or rE104, provided that the Disciplinary Tribunal is of the opinion either that this does not materially prejudice the respondent(s), or that the evidence is accepted on such terms as are necessary to ensure that no such prejudice occurs.

Directions

rE106 Within 21 days of the date of service of the directions under rE103.3, the respondent(s) must:

- .1 agree the standard and/or non-standard directions; or
- .2 provide to the Bar Standards Board written submissions explaining why the directions sought by the Bar Standards Board, should be amended, withdrawn or added to; and/or
- .3 indicate to the Bar Standards Board whether they intend to make any of the applications referred to in rE127.

rE107 Within fourteen days of the date when the Bar Standard Board receives any written submissions from a respondent in accordance with rE106.2, the Bar Standards Board must consider them and must during that fourteen day period:

- .1 inform the respondent(s) of those changes to the standard directions or non-standard directions (as appropriate) which the Bar Standards Board is able to agree; and
- .2 seek to agree with the respondent(s) such other changes to the standard directions or non-standard directions (as appropriate) as may be acceptable to all parties.

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No reply from respondent

rE108 Where standard directions are sought by the Bar Standards Board and the respondent does not reply to a request to agree directions within the relevant 21 day period, referred to in rE106, the respondent will be deemed to have accepted the *standard directions* and they shall be deemed to apply to the particular matter, save and in so far as they may have been modified on the application of any other respondent to the same proceedings which was made within the relevant 21 day period. The Bar Standards Board must forthwith serve on the respondent and file with BTAS any directions which are deemed to apply to the matter.

rE109 Where non-standard directions are sought by the Bar Standards Board and the respondent does not reply within the 21 day period referred to in rE106, the Bar Standards Board must send to the President a copy of the non-standard directions and invite him or her to appoint a Directions Judge to endorse the directions in accordance with rE114 to rE126.

Agreement of directions

rE110 Where standard directions are sought in a case by the Bar Standards Board and the parties agree the directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, those directions will apply to the case and the Bar Standards Board must forthwith serve the agreed directions on the respondent and file them with BTAS.

rE111 The parties may agree non-standard directions, save that where any non-standard direction would have the effect of preventing BTAS from carrying out any function given to it by these Regulations, the said direction cannot be agreed without endorsement of a Directions Judge. In these circumstances, the Bar Standards Board must send to the President a copy of the non-standard directions and invite him or her to appoint a Directions Judge to endorse the directions in accordance with rE114 to rE126.

rE112 Where non-standard directions, which do not include matters under rE111, are sought by the Bar Standards Board in a case and the parties agree those directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, those directions will apply to the case. The Bar Standards Board must forthwith serve the agreed directions on the respondent and file them with BTAS.

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Non-agreement of directions

rE113 Where standard and/or non-standard directions are sought in a case by the Bar Standards Board and the respondent does not agree those directions within the relevant 21 day period referred to in rE106, or within the fourteen day period referred to in rE107, the Bar Standards Board must write to the respondent to confirm that the directions have not been agreed and must send to the President the following (where relevant):

- .1 a copy of the directions, including any standard directions and/or non-standard directions which have been agreed;
- .2 any written submissions received from the respondent(s) in accordance with rE106.2;
- .3 any notice from the respondent(s) that they may be intending to make an application referred to at rE106.3; and
- .4 the Bar Standards Board's response to any such request(s) and/or submissions.

Agreement/endorsement of directions by a Directions Judge

rE114 When the President has received the documents referred to in rE109 or rE111 above, the President must designate either a Queen's Counsel or Judge, to be determined at the President's sole discretion ("the Directions judge"), to exercise the powers and functions conferred on the Directions Judge in these Regulations.

rE115 The President must ensure that copies of the charge(s) or application(s), together with the documentation referred to at rE109 or rE111 above, are sent to the Directions Judge once he or she has been designated.

rE116 When he or she receives the relevant documents, the Directions Judge must consider any submissions about the directions and will determine whether an oral directions hearing is necessary.

rE117 If the Directions Judge considers that no oral hearing is necessary, then:

- .1 he or she must make an order setting out those directions which are to apply in the case taking into account all the relevant circumstances, including any written submissions of the parties and his or her own findings; and

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

rE118 If the Directions Judge considers that an oral hearing is necessary, the Directions Judge must give written notice to the Bar Standards Board and the respondent(s) that an oral hearing is to be held for the purpose of giving directions and taking such other steps as he considers suitable for the clarification of the issues before the Disciplinary Tribunal and generally for the just and expeditious handling of the proceedings. The Directions Judge shall also provide the Bar Standards Board and the respondent(s) with a time estimate for the oral directions hearing.

rE119 Within seven days of receiving the notice referred to in rE118 above, the Bar Standards Board and the respondent(s) must notify the President and the other party of their and, where relevant, their representative's available dates and times during the six week period immediately after the date of that notice.

rE120 The Directions Judge must try to find a date and time within that six week period which are convenient for all parties. If that is not possible, the Directions Judge must fix a date and time for the oral directions hearing within that six week period and must notify the Bar Standards Board and the respondent(s) of that date and time.

rE121 Once the Directions Judge has set a date for the oral hearing, BTAS must appoint a person(s) in accordance with rE136 to act as Clerk at the hearing to take a note of the proceedings; draw up a record of the directions given and/or any admissions made at it.

rE122 BTAS must arrange for a record of the oral hearing before a Directions Judge to be made.

rE123 The oral hearing before a Directions Judge will be in private.

rE124 After the oral directions hearing (or, if one was not required, after the review of the papers by the Directions Judge) BTAS must ensure that copies of the directions order are served on the Bar Standards Board and on the respondent(s).

rE125 The directions order served under rE124 is final, and there is no appeal against it.

rE126 Any variation sought by a party to an order for standard directions made and served under rE108 or rE110, or to an order for non-standard directions made and served under rE112,

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Setting the hearing date

rE130 This regulation applies where, after the deemed acceptance, later agreement, or directions, or the service of a directions order by *the President*, the date of the hearing has not been fixed. Where this Regulation applies, each party must submit details of their availability for the substantive hearing to BTAS in accordance with the directions. After he or she receives such details, or, where no such details are provided, once the time for providing such details has expired, the *President* must fix the date of the substantive hearing, having regard to the availability of the parties (if provided) and the need for the prompt determination of any charges and/or application(s) made against the respondent(s), in accordance with the provisions of these Regulations.

rE131 BTAS must inform all parties of the date fixed for the hearing as soon as reasonably practicable after the President has fixed the date.

