



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

Purpose of notice
To grant an application from the BSB to approve alterations to its regulatory arrangements in respect of its Disciplinary Tribunal Rules
Alterations that are being approved by this decision
There are a substantial number of alterations which are set out in more detail in the notice itself. However, the overall purpose of the changes are to provide greater clarity on the process for those affected by the Disciplinary Tribunal Process and to streamline the steps before and after the hearing. The changes also aim to increase protection for vulnerable witnesses and the public.

Decision notice

Issued by the Legal Services Board under Part 3 of Schedule 4 to the Legal Services Act 2007

The Bar Standards Board's application for approval of changes to its regulatory arrangements in respect of its Disciplinary Tribunal Rules

The Legal Services Board (**LSB**) has granted an application from the Bar Standards Board (**BSB**) to approve alterations to the regulatory arrangements in respect of its Disciplinary Tribunal Rules (**DTR**). 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 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 set out at the end of this decision notice.

Proposed changes

1. The BSB applied to the LSB for approval of the proposed amendments to Part 5, section B of the BSB Handbook along with the consequential alterations to the other sections of the Handbook that arise in light of this.
2. The application did not set out all of the alterations individually due to the large number of amendments. However, within an annex to the application the BSB provided the LSB with a copy of the current Disciplinary Regulations, which contained the proposed amended regulations. This can be found in **Annex A** of this decision notice. The consequential alterations can be found in **Annex B**.
3. The application states that the amended Regulations are designed to achieve the following outcomes:
 - Full clarity of process for those affected by the Disciplinary Tribunal Process
 - Increased protection for vulnerable witnesses
 - A more proportionate and streamlined approach to the steps before and after the hearing
 - Increased public protection and promotion of adherence of professional principles through the possibility of marking a breach of the BSB Handbook where a Tribunal does not find that professional misconduct is proved yet is still of the view that there has been a breach of the Handbook
4. More detail on the alterations is summarised below:
 - Changes to language/terminology to ensure it is suitable, accurate and reflects good regulatory practise.

- Simplification and streamlining of the 'Directions' section in the Regulations so the Tribunal can address its resources appropriately to cases where the directions cannot be agreed between parties. In addition, the amended Regulations now include the power for the Tribunal to exclude evidence or draw an adverse inference where there has been late or non-compliance, to enable the Tribunal to have stricter control to ensure compliance with directions.
- The process for appointing Tribunal members is specified more clearly, thereby increasing transparency.
- Removal of the requirement that the President of the Council of the Inns of Court have regard to any recommendation of the Professional Conduct Committee (PCC) that a Judge, rather than a QC, chair a three person panel.
- Inclusion of new sections on dealing with the evidence of vulnerable witnesses
- Inclusion of a more proportionate approach to enable a Respondent to apply for a fresh hearing where they were not present at a Tribunal, where there is legitimate reason to do so (thereby reducing expense and unnecessary use of the High Court).
- Inclusion of an outline of the procedure to be followed at hearings.
- Inclusion of a power for the Tribunal to direct that a matter be referred back to the BSB to consider the imposition of an administrative sanction. This has also necessitated an addition to the Complaints Regulations (rE66A). This addition provides the BSB with the power to reconsider complaints if they are referred back by a tribunal.
- Drafting of a new rule that states that the Tribunal has discretionary powers, in exceptional circumstances, to postpone the start of a period of suspension.
- Removal of prescriptive criteria within the current regulations setting out when the BSB can appeal a Tribunal decision to the High Court.
- Pronouncement by Inns is only necessary in the case of disbarments.
- Provision of one publicly available decision of the Tribunal and discretion is given to the Bar Tribunals and Adjudication Service (BTAS) to send the report to the other persons it deems appropriate. Also included is an obligation to publish an anonymised summary where changes are dismissed.
- Removal of sections on the steps to be taken upon sentence of disbarment or suspension. Removal of this detail services to streamline the Regulations. The points are more appropriately addressed in internal policy and separate guidance.
- Section C of Part 5 is no longer applicable. These rules apply to decisions made by tribunals prior to 7 January 2014 where notice of appeal had been served before 18 April 2014. All such appeals have now been disposed of. In addition, the jurisdiction that the Visitors (as defined in Part 6 of the BSB Handbook) exercised in relation to appeals against qualification decisions has also expired. These rules have therefore been removed.