Appointing a Disciplinary Tribunal and issuing a Convening order

rE132 On

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

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

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

the President must, in all cases,

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

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

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

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

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(1) where any ~~respondent~~ is a *barrister*, details of the *barrister's* Inn, his ~~or her~~ date of ~~call~~ and (if appropriate) the date of his ~~or her~~ appointment as Queen's Counsel, and details of whether or not the *barrister* was acting as a *self-employed barrister* or an *employed barrister* (and, in the latter case, details of his *employer*, including whether or not it is a *BSB authorised body*) and if the *barrister* was acting as a *HOLP* or *manager* of an *authorised body*, identifying this fact and identifying the *authorised body* and whether or not it is a *BSB authorised body*;

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(2) ~~where any respondent is a BSB authorised body~~, details of the date when that body was so authorised or licensed with a summary of the number of *barristers* and other individuals working within that *BSB authorised body*;

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

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

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

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

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.iv the name of the Clerk,

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

- (1) their right to represent themselves or be represented professionally, with or without instructing a *solicitor*, as they shall think fit; and
- (2) their right to inspect and be given copies of documents referred to in the list served pursuant to rE103 above; and
- (3) their right (without prejudice to their right to appear and take part in the proceedings) to deliver a written answer to the charge(s) and/or application(s) if they think fit.

rE133 The respondent(s) may, when they receive the *Convening Order*, give notice to the *President* objecting to any one or more of the proposed members of the *Disciplinary Tribunal*. The respondent must give this notice as soon as is reasonably practicable and must specify the grounds for his or her objection.

rE134 When the *President* receives such an objection, he or she must, if satisfied that it is justified (but subject to rE135), exercise the power conferred on him or her by rE148 to nominate a substitute member or members of the *Disciplinary Tribunal*, and must notify the respondent(s) accordingly. When they receive that notification, the respondent(s) may object to any substitute member or members, in the same way as they may object under rE133.

rE135 No objection to any member of the *Disciplinary Tribunal* may be made, or if made, may be upheld, on the grounds only that he or she knows, or might have known, about a charge of professional misconduct, or of a breach of proper professional standards, or a previous application to disqualify, or a charge consisting of a legal aid complaint, against the respondent(s), or any finding on any such application or charge, or any sanction imposed on the respondent(s) in connection with any such application or charge.

Appointment of Clerk(s)

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~~rE136~~ ~~BTAS shall appoint a Clerk(s) to perform the functions specified in these Regulations and such other functions as the President, Directions Judge or the Chair of any Disciplinary Tribunal may direct.~~

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~~rE137~~ ~~The President may publish qualifications or other requirements for those appointed to be Clerks.~~

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~~rE138~~ ~~No person who has been engaged in the investigation of a complaint or application against a respondent in accordance with the relevant procedure or otherwise shall act as Clerk of proceedings under these Regulations arising out of that complaint or application.~~

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~~The Disciplinary Tribunal~~

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~~Composition of Disciplinary Tribunals~~

~~rE139~~ A Disciplinary Tribunal must consist of either three persons or five persons.

~~rE140~~ A five-person panel must include the following persons nominated by the President:

- .1 as ~~Chair~~, a ~~Judge~~; and
- .2 ~~two lay members~~; and
- .3 ~~two practising barrister~~ of not less than seven years' standing.

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The hearing before a Disciplinary Tribunal must be in public, unless it has been directed that it is not to be held in public, and that direction has not been overruled by the tribunal. ¶
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~~rE141~~ A three-person panel shall include the following persons nominated by the President:

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

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~~rE142~~ ~~With the exception of judicial Chairs, the persons nominated by the President to sit on a Disciplinary Tribunal must be selected from the pool appointed by the Tribunal Appointments Body.~~

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~~rE143~~ In deciding who will sit on the panel, the President ~~may~~ have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the ~~respondent~~(s)

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against whom the charges have been made. When constituting the panel, the President shall take into account the requirements of rE140 and rE141 above, and rE144 and rE145 below.

rE144 A person must not be nominated to serve on a *Disciplinary Tribunal* if they:

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

rE145 The person nominated by the President, in accordance with rE140 and rE141, to be Chair of the Disciplinary Tribunal, may be the Directions Judge as appointed under rE114, unless the Directions Judge considers there to be any reason why he or she should not Chair the hearing.

rE146 The President may publish qualifications or other requirements made for those appointed to serve on a Disciplinary Tribunal.

rE147 If a vacancy in the Disciplinary Tribunal arises before the substantive hearing of the charge, the President must choose another member of the relevant class to fill that vacancy.

rE148 At any time before the substantive hearing of the charge starts, the *President* may cancel any or all of the nominations made pursuant to these Regulations, and make such alternative nominations as, in the exercise of his or her discretion, he or she deems necessary or expedient, provided always that *the President* notifies the respondent(s) of the identity of such substitutes as soon as is reasonably practicable after he or she has chosen them. The respondent(s) may object to such substitute members in the same way as they may object under rE133.

rE149 The proceedings of a five-person panel will not be invalidated on the sole ground that after the *Convening Order* has been issued (in accordance with rE132 above), one or more of the members becomes unable to act or is disqualified from acting, provided that:

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

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

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

rE150 A member of a *Disciplinary Tribunal* who has been absent for any time during a sitting shall take no further part in the proceedings.