- In addition to the amended Regulations, there have been consequential changes to the other parts of the Handbook including the definitions section, in particular the following:
 - The drafting of a definition for the terms BTAS, Respondent and Judge (Part 6, Definitions);
 - Removal of terms no longer within the Regulations (eg: Defendant);
 - Removal of definitions relating to the Hearings before the Visitors Rules; and
 - Alteration to numbers of relevant regulations

Key issues considered in the assessment of the application

5. The LSB broadly welcomes the BSB's approach in making these changes to streamline the disciplinary process. As stated in the BSB application, the existing Regulations have been in place since 2009 and have not been substantively revised since then. Key issues with the existing Regulations, as noted in the BSB application include:

- The terminology did not reflect established regulatory practice elsewhere or the reality of how decisions were taken in the process.
- The "Directions" stage was overly complex and caused delay in the progress of matters before the Tribunal.
- The current Regulations did not make express provision for vulnerable witnesses, as is the case with equivalent rules of other regulators.
- With the increased possibility of persons without legal qualification being subject to disciplinary action, there was a need for greater clarity of process.
- There was a gap in powers of disposal if a Tribunal considered that a matter breached the BSB Handbook but did not amount to professional misconduct.
- The power to impose deferred sentences within the current Regulations was overly complex and disproportionate.
- The current procedures relating to the publication of findings and enactment of sentences was overly complex and disproportionate.

6. The LSB sought assurance on a number of issues in its assessment, which included:

- Sanctions
- Timeliness of reporting and publication of findings and decisions
- Risks of publishing cases where allegations are not proven and data protection
- Equality impact

Sanctions

7. The LSB asked why the sanction on the practising certificate not being renewed is listed as the third most severe sanction. We wanted to find out about the extent to which the BSB

considered the risk that the rule is addressing by making it the third most severe sanction rather than the second.

8. The BSB clarified that the prohibition on renewal applied only to 'unregistered barristers' i.e. those who do not currently have a practicing certificate and therefore are unable to provide reserved legal activities (these people would have been called to the Bar and are therefore allowed to use the title of Barrister). It is a preventative sanction that prohibits those who present a risk to the public from obtaining a practicing certificate. The BSB continued by stating that, in the hierarchy of sanctions, the immediate impact of a suspension from current practice is more serious than the imposition of a preventative measure. The BSB later clarified in an amendment to the rules that the suspension applies to practicing barristers and the prohibition on renewal applies to non-practising barristers.

Timeliness of reporting and publication of findings and decisions

9. The LSB asked why BTAS publishes its findings and decisions within 14 days but there is no time limit on when the report needs to be published.
10. The BSB clarified that including a strict deadline within the regulations for the production of a full report is not necessarily appropriate given the range of cases considered by a Tribunal. In some cases, the complexity of the issues under consideration may mean that the full, agreed, report could take considerably longer than the 'norm'. The BSB reported that, in its view, the timescale for issuing the full report is more appropriate for inclusion in policy/guidance. The approach of not having a prescriptive deadline for this is in line with court practice and other regulators where complex judgements may take weeks, if not some months, to produce. The BSB envisaged that such a long timescale would be applicable in only a very few cases but nevertheless, it considered that the system needs to be sufficiently flexible to accommodate the complex cases. The public is protected by the requirement that the finding and decision is published within 14 days which allows information about suspensions and disbarments to be put in the public domain quickly, but not necessarily the full reasons for the decisions.

Risks of publishing cases where allegations are not proven and data protection

11. The LSB raised some questions with the BSB around (i) whether the BSB has considered the risks in publishing cases where allegations are not proven and (ii) the data protection is in place to ensure respondents cannot be identified.
12. As regards the first question the BSB clarified that it had considered the risks and had decided that reports should be summarised and anonymised for publication where the allegations have not been proved. In the BSB's view this strikes the right balance between transparency and protecting the respondent. As to the second question, the BSB specified that the summaries will be compiled in such a way as the parties involved cannot be identified from the reports. In any event, the BSB stated that it and BTAS already have in place data protection statements that cover the disclosure of personal data for the purpose of disciplinary proceedings and reporting the results thereof. The BSB confirmed that it will review its data protection in light of the changes to the DTRs and will make any necessary amendments.

Equality impact

13. The LSB application states that they do not envisage that the amendments will impact negatively upon the diversity of the Bar. It considers that the amended regulations will enhance promotion of a strong and effective legal profession by providing a clearer framework of procedure to take to the disciplinary action and further ensuring that those who are accused of a breach of the Handbook and/or professional misconduct are dealt with in an effective, clear and proportionate manner.
14. The LSB sought clarification on whether the BSB had carried out an Equality Assessment (EA). The BSB confirmed that it had carried out an EA.

Consultation

15. In July 2015, the BSB conducted a consultation on the proposed changes to the DTR (part 5 of the Handbook). The BSB received 11 responses to the consultation, with differing views and opinions. The changes to the DTR, were in some cases, considered controversial and, in other cases, fairly straight forward.
16. The consultation summary of responses paper states that the BSB has taken into account the differing views in producing the proposed amendments of the DTR.

Guidance

17. The LSB asked the BSB to provide a copy of their guidance on three and five person disciplinary tribunal cases and disqualification orders, to help understand how the regulations will be implemented. For the avoidance of doubt, the guidance is not defined as regulatory arrangements and therefore is not approved as part of this decision.

Decision

18. The LSB has considered the BSB's 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.
19. The Annex to this decision notice contains the specific amendments to the BSB's regulatory arrangements approved by the LSB. The version attached to this notice is presented slightly differently to that in the application, making the amendments clearer.

Chronology

- The LSB confirmed receipt of an application from the BSB on 11 April 2017.
- The 28 day initial decision period for considering the application ended on 8 May 2017.
- An extension notice was issued on 4 May 2017
- This decision notice is effective from 21 June 2017.
- The decision notice will be published on our website by 23 June 2017.

Neil Buckley, Chief Executive of the Legal Services Board
21 June 2017

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 proposed 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 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.

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

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

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.

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*.

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
- .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, must be endorsed by a *Directions Judge*, who shall be designated by the *President* in accordance with the requirements of rE114.

Applications

rE127 At any time before the hearing, either party can make any of the following applications and thereafter file with *BTAS* and serve on the opposing party written submission in support of the applications, namely:

- .1 an application to sever the charges and/or applications;
- .2 an application to strike out the charges and/or applications which relate to the *respondent* who makes the application;
- .3 an application to stay the proceedings;
- .4 an application about the admissibility of documents;
- .5 an application for disclosure of documents;
- .6 an application to extend or abridge any relevant time limits;
- .7 an application for the hearing to be held in private;
- .8 an application for separate hearings or an application that proceedings pending against separate *respondents* be dealt with at the same hearing; or
- .9 any other application to vary standard or non-*standard directions* (which either party considers reasonable, having regard to the facts of the case).

rE128 The *Directions Judge* or Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* will consider how any of the applications referred to rE127 are to be dealt with.

Extent of powers to order directions

rE129 The *Directions Judge* or the Chair of the *Disciplinary Tribunal* designated in the *Convening Order* (or failing the *Directions Judge* or the Chair of the *Disciplinary Tribunal*, any other *Judge* nominated by the *President*) may, at any stage, make such directions for the management of the case or the hearing as he or she considers will expedite the just and efficient conduct of the case.

Setting the hearing date

rE130 This regulation applies where, after the deemed acceptance, later agreement of directions, or the service of a directions order by *the President*, the date of the hearing has not been

fixed. Where this Regulation applies, each party must submit details of their availability for the substantive hearing to *BTAS* in accordance with the directions. After 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:
 - (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*;

- (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*;
- (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,
- (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*;

- .ii the date and time of the sitting of the *Disciplinary Tribunal* at which it is proposed the charge(s) and/or application(s) should be heard; and
- .iii the names and status (that is, as Chair, as *lay member*, as *barrister* or other) of those *persons* who it is proposed should constitute the *Disciplinary Tribunal* to hear the case; and
- .iv the name of the Clerk,

and send copies of that *Convening Order* to the nominated members of the *Disciplinary Tribunal*, the 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)

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

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

rE138 No person who has been engaged in the investigation of a 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.