Provision of documents to the Disciplinary Tribunal

rE151 The *Bar Standards Board* and the *respondent* must send to *BTAS*, at least fourteen days before the hearing:

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

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

rE152 The evidence referred to in rE151 must be indexed and paginated.

rE153 *BTAS* shall provide, to each member of the *Disciplinary Tribunal* before the start of the substantive hearing copies of the following documents:

.1 the *Convening Order*;

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

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

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

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

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

Applications for adjournment before the commencement of the hearing

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rE154 Any application by a party for an adjournment of the substantive hearing before the date on which the hearing is scheduled to commence must be in writing and accompanied by any evidence upon which the party relies in support of his or her application.

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rE155 An application under rE154 must be submitted to the Chair of the Disciplinary Tribunal which has been convened to hear the case and served upon the other party. The Chair must make reasonable attempts to seek any representations in response to the application from the other party. The Chair must consider the application for adjournment taking into account any response submitted by the other party and may:

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.1 grant the adjournment; or

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

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.3 refuse the application; and

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.4 may make such directions as he or she considers appropriate for the further conduct of the case.

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Hearing in public

rE156 The hearing before a Disciplinary Tribunal must be in public, unless it has been directed that all or part of the hearing is not to be held in public, and that direction has not been over-ruled by the Disciplinary Tribunal.

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Recording of proceedings

rE157 BTAS must arrange for a verbatim record of the proceedings before a Disciplinary Tribunal to be made.

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Joinder

rE158 Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the Disciplinary Tribunal may consider and determine charges against two or more respondents at the same hearing where:

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.1 the charge(s) against each respondent arises out of the same circumstances; or

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.2 in the view of the Disciplinary Tribunal, a joint hearing is necessary or desirable.

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rE159 Where a joint hearing is held;

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Rules of natural justice

rE165 The rules of natural justice apply to proceedings of a *Disciplinary Tribunal*.

Evidence

rE166 The *Disciplinary Tribunal* may:

- .1 (subject to rE167 below) admit any evidence, whether oral or written, whether given in person, or over the telephone, or by video link, or by such other means as the *Disciplinary Tribunal* may deem appropriate, whether direct or hearsay, and whether or not it would be admissible in a court of law;
- .2 give such directions with regard to the admission of evidence at the hearing as it considers appropriate, ensuring that a respondent has a proper opportunity of answering the charge(s) and/or application(s) made against him or her;
- .3 exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence.

rE167 Any party may refer to the fact (if relevant) that the determination by consent procedure was used before the complaint was referred as a charge before a Disciplinary Tribunal. However, no reference may be made to the substance of the procedure (including, without limitation, any reference to the contents of any report produced in the course of such procedure, or to the circumstances in which the determination by consent procedure ended), unless and until the respondent refers to the substance of the procedure in the course of presenting his or her case, or when he or she is being sanctioned.

rE168 Where a party has previously failed to comply with any direction made by the Directions Judge, or has failed to do any act, including the submission of evidence, within the time period specified in a direction, the Disciplinary Tribunal may, at its discretion;

- .1 decide to exclude the relevant evidence; or
- .2 draw an adverse interference against that party;

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Decisions of courts or tribunals

rE169 In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was a party, the following Regulations shall apply:

- .1 a copy of the certificate or memorandum of conviction relating to the offence shall be conclusive proof that the *respondent* committed the offence;
- .2 any *court* record of the findings of fact upon which the *conviction* was based (which may include any document prepared by the sentencing judge or a transcript of the relevant proceedings) shall be proof of those facts, unless proved to be inaccurate;
- .3 the finding and sanction of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing an official copy of the finding and sanction and the findings of fact upon which that finding or sanction was based shall be proof of those facts, unless proved to be inaccurate; and
- .4 the judgment of any civil *court* may be proved by producing an official copy of the judgment, and the findings of fact upon which that judgment was based shall be proof of those facts, unless proved to be inaccurate.

rE170 In proceedings before a *Disciplinary Tribunal* which involve the decision of a *court* or tribunal in previous proceedings to which the *respondent* was not a party, the provisions of rE169 do not apply.

Witness evidence at the Disciplinary Tribunal

rE171 Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at the hearing.

rE172 Subject to rE176, witnesses:

- .1 if giving oral evidence-in-chief, shall first be examined by the party calling them;
- .2 may be cross-examined by the opposing party;
- .3 may be re-examined by the party calling them; and
- .4 may at any time be questioned by the *Disciplinary Tribunal*.

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rE184 If the relevant procedure has not been complied with, but a *Disciplinary Tribunal* is satisfied that it has not been practicable to comply with the relevant procedure, the Tribunal may hear and determine the charge(s) or application(s) in the absence of that respondent, if it considers it just to do so, subject to compliance with rE234.2 in respect of that respondent if the *Disciplinary Tribunal* finds any charge or application proved.

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Application for a fresh hearing

rE185 Where the *Disciplinary Tribunal* proceed in the respondent's absence, in accordance with rE183 or rE184, the respondent may apply to BTAS for a Directions Judge, appointed by the President, to consider an application for a fresh hearing before a new Disciplinary Tribunal.

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rE186 The respondent's application under rE185 must be supported by a statement setting out the facts and/or circumstances upon which the respondent relies in support of his or her application.

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rE187 The Directions Judge may grant a new hearing if he or she considers it just to do so and if he or she is satisfied that:

- .1 the respondent submitted his or her application for a new hearing promptly upon becoming aware of the decision of the Disciplinary Tribunal; and
- .2 the respondent had good reason for not attending the hearing.

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Order of proceedings at a hearing

rE188 The order of proceedings at a hearing shall be as set out in these regulations unless the Disciplinary Tribunal decides, having considered the interests of justice and fairness to the parties, that the procedure should be varied. The Disciplinary Tribunal may then give such directions with regard to the conduct of, and procedure at, the hearing as it considers appropriate.

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rE189 At any time during the hearing when it considers it desirable, the Disciplinary Tribunal may retire into private to deliberate.