The Disciplinary Tribunal

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.

rE141 A three-person panel shall include the following *persons* nominated by *the President*:

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

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

rE143 In deciding who will sit on the panel, the *President* may have regard to the nature of the charge(s) and/or application(s) being determined and to the identity of the *respondent(s)* against whom the charges have been made. When constituting the panel, *the President* shall take into account the requirements of rE140 and rE141 above, and rE144 and rE145 below.

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

- .1 are a member of the *Bar Council* or of any of its committees; or
- .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
 - .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

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.

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

- .1 grant the adjournment; or
- .2 direct that the application must be renewed before the *Disciplinary Tribunal* on the first day fixed for the hearing; or
- .3 refuse the application; and
- .4 may make such directions as he or she considers appropriate for the further conduct of the case.

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*.

Recording of proceedings

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

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:

- .1 the charge(s) against each *respondent* arises out of the same circumstances; or
- .2 in the view of the *Disciplinary Tribunal*, a joint hearing is necessary or desirable.

rE159 Where a joint hearing is held:

- .1 these Regulations are to have effect in relation to the hearing with the necessary modifications as directed by the Chair; and
- .2 each *respondent* concerned is to be able to exercise any of the rights granted to that *respondent* under these Regulations whether or not any other *respondent* concerned wishes to exercise that right.

rE160 Unless it is of the view that there is a risk of prejudice to the fairness of the proceedings, the *Disciplinary Tribunal* may consider and determine at a single hearing two or more matters which have been separately referred to the *Disciplinary Tribunal* in respect of the same *respondent*, whether or not those matters arise from the same circumstances.

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

rE161 A *Disciplinary Tribunal* may at any time before or during the hearing grant permission to the Bar Standards Board to amend the charge(s) and/or application(s) against any *respondent*, or grant permission for new charge(s) and/or application(s) be added, provided that:

- .1 the *Disciplinary Tribunal* is satisfied that no *respondent* will by reason of such an amendment or addition suffer any substantial prejudice in the conduct of his or her defence; and
- .2 the *Disciplinary Tribunal* will, if so requested by a *respondent*, adjourn for such time as the *Disciplinary Tribunal* considers reasonably necessary to enable that *respondent* to meet the amended charge(s) or application(s).

Adjournment of the hearing

rE162 Subject to rE163, the *Disciplinary Tribunal* must sit from day to day until it has made a finding and, if any charge or application is found proved, until sanction has been determined.

rE163 A *Disciplinary Tribunal* may, if they decide an adjournment is necessary for any reason, adjourn the hearing for such period or periods as it may decide.

Standard of proof

rE164 The *Disciplinary Tribunal* must apply the criminal standard of proof when deciding charges of *professional misconduct* and in deciding whether the *disqualification condition* has been established.

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 inference against that party.

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*.

rE173 Any further questioning of the witnesses by the parties shall be at the discretion of the *Disciplinary Tribunal*.

rE174 The *Disciplinary Tribunal* may, upon the application of a party, agree that the identity of a witness should not be revealed in public.

rE175 A witness of fact shall be excluded from the hearing until he or she is called to give evidence, failing which he or she will not be entitled to give evidence without leave of the *Disciplinary Tribunal*

Vulnerable Witnesses

rE176 For the purpose of these Regulations, any person falling into one or more of the following categories may be treated by the *Disciplinary Tribunal* as a vulnerable witness in proceedings before it:

- .1 any witness under the age of 18 at the time of the hearing;
- .2 any witness with a mental disorder within the meaning of the Mental Health Act 1983;
- .3 any witness who is significantly impaired in relation to intelligence and social functioning;
- .4 any witness with physical disabilities who requires assistance to give evidence;
- .5 any witness, where the allegation against the *respondent* is of a sexual or violent nature and the witness was the alleged victim; and
- .6 any witness who complains of intimidation.

rE177 Subject to hearing representations from the parties, the Chair of the *Disciplinary Tribunal* or the *Disciplinary Tribunal* may adopt such measures as it considers desirable to enable it to receive evidence from a vulnerable witness.

rE178 Any witness who is not regarded as a vulnerable witness under rE176 may apply for one or more of the measures set out in rE179 to be put into place on the ground that the measure(s) is desirable to enable the *Disciplinary Tribunal* to receive his or her evidence.

rE179 Measures adopted by the *Disciplinary Tribunal* for receiving evidence from a vulnerable witness may include, but are not to be limited to:

- .1 use of video links;

- .2 use of pre-recorded evidence as the evidence-in-chief of a witness, provided always that such a witness is available at the hearing for cross-examination and questioning by the *Disciplinary Tribunal*;
- .3 use of interpreters (including signers and translators) or intermediaries;
- .4 use of screens or such other measures as the *Disciplinary Tribunal* consider necessary in the circumstances in order to prevent:
 - .a the identity of the witness being revealed to the press or the general public; or
 - .b access to the witness by the *respondent*
- .5 the hearing of evidence (either whole or in part) by the *Disciplinary Tribunal* in private.

rE180 No *respondent* charged with an allegation of a sexual or violent nature may cross-examine in person a witness who is the alleged victim, either:

- .1 in connection with that allegation, or
- .2 in connection with any other allegation (of whatever nature) with which the said *respondent* is charged in the proceedings.

rE181 In the circumstances set out in rE180, in the absence of the *respondent's* written consent, *BTAS* must, no less than seven days before the hearing, appoint a legally qualified person to cross-examine the witness on the *respondent's* behalf.

rE182 A witness who is not regarded as a vulnerable witness under rE177 may apply for one or more of the measures set out in rE179 to be put in place on the ground that the measure(s) is desirable to enable the *Disciplinary Tribunal* to receive his or her evidence.

Absence of Respondent

rE183 Where the *respondent* has not attended at the time and place appointed for the hearing, the *Disciplinary Tribunal* may nevertheless, subject to compliance with rE234.1 in respect of that *respondent*, proceed to hear and determine the charge(s) or application(s) relating to that *respondent*, if it considers it just to do so and it is satisfied that the relevant procedure has been complied with (that is, the *respondent* has been duly served (in accordance with rE249 of these Regulations) with the documents required by rE102, rE103, and rE132.3.c (as appropriate)).

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

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*.

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.

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.

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.

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

rE190 The *Disciplinary Tribunal* shall consider any submissions from the parties in relation to objection(s) to the charge(s) or preliminary applications, following which the *Disciplinary Tribunal* will retire into private session to consider the submissions and shall thereafter announce its determination.

rE191 After the *Disciplinary Tribunal* has dealt with any submissions or applications under rE190, the Clerk shall read the charge(s) in public.

rE192 The Clerk shall ask the *respondent(s)* whether the charge(s) is admitted or denied. The *respondent(s)* plea to the charge(s) will be entered on the record.

rE193 Where the *respondent(s)* admit the charges(s), the Chair of the *Disciplinary Tribunal* shall announce the charge(s) proved and the *Disciplinary Tribunal* shall record in writing its finding on the charge(s) and its reasons. The matter shall then continue in accordance with the procedure set out at paragraph rE199 onwards.

rE194 Where the *respondent(s)* denies the charge(s), the Bar Standards Board will present the case against the *respondent(s)*, which may include producing any evidence and calling any witness in person.

rE195 After the evidence against the *respondent* has been called, the *respondent* shall be entitled to submit that he or she has no case to answer. The Bar Standards Board shall be entitled to respond to such a submission. If such a submission is upheld the *Disciplinary Tribunal* shall dismiss the charge(s), either in whole or in part. If the entirety of the case against the *respondent* is not dismissed and some charges remain the proceedings shall continue as set out at rE196 to rE198.

rE196 The *respondent* shall then be entitled to call any witness, give evidence on his or her own behalf and adduce any other evidence in support of the *respondent's* defence.

rE197 The *Bar Standards Board* shall be entitled to call witnesses and adduce evidence in rebuttal of any part of the defence case.

rE198 After the *respondent* has called any witness in person and adduced any evidence, the *Bar Standards Board* may address the *Disciplinary Tribunal*, and thereafter the *respondent*.

The finding

rE199 At the end of the hearing, the *Disciplinary Tribunal* must record in writing its finding(s) on each charge or application, and its reasons. That record must be signed by the Chair and by all members of the *Disciplinary Tribunal*.