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rE190 The Disciplinary Tribunal shall consider any submissions from the parties in relation to objection(s) to the charge(s) or preliminary applications, following which the Disciplinary

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rE200 If the members of the *Disciplinary Tribunal* do not agree on any charge or application, the finding to be recorded on that charge or application must be that of the majority. If the members of the *Disciplinary Tribunal* are equally divided on any charge or application, then, as the burden of proof is on the *Bar Standards Board*, the finding to be recorded on that charge or application must be that which is the most favourable to the respondent.

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rE201 The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* finding on the charge(s) or application(s), and state whether each such finding was unanimous or by a majority. The *Disciplinary Tribunal* is free to reserve its judgment.

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rE202 In any case where the *Disciplinary Tribunal* dismisses the charge(s) and/or application(s), it may give advice to the respondent about his or her future conduct

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rE203 If the *Disciplinary Tribunal* finds any of the charges or applications proved against a respondent, it may hear evidence of any previous:

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

.2 *Disqualification Order*; or

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

.4 *adverse* finding on a charge consisting of a *legal aid complaint*; made in respect of the *respondent*, or, where the proved charge(s) concerns a *BSB authorised body*, in respect of that body or any person employed in the *BSB authorised body* directly implicated by the charges

rE204 After hearing any representations by or on behalf of the respondent(s), the *Disciplinary Tribunal* must decide what sanction to impose on a respondent, taking into account the sentencing guidance and, must record its sanction in writing, together with its reasons.

rE205 If the members of the *Disciplinary Tribunal* do not agree on the sanction to be imposed on a respondent, the sanction to be recorded must be that decided by the majority. If the members of the *Disciplinary Tribunal* are equally divided on the sanction to be imposed

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on a respondent, the sanction to be recorded must be that which is the most favourable to the respondent.

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rE206 The Chair of the *Disciplinary Tribunal* must then announce the *Disciplinary Tribunal's* decision on sanction and state whether the decision was unanimous or by a majority.

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rE207 Subject to rE208 below:

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

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

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

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

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

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

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.2 in the case of a respondent who is a *relevant person* in respect of whom the *Disciplinary Tribunal* finds the *disqualification condition* to be established, the *Disciplinary Tribunal* may make a *Disqualification Order* if the *Disciplinary Tribunal* considers that the making of such a *Disqualification Order* is a proportionate sanction and is in the public interest (there being no other available sanction in respect of a *relevant person* who is a *non-authorized individual* directly or indirectly employed by a *BSB authorized person*).

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rE208 In any case where a charge of *professional misconduct* has been found proved, the *Disciplinary Tribunal* may decide that no further action should be taken against the respondent.

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rE209 In any case where a charge of *professional misconduct* has not been found proved, the *Disciplinary Tribunal* may direct that the matter(s) be referred to *Bar Standards Board* for

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it to consider whether an *administrative sanction* should be imposed in accordance with the provisions of rE37.3 of the Complaints Regulations, where:

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

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

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rE209A A direction made under rE209 is not a disposal or a finding for the purposes of the BSB Handbook.

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rE210 A three-person panel must not:

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

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

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

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

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

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

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rE211 In the event that a three-person panel considers that a case before it merits the imposition on a respondent of any of the sentences referred to in rE210 or the three-person panel otherwise considers that the case of a particular respondent is complex enough to warrant sentencing by a five-person panel:

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

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- .2 the three-*person* panel must, in order to help the five-*person* panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other *respondents* to the proceedings). The *respondent* cannot challenge the facts found by the three-person panel; and
- .3 the three-person panel must direct within what period of time the sentencing hearing before the five-*person* panel is to be held and make appropriate directions for the parties to provide the *President* with their dates of availability.

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rE212 Following a referral by a three-person panel under **rE211**, the five-*person* panel must be constituted in accordance with **rE140**. *The President must fix the date for the sentencing hearing and in so doing shall have regard to the availability of the parties, save that the President may disregard the availability of any party where that party has failed to provide any, or any reasonable dates of availability. As soon as is reasonably practicable after he or she has fixed the sentencing hearing, the President must inform all the parties of that date.*

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rE213 *The respondent must be informed by BTAS as soon as practicable of the names and status (that is, as Chair, as lay member, as barrister or other) of those persons who it is proposed will constitute the five-person panel. The respondent may, when he or she is so informed, give notice to the President objecting to any one or more of the proposed members of the panel. That notice must be given as soon as is reasonably practicable, must specify the ground of objection, and must be dealt with in accordance with rE134 and rE135.*

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rE214 If the five-person panel is satisfied that the requirements of **rE212** and **rE213** above have been complied with, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the five-person panel may nonetheless *sanction* the *respondent*, provided that it complies with **rE234.1** **rE234.3**.

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rE215 If the five-person panel is satisfied that it has not been practicable to comply with the requirements of **rE212** and **rE213**, above, and the *respondent* has not attended at the time and place appointed for the sentencing hearing, the five-*person* panel may nonetheless *sanction* the *respondent*, provided that it complies with **rE234.2**.

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rE216 If the procedure under **rE215** has been followed, the *respondent* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a

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fresh five-person panel and the procedure for the respondent's application shall be as set out at rE185 to rE187 in these Regulations.

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rE217 Sections 41 and 42 of the Administration of Justice Act 1985 (as substituted by Section 33 of the Legal Aid Act 1988 and as amended by Schedule 4 to the Access to Justice Act 1999) confer certain powers (relating to the reduction or cancellation of fees otherwise payable by the Legal Aid Agency in connection with services provided as part of the Criminal Legal Aid or Civil Legal Aid and to the exclusion from providing representation funded by the Legal Aid Agency as part of the Criminal Legal Aid or Civil Legal Aid) on a Disciplinary Tribunal in the cases to which those Sections apply). Accordingly;

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.1 any Disciplinary Tribunal which hears a charge consisting of a *legal aid complaint* relating to the conduct of a respondent who is a *barrister* may if it thinks fit (and whether or not it sentences the respondent in accordance with rE206.1 in respect of any conduct arising out of the same *legal aid complaint*) order that any such fees as are referred to in Section 41(2) of the Act of 1985 shall be reduced or cancelled;

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

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

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.b his or her professional conduct generally.

rE218 Whether or not a Disciplinary Tribunal finds any charge or application proved against a *barrister* who is a *pupil supervisor*, if the Disciplinary Tribunal considers that the circumstances of the *complaint* are relevant to the respondent in his or her capacity as a *pupil supervisor*, it may notify the respondent's Inn of those concerns in such manner as it sees fit.

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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rE219 If a barrister is a member of more than one Inn, each Inn of which he or she is a member must be mentioned in the sanction imposed on him or her.

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~~Sanction of suspension from practice or from authorisation or licensing or imposition of conditions~~

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rE220 For the purposes of rE222 to rE224:

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

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

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

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

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.a prohibited from holding himself/herself out as registered with the Bar Standards Board; and;

.b not authorised to practise.

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

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.4 The effect of a sanction on a BSB authorised individual or a registered European lawyer requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this Handbook.

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

Part 5: Enforcement Regulations
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rE221 ~~In exceptional circumstances, where the total suspension is three months or less, the Tribunal may postpone the commencement of the suspension for a period as it deems fit.~~

rE222 The period for which a sanction of suspension from *practice* is expressed to run may be:

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.1 a fixed period; or

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

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rE223 Conditions may be imposed on a *barrister's practising certificate* ~~or~~ on the authorisation ~~or licence~~ of a *BSB authorised body*.

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.1 without its being *suspended*; or

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

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rE224 Conditions may (depending on the circumstances) include:

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

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

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

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

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

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rE225 rE226 to rE233 below apply to any respondent who:

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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

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

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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

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

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~~rE226 Where rE225 applies, the Disciplinary Tribunal must seek representations from the respondent and from the Bar Standards Board on the appropriateness or otherwise of taking action under rE227 below.~~

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~~rE227 Having heard any representations under rE225 the Disciplinary Tribunal must (unless in the circumstances of the case it appears to the Disciplinary Tribunal to be inappropriate to do so), either:~~

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

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

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

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~~rE228 If the Disciplinary Tribunal decides that it would be inappropriate to require immediate suspension or immediate imposition of conditions (as the case may be) it may nonetheless require the respondent to suspend his or her practice or to impose conditions, from such date as the Disciplinary Tribunal may specify.~~

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~~rE229 Where the respondent is permitted to continue to practise for any period before being suspended under rE228 the Disciplinary Tribunal may require the Bar Standards Board to impose such terms on the respondent's practice as the Disciplinary Tribunal deems necessary to protect the public until the suspension comes into effect.~~

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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rE230 ~~Where an order is made in respect of a *respondent* under rE225 and that *respondent* considers that, due to a change in the circumstances, it would be appropriate for that order to be varied, he may apply to *the President* in writing for it to be varied.~~

rE231 ~~When *the President* receives an application made under rE230, he must refer it to the Chair and to one of the *lay members* of the *Disciplinary Tribunal* which originally made the order to make a decision on the application.~~

rE232 ~~Any application made under rE230 must be sent by the applicant, on the day that it is made, to the *Bar Standards Board*. The *Bar Standards Board* may make such representations as they think fit on that application to those to whom the application has been referred by the *President*.~~

rE233 ~~The persons to whom an application made under rE230 above is referred may vary or confirm the order in relation to which the application has been made.~~

Wording of the *sanction* when *respondent* not present

rE234 If a *respondent* has not been present throughout the proceedings, the *sanction* in respect of that *respondent* must include one or more of the following statements:

- .1 if the relevant procedure under rE183 has been complied with, that the finding and *sanction* were made in the absence of the *respondent* in accordance with rE183;
- .2 if the procedure under rE184 has been complied with, that the finding and the *sanction* were made in the absence of the *respondent* and that he *or she* has the right to apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*;
- .3 if the relevant procedure under rE213 has been complied with, that the *sanction* was made in the absence of the *respondent* in accordance with rE214;
- .4 if the procedure under rE215 has been complied with, that the *sanction* was made in the absence of the *respondent* and that he may apply to the *Directions Judge* for an order that there should be a new hearing before a fresh *Disciplinary Tribunal*.

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Where a sentence imposed by a *Disciplinary Tribunal* includes a fine, condition and/or a suspension from *practice*, the *Disciplinary Tribunal* may direct that those elements of the sentence are to have deferred effect.¶
A sentence may be directed to have deferred effect for a minimum of six months or a maximum of two years (the "*period of deferral*").¶
Power to activate a deferred sentence¶
A deferred sentence must be activated if the *defendant* is later found (whether during the period of suspension, or afterwards) to have committed *professional misconduct* during the *period of deferral*.¶
Where a *Disciplinary Tribunal* finds that there has been *professional misconduct* during the *period of deferral*, it shall ...

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Report of Finding and Sanction

rE235 As soon as is practicable after the end of the proceedings of a *Disciplinary Tribunal*, the Chair must prepare a report in writing of the finding(s) on the charge(s) of *professional misconduct* and/or on any applications, and the reasons for those findings and the sanction. At the discretion of the Chair, the report may also refer to matters which, in the light of the evidence given to the *Disciplinary Tribunal*, appear to require investigation or comment. He or she must send copies of the report to:

- .1 the respondent;
- .2 the Director General of the *Bar Standards Board*;
- .3 the Chair of the Bar Standards Board; and
- .4 where a barrister has been disbarred, the respondent's Inn of Call and of any other Inns of which he or she is a member; and
- .5 where a HOLP or HOFA or manager or employee of a licensed body has been disqualified, the LSB; and
- .6 in cases where one or more charges of *professional misconduct* have been found proved:
 - .a the respondent's head of chambers, HOLP, or employer (as appropriate); and
 - .b in the case of a registered European lawyer, his or her home professional body; and
- .7 in cases where one or more charges of *professional misconduct* have been found proved and any such charge constitutes, or arises out of, a legal aid complaint, and/or the sanction includes an order under rE217, the Legal Aid Agency; and
- .8 any other person or bodies that the President deems, in his or her absolute discretion, to be appropriate, taking into account the circumstances.