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

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

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

The sanction

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

- .1 finding of *professional misconduct* by a *Disciplinary Tribunal* or under the determination by consent procedure; or
- .2 *Disqualification Order*; or
- .3 finding of a breach of proper professional standards by the *Bar Standards Board* or any other regulator
- .4 adverse finding on a charge consisting of a *legal aid complaint*;

made in respect of the *respondent*, or, where the proved charge(s) concerns a *BSB 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 on a *respondent*, the sanction to be recorded must be that which is the most favourable to the *respondent*.

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

rE207 Subject to rE208 below:

- .1 a *respondent* against whom a charge of *professional misconduct* has been found proved may be sanctioned by the *Disciplinary Tribunal* as follows:
 - .a in the case of *barristers*, in accordance with Annex 1 to these Regulations;
 - .b in the case of a *BSB legal services body*, in accordance with Annex 2 to these Regulations;
 - ~~.c in the case of a *licensed body*, in accordance with Annex 3 to these Regulations;~~
 - .d in the case of *registered European lawyers*, in accordance with Annex 4 to these Regulations;
 - .e in the case of all other *BSB regulated persons*, in accordance with Annex 5 to these Regulations;

- .2 in the case of a *respondent* who is 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-authorised individual* directly or *indirectly employed* by a *BSB authorised person*).

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

rE209 In any case where a charge of *professional misconduct* has not been found proved, the *Disciplinary Tribunal* may direct that the matter(s) be referred to *Bar Standards Board* for 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
- .2 The *Disciplinary Tribunal* considers that such referral to the *Bar Standards Board* is proportionate and in the public interest

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

rE210 A three-person panel must not:

- .1 disbar a *barrister* or suspend a *barrister's practising certificate* for a period longer than twelve months; or
- .2 revoke the authorisation or licence (as appropriate) of a *BSB authorised body* or suspend it for a period longer than twelve months; or
- .3 remove a *registered European lawyer* from the *register of European lawyers*; or
- .4 impose a sanction of suspension on any *BSB regulated person* for a prescribed period longer than twelve months; or
- .5 impose a *Disqualification Order* for more than twelve months.

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

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

- .1 the three-person panel must refer the case to a five-person panel for it to sanction that *respondent* (but may proceed to sanction any other *respondents* to the proceedings in respect of whom this regulation does not apply); and
- .2 the three-person panel must, in order to help the five-person panel, prepare a statement of the facts as found (and, where relevant, the sentences passed on any other *respondents* to the proceedings). The *respondent* cannot challenge the facts found by the three-person panel; and
- .3 the three-person panel must direct within what period of time the sentencing hearing before the five-person panel is to be held and make appropriate directions for the parties to provide the *President* with their dates of availability.

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

rE213 The *respondent* must be informed by *BTAS* as soon as practicable of the names and status (that is, as Chair, as *lay member*, as *barrister* or other) of those *persons* who it is proposed will constitute the five-person panel. The *respondent* may, when 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.

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 rE234.1rE234.3.

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

rE216 If the procedure under rE215 has been followed, the *respondent* may apply to the *Directions Judge* for an order that there should be a new sentencing hearing before a fresh five-person panel and the procedure for the *respondent's* application shall be as set out at rE185 to rE187 in these Regulations.

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

- .1 any *Disciplinary Tribunal* which hears a charge consisting of a *legal aid complaint* relating to the conduct of a *respondent* who is a *barrister* may if it thinks fit (and whether or not it sentences the *respondent* in accordance with 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;
- .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:
 - .a his or her conduct in connection with any such services as are mentioned in Section 40(1) of the Act of 1985; or
 - .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.

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.

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

rE220 For the purposes of rE222 to rE224:

- .1 The effect of a sanction of suspension for a *BSB authorised individual* is that:
 - .a the *respondent's practising certificate* is *suspended* by the Bar Standards Board for the period of the suspension;
 - .b the *respondent* is prohibited from practising as a *barrister*, or holding 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);
- .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*:
 - .a prohibited from holding himself/herself out as registered with the *Bar Standards Board*; and;
 - .b not authorised to *practise*.
- .3 The effect of a sanction of suspension for a *BSB 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;
- .4 The effect of a sanction on a *BSB authorised individual* or a *registered European lawyer* requiring completion of continuing professional development shall be in addition to the mandatory requirements set out in the continuing professional development rules at Part 4 of this *Handbook*.