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Appeals

rE236 In cases where one or more charges of *professional misconduct* have been proved, and/or a *disqualification order* has been made, an appeal may be lodged with the High Court in accordance with the Civil Procedure Rules:

- .1 by the respondent against *conviction* and/or sanction;
- .2 with the consent of the Chair of the *Bar Standards Board* or the Chair of the *PCC*, by the *Bar Standards Board* against sanction.

rE237 In any case where any charge of *professional misconduct* or application to *disqualify* has been dismissed, the *Bar Standards Board* may (with the consent of the Chairman of the *Bar Standards Board* or of the Chairman of the *PCC*) lodge an appeal with the High Court in accordance with the Civil Procedure Rules.

rE238 Where a respondent lodges an appeal against a *disbarment* or *Disqualification Order* or the revocation of a ~~licence or~~ *authorisation*, he or she may at the same time lodge with the High Court an appeal against any requirement imposed under rE227 to rE229 as appropriate.

Action to be taken by the Inn (in circumstances where a barrister has been *sanctioned* to be *disbarred*)

rE239 The Treasurer of the *respondent's Inn of Call* must not fewer than 21 days, or more than 35 days, after the end of the *Disciplinary Tribunal's* proceedings (or, where the *respondent* has given notice of appeal to High Court against the finding and/or *sanction*, once the time for appeal to the High Court has expired and any appeal to the High Court has been disposed of) pronounce the *sanction* of *disbarment* decided on by the *Disciplinary Tribunal*, and take such further action as may be required to carry the *sanction* into effect. The Treasurer must inform the *persons* specified in rE235 of the date on which the *sanction* is to take effect, (which must be no later than two working days after the date when that *sanction* is pronounced).

rE240 In any case in which the *respondent* has given notice of appeal to the High Court against the finding and/or *sanction* of the *Disciplinary Tribunal* on the charges of *professional misconduct*, no action referred to in rE239 may be taken until the appeal has been heard by the High Court, or otherwise disposed of without a hearing.

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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

rE241 Subject to rE242, the *Bar Council/Bar Standards Board* must take the appropriate steps to put the finding and/or sanction of the *Disciplinary Tribunal* into effect, except that in any case in which a *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct* or *disqualification order*, no action may be taken until the appeal has been heard by the High Court or otherwise disposed of without a hearing.

rE242 Where the finding and/or sanction of the *Disciplinary Tribunal* is that the *BSB authorised person* should be subject to an immediate suspension and/or immediate imposition of conditions in accordance with rE226 the actions of the *Bar Council/Bar Standards Board* must not be deferred even if the *BSB regulated person* has given notice of appeal to the High Court against the finding and/or sanction of the *Disciplinary Tribunal* on the charges of *professional misconduct*.

Publication of finding, sanction and report of the Disciplinary Tribunal

rE243 The following procedures apply to the publication of the finding and sanction of a *Disciplinary Tribunal*:

.1 *BTAS*:

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

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

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

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If the *Disciplinary Tribunal* has imposed a sentence (other than disbarring or suspending a *barrister* see rE189 to rE192, above), the *Council of the Inns of Court*, when it receives the report prepared in accordance with rE181, must, not fewer than 21 days after the end of the Tribunal's proceedings, pronounce the sentence decided on by the Tribunal, and take such further action as may be required to carry that sentence into effect. The *Council of the Inns of Court* shall inform the *persons* specified in rE181 of the date on which the sentence is to take effect. That date must be no later than two clear days after the date when the sentence is pronounced.¶
In any case in which a *BSB regulated person* has given notice of appeal to the *Visitors* against the finding and/or sentence of the Tribunal on the charges of *professional misconduct*, no action referred to in rE193 may be taken until the appeal has been heard by the *Visitors*, or otherwise disposed of without a hearing.¶

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~~rE243A~~ The following procedures apply to the publication of the report of the *Disciplinary Tribunal*

Decision:

.1 *BTAS*:

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

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

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

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

Costs

~~rE244~~ A *Disciplinary Tribunal* may make such Orders for costs, whether against or in favour of a respondent, as it shall think fit.

~~rE245~~ A party who wishes to make an application for costs must, no later than 24 hours before the commencement of the hearing, serve upon any other party and file with *BTAS* a schedule setting out the costs he or she seeks.

~~rE246~~ Where it exercises its discretion to make an Order for costs, a *Disciplinary Tribunal* must either itself decide the amount of such costs or direct *BTAS* to appoint a suitably qualified person to do so on its behalf.

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

Where the defendant is permitted to continue to practise for any period before being suspended under rE204, the Tribunal may require the Bar Standards Board to impose such terms on the defendant's practice as the Tribunal deems necessary to protect the public until the suspension comes into effect.

Where an order is made in respect of a defendant under rE203 above and that defendant considers that, due to

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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rE247 Any costs ordered to be paid by or to a respondent must be paid to or by the *Bar Standards Board*.

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rE248 All costs incurred by the *Bar Standards Board* preparatory to the hearing before the Disciplinary Tribunal must be borne by the *Bar Standards Board*.

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Service of documents

rE249 Any documents required to be served on a respondent in connection with proceedings under these Regulations shall be deemed to have been validly served:

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Representation of complainant's interests
The *BSB representative* must keep the complainant (if any) informed of the progress of the complaint. ¶
Service of documents

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

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

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

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

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

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

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

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

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- .2 If served by e-mail, where:
 - .a the respondent's e-mail address is known to the *Bar Standards Board*; and
 - .b the respondent has asked for or agreed to service by e-mail, or it is not possible to serve by other means;

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

- .3 If actually served;
- .4 If served in any way which may be directed by the *Directions judge* or the Chairman of the *Disciplinary Tribunal*.

rE250 For the purpose of rE249.1, "received hand delivery" means by a delivery by hand which is acknowledged by a receipt signed by the respondent or by a relevant representative of the respondent (including, for example, his or her clerk, or a manager or employee of the *BSB* authorised body at which he or she works).