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

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

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

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

- .1 without its being *suspended*; or
- .2 to take effect on a *barrister's practising certificate* or on the authorisation or licence of a *BSB authorised body* when a period of suspension ends.

rE224 Conditions may (depending on the circumstances) include:

- .1 conditions limiting the scope of the *respondent's practice* (after the end of any suspension, if relevant) to such part as the *Disciplinary Tribunal* may determine, either indefinitely or for a defined period; and/or
- .2 imposing requirements that the *respondent*, or in the case of a *BSB authorised body*, its *managers* or *employees*, undergo such further *training* as the *Disciplinary Tribunal* may determine; and/or
- .3 prohibiting the *respondent* from accepting or carrying out any *public access instructions*; and/or
- .4 such other matters as the *Disciplinary Tribunal* may consider appropriate for the purpose of protecting the public and/or preventing a repetition of the conduct in question.

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

rE225 rE226 to rE233 below apply to any *respondent* who:

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

- .3 is a *BSB authorised body*, which has been sanctioned to have its authorisation or licence-revoked or *suspended* for more than twelve months; or
- .4 is a *BSB authorised person*, who has been sanctioned to have conditions placed on 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.

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

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

- .1 in relation to rE225.1 to rE225.3, require the *respondent* to suspend his or her *practice* immediately, in which case the *Bar Standards Board* must suspend that *respondent's practising certificate* with immediate effect; or
- .2 in relation to rE225.4 decide that the condition prohibiting the *respondent* from accepting *public access instructions* or conducting any litigation, shall take effect immediately; or
- .3 where the *respondent* has been sanctioned to be disbarred or to be suspended, and where that *respondent* does not currently hold a *practising certificate*, require the *Bar Standards Board* not to issue any *practising certificate* to him or her.

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.

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

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

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.

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.

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.

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

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

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:

- .1 If sent by guaranteed deliver post, or other guaranteed or acknowledged delivery, or receipted hand delivery to:
 - .a in the case of a *BSB authorised individual*, the address notified by 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
 - .b in the case of a *BSB authorised body*, its registered office address or its principal office; or
 - .c in the case of a *BSB regulated person* or *non-authorised individual* acting as a *manager* or *employee* of a *BSB 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
 - .d in either case, an address to which the *respondent* may have asked in writing that such documents be sent; or
 - .e in the absence of any of the above, to his or her last known address; or;
 - .f in the case of a *BSB regulated person* or *non-authorised individual* acting as a *manager* or *employee* of a *BSB authorised body*, the last known address of the relevant *BSB authorised body*,

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

- .2 If served by e-mail, where:
 - .a the *respondent's* e-mail address is known to the *Bar Standards Board*; and

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

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

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

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.

ANNEX A – Amended Disciplinary Tribunal Regulations – Tracked Changes

Part 5: Enforcement Regulations
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.

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*² 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

² 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.

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

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.

~~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.~~

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.

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*³, the *Disciplinary Tribunal* may decide to:

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

³ If an application to disqualify is made in the same proceedings, the *Disciplinary Tribunal* may also disqualify a *BSB regulated person* in accordance with these Regulations.

ANNEX 6 - STANDARD DIRECTIONS

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*;

- 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. If 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.

Consequential alterations

Annex B

1. The following consequential alterations are proposed to accommodate changes to The Disciplinary Tribunals Regulations 2014:

Contents

2. Removal of reference to Part 5.C from the contents on page 5.

Part 1 Introduction

A. General

A3. Amendments to the Handbook

3. Removal of r13 “Any amendments to Section 5.C must be made in accordance with the requirements of that Section” on page 13.

C. Commencement and Transitional Provisions

4. Amendment of r14.1 to read “a matter is being dealt with under The Disciplinary Tribunal Regulations 2014 as at [implementation date]; or” on page 17.

Part 2 The Code of Conduct

C. The Conduct Rules

C4. You and your regulator

5. Removal of reference to “*the Visitors*” from rC64.2 on page 52.

Part 5 Enforcement Regulations

A. The Complaints Regulations

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

6. Amendment of rE50 to read “*Pursuant to rE37.3 above and rE66A below, the PCC may impose an administrative sanction on a BSB regulated person only where*” on page 180.
7. Removal of rE59.3 “*any deferred sentence which would be activated if the relevant person were to be found guilty of the charges alleged*” on page 180.
8. Amendment of rE66A to read “*Where a Disciplinary Tribunal directs that matter(s) be referred to the Professional Conduct Committee under rE209 to consider whether an administrative sanction should be imposed, the PCC shall consider the matter in accordance with rE50-55 or dismiss the complaint in accordance with rE37.1/37.2*” on page 182.

A5. Determination by consent

9. Removal of rE69.2.e.ii “*any deferred sentences which would be activated if the breach or breaches were proved,*” on page 183.
10. Removal of rE79 “*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”)*” on page 184.
11. Amendment of rE80 to read “*A deferred sentence, imposed prior to [implementation date], 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*” on page 184.

Part 6 Definitions

12. Removal of definition 6 “*Answer: in Part 5, means any document served in accordance with Regulation E240*” on page 260.
13. Removal of definition 39 “*BSB Representative: means a person or persons appointed by the Bar Standards Board in accordance with Regulation E103 following a referral of a matter by the PCC to a Disciplinary Tribunal*” on page 263.
14. Alteration of definition 54 to read “*Convening Order: means the Order described in Rule E132.c*” on page 264.
15. Removal of definition 64 “*Defendant: in Section 5.B means the relevant person who is the subject of the disciplinary charge or charges brought before a Disciplinary Tribunal and/or of a disqualification application made to the Disciplinary Tribunal under the Complaints Regulations and in Section 5.D means the relevant person against whom the Bar Standards Board is considering taking interim action in accordance with Section 5.D*” on page 265.
16. Alteration of definition 74 “*Disciplinary Tribunal: means a Tribunal convened pursuant to rE132 of the Disciplinary Tribunal Regulations 2016 to consider an allegation of professional misconduct against a BSB regulated person (for which the sanctions may include disqualification, where Part 5 so provides) and/or to consider an application for disqualification against a relevant person*” on page 266.
17. Removal of definition 102 “*Hearings Before the Visitors: means an appeal hearing constituted under Section 3.V*” on page 269.
18. Addition of definition 116A “*(116A) Judge For the purposes of rE140 and rE141, a Judge includes:*
 - .1 a puisne judge of the High Court;*
 - .2 a judge of the Court of Appeal;*
 - .3 a Circuit judge;*
 - .4 a Recorder who has been authorised to sit as a judge of the High Court under section 9(1) of the Supreme Court Act 1981;*
 - .5 a deputy judge of the High Court appointed under section 9(4) of the Supreme Court Act 1981; and*
 - .6 a person who has been a judge of the Court of Appeal, or a puisne judge of the High Court, or a Circuit Judge, provided that he remains permitted by virtue of section 9 of the Supreme Court Act 1981 to be requested to act as a judge of the High Court, or is*

eligible for appointment as a deputy Circuit judge under section 24 of the Courts Act 1971” on page 270.

19. Amendment of definition 154 “*Period of Deferral: A sentence imposed prior to xxxx that was deferred for a period no less than six months and no more than two years long*” on page 274.
20. Removal of definition 156 “*Petition: In Part 5 means the petition of appeal served pursuant to Rule E236.1*” on page 274.
21. Removal of definition 203 “*Respondent: In Part 5 means the person with an interest in upholding a relevant decision, being:*
 - a) *in the case of an appeal by the BSB against a decision of a*
 - b) *Disciplinary Tribunal, the defendant;*
 - c) *in all other cases, the BSB*” on page 279
22. Amendment of definition 219 “*Suspended or Suspension: means to suspend the practising certificate, licence or authorisation of a BSB authorised person, either generally or in respect of any separate authorisation that person may have to conduct litigation or to carry out public access work which power when exercised on an interim basis, shall be exercised in accordance with Section 5.D and when exercised in fitness to practise proceedings shall be exercised in accordance with Section 5.E.*” on page 280.
23. Removal of definition 227 “*The Visitors: means, in respect of appeals made before 7 January 2014, the panel nominated to hear an appeal pursuant to Rule E244.1 or, in the case of an appeal within Rule E244.3 to E244.5 the single judge nominated to hear the appeal*” on page 281.