Delegation

rE251 The powers and functions conferred by these Regulations on a *Directions judge* may be exercised by any other Judge or Queen's Counsel nominated by *the President*, including the Judge or Queen's Counsel designated in the Convening Order as Chair of the Disciplinary Tribunal appointed to hear and determine the charge or charges against the respondent, if the *Directions Judge* is unable to act due to absence, or for any other reason.

rE252 Any duty or function or step which, under these regulations, is to be discharged or carried out by *the President* may, if he is unable to act due to absence or to any other reason, be discharged or carried out by the Registrar of BTAS, the Chair of the Tribunal, or by any other person nominated in writing by the President for any specific purpose.

rE253 Anything required by these Regulations to be done or any discretion required to be exercised by, and any notice required to be given to, *the President* may be done or exercised by, or given to, any person authorised by *the President*, either prospectively or retrospectively and either generally or for a particular purpose. Any authorisations given by the President under this regulation must be in writing.

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ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

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

rE254 A respondent who has been excluded from legal aid work under Section 42 of the Administration of Justice Act 1985 may apply for an order ending his or her exclusion from providing representation funded by the *Legal Aid Agency* as part of the Community Legal Service or Criminal Defence Service in accordance with rE256 below.

rE255 Any such application must be in writing and addressed to the Chair of the Disciplinary Tribunal that made the original order.

rE256 *The President* may dismiss the application, or may decide that the respondent's exclusion from providing representation funded by the *Legal Aid Agency* as part of the Criminal Legal Aid or Civil Legal Aid be ended forthwith, or on a specified future date.

rE257 The Chair of the Disciplinary Tribunal must notify his or her decision in writing to all those persons who received copies of the report of the *Disciplinary Tribunal* under rE235.

rE258 The Disciplinary Tribunal may make such order for costs in relation to an application under rE244 as it thinks fit and rE244 to rE248 apply with all necessary modifications.

Interpretation

rE259 In Section 5.B2 all italicised terms shall be interpreted in accordance with the definitions in Part 6.

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

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

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Section.B: The Disciplinary Tribunals Regulations
B3: Citation, commencement and revocations

B3 Citation and commencement

rE260 These Regulations may be cited as “The *Disciplinary Tribunal* Regulations 201X”.

rE261 ~~These Regulations will come into effect on [] and shall apply to all cases referred to a *Disciplinary Tribunal* prior to that date under the Regulations then applying, and any step taken in relation to any *Disciplinary Tribunal* pursuant to those Regulations shall be regarded as having been taken pursuant to the equivalent provisions of these Regulations.~~

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B4 Annexes to the *Disciplinary Tribunals Regulations*

ANNEX 1 – SENTENCING POWERS AGAINST BARRISTERS

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

1. ~~order that he or she be disbarred;~~
2. ~~order that his or her *practising certificate* be suspended for a prescribed period;~~
3. ~~order that his or her *practising certificate* should not be renewed;~~
4. ~~order that conditions be imposed on his or her *practising certificate*;~~
5. ~~order that he or she be prohibited, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;~~
6. ~~order that his or her authorisation to *conduct litigation* be removed or suspended, or be subject to conditions imposed;~~
7. ~~order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to his or her time as an employee or manager of a licensed body);~~
8. ~~order him or her to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* may direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;~~
9. ~~reprimanded him or her;~~
10. ~~give him or her advice about his or her future conduct;~~
11. ~~order him or her to attend on a nominated *person* to be reprimanded; or~~

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

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Deleted: to suspend his *practising certificate* and suspend his rights and privileges as a member of his *Inn* for a prescribed period (either unconditionally or subject to conditions)

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12. order him or her to attend on a nominated person to be given advice about his or her future conduct.

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to impose conditions on his practising certificate;¶
be prohibited, either indefinitely or for a prescribed period
and either unconditionally or subject to conditions, from
accepting or carrying out any public access instructions; ¶
to remove or to suspend his authorisation to conduct
litigation or to impose conditions on it;¶
to order him to pay a fine of up to £50,000 to the Bar
Standards Board (or up to £50,000,000 if the charges relate
to his time as an employee or manager of a licensed body);¶
to order him to complete continuing professional
development of such nature and duration as the Tribunal
may direct, whether outstanding or additional requirements,
and to provide satisfactory proof of compliance with this
order to the supervision team;¶
to order him to be reprimanded by the Treasurer of his Inn;¶
to order him to be reprimanded by the Tribunal;¶
to give him advice about his future conduct;¶
to order him to attend on a nominated person to be
reprimanded; or¶
to order him to attend on a nominated person to be given
advice about his future conduct

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~~ANNEX 2 – SENTENCING POWERS AGAINST BSB LEGAL SERVICES BODIES~~

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

1. ~~order that its authorisation to practise as a BSB legal services body be removed;~~
2. ~~order that conditions be imposed on its authorisation to practise as a BSB legal services body;~~
3. ~~order that its authorisation to practise for a prescribed period be suspended (either unconditionally or subject to conditions);~~
4. ~~order that it, as a licensed body, be re-classified (either unconditionally or with conditions imposed on its licence to practise as a licensed body);~~
5. ~~order that its authorisation to conduct litigation be withdrawn or suspended, or be subject to conditions on it;~~
6. ~~order it to pay a fine of up to £250,000 to the Bar Standards Board;~~
7. ~~order that its managers or employees complete continuing professional development of such nature and duration as the Disciplinary Tribunal may direct and to provide satisfactory proof of compliance with this order to the supervision team;~~
8. ~~reprimanded it;~~
9. ~~give it advice about its future conduct; or~~
10. ~~order it to attend (by its HOLP or other person identified in the order) on a nominated person to be given advice about its future conduct.~~

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~~remove its authorisation to practise as a BSB legal services body;~~
~~impose conditions on its authorisation to practise as a BSB legal services body;~~
~~suspend its authorisation to practise for a prescribed period (either unconditionally or subject to conditions);~~
~~re-classify it as a licensed body (either unconditionally or with conditions imposed on its licence to practise as a licensed body);~~
~~withdraw, or suspend its authorisation to conduct litigation or to impose conditions on it;~~
~~order a fine of up to £250,000 to the Bar Standards Board;~~
~~order that its managers or employees complete continuing professional development of such nature and duration as the Tribunal may direct and to provide satisfactory proof of compliance with this order to the supervision team;~~
~~reprimand it;~~
~~give it advice about its future conduct; or~~
~~order it to attend (by its HOLP or other person identified in the order) on a nominated person to be given advice about its future conduct~~

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~~ANNEX 3 – SENTENCING POWERS AGAINST LICENSED BODIES~~

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

- ~~1. — revoke its licence to practise revoked;~~
- ~~2. — suspend its licence to practise for a prescribed period (either unconditionally or subject to conditions);~~
- ~~3. — impose conditions on its licence to practise;~~
- ~~4. — withdraw or suspend its right to conduct litigation or to impose conditions on it;~~
- ~~5. — order it to pay a fine of up to £250,000,000 to the Bar Standards Board;~~
- ~~6. — order it to ensure that its managers or employees complete continuing professional development of such nature and duration as the Tribunal shall direct and to provide satisfactory proof of compliance with this order to the supervision team;~~
- ~~7. — reprimand it;~~
- ~~8. — give advice to it about its future conduct; or~~
- ~~9. — order it to attend (by its HOLP or other person identified in the order) on a nominated person to be given advice about its future conduct.~~

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ANNEX 4 – SENTENCING POWERS AGAINST REGISTERED EUROPEAN LAWYERS

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

1. ~~order the he or she be removed from the *register of European lawyers*;~~
2. ~~order that he or she be suspended from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);~~
3. ~~order a condition to be imposed on him or her prohibiting him or her, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;~~
4. ~~order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or of up to £50,000,000 if, the charges relate to his or her time as an *employee or manager of a licensed body*);~~
5. ~~order him or her to complete continuing professional development of such nature and duration as the *Disciplinary Tribunal* shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;~~
6. ~~reprimanded him or her;~~
7. ~~give him or her advice about his or her future conduct;~~
8. ~~order him or her to attend on a nominated *person* to be reprimanded; or~~
9. ~~order him or her to attend on a nominated *person* to be given advice about his or her future conduct;~~

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suspend him from the *register of European lawyers* for a prescribed period (either unconditionally or subject to conditions);¶
impose a condition on him prohibiting him, either indefinitely or for a prescribed period and either unconditionally or subject to conditions, from accepting or carrying out any *public access instructions*;¶
order him to pay a fine of up to £50,000 to the *Bar Standards Board* (or of up to £50,000,000 if, the charges relate to his time as an *employee or manager of a licensed body*);¶
order him to complete continuing professional development of such nature and duration as the Tribunal shall direct, whether outstanding or additional requirements, and to provide satisfactory proof of compliance with this order to the *supervision team*;¶
reprimand him;¶
give him advice about his future conduct;¶
order him to attend on a nominated *person* to be reprimanded; or¶
order him to attend on a nominated *person* to be given advice about his future conduct

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

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

- order him or her to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to their time as an *employee* or *manager of a licensed body*);
- reprimanded him or her;
- give him or her advice about his or her future conduct;
- order him or her to attend on a nominated *person* to be reprimanded;
- order him or her to attend on a nominated *person* to be given advice about his or her future conduct;

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Deleted: order him to pay a fine of up to £50,000 to the *Bar Standards Board* (or up to £50,000,000 if the charges relate to their time as an *employee* or *manager of a licensed body*);
reprimand him;
give him advice about his future conduct;
order him to attend on a nominated *person* to be reprimanded;
order him to attend on a nominated *person* to be given advice about his future conduct

² If an application to disqualify is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify a *BSB regulated person* in accordance with these Regulations.

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ANNEX 6 - STANDARD DIRECTIONS

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

1. The hearing will be in public;
2. This timetable will commence on the second working day after filing of these directions with the BTAS and all time limits will run from that date, unless stated otherwise;
3. Within 28 days, ie by [date]:
 - a all parties will provide to BTAS with dates when they are available for the substantive hearing in the period between [month/year] and [month/year], failing which BTAS may fix the hearing without reference to the availability of any party;
 - b the respondent will specify:
 - i whether he or she admits the charges;
 - ii if not, which areas of fact and/or law are in dispute;
4. Within 42 days, ie by [date], the respondent must provide a copy of the documents and a list of witnesses, on which and on whom he or she intends to rely, and copies of any witness statements on which he or she intends to rely. The BSB is to provide copies of any witness statements on which it intends to rely within 42 days, i.e. by [date], if required;
5. Within 56 days, ie by [date], both the Bar Standards Board and the respondent must:
 - a serve written notice of the witnesses (if any) whom they require the other party to tender for cross-examination;
 - b provide a schedule setting out details of the witnesses he or she intends to call and a time estimate for the evidence of each of his or her witnesses;
6. At least fourteen days before the date fixed for the substantive hearing:
 - a the respondent will provide to BTAS [four/six] copies of any defence bundle already provided under direction (5) for circulation to the Disciplinary Tribunal members, and at the same time send a copy to the Bar Standards Board;

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(a) whether he admits the charges;
(b) whether any of the facts relied on by the *Bar Standards Board* and set out in the documents provided pursuant to rE104 are admitted

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

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

7. It either party seeks reasonable adjustments, to enable a person with a disability to participate in the hearing, or measures under rE179 to rE184, they must notify *BTAS* as soon as possible and no later than 21 days before the date fixed for the substantive hearing;

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

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

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

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OR

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